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| AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS<br>COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES | | |

# THE MATTER OF

# AL'ASAAD MILAAD

# V.

# REPUBLIC OF TUNISIA

# APPLICATION NO. 032/2018

# JUDGMENT

**26 JUNE 2025**

AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS
The Registrar
LE GREFFIER
ARUSHA TANZANIA
COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

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**The Court composed of:** Modibo SACKO, President; Chafika BENSAOULA, Vice President; Suzanne MENGUE, Tujilane R. CHIZUMILA, Blaise TCHIKAYA, Stella I. ANUKAM, Imani D. ABOUD Dumisa B. NTSEBEZA, Dennis D. ADJEI, Duncan GASWAGA – Judges; and Robert ENO, Registrar.

In accordance with Article 22 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (hereinafter referred to as "the Protocol") and Rule 9(2) of the Rules of Court (hereinafter referred to as "the Rules"),[1] Justice Rafaâ BEN ACHOUR, judge of the Court and a national of Tunisia, did not hear the Application.

In the Matter of:

Al'asaad MILAAD

*Represented by:*
Mr. Mohsen BACCOUCHE,
Advocate of the Court of Appeal of Tunis

Versus

REPUBLIC OF TUNISIA

*Represented by:*

i. Mr. Farhad KHALIF, Director General of Legal Affairs at the Ministry of Foreign Affairs; and
ii. Mr. Shadli ARRAHMANI, State Litigation Officer.

After deliberations,

*Renders this Judgment:*

[1] Rule 8(2), Rules of Court, 2 June 2010.

## I. THE PARTIES

1. Al'asaad Milaad (hereinafter referred to as "the Applicant") is a Tunisian national, shareholder in several companies. He alleges violation of his right to a fair trial and his right to property in connection with the auction sale of a plot of land which he did not win.

2. The Application is filed against the Republic of Tunisia (hereinafter referred to as "the Respondent State"), which became a Party to the African Charter on Human and Peoples' Rights (hereinafter referred to as "the Charter") on 16 March 1983 and to the Protocol on 21 August 2007. It deposited, on 16 April 2017, the Declaration under Article 34(6) of the Protocol by virtue of which it accepts the jurisdiction of the Court to receive cases from individuals and Non-Governmental Organisations having observer status before the African Commission on Human and Peoples' Rights (hereinafter referred to as "the Declaration"). On 7 March 2025, the Respondent State deposited, with the African Union Commission, an instrument withdrawing the said Declaration. The Court has held that this withdrawal has no bearing on pending cases and new cases filed before 8 March 2026, which is the day on which the withdrawal took effect, being a period of one year after its deposit.[2]

## II. SUBJECT OF THE APPLICATION

### A. Facts of the matter

3. It emerges from the Application that the Applicant was a shareholder in *Société tunisienne des structures métalliques* (hereinafter "ST METAL MILAAD") which auctioned off a number of its properties on 15 August 2008 to the *Société Tunisienne de Banque*.

[2] *Mouaz Khariji Ghannouchi and Others v. Republic of Tunisia*, AfCHPR, Application No. 004/2023, Decision on the Application for the revocation of the Order for provisional measures of August 28, 2023, 17 March 2025, §§ 12 and 13.

4. On 15 August 2008, the Applicant, together with the real estate company Aqariat Elsharie Real Estate Company ("hereinafter referred to as "AEREC"), which is a subsidiary of the *Société Tunisienne de Banque*, took part in the auction of a plot of land. During the auction, the plot, measuring 60,000 square meters, was sold to AEREC.

5. The Applicant submits that his bid for the 60,000 square-meter plot was higher than that of AEREC by more than one-sixth. The Applicant also submits that, in accordance with Article 442 of the Tunisian Code of Civil and Commercial Procedures (promulgated by the Law No.130 of 5 October 1959, and amended by Law No. 2010-36 of July 5, 2010), the property in question was listed for re-auctioning.

6. During the bidding session for the re-auction of the property, the Applicant challenged the participation of AEREC before the District Court of Ben Arous, alleging that the said company did not meet the conditions stipulated in Article 444 of the Tunisian Civil and Commercial Procedures Law. The objection was however dismissed on 15 October 2008 and the property was sold to Aqariat Elsharie. Subsequently, ownership of the property was formally transferred to AEREC by Decision No. 20282 of 15 October 2008, issued by the Property Sales Division of the Court of First Instance.

7. The Applicant challenged the decision before the Ben Arous Court of First Instance, claiming that AEREC's participation in the auction was illegal. On 3 November 2010, the Court of First Instance rendered judgment No. 22538 dismissing the Applicant's case.

8. The Applicant then appealed against the judgment of the Court of First Instance No. 22538 before the Tunis Court of Appeal which, by Judgment No. 31528 of 12 March 2013, upheld the first decision.

9. The Applicant subsequently appealed the said decision before the Cassation Court which, by Judgment No. 9287 of 30 April 2013, allowed the

Applicant's appeal and referred the matter back before a reconstituted bench of the Court of Appeal.

10. The Court of Appeal reconsidered the case and, by Judgment No. 82390 of 8 April 2016, reversed its earlier Judgment No. 31528 of 12 March 2013 as well as Judgment No. 20282 of 15 October 2008 rendered by the Court of First Instance.

11. AEREC then lodged a cassation appeal against the Court of Appeal's Judgment No. 82390 of 8 April 2017. By Judgment No. 45501/46360 of 4 December 2017, the Cassation Court quashed the contested judgment without referring the matter back to the Court of Appeal.

### B. Alleged violations

12. The Applicant alleges that:

    i. The Respondent State violated his right to a fair trial under Article 7(1)(a) of the Charter;
    ii. The Respondent State violated his right to property under Article 14 of the Charter.

## III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

13. The Application was filed on 11 September 2018. On 9 October 2018 the Court requested the Applicant to provide it with additional information.

14. On 10 December 2018, the Applicant filed the additional information and the Application was registered and served on the Respondent State on 20 December 2018.

15. The Parties filed all their other pleadings within the time prescribed by the Court. On 15 January 2020, pleadings were closed and the Parties were duly notified.

16. On 15 October 2024, the Court issued an Order reopening pleadings in order to allow the Respondent State to file its submissions on the Applicant's request for amicable settlement. The Order was served on the Respondent State on 17 October 2024 for its response to the request within 30 days. At the expiry of the said time-limit, the Respondent State did not file its response.

17. Pleadings were closed on 29 January 2025 and the Parties were duly notified.

## IV. PRAYERS OF THE PARTIES

18. The Applicant prays the Court to:

    i. Declare that his right to a fair trial was violated owing to the decisions taken by the institutions of the Respondent State's judiciary;
    ii. Order the Respondent State to return the property in question to the Applicant, valued at the closing price of the first auction;
    iii. Order the Respondent State to pay him reparations of at least 31 million Euros for damages suffered. In the event that it is impossible to return the property, compensate him with at least 50 million Euros for all damages suffered;
    iv. Order all necessary measures with a view to reach amicable settlement with the Respondent State before consideration of the case.

19. The Respondent State prays the Court to declare the Application inadmissible and consequently dismiss it.

## V. JURISDICTION

20. The Court recalls that Article 3 of the Protocol provides as follows:

> 1. The jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant human rights instruments ratified by the States concerned.
> 2. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.

21. The Court further recalls that pursuant to Rule 49(1) of the Rules, it "shall preliminarily ascertain its jurisdiction … in accordance with the Charter, the Protocol and these Rules."

22. In the instant Application, the Court observes that the Respondent State raises an objection to its material jurisdiction. The Court will thus address the said objection before considering other aspects of jurisdiction, if necessary.

### A. Objection to material jurisdiction

23. The Respondent State submits that the Applicant's allegations do not fall within the scope of human rights or within the jurisdiction of this Court.

24. It further argues that the jurisdiction of the Court should be limited to ordering measures to stop or to prevent the violation of human rights of African citizens, and to encourage governments and state actors to protect the rights of citizens as defined by international treaties in general and by the Charter in particular.

25. It is also the Respondent State's contention that the Applicant was not the rightful owner of the property in question, and neither did he acquire it at

any stage before or after the judicial dispute arose. The Respondent State concludes that none of the Applicant's human rights was violated.

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26. In his reply, the Applicant submits that the Respondent State cannot rely on a sweeping interpretation of the rules of international law on the comprehensive concept of human rights to shy away from its legal and moral responsibility vis-à-vis acts of its officials and judges that cause citizens serious prejudice.

27. The Applicant alleges that he followed the legal process to acquire ownership of the property through auction sale and would have been successful but for the erroneous application of the provisions of the law by the courts, which caused him prejudice.

28. According to the Applicant, the national courts violated an explicit procedural rule of auction sale and such an act constitutes a violation of the right to a fair trial.

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29. The Court recalls that under Article 3(1) of the Protocol, it has "jurisdiction to examine any application submitted to it provided that the rights of which a violation is alleged are protected by the Charter or any other human rights instrument ratified by the Respondent State".

30. The Court further reiterates its jurisprudence that for it to assume material jurisdiction, it is sufficient that the rights allegedly violated are protected by the Charter or any other human rights instrument ratified by the State concerned.[3]

[3] *Alex Thomas v. United Republic of Tanzania* (merits) (20 November 2015) 1 AfCLR 465, § 45; *Kennedy Owino Onyachi and Charles John Mwanini Njoka v. United Republic of Tanzania* (merits) (28 September 2017) 2 AfCLR 65, §§ 34-36; *Jibu Amir alias Mussa and Said Ally Mangaya v. United Republic of Tanzania* (merits and reparations) (28 November 2019) 3 AfCLR 629, § 18; *Abdallah Sospeter Mabomba*

31. In the instant Application, the Applicant alleges violation of his rights to a fair trial and to property, which are both protected by the Charter, to which the Respondent State is a Party. As such, the Court considers that, in considering this Application, it is acting within the remit of its jurisdiction to interpret and apply the Charter and other human rights instruments ratified by the Respondent State.

32. In light of the above, the Court dismisses the Respondent State's objection to its material jurisdiction and holds that it has material jurisdiction to hear the present Application.

## B. Other aspects of jurisdiction

33. The Court notes that there is no dispute regarding its personal, temporal and territorial jurisdiction. Nonetheless, it must ensure that all aspects of its jurisdiction are fulfilled before proceeding to consider the Application.

34. With regard to its personal jurisdiction, as stated in paragraph 2 of this judgment, the Court recalls that the withdrawal of the Declaration does not apply retroactively and only takes effect 12 months after the notice of such withdrawal has been deposited, in this case, on 8 Mach 2026. Having been filed before the said date, the present Application is thus not affected by the withdrawal.[4] Accordingly, the Court has personal jurisdiction to consider the present Application.

35. As regards temporal jurisdiction, the Court observes that the violations alleged in the Application occurred between 2008 and 2017, that is, after the Respondent State became a Party to the Protocol on 21 August 2007. The Court, therefore, has temporal jurisdiction to consider this Application.

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*v. United Republic of Tanzania*, AfCHPR, Application No. 017/2017, Judgment of 22 September 2022, § 21.

[4] *Ingabire Victoire Umuhoza v. Republic of Rwanda* (jurisdiction) (2016) 1 AfCLR 562, §§ 66-68; *Houngue Eric Noudehouenou v. Republic of Benin*, AfCHPR, Application No. 003/2020 Order of 5 May 2020 (provisional measures), §§ 4-5 and Corrigendum of 29 July 2020; *Kouadio Kobena Fory v. Republic of Côte d'Ivoire* (merits and reparations) (2 December 2021) 5 AfCLR 682, § 2 and *Cheusi v. Tanzania* (judgment), *supra*, § 38.

36. The Court also finds that it has territorial jurisdiction insofar as the violations alleged in the Application occurred within the territory of the Respondent State, which is a State Party to the Charter and the Protocol.

37. In light of all of the above, the Court holds that it has jurisdiction to determine the present Application.

## VI. ADMISSIBILITY

38. The Respondent State raises objections to the admissibility of the Application on account of conditions not provided for under Article 56 of the Charter. The Court will, therefore, consider these objections (A), before proceeding to consider the admissibility requirements provided for under the Charter, if necessary (B).

### A. Objections to admissibility not provided for under Article 56 of the Charter

39. The Respondent State raises two objections to admissibility not provided for under Article 56 of the Charter, namely, the filing of the Applicant's Reply out of time, and the principle of sovereignty and independence of the judiciary.

#### i. Objection based on the filing of the Applicant's Reply out of time

40. The Respondent State submits that the Applicant filed his Reply outside the time-limits set by the Court without seeking leave, while compliance with time-limits is a requirement that cannot be waived except with the permission of the Court.

41. The Respondent State further contends that time-limits are set to be observed by the parties in a time bound sequence, and failure to observe time goes against optimal case management and expeditious settlement of disputes.

42. The Respondent State also submits that observance of time-limits is part of processes that the Court should oversee, monitor and enforce in dealing with applications before it.

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43. The Applicant did not respond to the Respondent State's objection.

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44. The Court notes that under Rule 44(3) of the Rules "where a party is unable to comply with any time limit prescribed in these Rules, the President may grant an extension of 30 [days] upon Application being made, giving reasonable explanation for the inability to comply".

45. It follows that the Court has discretion to grant extension of time to file pleadings, having regard to the circumstances of each case.

46. In the instant case, the Court notes that reminders were sent to the Applicant and, on two occasions, he was granted, *suo moto,* an additional extension of 30 days to file his Reply to the Respondent State's submissions, that is, on 18 June 2019 and 28 August 2019. The Court received the Applicant's Reply on 10 September 2019, which was within the additional time.

47. The Court further recalls that, in the instant case, it also granted the Respondent State*, suo moto*, on 22 March 2019, an additional extension of 30 days to file its Response to the Application.

48. The Court considers that in the interest of justice, extension of time is an exceptional but necessary practice, provided that it does not hamper the proper administration of justice. Moreover, the principle of equality of arms is safeguarded in the instant case, since both Parties were granted an extension of time.

49. Accordingly, the Court dismisses the Respondent State's objection in this regard.

**ii. Objection based on the principle of sovereignty and independence of the judiciary**

50. The Respondent State argues that the subject matter of the Application relates to a judgment rendered by its domestic courts, which are independent. It therefore submits that questioning decisions rendered by the said courts constitutes a serious infringement on State sovereignty. The Respondent State contends that independence of the judiciary means that the Court should not interfere in the decisions of the Respondent State's courts and should not issue external decisions purporting to direct its courts or to oppose their decisions.

51. The Respondent State also contends that it cannot be held responsible for decisions issued by its courts simply by virtue of the principle of independence of justice.

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52. The Applicant on his part contends that the Respondent State's argument based on the principle of sovereignty only stands in the context of inter-state disputes, whereas his dispute with the Respondent State is a personal one, which does not have any effect on the territorial sovereignty of the State. Besides, it has accepted to litigate disputes before this Court.

53. The Applicant further contends that the Respondent State is responsible for the acts of its domestic organs, in line with the principle of legal unity embodied in the concept of "State". According to the Applicant, going by this principle, the Respondent State is liable for the acts of its officials, and can be sued before this Court since it has accepted the latter's jurisdiction.

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54. The Court recalls that as it has held in *Ali ben Hassen ben Youcef ben Abdlhafid v. Republic of Tunisia*, notes that by ratifying international treaties and covenants, States assume existing international obligations to protect human rights, and therefore to subject themselves to oversight by international human rights protection mechanisms established by the United Nations and other regional systems, including the Court. The goal of these mechanisms is to guarantee effective human rights protection and to preserve human dignity, a noble goal that does not contradict or infringe the sovereignty of States.[5]

55. With regard to the Respondent State's contention that the jurisdiction of this Court infringes on its sovereignty, the Court recalls the international jurisprudence on contemporary international relations according to which State sovereignty is not unlimited. Such illustration of limitation to sovereignty is when a State voluntarily commits to certain international obligations or when a State becomes a party to a bilateral or multilateral treaty. In this regard, the Court recalls the 1923 *Vapeur Wimbledon Decision* of the Permanent Court of International Justice, where the latter held that:

> "[t]he Court declines to see in the conclusion of any Treaty by which a State undertakes to perform or refrain from performing a particular act an abandonment of its sovereignty. No doubt any convention creating an obligation of this kind places a restriction upon the exercise of the sovereign rights of the State, in the sense that it requires them to be exercised in a certain way. But the right of entering into international engagements is an attribute of State sovereigntye".[6]

56. With regard to the Respondent State's objection that it is not responsible for decisions issued by its courts, this Court notes that the principle of the unity of the State is well "established as a customary and well established rule of international law". Accordingly, "the conduct of any organ of a State must be

[5] *Abdelhafid v. Tunisia* (jurisdiction and admissibility) (2021) 5 AfCLR 193, § 46.
[6] CPJI, Vapeur Wimbledon, *Germany v. France and others*, Serie A, No 1, 25, 17 August 1923.

regarded as an act of that State".[7] Moreover, the principle of "responsibility of States for the breach of an international obligation" is recognized in international law".[8]

57. The Court further recalls Article 1 of the Charter, which states that "[t]he Member States of the Organization of African Unity parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this Chapter and shall undertake to adopt legislative or other measures to give effect to them".

58. The Respondent State is a party to the Charter and to the Protocol, as stated in paragraph 2 of this Judgment. The procedure before this Court is therefore consistent with the Respondent State's obligations as a State Party to the Charter and does not in any way infringe its national sovereignty.

59. In light of the above, the Court dismisses the Respondent State's objection in these regards.

## B. Other admissibility requirements

60. Under Article 6(2) of the Protocol, "The Court shall rule on the admissibility of cases taking into account the provisions of Article 56 of the Charter".

61. Rule 50(1) of the Rules[9] reads: "The Court shall ascertain the admissibility of an Application filed before it in accordance with Article 56 of the Charter, Article 6(2) of the Protocol and these Rules".

[7] ICJ, LaGrand (*Germany v. United States*), 27 June 2001; and Difference relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, ICJ Reports 1999 (I), P. 87, para. 62.
[8] ECHR, Grand Chamber, *Ilascu and Others v. Moldova and Russia* (Application no. 48787/99), Judgment.
[9] Rule 40 of the Rules of 2 June 2010.

62. Rule 50(2) of the Rules of Court,[10] which in substance restates the provisions of Article 56 of the Charter, provides as follows:

> Applications filed before the Court shall comply with all of the following conditions:
>
> a. Indicate their authors even if the latter requests anonymity;
> b. Are compatible with the Constitutive Act of the African Union and with the Charter;
> c. Are not written in disparaging or insulting language directed against the State concerned and its institutions or the African Union;
> d. Are not based exclusively on news disseminated through the mass media;
> e. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged;
> f. Are submitted within a reasonable time from the date local remedies were exhausted or from the date set by the Court as being the commencement of the time limit within which it shall be seized with the matter; and
> g. Do not deal with cases which have been settled by those States involved in accordance with the principles of the Charter of the United Nations, or the Constitutive Act of the African Union or the provisions of the Charter.

63. The Court notes that in the present case, the Parties do not dispute that the Application complies with the requirements under Rule 50 of the Rules. Nevertheless, the Court must satisfy itself that the said requirements Rules are met before proceeding to consider the Application.

64. The Court notes that in accordance with Rule 50(2)(a) of the Rules, the Applicant has clearly stated his identity.

65. The Court also notes that the present Application seeks to protect the Applicant's rights under the Charter. Moreover, one of the objectives of the

[10] Rule 40 of the Rules of 2 June 2010.

Constitutive Act of the African Union, as set out in Article 3(h) thereof, is the promotion and protection of human and peoples' rights. Furthermore, there is nothing in the Application that is incompatible with the Constitutive Act of the African Union. The Application therefore meets the requirements under Rule 50(2)(b) of the Rules.

66. The Court further notes that the present Application is not based exclusively on information disseminated through the mass media but rather on challenges brought before the Respondent State's courts. The Application, therefore, meets the requirement of Rule 50(2)(d) of the Rules.

67. With regards to Rule 50(2)(e) of the Rules pertaining to the exhaustion of local remedies, the Court observes that the Application was filed before it after the Cassation Court had considered the case twice. In the first procedure, the Cassation Court, by Judgment No. 9287 of 30 April 2013, quashed the judgment and referred the case back to a reconstituted bench of the Court of Appeal. In the second procedure initiated by AEREC, the Cassation Court, by Judgment No. 45501/46360 of 4 December 2017, quashed the judgment without referral to the Court of Appeal.

68. The Court notes that the Cassation Court is the apex court of the Respondent State. Furthermore, there is nothing in the record to indicate that the Applicant had any other ordinary judicial remedy in the Respondent State's legal system that he could have pursued. Accordingly, the Court finds that the Applicant exhausted local remedies, and the Application therefore meets the requirement set out under Rule 50 (2)(e) of the Rules.

69. The Court further observes that the Cassation Court rendered its decision on 4 December 2017, that is, eight months and 15 days before the present Application was filed before this Court on 11 September 2018. The Court considers the time taken by the Applicant to seize it to be manifestly reasonable, which makes it compliant with Rule 50(2)(f) of the Rules.[11]

[11] *Lameck Bazil v. United Republic of Tanzania*, AfCHPR, Application No. 027/2018, Judgment of 13 November 2024, §41.

70. Finally, the Court finds that the requirement of Rule 50(2)(g) of the Rules is met insofar as there is no indication on the record that the instant Application concerns a case that has already been resolved by the Parties in accordance with either the principles of the Charter of the United Nations, the Constitutive Act of the African Union or the Charter.

71. In view of the foregoing, the Court finds that all admissibility requirements are met and declares the Application admissible.

## VII. ON THE REQUEST FOR AMICABLE SETTLEMENT

72. The Applicant prays the Court, before considering the matter, to exert all possible efforts to bring about an amicable settlement with the Respondent State.

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73. The Respondent State did not respond to this request.

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74. Pursuant to Article 9 of the Protocol "[t]he Court may try to reach an amicable settlement in a case pending before it in accordance with the provisions of the Charter."

75. Rule 64(1)(2) of the Rules of Court provides that:

> 1. Pursuant to Article 9 of the Protocol, the Court may promote amicable settlement of cases pending before it. To that end, it may invite the parties and take appropriate measures to facilitate amicable settlement of the dispute.
> 2. Parties to a case before the Court, may on their own initiative, solicit the Court's intervention to settle their dispute amicably at any time before the Court gives its judgment.

76. On 15 October 2024, the Court issued an order reopening pleadings. The Order was notified to the Respondent State on 17 October 2024 and it was directed to file its observations on the proposal for amicable settlement within 30 days of notification.

77. At the expiry of the aforementioned deadline, the Respondent State did not file any response. The Court finds that by failing to file a response, the Respondent State is unwilling to pursue the avenue of the proposed amicable settlement.

78. The Court stresses in this regard that a key prerequisite for amicable settlement is that the Parties must be willing to pursue the process. Given the failure of the attempt to settle the matter amicably in the instant case, and recalling that under both the Protocol and the Rules, amicable settlement is only an option, the Court considers that the prerequisites for an amicable settlement are not met.[12]

79. The Court, therefore, dismisses the Applicant's request for amicable settlement in the present Application. Accordingly, the Court decides to examine the instant Application, having regard to its contentious procedure.

## VIII. MERITS

80. The Applicant alleges violation of the right to a fair trial, protected under Article 7(1)(a) of the Charter (A) and violation of the right to property, protected by Article 14 of the Charter (B). The Court will examine these allegations sequentially.

### A. Alleged violation of the right to a fair trial

81. The Court notes that Article 7(1)(a) of the Charter provides :

[12] *African Commission on Human and Peoples' Rights v. Republic of Kenya*, AfCHPR, Application No. 006/2012, Judgment of 23 June 2022 (reparations), § 32.

1. Every individual shall have the right to have his cause heard. This comprises:
    a. the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force.

82. The Court recalls that in line with jurisprudence,[13] Article 7(1)(a) of the Charter can be interpreted in the light of Article 14(1) of the International Covenant on Civil and Political Rights (hereinafter referred to as "ICCPR"), which states that "All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."

83. The Applicant alleges violation of his right to a fair trial, protected by Article 7(1)(a) of the Charter, with regard to two issues. He alleges firstly, that domestic courts erred in their application of the law and, secondly, that his right to have decisions delivered in open court was violated. The Court will examine each of these allegations in turn.

**i. Alleged violation based on an erroneous application of the law by domestic courts**

84. The Applicant alleges that Judgment No. 45501/46360 of 4 December 2017 issued by the Cassation Court deprived him of the avenue to bring a case before an appellate court to seek the annulment of the said judgment and to seize the full bench of the Cassation Court for a final decision. It is the Applicant's contention that the question for determination is very precise and clear, namely: "Can a party who has not secured one-third of the bid price participate in a public auction of a property before the Property Sales Department of the Court of First Instance?"

[13] *Jonas v. United Republic of Tanzania* (merits) (28 September 2017) 2 AfCLR 101, §§ 64-65.

85. The Applicant further contends that despite the clarity of the legal provision, the Cassation Court rendered an arbitrary decision against him. Thus, the Cassation Court ruled on the matter in disregard of the express provisions of the law by deciding not to refer the matter back to the Court of Appeal for determination, and ultimately to the full bench of the Cassation Court for a final determination.

86. The Applicant argues that the judgment 15 October 2008 in Case No. 20283, which upheld the auctioneer's decision in favour of AEREC, is a gross violation of the procedural rules under Tunisian domestic law, in particular Articles 444 and 425 of the Code of Civil and Commercial Procedures.

87. In reply, the Respondent State avers that the decisions issued by its domestic courts are faultless, given the safeguards enshrined by the law-makers, such as the principle of two-tier litigation and the oversight role of the Cassation Court, a court established by the law, and composed of competent, impartial and independent judges with recognized experience in the field, in accordance with the law.

88. The Respondent State also submits that the Applicant did not own the property in question at any time before or after the dispute, and thus entered the auction on equal footing with other members of the public.

89. The Respondent State further submits that in making their decisions, its domestic courts defer to no other authority than the law, not even to the State under which they are established, so that they are independent. It is the Respondent State's contention that as a result, it is not responsible for the decisions of its domestic courts and is not in any manner obligated to compensate anyone for prejudice arising from court decisions.

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90. The Court considers that regarding the allegation being examined, the question for determination is whether the Respondent State's courts violated the Applicant's right to a fair trial by failing to refer the case to the Court of Appeal.

91. The Court recalls its jurisprudence in *Alex Thomas v. United Republic of Tanzania*[14] that:

> This Court does not accept the Respondent's contention that, the issue of manifest errors at trial are not within the purview of this Court because the Court of Appeal of Tanzania has determined them with finality. Though this Court is not an appellate body with respect to decisions of national courts, this does not preclude it from examining relevant proceedings in the national courts in order to determine whether they are in accordance with the standards set out in the Charter or any other human rights instrument ratified by the State concerned. With regard to manifest errors in proceedings at national courts, this Court will examine whether the national courts applied appropriate principles and international standards in resolving the errors. This is the approach that has been adopted by similar international courts.

92. As it has also held in in *Kijiji Isiaga v. United Republic of Tanzania:*[15]

> The Court underscores that domestic courts enjoy a wide margin of appreciation in evaluating the probative value of a particular evidence. As an international human rights court, the Court cannot take up this role from the domestic courts and investigate the details and particularities of evidence used in domestic proceedings.

[14] *Thomas v. Tanzania* (merits), *supra*, § 130.
[15] *Kijiji Isiaga v. United Republic of Tanzania* (merits) (21 March 2018) 2 AfCLR 218, §§ 65 and 66.

93. It follows from the foregoing that the Court intervenes in the factual findings and decisions of domestic courts only in the event of a manifest irregularity resulting in a denial of justice. Regarding the allegation being considered, the Court notes that it relates to violation of the Applicant's right to fair trial due to the erroneous application of the law by judges of the Court of First Instance and the Court of Appeal.

94. In this regard, the Court observes that it emerges from the record that, in Judgment No. 22538 of 3 November 2010 rendered by the Ben Arous Court of First Instance (page 8), in Judgment No. 82390 of 8 April 2016 rendered by the Tunis Court of Appeal (pages 9 and 10), and Judgment No. 45501/46360 of 4 December 2017 (pages 6 to 14) rendered by the Cassation Court, the domestic courts stated the grounds for their interpretation of Article 444 of the Code of Civil and Commercial Procedure[16] and the intention of the legislators.

95. The Court also notes that the Cassation Court adopted the same interpretation and application of Article 444 of the Code of Civil and Commercial Procedure as that of the lower courts. The Cassation Court thus confirmed that

> That the legislator waived the requirement for the bidder at an auction to deposit a guarantee is mainly due to the fact that the bidder had already met this requirement, having participated in the first auction. He met the guarantee requirements and was obtained a decision conferring on him ownership of the property. The property, valued at five-sixths of the new highest bid amount, was transferred to him by the first sale. Consequently, the guarantee requirement applies to each new interested bidder in order to guarantee that only credible and serious bidders participate in the new auction, and this condition does not apply in any way to the auction bidders.

[16] Article 444 of the Code of Civil and Commercial Procedure states: "The re-auction takes place forty days at the earliest and sixty days at the latest after notice of re-auction has been served".

96. The Court further notes that the Cassation Court adopted the same interpretation of Article 444 of the Code of Civil and Commercial Procedure in light of the principle of second chance for the owner to sell the property at a higher price, and in light of the legislator's intention in this regard.

97. It emerges from these findings that the Cassation Court's judgment is based on legal grounds. The cassation judgment challenged by the Applicant was based on the following grounds:

> The principle of the second chance for the owner to sell his property at a higher price (Al-Tasdis), as stated in the explanation of the reasons for its legislation, is intended to give the debtor, that is, the owner of the asset being actioned off, a chance to sell his property at a higher price than that agreed at the first auction. This is in the interests of both the owner and the creditors, including the claimant who initiated the forced sale. The legislator therefore wanted to ensure that only serious and credible bidders participate in the second auction. It is in this context that the guarantee deposit becomes a requirement. It is required of the bidders and the seller, but it is not reasonable to require the same of the bidder who won the first auction.

98. In view of the foregoing, the Applicant does not prove any apparent irregularity or misapplication of the law by the domestic courts that would warrant the intervention of this Court.

99. Consequently, the Court considers that the Respondent State did not violate the Applicant's right to a fair trial, protected by Article 7 of the Charter, as regards the misapplication of the law by domestic courts.

**ii. Alleged violation of the right to have decisions delivered in open court**

100. The Applicant alleges violation of his right to have decisions delivered in in open court, enshrined in Article 108 of the 2014 Constitution of the Republic of Tunisia, under which "Court hearings are public ... Judgment may only be delivered in open court". It maintains that this rule has not been respected

in all the cases he brought before domestic courts starting from the first judgment No 22538 of 3 November 2010 handed down by the Ben Arous Court of First Instance. According to the Applicant, before it was enshrined in the Constitution, the rule relating to the delivery of decisions in open court was provided only in the Code of Civil and Commercial Procedure.

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101. The Respondent State did not make any submission on this issue.

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102. Article 7(1) of the Charter provides:

> "Every individual shall have the right to have his cause heard. This comprises:
>
> (a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;
>
> (b) the right to be presumed innocent until proved guilty by a competent court or tribunal;
>
> (c) the right to defense, including the right to be defended by counsel of his choice;
>
> (d) the right to be tried within a reasonable time by an impartial court or tribunal".

103. The Court also notes that although the Charter does not expressly provide for the right to have judgments delivered in open court, Principle A/9 of the Principles and Guidelines of the African Commission on Human and Peoples' Rights on Fair Trial and Legal Assistance in Africa, 2003, provides that any decision ensuing from a civil or criminal trial shall be delivered in open court.

104. It also emerges from a combined reading of Article 7(1) of the Charter and Article 14(1) of the ICCPR that the public administration of justice is partly safeguarded by the obligation to pronounce all verdicts in public and that failure to comply with this obligation constitutes a violation of international human rights law. This obligation includes cases tried in camera.[17]

105. In any event, Article 121 of the Code of Civil and Commercial Procedure states "[the judgment] is delivered in a public sitting attended by all the judges who have signed it." These provisions are to the effect that the Respondent State has incorporated into its domestic law, the right alleged to have been violated by the Applicant in the present case.

106. The Court also notes from the record, that, in Judgment No. 20283 of 15 October 2008 rendered by the Court of First Instance in Ben Arous, it is stated on the cover page that it was delivered in a public plenary session. Judgment No. 22538 of 3 November 2010 rendered by the First Chamber of Ben Arous Court indicated on the fifth page that "publicly deliver the following judgment…". In Judgment No. 82390 of 8 April 2016 rendered by the Court of Appeal in Tunis, it is indicated on its front page, "in its public session held on Friday 8 April 2016…". On the other hand, Judgment No. 31528 of 12 March 2013 rendered by the Court of Appeal of Tunis rendered and Judgment No.45501/46360 of 4 December 2017 of the Cassation Court did not indicate that they were delivered in a public hearing or were in open court.

107. The Court observes that the last two judgments mentioned above do not contain evidence that they were delivered in open court, which is a violation of the aforementioned provisions of the Charter as read jointly with those of the ICCPR.

108. Consequently, the Court finds that the Respondent State violated the Applicant's right to a fair trial, guaranteed by Article 7(1) of the Charter read

[17] Human Rights Committee, 23 August 2007, General Comment 32, p 10, § 29.

jointly with Article 14(1) of the ICCPR, insofar as its domestic courts failed to deliver in open court Judgment No. 31528 of 12 March 2013 of the Court of Appeal of Tunis and Judgment No. 45501/46360 of 4 December 2017 of the Cassation Court.

## B. Alleged violation of the right to property

109. The Applicant alleges that his right to property was violated insofar as domestic courts erroneously applied the explicit and clear internal rules of the law which entitled him to be the sole participant in the re-auction.

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110. The Respondent State submits that the allegation is baseless. It argues that the process of a public auction sale is open to the public and to everyone looking to own the property being auctioned. It further elaborates that when the property that is the subject of the present case was offered for sale by public auction, another bidder competed with the Applicant, namely AEREC. It is the Respondent State's contention that the said company thus had equal opportunity to bid for the property.

111. The Respondent State also contends that the Applicant did not at any time own property for it to be returned to him.

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112. Article 14 of the Charter states: "[t]he right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws".

113. The Court recalls its jurisprudence that the right to property as guaranteed by Article 14 of the Charter includes the right to use one's property (*usus*),

the right to enjoy its fruits (*fructus*) and the right to dispose of it, including the right to sell it (*abusus*).[18]

114. In the instant case, the Applicant alleges that the trial judges erred in the application of the law, which prevented him from owning the property. The Court however considers that the allegation is baseless insofar as the Applicant never owned the property given that he cannot lay claim to any of the three above stated elements of the right to property. It follows that the Applicant has no basis to allege violation of his right to ownership.

115. The Court, therefore, dismisses the Applicant's allegation and holds that the Respondent State did not violate his right to property, protected by Article 14 of the Charter.

## IX. REPARATIONS

116. The Applicant prays the Court to:

i. Declare that his right to a fair trial before an impartial court was violated with regard to the decisions of the Respondent State's domestic courts
ii. Order the Tunisian state to return to him the property in question, valued at the price concluded at the first auction.
iii. Order the Respondent State to pay him reparations the not less than 31 Million Euros for damages suffered.
iv. In the event that it is impossible to return the property, to compensate him with at least 50 Million Euros for all the damages suffered.

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117. The Respondent did not submit on reparations.

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[18] *African Commission on Human and Peoples' Rights v. Republic of Kenya* (merits) (2017) 2 AfCLR 9, § 124; *Sébastien Germain Ajavon v. Republic of Benin* (merits) (2019) 3 AfCLR 130, § 264.

118. The Court recalls Article 27(1) of the Protocol which provides that:

> If the Court finds that there has been violation of a human or peoples' rights, it shall make appropriate orders to remedy the violation including the payment of the fair compensation or reparation.

119. The Court notes, in line with its consistent case-law, that for reparations to be granted, the Respondent State should first be found internationally responsible for the wrongful act and that causation should be established between the wrongful act and the harm allegedly suffered. Furthermore, and where granted, reparation should cover the full damage suffered.[19]

120. The Court recalls that it has established that the burden of proof for a claim for damages resulting from a violation of a human right rests with the Applicant. The Court reiterates that it is the responsibility of the Applicant to provide evidence of his claims.[20] As for moral damages, the Court considers that the requirement of proof is not strict,[21] since it is assumed that moral prejudice occurs when violations are established.[22]

121. The Court further reiterates its jurisprudence that measures to be taken by a Respondent State to address a human rights violation may include restitution, compensation and rehabilitation of the victim, as well as measures of non-repetition, taking into account the circumstances of each case.[23]

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[19] *Ally Rajabu and Others v. United Republic of Tanzania* (merits and reparations) (28 November 2019) 3 AfCLR 539, § 136; *Guehi v. Tanzania* (merits and reparations), *supra,* § 55; *Lucien Ikili Rashidi v. United Republic of Tanzania* (merits and reparations) (28 March 2019) 3 AfCLR 13, § 119; *Norbert Zongo and Others v. Burkina Faso* (reparations) (5 June 2015) 1 AfCLR 258, § 55; and *Kalebi Elisamehe v. Tanzania* (merits and reparations), § 97.

[20] *Kennedy Gihana and Others v. Republic of Rwanda* (merits and reparations) (28 November 2019) 3 AfCLR 655, § 139; *Reverend Christopher R. Mtikila v. United Republic of Tanzania* (reparations) (13 June 2014) 1 AfCLR 72, § 40; *Lohé Issa Konaté v. Burkina Faso* (reparations) (3 June 2016) 1 AfCLR 346, § 15(d); and *Elisamehe v. Tanzania* (merits and reparations), *supra*, § 97.

[21] *Zongo and Others v. Burkina Faso* (reparations), *supra*, § 55; *Elisamehe v. Tanzania* (merits and reparations), *ibid*, § 97.

[22] *Ibid.*

[23] *Ingabire Victoire Umuhoza v. Republic of Rwanda* (reparations) (7 December 2018) 2 AfCLR 202, § 20; *Elisamehe v. Tanzania, supra*, § 96.

122. In the present case, the Court has established that the Respondent State violated the Applicant's right to a fair trial, provided for in Article 7(1) of the Charter read together with Article 14(1) of the ICCPR, insofar as it failed to deliver in open court Judgment No. 31528 of 12 March 2013 of the Court of Appeal of Tunis as well as the Judgment No. 45501/46360 of 4 December 2017 of the Supreme Court. The Applicant's request for reparations must therefore be examined in the light of the established violations.

## A. Pecuniary reparations

### i. Material prejudice

123. In the instant case, the Applicant prays the Court to order the Respondent State to return to him the property in dispute, at the price concluded at the first auction, and to compensate him with an amount not less than Thirty-One Million (31 000 000) Euros for the prejudice suffered. The Applicant prays, in the event that it is impossible to return the property, that he should be paid compensation of at least Fifty Million (50 000 000) Euros for all the prejudice suffered. However, he does not demonstrate the causal link between the material prejudice suffered and the violation of his right to fair trial, in particular the non-delivery of the above-mentioned decisions in open court, as provided for in Article 7(1) of the Charter.

124. In any event, the Court is of the view that is findings in the present Judgment do not affect the decisions of domestic courts regarding the outcome of the bid, or the Applicant's ownership of the property involved.

125. Consequently, the Court dismisses the Applicant's prayer for reparation for material prejudice.

### ii. Moral prejudice

126. Without specifically mentioning moral prejudice, the Applicant prays the Court in general terms to grant him reparations.

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127. The Respondent State prays the Court to dismiss all of the Applicant's prayers.

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128. The Court recalls its well-established jurisprudence that moral prejudice is presumed when a violation is established. When granted, the quantum of reparations is determined in all fairness, taking into account the circumstances of each case.[24]

129. The Court notes that in the instant case, the Respondent State violated the Applicant's right to a fair trial insofar as its courts failed to deliver their decision in open court in respect namely of Judgment No. 31528 of the Tunis Court of Appeal of 12 March 2013 and Judgment No. 45501/46360 of the Supreme Court of 4 December 2017.

130. The Court considers that this violation caused the Applicant moral prejudice. In the circumstances, and in the exercise of its discretion, the Court awards him the sum of Six Hundred Tunisian Dinars (TDS 600) for prejudice he suffered.

## B. Non-pecuniary reparations

### i. Publication of the judgment

131. The Parties do not make specific prayers in respect of publication of the judgment.

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[24] *Zongo and Others v. Burkina Faso* (reparations), *supra,* § 55; *Umuhoza v. Rwanda* (reparations), *supra,* § 59; *Christopher Jonas v. United Republic of Tanzania* (reparations) (25 September 2020) 4 AfCLR 545, § 23.

132. The foregoing notwithstanding, the Court finds, for reasons now well established in its practice, and in the particular circumstances of the instant case, that publication of this judgment is necessary. Such a measure is meant to ensure non-repetition of the violation found[25] in the sense that it reminds domestic courts to comply with the provisions of Article 7(1) of the charter and Article 14 of the ICCPR, which stipulate that all judicial decisions must be delivered in open court.

133. Consequently, the Court orders the Respondent State, within three months from the date of notification, to publish this judgment on the websites of the Judiciary and the Ministry of Justice, and to ensure that the text of the Judgment remains accessible for at least one year after the date of publication.

**ii. Implementation and reporting**

134. The Parties do not make specific prayers in respect of implementation and reporting.

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135. However, the justification provided earlier in respect of the Court's decision to order publication of the judgment equally applies to implementation and reporting. The Court also notes that the order relating to reporting on the measures taken by a Respondent State is a matter of judicial practice.[26]

136. The Court therefore finds it appropriate to order the Respondent State to submit to it, within six months of notification of this Judgment, periodic reports on the implementation thereof, indicating the measures taken to comply with this Judgment, in accordance with Article 30 of the Protocol.

[25] *Legal and Human Rights Centre and Another v. United Republic of Tanzania*, AfCHPR, Application No. 039/2020, Judgment of 13 June 2023 (merits and reparations), § 180.
[26] *LHRC and Another v. Tanzania*, *supra*, § 183; *Habyalimana Augustino and Muburu Abdulkarim v. United Republic of Tanzania*, AfCHPR, Application No. 015/2016, judgment of 3 September 2024, § 253.

## X. COSTS

137. The Parties do not make any submissions regarding costs.

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138. The Court notes that Rule 32(2) of the Rules provides that "unless otherwise decided by the Court, each party shall bear its own costs, if any."[27]

139. The Court considers that in the instant case, there is no reason for it to depart from that provision. Accordingly, it decides that each Party shall bear its own costs.

## XI. OPERATIVE PART

140. For these reasons:

THE COURT,

*Unanimously,*

*On amicable settlement*

i. *Dismisses* the Applicant's request for amicable settlement.

*On jurisdiction*

ii. *Dismisses* the objection to jurisdiction;
iii. *Declares* that it has jurisdiction.

[27] Rule 30(2), Rules of Court, 2 June 2010.

*On admissibility*

iv. *Dismisses* the objections to the admissibility of the Application;
v. *Declares* the Application admissible.

*On merits*

vi. *Holds* that the Respondent State did not violate the Applicant's right to property, protected under Article 14 of the Charter;
vii. *Holds* that the Respondent State violated the Applicant's right to a fair trial, protected under Article 7(1)(a) of the Charter as read jointly with Article 14(1) of the ICCPR, regarding the failure of domestic courts to deliver their decisions in open court.

*On reparations*

viii. *Dismisses* the prayer for reparation of the material prejudice;
ix. *Grants* the Applicant's prayer for reparation of the moral prejudice suffered and awards him the sum of Six Hundred Tunisian Dinars (TDS 600);
x. *Orders* the Respondent State to publish this judgment, within three months of notification thereof, on the websites of the Judiciary and the Ministry of Justice, and to ensure that the text of the Judgment remains accessible for at least one year after the date of publication;
xi. *Orders* the Respondent State to report on the implementation of the measures ordered within six months from the date of notification of this judgment.

*On costs*

xii. *Orders* each Party to bear its own costs.

**Signed:**

Modibo SACKO, President;

Chafika BENSAOULA, Vice-president;

Suzanne MENGUE, Judge;

Tujilane R. CHIZUMILA, Judge;

Blaise TCHIKAYA, Judge;

Stella I. ANUKAM, Judge;

Imani D. Aboud, Judge;

Dumisa B. NTSEBEZA, Judge;

Dennis D. ADJEI, Judge;

Duncan GASWAGA, Judge;

and Robert ENO, Registrar.

Done at Arusha, this Twenty-Sixth Day of June in the Year Two Thousand and Twenty-Five in Arabic, English and French, the Arabic text being authoritative.

AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS
The Registrar
LE GREFFIER
ARUSHA TANZANIA
COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES