


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. 036/2020

LEGAL AND HUMAN RIGHTS CENTER AND TANGANYIKA LAW SOCIETY

V.

UNITED REPUBLIC OF TANZANIA

**(ARISING FROM CONSOLIDATED APPLICATIONS 009/2011 AND 011/2011
LEGAL AND HUMAN RIGHTS CENTRE AND TANGANYIKA LAW SOCIETY AND
REVEREND CHRISTOPHER MTIKILA**

V.

UNITED REPUBLIC OF TANZANIA)

CASE SUMMARY

I. THE PARTIES

1. The Applicants identified themselves as Legal and Human Rights Center and Tanganyika Law Society. However, in ***Consolidated Applications No. 009/2011, and No. 011/ 2011 Tanganyika Law Society and the Legal and Human Rights Centre & Reverend Christopher Mtikila v. United Republic of Tanzania*** from which this Application arises, the Applicants are described as Non-Governmental Organizations (NGOs), with Observer Status before the African Commission on Human and Peoples' Rights, both based in the United Republic of Tanzania. They stated their objectives as representing the interest of its members, the administration of justice, and upholding and advising Government and the public on all legal matters, including human rights, rule of law and good governance; and the promotion and protection of human and peoples' rights respectively.
2. The Applicants are represented by Advocate Fulgence T. Massawe of the Legal and Human Rights Centre, and Advocate Jebra Kambole, of Law Guards Advocates, Dar es Salam.
3. The Application is filed against the United Republic of Tanzania (hereinafter referred to as "the Respondent State") which became a party to the African Charter on Human and Peoples' Rights (herein after referred to as "the Charter") on 21 October 1986, and to the Protocol establishing the African Court on 10 February 2006. Though the Respondent State made the Declaration prescribed under Article 34(6) of the Protocol, by which it accepted the jurisdiction of the Court to receive applications directly from individuals and Non-Governmental Organizations (NGOs), it withdrew the Declaration on 20 November 2019. According to the jurisprudence of the Court, this withdrawal takes effect after twelve months, that is, on 22 November 2020.

II. SUBJECT OF THE APPLICATION

4. The Applicants state that they instituted an Application before the Court in 2011 (Application No. 011/2011)¹, seeking orders to compel the Respondent State to amend its constitutional and legal framework to allow for independent candidacy in its electoral process.
5. The Applicants further state that they were successful in that Application, and that the Court found in their favour, that the Respondent State had violated Articles 10 and 13(1) of the Charter. The Applicants further state that the Court ordered the Respondent State to take constitutional, legislative and all other measures necessary and within reasonable time to remedy the violations, and to inform the Court on the measures taken.
6. The Applicants contend that, without reason, the Court's judgment on the merits excluded them from subsequent stages of the case, including the reparations stage, and instead, heard only from Reverend Christopher Mtikila, who was the 2nd Applicant in Consolidated case. The Applicants argue that due to the fact that Reverend Christopher Mtikila died in 2015, there has been nobody to formally follow up with the implementation of the Court's judgments.
7. The Applicants also aver that the Respondent State has not aligned its constitutional and legal framework to allow independent candidacy, therefore failing to give effect to the rights of the Applicants and countless other citizens. This is despite the Respondent State arguing that such changes can only be through a constitutional review process, yet the Head of State has publicly stated that there shall be no constitutional review process.

¹ The Application filed by the Applicants was registered as Application 009/2011 and not 011/2011; the Application filed by Reverend Christopher Mtikila against the United Republic of Tanzania was the one registered as Application 011/2011 and the two applications were later joined and dealt with as *Consolidated Applications 009/2011 and 011/2011 Tanganyika Law Society and the Legal and Human Rights Centre & Reverend Christopher Mtikila v. United Republic of Tanzania*.

8. The Applicants submit that the constitutional review process is not the only means by which to give effect to the Court's judgment; that this can be achieved through a constitutional amendment bill which would be adopted by Parliament at an ordinary or extraordinary sitting.
9. They further state that in compounding the continuous violations occasioned by the non-implementation of the decisions of the Court, the Respondent State has contributed to or failed to prevent a number of activities that have contributed to shrinking space in Tanzania, including:
 - i. Arrests and harassment of opposition politicians and journalists;
 - ii. Banning of live broadcast of parliamentary sessions which has contributed to limiting citizen's access to information;
 - iii. Adoption of laws and policies that restrict media freedoms and free speech;
 - iv. The unlawful banning of political activity including political rallies and public political gatherings.
10. They state that, local government elections were conducted on 24 November 2019 and Parliamentary and Presidential elections are scheduled to be held in October 2020. They argue that in the absence of a framework that provides for independent candidacy and in light of the shrunk civic and political space, it will be difficult, if not impossible, to have a fair, just and credible electoral process.
11. They argue that, they and Tanzanian citizens as a whole, continue to suffer grave and irreparable harm due to the actions and omissions of the Respondent and that should elections proceed under the current legal framework, grave consequences could follow, including electoral related disputes and violence.
12. According to the Applicants, should the Respondent State fail to implement the necessary policy, constitutional, legal and other measures, the Applicants and other citizens shall fail to realize the rights as declared by the Court on its merits Judgment. Furthermore, the Applicants agitate that they have no other available

or expeditious legal/judicial recourse and have thus been forced to return to this Court to seek justice.

III. APPLICANTS' PRAYERS

13. The Applicants pray the Court for the following orders:

- a. Provisional measures pursuant to Article 27 of the Protocol (sic) order the Respondent to stay council members, parliamentary and presidential elections scheduled for 2020 pending the determination of this Application;
- b. An order reinstating the Applicant (sic) to proceedings in Application 9 of 2011 before the Court.
- c. An order compelling the Respondent to take all necessary measures to give effect to the decision on the merit decision (sic) in such manner so as to ensure that independent candidates can vie for council members, parliamentary and presidential elections scheduled for October 2020, respectively.
- d. An order finding that the Respondent in violation of Article 1 of the African Charter.
- e. An order compelling the Respondent to periodically report to the Court within a reasonable timeframe on the measure taken to give effect to the decisions of the Court.
- f. An order to declare the Respondent has disobey (sic) the Court orders if this Honourable Court of 14th June 2011.²

² The Applicants have cited a wrong date of the judgment of the Court in that Application; the correct date of the said Judgment being 14 June 2013 and not 14 June 2011.