

The SADC Lawyers' Association

Media statements

Zimbabwe

The SADC Tribunal ruling in the case of *William Michael Campbell and Another v the Republic of Zimbabwe*

The SADC Lawyers' Association welcomes the 5 June 2009 SADC Tribunal ruling on contempt proceedings against the Government of Zimbabwe in the case of *William Michael Campbell and Richard Thomas Etheredge v the Republic of Zimbabwe*; Case Number SADC (T) 03/2009. This is victory, not only for the Zimbabwean applicant farmers but for the rule of law in the country and the SADC region.

The contempt ruling follows the failure by the Government of Zimbabwe to follow the SADC Tribunal's initial November 2008 ruling which in essence ordered the Government of Zimbabwe to protect the applicant farmers' rights to occupy and use their farms. As has become traditional and predictable, the Government of Zimbabwe ignored this court order and went on to allow the invasion of the farms and the harassment of the farmers in question, with President Mugabe labelling the SADC tribunal's decision as 'nonsense' and of 'no consequence' whilst one of the Ministers, Dydimus Mutasa said the Tribunal was 'daydreaming.' The country's Deputy Chief Justice, a man expected to uphold the rule of law, scoffed at the SADC Tribunal ruling, saying the tribunal had no jurisdiction to deal with the case. This led the Tribunal on 5 June 2009 to hold the Government of Zimbabwe to be in contempt of court and referred the government to the SADC Summit for appropriate action, whilst also ordering them to pay the costs of the proceedings.

The Tribunal's ruling has clearly demonstrated that the Zimbabwean Government has no regard for the rule of law or the

international system to which the country purportedly subscribes. Whilst President Mugabe and his government have over the years shown complete contempt for Western institutions, it is regrettable that they are disregarding even the processes that are spearheaded by African and SADC institutions like the SADC Tribunal. The SADC Lawyers' Association urges the SADC Summit to take a tough stance towards the Zimbabwean Government on the issue when it meets in August so that the country does not continue to be a pariah state, ignoring court orders and disregarding the international legal system.

The order of costs against the government of Zimbabwe by the Tribunal is a welcome development in that it shows the Tribunal's displeasure with the conduct of the Zimbabwean Government whilst at the same time alleviating the financial burden that the applicants have had to endure in order to obtain justice. We urge the Government of Zimbabwe to show its sincerity in the implementation of the Global Political Agreement by respecting the rights of the applicants and other affected farmers, by upholding the rule of law and by abiding by the latest ruling of the SADC Tribunal.

We urge the SADC Heads of State and Government to be robust in their treatment of the Zimbabwean Government in terms of Article 32 (5) of the Protocol on the Tribunal. Further, the SADC Lawyers' Association trusts that the Heads of State and Government will have the same courage as they demonstrated recently in dealing with the unelected government of Madagascar and will not act in a manner that validates the charge of selective application of sanctions.

Issued on behalf of the SADC Lawyers' Association by Mabvuto Hara, president of the SADC Lawyers' Association; 12 June 2009.

Swaziland

Law under which Swazi Human Rights Lawyer Thulani Maseko has been arrested - ancient and undemocratic.

The SADC Lawyers' Association is concerned about the arrest and continued detention of Thulani Maseko, a human rights lawyer in Swaziland. Thulani was arrested on the 2 June 2009, under an ancient 1938 piece of legislation called the Sedition and Subversive Activities Act 46 of 1938.

Although the Act has been amended several times between 1967 and 1987, it still remains an undemocratic piece of legislation which infringes upon the Swazi citizenry's right to freedom of expression and to speak freely without unnecessary censorship or limitation; and to seek, impart and receive information and ideas as enshrined in Article 19 of the United Nations International Covenant on Civil and Political rights.

The Act gives 'the king, his heirs and successors' as well as the Government of Swaziland unnecessary immunity from criticism and scrutiny under the guise of protecting them from contempt or hatred or raising disaffection or discontent amongst the king's subjects. These provisions go against all modern democratic and human rights values that give the citizens the right to participate in their governance and to raise their discontent in situations where their rights are infringed upon.

The Act also gives the King on the advice of the Prime Minister,

the right to appoint special tribunals to deal with trials of persons charged under the Act if the Prime Minister is of the opinion that 'an offence under which a person is charged involves the security of Swaziland'. The decision of the special tribunal is final and cannot be appealed against to any court. Such a tribunal cannot be expected to be impartial and fair considering that it is handpicked by the King to deal with a specific case. The legislation thus deprives the citizen of his/her right to be tried by an independent judiciary and the creation of such special tribunals can only send the message of kangaroo justice. Secondly, the non appeal clause against the decision of the tribunal infringes upon an accused person's right to a fair trial as enshrined in Article 14 (5) of the International Covenant on Civil and Political Rights which states that 'Everyone convicted of a crime shall have the right to his/her conviction and sentence being reviewed by a higher tribunal according to law'.

The SADC Lawyers' Association therefore calls upon the Government of Swaziland to refrain from abusing this anachronistic legislation to negate citizens' rights to freedom of expression and related rights. The SADC Lawyers' Association also calls upon the Government of Swaziland to urgently review the legislation so that it conforms to current democratic values, international human rights norms and human rights instruments to which Swaziland is a signatory.

Issued on behalf of the SADC Lawyers' Association by Mabvuto Hara, president of the SADC Lawyers' Association; 12 June 2009. 