

**IN THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY
TRIBUNAL AT WINDHOEK, REPUBLIC OF NAMIBIA**

SADC (T) CASE No. 8/08

IN THE MATTER BETWEEN:

Albert Fungai Mutize & Others

Applicants

Versus

Mike Campbell (private) Limited

1st Respondent

William Michael Campbell

2nd Respondent

And

Government of the Republic of Zimbabwe

Respondent

And

Gideon Stephanus Theron & 76 Others

**Fourth to Eightieth
Respondents**

CORAM:

H.E. Justice Dr. L.A. Mondlane

President

H.E. Justice A. G. Pillay

Member

H.E. Justice I. J. Mtambo

Member

H.E. Justice Dr. R. Kambovo

Member

H.E. Justice Dr. O.B. Tshosa

Member

APPLICANTS' AGENT:

FARAI MUTAMANGIRA

RESPONDENT'S AGENT:

P. MACHAYA,

FIRST AND SECOND RESPONDENTS' AGENTS:

**J.J. GAUNTLETT, SC
A.P. DEBOURBON, SC
J.L. JOWELL QC
E.M. ANGULA, COUNSEL**

**Hon. Justice M. C.C. Mkandawire:
Mr. D. Shivangulula:**

**Registrar
Court Clerk**

RULING

On 28 May, 2008, when the case of **Mike Campbell (Pvt) Limited and William Michael Campbell Versus The Republic of Zimbabwe (Case No. SADC (T) 2/07)** was called on, counsel for the applicants moved to have this application heard. The application was purportedly made pursuant to Article 30 of the Protocol on Tribunal and Rule 70 of the Rules of Procedure of SADC Tribunal.

We dismissed the application in open Court, after hearing arguments from all counsel. We reserved our reasons for doing so. We now state those reasons.

As conceded by learned counsel for the applicants at the very outset of the hearing, the application was in fact a prayer to file a proper application in due course. We consider that counsel was right to make this concession since the application was defective, especially in view of the fact that no list of documents had been filed in support thereof in terms of paragraph 3(e) of Rule 70.

Even if we had been prepared to treat the application as having been properly made, we would still have rejected it under paragraph 2 of Rule 70 since the applicants did not provide sufficient material to show that their application was an exceptional one. Moreover, no good cause had been shown by the applicants as to why they made their application so late, when the case to which the application related, commenced way back in October, 2007.

It will be recalled that on 11 December, 2007 a Ruling was given by the Tribunal granting interim protection to the two applicants (Case No. SADC (T) 2/07) and another Ruling was given by the Tribunal on 28 March, 2008 to granting 77 applicants leave to intervene in the case (Cases No. SADC (T) 2/08, SADC (T) 3/08, SADC (T) 4/08) and SADC (T) 6/08).

Furthermore, there is an additional reason for rejecting the application.

Paragraph 1 of Article 15 of the Protocol states as follows:

“The Tribunal shall have jurisdiction over disputes between States, and between natural or legal persons and States”.

Since the alleged dispute in the application is between persons, namely the applicants, the first and second respondents and the fourth to eightieth respondents and not between persons and the State, the Tribunal has no jurisdiction to hear the application.

Made this 30th Day of May, 2008 at Windhoek in the Republic of Namibia.

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H.E Justice Dr Luis Antonio Mondlane

PRESIDENT

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H.E Justice Ariranga Govindasamy Pillay

MEMBER

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H.E Justice Isaac Jamu Mtambo, SC

MEMBER

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H.E Justice Dr Rigoberto Kambovo

MEMBER

.....

H.E Justice Dr Onkemetse B. Tshosa

MEMBER