

Attempt to destroy tribunal's individual access contrary to international law

09/03/2018 (Public Law)

Law Society of South Africa, Tembani and others v President of the Republic of South Africa [2018] ZAGPPHC 4

The Full Bench of the South African High Court has struck down as in conflict with the Constitution of South Africa an international treaty amendment by South Africa curtailing the rights of access by individual applicants to the Southern African Development Community (SADC)'s Tribunal.

The measure affected over 230 million citizens of the 15 member states of South Africa. Adopted at a summit of SADC heads of state in 2014, it had stripped the SADC Tribunal of human rights functions similar to those of the ECHR. The step, taken in concert with Zimbabwe and 12 other SADC member states, followed a series of awards obtained from the SADC Tribunal holding Zimbabwe's land seizure programme to be in violation of Zimbabwe's obligations in international law.

Zimbabwe defied the awards. Enforcement applications by a group of Zimbabwean commercial farmers, led by Mike Campbell and Luke Tembani, followed in the domestic courts of Zimbabwe and South Africa. Those in South Africa proceeded up through the High Court, Supreme Court of Appeal and the Constitutional Court, the latter affirming the orders below enforcing the Tribunal awards (in *Government of Zimbabwe v Fick and Others*).

In the latest ruling the Full Bench unanimously ruled that the signing by President Zuma of the measure had comprised action in concert with an international-law violator, Zimbabwe, contrary to South Africa's own international law obligations. The ruling follows the Full Bench's judgment last year that South Africa's attempt to exit the International Criminal Court, set up by the Rome Treaty, was contrary to its international law obligations and in breach of the Constitution.

The judgment is [here](#).

Jeremy Gauntlett SC QC of Brick Court Chambers led in both matters, and in the preceding Tribunal proceedings.

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