



International Tribunal for Natural Justice

Case ref: 2015-01-UZA

Date: 14 April 2016

DIRECTIONS HEARING

Proceeding of

Unified Common-law Grand Jury of Southern Africa ('UZA')

Applicant

v

Constitutional Court of South Africa

Respondent

Date: Thursday 14 April 2016

Time: 8:00AM (GMT+2)

SUMMARY OF DIRECTIONS HEARING

MISS PHO: The directions hearing of the proceeding of Unified Common-law Grand Jury of Southern Africa or UZA, versus Constitutional Court of South Africa ('**CC**').

Present today, Sir John Walsh of Brannagh Chief Justice of the ITNJ will be presiding over this matter. We also have myself, Julie-Anne Pho and Eylul Top; we are court officers and Associates to the Chief Justice at the ITNJ. The applicant in this matter is UZA, I see we have Brother Thomas here, and we just want to confirm if Chris Walker is also present.

MR WALKER: Yes, I am. Hello.

MISS PHO: Hi, nice to meet you.

MR WALKER: Nice to meet you too.

MISS PHO: And it seems that we do not have anyone present from the CC, in which case we can proceed.

1. Overview of the hearing:

MISS TOP: The purpose of this directions hearing is to determine where each party stands in the action and whether there is any possibility of resolution. We will aim to encourage and assist both parties in coming to an agreement. If this does not occur, the tribunal can then send the matter to mediation, if both parties agree to it, or set a date for trial. This hearing may also be useful in resolving some issues, thus limiting the amount of issues to be argued at trial.

2. Clarification of remedies sought.

MISS PHO: We need to establish what it is exactly that the UZA wants from the ITNJ. On 1st February 2016 the ITNJ received correspondence from you, Brother Thomas, stating that UZA wishes to change the cause of action before the ITNJ. We also received correspondence yesterday 13 April 2016, which quite frankly, didn't make any sense. It also contradicted the earlier correspondence from 1st February 2016.

As such, Brother Thomas, would you please clarify, sticking to one sentence if possible, what it is that you are seeking from the ITNJ?

BROTHER THOMAS: Thank you, Julie-Anne. Firstly, we would just like to clarify how we would like to proceed in this matter, unfortunately, if we tried to put it in one sentence, I would say that stated as in (**COURT CASE NAME: INDISTINCT**), where the court directed that where those *something* law make pleadings and complaints to allow the court to look at the substance of the pleadings rather than form.

MISS PHO: Sorry, Brother Thomas, just to interrupt you there, were you referencing a court case just then? So you can reference cases to argue your own case, but what was your cause of action that you want to bring to the ITNJ?

BROTHER THOMAS: We feel that we have the right, based on what we have provided, we have the rights to common law courts or what is referred to as in South Africa, community courts, so firstly we would like to explore the establishment of community courts in South

Africa because according to our 1955 Freedom Charter and the 1994 Reconstruction and Development Program, Community Courts were an essential (**INDISTINCT**) of the people to be established. Because since then, the courts haven't developed common law or customary courts, which is a constitutional obligation and we do have the right of trial by public hearing, and we feel that we are not being granted that right so this is why we came to the ITNJ to explore that possibility of assisting and giving us guidance, if the court feels that we have valid rights to community courts, and then to see how we can find a remedy to that. Either by order, by decree, or by statute.

MISS PHO: So are you saying that what you're seeking is for there to be an establishment of community courts in South Africa?

BROTHER THOMAS: Yes, that is correct.

MISS PHO: Okay, so in your own words, can you please succinctly explain exactly what that cause of action is?

BROTHER THOMAS: Can you please clarify for me, please?

MISS PHO: Can you please explain in one sentence, if possible, that cause of action? Essentially what we have just said, essentially I have put words forward for what you want and we need to hear from your own words what it is that you want.

BROTHER THOMAS: We require community courts by common law jurisdiction or by natural law or natural justice jurisdiction. That is what we wish for. Thank you.

MISS PHO: Okay, so if you were seeking for there to be an establishment of community courts in South Africa. Do you no longer wish, or is your cause of action no longer that there be recommendations in regards to restorative justice in the CC?

BROTHER THOMAS: Well, that is (**INDISTINCT**) of the process; restorative justice is a natural law principle, and therefore community courts would obviously be operating under the restorative justice principles.

HIS HONOUR: Brother Thomas, when these actions started, the original defendant was the Republic of South Africa, that is the government, then the CC was added. In the early stages, you wanted to include as defendants, all the public servants of the governments, all the way

through, from the police to the **(INDISTINCT)** to everybody. We pointed out that that could give you hundreds, if not thousands of potential defendants, and the case could go on for months. You narrowed it down then to the Republic of South Africa and the CC. Later, you indicated that you wanted to drop the Republic of South Africa as a defendant and just have the CC. We just need to clarify that, as I notice in the document that you sent us yesterday, you had the Republic of South Africa back in as the respondent, the CC as the second respondent, and the Judicial Services Commission as the third respondent.

Now, this document was headed in the CC, and your email indicated that this was a separate action and we are just trying to clarify whether this is to modify the action before the ITNJ or is it a completely separate action?

BROTHER THOMAS: Your Honour, we initiated separate action with the CC to clarify our position as our previous filings were confusing, and we felt that because the retributive Roman Dutch Law system is not providing a remedy, we need to proceed with this action under Natural Law and Natural Justice. The content of the filings that we sent you is exactly the same so in this case with the ITNJ we are keeping the respondents as the CC, because this is not a retributive action, it is a restorative justice action. We then feel that this needs to be heard inside a formal court, because it could possibly grant or limit our jurisdiction. The primary focus of our case is based on jurisdiction and we feel that lines have been paved between the jurisdiction of the courts, and potentially between the jurisdiction of the community courts, we do have customary courts in South Africa, they have been placed in subject to other jurisdictions, which creates an infringement of rights, we believe, and that is what we wish to prove in this matter.

HIS HONOUR: So in relation to the action that you have before the ITNJ, is the CC as you indicated in previous correspondence, the only respondent?

BROTHER THOMAS: Yes, Your Honour, it is the only respondent, because the CC is the only court in South Africa that has jurisdiction to hear Constitutional matters so there is no need for us to include anybody else.

HIS HONOUR: So, you do not want to include the Republic of South Africa?

BROTHER THOMAS: This is not a retributive action; we do not feel that it is necessary.

HIS HONOUR: Then what we need to do then is, you need to discontinue formally the action

against the Republic of South Africa and we need to advise them because when the trial starts, if they are still on the record, it would entitle the government to send someone along to represent their point of view, only to be told that they are no longer a party to the action so we should let them know they are no longer a party to the action.

BROTHER THOMAS: Yes, we will do that, Your Honour. Yesterday when we filed at the court, we just filed on the CC and the Judicial Services Commission ('**JSC**'), which is mainly made up of judges from the constitutional court.

HIS HONOUR: Before we move onto the judicial services commission. You formally discontinue against the Republic of South Africa, that is the politically elected government.

BROTHER THOMAS: Will do that, Your Honour.

HIS HONOUR: Yes, fine. Now, you mentioned the CC. That is fine, they can stay in. Now, you have mentioned the JSC that was in the body of the document you sent us, I think late last night our time, is it your intention that your action is a separate action, is an action against the JSC as well?

BROTHER THOMAS: Your Honour, most of the judges from the CC, are also members of the JSC and it is our comprehension that they are there to give guidance, or to assist, or to make recommendations to the CC. There is possibly an action such as this; you could correct us if we are wrong.

HIS HONOUR: No, No, it is basically the administrative consultant of arms of the court itself and that is not unusual for there to be such a body. So, the action you are taking is to be a separate action from the one before the ITNJ?

BROTHER THOMAS: Yes, Your Honour. Because we have changed the nature of our case, we have to try and exhaust all remedies in our country as well and it's a possible action too, in a manner of speaking.

HIS HONOUR: I see, so you will be seeking in that action that a declaration from the courts that the courts should have a much stronger focus on restorative justice principles.

BROTHER THOMAS: That is correct, Your Honour.

HIS HONOUR: Now in relation to the action that is still before the ITNJ that is against the CC, are you going to be alleging any specific instances of wrongdoing or the CC straying from the Constitution or failing to live up to its obligation as the final arbiter of the law in South Africa?

BROTHER THOMAS: Your Honour, we do have witnesses and first hand experience of the judges failing to develop the jurisdiction. As we said, we don't want this action to turn into a retributive action, we are obviously seeking reconciliation so any action that is retributive in nature, and we would like to remove from the record.

HIS HONOUR: Yes, so but in a sense if you allege the CC in some instances has acted contrary to the constitution or to the principles of justice or unfairly in any way. There does not have to be retribution, it can just be that that matter is proved and a remedy is sought. Because these things are instances of evidence that something has been done wrong. It is only in the last week, from memory, the CC ruled that the President himself had acted contrary to the Constitution and the principles of law, and determined a judgement against him. So they are not beyond finding error where it seems appropriate. So if you are seeking a declaration that the CC, in some instances ignored the Constitution or acted against the interest of the people, these are instances of evidence that can be produced by people giving evidence or by written statements.

BROTHER THOMAS: Your Honour, in that case, we will provide written statements if the court believes that the matter will be set down for a trial. We will provide witnesses who will be willing to give oral testimony as well as witnesses who will give written statements, and then we will list them and submit them to the court.

HIS HONOUR: Alright, with your action against the CC that you are launching separately from the ITNJ, is it your intention that that matter be determined before the ITNJ trial takes place? So you can use what happened in that hearing or that action, as evidentiary matters for the ITNJ to consider.

BROTHER THOMAS: That is correct, Your Honour. That is our aim. We would like to ensure based on the ruling that the CC and the JSC, if they failed to uphold the matter, then we will use that as further evidence in this case. So it is probably better that the ITNJ sends this matter down for trial after the ruling of the CC.

HIS HONOUR: When do you expect the CC to hear your separate matter, in terms of time.

BROTHER THOMAS: Your Honour, it would normally take about 4 to 6 weeks before they make a decision, however, when we change/when we remove the Republic of South Africa, do we give them a time limit to the decision making or?

HIS HONOUR: Well yes, you would indicate that in your submission that you wish for the matter to be determined within a reasonable time period. So your application is asking for a number of things. As I have understood it, you have made an application previously to the CC on previous occasions and they have rejected the application on the basis that there was no case to answer. So will you be using those [applications] as evidentiary material for the ITNJ to consider?

BROTHER THOMAS: Your Honour, because our previous documentation was not clear as to the jurisdiction of which we wish to proceed, we feel that the documents that we have submitted now would be sufficient to carry forward our possible admissions and the topics that we wish to discuss.

HIS HONOUR: Now, with the application you have made to the CC, the notice of Motion. You are asking them to hear the matter as a matter of urgency, you have asked them to dispense of the formal part of documentation, which is fine. You're asking them to move towards a truth and reconciliation commission, into the financial system. You have asked them to set up or confirm that there should be Community Courts, preferably in accordance with section 34 of the Bill of Rights. You have also asked them to either order to allow for community banks and you have asked them for amendments to the banking act to redress economic and social problems that have arisen. So assuming that the CC hears those matters and you get a determination, then presumably, you will use that determination as evidence before the ITNJ.

BROTHER THOMAS: That is correct, Your Honour.

HIS HONOUR: A pretty easy to go from then on. If they reject your application then a matter of substance can be argued fully before the ITNJ. If they reject your application or only grant part of it, how many witnesses do you believe you will be calling to the ITNJ when we have the trial?

BROTHER THOMAS: Your Honour, how many witnesses would be sufficient to substantiate our cause? What would the recommendation of the ITNJ be?

HIS HONOUR: No it doesn't work that way, Brother Thomas, on the numbers. It matters on the sufficiency of the evidence. It could be one person who could determine the case, it could be five people. Generally speaking, in running court cases, if you call more than ten people, you do not achieve anything very much. If you call up one hundred people, you confuse everybody. If you have got somewhere between 6 to 10 people with specific examples of evidence. Now, evidence would be something like I was unlawfully evicted from my home, there was bogus or false documentation, I went to the court and the judge said 'I am not in the slightest interested in you, we are here for the banks'. If they said something like that, that would be what is called hard evidence to them acting improperly and if for example, the court refused the application because they didn't like the occupation of the applicant or the tribal background or the person's religion, that also would be hard evidence of the court acting improperly. Now, that is different from somewhere having a different opinion from the court. Opinion evidence does not help very much in a court case. The only time opinion evidence is of value is when it is given by an expert in an area where there can be different opinions. For example, in a medical case if someone is trying to determine in a court if surgical procedure should take place, there is a case going on at the moment over the last couple of days, where a person has cancer, there is a treatment that is available for it, the parents are of the view that it is dangerous, the doctors are of the view that it is comparatively safe. That is where the court will listen to opinion and make a decision. Where a physician will give an opinion and another physician may give a contrary opinion, but for a lay person to give an opinion that he or she does not like the government does not help the court very much. Unless they have a specific example of where the government has acted badly and I think the CC in the case against President Zuma came to the view that whatever his reason he had acted badly and they ruled against him.

HIS HONOUR: Your Honour, in that case, we will present 6 people who will be willing to testify when they did not consent to the jurisdiction of the court and transfer the matter to community courts.

HIS HONOUR: That is good because that is factual evidence. Then the question can be determined whether it was a legitimate question and the ITNJ can make a determination on the matter. Generally speaking, every person has the right to challenge jurisdiction of the court and there was an unfortunate case in one of the States of Australia where someone challenged the jurisdiction of the court, the judge who was a female judge took exception to the matter, pressed the riot button that they had on the bench and the court police came in and tasered the people in the court room. Unfortunately, most of the people they tasered

were sitting there as observers, including a representative of the press. So that was determined later that the person had a right to ask what the jurisdiction of the court was and it could be very simply answered. So if you have cases like that, it would be helpful to hear. Also, if you have any professors who are learned in the law, law professors, academics and so on, who wish to give an opinion as to the conduct of the government or the court or government instrumentality, that opinion can be listened to and taken into account.

BROTHER THOMAS: Your Honour, the issue here is that people are suffering under **(INDISTINCT)**. We are sitting with a situation where millions of people are participating in online credit clubs, and information has been exposed into our banking system, and these very same people are now under threat and under investigation by our government. There are a lot of court cases at the moment, and just recently, I was evicted out of the court for questioning the jurisdiction of the court and transferring the matter under this very same matter and it was refused. Attorneys and Judges, I have spoken to Supreme Court Judges who verify my opinion of what we are saying but are too afraid to speak up. This is the **(INDISTINCT)** of the matter, and that is why I am having to represent this case as I am not under jurisdiction of the South African courts, I have relinquished my estate, and my heritage and my birth right in order to try to find a remedy for this matter. We cant, it is too hard to find a remedy, and it is very hard to find experts in South Africa who are willing to put their life on the line.

HIS HONOUR: I understand that. In relation to these community credit clubs, is it that the traditional banks are trying to stop them and their legal argument is that they do not comply with the laws in relation to banking?

BROTHER THOMAS: Your Honour, their argument is very one sided. Their argument is that these people are acting as banks. In the meantime, they are practicing a custom, which has now developed which is using the banking facility to facilitate the donations, their accounts are being frozen, and their assets are being seized without due process. They are immediately seen as being guilty before a matter is heard properly... **(INDISTINCT)**... and they are of course, **(INDISTINCT)**... into the courts to plead guilty and even though they are protected within the proceedings and even though they know that what they are doing in their hearts is correct, they are still forced to plead guilty, pay the fines, and eventually lose their incomes. Which is not lawful.

HIS HONOUR: There seems to be two matters there. One whether they have been denied due process under the law. Secondly, whether the law the banks are using to stop them is a

valid and constitutional exercise. So, the banks are presumably relying upon some banking statute to put these community clubs out of action and that in itself is a matter that can be argued before the ITNJ and the second matter is whether they have been given due process. I mean, if there has been a unilateral seizure of assets without proper hearing, that is a denial of due process in practically every country in the world.

BROTHER THOMAS: Thank you, Your Honour. We will consider that.

HIS HONOUR: Now, what I think you are saying is that you want to run your matter in the CC before the ITNJ hears the matter. What would help in the meantime is if you can clarify the witnesses and the evidence that you wish to put before the ITNJ. That would help us to determine how long the matter will take and any procedural matters that we need to do.

BROTHER THOMAS: Thank you, Your Honour. We will take care of that in the meantime. What period of reasonable time can we give the CC to make a decision on our application?

HIS HONOUR: Well I notice that in your application you wanted it heard as a matter of urgency. I suppose what you consider urgent, they may or may not but as a matter of urgency to my mind would be something within a matter of weeks, no more than two weeks. What could hurry it along is that if they are delaying matters, you could put in an affidavit showing how people are suffering loss, which loss will only increase the longer they take to determine these matters.

BROTHER THOMAS: Thank you, Your Honour.

HIS HONOUR: Like, for example, if there is a bushfire, any delay in putting it out causes further damage and if people are losing their homes or their assets, then that in itself can create a matter of urgency. Look, any court and any judge can hear a matter of urgency even if as a temporary measure. It has not been unknown in other countries for a judge to make a decision in a matter of minutes effective immediately to allow the parties to get everything together and hear the matter in a couple of days. For example, in a deportation matter, if someone is going to be deported or in the United States someone is due to be executed, any application to stop the process is to be heard as a matter of urgency as failing to hear the matter would mean any decision could be (**INDISTINCT**) if the deportation or the execution was to take place. I am just using that as an example, I am not saying that anyone is being executed in this but some of the things you mention indicate continuing harm until some of these things are remedied. So that in itself, does create an urgency.

HIS HONOUR: I would think two weeks would be sufficient for them to start hearing the matter, and your evidence would probably take no more than a week, and within 4 to 6 weeks it should be all over. Then we can set down the ITNJ for some time after that. Now after that, if you win your matter before the CC, then your matter before the ITNJ may be shorter than it will be if you don't succeed before the CC. But if you give us the details of the evidence that people are going to give, in the way of statements or affidavits so that we can have a look at it beforehand and so we can see what the nature of the evidence is going to be, and whether the people are prepared to give viva voce evidence that is verbal evidence in the public in a witness box, as distinct from just making statements.

BROTHER THOMAS: Thank you, Your Honour. In the event of some miracle that the CC has finally (**indistinct**) and granted an order for a public hearing, would the ITNJ be prepared to enter the mediations as an independent party to observe the proceedings, and would it be a conflict of interest to guide or assist in any admissions or errors?

HIS HONOUR: Yes, we could certainly do that but if the CC grants you with all the things you are asking for, we could as the ITNJ endorse it, which would then give it worldwide publicity, as, the CC has turned the corner. I mean, the decision against your own President, is something that did get a lot of publicity overseas, it is not completely unknown, but it is not unusual for the highest court of the land to go against the governor, the president, the prime minister or whoever. It certainly creates (**INDISTINCT**).

BROTHER THOMAS: Yes, Your Honour.

HIS HONOUR: It actually supports the notion of 'No man is above the law.'

BROTHER THOMAS: Well, at the moment, there is still quite a few above the law.

HIS HONOUR: Yes, but it is not unique to South Africa, Brother Thomas. It does apply to other places. So if we can summarize, your action before the ITNJ is just before the CC?

BROTHER THOMAS: Yes, that is correct, Your Honour.

HIS HONOUR: Your side action, or your separate action, I can call it that is being run by you against the CC, the JSC and the Republic of South Africa, all in one action. And, you are hoping to have that heard in a matter of weeks by the CC?

BROTHER THOMAS: Your Honour, we are going to remove the Republic of South Africa by your recommendation, so that we keep a few matters corresponding so we feel that we should remove the Republic of South Africa as a respondent from our CC case. Or do we leave it as is?

HIS HONOUR: Look, it is up to you. You are basically asking the CC to make determinations in relation to the affidavit material that you put in. If it calls for a political determination, that is the passing of legislation, then the CC can recommend that the legislation can be changed without the necessity for the Republic of South Africa as the government being a respondent. I am sure that with what has happened with the CC in the last matter of weeks, if they come down with a determination that the banking act needs to be changed, then it would be a foolish if they ignored it.

BROTHER THOMAS: Yes, Your Honour. The evidence that we are going to be submitting, some of it is instances from the High Court, some of them are from Magistrates Court, so we do not have to refer to the Republic of South Africa because we are going to file this with the CC. So because our evidence is from the lower courts, would there be a need to include the Republic of South Africa?

HIS HONOUR: No, no, generally the supervision of lower courts, either by tradition or by statute, is that of a hierarchy court, whether it is called the Supreme Court or the High Court or the Crown Court or the CC. There is a sort of a hierarchy in most countries, where you start with a lower court, whether that is called a magistrates court or a local court or whatever, and your constitutional court is the highest court in the land so they have an inherent jurisdiction in all the other courts. So if you get a determination that could be put before the ITNJ.

BROTHER THOMAS: We will do that.

HIS HONOUR: Basically what we will do as the ITNJ Court, as we are not your lawyers in this other matter before the CC, are you going to engage lawyers in it?

BROTHER THOMAS: Your Honour, if the CC sets the matter down for a public hearing, then we can believe that it will create a platform for lawyers to come on board to assist us. Obviously, we are going to have to do this alone and I am told there is sufficient platform or hearing where lawyers can participate without fear, favour or prejudice. So we are hoping to

bring, even possible, **(INDISTINCT)** on board.

HIS HONOUR: Well, that would be helpful because the ITNJ can sit back and observe what is happening, but really as a court we cannot get involved in acting for any party, whether that is you or the CC in any matter. I hope that you understand that.

BROTHER THOMAS: Yes, no we do comprehend, Your Honour.

HIS HONOUR: So, your cause of action is against the CC, and the way that the evidence is presented, the type of evidence and the quantum of the evidence and the argument may be determined to an extent by what happens in this separate action that you are bringing against in the CC.

BROTHER THOMAS: Yes, thank you.

MISS PHO: We just need to discuss things privately. One moment please. [Audio Off]

[Audio On]

HIS HONOUR: Brother Thomas, we are just clarifying some matters. It is now been decided that the only respondent that you want in the ITNJ matter is the CC and if you wish to change that at any time, and we do not encourage you to do so, you need to seek the leave of the ITNJ because it might put a completely different slant on the matters, if someone other than the CC becomes a respondent. Also in relation to the cause of action and the original cause of action, would be that the CC itself has strayed from its duties under the constitution and with references as to what they should do **(INDISTINCT)**. I think what we need to do is leave matters there until your separate matter before the CC is determined. Once that is determined, we can then set a trial date and make arrangements.

BROTHER THOMAS: Thank you, Your Honour. What we will do is on Monday we will file specific evidences with the CC of South Africa, and we will give them two weeks notice as a matter of urgency to respond to our action.

HIS HONOUR: Yes, irrespective of what happens in the CC, your matter that records of the evidence put before them, and the determinations that they make can and should be put before the ITNJ when the matter proceeds to trial to avoid a repetition of evidence and procedure.

BROTHER THOMAS: Thank you, Your Honour. Do we send the documentation to the ITNJ via registered mail as well or which form would you...?

HIS HONOUR: No, we do not need it now. It is just when the matter before the CC is concluded, if you are going to rely on any of that material, you can send that to the ITNJ.

BROTHER THOMAS: Could we send that digitally or would you prefer hard copies by registered mail?

HIS HONOUR: No, just by email. The reason to have the evidence is that when your matter comes to trial and a witness gets into the witness box and says 'well, I have already said this in the CC' it is helpful if we know what the person actually said to them.

BROTHER THOMAS: Yes, Your Honour.

HIS HONOUR: In relation to the trial itself, it will be live streamed. At some stage closer to the trial, we need to talk to you about the actual physical facilities, where it is actually going to be held and the technical arrangements for the transmitting of the proceedings.

BROTHER THOMAS: Yes, Your Honour. We have already tentatively arranged that and we will put it into writing once we get to that stage.

MISS PHO: Brother Thomas, the ITNJ cannot rule in your favour unless you have convincing evidence. We ask if you have any kind of empirical research or any kind of convincing evidence to support your argument that the courts in South Africa should have a stronger focus on restorative justice principles?

BROTHER THOMAS: We will do that.

MISS PHO: So, at the current time, do you have any idea of what kind of evidence this will be?

BROTHER THOMAS: Yes, we have got cases, we have foreclosure cases over the last number of years, we have about forty complaints filed with us, in cases where people are seeking reconciliation and are wishing to provide substantial proof of what the banks are doing is unlawful. We also have cases with the online credit clubs. We have cases that were

filed in the CC of South Africa and were summarily dismissed without any hearing or any trial. This was the case of Michael Kilinger? We have firsthand experience of the actions of the high courts, magistrates courts, and our recent cases would be the credit club cases which we would have evidence of.

MISS PHO: So his honour said previously that it is not enough for witnesses to give opinion evidence because that is not in itself persuasive. So you cannot just have that someone brought a matter before the CC and it was dismissed for whatever reason, unless there is something that you can show that proves the CC dismissed that matter for any kind of irrelevant reasons.

It may be useful now to distinguish what may be considered convincing evidence, from what might not be considered convincing evidence.

Convincing evidence may be something such as:

- Studies conducted by experts in the field
- Articles published in law magazines from respected authorities

Conversely, NOT considered convincing evidence may be:

- Blog posts
- Opinion Evidence unless given by expert witnesses (such as police and legal agencies)

So, I repeat that if you want to argue that the CC should have a stronger focus on restorative justice principles, you need to find for example some sort of study that suggests that it is actually better for courts to have a focus on restorative justice principles, and that there are statistics that show that courts that do not focus on restorative justice do not achieve certain results that are desired by the public. In saying that, non-expert witnesses are still able to give viva voce evidence, if for example, if they are attesting to their own personal experiences with the courts, and explaining how they believe the current system has failed them. I also bring your attention to the fact that the ITNJ cannot tell you how much evidence or what kind of evidence, or in the form that it comes in. You have to decide for yourself what evidence you are going to bring, and you will have to send whatever evidence that you have to the ITNJ in advance so we can look over it and determine that it is relevant. If for example you are going to call four witnesses to give viva voce evidence, you will have to send us a document that can be one page briefly describing who is going to be giving the evidence and why they are going to be called to give the evidence.

Do you understand what I am saying to you?

BROTHER THOMAS: Yes, thank you, thank you for that. We will **(INDISTINCT)**.

MISS TOP: Just quickly, Brother Thomas, are there any more queries or issues you may have from what has been discussed today? Because it can be a little bit confusing and takes considerable amounts of time through emails, when we have to go through emails and reply back to you. So, if there is anything now, it is probably best to bring it up now during a formal court proceeding instead of an email later on.

BROTHER THOMAS: We are quite clear; I believe that we are now quite clear on how we are proceeding and that we will quite sufficiently have substantive evidence in this matter. Thank you for your guidance in this matter.

HIS HONOUR: So what we will do now Brother Thomas is make formal orders, we will proceed with the CC as the only respondent, that we will set a trial date and I would suggest not before July to give it time for your CC matter to be determined. Once that has been determined, we can then discuss what would be a convenient time to have the trial, bearing in mind things like public holidays, national matters and so on. Generally speaking too, if the case is going to go for more than a couple of days, it is always a good idea to start the trial on a Monday rather than a Friday. For two reasons. One is that unless you plan to sit in the court everyday of every week, if you start on a Friday then you have a break until Monday; it gives an opportunity for matters to be discussed in advance. It is more sufficient to start on a day without having a break. It is just a commonsense thing to do. I do know in some cases where, particularly in criminal matters, people are hoping for a dismissal, they try to have it on a Friday afternoon so that the Judge can say 'case dismissed' and everyone gets to go home. This type of matter, I think will be practical to start at the beginning of the week. So we can talk about that later. So would you agree to not before July? Would that be appropriate?

BROTHER THOMAS: Yes that sounds very good, Your Honour, we agree with you. It will probably take us that amount of time for us to invite attorneys or justices in our case. As well as get all the witnesses together. You know, justice needs time, sometimes.

HIS HONOUR: Yes it does. In relation to procedural matters, once the judgment has been determined, if we could have copies of statements, affidavits and evidence at least 14 days before the trial date to give us time to go over it so we are not wasting court time going over material that has just been deposited at the court. That is not to say that if something urgent

comes up during the running of the trial that it wont be heard. It is just more efficient to do things beforehand, as it is more practicable to do so.

BROTHER THOMAS: We will keep that in mind, Your Honour.

HIS HONOUR: So what we will do now is, we will stand this down now. We will just formally read out the orders just for the record.

MISS PHO: Brother Thomas we propose the following orders:

- I. **Order 1:** That the Applicant file with the ITNJ, any evidence the Applicant seeks to rely upon at trial, no later than 14 days prior to the scheduled trial date.
- II. **Order 2:** A trial will be listed no earlier than July 2016.

We will distribute the record of outcome to all parties in due course and if at any time you believe that you will not be able to comply with an order at a given deadline, please, notify the ITNJ as soon as possible.

HIS HONOUR: If there are no further questions, Brother Thomas, and I notice that you brought someone along as a witness. If you have a friend there who has any final questions before we close. We would be happy to answer them.

MR WALKER: No, I do not have any questions, thank you, Your Honour.

HIS HONOUR: Thank you very much, I just wanted to, I realize you have been sitting there listening to all of this so I just wanted to give you the opportunity if there is anything that needed to be determined to do it now. Well, what I will do now is formally close the matter. Brother Thomas, we look forward to hearing from you by email.

BROTHER THOMAS: Thank you, bye.

MISS PHO: The matter is now stood down.

Time: 1:00:53