

KAMBEYO KA-KAUNDA & EMMIE CHENDA MKANDAWIRE

V.

REPUBLIC OF MALAWI

APPLICATION NO. 004/ 2022

JUDGMENT ON MERITS AND REPARATION

24 SEPTEMBER 2026

A DECISION OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

Arusha, 24 September 2026: The African Court on Human and Peoples' Rights (the Court) today delivered a judgment in the case of *Kambeyo Ka-Kaunda & Emmie Chenda Mkandawire v. Republic of Malawi*

Kambeyo Ka-Kaunda (the First Applicant), a former property consultant based in the city of Blantyre and Emmie Chenda Mkandawire (the Second Applicant), a retired primary school teacher and business associate of the First Applicant (together, the Applicants), are both nationals of Malawi. They allege the violation of their right to a fair trial and their right to property arising from a protracted land dispute before the domestic courts of the Respondent State.

Their Application is filed against the Republic of Malawi (the Respondent State), which became a party to the African Charter on Human and Peoples' Rights (the Charter) on 23 February 1990 and to the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (the Protocol) on 9 October 2008. On the latter date, the Respondent State also deposited the Declaration required under Article 34(6) of the Protocol, by which it accepted the jurisdiction of the Court to receive applications filed by individuals and non-governmental organisations with observer status before the African Commission on Human and Peoples' Rights.

The Applicants aver that, over a period of twelve years, they experienced violations of their human rights in Malawi stemming from a property dispute in Blantyre. The matter arose when the Applicants assisted an associate, Profera Mtambalika, in securing a land title for a piece of land described as "Title number Ndirande 26", registered in his name. In exchange, Mtambalika was expected to transfer to the Applicants a portion of 2.2 hectares of the said land. When Mtambalika breached the sale agreement and refused to transfer the said portion, the Applicants sought specific performance before the High Court of Malawi on 20 April 2010.

On 9 June 2014, the High Court of Malawi rendered judgment against the Applicants, dismissing their case in its entirety, notwithstanding that Mtambalika and his lawyer never appeared before the court during the hearings. The High Court held that there could be no specific performance where the contracts were declared invalid owing to the Applicants' misrepresentation. Dissatisfied, the Applicants appealed to the Malawi Supreme Court of Appeal (MSCA) on 22 July 2015. On 2 August 2016, the MSCA dismissed the appeal with costs, confirmed the judgment of the High Court and ordered the Applicants to pay the costs to Mtambalika. The Applicants contend that, despite multiple written requests to the Chief Justice, they never received a signed copy of the MSCA's judgment of 2 August 2016.

On 30 October 2016, the Applicants filed a Notice of Motion for Review of the MSCA's judgment. The MSCA dismissed the application for review on 6 April 2022. The Applicants submit that they never received the official copy of the review judgment despite several requests to the MSCA's Registry; eventually, the Registry provided them with illegible handwritten notes purporting to be a copy of the review judgment. They further complain that the review proceedings were marred by procedural irregularities, in that the Bench lacked the requisite quorum, the review hearing having been conducted by two instead of nine judges as is the practice. The Applicants submit that they filed the present Application before this Court after their application to restore the matter to the cause list of the MSCA remained unanswered for six months.

The Applicants allege the violation of Article 7 of the Charter on the right to a fair trial, read together with Articles 2 and 14 of the International Covenant on Civil and Political Rights (ICCPR) and Article 10 of the Universal Declaration of Human Rights, in respect of the right to due process and legal certainty, the right to a fair and public hearing, the right to defence, and the right to be tried within a reasonable time by an impartial court. They further allege the violation of the right to property as guaranteed under Article 14 of the Charter. They Applicants filed a request for legal aid which was granted by the Court.

On 27 January 2026, the Applicants filed a request for an expedited procedure, together with medical reports in support, and a request for a judgment in default.

The Court noted that the Respondent State did not file any pleadings in the Application. It recalled that Rule 63(1) of the Rules sets out three conditions for the rendering of a judgment in default, namely: the failure of a party to appear before the Court or to defend its case within the prescribed time; the notification to the defaulting party of the Application and all other documents pertinent to the proceedings; and a request made by the other party or on the use of the discretion of the Court. The Court found that the Application and all supporting documents were duly served on the Respondent State, which acknowledged receipt by a letter dated 21 August 2024, and that the Respondent State failed to file its Response despite repeated reminders; that the Respondent State was duly notified and granted extensions of time; and that the Applicants had, on several occasions, requested a judgment in default. Having found that all the requirements under Rule 63 of the Rules were met, and in view of the First Applicant's severe illness, the Court decided to expedite the matter and to render the present judgment in default.

On jurisdiction, and pursuant to Article 3 of the Protocol and Rule 49(1) of the Rules, the Court conducted a preliminary examination of its jurisdiction. Although the Respondent State did not file any Response, the Court satisfied itself that it had material jurisdiction, in so far as the Applicants alleged violations of rights protected under Articles 7 and 14 of the Charter and Article 2 and 14 of the ICCPR, instruments to which the Respondent State is a party. It also found that it had personal jurisdiction, as the Respondent State had ratified the Protocol and deposited the Declaration under Article 34(6); temporal jurisdiction, as the proceedings that led to the alleged violations took place after 9 October 2008, when the Respondent State became a party to the Protocol; and territorial jurisdiction, as the alleged violations occurred within the territory of the Respondent State. The Court accordingly held that it had jurisdiction to hear the Application.

On admissibility, the Court considered the requirements of Article 56 of the Charter as restated in Rule 50(2) of the Rules. It found that the Applicants had indicated their identities; that the Application sought to protect rights guaranteed under the Charter and it was compatible with the Constitutive Act of the African Union; that it did not contain disparaging or insulting language; that it was not based exclusively on news disseminated through the mass media, being based on court records; and that it did not concern a case already settled by the Parties. As regards the exhaustion of local remedies, the Court observed that the MSCA, the highest court of the Respondent State, had dismissed the Applicants' appeal on 2 August 2016, and that this requirement was therefore met. On the requirement that an application be filed within a

reasonable time, the Court recalled that a review procedure is an extraordinary remedy which an applicant need not exhaust, but that where an applicant chooses to pursue it, the time spent in doing so is taken into account. Computing time from the MSCA's review judgment of 6 April 2022 to the filing of the Application, a period of six months and eleven days had elapsed, which the Court considered reasonable. The Court therefore declared the Application admissible.

On the merits, the Court examined the alleged violations of the right to a fair trial and the right to property. With respect to the right to have one's cause heard, the Applicants alleged a violation of their right to a fair and public hearing arising from the unavailability of legible decisions of the domestic courts, and a violation of due process arising from the composition and competency of the MSCA's review bench. The Court recalled its jurisprudence that the right to acquire knowledge of the record of proceedings is an important aspect of the right to a fair trial, related to the right to defence and to the principle of equality of arms, and that domestic courts bear the obligation to provide litigants with the records required to pursue an appeal. The Court observed that the Applicants had diligently made several attempts to obtain certified copies of the decisions of the domestic courts, but that the copies furnished were unsigned, illegible or handwritten. Once the Applicants had adduced evidence of due diligence in seeking the record, the burden shifted to the Respondent State, which filed no Response and did not act diligently to address the Applicants' complaints. The Court accordingly found that the Respondent State violated the Applicants' right to have their cause heard, protected under Article 7(1) of the Charter as read jointly with Article 14(1) of the International Covenant on Civil and Political Rights (the ICCPR), in respect of the rights to a fair and public hearing and the availability of court decisions.

Regarding due process and the composition of the MSCA's Review Bench, the Court considered the Applicants' allegation that the review hearing was conducted by two judges, contrary to the requirement of the Constitution of Malawi that the Supreme Court of Appeal, when determining any matter other than an interlocutory matter, be comprised of an uneven number of Justices of Appeal, not being less than three, and to the requirement of the Chief Justice's Practice Direction No. 1 of 2018 that the Review Bench be composed of not less than seven judges. The Court found that the quorum of two judges did not comply with the Constitution or the Practice Directions of the MSCA, and that a Bench whose composition was contrary to the said Practice Directions was not lawfully mandated and not competent to hear the review. The Court accordingly found that the Respondent State violated the Applicants' right to a fair trial with respect to due process, as guaranteed by Article 7(1)(a) of the Charter, in relation to the composition and competency of the MSCA's Bench that heard the review application.

As to the right to defence, the Applicants submitted that the illegibility of the MSCA's review judgment prevented them from ascertaining the grounds for dismissal, and that procedural irregularities at the review hearing, together with the High Court's handling of the affidavits, deprived them of the opportunity to defend their interests effectively. Having already dealt with the question of illegibility under the right to a fair and public hearing, the Court focused on the Applicants' claim regarding the opportunity to be heard during the review proceedings. It observed that, under Order III, Rules 20 and 21 of the MSCA Rules, counsel who is unable to attend a hearing is required to file a written declaration to that effect, together with copies of the arguments he or she wishes to submit and service upon the other party. Noting that there was nothing on record to indicate that the Applicants were denied an opportunity or hindered in presenting their case, and that the affidavits of both the Applicants and the Respondent State were accepted by the High Court, the Court found that the Parties had been treated equally in the domestic proceedings and that the Applicants had not been placed at a disadvantage. It therefore found that the Respondent State did not violate the right to defence under Article 7(1) (c) of the Charter.

In respect of the right to be tried within a reasonable time, the Applicants alleged excessive and unjustified delays of nearly twelve years, and relied on the three-factor test of, the complexity of the case, the conduct of the Applicants, and the conduct of the judicial authorities. The Court recalled that reasonableness must be assessed on a case-by-case basis, considering the complexity of the case, the conduct of the parties and that of the judicial authorities. It observed that the Applicants had not filed the complete record of proceedings before the High Court or the MSCA, and that, in the absence of such primary evidence, it was unable to verify the precise causes of the delay or to attribute it to the Respondent State.

The Court established that the proceedings at the High Court had lasted four years, one month and twenty days; the appeal before the MSCA one year and eleven days; and the review stage, from the filing of the application for review to judgment, two years, nine months and twenty-three days, amounting to a cumulative period of nine years, five months and twenty-nine days. While this period appeared long for a straightforward land dispute, the Court, in the absence of evidence that either Party had deliberately hampered the proceedings and in the absence of the record of proceedings, found that the alleged delays were unsubstantiated. It therefore found that the Respondent State did not violate the right to be tried within a reasonable time under Article 7(1)(d) of the Charter.

Concerning the right to property, the Applicants submitted that, by failing to safeguard their fair trial rights and by holding that they were not the rightful owners of the land, the Respondent State

violated their right to property under Article 14 of the Charter. The Court recalled that the right to property encompasses the rights of use, enjoyment and disposal, but that these protections attach to an established legal entitlement. It noted that the Applicants had not established that they held a valid and legally recognised proprietary right over the land in question, the ownership of which had been contested before the domestic courts, which held that the purported agreements were invalid, having been procured through misrepresentation.

The Court further noted that the domestic judicial system had provided a forum in which the Applicants' claim to property was heard and determined, and that the Applicants had been afforded an opportunity to prove their claim before the competent domestic courts. The Court accordingly dismissed the allegation and found that the Respondent State did not violate the Applicants' right to property under Article 14 of the Charter.

Turning to reparations, and pursuant to Article 27 of the Protocol, the Court reiterated that a State found to be responsible for an internationally wrongful act is under an obligation to make full reparation for the consequences of that act, that there must be a causal link between the violation established and the alleged harm, and that the burden of proof rests on the Applicant. It reaffirmed that moral prejudice is presumed once a violation has been established. The Court recalled that it had found violations of the right to a fair trial with respect to due process, under Article 7(1)(a) of the Charter as read together with Article 2(3)(b) of the ICCPR, and with respect to the right to a fair and public hearing under Article 7(1) of the Charter.

Under pecuniary reparations, the Court noted that the Applicants' prayers relating to the right to property and to legal expenses incurred in the domestic proceedings concerned matters for which no violation had been found, and it accordingly dismissed those prayers. As regards moral prejudice, the Court found that the established violations had caused the Applicants substantial moral prejudice and, in the exercise of its discretion, awarded each of them the sum of Five Hundred Malawi Kwacha (MK 500) as compensation for the moral prejudice suffered. As to the moral prejudice alleged to have been suffered by the Applicants' families as indirect victims, the Court recalled that compensation is granted only upon proof of marital status or filiation, including through submission of copies of marriage or birth certificates. Since no such evidence had been provided, the Court accordingly dismissed the claim as unsubstantiated.

Under non-pecuniary reparations, the Court considered it appropriate to order the Respondent State to take the necessary measures to furnish the Applicants, immediately, with official and accessible copies of the judgment of the MSCA of 2 August 2016 and of the formal decision on

the review of 6 April 2022. It further ordered that these decisions be published on the websites of the Judiciary and the Ministry of Justice within three months from the date of notification of this Court's judgment, and that the texts remain accessible for at least one year after the date of such publication.

As measures of non-repetition, the Applicants had requested reforms to ensure that cases are tried within a reasonable time, that court records and judgments are accessible, including electronically, and that the legal framework, particularly the Practice Directions, is clear and certain. The Court ordered the Respondent State to take the necessary measures to that end, to guarantee legal certainty and the accessibility of judicial records.

The Court further ordered the Respondent State to submit to it a report, within six months of notification of this judgment, on the status of implementation of the measures ordered, and provided that, should the judgment not be fully complied with, the Court would hold an implementation hearing.

On costs, the Court ordered each Party to bear its own costs.

The judgment was delivered in default against the Respondent State, the Court having found that the requirements of Rule 63 of the Rules were satisfied.

Pursuant to Article 28(7) of the Protocol and Rule 70 (2) of the Rules, Honourable Judge Rafaâ Ben Achour issued a Partial Dissenting Opinion on the finding regarding Article 7(1)(d) of the Charter on the right to be tried within a reasonable time.

Further Information

Further information about this case, including the full text of the decision of the African Court, may be found on the website at: <https://ajudata.african-court.org/details-case/0042022>

For any other queries, please contact the Registry by email at: Registrar@african-court.org

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rights instrument ratified by the States concerned. Additional information can be found on the Courts website at www.african-court.org.