# Case summary

*By Benjamin Joyes, 23 December 2011*

**Application 009/2011 Tanganyika Law Society & Legal and Human Rights Centre v. United Republic of Tanzania &**

**Application 011/2011 Reverend Christopher R. Mutikila v. The United Republic of Tanzania (Cases combined)**

Application

On 2 June 2011, the Tanganyika Law Society ("Tanganyika") and the Legal and Human Rights Centre (the "LHRC") submitted an application to the African Court on Human and Peoples' Rights ("AfCHPR"). Tanganyika is the Bar association of the Tanzanian mainland, and has observer status before the African Commission on Human and Peoples' Rights (the "Commission"). The LHRC, which also has observer status, is an independent non-governmental organisation based in Tanzania. The AfCHPR has provided a summary of the application (the "Tanganyika et al summary"). The original version is not publicly available.

On 10 June 2011, Reverend Christopher Mtikila, a political activist and leader of the Tanzanian Democratic Party, lodged an application with the Registry of the AfCHPR. The original version is publicly available here.

The thrust of both applications is that the Tanzanian government has violated the rights of Tanzanian citizens by prohibiting independent candidates from taking part in presidential, parliamentary and local elections.

On 22 September 2011, the AfCHPR decided, under Rule 54 of the Rules of the Court to join the two applications by reason of the common subject matter and Respondent, namely Tanzania. The now-joined application is currently under consideration by the AfCHPR.

Background

Since the introduction of multi-party politics in the early 1990s, Reverend Mtikila has been an outspoken and prominent opposition politician in Tanzania.

The sequence of events that has given rise to both applications can be characterised as follows:

1992: The Tanzanian National Assembly passes the Eighth Amendment to the Constitution, introducing a requirement for membership to and sponsorship by a political party for all persons running in presidential, parliamentary and local government elections.

1992: Reverend Mtikila's application to register his own political party is denied by the Registrar of Political Parties.

1993: Reverend Mtikila challenges the Eighth Amendment in the High Court, submitting that it unfairly limits his rights to free association and political participation.

1994: On 24 October, a High Court Judge rules that the Eighth Amendment is null and void as it conflicts with existing provisions of the Constitution.

1994: On 2 December, Parliament adopts the Eleventh Constitutional Amendment Act, which reinstates the prohibition on independent candidates.

2002: Reverend Mtikila registers the Democratic Party.

2005: Reverend Mtikila brings a challenge in the High Court against the Eleventh Amendment.

2006: The High Court grants Reverend Mtikila's application, confirming the judgment of 1994.

2010: The Court of Appeal rescinds both the 1994 and 2006 High Court judgments [*Civil Appeal No. 45 of 2009 between The Honourable Attorney General (Appellant) and Reverend Christopher Mtikila (Respondent)*]

Rev Mtikila's Application

In his application to the AfCHPR, Reverend Mtikila relies on a number of regional and international legal instruments.

In support of his submission that the Tanzanian Republic has unfairly curtailed his right to participate in public affairs, Rev Mtikila cites, *inter alia*, Article 13(1) of the African Charter on Human and Peoples' Rights (the "AChHPR"); Article 21(1) of the Universal Declaration of Human Rights (the "UDHR"); Article 25 of the International Covenant on Civil and Political Rights (the "ICCPR"); General Comments of the Human Rights Committee mandated with the interpretation of the ICCPR;[7] and a number of cases before the Commission dealing with the right to participate in public affairs.

In terms of an individual's right to freedom of association, the application cites Article 20 of the UDHR; Article 22 of the ICCPR; and Article 10 of the AChHPR. Rev Mtikila also submits that the requirement of affiliation with a political party contradicts Article 20 of the Constitution of Tanzania. Rev Mtikila also states that the Eleventh Constitutional Amendment offends the right to non-discrimination and the rule of law generally.

The Tanganyika *et al* Summary

The Tanganyika *et al* summary references the aforementioned chain of events that took place in the Tanzanian courts between 1994 and 2010, arguing that Tanzania "is in violation of Article 2 and 13(1) of the African Charter on Human and Peoples' Rights, and Articles 3 and 25 of the ICCPR, a violation that was institutionalized in 1992, at the onset of multiparty politics in the country."

In terms of the extent of the State's alleged breach, the application submits that "the effect of the violation is that a great majority of Tanzanians who do not belong to political parties have been discriminated against and denied the opportunity to take part in public affairs or from being elected".

The Tanganyika summary states that "all domestic remedies have been exhausted and the violation is continuing".

Comment

The case summary provided by the Court states that Rev Mtikila is seeking relief in the form of a "declaration that current Tanzanian law barring independent candidates from seeking public/elective office is in violation of the African Charter and the ICCPR". However, Rev Mtikila's full application goes further than the summary suggests, as it also contains a request for compensation for the "continuous violation of his rights that forced him to endure long and costly judicial proceedings". Under Article 27(1) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, if the Court considers there has been a violation of a right guaranteed by the AChHPR or any other relevant human rights instrument then *it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation.* The author submits that any such discrepancies, between the summary provided by the Registry of the ACtHPR and the complete application submitted by the aggrieved party, could be avoided in future if the Court published applications in full on its website, with the consent of the Applicant.

In relation to the application made by Tanganyika et al., the case summary does not detail the remedy, if any, sought by the Applicant. The summary simply contains a brief synopsis of the facts and an explanation of the procedural background of the application. Without access to the original document, it is not possible to ascertain whether the Registry has failed to include relevant information in the case summary, or whether the application simply contained no request for relief. Once again, these issues could be resolved by publication of the original applications. Such action would provide other potential applicants, lawyers and observers with greater access to the detail of the arguments put before the Court and would facilitate thereafter a greater understanding of the basis of the Court's reasoning in consequent decisions.

Given that Tanzania is one of only five African states that has made an Article 34(6) declaration (which permits individuals and NGOs with observer status before the African Commission to petition the court directly), the Court's assessment of this case is eagerly anticipated. It will be interesting to assess how the Court deals with a situation in which it is forced to engage with a direct challenge to Tanzanian sovereignty.