


AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي		UNIÃO AFRICANA
AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES		

**APPLICATION NO. 055/2016**

**CLEOPHAS MAHERI MOTIBA**

**V.**

**UNITED REPUBLIC OF TANZANIA**

**CASE SUMMARY**

## **I. THE PARTIES**

1. The Application is filed by Cleophas Maheri Motiba, (hereinafter referred to as "the Applicant), a national of Tanzania, against the Republic of Tanzania (hereinafter referred to as "the Respondent State").
2. The Respondent State is the Republic of Tanzania (hereinafter referred to as "the Respondent State".

## **II. SUBJECT OF THE APPLICATION**

### **A. FACTS OF THE MATTER**

3. The Applicant alleges the violation of his right to work when his employment was terminated through retrenchment by the Respondent State in public interest on 30 June 1996.
4. He avers that on 1 July 1996, by virtue of the TRA Act No. 11 of 1995, the Tanzania Revenue Authority (TRA) subsumed the functions of the Ministry of Finance, where he was employed as a "Finance Manager Officer" on a permanent and pensionable basis. Subsequently, he was issued with a retrenchment letter by the Permanent Secretary, Ministry of Finance indicating that he was retired in public interest according to "*Dokezo Sabili*" (Government Notice) which was assented to by the President of the Respondent State on 19 April 1996. The Applicant protested his termination to the Permanent Secretary, Ministry of Finance but was dissatisfied with the response and then filed a case at the High Court on 1 October 1999.
5. The Applicant further avers that he was not satisfied with the Ruling of the High Court on 28 September 2001 on the preliminary issues and therefore filed an Appeal before the Court of Appeal, whose Ruling of 27 March 2006, he was also dissatisfied with. The Court of Appeal directed that his case be returned to the High Court for consideration on the merits.

6. On 19 September 2006, the High Court considered the Applicant's case on the merits and rendered its decision on 15 September 2009, dismissing the case with costs. Similarly, the Applicant was not satisfied with the decision of the High Court and therefore filed an appeal at the Court of Appeal in October 2010. The Court of Appeal rendered its decision on 15 December 2010, upholding the decision of the High Court and dismissing the Applicant's case for lack of merit.
7. Finally, the Applicant filed an Application to the Court of Appeal to review its decision of 15 December 2010. The Court of Appeal dismissed the Application for review for lack of merit on 15 February 2013.
8. The Applicant submits that he was dissatisfied with the lack of remedies provided by the domestic Courts or lack thereof and approached the Tanzania Human Rights Commission for Human Rights and Good Governance (Commission) on 15 April 2015 for remedy. On 20 April 2015, the Commission informed the Applicant that it had no jurisdiction to consider the matter as per Section 130 (5) of the Constitution of the United Republic of Tanzania.
9. The Applicant then filed his Application before this Court on 14 September 2016.

## **B. ALLEGED VIOLATIONS**

10. The Applicant alleges that the Respondent State violated four (4) of his rights protected by the Charter, notably:

- a. **The right to work guaranteed under Article 15, by:**

- i. unlawfully terminating his employment from the TRA contrary to the provisions of the TRA Act N0.11 of 1995
    - ii. the failure of TRA to secure his employment status

- b. **The right to fair trial guaranteed under Article 7 by:**

- i. violating his right to be tried by an impartial court or tribunal

- ii. violating his right to be tried within a reasonable time
- iii. failing to consider the evidence adduced

**c. The right to equality before the law and equal protection of the law, guaranteed under Article 3(1) and (2) by:**

- i. the failure of the High Court, to hear his witness

**d. The right to freedom from discrimination guaranteed under Article 2 by:**

- i. Indiscriminately applying of Section 16 (2) of the TRA Act with regard to commissioners and employees.

**III. PRAYERS OF THE APPLICANT**

11. The Applicant prayed the Court to take the following Measures and grant the following Orders:

“a). A Declaratory Order that the decision that the Principal Secretary Establishment BUBESHI J and MIHAYO J and decision of the Court of Appeal of Tanzania Civil Appeal Number 27/2010 at Dar-es-salaam did not follow the law and did not consider my basic rights and the breach of the principle of natural justice which I have suffered in the process of retrenchment hence they are a nullity.

b). The whole process of my retrenchment to be declared unfair as it denied me to get employment elsewhere hence the respondent should be ordered to pay me compensation equivalent to the amount of salaries and other employment I ought to get in the corporation as it was being reviewed time after time.

c). I need legal aid because I have no money to employ an advocate. I have no job in my family is depending on me so I need Advocate to can represent me to the court.

d). The courts to appoint experts who can assist the court in order to determine proper my application.

e). The court to call witnesses who will be required by it and by the applicant.

f) Any other enabling provisions of the law in the Constitution of the United Republic of Tanzania in Criminal Appeal Number 60/2000.”