In the Consolidated Matter of

1. Tanganyika Law Society
2. The Legal and Human Rights Centre
v.
The United Republic of Tanzania
Application No. 009/2011

And

Reverend Christopher R. Mtikila
v.
The United Republic of Tanzania
Application no. 011/2011

Separate opinion: B. M. Ngoepe, Judge

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1) I agree with the majority judgment, of which I am part, in all respects. It is a judgment which, to any seriously diligent reader, whether they agree with it or not, has been written with sufficient clarity and lucidity of thought. I have, however, felt the need to write a separate opinion on a conundrum which has been vexing this Court for some time and which has manifested itself in this judgment differently from the way it has done in the past. It is this: in writing a judgment, should this Court **always**, in every matter, deal with admissibility first and only thereafter with jurisdiction, or vice-versa? Unlike in previous judgments,

this judgment has this time round elected to first deal with the issue of admissibility, and then jurisdiction.

2) There has never been, in any matter, a unanimous decision that the Court must every time start with jurisdiction, or with admissibility. Views have on every single occasion differed on this aspect, with strong arguments advanced in support of each view. I have likened this debate to the infamous age-old one: the chicken or the egg first? Personally I do not, at this stage, subscribe to any one of the two approaches as I do not see the need for rigidity. My problem is therefore not as to which one should be dealt with first, but with a rigid approach that one must always start with the one and never with the other.

3) In wrestling with the above issue, as indeed with others from time to time, it is, admittedly, not only desirable but also necessary for this Court to learn from other international jurisdictions. At the same time though, it must be borne in mind that this Court is not only beginning, as it is entitled to and indeed obliged, to develop its own jurisprudence and practices. It cannot therefore afford to compromise its own capacity to do so by enslaving itself to any form of rigidity or to any mechanical approach; things should not be cast in stone. Being pragmatic is a virtue. I would have grave reservations with a mechanical approach to, and application of, the law. In my view, heavens would not fall merely because in a given matter, the Court started with admissibility and not with jurisdiction, or vice-versa. A further problem is that adherence to the rigidity sometimes gives rise to a secondary time-consuming debate, namely, whether a particular point falls

under admissibility or jurisdiction. This happens when such a point appears to be overlapping. As I do not subscribe to any view that the Court must always start with the one and not the other, I discuss the matter no further.