



## INTERNATIONAL TRIBUNAL FOR NATURAL JUSTICE

In February 2016, the Applicant UZA requested that the Applicant be able to change the cause of action before the ITNJ. This request, which the Applicant (or any Party) has the right to give, presented many issues because prior to February, the matter was ready to proceed to a trial. Given that the ITNJ then had to clarify UZA's position in the matter, another directions hearing was held on 14 April 2016.

Chief Justice Sir John Walsh of Brannagh emphasised that no Party may frivolously change the substance of a matter before the ITNJ once it has begun. He further highlighted that if a Party would like any changes to be made to a matter, that Party must first seek leave from the Tribunal to ensure that the proposed changes are appropriate and do not hinder the process or infringe on another Party's rights. Following this, His Honour asked the Administrator of UZA, Brother Thomas, why and how UZA would like to change the cause of action of the matter. In response, Brother Thomas suggested that the Constitutional Court is not a "community court", which he believes is prescribed in the Constitution of the Republic of South Africa. He further explained that community courts are neighborhood-focused problem-solving courts that apply problem-solving approaches such as restorative justice principles to local concerns, and that as the Constitutional Court has failed to do this, it has been acting unconstitutionally. The Applicant wanted to pursue this moving forward, and although UZA believed that it deviated from the cause of action currently on foot, His Honour clarified that this was not so. The allegation that the Constitutional Court is not a "community court" merely supports the broader allegation that the Constitutional Court is acting outside its legal mandate as established by the Constitution.

Evidence for the trial was also discussed at the directions hearing. Brother Thomas required guidance as to how many witnesses UZA should call, and what kind of evidence would be required to argue the Applicant's case. His Honour made clear that the ITNJ must remain neutral and as such, cannot help Parties in an open matter with their respective cases. Notwithstanding, examples of convincing evidence were given to aid UZA. Such examples included studies conducted by experts in the field, articles

published in law magazines by respected authorities, and expert opinion evidence. These examples were contrasted from those not deemed probative, including blog posts and lay opinion evidence. His Honour clarified that anybody may give factual evidence, for example, detailing his or her personal experiences with the Constitutional Court, but opinion evidence cannot be given unless given by an expert. It was explained to Brother Thomas that it is up to UZA to decide how it will present its evidence at trial, and also that the ITNJ could not possibly decide in the Applicant's favour unless the Applicant manages to present convincing evidence in support of its claims.

His Honour also asked about correspondence sent from Brother Thomas on behalf of UZA to the Tribunal the day before the directions hearing on 13 April. Brother Thomas explained that the correspondence in question was an application to the Constitutional Court of South Africa, against the Constitutional Court, the Republic of South Africa, and the Judicial Service Commission in South Africa. This application was separate but related to the matter currently on foot at the ITNJ. It was UZA's intention to see what happened with the Constitutional Court matter, and if it went satisfactorily or not, the result may be used as evidence in the ITNJ case. As such, Brother Thomas requested that the ITNJ matter be stayed until the Constitutional Court matter has reached some sort of conclusion. Brother Thomas, and UZA by extension, did not want to jeopardise either action, to which His Honour agreed.

The Applicant also confirmed that moving forward, the Constitutional Court of South Africa was the only appropriate Respondent. As such, the Republic of South Africa has been removed as Respondent and is no longer a party to the matter.

Upon the conclusion of the directions hearing, orders were made regarding evidence, and it was confirmed that a trial would be scheduled no earlier than July 2016. This was to give UZA sufficient time to deal with the separate Constitutional Court action, and to gather its evidence and formulate its case.

Julie-Anne Pho  
ITNJ Court Officer  
14 April 2016