The African Court on Human and Peoples' Rights' power to review its decisions

*Jamil Ddamulira Mujuzi**
https://orcid.org/0000-0003-1370-6718

ABSTRACT: Article 28(2) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights provides that '[t]he judgment of the Court decided by majority shall be final and not subject to appeal'. However, article 28(3) states that '[w]ithout prejudice to sub-article 2 above, the Court may review its decision in the light of new evidence under conditions to be set out in the Rules of Procedure'. Rule 78 of the Rules of the Court (2020) provides that the Court may review its decision 'in the event of the discovery of a new fact or evidence which, by its nature, has a decisive influence and which, when the decision was delivered, was unknown to the party and could not with due diligence have been known to that party'. Since its establishment (2013 to 2022), the Court has dealt with nine review applications. In this article, it is argued that Rule 78(1) is contrary to article 28(3) because it empowers the Court to review a decision based on new facts, yet article 28(3) limits the Court's power for review to the discovery of new evidence; the Court can review its decisions *ex mero motu* (although the jurisprudence of the Court suggests otherwise); the requirement that for new evidence to be admissible before the Court reviews its decision should have been unknown to the Court and the party is contrary to Rule 78(1); and that the six-month period should start running when the applicant obtains the new evidence as opposed to when they become aware of its existence (provided for in the Rules).

TITRE ET RÉSUMÉ EN FRANÇAIS

Le pouvoir de révision des décisions de la Cour africaine: l'article 28(3) du Protocole à la Charte africaine portant création de la Cour africaine des droits de l'homme et des peuples en pratique

RÉSUMÉ: L'article 28(2) du Protocole à la Charte africaine des droits de l'homme et des peuples portant création d'une Cour africaine des droits de l'homme et des peuples (Protocole) dispose que «l'arrêt de la Cour, adopté à la majorité, est définitif et ne peut faire l'objet d'aucun appel». Toutefois, l'article 28(3) prévoit que «sans préjudice du paragraphe 2 ci-dessus, la Cour peut réexaminer sa décision à la lumière de nouvelles preuves, dans des conditions fixées par le Règlement intérieur». La règle 78 du Règlement de la Cour (2020) énonce que la Cour peut réexaminer sa décision «en cas de découverte d'un fait ou d'un élément de preuve nouveau qui, par sa nature, exerce une influence décisive et qui, au moment où la décision a été rendue, était inconnu de la partie et n'aurait pu, avec une diligence raisonnable, être connu de celle-ci». Depuis sa création, la Cour a traité neuf demandes de réexamen (2013 à 2022). Dans cet article, il est soutenu que: la règle 78(1) est contraire à l'article 28(3) en ce qu'elle habilite la Cour à réexaminer une décision sur la base de faits nouveaux, alors que l'article 28(3) limite le pouvoir de réexamen de la Cour à la découverte de nouvelles preuves; la Cour peut réexaminer ses décisions *ex mero motu* (bien que la jurisprudence de la Cour suggère le contraire); l'exigence selon laquelle les nouvelles preuves, pour être recevables avant que la Cour ne réexamine sa décision, doivent

* LLB (Hons) (Makerere), LLM (Pretoria), LLM (Free State), LLD (Western Cape); Professor of Law, Faculty of Law, University of the Western Cape; djmujuzi@gmail.com

JD Mujuzi 'The African Court on Human and Peoples' Rights' power to review its decisions' (2025) 9 *African Human Rights Yearbook* 194-210
http://doi.org/10.29053/2523-1367/2025/v9a9

avoir été inconnues de la Cour et de la partie est contraire à la règle 78(1); et le délai de six mois devrait commencer à courir lorsque le requérant obtient la nouvelle preuve, et non au moment où il prend connaissance de son existence (tel que prévu par le Règlement).

TÍTULO E RESUMO EM PORTUGUÊS

O poder do Tribunal Africano dos Direitos Humanos e dos Povos para rever as suas decisões

RESUMO: O Artigo 28, n. 2 do Protocolo da Carta Africana dos Direitos Humanos e dos Povos relativo à criação de um Tribunal Africano dos Direitos Humanos e dos Povos (o Protocolo) prevê que '[o] julgamento do Tribunal decidido por maioria será definitivo e não sujeito a recurso.' No entanto, o Artigo 28, n. 3 estabelece que '[sem] prejuízo ao n. 2 acima, o Tribunal pode rever a sua decisão à luz de novas provas, sob condições a definir nas Regras de Processo.' A Regra 78 das Regras do Tribunal (2020) prevê que o Tribunal pode rever a sua decisão 'no caso de descoberta de um novo facto ou prova, que pela sua natureza tenha uma influência decisiva e que, quando a decisão foi proferida, fosse desconhecido da parte e não pudesse, com a devida diligência, ter sido conhecida por essa parte.' Desde a sua criação, o Tribunal tratou de nove pedidos de revisão (2013 a 2022). Neste artigo, argumenta-se que: a Regra 78, n. 1 é contrária ao Artigo 28, n. 3 porque confere ao tribunal o poder de rever uma decisão baseada em novos factos, mas o Artigo 28, n. 3 limita o poder do Tribunal para revisão à descoberta de novas provas; o tribunal pode rever as suas decisões *ex mero motu* (embora a jurisprudência do Tribunal sugira o contrário); a exigência de que novas provas sejam admissíveis antes de o Tribunal rever a sua decisão, esta deveria ser desconhecida do Tribunal e da parte contrariar a Regra 78, n. 1 e que o período de seis meses deveria começar a começar a contar quando o requerente obtiver a nova prova, em vez de quando tomar conhecimento da sua existência (previstas nas Regras).

KEY WORDS: African Court; review; appeal; article 28; Rule 78; inherent powers

CONTENT:

1 Introduction 195
2 Review powers under Article 28(3) and Rule 78 197
2.1 Triggering the review process 198
2.2 Ground(s) for review 200
2.3 The six-month deadline to apply for review of the Court's decision 206
3 Application for review and stay of execution of judgment 208
4 Conclusion 209

1 INTRODUCTION

The Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (African Court Protocol)[1] establishes the African Court on Human and Peoples' Rights (African Court). The mandate of the Court is to protect human rights.[2] It executes its mandate through the determination of individual or inter-state applications and requests for advisory

1 Protocol the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (1998) (African Court Protocol).

2 Art 3 of the Protocol provides that '[t]he jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant Human Rights instrument ratified by the states concerned'.

opinions.[3] The Court has indeed handed down many decisions dealing with different rights.[4] However, some litigants have been dissatisfied with the manner in which the Court has dealt with their cases dealing with human rights violations. The challenge is that there is no possibility for a person who is dissatisfied with the decision of the Court to appeal against it. This is because article 28(2) of the Protocol provides that '[t]he judgment of the Court decided by majority shall be final and not subject to appeal'.

However, article 28(3) states that '[w]ithout prejudice to sub-article 2 above, the Court may review its decision in the light of new evidence under conditions to be set out in the Rules of Procedure'. Article 28(2) of the Court Protocol provides for the general rule – that the decision of the Court is final. However, although the word 'shall' is used in article 23(2), that general rule is subject to the exception under article 28(3). Thus, article 28(3) of the Protocol empowers the Court to review its decision 'in the light of new evidence'.[5] The review procedure under article 28(3) is 'an exceptional one'.[6] Article 28(3) is operationalised by Rule 78 of the Rules of the Court (Rules) (2020) which provides that the Court may review its decision 'in the event of the discovery of a new fact or evidence, which by its nature, has a decisive influence and which, when the decision was delivered, was unknown to the party and could not with due diligence have been known to that party'. In *Urban Mkandawire v The Republic of Malawi,*[7] the Court held that the review 'process may not be used to undermine the principle of finality of judgments enshrined in article 28(2) [of the Protocol], which states that there shall be no appeal'.[8] In his separate opinion in the same case, Judge Ouguergouz held that the words 'without prejudice' under article 28(3) of the Protocol should 'simply be conceived as providing for an exception to the principle of the "final" character of the judgments of the Court enshrined in the preceding paragraph'.[9] Article 28(3) of the Protocol and Rule 78 of the Rules of the Court empower the Court to review its 'decision'. Rule 1(k) defines 'decision' to mean 'any pronouncement of the Court, in the exercise of its judicial powers, which is in the form of a judgment, ruling, opinion or order'. Thus, Rule 78 empowers the Court not only to review its decision in light of new evidence, but also in light of a new fact. It is argued that Rule 78(1) is contrary to article 28(3). Under

3 Art 4 & 5 African Court Protocol.

4 See generally https://www.african-court.org/cpmt/decisions (accessed 16 November 2025).

5 In *Kouadio Kobena Fory v Côte d'Ivoire* (Application 1/2022) (1 December 2022) para 19, the Court held that 'the purpose of an application for review is not to submit a new case to it but to seek a review of a judgment it has already delivered in a case, in respect of which a revision is sought'. See also para 58 where the Court held that 'the application for review cannot be based either on the legal grounds of its judgment or on particulars underpinning its findings'.

6 *Kouadio Kobena Fory* (n 5) para 23.

7 *Urban Mkandawire v Malawi* (Application 3/2011) (28 March 2014).

8 *Urban Mkandawire* (n 7) para 14.

9 *Urban Mkandawire* (n 7) 17.

article 28(4), the Court is empowered to interpret its judgment.[10] The Court has held that it can only interpret its judgment if the meaning[11] or scope[12] is not clear. It has indeed interpreted some of its decisions.[13]

Rule 79 empowers the Court to correct any clerical errors in its decision. This is commonly referred to as the 'slip rule'.[14] The Court's powers to interpret its decisions and to correct clerical errors are different from its power to review its decision. Reviewing a decision means that the Court changes the ruling. Since its establishment, the Court has dealt with nine review applications (2013 to 2022). All these applications were unsuccessful. However, the Court has developed principles that should govern review applications. This article examines those review applications and illustrates how the Court interpreted its review powers. Where necessary, the author suggests possible ways in which the Court could deal with review applications.

The article is divided into five parts. Following this introduction, the second part deals with the review powers under article 28(3) and Rule 78. In this part, the author deals with the circumstances in which the review process is 'triggered'; the grounds for review; and the time within which the review application has to be made. The third part of the article deals with application for review and stay of execution of judgment. The last part concludes the article.

2 REVIEW POWERS UNDER ARTICLE 28(3) AND RULE 78

Before discussing the Court's case law, it is important to reproduce Rule 78 in detail. This will enable the author to analyse the extent to which the Court's practice complies with both article 28(3) and Rule 78. Rule 78(1) provides:

> A party may, in the event of the discovery of a new fact or evidence, which by its nature, has a decisive influence and which, when the decision was delivered, was unknown to the party and could not with due diligence have been known to that party, request the Court, within a period of six months after that party acquired knowledge of the fact (or evidence), apply to the Court to review that decision. The Court shall not accept any request for review of its decision after five (5) years of the delivery of the same.

10 Art 28(4) provides that '[t]he Court may interpret its own decision'.

11 In *Houngue Eric Noudehouenou v Benin* (Application 1/2022) (5 September 2023) paras 16 and 17, the Court held that 'a request for interpretation must seek to ensure a better enforcement of the Court's judgment' and that it will not interpret a judgment that is 'clear and that there is no difficulty in understanding it'.

12 *APDH v Côte d'Ivoire* (4 May 2017) (28 September 2017) para 18.

13 See, eg, *Mohamed Abubakari v Tanzania* (Application 2/2017) (28 September 2017).

14 See, eg, *Yu Sung Construction Limited v Attorney General of the Republic of South Sudan* (Appeal 11 of 2022) [2023] EACJ 11 (27 November 2023) para 34.

Rules 2 to 4 provide for the procedure that has to be followed before and after filing the review application.[15] Rule 78(5) provides that '[a]n application for review shall not stay the execution of a decision, unless the Court decides otherwise'. It is important to take a closer look at Rule 78 by focusing on the following issues: triggering the review process; ground(s) for review; and the deadline to be met before the review application can be admitted. Before discussing these issues, it is necessary to recall that Rule 78 of the 2020 Rules replaced Rule 67 of the 2010 Rules. Rule 67(1) of the 2010 Rules was slightly different from Rule 78(1) of the 2020 Rules. It provided:

> Pursuant to article 28(3) of the Protocol, a party may apply to the Court to review its judgment in the event of the discovery of evidence, which was not within the knowledge of the party at the time the judgment was delivered. Such application shall be filed within six (6) months after that party acquired knowledge of the evidence so discovered.

The differences between Rules 67(1) of the 2010 Rules and 78(1) of the 2020 Rules are that the latter adds additional conditions under which the Court may review its decisions. These include the discovery of a new fact, which fact or evidence must have a decisive influence on the judgment. Rule 67(1) of the 2010 Rules also did not set the period within which the Court was barred from entertaining a review application. The Court handed down judgments dealing with review applications under Rule 67(1). However, in all these judgments, the applications were dismissed on the ground that the applicants had failed to prove that the information in question amounted to new evidence within the meaning of Rule 67(1).[16] Since Rule 67(1) of the 2010 Rules was replaced by Rule 78 of the 2020 Rules, it is beyond the scope of this article to discuss the judgments that were decided on the basis of Rule 67 of the 2010 Rules. The discussion turns to Rule 78.

2.1 Triggering the review process

Under Rule 78(1), the review process can only commence upon the application of 'a party'. Rule 1(p) of the Rules of the Court defines

15 Rules 2 to 4 provide: '2. The Application shall specify the decision in respect of which review is requested, contain information necessary to show that the conditions laid down in sub-rule 1 of this Rule have been met, and be accompanied by a copy of all relevant supporting documents. 3. Upon the instructions of the Court, the Registrar shall transmit a copy of the Application to any other party concerned and shall invite them to submit written observations, if any, within the time limit set by the President. The President shall also fix the date of the hearing should the Court decide to hold one. The Court shall rule on the admissibility of such Application and its decision shall take the form of a judgment. 4. If the Application is declared admissible, the Court shall determine the time limit for all future proceedings on the substance of the Application.'

16 *African Commission on Human and Peoples' Rights v Kenya* (Application 6/2012) [2019] AfCHPR 46 (24 October 2019); *Rutabingwa Chrysanthe v Rwanda* (Application 1/2018) [2019] AfCHPR 25 (4 July 2019); *Thobias Mango & Another v Tanzania* (Application 2/2018) [2019] AfCHPR 26 (4 July 2019); *Urban Mkandawire v Malawi* (Application 3/2011) [2014] AfCHPR 48 (28 March 2014); *Woyome v Ghana* [2020] AfCHPR 40 (26 June 2020); *Malengo v Tanzania* [2020] AfCHPR 35 (15 July 2020); and *Omary & Others v Tanzania* (Application 1/2012) [2012] AfCHPR 31 (1 January 2012).

'parties' to mean 'an applicant, respondent state and intervener'. A combined and strict reading of Rules 78(1) and 1(p) reveals that the Court cannot review its decision *ex mero motu*. Differently put, without an application from one of the parties, the Court has no jurisdiction to review its decision. As a result, and as the discussion below illustrates, all the review applications have been filed by natural and juristic persons. That is why the Court held that an 'applicant must' meet the requirements under Rule 78(1) for it to review the decision.[17] It also held that 'the onus is on the applicant to demonstrate, in his application, the discovery of new evidence of which he had no knowledge of at the time of the Court's judgment and the exact time when he came to know of this evidence'.[18]

However, Rule 90 provides that '[n]othing in these Rules shall limit or otherwise affect the inherent power of the Court to adopt such procedure or decisions as may be necessary to meet the ends of justice'. As mentioned above, article 28(3) of the Court Protocol empowers the Court to 'review its decision in the light of new evidence under conditions to be set out in the Rules of Procedure'. It does not provide that the Court can only review its decision on the basis of an application by one of the parties. Thus, it is the Court, through its Rules, that attempted to limit the scope of the Court's review powers. Therefore, nothing prevents the Court from invoking its inherent powers to review its decision *ex mero motu* if doing so 'is necessary to meet the ends of justice'. Otherwise, Rule 78 may have to be amended to expressly provide for the circumstances in which the Court can review its decision *ex mero motu*.

As mentioned above, Rule 78(1) provides that for new evidence to be admissible, it must have been 'unknown to the party' at the time the decision was delivered. There are suggestions that the Rule 78(1) should be interpreted to provide that apart from the party, the Court should also not have been aware of the new evidence. For example, in his separate opinion in *Urban Mkandawire v Malawi*[19] Judge Ouguergouz referred to both the French and English texts of the Protocol and held that there was a discrepancy between article 28(3) in the French and English tests. He explained that

> [t]he Court should have clearly spelt out the three conditions for admissibility of an application for review as provided for by the Protocol and the Rules, that is to say that the application 1) must contain new evidence 2) which the Court 'or' the Applicant had no knowledge of when the judgment was being rendered, and 3) to be submitted within six months of the date the said party discovered the new evidence. The discrepancy between the English and French versions of paragraph 3 of Article 28 of the Protocol could indeed explain why one of the three conditions which it poses is not identical to that of paragraph 1 of Rule 67 of the Rules. The French version of paragraph 3 of Article 28 of the Protocol makes it possible for the Court to review its judgment in the light of new evidence 'which was not within its knowledge at the time of its decision'; for its part, the English version of this paragraph does not contain such a condition.[20]

17 *Urban Mkandawire* (n 7) para 12.

18 *Wilson Barngetuny Koimet & Others v Republic of Kenya* (Application 6/2012) (11 November 2019) para 12. See also *Thobias Mango* (n 16) para 13.

19 *Urban Mkandawire* (n 7).

20 *Urban Mkandawire* (n 7) 18.

The judge added that both the French and English versions of the Rules provide that it is the 'party' that files an application for review. According to him, this is attributable to the fact that the English version of article 28(3) is silent on the fact that the Court should also be unaware of the new evidence at the time the decision was delivered. He added that the instruments establishing several regional and international tribunals or courts deal with the issue of review or revision and 'require that both the Court and the party requesting the review must have been unaware of the new fact' at the time the decision was delivered.[21] The Court appears to be moving towards this interpretation. For example, in *Kouadio Kobena Fory v Cote d'Ivoire*,[22] the Court held:[23]

> The Court reiterates that for a decision to be reviewed, it must be established that at the time of rendering the decision, new facts have come to light of which the Court and the parties were unaware and which are of such a nature as to have a decisive influence on the decision already rendered.

In this case, the Court suggests that the new facts should have been unknown to both the applicant and the Court. This additional requirement, that the Court should also be unaware of the new evidence at the time it delivered its decision, is not contemplated under Rule 78(1). However, nothing prevents the Court from amending Rule 78 to include that requirement. In doing so, the Rule should provide that either the Court or the party should have been unaware of the new evidence. It is not necessary to require that both the Court and the party should have been unaware of the new evidence. In light of the above discussion, it is possible for the Court to review its decision *ex mero motu* by invoking its inherent powers provided that the applicant was unaware of the new evidence at the time when the court delivered its decision.

2.2 Ground(s) for review

Under Rule 78(1), the Court can review its decision on one of the two grounds: (i) the discovery of a new fact; or (ii) the discovery of new evidence. Although the two concepts are closely related, the Rules draw a distinction between 'facts', on the one hand, and 'evidence', on the other.[24] Evidence or probative material is what is needed to prove a

21 As above. He made similar observations in subsequent cases; see, eg, separate opinion of Ouguergouz J in *Frank David Omary & Others v Tanzania* (Application 1/2012) (3 June 2016).

22 *Kouadio Kobena Fory* (n 5).

23 *Kouadio Kobena Fory* (n 5) para 65.

24 Eg, Rule 40(1) provides that '[a]pplications filed before the Court shall be written in one of the official languages of the Court and filed in one (1) original Application containing a summary of the facts and of the evidence intended to be adduced. The said Application shall be signed by the Applicant or by his/her representative.' See also Rule 60(3) which provides that '[e]very preliminary objection shall set out the facts and the law on which the objection is based as well as the submissions and a list of the documents in support, if any; it shall also specify any evidence which the party intends to adduce'. See also Rule 41.

fact.[25] Thus, Rule 55(1) provides that '[t]he Court may, of its own accord or at the request of a party, obtain any evidence which in its opinion may provide clarification of the facts of a case'. Ouguergouz J also emphasised the fact that there is a difference between 'facts' and 'evidence'.[26] As mentioned above, article 28(4) of the Protocol empowers the Court to review its decision on one ground – 'in the light of new evidence'. In most of the cases, the Court has referred to the new materials submitted by the parties in their review applications as 'evidence' as opposed to 'facts'. Thus, it is required that before any information is admitted, it should be both 'new' and 'evidence'.[27] However, in one case, it held that for an application for review to be admitted, '[t]he applicant must also prove the existence of facts or evidence that he or she considers to be new'.[28] This implies that the Court is open to reviewing its decision based on a new fact, which is contrary to article 28(3). Thus, by empowering the Court to review its decision based on the discovery of a new fact, Rule 78(1) extends the jurisdiction of the Court beyond what was conferred upon it under article 28(3). This invalidates that part of the Rule.

For the Court to review its decision, the new evidence should, first, have a decisive influence on the decision; and, second, it should have been unknown to the party and could not, with due diligence, have been known to that party. These two conditions have to be read conjunctively. Thus, if the new evidence would have had a decisive influence on the decision but was known to the party at the time the decision was delivered, the Court will not review its decision. Likewise, if the evidence would have had a decisive influence on the decision and was not known to the party but could have, with due diligence, been known to that party, the Court will not review its decision. This requirement perhaps is meant to ensure that the parties conduct their cases with due diligence and that they do not 'benefit' from concealing evidence or neglecting relevant evidence. In *Frank David Omary*,[29] the Court held that 'the requirements for admissibility for an application for review are cumulative; the absence of any one of them is sufficient

25 Art 26(2) of the Court Protocol provides that '[t]he Court may receive written and oral evidence including expert testimony and shall make its decision on the basis of such evidence'. In *Kouadio Kobena Fory* (n 5) para 56, the Court held that 'the evidence required under Rule 78(1) of the Rules is defined as the 'demonstration of the existence of a fact', that is, an 'event which occurred or took place' outside the proceedings before the Court and which was not previously known to a party or parties' (references omitted).

26 *Urban Mkandawire* (n 7) para 13; while referring to the differences between art 28(3) of the Protocol and other instruments establishing regional and international courts or tribunals, he observed that '[w]hat is even more fundamental is the fact that these three instruments refer to the existence of a new "fact" and not to a new "evidence", which is quite different'. He made similar and more detailed observations in a subsequent case. See separate opinion of Ouguergouz J in *Frank David Omary* (n 21).

27 *Alfred Agbes Woyome* (n 16) para 41.

28 *Kouadio Kobena Fory* (n 5) para 26. See also para 66 where the Court held that 'materials' presented by the applicant in his application for the review of the Court's decision were 'neither new facts nor new evidence within the meaning of art 28(3) of the Protocol and Rule 78(2) of the Rules'.

29 *Frank David Omary* (n 21).

to engender the inadmissibility of the application'.[30] The Court's jurisprudence demonstrates that it has understood 'decisive' evidence to mean evidence of 'the nature to exert influence on its initial decision'.[31] In other words, it must have a 'bearing' on the evidence in the decision sought to be reviewed.[32] In *Kouadio Kobena Fory,*[33] the Court held that the discovered new fact or evidence must have existed before the judgment was delivered. In other words, the events that take place after the judgment has been delivered are not considered new facts or evidence within the meaning of Rule 78(1).[34] The Court held that the evidence is not 'new' for the purposes of article 28(3) if it was submitted to the Court at the time of the initial decision that the applicant would like to be reviewed;[35] if it was 'genetically similar' to the evidence that was submitted to the Court to make its initial decision;[36] if it was the 'same in form and substance' as that earlier considered by the Court in the initial judgment sought to be reviewed;[37] if it was just a 'substantiation' of the evidence considered on merits;[38] or if the Court was 'aware' of it 'at the time of the judgment'.[39] The evidence must not have been in 'foreknowledge' of the applicant at the time the judgment was delivered.[40] The jurisprudence also shows that the Court will assume that the party was aware of the new evidence if it was published in media, that is, 'available in the public domain', at the time the judgment was delivered.[41] The presumption is that if the evidence was in the public domain, the applicant was aware of it, especially when it 'was so vital to their cause'.[42] The jurisprudence of the Court appears to create the impression that this presumption is irrebuttable. Thus, if the evidence was available in the public domain at the time the decision was delivered, the Court assumes that the applicant was aware of it. It is argued that that should be the general rule. However, the applicant should be allowed to adduce evidence to the contrary. In other words, they should be allowed to rebut the presumption. If they convince the Court that they were unaware of the

30 *Frank David Omary* (n 21) para 52.

31 *Frank David Omary* (n 21) para 49; *Ramadhani Issa Malengo* (n 16) para 29; *Alfred Agbes Woyome* (n 16) para 36. See also *Delta International Investments SA, Mr and Mrs AGL de Lange v Republic of South Africa* (Application 1/2012) (15 March 2013) para 7, where the Court held that it can only review its decision if the evidence is new 'to warrant review'.

32 *Ramadhani Issa Malengo* (n 16) para 34.

33 *Kouadio Kobena Fory* (n 5).

34 *Kouadio Kobena Fory* (n 5) para 37. The Court held that 'a fact or event that occurs after a judgment has been delivered is not a "new fact" within the meaning of Rule 78(1) of the Rules, regardless of its legal consequences. Consequently, a new fact must precede the delivery of the judgment on the merits.'

35 *Frank David Omary* (n 21) paras 41-45.

36 *Wilson Barngetuny Koimet* (n 18) para 15.

37 *Thobias Mango* (n 16) para 16.

38 *Thobias Mango* (n 16) para 25; *Ramadhani Issa Malengo* (n 16) para 32; *Alfred Agbes Woyome* (n 16) para 37.

39 *Rutabingwa Chrysanthe* (n 16) para 17.

40 *Ramadhani Issa Malengo* (n 16) para 27.

41 *Frank David Omary* (n 21) para 50; *Alfred Agbes Woyome* (n 16) para 41.

42 *Frank David Omary* (n 21) para 49.

evidence although it was available in the public domain, the Court may admit the evidence. However, there should be stringent conditions for rebutting the presumption.

Related to the above is the question of what the new evidence is likely to prove for the Court to review its judgment. Such evidence could prove a fact that impacts the Court's conclusion in the judgment or the integrity of the judgment itself. In the first category, the example that comes to mind is where the Court invoked or relied on a wrong treaty or treaty provision to decide the case. In other words, the Court acted *per incuriam*.[43] The second category encompasses situations where the judgment was procured through fraud or deception. The Court appears to be open to this approach.[44] Once the evidence in question is adduced, the Court is obligated to review its decision if it concludes that it was wrong. This is the case although article 28(3) states that the Court 'may review its decision'. It does not state that the court 'shall review' its decision. Hence, 'may' should be interpreted as 'shall'. Courts in some African countries have held that there are circumstances in which the word 'may' should be interpreted as imposing a mandatory obligation.[45] Thus, if the new evidence proves that the Court's decision was wrong, the Court is obligated to review it because it would be in the interests of justice to do so.

Another important question relates to the meaning of the words 'when the decision was delivered'. In other words, is Rule 78(1) only applicable to evidence that was discovered after the judgment was delivered or does it also apply to evidence that was discovered before the judgment was delivered but after the close of pleadings? To answer this question, one has to take a look at Rule 46. Rule 46 provides:

> (1) The written pleadings shall be considered to have closed when the applicant replies to the respondent state's response to the application or when the Court so decides.
>
> (2) Each party reserves the right to apply for leave to present additional submissions after close of pleadings. Such application shall be communicated to the other party, and the latter shall be given fifteen (15) days within which to react.
>
> (3) The Court has the discretion to determine whether or not to reopen pleadings.

43 See, eg, *Amudo v Secretary General of the East African Community* [2015] EACJ 112 (25 May 2015) para 54; *Independent Medico Legal Unit v Attorney General of the Republic of Kenya* [2013] EACJ 144 (1 March 2013) 25. See also *Celebici Camp, Prosecutor v Mucic & Others*, Judgment, IT-96-21-A (ICTY AC) (20 February 2001) para 8, where the Court explained the circumstances in which it can depart from its decision decided *per incuriam*.

44 In *Kouadio Kobena Fory* (n 5) para 57, the Court referred to jurisprudence of the Inter-American Court of Human Rights and held that 'judgment review may be sought for exceptional reasons, such as those relating to documents whose existence was unknown at the time the judgment was delivered, to documentary or testimonial evidence or confessions in a final judgment and is later found to be false, or when there has been prevarication, bribery, violence, or fraud, and facts subsequently proven to be false, such as a person having been declared missing and found to be alive'. See also *Alfred Agbes Woyome* (n 16) para 38.

45 See, eg, *Peter Muturi Njuguna v Kenya Wildlife Service* [2017] KECA 42 (KLR) paras 12-15 (Court of Appeal of Kenya); *Diamond v The Standard Bank of South Africa Limited (Executor) & Others* CAZ 8 89 of 61 [1965] ZMCA 2 (12 May 1965) 4 (Court of Appeal of Zambia).

> (4) No party may file additional evidence after the close of pleadings except by leave of Court.

In *Onyachi and Another v Tanzania,*[46] the Court referred to Rule 46(3) and held that 'when a party requests for the reopening of pleadings after the close of the same, the Court has the inherent power to order the reopening of pleadings and admit submissions filed by parties'.[47] The Court has held that although it has the discretion under Rule 46(3) to reopen the pleadings, for it to exercise that discretion, 'the arguments in support of such a measure must be sufficiently relevant to the subject of the application'.[48] Thus, it has allowed applications to reopen pleadings when it is in the interests of justice to do so,[49] 'in respect of the principle of adversarial proceedings'[50] or when reopening the pleadings would enable the 'proper administration of justice'.[51] What amounts to the 'interests of justice' or the 'proper administration of justice' will depend on the facts of each case. The Court has allowed applications to reopen pleadings in instances in which the issue before it is complex and the additional evidence will be essential in resolving such issues;[52] when, at the time the pleadings were closed, the applicant had not collected all the information needed to include in its pleadings,[53] to allow the respondents to file their replies to the applicant's submissions;[54] to allow the applicant to file his reply to the respondent's submissions;[55] or to allow both parties to submit their new pleadings.[56] Such evidence or information is necessary to enable

46 *Onyachi & Another v Tanzania* [2021] AfCHPR 32 (20 July 2021).

47 *Onyachi* (n 46) para 14.

48 *Noudehouenou v Benin* (Application 20/2020) [2024] AfCHPR 14 (6 June 2024) para 3.

49 *Legal and Human Rights Centre and Liberatus Mwang'ombe v Tanzania* (Application 41/2020) [2025] AfCHPR 17 (20 May 2025) para 15; *Zabron v Tanzania* (Application 51/2016) [2023] AfCHPR 34 (26 October 2023); *Muwinda & Others v Tanzania (*Application 30/2017) [2021] AfCHPR 56 (5 March 2021).

50 *Paul & Another v Côte d'Ivoire* (Application 19/2020) [2022] AfCHPR 81 (1 April 2022) para 3.

51 *Mwakasindile v Tanzania* (Application 45/2019) [2025] AfCHPR 18 (2 June 2025) para 10.

52 *Shaibu & Others v Tanzania* (Application 46/2020) [2025] AfCHPR 32 (5 August 2025) (new legislation was passed after the close of the pleadings and the respondent state wished to rely on that legislation in its submissions).

53 *Cheknoris v Tanzania* (Application 5/2020) [2023] AfCHPR 56 (24 February 2023); *Hussein v Tanzania* (Application 1/2018) [2024] AfCHPR 21 (28 October 2024); *Jeshi v Tanzania* (Application 17/2016) [2019] AfCHPR 84 (19 August 2019); *Kisase v Tanzania* (Application 5/2016) [2019] AfCHPR 29 (19 August 2019).

54 *Mwakasindile* (n 51); *Legal and Human Rights Centre and Liberatus Mwang'ombe* (n 49); *Ayed v Tunisia* (Application 8/2019) [2022] AfCHPR 79 (7 June 2022).

55 *Mwendesha v Tanzania* (Application 32/2016) [2023] AfCHPR 1 (9 January 2023); *Kalijo v Tanzania* (Application 26/2017) [2019] AfCHPR 94 (27 August 2019).

56 *John v Tanzania* (Application 49/2016) [2022] AfCHPR 78 (13 May 2022); *Motiba v Tanzania* [2021] AfCHPR 33 (5 July 2021).

the Court to decide the issue before it 'with full knowledge of the facts'.[57] Thus, the party applying for the reopening of pleadings is expected to have compelling reasons for the delay in making such submissions and such submissions have to be crucial or essential to the issues that the Court has to decide.[58] In the majority of the cases , the Court allowed the applications, especially by state parties, to reopen the pleadings under Rule 46(3). This has been the case even in instances where some of the parties opposed the application for reopening the pleadings on the grounds that the applicant had sufficient time to file their pleadings and that reopening the pleadings would have been prejudicial to them (those opposing the application)[59] or that the application amounted to an abuse of process.[60] This could explain why in *Hussein v Tanzania*,[61] Blaise Tchikaya J was concerned 'that the respondent state obtained the reopening of the proceedings only served to lengthen the proceedings without any probative legal interest'.[62] Neither the Rules nor the Practice Directions[63] provide for the circumstances in which the Court can invoke Rule 46(4). In *Nondo & Others v Tanzania*[64] the Court invoked Rule 46(4) and its inherent powers under Rule 90 to reopen the pleadings to allow the respondent state to file new evidence (legislation) that came into existence after the close of pleadings because it was in the 'interests of justice' to do so.[65] In other words, the Court can only reopen pleadings to allow parties to file additional evidence 'in exceptional circumstances'.[66] Thus, the phrase 'when the decision was delivered' should be interpreted to include the evidence discovered when it was too late for the parties to ask the Court to reopen pleadings for them to file additional evidence. Thus, although such evidence was known to the party before the judgment was delivered, it was impossible for the party to bring it to the attention of the Court as the opportunity to do so ceased to exist when the pleadings were closed and could not be reopened.

57 *Nguza Viking & Others v Tanzania* (Application 6/2015) [2020] AfCHPR 62 (9 March 2020) para 5.

58 *Msuguri v Tanzania* (Application 52/2016) [2022] AfCHPR 12 (8 March 2022) para 14; *Iddi s/o Amani v Tanzania* (Application 25/2017) [2023] AfCHPR 52 (20 November 2023).

59 See, eg, *Centre for Human Rights (CHR), Institute for Human Rights and Development in Africa (IHRDA) & Legal and Human Rights Centre (LHRC) v Tanzania* (Application 19/2018) [2024] AfCHPR 7 (31 May 2024).

60 *Jogoo v Tanzania* (Application 14/2018) [2024] AfCHPR 33 (29 November 2024).

61 *Hussein v Tanzania* (Application 1/2018) [2025] AfCHPR 29 (26 June 2025).

62 *Hussein* (n 61) para 5.

63 Practice Directions (5 March 2024), https://www.african-court.org/wpafc/wp-content/uploads/2024/03/EN-Practice-Direction-Adopted-5-March-2024_.pdf (accessed 31 October 2025).

64 *Nondo & Others v Tanzania* (Application 40/2020; Application 43/2020) [2025] AfCHPR 33 (15 September 2025).

65 *Nondo* (n 64) para 16.

66 *Mango & Another v Tanzania* [2020] AfCHPR 34 (4 September 2020) para 16. See also *Anudo v Tanzania* [2020] AfCHPR 33 (8 September 2020) para 13.

2.3 The six-month deadline to apply for review of the Court's decision

Under Rule 78(1) a litigant wishing to have the Court's decision reviewed has to make the application 'within a period of six months after the party acquired knowledge of the fact (or evidence)'. However, the same Rule provides that '[t]he Court shall not accept any request for review of its decision after five (5) years of the delivery of the same'. A combined reading of these two conditions shows that they are meant to ensure that those seeking to have the Court's decision reviewed have to do so at the first available opportunity – preferably before the execution of the decision. In *Kouadio Kobena Fory v Côte d'Ivoire,*[67] the Court referred to Rule 78(1) and held that 'the request for review must be filed within six (6) months from the date on which the applicant became aware of the new fact or at least five (5) years from the date of the judgment'.[68]

The Rule applies to three phases of the application. The first phase is where the application for review is filed within six months. In this case, the party does not have to motivate why the application is being filed. This is because they would have fully complied with Rule 78(1). Thus, the Court often observes that 'request for review satisfies the requirements of Rule 67(1) with regard to the time limit of six (6) months within which to file an application for review of the judgment'.[69] The Court has taken two approaches in determining the time at which the six-month deadline starts to run. The first approach is to apply Rule 78(1) literally. Thus, it has held that 'the request for review must be filed within six (6) months from the date on which the applicant became aware of the new fact'.[70] The second approach is for the Court to hold that '[t]he application for review itself, must be filed within six (6) months of the time when the applicant obtained such evidence'.[71] A strict interpretation of Rule 78(1) means that if the applicant acquires knowledge of the evidence, for example, on 30 January next year, they must submit the application by 30 July of the same year. However, it could be that the applicant 'acquired knowledge' of the existence of evidence but did not obtain the evidence at the time they acquired the knowledge. They may obtain the evidence several weeks or months after the acquisition of the knowledge of its existence (for example, through filing a case court to access that evidence). In that case, the six-month deadline should start running on the day they obtained the evidence. This is the approach that the Court followed in

67 *Kouadio Kobena Fory* (n 5).

68 *Kouadio Kobena Fory* (n 5) para 26.

69 *Urban Mkandawire* (n 7) para 14. See also *Alfred Agbes Woyome* (n 16) para 31.

70 *Kouadio Kobena Fory* (n 5) para 26. In *Rutabingwa Chrysanthe* (n 16) para 13, the Court held that the application 'shall' be filed within six months.

71 *Wilson Barngetuny Koimet* (n 18) para 12. See also *Thobias Mango* (n 16) para 13; *Ramadhani Issa Malengo* (n 16) para 24; *Alfred Agbes Woyome* (n 16) para 28.

Kouadio Kobena Fory,[72] when it held that although the applicant discovered the existence of the evidence in early December, he only obtained the evidence in late December.[73] The six-month period includes weekends and public holidays.

Irrespective of which of the two approaches is followed, the applicants must 'demonstrate' that their review application was filed within six months otherwise it will be dismissed.[74] In order for the Court to be satisfied that the applicant has met the six-month deadline, the review application must disclose 'the exact time when he [the applicant] came to know of this evidence'.[75] Thus, the application will indicate the exact or estimated date on which the applicant 'discovered' the evidence.[76] However, the Court will infer that the applicant complied with this requirement if the application is filed before the expiry of six months after the delivery of the judgment. For example, in *Ramadhani Issa Malengo v Tanzania*[77] the Court held:[78]

> As regards the filing of the Application within six (6) months of the discovery of new evidence; the Court notes that the applicant did not submit on when he discovered the alleged new evidence. Nevertheless, the application having been filed on 4 December 2019, that is, five (5) months after the delivery of the Ruling of 4 July 2019; it is deemed to have been filed within the six (6) months' time limit and in accordance with Rule 67(1) of the Rules.

The second phase deals with a situation where the application is filed outside the six-month period. In this case, the party has to apply for condonation and motivate why the application has been filed outside the six-month period. The Court could invoke its inherent powers to condone the late application. The second phase runs from seven months to four years and 11 months. The third phase starts on the day of the 'fifth anniversary' of the decision. During this phase, the Court cannot allow the request for review. The use of the word 'shall' implies that the Court has no choice in the matter. Thus, the Court held that 'it shall reject on its own motion any application for review of its judgment filed five (5) years after its delivery'.[79]

The Court has been inconsistent in dealing with the question of the stage at which it should assess whether the application was filed within

72 *Kouadio Kobena Fory* (n 5).

73 29. The Court held that '[w]ith regard to the requirement to comply with a time limit of six (6) months from the discovery of the new fact or evidence, the Applicant submits that it was after reading the Judgment of 2 December 2021 that he discovered evidence, claiming that he was not aware of it at the time the judgment was delivered. In this regard, the Court notes that it was on 27 December 2021 that the Applicant received a copy of the judgment by DHL mail. Thus, the start date of the six (6) month time-limit under Rule 78(1) is set on 27 December 2021.'

74 *Wilson Barngetuny Koimet* (n 18) para 15.

75 *Rutabingwa Chrysanthe* (n 16) para 14; see also *Ramadhani Issa Malengo* (n 16) para 24.

76 See, for example, *Alfred Agbes Woyome* (n 16) para 30.

77 *Ramadhani Issa Malengo* (n 16).

78 *Ramadhani Issa Malengo* (n 16) para 26.

79 *Kouadio Kobena Fory* (n 5) para 27.

six months. For example, in *Wilson Barngetuny Koimet & Others v Kenya*,[80] the Court held:[81]

> The Court, focusing on the evidence submitted by the applicants, observes that the applicants have not demonstrated that this evidence was not within their knowledge at the time the Court delivered its Order of 4 July 2019. Neither have the applicants demonstrated that their application for review was filed within six (6) months of them becoming aware of the existence of this evidence.

However, in *Thobias Mango & Another v Tanzania*,[82] it held that '[h]aving found that the applicants have not filed new evidence, the Court does not deem it necessary to determine whether such information was filed within the six (6) months envisaged under Rule 67(1) of the Rules'.[83] The Court has followed the same approach in other cases.[84] In other cases, the Court dealt with the issue of whether the application was filed within the six-month period before examining the question of whether the applicant had adduced new evidence.[85]

3 APPLICATION FOR REVIEW AND STAY OF EXECUTION OF JUDGMENT

Under article 78(5) '[a]n application for review shall not stay the execution of a decision, unless the Court decides otherwise'. Rule 80(1) requires state parties to 'fully comply with the decisions of the Court and guarantee their execution within the time limits set by the Court'. Hence, the decisions of the Court must be executed as soon as practicable. The Rules do not stipulate the criteria that the Court is required to consider in determining whether or not to stay the execution of the judgment. Thus, the guiding principle should be whether it is in the interests of justice to stay the execution of the decision. In determining the interests of justice, the Court could consider, for example, whether the order to stay the execution will cause irreparable harm or damage to one of the parties. The burden should be on the party opposing the execution of the judgment to explain how its execution will prejudice them and that the prejudice will not be remedied. Thus, in some review applications, parties have also asked the Court to issue provisional measures to, for example, stay the pending auction of the disputed property.[86]

80 *Wilson Barngetuny Koimet* (n 18).
81 *Wilson Barngetuny Koimet* (n 18) para 15.
82 *Thobias Mango* (n 16).
83 *Thobias Mango* (n 16) para 27.
84 *Rutabingwa Chrysanthe* (n 16) para 19.
85 *Ramadhani Issa Malengo* (n 16); *Alfred Agbes Woyome* (n 16); *Kouadio Kobena Fory* (n 5).
86 See, for example, *Alfred Agbes Woyome* (n 16) paras 20-24.

4 CONCLUSION

A decision of the African Court is final. Thus, article 28(2) of the African Court Protocol provides that '[t]he judgment of the Court decided by majority shall be final and not subject to appeal'. However, there is an exception to the general rule under article 28(2). This is found in article 28(3) which provides that '[w]ithout prejudice to sub-article 2 above, the Court may review its decision in the light of new evidence under conditions to be set out in the Rules of Procedure'. Article 28(3) is supplemented by Rule 78 of the Rules of the Court. It states that the Court may review its decision in the event of the discovery of a new fact or evidence which, by its nature, has a decisive influence and which, when the decision was delivered, was unknown to the party and could not with due diligence have been known to that party. In this article, the author has argued, among others, that Rule 78(1) is contrary to article 28(3) because it empowers the Court to review a decision based on new facts. Article 28(3) confines the Court's reviewing power to situations involving the discovery of new evidence. It is also argued that although Rule 78 provides that the Court can only review its decision pursuant to an application by one of the parties, the Court can invoke its inherent powers to review its decisions *ex mero motu*. Rule 78 provides that for the Court to review its decision, the new evidence should have been unknown to the applicant at the time the Court delivered its decision. However, the Court has held that for it to review its decision, the new evidence should have been unknown to both the applicant and the Court. It is argued that this interpretation is contrary to Rule 78. It is important to mention in passing that the Protocol and the Rules are silent on whether the Court can issue provisional measures pending a decision on the application for review. However, nothing prevents the Court from issuing such measures under article 27(2) of the Protocol read with Rule 59 of the Rules. Although article 61 the Statute of the International Court of Justice (ICJ) empowers the Court to review its decisions, all the review applications before the ICJ have been unsuccessful and the issue of provisional measures did not arise.[87] Neither the American Convention on Human Rights (1969)[88] nor the European Convention on Human Rights (1950) empowers the respective courts to review their decisions. However, the Rules of the

87 *Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case Concerning the Continental Shelf (Tunisia v Libyan Arab Jamahiriya)*, Judgment, ICJ Reports 1985; *Application for Revision of the Judgment of 11 July 1996 in the Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Yugoslavia), Preliminary Objections (Yugoslavia v Bosnia and Herzegovina)* (Judgment of 3 February 2003); *Application for Revision of the Judgment of 11 September 1992 in the Case Concerning the Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening) (El Salvador v Honduras)* (18 December 2003).

88 Art 67 of the American Convention on Human Rights (1969) provides that '[t]he judgment of the Court shall be final and not subject to appeal. In case of disagreement as to the meaning or scope of the judgment, the Court shall interpret it at the request of any of the parties, provided the request is made within ninety days from the date of notification of the judgment.'

European Court of Human Rights empower the Court to revise its judgments,[89] while the Rules of Procedure of the Inter-American Court of Human Rights allow the Court to rectify errors in its judgments.[90]

89 Rule 80 of the Rules of Court (15 September 2025) provides: '(1) A party may, in the event of the discovery of a fact which might by its nature have a decisive influence and which, when a judgment was delivered, was unknown to the Court and could not reasonably have been known to that party, request the Court, within a period of six months after that party acquired knowledge of the fact, to revise that judgment. (2) The request shall mention the judgment of which revision is requested and shall contain the information necessary to show that the conditions laid down in paragraph 1 of this Rule have been complied with. It shall be accompanied by a copy of all supporting documents. The request and supporting documents shall be filed with the Registry. (3) The original Chamber may decide on its own motion to refuse the request on the ground that there is no reason to warrant considering it. Where it is not possible to constitute the original Chamber, the President of the Court shall complete or compose the Chamber by drawing lots. (4) If the Chamber does not refuse the request, the Registrar shall communicate it to the other party or parties and shall invite them to submit any written comments within a time-limit laid down by the President of the Chamber. The President of the Chamber shall also fix the date of the hearing should the Chamber decide to hold one. The Chamber shall decide by means of a judgment.' For a detailed discussion of the procedure under Rule 80, see, eg, CM Gómez 'Revision of judgment: European Court of Human Rights (ECtHR)' (2021), https://opil.ouplaw.com/display/10.1093/law-mpeipro/e3386.013.3386/law-mpeipro-e3386?p=emailAO70yCIcGmIY6&d=/10.1093/law-mpeipro/e3386.013.3386/law-mpeipro-e3386&print (accessed 27 November 2025).

90 Rules of Procedure of the Inter-American Court of Human Rights, approved by the Court during its 85th Regular Period of Sessions, held from 16-28 November 2009. Rule 76 provides that '[t]he Court may, on its own motion or at the request of any of the parties to the case, within one month of the notice of the judgment or order, rectify obvious mistakes, clerical errors, or errors in calculation. The Commission, the victims or their representatives, the respondent state and, if applicable, the petitioning state shall be notified if an error is rectified.'