


<b>AFRICAN UNION</b>		<b>UNION AFRICAINE</b>
<b>الاتحاد الأفريقي</b>		<b>UNIÃO AFRICANA</b>
<b>AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES</b>		

**PATROKLOS TSAPERAS**

**V.**

**THE REPUBLIC OF MALAWI  
APPLICATION NO. 007/2022**

**CASE SUMMARY**

## **I. THE PARTIES**

1. Mr. Patroklos Tsaperas (hereinafter referred to as the “Applicant”) is a national of the Republic of South Africa and a shareholder in the Malawi Mobile Limited (hereinafter referred to as “MML”). He alleges violation of his rights in relation to the execution of alleged agreement and especially the interference of that process by the Attorney-General of Malawi.
2. The Application is filed against the Republic of Malawi (hereinafter referred to as “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. Furthermore, on 9 October 2008, the Respondent State deposited the Declaration prescribed 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.

## **II. SUBJECT OF THE APPLICATION**

### **A. Facts of the matter**

3. It emerges from the record, that on 19 April 2002, the Malawi Mobile Limited, to which the Applicant is a shareholder and the Malawian Regulatory Authority (MACRA) entered into an agreement for the former to provide mobile services for fifteen (15) years in the Respondent State upon payment of annual license fees in the amount of US Dollars one hundred thousand (\$100,000).
4. Under this agreement, MML was required to roll out the services within twelve (12) months and the Applicant claims that MML subsequently paid an aggregate of United States Dollars Four Hundred Thousand (\$400,000) as license fees.
5. By January 2005, MML had not rolled out the services but had apparently engaged third parties in order for them to facilitate the roll out. On 27 January 2005, MML sought an extension of time up to 31 October 2005 so as to effect the roll out.

6. On 9 February 2005, MACRA notified MML of their revocation of the license and further demanded from MML, license fees and penalties. MACRA also instructed MML to roll out the mobile services within ninety (90) days and that should they fail to roll out the services, pay the license fees and penalties then the license would remain revoked.
7. On 15 March 2005, MACRA informed MML that its request for extension of time to roll out the mobile services would be considered by the former's board of directors and also requested a progress report from MML.
8. On 21 March 2005, MML transmitted another request for extension to MACRA for the roll out. On 24 March 2005, the Attorney General of Malawi suspended the board of directors of MACRA. The Applicant also claims that he was arrested along with the Chairman of MACRA and another, Mr Kapeta SC but that the criminal proceedings against them was subsequently discontinued. Furthermore that Mr Kapeta served a notice of intention to sue the Attorney General for malicious prosecution and this claim was settled amicably.
9. The Applicant alleges that there was wide coverage of his arrest and therefore it injured his reputation "in the eyes of the right thinking members of the global business community, his business associates, friends, families and neighbours."
10. The Applicant claims that on 29 March 2005, an agreement was subsequently reached between MML and MACRA, which granted MML the extension of time for the roll out subject to the following conditions:
  - a) That MML would make payments of the annual fees for 2004-2006 to the tune of one hundred thousand (\$100,000) per year;
  - b) The roll out period would be extended up to 31 October 2005;
  - c) The licence would be revoked after 31 October 2005 if MML does not fulfil its obligation;
  - d) This agreement superseded any previous agreements.
11. The Applicant avers that following the above-mentioned agreement, MML made two payments for the license fees to the tune of one hundred thousand dollars (\$100,000) each on 19 and 20 April 2005. However, that through "the inducement of Government", MACRA "wrongly and maliciously" revoked the agreement of 29 March 2005.

12. From the record, it is alleged that the suspension of the board of directors of MACRA had the effect of suspending the resolutions they had undertaken including the alleged extension of the roll out period on 29 March 2005.
13. On 12 May 2005, MML filed a suit against the Respondent State in the commercial division of the High Court where it alleged breach of contract and prayed for general and special damages. On 20 April 2012, the High Court found in favour of MML and it was awarded the amount of United States Dollars sixty-six million, eight-hundred and fifty thousand as damages (\$66,850,000) plus costs. The Respondent State appealed to the Supreme Court of Malawi and MML also filed a cross-appeal as it was not satisfied with the award of damages. On 10 March 2015, judgment was delivered in their favour as the Supreme Court of Appeal set aside the decision of the High court and dismissed the MML's cross appeal.
14. On 15 March 2015, MML commenced a reference against the Respondent State at the COMESA court of justice and the Respondent State raised a preliminary objection as regards the jurisdiction of the court while MML requested for the recusal of the judge who was a national of Malawi. On 20 November 2015, the first instance court of COMESA dismissed the preliminary objection to its jurisdiction.
15. The Respondent State appealed to the appellate division and on 27 April 2017, the appellate division of COMESA court allowed the appeal by finding that it did not have jurisdiction to decide the matter and thus dismissed the reference filed by MML. Being dissatisfied with the decision of the appellate division, MML filed for review. This review was dismissed on 17 September 2021 by the appellate division of the COMESA court.

## **B. ALLEGED VIOLATIONS**

16. The Applicants allege the following violations:
  - i. Right to property under Articles 14 of the Charter and Article 17 of the Universal Declaration of Human Rights;

- ii. Freedom from discrimination under Article 2 of the Charter and Article 26 of the International Covenant on Civil and Political Rights (ICCPR);
- iii. Right to equal protection of the law under Article 3 of the Charter; and Article 14 of the ICCPR;
- iv. Right to be recognised as a person under Article 16 of ICCPR;
- v. Right to have one's cause heard under Article 7(1) of the Charter

### **III. PRAYERS OF THE APPLICANT**

17. The Applicant prays the Court for :

- a) Reparations;
- b) Compensation for loss of income/revenue and pecuniary/material damage in the sum of \$133,700,000 as assessed by the uncontroverted evidence of expert...;
- c) The sum of \$400,000 being reimbursement of the license fees paid by MML to MACRA;
- d) Compensation for non-pecuniary/moral damage (to be assessed by the African Court);
- e) Satisfaction (publication of the Court's judgment);
- f) Rehabilitation (withdrawal of the defamatory and disparaging material concerning the 1<sup>st</sup> Applicant on the internet);
- g) US\$ 1,200,000 being reimbursement of the inevitable expenditure and costs (Lawyer's fees in domestic courts and in the African Court, transport and sojourn expenses);
- h) A Declaration that the acts and/or omissions of the Respondent complained herein amount to a violation of the provisions of the African Charter.