

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

Application 004/2022

Kambeyo Ka Kaunda & AnotherAPPLICANTS

V.

Republic of Malawi.....RESPONDENT

CASE SUMMARY

I. THE PARTIES

1. The Application is filed by Mr. Kembeyo Ka-Kaunda on his own behalf and on behalf of Mr Profera Mtambalika, the 2nd Applicant. Mr Kambeyo Ka-Kaunda (hereinafter the Applicant) is a national of the Republic of Malawi, is a retired Administration Officer residing in Chibwana Village, Chilomini, Blantyre, Malawi. The original application was made by the Applicant on his own, but after request to the African Court, he is now represented by Mr Donald Deya of the Pan-African Lawyers Union (PALU). The Application relates to the violation of the right to fair trial and the right to property under the African Charter.
2. The Respondent State is 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 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

1. From the application, the Applicants had a dispute with Mr. Profera Mtambalika, where Mr. Mtambalika refused to transfer a freehold land, Title Number Ndirance 26, situated in Blantyre, Malawi, in breach of the Sale Agreements. The Applicants approached the High Court of Malawi, seeking an order for specific performance on the part of Mr. Mtambalika. The High Court ruled that the case was not fit to proceed under

Originating Summons as it was originated by a Writ of Summons. Despite this order, the Affidavit of Mr Mtambalika was adopted, which was filed as part of his testimony. The High Court on 9 June 2014 dismissed the Applicants' Originating Summons.

2. The Applicants appealed and on 2 August 2016, the Supreme Court of Appeal dismissed the Applicant's appeal and confirmed the judgment of the High Court. Despite multiple requests, the Supreme Court of Appeals judgment was never signed.
3. Dissatisfied with the Supreme Court of Appeal's judgment, the Applicants filed their notice of motion for review on 30 October 2016, and the Supreme Court granted leave for review on 13 June 2019. On 13 June 2019, the Applicants submitted their application for Review. During the hearing on 26 October 2021, only two judges presided over the case, but it was postponed to 6 April 2022 for lack of quorum. During the hearing, only two judges were also present, and the case was also dismissed because Mr. Mtambalika's Counsel was not present, despite his earlier communication of inability to attend the hearing for reasons beyond his power.
4. The Applicants never received any official decision from the Supreme Court of Appeal on the dismissal of their review application. After consulting the Court's Registry, the Applicants were only given handwritten notes which are not readable. The Applicants prepared an application to restore the matter to the cause list on 20 April 2022, but received no response for more than 6 months.

B. Alleged Violations

3. The Applicant alleges that the Respondent has violated their right to fair trial under Article 7 of the African Charter, and the right to property under Article 14 of the African Charter.

C. APPLICANT'S PRAYERS

4. The Applicant prays the Court to make the following orders:
 - i. A declaration that the Respondent violated the African Charter on Human and Peoples' Rights, specifically Articles 7 and 14
 - ii. A declaration that the Respondent violated the International Covenant on Civil and Political Rights, especially Articles 2 and 14
 - iii. A declaration that the Respondent violated the Universal Declaration of Human Rights, especially Articles 10 and 17
 - iv. An order requiring the Respondent to compensate for their: -
 - a. Material damages, by a sum of money of USD 1.6 million
 - b. Moral damages, by a sum of USD 5.6 million
 - v. An order requiring the Respondent to adopt constitutional, legislative, administrative and other measures to remedy the violations of the rights of the Applicants, including presenting a signed version of the judgment of the Supreme Court of Appeal of 2 August 2016 and the formal decision of the Supreme Court of Appeal, dismissing Applicants' application for review on 6 April 2022
 - vi. An order that the relevant officials of the Respondent State to make all necessary reforms/amendments/changes to ensure that cases are tried within a reasonable time, that the court records and judgments are accessible, and that the legal framework is clear and certain
 - vii. An order for costs in favour of the Applicants.