

Communication No. 135/94

Kenya Human Rights Commission/Kenya

FACTS

1. The university academic staff from the four public universities in Kenya (University of Nairobi, Kenyatta University, Moi University and Egerton University) met and resolved to form an umbrella trade union to represent their interests in negotiations with their respective employers. They decided to name their union the Universities Academic Staff Union (UASU).
2. On 25 May 1992 they submitted an application for registration to the Registrar of Trade Unions. The Registrar acknowledged the receipt of the application documents the same day. However, there were no further replies from either the Registrar General, or the Attorney General.
3. In June 1993, the UASU interim officials wrote to the Attorney General seeking audience with him to discuss UASU's registration. The Attorney General did not reply to this letter.
4. Due to the lack of response, the members of the UASU decided to go on strike on 29 November 1993. The notice of the intended strike was issued to the Attorney General, the Registrar and the Vice-Chancellors of the public universities. A copy of notice was also delivered to Kenya's President Daniel Arap Moi, who is also the Chancellor of all the public universities.
5. On 24 November 1993 the Registrar refused to register UASU on the grounds that "the union is used for unlawful purposes and as such peace, welfare and good order in Kenya would otherwise be likely to suffer prejudice..."
6. The strike began on 29 November 1993 and court proceedings were initiated on 23 December 1993, challenging the Registrar's decision to reject their application for registration as a trade union.
7. On 27 December 1993, during the swearing in of two newly appointed judges of the High Court of Kenya, President Moi stated that the government would never register UASU despite the fact that the matter was already in court. He reiterated the government's position on 31 December in a public statement. He again repeated that the government would not allow the registration of UASU on 25 February 1994 and further stated that the government would take stern action against the leaders of the UASU.

8. Justice AB Shah, one of the new judges sworn in on 27 December 1993, and who was previously the President's lawyer, heard an application filed by University of Nairobi UASU chapter officials seeking to restrain eviction from their university housing until the cases against the Registrar challenging the rejection of registration, and their purported dismissal from the university, were fully determined. Justice AB Shah rejected the application.
9. All the national officials of UASU have been arrested and harassed since the strike begun in November 1993. On 10 December 1993, the national interim officials were arrested while proceeding to Egerton University for a meeting. No charges were pressed and the officials were released the following day. Dr. Korwa Adar was again arrested on 25 February 1994 from his house after the president warned that action will be taken against UASU leaders. Dr. Adar was charged with inciting students and colleagues to violence.

PROCEDURE BEFORE THE COMMISSION

10. The communication is dated 8 March 1994 and was received by the Secretariat of the Commission on 2 May 1994.
11. the Commission was seized of the communication At the 16th session held in October 1994, and it was decided that the Government of Kenya should be notified of the complaint against it for comments.
12. On 10 January 1995 a letter was sent by the Secretariat of the Commission to the complainant asking what had been the outcome of the court case in respect of the refusal of the Government to register the union in question. On the same day, a notification was sent to the government informing it of the communication during the 16th session and that the admissibility of the communication would be considered at the 17th session.
13. At the 17th session the 3 month period given to the Government of Kenya to respond to the communication had not yet elapsed. The case was therefore deferred to the 18th session.
14. On the 20 April 1995, letters were sent to both the complainant and the government of Kenya, stating that the case would be considered at the 18th session and requesting the Government of Kenya's response to the communication and information from the complainant on the pending court case.

LAW
Admissibility

15. Article 56 of the African Charter reads:

“Communications ... shall be considered if they:

...

5. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged,...

16. The most recent information the Commission has, provided by the complainants themselves, states that two cases relating to the subject of the communication are still pending before Courts of Kenya. The complainant has therefore not exhausted all available local remedies.

FOR THE ABOVE REASONS, THE COMMISSION

declares the communication inadmissible.

Taken at the 18th Ordinary Session, Praia, Cape Verde, October 1995.