


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

APPLICATION NO. 008/2023

FLORA MUSTAFA APPLICANT

V.

REPUBLIC OF MALAWI RESPONDENT STATE

CASE SUMMARY

14 SEPTEMBER 2023

I. THE PARTIES

1. Mrs. Flora Mustafa (hereinafter referred to as “the Applicant”) is a national of the Malawi and one of the wives of the late Seleman Mustafa. She alleges the violation of her fair trial rights during the proceedings at the national courts.
2. The Respondent State became a 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 an African Court on Human and Peoples’ Rights on 9 October 2008. It deposited the Declaration prescribed under Article 34(6) of the Protocol on 9 October 2008.

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. From the record, the Applicant who is one of three widows of Mr. Seleman Mustafa (deceased) was involved in a dispute on the inheritance of the property of the deceased. The above-mentioned dispute was filed by Emily Mustafa, the deceased second wife, before the High Court of Malawi, who claimed that the deceased died intestate and therefore, having contributed significantly to the acquisition of business investments in particularly, the two properties (SAL 176 & SAL 177); it entitled her to be the sole heir of those properties. Ms Emily Mustafa further claimed that the other two wives were given their own assets before the demise of the deceased.

4. In contrast, the Applicant's account was that the deceased died testate and that his valid will should be given effect. She argued that the assets that were transferred to the two families belonged to the deceased's son and those do not count as part of the deceased's inheritance. The High Court held that the deceased died intestate and it applied Section 17 of the Deceased Estates (Wills Inheritance and Protection) Act, 2011 of Malawi in granting all the wives and children equal share of the inheritance.
5. On 6 June 2021, Ms Emily Mustafa appealed to the Supreme Court of Appeal. The Supreme Court of Appeal of Malawi reversed the decision of the High Court decision and held that the property in SAL 176 & 177 belonged to Ms Emily Mustafa. The Applicant being dissatisfied with the decision of the Supreme Court of Appeal of Malawi filed an application for review of the Supreme Court of Appeal's decision, which on 14 July 2021 dismissed the Applicant's application indicating that it would provide the reasons for the dismissal at a later date. The Applicant claims that the Supreme Court has not provided any reasons for its judgment to date.

B. Alleged Violations

6. The Applicant alleges the following, that:
 - i. Her right to a fair trial protected under Article 7(1) and 14 of the Charter¹ was violated, because the Judges of the Supreme Court of Appeal made up some of the evidence by stating facts not stated by witnesses.

¹ as read together with Part A, Article 2 (h) of Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa and Article 8 of the Universal Declaration on Human Rights

- ii. She was not given adequate opportunity to challenge the evidence of Ms Emily Mustafa in violation of Article 8 of the Universal Declaration on Human Rights; Article 7 (1) of the Charter as read together with Part A, Article 2 (e) of Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (“Fair Trial Guidelines”); and
- iii. She was not provided with the reasons for the decision on the review by the Supreme Court of Appeal in violation of Article 8 of the UDHR; Article 7 (1) of the Charter, as read together with Part A, Article 2 (I) of the Fair Trial Guidelines.

C. APPLICANT’S PRAYERS

7. The Applicant prays the Court for the following:

- i. A declaration or finding that her right to a fair trial or hearing guaranteed under relevant human rights instruments has been violated;
- ii. A Declaration that the violation of her right occasioned miscarriage of justice;
- iii. An order for restitution of their equal share to the Applicant and her children in the matrimonial property;
- iv. An order for compensation to be assessed by the Court; and
- v) a Ruling on Provisional Measures.