


AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي		UNIÃO AFRICANA
<p style="text-align: center;">AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES</p>		

SAMSON KIRAHUKA AND 36 OTHERS

V.

UNITED REPUBLIC OF TANZANIA

APPLICATION NO. 034/2020

CASE SUMMARY

I. THE PARTIES

1. The Applicant and thirty-six (36) others (herein referred to as the “Applicants”) are former employees of Arge Swietelsky International, an Austrian railway company that was contracted by the Tanzania-Zambia Railway Authority for a railway welding project. The Applicants appear to be either resident in Tanzania or are citizens thereof.
2. The Application is filed against the United Republic of Tanzania (hereinafter referred to as “the Respondent State”), which, became party to the African Charter on Human and Peoples’ Rights (hereinafter referred to as “the Charter”) on 21 October 1986 and to the Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of an African Court on Human and Peoples’ Rights (hereinafter referred to as “the Protocol”) on 10 February 2006 and deposited the Declaration required under Article 34(6) of the Protocol on 29 March 2010, by which it accepted the jurisdiction of the Court to receive cases from individuals and Non-Governmental Organisations. On 21 November 2019, the Respondent State deposited with the Chairperson of the African Union Commission, an instrument withdrawing its Declaration. The Court held that this withdrawal has no bearing on pending and new cases filed before the withdrawal came into effect, that is, one (1) year after its deposit, which is on 22 November 2020.¹

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. The thirty-seven (37) Applicants, are former employees of Arge Swietelsky International, an Austrian railway company, based in Vienna, Austria, that was contracted by the Tanzania-Zambia Railway Authority for a railway welding project (‘The TAZARA Welding Project’) in 20 May 1994. They allege that they were

¹ *Andrew Ambrose Cheusi v. United Republic of Tanzania* (judgment) (26 June 2020) 4 AfCLR 219, §§ 37-39.

unlawfully terminated by the company on on 13 February 2001. As a result of this termination they allege to have filed a suit in 2001 at the High Court of Tanzania, Dar es Salaam, *Civil Case No. 367 of 2001* on 17 October 2001, where they claimed unlawful termination and prayed for payment of the arrears of the salaries, subsistence allowances, interests and costs occasioned by the suit. The company failed to file a written statement of defence and thus, 27 May 2002, the High Court entered a judgment in default in favour of the Applicants.

4. The Applicants contend that the decision of the High Court was not implemented by the Judiciary and the Executive and their efforts to engage the Executive branch of government to enforce the decision bore no fruit. Hence their seizure of this Court.
5. Furthermore, they aver that on 17 October 2001, the Applicant's filed an application to the High Court of Tanzania under Civil Case No. 367 of 2001, for inspection of the company's bank account at the Standard Chartered Bank and to debit approximately TSH. 616,160,000 so as to deposit it at the High Court to realise the sum of amounts owed to the Applicant's under the TAZARA wielding project.
6. They surmise that on 29 October 2004, the High Court of Tanzania, sitting at Dar es Salaam, dismissed the application as 'misconceived and incompetent' on two grounds, namely: (i) that the application was an interlocutory application brought in the absence of a pending trial,² and (ii) that two of the three respondents³ against whom relief was sought were not parties to any prior actions involving the Applicants.

² The Applicant's sought interlocutory relief without there being an ongoing trial

³ The Respondents listed were Arge Swietelsky International, Tanzania Zambia Railway Authority, and Ms Inter Consult Limited.

B. Alleged violations

7. The Applicants contend that the Respondent State, by failing to implement the High Court Judgement, violated the following Articles of the African Charter on Human and Peoples' Rights (herein after referred to as the "Charter"):
 - i. Article 1 (the duty to recognise the rights and freedoms enshrined in the African Charter, and adopt legislative and other measures to achieve this);
 - ii. Article 2 (the right to non-discrimination);
 - iii. Article 3 (the right to equality before the law and equal protection of the law);
 - iv. Article 4 (the right to life);
 - v. Article 5 (the right to dignity and freedom against torture, cruel and degrading treatment); and
 - vi. Article 7(1)(e) (the right to appeal to a competent organ).
 - vii. Article 16 (2) (duty on the State to take measures to protect the health of their people and to ensure that they receive medical attention when they are sick);
 - viii. Article 17 (1) (right to education);
 - ix. Article 18 (1) (the family shall be the natural unit and basis of society); and
 - x. Article 21 (right of people to freely dispose of their wealth and natural resources).

III. APPLICANTS PRAYERS

8. The Applicants pray the Court to order the Respondent State to furnish the Court with:
 - i. The original contract of TAZARA Rail Welding Project to determine their salaries plus allowances;
 - ii. Subsequent sub-contracts appended to the main contract;
 - iii. All liability certificates signed during the duration of the project;
 - iv. All payment certificates issued pursuant to the original contract;
 - v. The original Civil Case File No. 367/2007 and Miscellaneous Civil Case File No 42/2007 to be investigated; and
 - vi. The High Court Order of the decree.