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JOHANNESBURG, SOUTH AFRICA, 21 MAY 2020

Mitu-Bell Welfare Society appeal case is fertile ground for the development of the right to remedy

For the law to become a tool for social change, an enabling environment for conducting strategic litigation must exist. When victims of human rights violation approach courts they need to be assured that legal technicalities will not constitute a barrier in their cause.

On 21 May 2020, the Initiative for Strategic Litigation in Africa (ISLA) represented by Kenya Legal and Ethical Issues Network on HIV & AIDS (KELIN) made submissions as *amicus curiae* in a case in which Mitu-Bell Welfare Society is appealing the decision of the Kenyan Court of Appeal. This is an eviction case brought by Mitu-Bell against Kenya Airports Authority and the Commissioner of lands after they were evicted. The court of first instance granted a structural interdict and the Supreme court overturned the decision on the basis that structural interdicts were not part of Kenyan law.

The appeal, heard by a panel of five justices, including the Chief Justice, requires a determination of a court's power to issue structural interdicts, (supervisory orders through which courts monitor compliance with its orders).

This is the first case to reach the Supreme Court in relation to socio-economic rights under the 2010 Constitution.

ISLA's amicus intervention focused on providing comparative and international law to the court to illustrate how the law relating to structural interdicts is a core component of the constitutionally protected right to remedy, not a new phenomenon that has no legal basis under Kenyan law.

"The existence of effective remedies is a key requirement for enabling victims of human rights violations to hold States accountable. The development of jurisprudence to recognise different forms of remedies is a task that must be undertaken if our Constitutions are to become living documents that are capable of providing redress," ISLA's Executive Director Sibongile Ndashe says.

ISLA's legal arguments address the meaning of the right to remedy in the context of human rights violations; demonstrate how remedies in human rights litigation have evolved over time under international law and the regional human rights systems. The arguments also present comparative jurisprudence in which courts have found that structural interdicts were necessary to ensure effective and sufficient remedy; and discuss applicable jurisprudence from the Kenyan courts in executing its constitutional mandate to provide an "appropriate relief" as envisaged in Article 23(3) of the Kenyan Constitution.

Once the judgment is ready, the Supreme Court shall issue a notice informing the parties.

Lesego Nchunga, Women's Economic Justice Lawyer at ISLA says: "Although there are a wide range of remedies available for breaches of constitutional rights, structural interdicts are the most effective for the protection of socio-economic rights. Structural interdicts have been used by international human rights systems, as well as regional human rights systems, for the reason that they offer more concrete benefits to those whose rights have been violated. In the Kenyan context and this being the first Supreme Court case on this issue, it is critical for the court to determine what constitutes 'appropriate relief' in socio-economic rights cases."

ISLA was represented by Carolene Kituku, an alumna of ISLA's Feminist Litigation Network, a programme that aims to create a pool of African feminist lawyers who can

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