

The court has now given judgment for two test cases in the Kenyan Emergency Group Litigation, Kimathi & Ors –v- Foreign and Commonwealth Office.

The court has refused to allow any other test case to proceed because it says the events were too long ago for there now to be a fair trial. The court concluded that the British Government cannot now be expected to answer the allegations of abuse brought by the test claimants as the delay bringing the claim makes it unjust and inequitable to allow the action to proceed, and the unfairness to the Defendant outweighs the prejudice to the Claimants.

The claimants' legal team appealed the judge's approach and the principles that he applied in his judgment of the first test case. The Court of Appeal refused permission to appeal and did not accept there was any likelihood of finding that the judge was wrong in his approach or in the principles he applied.

The judge has taken the same approach and applied the same principles in the second test claimant's case.

As a result of the judgments in these two test cases, the Court in London has made an order that the group litigation should end and all the cases in the group litigation as a whole should be dismissed.

Both judgments in the test cases acknowledge that abuses occurred during the State of Emergency in Kenya. This was accepted by the Rt. Hon William Hague M.P. (the former Foreign Secretary) and by the Defendant's legal counsel in this litigation. It was accepted that the two test claimants were telling the truth, but their evidence has been rendered significantly less cogent due to the passage of time. None of the claimants were accused of making up their account or exaggerating.

The judge came to his decision despite evidence that there was a deliberate strategy to avoid investigation of abuses at the time, despite such abuses being widely known at a high level of government, and despite decisions not to prosecute abuses at the time.

The British Government, through the concerted and determined efforts of its considerable team of lawyers, argued strenuously that it was impossible for them to answer the test claimants' allegations.

The claimants' legal team of solicitors and barristers are devastated by the unsuccessful conclusion of the case. They worked strenuously and tirelessly on behalf of their clients. As individuals we share the distress and anguish of our clients and reflect on the wisdom of an African proverb: "The axe forgets but the tree remembers".

The memory of the abuses will live on with the claimants for the remainder of their lives, and will continue to be remembered by the children and descendants of those who suffered.

The British Government never made any offer to pay compensation to any claimant in this litigation.

The legal team representing the claimants was acting under a Conditional Fee Agreement, a so-called "no win, no fee" arrangement. As the case has been lost, the lawyers representing the claimants have received no payment for their work over the past six years.

21 November 2018

### **Statistics concerning the trial:**

The court case lasted for more than 4½ years, including 254 days in court since the first appearance in March 2014.

The trial commenced on 23 May 2016 and ran for 230 days. It is one of the longest running trials in British legal history in civil law.

The court heard from witnesses in relation to the 25 test cases, many of whom travelled to London from Kenya to give their evidence to the court. The test cases were representative of over 40,000 claimants on the group register.

The court heard evidence from 43 witnesses for the claimants and 33 witnesses for the defendant who had experience of the Emergency and were there at the time.

The court heard evidence from 21 government witnesses for the defendant who described the steps taken to investigate the test claimants' claims.

Over 45,000 documents from the time of the Emergency were disclosed in the litigation. The parties utilised an electronic trial bundle which contained over 20,000 contemporaneous documents.

It has resulted in 16 reserved judgments and 5 unreserved judgments.