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		

APPLICATION NO. 006/2025

INSTITUTE FOR HUMAN RIGHTS AND DEVELOPMENT IN AFRICA

V.

THE REPUBLIC OF MALAWI

CASE SUMMARY

I. THE PARTIES

1. The Institute for Human Rights and Development in Africa (hereinafter referred to as "IHRDA" and 'the Applicant'), is a Pan-African Non-governmental organisation (hereinafter referred to as "NGO") based in Banjul, The Gambia. The IHRDA was granted observer status before the African Commission on Human and Peoples' Rights on 15 November 1999.[1] It alleges the violation of rights in relation to the award of costs, amongst others, in a public interest case decided by Supreme Court of Appeal of Malawi.

2. The Respondent State became party to the African Charter on Human and Peoples' Rights (hereinafter referred to as "the Charter") on 23 February 1990 and ratified the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights (hereinafter referred to as "Protocol") on 9 September 2008 and deposited the Declaration prescribed under Article 34(6) of the Protocol allowing direct access to the Court for individuals and NGOs on 9 October 2008.

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. It emerges from the Application that, on 12 June 2020, the President of the Respondent State placed Justice Andrew Nyirenda SC, former Chief Justice of Malawi (hereinafter referred to as "former Chief Justice") and, Justice Edward Twea SC, former Judge of the Supreme Court of Appeal (hereinafter referred to as "former Judge"), on administrative leave pending their retirement from the Judiciary.

[1] Granted observer status at the 26th Ordinary Session of the African Commission on Human and Peoples' Rights (1 – 15 November 1999).

4. The Applicant avers that subsequent to the placement on leave of the former Chief Justice and former Judge, Human Rights Defenders Coalition (hereinafter referred to as "HRDC"), which is a NGO based in Malawi, and two others, namely the Association of Magistrates in Malawi and the Malawi Law Society filed a public interest case before the High Court of Malawi, seeking judicial review and challenging the legality of the actions taken by the President of the Respondent State and the Secretary to the President and Cabinet.

5. On 14 June 2020, the High Court of Malawi granted the HRDC and the others, leave to apply for judicial review and granted an injunctive order restraining the implementation of the decision placing the former Chief Justice and former Judge on leave. On 27 August 2020, the High Court delivered its judgment declaring that the actions of the President of the Respondent State and the Secretary to the President and Cabinet were unconstitutional.

6. On 20 November 2020, the High Court also held that the President of the Respondent State and the Secretary to the President and Cabinet should personally bear the costs of the judicial review proceedings which were later assessed at the amount of Malawian Kwacha Sixty-Nine Million, Five Hundred and Seven Thousand, Four Hundred and Sixty-One (MWK 69, 507, 461), which they paid.

7. The President of the Respondent State and former Secretary to the President and Cabinet subsequently, appealed to the Supreme Court of Appeal, alleging that the Order of the High Court imposing the cost of litigation on them personally was erroneous as section 91 of the Constitution of the Respondent State provided them with unqualified immunity.

8. On 8 November 2024, the Supreme Court of Appeal reversed the decision of the High Court, found in favour of the appellants and ordered the HRDC and the others to reimburse the costs paid by the President and Secretary to the President and Cabinet, and to further pay the costs of litigation at the

Supreme Court of Appeal, the total amount due being Malawian Kwacha One Hundred and Six Million, and Five Hundred and Fifty Eight Thousand (MWK 106, 558, 000).

9. It emerges from the Application, that the HRDC and others have already paid Malawian Kwacha Thirty-Five Million, Five Hundred and Nineteen Thousand, Three Hundred and Thirty-Five Kwacha and Forty Tambala (MWK 35, 519, 335.40) and therefore owe the judgment creditors, Malawian Kwacha Seventy-One Million, Thirty-Eight Thousand, Six Hundred and Sixty-Four and Sixty Tambala (MWK 71, 038, 664.60).

10. The Applicant submits that the decision of the Supreme Court of Appeal which requires HRDC and others to personally bear the costs of public interest litigation, violates several human rights protected under the Charter and the International Covenant on Civil and Political Rights (ICCPR). Furthermore, the Applicant alleges that the Supreme Court of Appeal violated the right to a fair trial as it "promised to deliver a reasoned judgment within 90 days of the *ex-tempore* order" but had not done so.

B. Alleged violations

11. The Applicant alleges the following:

i. Violation of right to have one's cause heard contrary to Article 7 of the African Charter
ii. Violation of the right to express and disseminate opinions within the law contrary to Article 9(2) of the African Charter and Article 12(2) of the ICCPR.
iii. Violation of the right to an effective remedy contrary to Article 2(3) and (b) of the International Covenant on Civil and Political Rights (ICCPR).
iv. Violations of the right to property contrary to Article 14 of the African Charter.
v. Violation of freedom of Association contrary to Article 10 of the African Charter and article 22 of the International Covenant on Civil and Political Rights (ICCPR).
vi. Violation of the general obligations covered under article 1 of the African Charter on Humans and people's Rights.

III. PRAYERS OF THE APPLICANT

12. The Applicant prays the Court for the following:

i. A DECLARATION that the imposition of cost orders by the Supreme Court of Appeal of Respondent State against the Applicant and 2 other public interest plaintiffs in a case involving the genuine desire to protect rule of law, separation of powers and constitutional democracy amounts to a violation of the right to have one's cause heard under article 7 of the African Charter on Human and Peoples' Rights.

ii. A DECLARATION that the Respondent State is in violation of the right to an effective remedy under article 2 (3) of the International Covenant on Civil and Political Rights to which the Republic of Malawi is a State Party.

iii. A DECLARATION that the Respondent State is in violation of the right to express and disseminate information within the law under article 9 (2) of the African Charter on Human and Peoples' Rights.

iv. A DECLARATION that the Respondent State is in violation of the right to freedom of association under article 10 of the African Charter on Human and Peoples' Rights and article 21 of the International Covenant on Civil and Political Rights to which the Republic of Malawi is a State Party.

v. A DECLARATION that the Respondent State is in violation of the right to property under article 14 of the African Charter on Human and Peoples' Rights

vi. A DECLARATION that the Respondent State is in violation of its obligations under article 1 of the African Charter on Human and Peoples' Rights.

vii. AN ORDER compelling the Respondent State to reverse the costs imposed on the Applicants and its co-litigants, as well as any other unjustified financial penalties resulting from their public interest litigation.

viii. AN ORDER permanently restraining all the judicial organs of the Respondent State from enforcing the adverse costs orders made by the Supreme Court of Appeal on 8 November 2024.

ix. AN ORDER compelling the Respondent State to take all the necessary steps to ensure the cost orders are not imposed in cases relating to the vindication of human rights, constitutional litigation aimed at protecting rule

of law, separation of power or constitutional democracy broadly, except in instance where there is evidence that the case was frivolous, vexations or an abuse of process and

x. ANY FURTHER ORDER or ORDERS as the Court deems fit to make in the circumstances.