

CASE SUMMARY

IN THE CONSOLIDATED MATTER OF:

APPLICATION 009/2011

1. TANGANYIKA LAW SOCIETY

2. THE LEGAL AND HUMAN RIGHTS CENTER

V

THE UNITED REPUBLIC OF TANZANIA

APPLICATION 011/2011

REV. CHRISTOPHER R. MTIKILA

V.

THE UNITED REPUBLIC OF TANZANIA

(REPARATIONS)

1. The application was in respect of the Eighth Constitutional Amendment Act passed by the United Republic of Tanzania, which received Presidential assent in the same year. It required that any candidate for Presidential, Parliamentary and Local Government elections had to be a member of, and be sponsored by, a political party.
2. In 1993, Reverend Christopher R. Mtikila filed a constitutional case in the High Court *Misc. Civil Case No.5 of 1993* challenging the amendment to Articles 39, 67 and 77 of the Constitution of the United Republic of Tanzania and to Section 39 of the Local Authorities (Elections) Act 1979, as later amended by the Local Authorities (Elections) Act No.7 of 2002 through the Eighth Constitutional Amendment Act claiming that it conflicted with the Constitution and was therefore null and void.
3. On 16 October 1994, the Respondent tabled a Bill in parliament (Eleventh Constitutional Amendment Act No. 34 of 1994) seeking to nullify the right to

independent candidates to contest Presidential, Parliamentary and Local Government Elections.

4. On 24 October 1994, the High Court issued its judgment in *Misc. Civil Cause No.5 of 1993* in favor of Reverend Mtikila and declaring that independent candidates for Presidential, Parliamentary and Local Government elections are legally allowed.
5. On 2 December 1994, the Tanzanian National Assembly passed the Bill (Eleventh Constitutional Amendment Act No.34 of 1994) whose effect was to maintain the Constitutional position before *Misc. Civil Cause No. 5 of 1993* by amending Article 21(1) of the Constitution of the United Republic of Tanzania. This Bill became law on 17 January 1995 when it received Presidential assent thus negating the High Court's judgment in *Misc. Civil Cause No.5 of 1993*.
6. In 2005, Reverend Mtikila instituted *Christopher Mtikila v Attorney General Misc. Civil Cause No. 10 of 2005* challenging the amendments to Articles 39, 67 and 77 of the Constitution of the Republic of Tanzania as contained in the Eleventh Constitutional Amendment Act of 1994. On 5 May 2007. The Court again found in his favor, holding that the impugned amendments violated the democratic principles and the doctrine of basic structures enshrined in the Constitution. By this judgment, the High Court allowed independent candidates.
7. In 2009, vide *Civil Appeal No.45 of 2009*; the Attorney General challenged this judgment in the Court of Appeal. In its judgment of 17 June 2010, the Court of Appeal reversed the High Court's judgment of 5 May 2007, thereby disallowing independent candidates for election to local Government, Parliament or the presidency.
8. The Court of Appeal ruled that the matter was a political one and therefore had to be resolved by Parliament. Parliament set in motion a consultative process that is still ongoing, aimed at obtaining the views of the citizens of Tanzania on the possible amendment of the Constitution.
9. As the municipal legal order currently stands in the United Republic of Tanzania, candidates who are not members of or sponsored by a political party cannot run in the Presidential, Parliamentary or Local Government elections.

10. On 14 June 2013, the African Court on Human and Peoples' Rights delivered its judgment whereby it granted the application of Rev. Mtikila in part, affirming that the United Republic of Tanzania has violated the his right to:
 - a. Participate in public affairs,
 - b. His right to freedom of association and
 - c. The non - discrimination principle

11. Rev. Mtikila alleges that the violations by the Respondent led him to join different political parties in order to participate in elections and later to successfully set up his own party for the same purpose. These violations have also led Rev. Mtikila to engage in litigation at various levels including before this Court. In addition Rev Mtikila alleges that this has led to some stress and subsequent moral harm worsened by various instances of police searches on him, all of which he has included in the the computation that he is claiming reparation for.

12. As a consequence, the applicant prays the court:
 - a. To set his reparation claims at 5,000,000,000.00 TZS
 - b. To set his lawyer's fees for the international litigation (before this Court) at the scale of the legal aid established by the Court both for the main case and the subsidiary case on reparation; and
 - c. To order the Government of the United Republic of Tanzania to report every three months to the Court on the implementation of the Court orders

13. The Respondent raised objections to the Applicant's submissions on reparation on grounds that they were filed out of time.

15. The Applicant should not be entitled to reparations for his failure to comply with the requirements on registration of political parties as set out in the Political Parties' Act, he should not be entitled to reparations for statutory payments required for registration of political parties and for acting as an 'independent candidate' and purporting to incur expenditure relating to his independent candidature, which the law in the Respondent State currently does not allow.

16. The Applicant is to put strict proof regarding the alleged stress and moral harm he suffered and that in any case, the requirement of exhaustion of local remedies in this regard should apply with respect to this particular claim as the Applicant never raised it during his litigation at the domestic level. In any event, the claims for compensation for moral harm are exaggerated. The Applicant's alleged loss

of opportunity to participate in public affairs is premised on very varied and unpredictable political, social and economic factors obtaining in the Respondent State. Furthermore, the Applicant participated voluntarily in the political processes.

17. Generally, the Applicant's claims are fabricated, blown up, exaggerated and contrary to the Political Parties Act and the Election Expenses Act and are lacking in detail thus cannot facilitate verification and authentication.
18. Generally, the claim for costs of litigation before the domestic courts is contested and is against the order of the Court that each party shall bear its own costs. Furthermore, the Applicant has not detailed what these costs are and has not submitted evidence to prove that he incurred them. In addition, the Applicant has never been awarded costs by the national courts and the Court cannot award him these particular costs as it will be usurping the jurisdiction of the national courts in this regard.
19. On the lawyer's fees claimed, the Respondent states that this is an attempt by the Applicant for the retrospective acquisition of funds from the Court yet his counsel acted for him on a *pro bono* basis
20. The Respondent prays the Court:
 - a) The respondent prays for the court to dismiss the claim with costs for being fabricated, exaggerated and blown up.
 - b) That the Applicant be ordered to submit to the court and the Respondent a breakdown of the alleged claims and detailed analysis of evidence related thereto for authentication and verification process before the hearing of the case.
 - c) The Respondent prays for dismissal of the claims on the lawyer fees being set at the scale of the legal aid established by the Court, for being extraneous matters in the application.
 - d) The Respondent prays for the dismissal of the Applicant's prayer on the order to be issued to the Republic of Tanzania to report to the court for implementation of the court order for being mere speculations and imaginations on the part of the Applicant.
 - e) That the Court orders that the Respondent is not required to repair the supposed losses claimed by the Applicant.
 - f) That the Court orders that the current Constitutional review process constitutes enough remedy for the Applicant.

- g) The Respondent prays for the dismissal of the reparations claims by the Applicant in its entirety.
- h) The Respondent prays for any other relief(s) that the Court may deem fit to grant.