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COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES		

APPLICATION NO. 011/2024

URBAN MKANDAWIRE.....APPLICANT

V.

REPUBLIC OF MALAWI.....RESPONDENT

CASE SUMMARY

I. THE PARTIES

1. Urban Mkandawire (hereinafter referred to as the “Applicant”) is a citizen of Malawi. The Applicant brings his application with respect to the alleged violation of his rights in the context of his dismissal, in 1999, as a lecturer from the University of Malawi.
2. The Application is filed against the Republic of Malawi (hereinafter referred to as “the Respondent State”), which became a Party to the African Charter on Human and Peoples’ Rights (hereinafter referred to as “the Charter”) on 23 February 1990 and the Protocol on 9 October 2008. It further deposited, on 9 October 2008, the Declaration under Article 34(6) of the Protocol by virtue of which it accepts the jurisdiction of the Court to receive cases from individuals and Non-Governmental Organisations.

II. SUBJECT OF THE APPLICATION

A. Facts of the Matter

3. Since his dismissal as a lecturer from the University of Malawi, the Applicant has been pursuing justice for what he considers to have constituted an unfair and wrongful dismissal. Whereas he initially received rulings in his favour from the Respondent State’s High Court, subsequent legal challenges have hindered his quest for compensation and redress for the harm suffered. The current dispute, in which the Applicant alleges procedural irregularities affecting his right to a fair trial, led him to file a new Application before this Court.

B. Alleged violations

4. The Applicant alleges that the Respondent State has violated his fundamental rights guaranteed in:

- i. Article 3 of the Charter, considering that the University's termination of his employment without a fair hearing or valid reason violated his right to equal protection of the law.
- ii. Article 7 of the Charter, considering that he was not heard before the termination of his employment, compounded by the alleged fabrication of evidence and rendering of oral judgments by the Respondent State's courts, without written records.
- iii. Article 15 of the Charter, considering that he was dismissed without proper notice, without being heard, and that there was reliance on fabricated evidence, which infringes on his right to work and to be treated fairly in employment.
- iv. Article 19 of the Charter, considering that the handling of his case, including the failure to address the substantive issues of not being heard and the reliance on fabricated evidence, reflects unequal treatment under the law.
- v. Article 26 of the Charter, considering that the ongoing procedural focus, failure to address substantive rights, fabrication of evidence and lack of written judgments, suggest a lack of independence and impartiality in the judicial process.

III. PRAYERS OF THE APPLICANT

5. The Applicant prays the Court to:

- i. Find a violation of Article 7 (right to a fair trial), Article 15 (right to work), Articles 3 and 19 (right to equality) and Article 26 (independence of the courts).
- ii. Carefully examine the full history and context of his case, including:
 - a. To investigate the conduct of the Industrial Relations Court (IRC) chairperson, who later became a High Court judge, for potential conflict of interest and bias issues that may have undermined the fairness of the proceedings against the Applicant.

- b. To examine the Malawi Supreme Court of Appeal's decision to start its review from the discredited January 2007 IRC judgment, rather than considering the full procedural history, since this approach appears to uphold the flawed findings of the IRC and avoid addressing the university's violation of his right to be heard before termination.
 - c. To examine the flawed findings of the IRC, including the issue of fabrication of evidence to portray him as an incompetent lecturer.
- iii. Correct the factual inaccuracy stated in this Court's judgment of 21 June 2013, in paragraph 27, where the decision states that the Applicant wanted to address the High Court from the Bar where licensed practitioners would do.
- iv. Order the Respondent State to:
 - a. Pay him the damages of MK 3,156,708 (equivalent to USD 20,000 at the time) assessed by the Registrar on 28 May 2004, as a lawful and appropriate award for the violation of his constitutional rights.
 - b. Pay the current equivalent of MK 34,676,666.00, including interest accrued since the original 2004 assessment.
 - c. Pay the current equivalent of MK 12,136,833.10, derived from the execution fees of MK 684,472.15 (equivalent to USD 7,000 at the time of execution), paid on 28 May 2004.
 - d. Pay adequate additional compensation for the prolonged denial of justice and the violation of his rights under the Charter.