

<b>AFRICAN UNION</b>		<b>UNION AFRICAINE</b>
<b>الاتحاد الأفريقي</b> <i>African Commission on Human &amp; Peoples' Rights</i>		<b>UNIÃO AFRICANA</b> <i>Commission Africaine des Droits de l'Homme &amp; des Peuples</i>
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## **Communication 708/19**

### **Liberty Fighters Network & 2 Others**

**v**

### **The Republic of South Africa**

*Adopted by the  
African Commission on Human and Peoples' Rights  
during the 25<sup>th</sup> Extra-Ordinary Session, from 19 February to 5<sup>th</sup> March 2019  
Banjul, The Gambia*



**Commissioner Soyata Maiga**  
Chairperson of the African Commission  
on Human and Peoples' Rights




**Dr. Mary Maboreke**  
Secretary to the African Commission on  
Human and Peoples' Rights

## DECISION OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS ON SEIZURE

### Communication 708/19 -Liberty Fighters Network & 2 Others v. The Republic of South Africa

#### Summary of the Complaint

1. The Secretariat of the African Commission on Human and Peoples' Rights (the Secretariat) received a Complaint on 20<sup>th</sup> March 2018 from Liberty Fighters Network, Mr. Reyno Dawid De Beer, and Mr. Halbo De Beer (the complainants).
2. The Complaint is submitted against The Republic of South Africa (the Respondent State), which is a State Party to the African Charter on Human and Peoples' Rights (the African Charter), having ratified the same on 9 July 1996.<sup>1</sup>
3. The Complainants allege that there are many suspected fraudulent civil court processes followed in the Respondent State which are violating the human rights of people in various ways, ranging from being illegally evicted from their homes to repossession of their immovable properties after the banks have illegally obtained judgments when they are not the owners of those bonds anymore, through securitization which is practice amongst many banks in the Respondent State today.
4. The Complainants submit that during 2016, they opened a criminal case in a matter involving the second and third Complainants, relating to a suspected fraudulent Court process to evict people from a commercial property in the City of Tshwane. The Complainants allege that the criminal case they opened implicates two High Court Judges in Pretoria, but the commencement of criminal investigation of their case by the Directorate of Priority Crimes Investigation of the Respondent State's Police (also known as the "Hawks") was blocked by the National Prosecuting Authority (NPA) of the Respondent State, specifically by the National Director of Public Prosecutions, Mr. Shaun Abrahams.
5. The Complainants submit that they formally lodged a formal complaint to the office of the Chief Justice of the Respondent State, Justice Mogoeng Mogoeng, and they allege that his office had no interest to resolve their concerns relating to the untidy state of the judicial administration system of the Respondent State, and that prompted them to refer the Chief Justice to the South African Human Rights Commission (SAHRC).
6. The Complainants further submit that the South African Human Rights Commission (SAHRC) acknowledged in writing that there was clearly a major problem with the way in which the administration of the Courts of the Respondent State were handled and referred the matter to the Directorate of Court Administration within the Department of Justice and Constitutional Development of the Respondent State to attend to their matter. The Complainants submit that after communicating with that directorate, nothing was forthcoming.

<sup>1</sup> <http://www.achpr.org/instruments/achpr/ratification/>





7. The Complainants submit that after constant internal appealing processes based on the fact that the investigation of their criminal case was blocked by the National Prosecution Authority (NPA), they eventually approached the High Court (Gauteng Division, Pretoria) of the Respondent State on an urgent application during February 2017 to compel the National Prosecution Authority of the Respondent State to unblock investigations in their criminal case. The Complainants further submit that the President of the Respondent State and the Minister of Justice and Correctional Services decided not to oppose their application.
8. The Complainants submit that at the hearing in the High Court, the legal representatives of the National Prosecution Authority (NPA) promised the Presiding Judge that the then National Director of Public Prosecutions, Mr. Shaun Abrahams, was going to make his decision relating to their internal appeal by February 2017 and as a result the Judge ruled that their matter was not urgent and consequently it was struck from the roll with costs.
9. The Complainants submit that until the date they submitted their Complaint, the National Prosecution Authority has not fulfilled its promise to the High Court, as the criminal investigations into their case are still blocked, and they fear that valuable evidence has already been destroyed, making successful prosecution highly unlikely.
10. The Complainants further submit that after realizing that they were treated with contempt by the High Court of the Respondent State as described in the relevant pleadings submitted, they approached the Constitutional Court of the Respondent State to intervene in the judicial administration dilemma they are facing.
11. The Complainants submit that they presented very good reasons and factual findings why they believe that the Constitutional Court must intervene in what they allege to be violations of human rights threatening their democracy, and a full bench of the Constitutional Court of the Respondent State delivered its judgment on 2 May 2017 dismissing their matter without any hearing and without giving reasons.
12. The Complainants submit that they requested from the Constitutional Court that it was within their constitutional rights to receive information relating to the reasons why their application was dismissed, but through a letter, the Constitutional Court only informed them that the reason of the Court is that it was not in the interest of justice to hear the case at that time.
13. The Complainants allege that the Constitutional Court violated their constitutional right to receive information relating to the reasons why their case was dismissed for not being in the interest of justice at that time.
14. The Complainants allege that the independence of the Constitutional Court of the Respondent State is compromised by the fact that the Chief Justice Mogoeng Mogoeng, who they clearly mentioned in their pleadings to the Constitutional Court that he did not want to assist them, which prompted them to report him to the South African Human Rights Commission (SAHRC), was part of the *coram* that





delivered the judgment which dismissed their application, and they believe he should have excused himself from their matter.

15. The Complainants allege that the problem of fraudulent eviction court orders in the Respondent State has now escalated to the extent where occupants who join associations to resist landowners of properties obtaining unlawful Court Orders and other related unfair property practices, are now being targeted and prevented from joining those associations and in February 2018 the authorities in Johannesburg unlawfully arrested at least 100 occupants resisting evictions based on alleged fraudulent Court Orders.
16. The Complainants submit that a man by the name of Mr. Jonathan Constable, who assisted several of those occupants trying to oppose the practice of fraudulent eviction Court orders, was also arrested during January 2018 and he was referred to as the "property hijacking key-pin" for having resisted the execution of such orders. The Complainants submit that Mr. Jonathan Constable was unfairly arrested.
17. The Complainants submit that they are unable to find any remedy to these judicial administration system problems locally and have exhausted all local remedies.

#### **Article alleged to have been violated**

18. The Complainants allege that the Respondent State has violated Articles 3, 5, 7, 9, 10, 13, 14, 19, 21, 24, 25 of the African Charter on Human and Peoples' Rights (the African Charter).

#### **Prayers**

19. The Complainants seek the following:
  - (i) A declaration that the Respondent State has violated Articles 3, 5, 7, 9, 10, 13, 14, 19, 21, 24, 25 of the African Charter on Human and Peoples' Rights.

#### **Procedure**

20. The Secretariat received the Complaint on 20<sup>th</sup> March 2018, acknowledged receipt, and informed the Complainant that the complaint will be tabled for Seizure before the Commission for consideration.

#### **Analysis of the Commission on Seizure**

21. On the basis of the facts provided above, the Commission is of the view that the Complaint contains all the information required under Rule 93 (2) of its Rules of Procedure.

#### **Decision of the Commission on Seizure**

22. The Commission decides to be seized of this Communication.



23. The Commission requests the Complainant to present evidence and arguments on admissibility within two (2) months in accordance with Rule 105 (1) of its Rules of Procedure.

**Done by the African Commission on Human and Peoples' Rights at the 25<sup>th</sup> Extra-Ordinary-Session held in Banjul, The Gambia, from 19 February 2019 – 5 March 2019.**

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