

## JUDGMENT SUMMARY

### HAROLD MBALANDA MUNTHALI V. REPUBLIC OF MALAWI

APPLICATION No. 022/2017

#### JUDGMENT ON MERITS AND REPARATIONS

23 JUNE 2022

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

**Arusha, 23 June 2022:** Today, the African Court on Human and Peoples' Rights (the African Court or the Court) delivered its judgment in the case of *Harold Mbalanda Munthali v. Republic of Malawi*.

Harold Mbalanda Munthali (the Applicant) is a national of the Republic of Malawi (the Respondent State). The Applicant filed the case on his own behalf and on behalf of the estate of Mr Mbalanda Mweziwapala Munthali (the deceased) in his capacity as the administrator thereof, for the alleged unlawful confiscation of the deceased's properties.

The Applicant alleges that under the Forfeiture Act adopted in the pre-1994 dispensation, the Respondent State confiscated personal and real properties of the deceased in 1976. The Applicant also alleges that in 1993 the deceased filed a complaint with the High Court which in 1995 transferred his case to the National Compensation Tribunal established under the new Constitution adopted by the Respondent State in 1994 to deal with cases of confiscation. He further avers that the Tribunal located some of the properties and requested the authorities to have them returned to the deceased but the authorities did not cooperate.

In the Application before the African Court filed on 28 July 2017, the Applicant alleged that the confiscation of the deceased's property in 1976 under the Forfeiture Act implemented by the Respondent State, and the failure to return the properties and award compensation for the loss suffered constitutes a violation of the rights to property, equal protection before the law, and to have one's cause heard protected under Articles 14, 3(2) and 7(1) of the African Charter on Human and Peoples' Rights

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(the Charter), respectively. The Applicant prayed the Court to find that the violations are established and grant reparation for the confiscated properties as well as for the moral prejudice suffered by him and other heirs of the deceased.

The Respondent State did not object to the jurisdiction of the Court. However, having examined its jurisdiction, the Court found that it had personal jurisdiction given that the Respondent State is a party to the Protocol to the Charter on the Establishment of an African Court on Human and Peoples' Rights (the Protocol) and filed the Declaration under Article 34(6) thereof, allowing individuals and Non-Governmental Organisations to file cases against it. The Court also found that it had material jurisdiction given that the rights alleged to have been violated are protected under the Charter to which the Respondent State is a party. Regarding its temporal jurisdiction, the Court found that because the instantaneous act of confiscation of the properties occurred in 1976, which is before the Respondent State became a party to the Charter, to the Protocol and filed the Declaration, it does not have jurisdiction in respect of the said act. However, the Court found that it has jurisdiction to consider violations which derived from the instantaneous act of confiscation as they continued as at the time when the Respondent State filed the Declaration. The Court held, that, while the confiscation was instantaneous, the alleged failure to remedy the said confiscation had never been addressed. Finally, the Court found that it had territorial jurisdiction as the alleged violations occurred within the territory of the Respondent State which is a party to the Charter and the Protocol.

The Respondent State objected to the admissibility of the case on the grounds of non-exhaustion of local remedies and the Application not being filed within a reasonable time. Regarding the first ground, the Court found that neither the Constitutional Court nor the Supreme Court of Appeal were effective remedies in the situation of the deceased and the Applicant because, under the Constitution, the National Compensation Tribunal established by the Respondent State to deal with cases of confiscation under the Forfeiture Act had exclusive jurisdiction over the issues in dispute. The Court also based its finding on the fact that the High Court dismissed the deceased's claim for compensation on the ground that the matter was statute barred and it lacked jurisdiction as the National Compensation Tribunal had exclusive jurisdiction over the issues in dispute. In the Court's view, the Constitutional Court and

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Supreme Court could not have offered effective remedies when judicial authorities of the Respondent State confirmed the exclusive jurisdiction of the Tribunal whose ten-year tenure ended in 2005. Regarding the requirement to file the Application within a reasonable time, the Court found that it did not apply given that the alleged violations were continuing and the Application could have been filed at any time, so long as the violations alleged remained unresolved. Having found that other admissibility conditions were met, the Court declared the Application admissible.

On the merits of the case, the Court first restated its finding that it did not have jurisdiction over the instantaneous act of confiscation and would therefore not examine the alleged violation of the right to property. The Court however held that it would examine the violation of the right to a remedy given that the actual issue raised by the Applicant is the failure of the Respondent State to return the deceased's properties and pay compensation for the related loss. The Court therefore examined the alleged violations of the rights to equal protection before the law, to have one's cause heard and to a remedy.

On the right to equal protection before the law, the Court found that the violation was established given that the Respondent State did not allow the Tribunal to address the claims of the deceased while many other Malawians in the same situation had their petitions heard and had obtained compensation under the operations of the Tribunal. On the right to have one's cause heard, the Court found that the violation was established since the Respondent State failed to extend the tenure of the Tribunal and it had ousted the jurisdiction of all courts and granted the Tribunal exclusive jurisdiction, which left the deceased and later on the Applicant in a legal limbo as to how to vindicate their rights. Regarding the right to a remedy, the Court found that the Respondent State violated the said right based on a joint reading of Articles 1 of the Charter and 26 of the Protocol due to the fact that there was no remedy available for the deceased and then to the Applicant in the domestic system to address the Respondent State's failure to return the properties and award compensation.

Having found these violations, the Court considered the prayers of the Applicant for reparation especially in respect of the loss incurred as a result of the confiscation of the deceased's properties. The Applicant prayed the Court to award damages in the amount of One Million One Hundred Four Thousand Five Hundred Thirty-Nine Dollars



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and Eighty-Seven Cents (US\$ 1 104 539.87). According to the Applicant, this amount was an assessment based on the appreciation of the initial loss as at the time of filing the Application; the initial evaluation as the time of seizure being Ten Million Two Hundred Eighty-Five Thousand Two Hundred Fifty-Four Malawian Kwacha and Ninety-Seven Cents (MWK 10,285,254.97). The Court found that given the lack of accurate evaluation due to the fact that time has elapsed and most of the movable properties could not be traced by the Respondent State, the most accurate and fair evaluation should be based on the rate of inflation. The Court also took into account that fact that, as per national law and the decision of the Supreme Court, the parties agreed that the National Compensation Tribunal would not have granted awards higher than Ten Million Two Hundred Eighty-Five Thousand Two Hundred Fifty-Four Malawian Kwacha and Ninety-Seven Cent (MWK 10,285,254.97). The Court, however, held that it is not bound by this ceiling which is not necessarily in line with its statutory norms on reparations provided under Article 27(1) of the Protocol. Taking into account various parameters relating to the situation of the deceased and his family as at the time of confiscation and in the years that followed, the Court awarded material damages in the amount of Two Hundred Million Malawian Kwacha (MKW 200,000,000).

Regarding moral prejudice, the Court took into account the fact that the deceased who was a wealthy business man and the breadwinner of his family died destitute in 2010 shortly after his wife had died. Considering the hardship that his family went through, and having established the family relationship, the Court awarded each of the nine (9) heirs of the deceased, including the Applicant, the amount of One Million Malawi Kwacha (MKW 1,000,000).

Having noted that Applicant does not specify the amounts for the costs claimed or provide justification or evidence for the same, the Court dismissed his prayer for costs, and consequently ruled that each party bears its own costs.

### **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://www.african-court.org/cpmt/details-case/0222017>



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For any other queries, please contact the Registrar by email to [registrar@african-court.org](mailto:registrar@african-court.org) .

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