AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي		UNIÃO AFRICANA
UNIÓN AFRICANA		UMOJA WA AFRIKA
AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES		

THE MATTER OF

KAMBEYO KA-KAUNDA & ANOTHER

V.

REPUBLIC OF MALAWI

APPLICATION NO. 004/2022

ORDER

(REOPENING OF PLEADINGS)

1 JUNE 2026

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

The Court composed of: Blaise TCHIKAYA, President; Chafika BENSAOULA, Vice-President; Rafaâ BEN ACHOUR, Suzanne MENGUE, Stella I. ANUKAM, Imani D. ABOUD, Dumisa B. NTSEBEZA, Modibo SACKO, Dennis D. ADJEI, Duncan GASWAGA – Judges, and Grace W. KAKAI, Deputy 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, Judge of the Court and a national of Malawi, did not hear the Application.

In the matter of

Kambeyo KA-KAWUNDA and & ANOTHER

Represented by:
Donald Omondi DEYA, Executive Director, Pan African Lawyers Union (PALU).

Versus

UNITED REPUBLIC OF MALAWI
Unrepresented

After deliberation,

Issues the present Order:

I. THE PARTIES

1. The First Applicant is Kambeyo Ka-Kaunda, a property consultant "operating in the name and style of "Propertywise" in the city of Blantyre", while the Second Applicant Emmie Chenda Mkandawire is his business associate and a retired primary school teacher. The First and Second Applicants (hereinafter jointly referred to as "the Applicants") are nationals of Malawi. In the main Application, they allege violation of the right to a fair trial and the right to property.

2. The Application is filed against the Republic of Malawi (hereinafter referred to as "Respondent State"). The Respondent State became party to the African Charter on Human and Peoples' Rights (hereinafter referred to as "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 (hereinafter referred to as "the Protocol") on 9 October 2008. Also on 9 October 2008, the Respondent State 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 Organizations with Observer Status under the Commission on Human and Peoples' Rights.

II. SUBJECT MATTER OF THE MAIN APPLICATION

3. The Applicants avers that over a 12-year period, they experienced judicial misconduct and human rights violations in Malawi, stemming from a property dispute in Blantyre.[1] The matter arose when the Applicants assisted an associate, Profera Mtambalika, in "securing land titles for Ndirance 26" in exchange for parts of the property".[2] When Mtambalika

[1] The Applicants do not state when the property dispute began.
[2] The dates and timelines are not indicated in the pleadings filed before the Court.

breached the sale agreements,[3] the Applicants sought specific performance in the High Court in 2010.

4. Despite the Mtambalika's repeated failures to appear in court, the High Court rendered its judgment against the Applicants on 9 June 2014. The Applicants appealed to the Supreme Court of Malawi of Appeal (SCA), but they allege that the "proceedings were marred by procedural shifts". The matter was eventually concluded when the SCA rendered its judgment on 2 August 2016, in favour of Mtambalika and it was received by the Applicants on 24 March 2017, allegedly without, an official seal, date stamp, or signature.

5. The Applicants subsequently filed a request for review of the above-mentioned judgment of the SCA on 16 January 2018 and were granted leave to do so. The Applicants contend that the review hearings in 2021 and 2022 were presided over by only two justices instead of nine judges as per the usual practice of the SCA. The application for review was eventually dismissed on 6 April 2022.[4] The Applicants aver that the lack of quorum of the bench denied them a fair hearing. The Applicants also allege that they were unable to obtain an official written decision after the case was dismissed, save for illegible handwritten notes from the Registry of the SCA.

6. The Applicants then filed the present Application before this Court after their application to restore the matter to the cause list of the SCA remained unanswered for six months.

[3] Three sale agreements are cited, i.e., a sale agreement with the Pofera Mtambalika and the First Applicant dated 16 January 2008; a second sale agreement with the Second Applicant and Mtambalika also dated 16 January 2008 and a third sale agreement with the Second Applicant, Pofera Mtambalika and two others dated 16 January 2008.
[4] Illegible hand written notes of the Supreme Court.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

7. On 17 October 2022, the Applicants filed the Application before the Court together with a request for legal aid which the Registry acknowledged receipt of the following day.

8. On 2 December 2022, the Court, considered the Applicants' request for legal aid and decided to grant the request in accordance with Rule 31(2) of the Rules of the Court and assigned the Pan African Lawyers Union (PALU) to represent them.

9. On 21 March 2023, PALU submitted its first legal assistance progress report indicating that the Applicants raised concerns about the First Applicant's health and the need for a speedy consideration of the matter.

10. On 30 January 2024, the Applicants through a letter to the Court, formally expressed dissatisfaction with PALU's lack of communication since 18 July 2023 and requested for alternative legal representation.

11. On 5, 25 and 26 March 2024 respectively, the Registry held case management meetings with the Applicants and PALU during which the latter submitted a briefing report on its provision of legal representation to the Applicants.

12. On 19 April 2024, PALU filed an Amended Application, which the Registry acknowledged on 23 April 2024.

13. On 3 May 2024, the Registry transmitted the Amended Application to the Respondent State, requesting the latter to file the list of its representatives and its Response by 2 June 2024 and 1 August 2024 respectively. At the expiry of these deadlines, the Respondent State did not respond.

14. On 19 August 2024, and 21 August 2024, the Registry informed the Parties that the Court had decided to grant an extension of time for the Respondent

State to respond, and would proceed to give a judgment in default if no response was received by 5 October 2024.

15. Between October 2024 and November 2024, PALU submitted four quarterly legal assistance reports dated 23 October 2024, 28 January 2025, 25 April 2025, and 24 November 2025 respectively, informing the Court of its progress in representing the Applicants.

16. On 27 January 2026, the First Applicant formally filled a request for expedited procedure together with medical reports to substantiate the request. The Applicants further requested for a judgment in default to be rendered at the following session of the Court.

17. Pleadings were closed on 20 March 2026 and the Parties were duly notified.

IV. ON THE REOPENING OF PLEADINGS

18. In their request of 27 January 2026, the Applicants implored the Court to examine the main Application under an expedited procedure at its next session and to render a judgment in default.

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19. Rule 46(3) of the Rules provides that “the Court has the discretion to determine whether or not to reopen pleadings”. Further, Rule 90 of the Rules stipulates that “[n]othing in these Rules shall limit or otherwise affect the inherent power of the Court to adopt such procedure or decisions as may be necessary to meet the ends of justice.”

20. The Court recalls that in instances where procedural steps are deemed necessary, pleadings may be reopened in the interest of justice.[5]

21. The Court considers that in the present Application, it is in the interest of justice to allow the Respondent State to file its Response to the Applicants' request for an expedited procedure and a judgment in default.

22. Consequently, by virtue of its discretionary power and for the proper administration of justice, the Court decides to reopen pleadings and to transmit the Applicants' request to the Respondent State giving the latter fifteen days to file its Response thereto.

V. OPERATIVE PART

23. For these reasons:

THE COURT,

Unanimously,

i. *Decides* that the pleadings in *Application No. 004 2022 – Kambeyo Ka-Kaunda and Another v. Republic of Malawi* are reopened; and

[5] *Ado Shaibu and 5 Others v. United Republic of Tanzania,* ACtHPR, Application No. 046/2020, Order of 5 August 2025 (reopening of pleadings), §§ 17 and 19(iii); *Moses Amos Mwakasindile v. United Republic of Tanzania,* ACtHPR, Application No 045/2019, Order of 2 June 2025 (reopening of pleadings), §§ 6 and 12(i-iii).

ii. *Orders* the Respondent State to file its Response to the Applicants' request for an expedited procedure and a judgment in default, within fifteen days from the date of receipt of this Order.

Signed:

Blaise TCHIKAYA, President;

and Grace W. KAKAI, Deputy-Registrar.

Done at Arusha, this First Day of the Month of June in the Year Two Thousand and Twenty-Six in English and French, the English text being authoritative.

