



**Appeal number: CRR/2014/0001  
CRR/2014/0006**

**FIRST-TIER TRIBUNAL (CHARITY)  
GENERAL REGULATORY CHAMBER**

**KEBEDE AND OTHERS** **Appellants**  
**(THE TRUSTEES OF THE ETHIOPIAN ORTHODOX  
TEWAHDO CHURCH ST. MARY  
OF DEBRE TSION LONDON)**

**- and -**

**THE CHARITY COMMISSION FOR** **Respondent**  
**ENGLAND AND WALES**

**TRIBUNAL: JUDGE ALISON MCKENNA**

**Sitting in Chambers on 12 June 2015**

Upon the Tribunal having issued directions dated 10 April 2015 which required the Appellants to file with the Tribunal and serve on the Respondent their Reply to the Response and their submissions on the consolidation application by 4pm on 18 May 2015

And Upon the Appellants' failure to comply with those directions, the Tribunal having issued a Notice of Proposed Strike Out dated 3 June, which required the Appellants to comply by 10 June

And Upon the Tribunal having received from Lumbini Solicitors for the Appellants a submission on 10 June which complied in part only with the Notice of Proposed Strike Out

**IT IS DIRECTED that**

1. The Appellants are to file with the Tribunal and serve on the Respondents by 5pm on Monday 29 June 2015 a short Statement of Case for each appeal including details of:

- (a) which matters in the Respondent's Responses are disputed and why;
- (b) why it is said, in relation to each inquiry, that the Respondent's decision to open the inquiry was one that no reasonable decision maker could have made at the time it did so (the Appellants are referred to the Upper Tribunal's decision in *Regentford v Charity Commission* [2014] UKUT 0364 (TCC));
- (c) what evidence the Appellants will rely on at each hearing, including a list of the documentary evidence (if any) which they wish to place before the Tribunal in addition to the documents identified by the Respondent in the Responses, and the names of any witnesses in respect of whom they intend to file a witness statement and make them available for cross-examination;

2. The Tribunal will thereafter rule in writing on the issue of consolidation and issue consequential directions for the hearing of these matters at the earliest possible date.

3. Failure to comply with these directions will result in the Appellants' appeals being struck out by the Tribunal automatically and without further notice – see rule 8(1) of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended.

## **REASONS**

4. The Charity Commission opened a statutory inquiry into the charity of which the Appellants are trustees on 31 March 2014. The Appellants applied to the Tribunal on 14 April 2014 and that case is CRR/2014/0001.

5. The Charity Commission informed the Appellant and the Tribunal on 12 May 2014 that it had closed the inquiry. The Appellants' solicitors still wanted the Respondent to file its Response and argued that the Tribunal retained jurisdiction to hear the case notwithstanding the closure of the inquiry.

6. The Respondent applied for the Appellants' application to be struck out. I issued a ruling on 23 June 2014 in which I refused the strike out and, on 21 July 2014, I gave the Respondent permission to appeal my ruling to the Upper Tribunal (Tax and Chancery Chamber). In the circumstances I directed that the Respondent need not file a Response in CRR/2014/0001, as it would have to make its submissions to the Upper Tribunal. The Respondent's appeal to the Upper Tribunal was subsequently withdrawn, with the consent of the Upper Tribunal, without determination. In compliance with my directions of 10 April 2015, the Respondent has now filed its Response to the Appellants' application but the Appellants, despite telling me they wished to file a Reply, have still not done so. The filing of a Reply is a discretionary step under the Tribunal's Rules, but the Appellants' solicitor specifically asked me on 10 April to include in my Directions a Direction for the filing of a Reply. As none has been filed, the Appellants are now in breach of the Tribunal's Directions. I take no steps in relation to that matter now, but I have included in my Directions of today's date the relevant warning under rule 8(1) of the Rules, so that any further failure by

the Appellants to comply with the Tribunal's Directions will result in an immediate automatic strike out of the appeals.

7. On 22 October 2014, the Appellants made a second application to the Tribunal in respect of the Respondent's opening of a second statutory inquiry into the charity. That is case number CRR/2014/0006. The Respondent has filed a Response. The Appellants did not file a Reply.

8. These matters have taken far too long to proceed to hearing and I am concerned that a hearing or hearings should now be arranged as soon as possible. However, there is one outstanding matter which needs to be resolved before this can happen. The Respondent suggested in correspondence that these two cases should be consolidated so that there would be only one hearing. The Appellants did not agree to this. I asked them to consider their position more fully after they had seen the Respondent's Response in CRR/2014/0001. They have now done so, and continue to oppose consolidation of the appeals.

9. I have referred both parties to Mr Justice Turner's decision in *Maharani Restaurant v HMRC* (1999) STC 295, in which he helpfully outlined the factors to which a Judge should properly have regard when deciding whether to exercise the power to consolidate separate proceedings. These include: the commonality of identity of the Appellants, the commonality of witnesses, the degree of overlap of evidence, the desirability of sparing witnesses the need to give evidence more than once (and the risk that their evidence on the same point might be accepted in one appeal but not in another), the comparative cost and length of holding separate or consolidated hearings and, importantly, the risk of prejudice to the Appellants in relation to the presentation of similar fact evidence.

10. The Respondent complied with my directions to make a formal written application for consolidation, giving reasons in relation to the criteria in the above case law. The Respondent's case is, in summary, that there is (i) commonality of Appellants as both cases relate to the same charity with the same trustees. (ii) There would appear to be commonality of witnesses as it is likely that the Appellants' witnesses would be the same for both cases and the same case officer for the Respondent (Vicki Feltham) took the decision to open both inquiries. This engages the risk of witnesses giving evidence on the same points twice. (iii) There is likely to be a degree of overlap of evidence as both cases concern reviews of decisions to open inquiries into the same charity, with the same factual background of engagement with the Respondent. The list of documents already provided with the Respondent's Response indicate substantial overlap of documentary evidence. (iv) the Appellants' pleaded case is strikingly similar in relation to each case, suggesting that the issues in dispute will be similar. The Respondent's pleaded case is also similar in relation to each case. (v) A consolidated hearing would save time and cost. If the Appellants continue to request an oral hearing of each appeal, the hearings are likely to last for a day each. The Respondent estimates that a consolidated hearing would last only one day. The Respondent submits that it would be in accordance with the overriding objective to direct consolidation.

11. The Appellants' solicitor has now provided me with his submissions on the consolidation proposal. This was provided after the time for compliance with my Directions had expired, but I received no application to file out of time and no apology for late filing. The Appellants' case, in summary, is that there is a risk of

prejudice to the Appellants if the cases were to be heard together; that the application for consolidation is premature; and that the Tribunal has insufficient information at this stage to decide whether it would be fair and just to direct consolidation. I note that the lack of information relied upon in support of these submissions all emanates from the Appellants' side. It is said that the Tribunal cannot assume that there will be commonality of witnesses as no decision has yet been made by the Appellants as to who will be a witness. If the Appellants had filed a Reply, as directed, the Tribunal might have been in a position to rule on these issues now. As the Direction was not complied with, it will now be necessary for the Tribunal to receive further details of the Appellants' case before it can rule on consolidation. I note that the Appellants have the Responses and the Respondent's list of documents and the Respondent's comments on the issues and details of the witness it will rely on. I consider that it would be reasonable for the Appellants now to make the relevant decisions and to inform the Tribunal and the Respondent how it wishes to present its case to the Tribunal by filing a Statement of Case for each appeal containing the information outlined in my Direction above.

12. I have issued the Directions above with a view to moving this matter forward to a hearing or hearings as soon as possible. If consolidation is not agreed then that matter will have to be referred to a Judge to rule in writing, having considered the Appellants' Statement of Case filed and served in compliance with the above Directions. The Judge can also issue case management directions at that stage, although I have already encouraged the parties to try to agree them and continue to hope that this will be possible. The Tribunal Judge who rules on consolidation may also wish to rule under 15 of the Tribunal's Rules whether the evidence on which the Appellants seek to rely is (a) admissible and (b) relevant to the issues in dispute. The Judge may wish to seek the Respondent's further comments on those issues before ruling.

**ALISON MCKENNA**

**PRINCIPAL JUDGE**

**12 June 2015**

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