

# 01/10 Fick, Campbell & 2 Others v. Zimbabwe

In the Southern African Development Community (SADC) Tribunal, Windhoek, Namibia

In the Matter Between

Louis Karel Fick - 1<sup>st</sup> Applicant  
William Michael Campbell - 2<sup>nd</sup> Applicant  
Richard Thomas Etheredge - 3<sup>rd</sup> Applicant  
Commercial Farmers Union of Zimbabwe - 4<sup>th</sup> Applicant  
Southern African Commercial Farmers'  
Alliance-Zimbabwe - 5<sup>th</sup> Applicant

And

The Republic of Zimbabwe Respondent

Coram

H.E. Justice A.G. Pillay - President  
H.E. Justice I.J. Mtambo, SC - Member  
H.E. Justice Dr. L.A. Mondlane - Member

Applicants' Agent:

J. Gauntlett, SC  
Assisted by F.B. Pelser

Hon. Justice M.C.C. Mkandawire - Registrar

D. Shivangulula - Court Clerk

**Ruling**

**Delivered by H.E. Justice Isaac J. Mtambo, SC**

This application is brought under Article 32 (4) of the Protocol on Tribunal (the Protocol) in order that the Tribunal may report the failure by the Republic of Zimbabwe (the Respondent) to the Summit for its appropriate action, pursuant to paragraph 5 of that Article. It is made on the basis of two earlier decisions of the Tribunal in respect of the case of Mike Campbell (Pvt) Limited and others v The Republic of Zimbabwe (Case No 02 of 2007 decided on November 28, 2008, hereinafter referred to as the Campbell case), and the case of William Campbell and Another v The Republic of Zimbabwe (Case No 03 of 2009 decided on June 5, 2009,). In the former case, the Tribunal held that the Respondent was in breach of Articles 4 (c) and 6 (2) of the Southern African Development Community Treaty and made the necessary order which we will refer to later in this ruling. In the latter case, the Tribunal found that the Respondent had failed to comply with the decision in the former case and reported such failure to the Summit to take appropriate action in terms of Article 32 (5) of the Protocol which provides:

*"If the Tribunal establishes the existence of such failure, it shall report its finding to the Summit for the latter to take appropriate action."*

Despite this, the Respondent has continued to violate the decision of the Tribunal. Three instances of the violation may be highlighted, amongst others. Firstly, there is abundant evidence before us to the effect that the lives, liberty and property of all those whom the decision meant to protect have been endangered.

Secondly, in a letter dated 12 August, 2009 the Minister of Justice and Legal Affairs of the Respondent informed the Tribunal as follows:-

*"We hereby advise that, henceforth, we will not appear before the Tribunal and neither will we respond to any action or suit that may be instituted or be pending against the Republic of Zimbabwe before the Tribunal. For the same reasons, any decisions that the Tribunal may have made or may make in the future against the Republic of Zimbabwe, are null and void."*

Indeed, it is no surprise that the Respondent was not represented during the hearing of this application.

Thirdly, an attempt to register and enforce the decision of the Tribunal, pursuant to Article 32 (1) of the Protocol, has been refused by the High Court of Zimbabwe -vide the case of **Gramara (Private) Limited and Another v The Government of the Republic of Zimbabwe** (HC33/09) in which the Court stated as follows:

*"In the result, having regard to . . . overwhelmingly negative impact of the Tribunal's decision on domestic law and agrarian reform in Zimbabwe, and notwithstanding the international obligations of the Government, I am amply satisfied that the registration and consequent enforcement of the judgment would be fundamentally contrary to the public policy of this country."*

Article 32 (1) provides as follows: *"The law and rules of civil procedure for the registration and enforcement of foreign judgements in force in the territory of the Member State in which the judgement is to be enforced shall govern enforcement."*

And under paragraph 3 of that Article, the decision of the Tribunal is binding upon the parties to the dispute in respect of a given case and is enforceable within the territory of the Member State concerned.

It will be recalled that in the **Campbell** case, the Tribunal directed the Respondent to take all necessary measures, through its agents, to protect the possession, occupation and ownership of the land of the applicants and to take all appropriate measures to ensure that no action is taken directly or indirectly, whether by its agents or others, to evict the applicants from, or interfere with their peaceful residence on, the land.

In light of the foregoing, it is evident that the Respondent has not complied with the decision of the Tribunal. We, therefore, hold that the existence of further acts of non-compliance with the decision of the Tribunal has been established, after the Tribunal's decision of June 5, 2009 under which the earlier acts of non-compliance have already been reported to the Summit. Accordingly, the Tribunal will again report this finding to the Summit for its appropriate action.

We note also that the fourth and fifth Applicants were not parties to either of the two earlier applications. Their application is, therefore, dismissed.

Finally, we consider that there is ample justification for a costs order to be made against the Respondent, pursuant to Rule 78(2) of the Rules of Procedure of the SADC Tribunal, since the Respondent has continued to violate the decision of the Tribunal. The costs are to be agreed by the parties. In case of disagreement, the Registrar should determine the costs to be awarded.

**Delivered in open court this 16<sup>th</sup> day of July 2010, at Windhoek in the Republic of Namibia.**

**H.E. Justice Ariranga Govindasamy Pillay  
PRESIDENT**

**H. E. Justice Isaac Jamu Mtambo, SC  
MEMBER**

**H.E. Justice Dr Luis Antonio Mondlane**

**MEMBER**