

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		

**FLYWELL CHIKULUKUTU BANDA**

**V.**

**THE REPUBLIC OF MALAWI**

**APPLICATION NO. 003/2024**

**CASE SUMMARY**

**3 MAY 2024**

## **I. THE PARTIES**

1. Mr Flywell Chikulukuta Banda (hereinafter referred to as “the Applicant”), is a Malawian National and a final year Pharmacy student at the University of Malawi’s College of Medicine. The Applicant challenges the administrative processes in relation to some of his exam results.
2. The Application is filed against the Republic of Malawi, which 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 of an African Court on Human and Peoples’ Rights on 9 October 2009. Furthermore, 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 had failed some of his exams in his final year of medical school. Upon receiving the results, he challenged them and requested for sixteen (16) marked transcripts for the four courses he had undertaken from the College of medicine. The College of Medicine refused to release the scripts which led to the Applicant serving it with a demand letter.
4. Subsequently, following the demand letter from the Applicant, the University released three (3) marked scripts out of the sixteen (16) which had been demanded. The Applicant therefore, seized the High Court of Malawi challenging the marks that he was awarded by the College of Medicine and

praying for an order for the release of the remaining thirteen (13) marked scripts and further, for an order that he had passed all his exams. However, the Applicant's case was dismissed by the High Court. Consequently, the Applicant appealed to the Malawi Supreme Court of Appeal arguing that the High Court had erred in its judgment and praying for the reversal of the decision and grant of the reliefs he had sought in the High Court.

5. In March 2024, the Supreme Court of Appeal dismissed the Applicant's appeal.

## **B. Alleged violations**

6. The Applicant alleges that the Respondent State has violated the following provisions of the Constitutive Act of the African Union (hereinafter "Constitutive Act"):
  - i. **Article (3h)** - promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments; and
  - ii. **Article 4(m)** - respect for democratic principles, human rights, the rule of law and good governance.
7. The Applicant also alleges that the Respondent State violated the following provisions of the Charter:
  - i. **Article 3.1** - every individual shall be equal before the law;
  - ii. **Article 3.2** - every individual shall be entitled to equal protection of the law;
  - iii. **Article 5** - every individual shall have the right to the respect of dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman, or degrading punishment and treatment shall be prohibited;

- iv. **Article 17.1** - every individual shall have the right to education; and
- v. **Article 17.2** - every individual may freely take part in the cultural life of his community; and
- vi. **Article 17.3** - the promotion and protection of morals and traditional values recognized by the community shall be the duty of the State.

### **III. PRAYERS**

- 8. The Applicants pray the Court to order:
  - i. The Respondent State amend the disputed scores awarded to the applicant;
  - ii. The Respondent State immediately produce copies of the 13 marked scripts withheld by the Institution from the applicant. Alternatively, the Institution should refund the Applicant's deposited money for photocopying, as per the institutions letter on 26 May 2014 to the Applicant's legal representatives;
  - iii. The Respondent to correct the errors reported on the academic transcripts prepared for the Applicant by the institution;
  - iv. The Respondent State to compensate the Applicant for the time lost and psychological distress suffered.