

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

THE MATTER OF

KAMBEYO KA-KAUNDA & EMMIE CHENDA MKANDAWIRE

V.

REPUBLIC OF MALAWI

APPLICATION NO. 004/2022

JUDGMENT

24 SEPTEMBER 2026



TABLE OF CONTENTS

I.	THE PARTIES.....	2
II.	SUBJECT MATTER OF THE MAIN APPLICATION	2
	A. Facts of the matter	2
	B. Alleged violations.....	4
III.	SUMMARY OF THE PROCEDURE BEFORE THE COURT	4
IV.	PRAYERS OF THE PARTIES.....	5
V.	ON THE DEFAULT OF THE RESPONDENT STATE.....	6
VI.	JURISDICTION	8
VII.	ADMISSIBILITY	10
VIII.	MERITS	14
	A. Alleged violation of the right to a fair trial	14
	i. Alleged violation of the right to have one's cause heard	14
	ii. Alleged violation of the right to defence.....	20
	iii. Alleged violation of the right to be tried within reasonable time	24
	B. Alleged violation of the right to property.....	28
IX.	REPARATIONS	29
	A. Pecuniary reparations.....	32
	B. Non-pecuniary reparations	34
	i. Measures of restitution and satisfaction	34
	ii. Measures of non-repetition.....	34
	iii. Implementation and reporting.....	35
X.	COSTS.....	36
XI.	OPERATIVE PART	36

The Court composed of: Blaise TCHIKAYA, President; Chafika BENSAOULA, Vice-President; Rafaâ BEN ACHOUR, Suzanne MENGUE, Stella I. ANUKAM, Imani D. ABOUD, Dumisa B. NTSEBEZA, Modibo SACKO, Dennis D. ADJEI, Duncan GASWAGA – Judges, and Robert ENO, Registrar.

In accordance with Article 22 of the Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of an African Court on Human and Peoples’ Rights (hereinafter referred to as “the Protocol”) and Rule 9(2) of the Rules of Court (hereinafter referred to as “the Rules”), Justice Tujilane R. CHIZUMILA, a member of the Court and a national of Malawi, did not hear the Application.

In the matter of:

Kambeyo KA-KAUNDA & Emmie Chenda MKANDAWIRE

Represented by:

Donald Omondi DEYA, Chief Executive Director, Pan African Lawyers Union (PALU).

Versus

REPUBLIC OF MALAWI

Unrepresented

After deliberation,

Renders this Judgment:

I. THE PARTIES

1. The First Applicant, Kambeyo Ka-Kaunda, was a property consultant in Blantyre, Malawi, while the Second Applicant, Emmie Chenda Mkandawire was his business associate and a retired primary school teacher. The First and Second Applicants (hereinafter jointly referred to as “the Applicants”) are nationals of Malawi. They allege violations of the rights to a fair trial and property.
2. The Application is filed against the Republic of Malawi (hereinafter referred to as “Respondent State”). The Respondent State became party to the African Charter on Human and Peoples’ Rights (hereinafter referred to as “the Charter”) on 23 February 1990. Furthermore, the Respondent State became a party to the Protocol and deposited the Declaration required under Article 34(6) of the Protocol, accepting the jurisdiction of the Court to receive applications filed by individuals and Non-Governmental Organizations with Observer Status before the African Commission on Human and Peoples’ Rights (hereinafter referred to as “the Declaration”) on 9 October 2008.

II. SUBJECT MATTER OF THE MAIN APPLICATION

A. Facts of the matter

3. The Applicants aver that for over a period of 12 years they suffered violations of their rights arising from a property dispute in Blantyre.¹ They allege that they assisted an associate, Profera Mtambalika, to obtain a title to land known as “*Tittle number Ndirance 26*”, and to register it in his name. In return for which Mtambalika was to transfer to them a portion of 2.2 hectares of that land. The Applicants submit that when Mtambalika breached the agreement by refusing to transfer the portion to them,² they

¹ The Applicants do not state the period when the property dispute arose.

² The specific date of the breach of the agreement is not indicated in the pleadings.

sought specific performance before the High Court of Malawi, on 20 April 2010.

4. The Applicants submit that on 9 June 2014, the High Court of Malawi dismissed their case in its entirety, even though neither Mtambalika nor his lawyer appeared at the hearings. Furthermore, the High Court of Malawi held that “there can be no specific performance where contracts are declared invalid due to the plaintiff’s misrepresentation”.³
5. Dissatisfied with the High Court’s judgment, the Applicants on 22 July 2015,⁴ appealed to the Malawi Supreme Court of Appeal (MSCA)⁵ which, on 2 August 2016, dismissed the appeal with costs. The Applicants aver that despite multiple written requests to the Chief Justice,⁶ they never received a signed copy of the MSCA’s judgment.
6. On 30 October 2016, the Applicants filed a Notice of Motion for Review of the MSCA’s judgment. The MSCA dismissed the application for review on 6 April 2022. The Applicants submit that they never received the official copy of the review judgment despite several requests to the MSCA’s Registry. Eventually, the MSCA’s Registry provided them with illegible handwritten notes purporting to be a copy of the review judgment. In addition, they complain that the review proceedings were marred by procedural irregularities.
7. The Applicants filed the Application before this Court after their request to restore their case to the cause list of the MSCA remained unanswered for six months.

³ High Court of Malawi Principal Registry Civil Cause NO. 826 of 2010

⁴ The Applicants indicate two different dates, i.e., 22 July 2015 in the file notes and 2 July 2015 in the document marked 000346.

⁵ Unsigned judgement of the Malawi Supreme Court of Appeal.

⁶ 11 April 2017, 26 April 2017, 25 May 2017.

B. Alleged violations

8. The Applicants allege the following violations:
 - i. Article 7 on the right to a fair trial under the Charter, Article 2 and 14 of the International Covenant on Civil and Political Rights (ICCPR) and Article 10 of the Universal Declaration of Human Rights (UDHR) on the following aspects:
 - a. The right to due process: legal certainty;
 - b. The right to a fair and public hearing;
 - c. The right to defence; and
 - d. The right to be tried within a reasonable time by an impartial court;
 - ii. The right to property as guaranteed under Article 14 of the Charter.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

9. On 17 October 2022, the Applicants filed the Application together with a request for legal aid.
10. On 2 December 2022, the Court granted the Applicants' request for legal aid in accordance with Rule 31(2) of the Rules and assigned PALU to represent them.
11. On 21 March 2023, PALU submitted that the Applicants raised concerns about the First Applicant's health and requested for a speedy consideration of the matter.
12. On 19 April 2024, PALU filed an amended Application, which was transmitted to the Respondent State on 3 May 2024, requesting it to file its list of its representatives and its Response by 2 June 2024 and 1 August 2024, respectively. At the expiry of these deadlines, the Respondent State did not respond.

13. On 19 and 21 August 2024, the Parties were informed that the Court had decided *suo motu* to grant an extension of time for the Respondent State to file its Response, failing which, the Court would proceed with the matter and render a judgment in default. At the expiry of this deadline, the Respondent State had neither filed its Response nor its list of representatives.
14. On 27 January 2026, the Applicants filed a request for expedited procedure substantiated with medical reports and a request for a judgment in default to be rendered at the 82nd Ordinary Session of the Court.
15. Pleadings were closed on 20 March 2026, and the Parties were duly notified.
16. On 1 June 2026, the Parties were informed that the Court decided to reopen pleadings *suo motu* and transmitted the Applicants' requests for expedited procedure and judgment in default to the Respondent State for its observations. The Respondent State had not filed any observations by the lapse of the deadline.
17. Pleadings were closed again on 24 June 2026, and the Parties were duly notified.
18. During its 82nd Ordinary Session, having considered the request for expedited procedure on the ground of illness of the First Applicant, the Court decided to prioritise the consideration of this Application.⁷

IV. PRAYERS OF THE PARTIES

19. The Applicants pray the Court to make the following orders:

⁷ *Democratic Republic of Congo v. Republic of Rwanda*, ACtHPR, Application No. 007/2023, Order of 7 March 2024 (expedited procedure), §§ 32-33.

- i. A DECLARATION that the Respondent State violated Articles 7 and 14 of the African Charter on Human and Peoples' Rights;
- ii. A DECLARATION that the Respondent State violated Articles 2 and 14 of the International Covenant on Civil and Political Rights;
- iii. A DECLARATION that the Respondent State violated Articles 10 and 17 of the Universal Declaration of Human Rights;
- iv. AN ORDER requiring the Respondent State to compensate as follows:
 - a. the sum of USD 1.6 million for material damages; and
 - b. the sum of USD 5.6 million for moral damages;
- v. AN ORDER requiring the Respondent State 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 Respondent State 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.

20. The Respondent State did not file any pleadings in respect of this Application and, therefore, did not make any prayers.

V. ON THE DEFAULT OF THE RESPONDENT STATE

21. The Applicants filed various requests for a judgment in default.

*

22. The Respondent State did not file any pleadings in this Application.

23. Rule 63(1) of the Rules provides as follows:

Whenever a party does not appear before the Court or fails to defend its case within the period prescribed, the Court may, on the application of the other party, or on its own motion, enter a decision in default after it has satisfied itself that the defaulting party has been duly served with the Application and all other documents pertinent to the proceedings.

24. Rule 63(1) of the Rules sets out three conditions on which the Court may render judgment in default,⁸ namely: (i) the failure of one of the parties to appear before the Court or to defend its case within the prescribed time; (ii) the notification to the defaulting party of the application and all other documents pertinent to the proceedings; and (iii) a request made by the other party or the discretion of the Court.

25. With respect to the first condition relating to a party's failure to appear or defend its case, the Court observes that on 3 May 2024, the Registry transmitted the Application to the Respondent State, which was granted 90 days to file its Response and 30 days to file the list of its representatives. Although the Respondent State acknowledged receipt of the Application on 21 August 2024, it did not file its Response despite two reminders sent on 19 and 21 August 2024. The Registry, in the two reminders, informed the Respondent State that should it fail to file its Response, the Court would decide the matter in default. The Court, therefore, finds that the first condition is satisfied.

26. With respect to the second condition that the defaulting party should be notified about the application and all pleadings, the Court observes that on 3 May 2024, the main Application and all supporting documents were duly

⁸ *Misozi Charles Chanthunya v. Republic of Malawi*, ACTHPR, Application No. 001/2022, Judgment of 13 November 2024 (merits and reparations); *Leon Mugesera v. Republic of Rwanda* (judgment) (27 November 2020) 4 AfCLR 834, §§ 13-18; *Fidele Mulindahabi v. Republic of Rwanda* (merits and reparations) (26 June 2020) 4 AfCLR 291, § 22; *African Commission on Human and Peoples' Rights v. Libya* (merits) (3 June 2016) 1 AfCLR 153, §§ 38-42.

served on the Respondent State, which acknowledged receipt by a letter dated 21 August 2024. The Respondent State was granted 90 days to file its Response, which it failed to do. Thereafter, the Respondent State was granted an additional 45 days to file its Response to the main Application, failing which the Court would render a judgment in default.

27. Furthermore, on 1 June 2026, the Registry transmitted the Order on the re-opening of pleadings, the Applicants' request for a judgment in default and for an expedited procedure, directing the Respondent State to file its response within 15 days. The Respondent State did not file any response.
28. In light of the above, the Court finds that the second condition is met given the Respondent State failed to file a defence despite being served with the Application and other pleadings on file.
29. Lastly, with regard to the third condition, namely, that the judgment in default is rendered either through a request by the other party or *suo motu* by the Court, the Court observes that the Applicants filed requests for judgment in default on several occasions in letters dated: 18 October 2024; 27 November 2024; 10 February 2025; 26 June 2025 and 27 January 2026, arguing that the Respondent State had been given sufficient time to defend itself. The Court therefore finds that the third condition is equally satisfied.
30. Based on the foregoing, the Court finds that the requirements under Rule 63 of the Rules are met, and accordingly decides to render the Judgment in default.

VI. JURISDICTION

31. Pursuant to Article 3 of the Protocol:

1. The jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and

application of the Charter, this Protocol and any other relevant Human Rights instruments ratified by the States concerned.

2. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.

32. Furthermore, Rule 49(1) of the Rules, “The Court shall conduct a preliminary examination of its jurisdiction ... of an Application in accordance with the Charter, the Protocol and these Rules,” and rule on any objections thereto, if necessary.

33. Having found that there is nothing on the record to indicate that it lacks jurisdiction, the Court finds that it has:

- i. Material jurisdiction, insofar as the Applicants allege violations of human rights protected by Article 7 and 14 of the Charter; Article 2 and the ICCPR, instruments to which the Respondent State is a party.⁹
- ii. Personal jurisdiction, insofar as the Respondent State has ratified the Protocol and deposited the Declaration required under Article 34(6) of the Protocol.
- iii. Temporal jurisdiction, as the proceedings that led to the alleged violations occurred between 20 April 2010, when the Applicants filed a case before the High Court and 6 April 2022, when the MSCA rendered its decision on review. The alleged violations therefore took place after the Respondent State had become a party to the Protocol, on 9 October 2008.
- iv. Territorial jurisdiction, insofar as the alleged violations occurred in the territory of the Respondent State, which is a Party to the Charter and the Protocol.

⁹ Malawi ratified the ICCPR on 22 December 1993.

34. Based on the foregoing, the Court holds that it has jurisdiction to hear this Application.

VII. ADMISSIBILITY

35. Pursuant to Article 6(2) of the Protocol, “the Court shall rule on the admissibility of cases taking into account the provisions of Article 56 of the Charter”.
36. In accordance with Rule 50(1) of the Rules, “the Court shall ascertain the admissibility of an Application filed before it in accordance with Article 56 of the Charter, Article 6(2) of the Protocol and these Rules.”
37. The Court notes that Rule 50(2) of the Rules, which in substance restates the provisions of Article 56 of the Charter, provides as follows:

Applications filed before the Court shall comply with all the following conditions:

- a. Indicate their authors even if the latter requests anonymity;
- b. Are compatible with the Constitutive Act of the African Union and with the Charter;
- c. Are not written in disparaging or insulting language directed against the State concerned and its institutions or the African Union;
- d. Are not based exclusively on news disseminated through the mass media;
- e. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged;
- f. Are submitted within a reasonable time from the date local remedies were exhausted or from the date set by the Court as being the commencement of the time limit within which it shall be seized with the matter; and

- g. Do not deal with cases which have been settled by those States involved in accordance with the principles of the Charter of the United Nations, or the Constitutive Act of African Union or the provisions of the Charter.
38. The Court notes, from the record, that the Application's compliance with the requirements in Article 56 of the Charter, which are reiterated in Rule 50(2) of the Rules, is not in contention between the Parties. Nevertheless, it must ascertain that these requirements have been fulfilled.
39. The Court finds that the requirement laid down in Rule 50(2)(a) of the Rules is met since the Applicants have indicated their identities.
40. The Court also finds that the claims made by the Applicants seek to protect their rights guaranteed under the Charter. It further notes that one of the objectives of the Constitutive Act of the African Union, as stated in Article 3(h) thereof, is the promotion and protection of human and peoples' rights. The Application also does not contain any claim or prayer that is incompatible with the said provision of the Act. Therefore, the Court considers that the Application meets the requirement of Rule 50(2)(b) of the Rules.
41. The Court further finds that the Application does not contain any disparaging or insulting language regarding the Respondent State or its institutions, which makes it consistent with the requirement of Rule 50(2)(c) of the Rules.
42. Regarding the condition stated in Rule 50(2)(d) of the Rules, the Court observes that the Application is not based exclusively on news disseminated through the mass media, but it is derived from court records. The Court accordingly finds that the Application complies with this condition.
43. As far as the requirement of exhaustion of local remedies set out under Rule 50(2)(e) of the Rules is concerned, this Court observes that, on 2 August 2016, the MSCA, which is the highest court of the Respondent State,

dismissed the appeal that had been instituted against the Judgment of the High Court of 9 June 2014. The requirement to exhaust local remedies has, therefore, been met. The Court accordingly finds that the Application complies with this condition.

44. Regarding the condition stated in Rule 50(2)(f) of the Rules, the Court notes that the Rule provides that applications must be filed "... within reasonable time from the date local remedies were exhausted or from the date set by the Court as being the commencement of the time limit within which it shall be seized with the matter".
45. The Court recalls that in assessing the reasonableness of time, to file an application should be considered on a case-by-case basis.¹⁰
46. The Court notes that the MSCA rendered its decision on 2 August 2016, and on 3 October 2016, the Applicants filed an application for review, which was dismissed on 6 April 2022. The Applicants then filed the Application before this Court on 2 September 2022.
47. This Court has previously held that a review procedure is an extraordinary remedy that the Applicants need not exhaust.¹¹ The Court has also held in *Nguza Viking and Johnson Nguza v. Tanzania* that even if the review process is an extraordinary remedy, the time spent by the applicant in attempting to exhaust the said remedy should be considered when assessing reasonableness within the meaning of Article 56(6) of the Charter.¹²

¹⁰ *Amiri Ramadhani v. United Republic of Tanzania* (merits) (11 May 2018) 2 AfCLR 344, § 83.

¹¹ *Laurent Munyandikirwa v. Republic of Rwanda* (jurisdiction and admissibility) (2 December 2021) 5 AfCLR 777; *Wilfred Onyango Nganyi and 9 Others v. United Republic of Tanzania* (reparations) (4 July 2019) 3 AfCLR 308, § 95; *Nzigiyimana Zabron v. United Republic of Tanzania*, ACTHPR, Application No. 051/2016, Judgment of 4 June 2024 (merits and reparations) § 43; *Elisamehe v. Tanzania*, *supra*, § 36; *Mohamed Abubakari v. United Republic of Tanzania* (merits) (3 June 2016) 1 AfCLR 599, §§ 66-70; *Christopher Jonas v. United Republic of Tanzania* (merits) (28 September 2017) 2 AfCLR 101, § 44.

¹² See *Nguza Viking (Babu Seya) and Johnson Nguza (Papi Kocha) v. United Republic of Tanzania* (merits) (23 March 2018) 2 AfCLR 287, § 61; *Armand Guehi v. United Republic of Tanzania* (merits and reparations) (7 December 2018), 2 AfCLR 477, § 56; *Werema Wangoko Werema and Another v. United Republic of Tanzania* (merits) (7 December 2018) 2 AfCLR 520, § 49, *Alfred Agbesi Woyome v. Republic of Ghana* (merits and reparations) (28 June 2019) 3 AfCLR 235, §§ 83-86.

48. The Court emphasizes that, pursuant to Rule 50(2)(f) of the Rules, it has discretion to determine commencement of time for its seizure. In the present Application, given that the Applicants decided to pursue the review procedure, the Court cannot ignore the time they spent in attempting to do so. In this regard, the reasonableness of time should be computed from 6 April 2022 being the date of the MSCA decision on review. A period of six months and 11 days had elapsed between the said date and when the present Application was filed, which is on 17 October 2022. Such period is relatively short, and is deemed manifestly reasonable as per the jurisprudence of this Court.¹³ The Court accordingly finds that the Application complies with the condition set out under Rule 50(2)(f) of the Rules.
49. Finally, with respect to the requirement laid down in Rule 50(2)(g) of the Rules, the Court finds that the present Application does not concern a case which has already been settled by the Parties in accordance with the principles of the Charter of the United Nations, the Constitutive Act of the African Union, or the provisions of the Charter. The Application, therefore, meets this condition.
50. In light of the foregoing, the Court finds that the Application fulfils all the admissibility requirements set out under Article 56 of the Charter, as restated in Rule 50 of the Rules, and accordingly declares the Application admissible.

¹³ *Gozbert Henerico v. United Republic of Tanzania* (merits and reparations) (10 January 2022) 6 AfCLR 1, § 69.

VIII. MERITS

51. The Applicants allege that the Respondent State has violated their right to a fair trial guaranteed under Article 7 of the Charter; Articles 2 and 14 of the ICCPR; and the right to property guaranteed under Article 14 of the Charter.
52. The Court will address these allegations successively.

A. Alleged violation of the right to a fair trial

53. The alleged violation of the right to a fair trial is made in respect of four specific rights, namely: the right to due process; the right to a fair and public hearing; the right to defence; and the right to be tried within a reasonable time by an impartial court. Given that the right to due process and the right to a fair and public hearing fall under (i) the right to have one's cause heard, the Court will deal with them jointly before examining (ii) the alleged violations of the right to defence and (iii) the right to be tried within a reasonable time by an impartial court.

i. Alleged violation of the right to have one's cause heard

54. The Applicants' allegations regarding the right to have one's cause heard are two-fold: (a) alleged violation of fair and public hearing in relation to the availability of courts' decisions; and (b) alleged violation of due process owing to the composition of the bench and competency of the MSCA.

a. On the right to a fair and public hearing and availability of courts' decisions

55. The Applicants aver that their right to a fair trial was violated because the purported decision of the MSCA, dated 6 April 2022, dismissing their review application, is not legible. Furthermore, they allege that the record of proceedings and subsequent court decisions should be accessible and legible. They buttress their allegation by citing the provisions of the

Principles and Guidelines on the Rights to a Fair Trial and Legal Assistance in Africa of the African Commission on Human and Peoples' Rights (herein after referred to as the Commission's Fair Trial Guidelines).

56. The Applicants further allege that they were unable to ascertain the grounds on which their application was dismissed due to the lack of access to the court proceedings and because MSCA's review judgment of 6 April 2022 was purported illegible.

*

57. The Respondent State did not file a response.

58. Article 7(1) of the Charter provides that:

Every individual shall have the right to have his cause heard.

59. Article 14(1) of the ICCPR provides that:

... In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. ...

60. Principles D(b) and (c) of the Commission's Fair Trial Guidelines provide that States Parties have the duty to maintain effective systems for recording and storing all proceedings before judicial bodies, storing such information and making it accessible to the public. They should also publish the decisions throughout the country.

61. The Court recalls its jurisprudence that "... the right to acquire knowledge of the record of proceedings is also an important aspect of the right to a fair

trial and is related to the right to defence, more particularly the principle of equality of arms between the parties. Courts therefore have an obligation to strike a fair balance between the parties with a view to enabling them to be aware of and comment on all the evidence tendered by the adverse party”.¹⁴ In *Alex Thomas v. Tanzania*, this Court also examined the right to receive documents and held that it behoves on the Respondent State to provide applicants with the record required to pursue an appeal.¹⁵

62. In the present Application, the Applicants allege violation of their right to have one’s cause heard owing to the Respondent State’s failure to provide them with legible copies of the domestic courts’ decisions and pleadings. The Court notes from the record that, in support of this allegation, the Applicants made several attempts to obtain certified copies of the records and decisions of domestic courts but were unsuccessful.¹⁶ Although the domestic courts provided copies of the decisions,¹⁷ these were either unsigned,¹⁸ illegible or handwritten, which are not in line with the obligations of the Respondent State expounded on earlier in this Judgment.
63. The Court observes that once the Applicants have adduced evidence of due diligence to obtain the required documents,¹⁹ the burden of proof shifts to the Respondent State whose judicial bodies rendered the said decisions. However, the Respondent State did not file a response. The Court also notes that the Respondent State did not act diligently to address the complaints of the Applicants to receive the signed decisions of the MSCA’s judgments of 2 August 2016, and the review of 6 April 2022.

¹⁴ *Sébastien Germain Ajavon v. Republic of Benin* (merits) (29 March 2019) 3 AfCLR 130, § 161.

¹⁵ *Alex Thomas v. United Republic of Tanzania* (merits) (20 November 2015) 1 AfCLR 465, § 130.

¹⁶ The signed judgment of the High Court dated 9 June 2014; the unsigned judgment of the Malawi Supreme Court of Appeal dated 2 August 2016; and the illegible hand written notes of the review hearing before the Malawi Supreme Court of Appeal dated 6 April 2022.

¹⁷ 11 April 2017, 26 April 2017, and 25 May 2017. attempts to obtain the signed judgment of the Malawi Supreme Court of Appeal of 2 August 2016, arising from the High Court Judgment dated 9 June 2014.

¹⁸ The Chief Justice transmitted the unsigned Judgment of the Malawi Supreme Court of Appeal dated 2 August 2016.

¹⁹ *Sadick Marwa Kisase v. United Republic of Tanzania* (merits and reparations) (2 December 2021) 5 AfCLR 728, § 73; *Kennedy Owino Onyachi and Charles John Mwanini Njoka v. United Republic of Tanzania* (merits) (28 September 2017) 2 AfCLR 65, §§ 142-146; *Nguza Viking and Johnson Nguza v. United Republic of Tanzania* (merits) (23 March 2018) 2 AfCLR 287, §§ 66-74.

64. The Court thus observes that the Applicants were not informed of the grounds of dismissal of their applications before domestic courts.
65. In the circumstances, the Court finds that the Respondent State violated the Applicants' rights to be heard, protected under Article 7(1) of the Charter as read jointly with Article 14(1) of the ICCPR in respect of the rights to a fair and public hearing and availability of courts' decisions.

b. On the right to due process regarding the composition and competency of the Malawi Supreme Court of Appeal

66. The Applicants aver that the MSCA Rules (hereinafter referred to as "the MSCA Rules") 29²⁰ and 34²¹ do not specify the applicable law, procedural requirements, and processes for review. However, according to the Applicants, the said Rules only refer to "the practice of the Court of Appeal in England", which they aver creates legal uncertainty and violates their right to due process.
67. In substantiating this claim, the Applicants contend that during the review hearing of 26 October 2021, before the MSCA, "counsel for the Respondent State" informed the court that the quorum was not reached because only two judges were in attendance.²² Resultantly, the case was deferred to 6 April 2026. Notwithstanding their objection, the Applicants claim that the case was eventually heard by two judges who dismissed it with costs. According to the Applicants, a composition of two judges did not meet the quorum of nine Justices of Appeal and was therefore in contravention of the provisions of *Chief Justice's Practice Direction No. 1 of 2018* (hereinafter referred to as "Practice Directions"), thereby rendering the judgment void.²³

²⁰ The Court shall not review any judgment once given and delivered by it save and except in accordance with the Practice of the Court of Appeal of England.

²¹ Where no other provision is made by these Rules the procedure and practice for the time being in force in the Court of Appeal in England shall apply in so far as it is not inconsistent with these Rules, and the forms in use therein may be used with such adaptations as are necessary.

²² Justice Kapanda and Justice Chikopa.

²³ The Practice Directions provides: "The Practice direction and the objective; Following the provisions of section 104 read with section 105 of the Constitution, it has been decided to issue a Practice Direction that in determining any matter, other than interlocutory matter, the Court shall be constituted by the

*

68. The Respondent State did not file a response.

69. The Court notes that the Applicants allege violations of both Articles 7 of the Charter and 14 of the ICCPR, however, the Court observes that the claims made regarding the violation of the competence of the MSCA's review bench and its composition are covered under Article 7(1)(a) of the Charter. The Court will therefore consider the allegation solely based on the Charter.

70. Article 7(1)(a) of the Charter provides that:

Every individual shall have the right to have his cause heard. This comprises:

- a) The right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force.

71. The Court observes that the right to have one's cause heard, as enshrined under Article 7(1) of the Charter, bestows upon individuals a wide range of entitlements pertaining to due process of law, including the right to be given an opportunity to express their views on matters and procedures affecting their rights, the right to file a petition before appropriate judicial and quasi-judicial authorities for violations of these rights and the right to appeal to higher judicial authorities when their grievances are not properly addressed

current composition of nine Justices of Appeal currently composing the Supreme Court of Appeal, the Court shall be constituted by Seven Justice of Appeal. The objective of the Practice Direction is to ensure certainty, predictability and settlement of the law in the Supreme Court of Appeal".

by the lower courts.²⁴ Additionally, the right to be heard requires that a mechanism to review such findings should be put in place.²⁵

72. In considering the question of the composition and competence of the MSCA's review bench and whether its procedures contravene the law, the Court refers to the caselaw of the European Court of Human Rights (ECtHR). In this regard, the ECtHR has undertaken such assessment based, among others, on the principle of "manifest breach of domestic law", under which it examines whether the domestic court clearly violated its own national statutory laws regarding composition, bench size, or quorum requirements.
73. In assessing observance of the first requirement stated above, the Court observes that Section 105 of the Constitution of Malawi, provides that "[w]hen the Supreme Court of Appeal is determining any matter, other than an interlocutory matter, it shall be composed of an uneven number of Justices of Appeal, not being less than three". On the other hand, the Practice Directions stipulate that the composition of the review bench should not be less than seven judges in determining any matter other than an interlocutory matter.²⁶ In the instant case, the Court finds that the quorum of two judges who presided over the review hearing did not comply with the provisions of the Respondent State's Constitution or the Practice Directions of the MSCA.
74. The Court observes that given the MSCA review bench was not properly constituted, it was thus incompetent to hear the review hearings in 2021 and 2022.

²⁴ *Ibrahim Ben Mohamed Ben Ibrahim Belgheith v. Republic of Tunisia* (merits and reparations) (22 September 2022) 6 AfCLR 412, § 96; *Jebra Kambole v. United Republic of Tanzania* (merits and reparations) (15 July 2020) 4 AfCLR 460, § 96; *Werema Wangoko Werema v. United Republic of Tanzania* (merits) (2018) 2 AfCLR 520 §§ 68-69.

²⁵ *Kambole v. Tanzania*, *ibid.*

²⁶ See *Chief Justice's Practice Direction No. 1 of 2018*.

75. Accordingly, the Court finds that the Respondent State violated the Applicants' right to a fair trial under Article 7(1)(a) of the Charter with respect to the composition and competency of the MSCA's review bench.

ii. Alleged violation of the right to defence

76. The Applicants submit that due to the illegibility of the MSCA's judgment of 6 April 2022, they were unable to ascertain the legal grounds for the dismissal of their application, thereby rendering them unable to protect their interests effectively.
77. They argue that the violation was further compounded by the procedural irregularities during the review hearing of 6 April 2022. They also aver that their legal representative was unable to attend the hearing due to circumstances beyond his control and he allegedly informed the court of his unavailability verbally. They aver that the First Applicant was present but was denied the opportunity to speak. On the converse, counsel of Mtambalika was present during the hearing and was asked some questions by the judges, which he responded to. According to the Applicants, this clearly indicates that the case was not yet decided and that it was still possible for the parties to provide additional information, clarify statements, and to participate fully in the proceedings.
78. The Applicants further aver that they filed their affidavits and skeleton arguments before the High Court, using Originating Summons,²⁷ however, the High Court decided that they should have filed a Writ of Summons.²⁸ Nevertheless, it still accepted the affidavits filed by Mtambalika. Furthermore, the Applicants' aver that they were deprived of the opportunity

²⁷ An Originating Summons is a specialized, fast-track method used to commence civil proceedings. It is strictly reserved for cases concerning questions of law, statutory interpretation, or undisputed facts where no substantial disputes of evidence are expected. Because this procedure bypasses standard trial processes like pleadings and extensive witness testimonies, it resolves matters quicker and at a lower cost.

²⁸ A Writ of Summons is an originating court document that formally commences a civil lawsuit. It notifies the defendant that a claim has been filed against them and commands them to appear in court or file a defence within a specified period to avoid a default judgment. The standard procedure for a Writ of Summons follows a sequential, structured process.

to challenge the affidavits filed by Mtambalika, who did not attend any hearing, even though those affidavits were decisive to the outcome of the case, as is evident from the reasoning in the High Court decision of 9 June 2014 and the unsigned Judgment of the MSCA of 2 August 2016.

*

79. The Respondent State did not file a response.

80. The Court observes that the Applicants raise two claims that: (i) due to the illegibility of the MSCA's judgment dated 6 April 2022, they were unable to ascertain the legal grounds for the dismissal of their application, thereby rendering them unable to protect their interests effectively and (ii) they were not granted opportunity to be heard during the review proceedings before the MSCA.

81. The Court notes that the issue of illegibility raised by the Applicants was already determined under the alleged violation of the right to a fair and public hearing and availability of courts' decisions. The Court will therefore determine the alleged violation of the claim to be heard during the review proceedings before the MSCA.

82. The Court observes that Article 7(1)(c) of the Charter provides that:

Every individual shall have the right to have his cause heard.
This comprises:

(c) the right to defence, including the right to be defended
by counsel of his choice...

83. While the Applicants cite Article 14 of the ICCPR, the Court is of the view that the right is covered under Article 7 of the Charter; and will therefore consider the allegation solely on the basis of the Charter.

84. Regarding the right to defence, the Court has previously held in *Sébastien Germain Ajavon v. Republic of Benin*, that “the right to defence as set out in Article 7(1)(c) of the Charter is a key component of the right to a fair trial and reflects the potential of a judicial process offering the parties the opportunity to express their claims and submit their evidence.”²⁹
85. The Court also recalls that domestic courts enjoy a wide margin of appreciation in terms of assessing the probative value of evidence before it.³⁰ This, however, does not preclude it from evaluating proceedings of the domestic courts to assess whether the same are in consonance with the Charter and international human rights standards.³¹
86. The Court observes that the Applicants were represented by counsel at some stages of the proceedings before the domestic courts, for instance during the review hearing at the Court of Appeal on 6 April 2022.³² Their advocate had allegedly notified the MSCA of his unavailability to attend the hearing owing to reasons beyond his control.
87. The Court notes that Rules 20 and 21 of the MSCA Rules, Order III, provide for procedure for non-representation before it. Specifically, Rule 20 of the said Rules provides that:

At any time before hearing of the appeal any party to the appeal may file a declaration in writing that he does not wish to be present in person or by a legal representative on the hearing of the appeal together with four copies of such arguments as he desires to submit to the Court and serve a copy of such declaration and arguments upon every other party who has led an address for service and thereupon the appeal shall be dealt with as if the party had appeared.

²⁹ *Sébastien Germain Ajavon v. Republic of Benin* (merits) (29 March 2019) 3 AfCLR 130, § 149.

³⁰ *Kijiji Isiaga v. United Republic of Tanzania* (merits) (21 March 2018) 2 AfCLR 218, § 65.

³¹ *Zanzibar v. Tanzania*, *supra*, § 61; *Moses Amos Mwakasindile v. United Republic of Tanzania*, ACTHPR, Application No. 045/2019 Judgment 6 March 2026 (merits and reparations), § 109.

³² Letter from Ebenezer Law Firm to the Malawi Supreme Court of Appeal dated 16 January 2018.

88. Rule 21 of the same Rules provides that:

- (1) If the appellant fails to appear when his appeal is called on for hearing and has not taken action under Rule 20 of this Order, the appeal may be struck out or dismissed with or without costs.
- (2) When an appeal has been struck out owing to the non-appearance of the appellant, the Court may, if it thinks fit, and on such terms as for costs or otherwise as it may deem just, direct the appeal to be re-entered for hearing.

89. Considering these provisions, the Court observes that the legal representative of the Applicants, Barrister E. B. Sitolo, allegedly notified the court verbally about his inability to attend the review hearing. Under the Respondent State's laws, namely Rules 20 and 21 of the MSCA Rules, Order III, counsel was obliged to file a declaration in writing indicating that he would be absent for the hearing, together with four copies of arguments that he desires to submit to the court and upon every other party to the case. In the alternative, counsel should have notified the Applicants about the procedures in good time to enable them to comply with the requirements under MSCA Rules 20 and 21.

90. Additionally, the Court notes that there is nothing on record to indicate that the Applicants were denied an opportunity or hindered in any way to be heard or to present their case. Furthermore, both the Applicants' and the Respondent's affidavits were accepted by the High Court. This disproves the allegations made by the Applicants that it was only the affidavits of Mtambalika that were considered by the High Court and were decisive of the outcome of the case.

91. Therefore, the Court is of the opinion that the Parties were treated equally in the domestic proceedings under consideration, and the Applicants were not placed at a disadvantage. Accordingly, the claim that the Applicants

were deprived of the opportunity to challenge evidence and to defend themselves is unfounded.

92. Consequently, the Court finds that the Respondent State did not violate the Applicants' right to a fair trial regarding the right to defence as guaranteed under Article 7(1)(c) of the Charter.

iii. Alleged violation of the right to be tried within reasonable time

93. The Applicants submit that their right to be tried within a reasonable time under Article 7(1)(d) of the Charter was violated due to excessive and unjustified delays in the determination of their case from the time the Application was filed at the High Court up to the delivery of the judgment of the MSCA on the review application. They further submit that the proceedings were adjourned 11 times before the High Court, and 13 times before the MSCA.
94. They aver that the proceedings, which commenced by Originating Summons on 20 April 2010 before the High Court of Malawi, were only heard by the MSCA and judgment rendered on 6 April 2022, nearly 12 years later. It is the Applicants' submission that the review proceedings, where their Notice of Motion filed on 30 October 2016 was only determined on 13 June 2019, more than two and a half years later.
95. The Applicants further submit that such prolonged delays are inconsistent with established jurisprudence of the African Commission, which has held that undue prolongation of proceedings violates Article 7(1)(d) of the Charter, as affirmed in *Odjouoriby Cossi Paul v. Benin*. In that case, even a significantly shorter delay was found to be unreasonable. Citing the well-established three-factor test in *Wilfred Onyango Nganyi & 9 Others v. United Republic of Tanzania*, namely: the complexity of the case, the conduct of the Applicants, and the conduct of judicial authorities, the Applicants aver that their "dispute was a straightforward land dispute without complexities and at times they acted diligently and did everything within their power to

assist the court in the smooth running of the procedure”. They submit that these unjustified delays are solely attributed to the judicial authorities.

96. The Applicants also argue that the prolonged proceedings caused legal uncertainty and denied them procedural fairness, particularly as they were never provided with a signed or certified copy of the MSCA decision of 2 August 2016, despite clear procedural requirements under Order III Rules 27³³ and 28 of the Supreme Court of Appeal Rules³⁴ that judgments be formally pronounced and certified. Additionally, the Applicants aver that they were not furnished with a readable or official version of the decision of 6 April 2022, leaving them uncertain of the reasons for the dismissal of their review application, thereby further compounding the violation of their right to a fair and timely determination.

*

97. The Respondent State did not file any response to this Application.

98. Article 7(1)(d) of the Charter provides that “[e]very individual shall have the right to have his cause heard. This right comprises: (a) [...]; (d) the right to be tried within a reasonable time by an impartial tribunal.”
99. The Court recalls its jurisprudence that “determination as to whether the duration of the procedure in respect of local remedies has been normal or abnormal should be carried out on a case-by-case basis depending on the

³³ Order III Rules 27, stipulates:

1. The judgment of the Court shall be pronounced in open Court, either on the hearing of the appeal or at any subsequent time of which notice shall be given by the Registrar to the parties to the appeal.
2. A certified copy of the judgment shall be filed by the Registrar in the Court below.

³⁴ 1. Every judgment of the Court shall be embodied in an order.
2. A sealed or certified copy of the order shall be filed by the Registrar in the Court below
3. Interlocutory orders shall be prepared in like manner.

circumstances of each case”.³⁵ Additionally, the Court’s analysis takes into account the complexity of the case or of the proceedings relating to it, the conduct of the parties and that of the judicial authorities in order to determine whether the latter “has been passive or clearly negligent.”³⁶

100. The Court observes that the assessment of whether proceedings were conducted within a reasonable time requires an examination of the entire record of domestic proceedings, including the sequence of hearings, adjournments, and procedural steps taken by the parties.³⁷

101. In the present case, although the Applicants annexed the judgments of the High Court and the MSCA which were unsigned, they did not provide the complete record of proceedings from the High Court to the MSCA, such as records of adjournments or procedural timelines. Instead, they rely largely on their own summaries of the proceedings.

102. Based on the information provided by the Applicant, the Court can establish that the duration of the trial at the High Court from the commencement on 20 April 2010 to the delivery of judgment on 9 June 2014 was four years, one month and 20 days.

103. Similarly, the judgment of the MSCA shows that the appeal was filed on 22 July 2015, and decided on 2 August 2016, a period of one year and 11 days.

104. The record indicates that the petition for leave to review of the judgment of the MSCA was filed on 7 December 2017 and granted by the MSCA on 12 June 2019, however, judgment was only rendered on 6 April 2022. Therefore, a period of two years, nine months and 23 days had elapsed

³⁵ *Mariam Kouma and Ousmane Diabaté v. Republic of Mali* (merits) (21 March 2018), 2 AfCLR 237, § 37; *Beneficiaries of the late Norbert Zongo and Others v. Burkina Faso* (merits) (28 March 2014) 1 AfCLR 219, *supra*, § 92. *Wilfred Onyango Nganyi v. Tanzania* (merits), § 135.

³⁶ *Kouma and Diabaté v. Mali* (merits), *ibid*, § 38; *Kouadio Kobena Fory v. Republic of Côte d’Ivoire*, (merits and reparations) (2 December 2021) 5 AfCLR 682.

³⁷ *Zongo and Others v. Burkina Faso* (merits), *supra*, § 92; *Wilfred Onyango Nganyi & 9 Others v. Tanzania* (merits), § 135; *Thomas v. Tanzania* (merits), §§ 103-104.

between the time when the Applicants filed the Application for review on 12 June 2019, and when the judgment on review was delivered on 6 April 2022.

105. The Court observes that it took the Respondent State's courts a cumulative period of nine years, five months and twenty-nine days to finalise the Applicants' case. Notably, the proceedings lasted four years at the High Court, one year at the initial stage before the MSCA and two years at the review stage before the same court. While the cumulative period of nine years, five months, and 29 days to finalise the Applicants' case appears to be too long to consider a straightforward land dispute, the time must be contextualised since the Applicants and the Respondent State pursued the available judicial remedies at the national courts.
106. The Court notes that there is no evidence to show that the conduct of the Parties resulted in the delay. In the absence of such primary material evidence, the Court is unable to verify the precise causes of delay or determine whether such delay is attributable to the Respondent State either through procedural developments, adjournments, or other factors attributable either to the parties or to the judicial authorities. Thus, the Court cannot find a violation.³⁸ The Court also observes that judicial proceedings before each of the concerned courts involved different rules, practices and processes which require some time to be observed or completed.
107. From the foregoing, the Court finds that the Respondent State did not violate the Applicants' right to a fair trial, as provided under Article 7(1)(d) of the Charter in respect of the right to be tried within a reasonable time.

³⁸ *Cleophas Maheri Motiba v. United Republic of Tanzania* (merits and reparation) (22 September 2022) 6 AfCLR 656, § 135.

B. Alleged violation of the right to property

108. The Applicants submit that the Respondent State violated their right to property by failing to safeguard their right to fair trial and by ruling that they were not the rightful owners of the land.

109. Citing the jurisprudence of the ECtHR, *Kotov v. Russia* and *Anheuser-Busch Inc. v. Portugal*, the Applicants aver that the State has a positive obligation to establish an effective legal and judicial framework for the protection of property rights, including ensuring access to fair and effective judicial procedures for the determination and enforcement of such rights.

*

110. The Respondent State did not file any response in this Application.

111. Article 14 of the Charter provides:

The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.

112. The Court recalls its jurisprudence that the right to property as guaranteed under Article 14 of the Charter includes the right to use one's property (*usus*), the right to enjoy its fruits (*fructus*) and the right to dispose of it, including the right to sell it (*abusus*).³⁹

³⁹ *African Commission on Human and Peoples' Rights v. Republic of Kenya* (merits) (2017) 2 AfCLR 9, § 124; *Sébastien Germain Ajavon v. Republic of Benin* (merits) (2019) 3 AfCLR 130, § 264. *Al'asaad Milaad v. Republic of Tunisia*, ACtHPR, Application No. 032/2018, Judgment of 26 June 2025 (merits and reparations), § 114.

113. In the present case, the Applicants have not established that they held a valid and legally recognised proprietary right over the land in question. As reflected in the domestic proceedings before the High Court, the ownership of the land in question was contested and the High Court judge held on 9 June 2014 that “the purported agreements herein are invalid, the defendant’s signature having been secured through misrepresentation. The contracts can, therefore, not be enforced and are invalid. I so order. There can be no specific performance whereas in this matter, the contracts are declared invalid, due to the plaintiff’s misrepresentation, the plaintiff’s originating summons is therefore dismissed in its entirety.” This decision was contested by the Applicants on appeal before the MSCA which dismissed the appeal with costs on 2 August 2016.

114. In the absence of a proven property right, the Court finds that the Applicants cannot successfully invoke the full scope of Article 14, including *usus*, *fructus*, and *abusus*, as these protections attach to an established legal entitlement. The Court notes that the domestic judicial system provided a forum in which the Applicants’ claim to property was heard and determined. From the pleadings on record, it is evident that the Applicants were able to present their case before the High Court, including reliance on the alleged sale agreements and supporting affidavits. The existence of such judicial proceedings demonstrates that the Applicants were afforded an opportunity to prove their property claim before competent domestic courts.

115. As a consequence, the Court dismisses the Applicants’ allegation and holds that the Respondent State did not violate the Applicants’ right to property, protected under Article 14 of the Charter.

IX. REPARATIONS

116. In relation to reparations, the Applicants pray the Court to:

- i. Order the Respondent State to pay to them the sum of USD 5.6 Million, as compensation for the moral damage (emotional suffering, psychological trauma, anguish and grief, distress, and frustration) they have suffered;
- ii. Order the Respondent State to pay to them the sum of money equivalent to the current market value of the land (2.2 hectares) that they have lost as a result of the mishandling and/or non-handling of their case;
- iii. Order the Respondent State to pay them the sum of USD 1.6 Million, as material damages;
- iv. Order the Respondent State to pay them a sum of money, as compensation for the loss of their income, other business opportunities, travel expenses to the national courts for 12 years, legal expenses, etc.;
- v. Order the relevant officials of the Respondent State to sign the Judgment of the Supreme Court of Appeal of 2 August 2016 and to provide the formal decision of the Supreme Court of Appeal, dismissing the Applicants' application for review on 6 April 2022;
- vi. Order the Respondent State to make all necessary reforms/amendments/changes to ensure that cases are tried within a reasonable time (e.g., enough capacity), that the court records and judgments are accessible (e.g., electronically), and that the legal framework (ref. Practice Directions) is clear and certain.

*

117. The Respondent State did not file any response in this Application.

118. The Court notes that Article 27 of the Protocol provides that:

If the Court finds that there has been violation of a human or peoples' right, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation.

119. The Court recalls its previous judgments on reparation and reaffirms that, in considering claims for compensation for damage resulting from human rights violations, it takes into account the principle that the State found to be the author of an internationally wrongful act is under an obligation to make full reparation for the consequences so as to cover all the damage suffered by the victim.⁴⁰ The Court also takes into account the principle that there must be a causal link between the violation and the alleged harm and that the burden of proof rests with the Applicant, who must provide the information to justify his or her claim.⁴¹
120. The Court also established that “reparation must, as far as possible, erase all the consequences of the unlawful act and re-establish the state that would probably have existed had the unlawful act not been committed.” In addition, reparation measures may include: restitution, compensation, rehabilitation of the victim and measures to ensure that the violations are not repeated.⁴²
121. Furthermore, the Court recalls that, as it has already established, reparation measures for harm resulting from human rights violations must consider the circumstances of each case.⁴³
122. The Court reiterates that the onus is on the applicant to provide evidence to justify his prayers, particularly for material damages.⁴⁴ With regard to moral damages, the Court has held that it is presumed when violations are

⁴⁰ *Beneficiaries of late Norbert Zongo, Abdoulaye Nikiema alias Ablassé, Ernest Zongo and Blaise Ilboudo and Mouvement Burkinabé des droits de l'homme et des peuples v. Burkina Faso* (reparations) (5 June 2015) 1 AfCLR 265, § 22; *Lohé Issa Konaté v. Burkina Faso* (reparations) (3 June 2016) 1 AfCLR 359, § 15.

⁴¹ *Reverend Christopher Mtikila v. United Republic of Tanzania* (reparations) (13 June 2014) 1 AfCLR 74, § 31.

⁴² *Ingabire Victoire Umuhoza v. Republic of Rwanda* (reparations) (7 December 2018) 2 AfCLR 202, § 20.

⁴³ *Ibid*, § 22.

⁴⁴ *Kennedy Gihana and Others v. Republic of Rwanda* (merits and reparations) (28 November 2019) 3 AfCLR 655, § 139. See also: *Mtikila v. Tanzania* (reparations), § 40; *Konaté v. Burkina Faso* (reparations), § 15(d); and *Elisamehe v. Tanzania* (merits and reparations), *supra*, § 97.

established.⁴⁵ The Court further underscores that it cannot order reparation measures based on claims where no human rights violation has been established.

123. In the instant case, the Court has established that the Respondent State violated the Applicants' right to a fair trial regarding the right to due process as guaranteed by Article 7(1)(a) of the Charter as read together with Article 2(3)(b) of the ICCPR. Additionally, the Court found that the Respondent State violated the Applicants' right to a fair and public hearing as guaranteed under Article 7(1) of the Charter. The Court shall thus proceed to determine the appropriate reparations.

A. Pecuniary reparations

124. The Applicants seek reparations for material and moral prejudice that they suffered and for moral prejudice suffered by the indirect victims. The Court notes that the prayers of the Applicants are in relation to the right to property and legal expenses incurred in domestic proceedings for which this Court did not find any violation. As such, the Court dismisses these prayers.

125. In respect of moral prejudice, the Court notes that the Applicants pray for reparations regarding prejudice related to the right to due process and to a fair and public hearing.

126. The Applicants request that this Court orders the Respondent State to pay them the sum of USD 5.6 million as compensation for the moral damage (emotional suffering, psychological trauma, anguish and grief, distress, and frustration) that they have suffered. They further aver that the violations have also affected their families. They argue that this delay and injustice

⁴⁵ *Ally Rajabu and Others v. United Republic of Tanzania* (merits and reparations) (28 November 2019) 3 AfCLR 539, § 136; *Armand Guehi v. Tanzania* (merits and reparations) (7 December 2018) 2 AfCLR 477, § 55; *Lucien Ikili Rashidi v. United Republic of Tanzania* (merits and reparations) (28 March 2019) 3 AfCLR 13, § 119; *Zongo and Others v. Burkina Faso* (reparations), § 55; and *Elisamehe v. Tanzania* (merits and reparations), § 97.

allegedly made Applicants unfit to work, which resulted in a loss of income, thus undermining their children's education.

127. The Court recalls its previous jurisprudence that moral prejudice suffered by victims of human rights violations is presumed when violations are established.⁴⁶ In the instant case, the Court has found that the violation of the Applicants' right to a fair trial with regard to due process and the right to a fair and public hearing.
128. With regard to the Applicants' compensation for moral damages occasioned by the violation of the right to due process and the right to a fair and public hearing, the Court considers that these violations caused the Applicants moral prejudice. In the circumstances, and in the exercise of its discretion, the Court awards each one of them a sum of Five Hundred Malawi Kwacha (MK 500) for prejudice suffered as compensation for the moral damages.
129. In relation to the compensation of the Applicants' family members, the Court has previously held that compensation is granted only when there is proof of marital status for the spouses or filiation with the applicant with regard to children, including their birth certificates.⁴⁷ The Court notes that the Applicants have not provided any evidence to establish marital status or filiation, such as marriage certificates or birth certificates. Accordingly, the Court finds that the claim is unsubstantiated.
130. In view of these circumstances, the Court finds that the claim for moral prejudice suffered by the families of the Applicants as indirect victims is unjustified and is therefore dismissed.

⁴⁶ *Rajabu and Others v. Tanzania*, *supra*, § 136; *Guehi v. Tanzania*, *supra*, § 55; *Ikili Rashidi v. Tanzania*, § 119; *Zongo and Others v. Burkina Faso* (reparations), *supra*, § 55; and *Elisamehe v. Tanzania*, *supra*, § 97.

⁴⁷ *Zongo and Others v. Burkina Faso* (reparations), § 54; and *Ikili Rashidi v. Tanzania*, *supra*, § 135; *Umuhoza v. Rwanda* (reparations), § 68.

B. Non-pecuniary reparations

i. Measures of restitution and satisfaction

131. The Applicants pray the Court to grant them non-pecuniary reparations in the form of restitution and guarantee of non-repetition measures. Furthermore, the Applicants request that this Court orders the Respondent State to provide them with a signed copy of the judgment of the MSCA of 2 August 2016 and the formal decision of the MSCA, dismissing the Applicants' application for review on 6 April 2022.

132. Given its findings in this Judgment, the Court does not deem it necessary to grant any restitution measures. The prayer for restitution is therefore dismissed.

133. Conversely, in light of the violations established regarding due process and legal certainty, fair and public hearing, the Court considers it appropriate to order the Respondent State to take the necessary measures to immediately furnish the Applicants with official copies of the judgment of the MSCA of 2 August 2016 and the formal decision of the review judgment of the MSCA of 6 April 2022.

ii. Measures of non-repetition

134. The Applicants also pray the Court to order the Respondent State to make all necessary reforms to ensure that cases are tried within a reasonable time (e.g., enough capacity), that the court records and judgments are accessible (e.g., electronically), and that the legal framework (ref. Practice Directions) is clear and certain.

135. The Court observes that while guarantees of non-repetition generally apply in cases of systemic violations,⁴⁸ these remedies would also be relevant in individual cases where the violations will not cease, are likely to recur, or are systemic or structural in nature.⁴⁹ In the present case, the Court does not deem it necessary to issue an order regarding non-repetition of the violations of the Applicants' rights, since there is no possibility of such violations being repeated with respect to the Applicants. Additionally, there is nothing on record to demonstrate that the violations are systemic to warrant such a prayer. The Applicants' prayer in this regard is therefore dismissed.

iii. Implementation and reporting

136. The Applicants do not make specific prayers in respect of implementation and reporting.

137. Even so, the Court notes that the order relating to reporting on the measures taken by a Respondent State is a matter of judicial practice.⁵⁰

138. The Court therefore finds it appropriate to order the Respondent State to submit within six months of notification of this judgment, periodic reports on the implementation thereof, indicating the measures taken to comply with this Judgment, in accordance with Article 30 of the Protocol.

⁴⁸ *Guehi v. Tanzania*, *supra*, § 191; *Zongo and Others v. Burkina Faso* (reparations), *supra*, §§ 103-106.

⁴⁹ *Ibid.*

⁵⁰ *Amir Ramadhani v. United Republic of Tanzania* (reparations) (25 June 2021) 5 AfCLR 303 § 46; *Wilfred Onyango Nganyi and 9 Others v. United Republic of Tanzania* (reparations), § 83; *Nguza Viking (Babu Seya) and Johnson Nguza (Papi Kocha) v. United Republic of Tanzania* (reparations) (8 May 2020) 4 AfCLR 3, § 62.

X. COSTS

139. The Applicants pray for costs.

*

140. The Respondent State did not file any Response to the Application.

141. The Court notes that under Rule 32(2) of its Rules, “[u]nless otherwise decided by the Court, each party shall bear its own costs, if any.”

142. The Court also notes that the proceedings before it are free of charge and while the Applicants pray for costs, they do not provide any evidence to support this prayer.

143. In the present case, the Court finds that there is no reason to depart from the principle laid down in that provision. Accordingly, each party must bear its own costs.

XI. OPERATIVE PART

144. For these reasons:

THE COURT,

Unanimously

On the request for a judgment by default

- i. *Grants* the Applicants' prayer to render this judgment in default;
- ii. *Renders* this judgment by default.

On jurisdiction

- iii. *Declares* that it has jurisdiction.

On admissibility

- iv. *Declares* that the Application is admissible.

On merits

- v. *Holds* that the Respondent State did not violate the Applicants' right to defence as guaranteed under Article 7(1)(c) of the Charter;

By a majority of nine (9) Judges for, and one (1) Judge against, Rafaâ BEN ACHOUR dissenting,

- vi. *Holds* that the Respondent State did not violate the Applicants' right to be tried within a reasonable time as provided under Article 7(1)(d) of the Charter;

Unanimously,

- vii. *Holds* that the Respondent State did not violate the Applicants' right to property, protected under Article 14 of the Charter;
- viii. *Holds* that the Respondent State violated the Applicants' right to have one's cause heard guaranteed under Article 7(1) of the Charter as read jointly with Article 14(1) of the ICCPR, in respect of a fair and public hearing, and availability of courts' decisions;
- ix. *Holds* that the Respondent State violated the Applicants' right to have one's cause heard as guaranteed by Article 7(1)(a) of the

Charter in respect of the composition and competency of the bench of the Malawi Supreme Court of Appeal during the review hearing.

On reparations

- x. *Dismisses* the Applicants' prayers for pecuniary reparations in respect of material prejudice;
- xi. *Dismisses* the Applicants' prayer for restitution;
- xii. *Grants* the Applicants' prayers for moral prejudice suffered as compensation and awards each one of them a sum of Five Hundred Malawi Kwacha (MK 500);
- xiii. *Orders* the Respondent State to pay the amount indicated above free from taxes within six months, effective from the notification of this judgment;
- xiv. *Orders* the Respondent State to take the necessary measures to immediately furnish the Applicants with official and accessible copies of the judgment of the Malawi Supreme Court of Appeal of 2 August 2016 and the formal decision of the review judgment of the Malawi Supreme Court of Appeal, of 6 April 2022;
- xv. *Orders* the Respondent State to submit, within six months of notification of this Judgment, periodic reports on the implementation thereof, indicating the measures taken to comply with this Judgment, in accordance with Article 30 of the Protocol.

On costs

- xvi. *Orders* that each Party shall bear its own costs.

Signed:

Blaise TCHIKAYA, President;



Chafika BENSOUOLA, Vice-President;



Rafaâ BEN ACHOUR, Judge;



Suzanne MENGUE, Judge;



Stella I. ANUKAM, Judge;



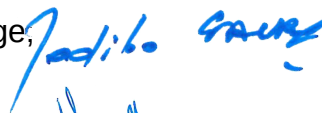
Imani D. ABOUD, Judge;



Dumisa B. NTSEBEZA, Judge;



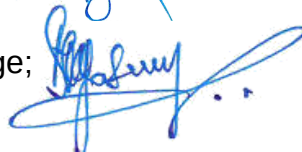
Modibo SACKO, Judge;



Dennis D. ADJEI, Judge;



Duncan GASWAGA, Judge;



and Robert ENO, Registrar.



In accordance with Article 28(7) of the Protocol and Rule 70 (2) of the Rules, the partly Dissenting Opinion of Justice Rafaâ BEN ACHOUR is appended to this Judgment.

Done at Arusha, this Twenty-Fourth Day of September in the Year Two Thousand and Twenty-Six in English and French, the English text being authoritative.

