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**AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS**
**COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES**

**THE MATTER OF**

**SYMON VUWA KAUNDA AND OTHERS**

**V.**

**REPUBLIC OF MALAWI**

**APPLICATION No. 013/2021**

**JUDGMENT**

**5 SEPTEMBER 2023**

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**The Court composed of:** Imani D. ABOUD, President; Modibo SACKO, Vice-President; Ben KIOKO, Rafaâ BEN ACHOUR, Suzanne MENGUE, Chafika BENSAOULA, Blaise TCHIKAYA**,** Stella I. ANUKAM, Dumisa B. NTSEBEZA, and Dennis D. ADJEI – 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"), Justice Tujilane R. CHIZUMILA, member of the court and a national of Malawi did not hear the application.

In the Matter of:

Symon Vuwa KAUNDA, Getrude MNYENYEMBE, Daniel Tula PHIRI, Mpata Shadreck TAYANI, Nkhasi Esau NSINAWANA, and Kayafa PHIRI

*Represented by:*

i. Advocate Jeremiah MTOBESYA, Law Age Consult, Tanzania; and
ii. Advocate Leonard Emmanuel MBULO, Mbulo Attorneys at Law, Malawi.

Versus

REPUBLIC OF MALAWI

*Represented by:*

i. Mr Pacharo Kayira, Chief State Advocate, Ministry of Justice and Constitutional Affairs;
ii. Mr Mabvuto Katemula, Chief Legal Officer, Ministry of Foreign Affairs and International Cooperation;
iii. Mr Oliver Gondwe, Principal Legal Officer Ministry of Foreign Affairs and International Cooperation; and

iv. Mr Lumbani Mwafulirwa, Senior State Advocate, Ministry of Justice and Constitutional Affairs.

After deliberation,

*Renders this Judgment*

## I. THE PARTIES

1. Symon Vuwa Kaunda (hereinafter referred to as "the First Applicant"), is a politician, who has been the Member of the National Assembly for Nkhatabay Central Constituency in Malawi since 2004. Getrude Mnyenyembe, Daniel Tula Phiri, Mpata Shadreck Tayani, Nkhasi Esau Nsinawana, and Kayafa Phiri (hereinafter referred to as "the Second, Third, Fourth, Fifth and Sixth Applicant" respectively) are Malawian nationals, registered voters and supporters of the First Applicant. The six Applicants will jointly be referred to as "the Applicants". The Applicants allege the violation of their rights in relation to electoral proceedings before domestic courts.

2. The Application is filed against the Republic of Malawi (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 23 February 1990 and the Protocol on 9 October 2008. It further deposited, on 9 October 2008, 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.

## II. SUBJECT OF THE APPLICATION

### A. Facts of the matter

3. The Applicants allege that following the conclusion of the general election held on 21 May 2019, the Malawi Electoral Commission (hereinafter referred to as "the MEC") declared the First Applicant duly elected as member of the National Assembly for the Nkhatabay Central Constituency.

4. Mr Ralph Joseph Mhone, who contested the same constituency seat, filed a petition before the High Court of Malawi seeking to nullify the election of the First Applicant. On 16 September 2019, the High Court dismissed the petition on the ground that the petitioner had not adduced sufficient evidence to prove his case.

5. Mr Mhone then appealed the High Court's decision before the Supreme Court of Appeal, which, on 21 April 2021, reversed the High Court's judgment and nullified the First Applicant's election. It also ordered that a fresh election be conducted.

### B. Alleged violations

6. The Applicants allege the violation of the following rights:

   i. The right to equal protection of the law, protected under Article 3(2) of the Charter by placing undue emphasis on procedural compliance when determining the election petition;
   ii. The right to be heard protected under Article 7(1) of the Charter by unjustifiably denying the First Applicant's reasonable request for extension of time to file additional documents;
   iii. The right to appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force protected under Article 7(1)(a) of the Charter, insofar as the Supreme Court misdirected itself in the re-consideration of evidence at Msinjiyiwi Polling station; and

iv. The right of the Applicants to participate freely in the government and public affairs of their country, protected under Article 13(1) of the Charter, insofar as the Supreme Court ordered that a fresh election be conducted.

## III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

7. The Application together with a request for provisional measures were filed before the Court on 5 May 2021 and served on the Respondent State on 13 May 2021 for its response within ninety (90) days and its observations on the request for provisional measures within ten (10) days respectively.

8. On 5 June 2021, the Respondent State filed its response to the request for provisional measures.

9. On 11 June 2021, the Court issued a Ruling in which it rejected the request for provisional measures by the Applicants that the election should be suspended. The Parties were notified of the Ruling on 12 June 2021.

10. On 30 June 2022, the Registry reminded the Respondent State that the time-limit to respond to the Application had elapsed, and that the Court would proceed to render a judgment in default should the Respondent State fail to file the requested response within forty-five (45) days of receipt of the notification.

11. At the expiry of the above stated time, the Respondent State did not file its pleadings as requested.

12. Pleadings were closed on 12 May 2023 and the Parties were duly notified thereof.

## IV. PRAYERS OF THE PARTIES

13. The Applicants pray the Court as follows:

    i. Declare that the Respondent State violated the Applicants' rights, protected under Articles 3(2), 7(1), 7(1)(a) and 13(1) of the Charter;
    ii. Make an order for reparations by payment of the Applicants' costs.

14. The Respondent State did not file a response to the Application and therefore did not make any prayers.

## V. ON THE DEFAULT OF THE RESPONDENT STATE

15. Rule 63 of the Rules provides that:

> Whenever a party does not appear before the Court, or fails to defend its case within the period prescribed, the Court may, on the application of the other party, or on its own motion, enter decision in default after it has satisfied itself that the defaulting party has been duly served with the Application and all other documents pertinent to the proceedings.

16. The Court notes that the afore-mentioned Rule sets out three conditions on which the Court may render judgment in default, namely, i) notification to the defaulting Party of both the application and other documents pertinent to the proceedings; ii) default of one of the Parties iii) request made by the other Party or the discretion of the Court.[1]

17. With regard to notification of the Application to the Respondent State and default by one of the parties, the Court notes that, on 13 May 2021, the

[1] See: *Bernard Ambataayela Mornah, v. Benin and 7 others (Burkina-Faso, Côte d'Ivoire, Ghana, Mali, Malawi, Tanzania and Tunisia*), ACtHPR, Application No. 028/2018, Judgment of 22 September 2022, §§ 45-50; *Léon Mugesera v. Republic of Rwanda* (judgment) (27 November 2020) 4 AfCLR 834, §§ 13-18; *Fidèle Mulindahabi v. Republic of Rwanda* (merits and reparations) (26 June 2020) 4 AfCLR 291, § 22; See *African Commission on Human and Peoples' Rights v. Libya* (merits) (3 June 2016) 1 AfCLR 153, §§ 38-42.

Application and all supporting documents were served on the Respondent State and it was requested to file its response within ninety (90) days of receipt. The Respondent State was further notified that the Court would issue a default judgment if it failed to file its response within an additional extension of forty-five (45) days. Despite this, the Respondent State did not respond thereto and ultimately, pleadings were closed on 12 May 2023. The Court thus concludes that the defaulting party, that is, the Respondent State, was duly notified.

18. With regard to the default of one of the Parties, the Court notes that, on 13 May 2021, it requested the Respondent State to file its response to the Application within ninety (90) days. However, the Respondent State did not submit its response. The Court further observes that, on 30 June 2022, the Registry reminded the Respondent State that the time-limit to file a response to the Application had elapsed. The Registry also informed the Parties that if it did not receive any response within forty-five (45) days, the Court would proceed to pass judgment in default. Despite these reminders, the Respondent State did not file any response. The Court, therefore, finds that the Respondent State has not exercised its right to defense.

19. With respect to the last condition, the Court notes pursuant to Rule 63 of the Rules that it can render judgment in default either *suo motu* or on request of the other party. The Applicant having not requested for a default judgment, the Court decides *suo motu*, and for the proper administration of justice, to render the judgment by default.

20. The requirements having thus been met, the Court renders this judgment by default

## VI. JURISDICTION

21. Article 3 of the Protocol provides that:

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 instrument ratified by the States concerned.
2. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.

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

23. On the basis of the above-cited provisions, therefore, the Court must preliminarily establish its jurisdiction and dispose of objections thereto, if any.

24. The Court notes that there is no objection to its jurisdiction in this case. However, it must satisfy itself that it has the jurisdiction to consider the instant Application. In this regard, the Court notes that there is nothing on record indicating that it does not have jurisdiction and therefore, it finds as follows:

i. It has material jurisdiction insofar as the Applicants allege the violation of rights guaranteed under Articles 3(2), 7(1), 7(1)(a) and 13(1) of the Charter, to which the Respondent State is a party.

ii. It has personal jurisdiction insofar as the Respondent State has ratified the Protocol and deposited the Declaration required under Article 34(6) of the Protocol as established earlier in this judgment.

iii. It has temporal jurisdiction, insofar as the alleged violations occurred after the Respondent State became a party to the Charter and the Protocol.

iv. It has territorial jurisdiction insofar as the alleged violations occurred within the territory of the Respondent State, which is a state party to the Protocol.

## VII. ADMISSIBILITY

25. Pursuant to 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."

26. In line with Rule 50(1) of the Rules "the Court shall ascertain the admissibility of an Application filed before it in accordance with Article 56 of the Charter."

27. The Court notes that Rule 50(2) of the Rules, 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 request 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 African Union or the provisions of the Charter.

28. In the instant Application, the Respondent State did not fully participate in the proceedings and thus did not raise any objections to the admissibility of the Application. However, the Court must establish that the Application meets the admissibility requirements specified in Article 56 of the Charter and Rule 50 (2) (a) of the Rules.

29. From the record, the Court notes that the Applicants have been clearly identified by name in fulfilment of Rule 50(2)(a) of the Rules.

30. The Court further notes that the claims made by the Applicants seek to protect their rights guaranteed under the Charter. Furthermore, one of the objectives of the Constitutive Act of the African Union, as stated in Article 3(h) thereof, is the promotion and protection of human and peoples' rights. Additionally, the Application does not contain any claim or prayer that is incompatible with a provision of the said Act. The Court thus finds that the Application complies with Rule 50(2)(b) of the Rules.

31. The Court further notes that the Application does not contain any disparaging or insulting language directed at the Respondent State or its institutions, in compliance with the Rule 50(2)(c) of the Rules.

32. The Application is also not based exclusively on news disseminated through mass media, but rather on the record from the domestic courts of the Respondent State. Thus, the Application complies with Rule 50(2)(d) of the Rules.

33. The Court notes that on 21 April 2021, the Supreme Court of Appeal of Malawi rendered a decision in which it set aside the High Court's judgment, ordered the nullification of the First Applicant's election and further ordered

a fresh election. The Supreme Court of Appeal being the highest court of the Respondent State, this Court finds that local remedies were exhausted in the present Application, and the requirement set out under Rule 50(2)(e) of the Rules is thus met.

34. With regard to the requirement set out under Rule 50(2)(f) of the Rules, the Court recalls that assessment of the reasonableness of time to file an application should be considered on a case-by-case basis.[2] The Court has previously held that in circumstances where the time being assessed is relatively short, the Applicant will be exempted from proving reasonableness and the said time will thus be said to be manifestly reasonable.[3]

35. The Court notes that, in the instant matter, the Supreme Court of Appeal delivered its judgment on 21 April 2021, while the present Application was filed before the Court on 5 May 2021. Therefore, only fourteen (14) days elapsed between the time the local remedies were exhausted and the filing of the Application before the Court. In view of the above, the Court finds that the Application was filed within a manifestly reasonable time and therefore in accordance with Rule 50(2)(f) of the Rules.

36. The Court also holds that the Application does not raise any matter or issues previously settled by the parties in accordance with the principles of the Charter of the United Nations, the Constitutive Act of the African Union, the provisions of the Charter as required under Rule 50(2)(g) of the Rules.

37. As a consequence of the foregoing, the Court holds that the Application fulfils all the requirements set out under Article 56 of the Charter as restated in Rule 50(2) of the Rules and accordingly finds the Application admissible.

[2] *Amiri Ramadhani v. United Republic of Tanzania* (merits) (11 May 2018) 2 AfCLR 344, § 83.
[3] *Niyonzima Augustine v. United Republic of Tanzania*, ACtHPR, Application No. 058/2016, Judgment of 13 June 2023, §§ 56-58; *Sébastien Germain Ajavon v. Republic of Benin*, ACtHPR, Application No. 065/2019, Judgment of 29 March 2021 (merits and reparations), §§ 86-87.

## VIII. MERITS

38. The Applicants allege that the Respondent State has violated the following rights:

    i. The right to equal protection before the law guaranteed under Article 3(2) of the Charter by placing undue emphasis on procedural compliance when determining the election petition;
    ii. The right to be heard protected under Article 7(1) of the Charter by unjustifiably denying the First Applicant's reasonable request for extension of time to file additional documents;
    iii. 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 protected under Article 7(1)(a) of the Charter, by the Supreme Court failing to competently discharge its functions when it misdirected itself in the re-consideration of evidence at Msinjiyiwi Polling station; and
    iv. The right of the second, third, fourth, fifth and six Applicants to participate freely in the government and public affairs of their country guaranteed under Article 13(1) of the Charter by ordering that a fresh election be conducted.

### A. Alleged violation of the right to participate freely in the government of one's country

39. The second, third, fourth, fifth and six Applicants allege that the decision of the Supreme Court to nullify the elections and order fresh elections, disenfranchised their right to freely participate in governance and public affairs, and denied the First Applicant the opportunity to represent his people as a member of the national assembly. It is the contention of the said Applicants that such a breach arose from the fact that the Supreme Court's decision was based on facts, which although true, were not material and did not affect the outcome of the election.

40. The Respondent State did not make any submissions on this issue.

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41. The Court acknowledges that the right of citizens to engage in the political affairs of their nation stands as a fundamental democratic entitlement safeguarded by both the Charter and various other international human rights instruments.[4]

42. Article 13(1) of the Charter provides that:

> Every Citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.

43. The Court notes this provision expressly guarantees both the right to vote and to be elected.[5] As the Court has previously held,

> The right to participation confers on all citizens the right to be involved in the government of their country directly or through their freely chosen representatives. It includes the right to vote and stand for elections to assume political or official positions as well as obtain, without discrimination, the opportunity to serve their nation being part of the government. Where citizens vote to indirectly participate in the affairs of their country through representatives, the right entails respect for the citizens' freedom to choose their representatives and the prohibition of any measure that would compromise their representatives' ability to perform functions that they have assigned to them. [6]

44. In the present case, the Court notes that the Applicants' allegation pertains to the manner in which the Supreme Court of Appeal of the Respondent

[4] See Article 21(1) UDHR and Article 25(1) of the ICCPR.
[5] ACHPR, *Constitutional Rights Project & Civil Liberties Organisation v. Nigeria* (1998), Communication No. 102/93.
[6] *Brahim Ben Mohamed Ben Brahim Belgeith v. Republic of Tunisia***,** ACtHPR*,* Application No. 017/2021, Judgment of 22 September 2022, § 111.

State adjudicated on the electoral petition and decided to annul the election. From the record, the Applicants aver that the Supreme Court did not make a proper finding by nullifying the election on grounds such as some ballot boxes not being secured, results sheets being tempered with, parties' representatives keeping the result sheets at their homes, and the presiding officer of one polling station altering the number of votes. According to the Applicants, while those grounds were true, they were not material and did not affect the outcome of the election in a manner that warranted cancellation of the results.

45. The Court notes from the record that, in considering whether those grounds warranted the results being nullified, the Supreme Court of Appeal found that the decision of the High Court on the insufficiency of evidence to overturn the election of the First Applicant was not supported by the evidence. It was on these grounds that the Supreme Court of Appeal set aside the High Court's judgment, annulled the said election and ordered that fresh elections be conducted in accordance with Section 100(4) of the Parliamentary and Presidential Elections Act in the Nkhatabay Central Constituency.

46. It follows from the foregoing, that there was nothing manifestly erroneous in the manner in which the Supreme Court of Appeal assessed the evidence, and decided as it did.

47. Consequently, this Court therefore dismisses the Applicants' claim and finds that the Respondent State did not violate the Applicants' right to participate freely in the government of his country protected under Article 13(1) of the Charter.

**B. Alleged violation of the right to equal protection of the law**

48. The Applicants contend that the Respondent State placed undue emphasis on procedural compliance when determining the election petition, without considering the consequences and costs of such measures in relation to the

rights of the Applicants to participate in the government of their country. This, according to the Applicants, violated their right to equality and equal protection of the law.

49. The Respondent State did not make any submission in respect of this issue.

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50. The Court recalls that Article 3(2) of the Charter provides that: "every individual shall be entitled to equal protection of the law."

51. As the Court has previously held, the principle of equality before the law, which is implicit in the principle of equal protection of the law, does not necessarily require equal treatment in all instances and may allow differentiated treatment of individuals placed in different situations.[7]

52. The Court also notes that a violation of Article 3(2) of the Charter does not necessarily follow from an alleged instance of differentiated treatment. Notably, the burden of proof is on the party that alleges, and general statements to the effect that a right has been violated do not suffice to establish a violation of the Charter.[8]

53. In the present case, the Court observes that the Applicants merely allege that the Supreme Court of Appeal placed undue emphasis on procedural compliance in respect of registration of voters, without stating how doing so led to a breach of their right to equality. They do not also demonstrate how the Supreme Court of Appeal's emphasis on procedural compliance run counter to established rules in the national law or violated their right to equality or equal protection of the law. The Applicants should have provided evidence as to how they were treated differently from other persons in the same situation.

[7] *Jebra Kambole v. United Republic of Tanzania* (merits and reparations) (15 July 2020) 4 AfCLR 460, § 88.
[8] *George Maili Kemboge v. United Republic of Tanzania* (merits) (11 May 2018) 2 AfCLR 369, § 51 and *Minani Evarist v. United Republic of Tanzania* (merits) (21 September 2018) 2 AfCLR 402, § 75.

54. This Court recalls that in any event, States are allowed latitude, within permissible limits, to configure their electoral management bodies to satisfy their peculiar local exigencies. In the present case, as the Supreme Court of Appeal found, there was lack of, or inadequate, civic voter sensitization about the registration which led to a low turnout. This was due to citizens not being aware of the need to register to vote as most people thought that the National Identity Registration which they had previously done with the National Registration Bureau qualified them to vote without having to specifically register again to vote. Therefore, the Supreme Court of Appeal rightly ordered that the election be held afresh to ensure that they were conducted in a manner that abides by electoral laws.[9]

55. Consequently, the Court finds that the Respondent State did not violate the Applicants' right to equal protection of the law protected under Article 3(2) of the Charter. In light of the foregoing, this Court dismisses the Applicants' claim.

## C. Alleged violation of the right to be heard

56. The Applicants allege that the Supreme Court of Appeal unjustifiably denied the First Applicant's reasonable request for extension of time to file additional documents.

57. The Applicants further aver that the Supreme Court of Appeal failed to discharge its functions when it erred by reconsidering the evidence of what occurred at Msinjiyiwi Polling Station.

58. The Respondent State did not make any submission in respect of this issue.

***

[9] Section 17 of the Parliamentary and Presidential Election Act (Chapter 2:01) provides that: "The Commission shall, in accordance with this Act, create the necessary conditions and take all necessary actions for promoting awareness among the citizens of Malawi of the need to register as a voter for the purpose of an election and of the need for their full participation in the election''.

59. Article 7(1)(a) of the Charter provides that:

> [e]very 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.

60. The Court notes that the Applicants' allegation in relation the Supreme Court of Appeal revolves around two (2) issues, firstly, the alleged denial of extension of time to file additional documents; and secondly, on the reconsideration of evidence. The Court will consider these issues in turns.

### i. Alleged denial of extension of time to file additional documents

61. The Court recalls that the right to have one's cause heard includes the right to be afforded time to file documents in support of one's claims. In the case of *Evodius Rutechura v. United Republic of Tanzania,*[10] the Applicant alleged that the Court of Appeal had erroneously dismissed his application to file for review out of time. Nevertheless, he did not substantiate this allegation or demonstrate with evidence the alleged violation of his right owing to the error of the Court of Appeal. He simply asserted that he was sick. The Court found that the manner in which the Court of Appeal dismissed the Applicant's application to file an application for review out of time did not disclose any manifest error or miscarriage of justice to the Applicant. The Court therefore dismissed the allegation and found that the Respondent State did not violate Article 7(1)(a) of the Charter.

62. In the present case, the Court notes that the Supreme Court of Appeal's denial of the First Applicant's request for extension of time to file additional documents was based on the fact that the First Applicant did not put forward

[10] *Evodius Rutechura v. Tanzania*, ACtHPR, Application No. 017/2021, Judgment of 26 February 2021, § § 65-67.

a satisfactory justification. The Court notes from the record, that the First Applicant submitted the additional documents belatedly despite the matter having been adjourned several times.

63. In view of the above, the Court finds that the Respondent State did not violate the right to be heard in respect of the alleged denial of extension of time to file additional documents.

### ii. Alleged misdirection of the Supreme Court in reconsidering evidence

64. The Court observes that the right to have one's cause heard entails the possibility of the Applicant to adduce his evidence and for the courts to evaluate the same.

65. In the instant case, the Court observes that the Supreme Court of Appeal did not misdirect itself but merely performed its duties by reconsidering the evidence adduced before the High Court, especially in respect of the assertion that alterations were made to the voting records at Msinjiyiwi polling station.

66. There was also nothing preventing the Supreme Court of Appeal from reconsidering the evidence.

67. The Court therefore finds that the Respondent State did not violate the right to have one's cause heard with regard to the evidence having been reconsidered by the Supreme Court of Appeal.

## IX. REPARATIONS

68. The Applicants prays the Court to find that the Respondent State violated their rights protected under Articles 3(2), 7(1)(a) and 13(1) of the Charter and to order the Respondent State to bear the costs of the proceedings.

69. The Respondent State did not make any submissions on reparations.

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70. Article 27 for the Protocol 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 fair compensation or reparation.

71. In the instant case, given that no violation has been found, consideration of the prayer for reparation is no longer warranted. The Court, therefore, dismisses the Applicant's prayer for reparations.

## X. COSTS

72. In their submissions, the Applicants pray the Court to order the Respondent State to bear the costs of the Application.

73. The Respondent State did not make any submission on costs.

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74. Pursuant to Rule 32(2) of the Rules, "unless otherwise decided by the Court, each party shall bear its own costs, if any."

75. In the instant case, the Court does not find any reason for departing from its established practice and thus orders that each Party will bear its own costs.

## XI. OPERATIVE PART

76. For these reasons:

THE COURT

Unanimously:

*On jurisdiction*

i. *Declares* that it has jurisdiction.

*On admissibility*

ii. *Declares* that the Application is admissible.

*On merits*

iii. *Finds* that the Respondent State did not violate the right to equal protection of the law, protected under Article 3(2) of the Charter with regard to the Supreme Court of Appeal's emphasis on procedural compliance concerning the registration of voters;
iv. *Finds* that the Respondent State did not violate the Applicants' right to have their cause heard, protected under Article 7(1) of the Charter by the Supreme Court of Appeal's denial to grant the extension of time to file additional documents;
v. *Finds* that the Respondent State did not violate the Applicants' right to an effective remedy, protected under Article 7(1)(a) of the Charter, owing to the Supreme Court of Appeal's reconsidering of evidence adduced in the High Court;
vi. *Finds* that the Respondent State did not violate the Applicants' right to free participation in the government and public affairs in their country, protected under Article 13(1) of the Charter.

*On reparations*

vii. *D*ismisses the prayer for reparations.

*On costs*

viii. *Orders* that each Party will bear its own costs.

**Signed:**

Imani D. ABOUD, President

Modibo SACKO, Vice-President

Ben KIOKO, Judge

Rafaâ BEN ACHOUR, Judge

Suzanne MENGUE, Judge

Chafika BENSAOULA, Judge

Blaise TCHIKAYA, Judge

Stella I. ANUKAM, Judge

Dumisa B. NTSEBEZA, Judge

Dennis D. ADJEI, Judge

Robert ENO, Registrar,

Done at Arusha, this Fifth Day of September in the Year Two Thousand and Twenty-Three, in English, the English version being authoritative.