

FOR IMMEDIATE RELEASE

JOHANNESBURG, SOUTH AFRICA, 27 November 2019

The Initiative for Strategic Litigation in Africa (ISLA) seeks to be enjoined as an *amicus curiae* in appeal proceedings before the Supreme Court of Kenya. The Mitubell Welfare Society has lodged an appeal before the Supreme Court. The appeal is against a judgment issued by the Court of Appeal.¹ The appeal requires a determination of a court's power to issue supervisory orders after judgment is handed down in a rights-violation case. The Supreme Court is expected to make a ruling on ISLA's *amicus curiae* application on Friday 29 November 2019.

In 1992, Government of Kenya relocated the members of the Mitu-Bell Welfare Society to live on land owned by the Kenya Airports Company. In September 2011, the owner of the land issued notice in local newspapers giving the residents 7 days to vacate the land. The notice expressly conveyed that upon expiry of the 7-day period any buildings shall be demolished and/or removed and any other activities can shall be terminated without further notice. The occupiers moved the High Court for conservatory orders to restrain the owner and any Government actor from proceeding with the evictions and demolition of property. The High Court granted the conservatory orders. Despite the High Court order, the eviction and demolition proceeded. In subsequent High Court proceedings, on 11 April 2013 the Court found that the eviction and demolition was unlawful and order a range of post-judgment supervisory orders.

On appeal before the Court of Appeal, the High Court judgement and order was set aside in its entirety. The Court held that a trial court becomes **functus officio** after delivery of judgment and that no further pleadings can be filed after judgment. The appeal court held that the trial court has no post-judgment supervisory powers.

Before the Supreme Court, the Petitioner has raised, as one of the grounds of appeal, that the Court of Appeal erred in unjustifiably interfering with the High Court's discretionary grant of a structural interdict as "appropriate relief" under Article 23 of the Constitution.

If admitted as *amicus curiae*, ISLA's legal argument will 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; 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 Constitution.

¹ In Civil Appeal no 218 of 2014. The Court of Appeal's judgment was issued on 1 July 2016.

ISLA is represented in this matter by Counsel based at Kenya Legal and Ethical Issues Network on HIV and AIDS (KELIN).

For further enquiries kindly contact:

Faathima Mahomed, Lawyer, Women's Land and Property Rights

Tel: +27 11 3389028, Email: faathima@the-islam.org