



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

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CASE SUMMARY

APPLICATION NO. 022/2017

HAROLD MBALANDA MUNTHALI V. REPUBLIC OF MALAWI

PARTIES

Mr Harold Mbalanda Munthali (hereinafter referred to as "the Applicant") is a Malawian national. He brings this claim on his own behalf and on behalf of the estate of his deceased father Mr Mbalanda Mweziwapala Munthali (hereinafter referred to as "the deceased") in his capacity as the administrator for the alleged unlawful confiscation of the deceased's properties.

The Application is filed against the Republic of Malawi (hereinafter referred to as "the Respondent State"), which 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 on 9 October 2008. It also deposited, on 9 October 2008, the Declaration under Article 34(6) of the Protocol through which it accepts the jurisdiction of the Court to receive cases from individuals and Non-Governmental Organisations (NGOs).

SUBJECT OF THE APPLICATION

The Application was filed on 28 July 2017 and concerns the alleged unlawful confiscation of the deceased's properties and failure to provide a remedy for the confiscation.

Facts of the matter

The Applicant alleges that, on 26 January 1976, the Government of the Respondent State confiscated all personal and real property of the deceased without compensation under the Forfeiture Act.

After he had filed a complaint against the Government, the deceased was referred on 6 August 2002, to the National Compensation Tribunal (hereinafter referred to as "the Tribunal"). The Tribunal, on 21 and 24 June 2003 located some of the properties and informed authorities of the Respondent State of its intention to hand over the said properties to the deceased. However, the Tribunal could not issue an Order and was unable to complete the matter before wrapping up its activities in 2005.

The deceased lodged an application before the High Court, which on 21 October 2005 ruled in his favour. However, on 29 January 2008, when assessing the damages, the Court issued an Order

dismissing the claim for compensation on the grounds that it was time barred under the Limitation Act and fell within the exclusive purview of the Tribunal.

The deceased did not appeal to the Supreme Court of Appeal of Malawi and did not receive any compensation until he died on 2 November 2010.

On 7 August 2012 and severally thereafter, the Applicant wrote to the Attorney General of the Respondent State over the claim of the deceased's estate, seeking an effective remedy. On 23 May 2016, the Attorney General responded that the Government could not compensate the deceased's estate outside the framework of the Tribunal.

Alleged violations

The Applicant alleges the violation of the right to equal protection before the law, the right to have one's cause heard protected under Articles 3(1), and 7(1) of the Charter; and Articles 14(1) and 16 of the International Covenant on Civil and Political Rights (hereinafter "the ICCPR") and the right to property guaranteed under Article 14 of the Charter.

PARTIES' PRAYERS

The Applicant prays the Court to make the following orders:

- i. Declare that the Respondent State's conduct in effecting a forfeiture of the deceased's property was unlawful and contrary to international law.
- ii. Declare that by failing to resolve the deceased's claim, the Respondent State violated the Applicant's right to equal protection before the law; the right to have the deceased's cause heard and the right to property.
- iii. Direct that the Applicant be paid the sum of US\$ 1,104,539.87 representing the loss suffered by the deceased as a result of the forfeiture of his property.
- iv. Direct the Respondent State to compensate the Applicant and his family for the hardship suffered as a result of the conduct of the Respondent State.
- v. Make an order for costs.

The Respondent State prays the Court to hold that the Application is inadmissible and to order that the Applicant should bear the costs.