

Titus Ani - Brief Oral Opening Submissions

This is a unique case which involves the question of mistaken identity. Due to extraordinary circumstances, previous Courts have wrongly passed a death sentence on this man before you. Those Courts did so based on incorrect information which had been given to them. We say this without making any criticism of those previous Courts who heard this man's case. They, for reasons that are set out in the Memorandum of Motion to Reconsider, have never been told the truth.

This man is not Emmanuel O Ihejirka from Sierra Leone. This man is Titus Ani from Nigeria.

Titus Ani has served approximately 13 years in prison, the vast majority of that time as a death row inmate. That is tragic. This man should never have received such a severe punishment. Fortunately, the legal system of the Republic of Indonesia is sophisticated and through this Memorandum of Motion to Reconsider can rectify the errors that have been made.

This Court, will for the first time learn of the true identity of the young man before you and be able to sentence him correctly to a term of imprisonment of less than 20 years plus a fine. This will better reflect the crime that was committed and the surrounding circumstances pertaining to that crime.

The Court has been provided with evidence that demonstrates without any doubt that the true identity of the prisoner is in fact Titus Ani. That evidence includes:

- a. DNA evidence from the Eijkman Institute for Molecular Biology, Jakarta;
- b. evidence from Titus Ani's family members and friends who knew him in Nigeria and Pakistan;
- c. United Nations documentation pertaining to Titus Ani's refugee status application in Pakistan.

Titus Ani's story is a sad one. He has been a victim of a cruel drug syndicate and has suffered enormously because of this. He did not reveal his true identity to previous Courts in order to protect his family.

Titus Ani is from a large Christian family in Nigeria. After his father died, he assumed responsibility of supporting his family who were very poor. In early 2003 as a 25 year old man he left his home in Nigeria to travel to Pakistan in search of legitimate work opportunities so that he could better support his family.

Upon arrival in Pakistan, members of the drug syndicate tricked him and stole his passport. He was left stranded.

After months living in a desperate situation he was forced to be a drug mule to earn money so that he could return home to his family in Nigeria. He thought that the drug syndicate were compelling him to take the drugs to Hong Kong. However they eventually tricked and threatened him into taking the drugs to Indonesia.

Titus Ani had no choice. The drug syndicate had taken his passport and left him with only one option, of taking a very dangerous flight on a fake passport with drugs inside his person, simply so that he could return to his home in Nigeria.

As an inexperienced victim of the syndicate, who had never previously been involved in crime, it is not surprising that Titus Ani was caught when he tried to enter Indonesia.

After Titus Ani was arrested, the drug syndicate threatened to kill every member of his family if he revealed his true identity. To demonstrate to him that they were serious, the drug syndicate informed Titus that his younger sister Blessing was murdered by them. The killing of Blessing was confirmed to Titus in a phone call by another family member. To protect other members of his family from this fate, Titus Ani remained silent as to his true identity during the previous Court process and was wrongly sentenced to death as Emmanuel O Ihejirika.

It may be that the real Emmanuel O Ihejirika (if such a person exists) was a regular drug trafficker. We may never know.

The Emmanuel O Ihejirika passport (which Titus had when he was arrested) reveals other trips to Asia in the year 2003. Earlier judgments of the Courts which previously sentenced this man make mention of these trips.

These trips were not undertaken by Titus Ani but by someone else. Unfortunately, it seems that earlier Courts were under the mistaken belief that Titus Ani may have been a regular drug trafficker and himself a member of the drug syndicate. This could explain the very severe sentence of death imposed on him.

Titus Ani was not a regular drug trafficker. He was a first time drug mule who was the victim of a very cruel drug syndicate. He was tricked and trapped into taking the drugs so that he could return to his home in Nigeria. He had no other choice.

The true story about Titus Ani has been set out in his affidavit taken in Kerobokan prison in 2010 at a time when his psychiatric illness (caused by so many years as a death row prisoner) was not as acute as it is now.

Importantly, the evidence given by Titus Ani has been corroborated by many other witnesses and documentary material.

All of that evidence is included in the Memorandum of Motion to Reconsider dated 17 October 2013. The documentary evidence took over 4 years of investigations to

compile. Affidavits were all signed before notaries, DNA evidence was examined by reputable institutes, psychiatric reports were obtained, eminent jurists have provided expert reports and official documentation from bodies such as the United Nations obtained.

This evidence supports what Titus Ani has set out in his affidavit as being the truth. Given the care in which it has been assembled, it is submitted that the documentary evidence contained in the 26 enclosures of the Memorandum of Motion to Reconsider dated 17 October 2013 ought to be accepted.

There has been a three year delay between filing the Memorandum of Motion to Reconsider and this hearing. We understand that this prisoner's file was lost. The passage of time and the logistical issues pertaining to witnesses residing in 5 continents of the world make this hearing quite challenging. There have been difficulties in securing visas for the Nigerian witnesses. Some witnesses who did reside in Indonesia have now left and one witness in Pakistan has since died. It may be that it is not logistically possible to have all witnesses attend the hearing in person although every effort is being made by the legal team to achieve this.

A man's life and freedom is on the line and the evidence in those 26 enclosures to the Memorandum must be closely read and understood. Comprehensive submissions have also been provided.

Had Titus Ani's true story been known by the earlier Courts he would not have received a death sentence, or even a life sentence.

Other prisoners who have been sentenced for trafficking type 1 drugs have received far more lenient sentences. A number of comparative sentences are set out in the Memorandum of Motion to Reconsider. Mr Morita Yuki, a Japanese citizen, was caught trafficking 22 times the amount of drugs that Titus Ani was carrying and was sentenced to 18 years imprisonment and a fine of Rp 5 billion. Mr Nico Ferdos, an Australian citizen, was caught trafficking 27 times the amount of drugs that Titus Ani was carrying and was sentenced to 15 years imprisonment. Mr Yuki, Mr Ferdos and Mr Ani were all caught with type 1 drugs. Mr Ani has already served approximately 13 years imprisonment with the vast majority of those years being under the sentence of death.

There are other exonerating circumstances that were previously not taken into account which ought now be taken into account by this Court. Titus Ani has apologised for his actions. He has behaved and continues to behave politely during Court hearings. Notwithstanding that he himself was a victim of the drug syndicate and has suffered greatly, he has apologised for his actions. He is a person of good character and has been a model prisoner. He is a man of faith and, like those of you of the Islamic faith, believes in one God.

Titus Ani has suffered enough. The death sentence that has been imposed upon him has caused him acute psychiatric illnesses. His mental state is set out in the forensic

psychiatric report of Dr Lely Setyawati and Dr Darmadji Angkawidja. He has a psychotic disorder, acute schizophrenia and permanent delusional disorder. It is highly unlikely that he will be able to understand everything that will take place in this Court.

It is submitted that even if the Court completely disregarded the truth about Titus Ani and continued to sentence him on the incorrect basis that he is Emmanuel O Ihejirika that it would be unconstitutional to execute someone who is so profoundly and permanently mentally ill.

The Court is invited to learn, for the first time, the truth about this sad, unique and extraordinary case. This Court through its recommendation to the Supreme Court can help demonstrate the sophistication and integrity of the Indonesian legal system. It can do this by applying a more appropriate and comparative sentence for Titus Ani who himself is a victim of the scourge of drugs.

Unfortunately, the Indonesian legal system and particularly the application of the death penalty has been the subject of international criticism. This case is ultimately not about the merits of the death penalty and does not require any opinion from the judiciary on this sensitive subject. This case is about the mistaken identity of this man who has been sentenced on a false set of facts.

However, this case does give this great nation of Indonesia a unique opportunity to demonstrate that its criminal justice system is modern and well functioning. This case gives each of you, and the justices of the Supreme Court, an occasion to demonstrate that justice and mercy is at the heart of Indonesian law.