



IN THE FIRST-TIER TRIBUNAL (CHARITY)

RULING on an APPLICATION for PERMISSION to APPEAL

By

EYOB GHEBRE-SELLASSIE and AFRICAN AIDS ACTION
(the “Appellants”)

- 1 This is an application dated 4th March 2010 by the Appellants for permission to appeal part of the decision of the First-tier Tribunal General Regulatory Chamber (Charity) (the “Tribunal”) dated 9th February 2010 in respect of case reference CA/2009/0004. That decision had the effect of dismissing the appeal brought by the Appellants against the Charity Commission.
- 2 The Tribunal accepts that this is a valid application for permission to appeal under rule 42 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 as amended (“the Rules”).
- 3 The right to appeal against a decision of the Tribunal is restricted to those cases which raise a point of law.
- 4 The Tribunal has considered whether to review its decision under rule 43(1) of the Rules, taking into account the overriding objective in rule 2, and has decided not to review its decision because the grounds of the application for permission to appeal either do not identify any errors of law or in one case raises a point of law that may be of broader public interest and which could be more appropriately dealt with in the Upper Tribunal.
- 5 In this case the grounds of appeal advanced are set out by the Appellants in their application. I have reviewed the application carefully and I have been able to identify a number of grounds of appeal, which I propose to deal with separately:
- 6 **Ground 1**
 - 6.1 The Tribunal has jurisdiction under section 2A(4)(a) of the 1993 Charities Act in respect of decisions, orders or directions of the Charity Commission made

on or after 18th March 2008. The terms “*decisions, orders or directions of the Commission*” are not defined in the Charities Act. It is argued in paragraphs 1 to 4.1 and elsewhere in the application that the Tribunal failed to give a “purposive” interpretation to these terms and that the terms should be regarded as applying to any action or correspondence in which the Charity Commission imposes or seeks to impose obligations or mandatory requirements.

- 6.2 The decision of the Tribunal did not turn on the description given by the Charity Commission to their actions or documents or the form of such actions or documents. Paragraph 3.10 of the decision considers the substantive effect of these actions. Nevertheless this ground of appeal raises a point of law that it would be helpful to clarify; which acts, correspondence or omissions of the Charity Commission are in law to be treated as “*decisions, orders or directions*” of the Charity Commission that can be the subject of an appeal to the Tribunal.
- 6.3 For this reason the Tribunal gives permission for the Appellants to appeal to the Upper Tribunal (Tax and Chancery) on this point of law.

7 Ground 2

- 7.1 It is argued in the application (in particular in paragraphs 4.2 and 4.3) that the Tribunal failed to take account of the Appellants arguments concerning the relevant provision of Schedule 1C of the Charities Act 1993 under which the appeal was being brought.
- 7.2 Counsel for the Appellants was invited to submit arguments on this particular issue at the hearing and did not seek to identify any particular provision. The decision states at paragraph 3.9 that as a consequence:

“I put it to counsel for each of the parties that the most likely basis upon which the Letter and Action Plan or individual actions within them could be regarded as a decision, order or direction that fell within Schedule 1C, might be if they were regarded as an “Order made by the Commission under section 19 A (2) of the Act which directs a person to take action specified in the order”. Such an Order is listed in Schedule 1C and so can be the subject of an appeal to the Tribunal. Both counsel were content with this approach. However I have considered all of the possibilities listed in Schedule 1C.”

It follows from this that the Tribunal did not fail to consider the argument raised by the Appellants in their application and that no error in law has therefore been identified in the application on this issue.

- 7.3 Permission to appeal on this point is therefore refused.

8 Ground 3

- 8.1 It is argued in the application (in particular in paragraphs 5- 6.1) that the Tribunal failed to give due consideration to the continuing nature of the decisions, directions or orders that were the subject of the appeal or their continuing effect on the Appellants in considering whether the time limit for appealing against such decisions, directions or orders had been exceeded.

8.2 These issues were considered by the Tribunal and are addressed in paragraph 4.5 of the decision. The Tribunal made its decision on the facts of this particular case. The application indicates that the Appellants disagree with this decision but does not identify an error in law.

8.3 Permission to appeal on this issue is therefore refused.

9 Ground 4

9.1 It is argued in the application (in particular in paragraphs 6.3- 6.4) that the Tribunal failed to properly distinguish between the legal effect of a decision by the Charity Commission to discharge or revoke its own decision, direction or order and the quashing of such a decision, direction or order by the Tribunal.

9.2 This issue was considered by the Tribunal and is addressed in paragraphs 4.12 and 4.13 of the decision. The Tribunal concluded that in the circumstances of this appeal the Appellants had no reasonable prospect of success in seeking to quash the order that had already been discharged. Any distinction of the kind referred to in the application that might exist in law would not have a bearing on the outcome of the appeal.

9.3 It follows that the appeal on this point has no prospect of success and that permission to appeal is refused.

10 Under rules 21(3) or 23(2) the Tribunal Procedure (Upper Tribunal) Rules 2008 as amended the Appellants have one month from the date this Ruling was sent to lodge the appeal under Ground 1 or an application for permission to appeal under Grounds 2, 3 or 4 with:

Upper Tribunal (Tax and Chancery)
45 Bedford Square
London
WC1B 3DN.

11 Any application for the appeal to be stayed should be made to the Upper Tribunal (Tax and Chancery) at the same address.

Signed:

Dated: 17 March 2010

Peter Hinchliffe
Tribunal Judge
First-tier Tribunal (Charity)

