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

THE MATTER OF

PATROKLOS TSAPERAS

V.

REPUBLIC OF MALAWI

APPLICATION NO. 007/2022

RULING

13 NOVEMBER 2026



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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, member of the Court, and a national of Malawi, did not hear the Application.

In the Matter of:

Patroklos TSAPERAS

Represented by:

David Kanyenda, Managing Partner, Makiyi, Kanyenda and Associates

Versus

REPUBLIC OF MALAWI

Represented by:

i. Counsel Thabo Chakaka-Nyirenda – SC, Attorney General;
ii. Mr Neverson Chisiza, Senior Assistant Chief State Advocate, Ministry of Justice;
iii. Mrs Angela Kaunda, Acting Head of Human Rights Section, Ministry of Justice;
iv. Mr Francis MacJessie, Senior State Advocate, Ministry of Justice.

After deliberation,

Renders this Ruling:

I. THE PARTIES

1. Mr Patroklos Tsaperas (hereinafter referred to as the "Applicant") is a national of the Republic of South Africa. He is also a director of Malawi Mobile Limited (hereinafter referred to as "MML"), in which he holds shares through Finanz Capital Management. He alleges violation of his rights in relation to the proceedings before the Malawian courts.

2. The Application is filed against the Republic of Malawi (hereinafter referred to as "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. On 9 October 2008, the Respondent State became a party to the Protocol and deposited the Declaration prescribed under Article 34(6) of the Protocol, by which it accepted the jurisdiction of the Court to receive applications filed by individuals and Non-Governmental Organisations (hereinafter "the Declaration").

II. SUBJECT MATTER OF THE APPLICATION

A. Facts of the matter

3. The record indicates that on 19 April 2002, MML, a company of which the Applicant is a director, entered into a licence agreement with the Malawi Communications Regulatory Authority (MACRA) to provide mobile telecommunications services in the Respondent State for a period of 15 years upon payment of an annual licence fee of United States Dollars One Hundred Thousand (USD 100,000).

4. Under this agreement, MML was required to roll out the services in Malawi within 12 months. However, by January 2005, MML had not rolled out the services but had apparently engaged third parties to facilitate the roll-out. The Applicant claims that on 27 January 2005, MML sought an extension of time up to 31 October 2005 to effect the roll-out.

5. On 9 February 2005, MACRA notified MML that its licence had been revoked and demanded payment of outstanding licence fees and penalties. On 21 March 2005, MML sent another request for extension of time to MACRA for the roll-out.

6. The Applicant alleges that, on 29 March 2005, MML and MACRA concluded a further agreement extending the roll-out period until 31 October 2005, subject to specified conditions. He further avers that on 4 April 2005, the Attorney General of Malawi suspended MACRA's board of directors and invalidated all its resolutions from 24 March 2005, including the decision to extend MML's roll-out period.

7. According to the Applicant, MML, relying on the extension of time given by MACRA, made two payments for the licence fee of United States Dollars One Hundred Thousand (USD 100,000) each on 19 and 20 April 2005.

8. The Applicant claims that following the suspension of the Board of Directors of MACRA, he was arrested along with the Chairman of MACRA and its counsel, Mr Khuze Kapeta, Senior Counsel, for allegedly uttering a false document, obtaining a document by false pretence, and perjury. However, they were subsequently released, and the criminal proceedings against them were discontinued. Furthermore, Mr Kapeta served a notice of intention to sue the Attorney General for malicious prosecution, but this claim was settled amicably.

9. On 12 May 2005, MML instituted a civil case against the Respondent State before the High Court of Malawi alleging breach of contract and the tort of inducement.

10. The Applicant alleges that on 13 June 2005, the former Chairman of MACRA's board, Mr Abdul Pillane, filed a constitutional claim before the High Court of Malawi challenging both the suspension of the MACRA's Board of Directors and the resolutions that they had made. According to the

Applicant, on 3 February 2006, the High Court of Malawi found in favour of Mr Pillane, holding that the decision of the Attorney General was "unconstitutional and unlawful, and therefore null and void". The Applicant also alleges that the Attorney General did not appeal this decision.

11. The Applicant avers that MML's case was referred to arbitration on 1 October 2010. The arbitration was terminated on 17 February 2011, and the case was referred back to the High Court. By judgment of 20 April 2012, the High Court found in favour of MML and awarded damages of United States Dollars Sixty-Six Million, Eight Hundred and Fifty Thousand (USD 66,850,000) together with costs.

12. The Respondent State appealed to the Malawi Supreme Court of Appeal (MSCA), and MML filed a cross-appeal before the same Court as it was not satisfied with the amount of damages awarded. On 10 March 2015, judgment was delivered in the Respondent State's favour as the MSCA found that there was no breach of contract and thus set aside the decision of the High Court and dismissed the MML's cross appeal.

13. Following the MSCA's judgment of 10 March 2015, MML, on 15 May 2015, instituted proceedings before the Common Market for Eastern and Southern Africa Court of Justice (hereinafter referred to as "COMESA CJ"). The Respondent State objected to the jurisdiction of the said Court. On 20 November 2015, the First Instance Division of the COMESA CJ dismissed the Respondent State's preliminary objection to its jurisdiction.

14. The Respondent State thus appealed the ruling on jurisdiction to the Appellate Division of the COMESA CJ. On 27 April 2017, the Appellate Division of the COMESA CJ held that it lacked jurisdiction and dismissed the reference. Being dissatisfied with the decision of the Appellate Division, MML filed a petition for review, which was dismissed on 17 September 2021.

B. Alleged violations

15. The Applicant alleges violations of the following:

    i. Right to property under Article 14 of the Charter and Article 17 of the Universal Declaration of Human Rights (UDHR);
    ii. Freedom from discrimination under Article 2 of the Charter and Article 26 of the International Covenant on Civil and Political Rights (ICCPR);
    iii. Right to equal protection of the law under Article 3 of the Charter and Article 14 of the ICCPR;
    iv. Right to be recognised as a person under Article 16 of the ICCPR; and
    v. Right to have one's cause heard under Article 7(1) of the Charter.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

16. The Application was filed on 17 October 2022 and served on the Respondent State on 28 January 2023. The Respondent State was granted 30 days to submit its list of representatives and 90 days to file its Response. It filed its Response on 18 August 2023, and the Response was transmitted to the Applicant on 29 August 2023 for his Reply.

17. On 9 October 2023, the Applicant filed his Reply, which was transmitted to the Respondent State for information.

18. Pleadings were closed on 3 December 2023, and the Parties were notified.

IV. PRAYERS OF THE PARTIES

19. The Applicant prays the Court for the following:

    i. Compensation for loss of income/revenue and pecuniary/material damage in the sum of $133,700,000 as assessed by the uncontroverted evidence of expert…;

ii. The sum of $400,000 being reimbursement of the license fees paid by MML to MACRA;
iii. Compensation for non-pecuniary/moral damage (to be assessed by the African Court);
iv. Satisfaction (publication of the Court's judgment);
v. Rehabilitation (withdrawal of the defamatory and disparaging material concerning the 1st Applicant on the internet);
vi. US$ 1,200,000 being reimbursement of the inevitable expenditure and costs (Lawyer's fees in domestic courts and in the African Court, transport and sojourn expenses);
vii. A Declaration that the acts and/or omissions of the Respondent complained herein amount to a violation of the provisions of the African Charter.

20. The Respondent State prays the Court that:

i. The Application should be dismissed as:
   a. No contract to extend the network roll existed;
   b. There was no breach of contract by MACRA;
   c. Malawi Government did not induce breach of contract as no contract existed;
   d. Neither did Malawi Government interfere with any contract since none existed;
   e. Malawi Government and MACRA are not liable at all to MML;
   f. MML does not deserve any award of damages as they have not proved a contract or its breach or any loss or damage.
ii. Malawi Government and MACRA should be awarded costs.

V. JURISDICTION

21. The Court notes that Article 3 of the Protocol provides as follows:

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 instrument ratified by the States concerned.

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

22. The Court further notes that pursuant to Rule 49(1) of the Rules, it "…shall conduct preliminary examination of its jurisdiction…in accordance with the Charter, the Protocol and these Rules."

23. On the basis of the above-cited provisions, the Court must conduct a preliminary assessment of its jurisdiction and dispose of any objections thereto.

24. The Court observes that the Respondent State does not challenge its jurisdiction. However, being cognisant of Rule 49(1) of the Rules, the Court must satisfy itself that all aspects of its jurisdiction are established before proceeding to determine the Application.

25. With respect to its personal jurisdiction, as stated in paragraph 2 of this Ruling, the Respondent State became a party to the Protocol on 9 October 2008 and deposited the Declaration with the African Union Commission on the same day. Consequently, the Court finds that it has personal jurisdiction.

26. The Court notes that the Applicant alleges violations of his rights guaranteed under Articles 2, 3 and 14 of the Charter and Articles 14 and 16 of the ICCPR, treaties to which the Respondent State is a party.[1] Accordingly, the Court finds that it possesses material jurisdiction to entertain this Application.[2]

27. As to temporal jurisdiction, the Court notes that the alleged violations began in 2005 with the Attorney General's breach of contract, which predates the

[1] The Respondent State became party to the ICCPR on 22 March 1994.
[2] *Idd Kiture v. United Republic of Tanzania*, ACtHPR, Application No. 010/2019, Judgment of 5 June 2026 (merits and reparations), § 19; *Elyssa v. Republic of Tunisia*, ACtHPR, Application No. 69/2019, Judgment of 4 December 2025 (merits), § 30.

Respondent State's accession to the Protocol. However, the Applicant alleges that the MSCA violated his rights to property and to a fair trial in 2012, that is, after the Respondent State became a party to the Protocol. The Court thus finds that it has temporal jurisdiction.[3]

28. The Court also notes that it has territorial jurisdiction as the alleged violations occurred in the territory of the Respondent State, which is a party to the Charter and the Protocol.[4]

29. In light of the foregoing, the Court holds that it has jurisdiction to hear this Application.

VI. ADMISSIBILITY

30. Article 6(2) of the Protocol provides that "the Court shall rule on the admissibility of cases taking into account the provisions of Article 56 of the Charter."

31. Pursuant to Rule 50(1) of the Rules, "[t]he 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."

32. 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 of the following conditions:
>
> a. Indicate their authors even if the latter request anonymity;

[3] *Ligue Ivoirienne des Droits de l'Homme and Others v. Republic of Côte d'Ivoire*, ACtHPR, Application No. 041/2016, Judgment of 5 September 2023 (merits and reparations), § 58.
[4] *Masudi Selemani v. United Republic of Tanzania*, ACtHPR, Application No. 042/2019, Judgment of 5 June 2026 (merits and reparations), § 27; *Godfrey Gabinus Alias Ndimba v. United Republic of Tanzania*, ACtHPR, Application No. 042/2019, Judgment of 5 June 2026 (merits and reparations), § 31.

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 seised 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 the African Union, or the provisions of the Charter.

33. The Respondent State raises two objections to the admissibility of the Application. The Court will, therefore, consider the said objections before examining other conditions of admissibility, if necessary.

A. Objections to the admissibility of the Application

34. The Respondent State raises two objections to the admissibility of the Application: (i) that the Applicant did not exhaust local remedies and (ii) that the Application was not filed within a reasonable time. The Court will consider the objections sequentially.

i. Objection based on failure to exhaust local remedies

35. The Respondent State contends that the objective of the requirement to exhaust local remedies is for victims of human rights violations first to seek redress for their grievances through national bodies, up to the highest

judicial authority, before submitting the case to an international body. The Respondent State further submits that the condition of exhaustion of local remedies underscores that international bodies are subsidiary to state institutions and should thus "not get involved unless human rights violations cannot be resolved at the national level".

36. According to the Respondent State, an international judicial body must not be made a court of first instance; therefore, the Applicant must pursue all appeals at the national level before approaching an international court.

37. The Respondent State argues that, in the present case, the "issues litigated upon in the domestic courts" related to a breach of contract by MACRA and an alleged tort of inducement to commit a breach of contract. It thus submits that no human rights violations were pleaded. According to the Respondent State, the issues raised before the national courts had no relevance to the Charter, the Protocol or any other relevant instrument that it has ratified.

38. It is the Respondent State's view that the Applicant has brought to this Court "a totally different set of remedies which were not litigated upon in the domestic courts in Malawi". Furthermore, the Respondent State contends that the Court derives its jurisdiction from the Charter and should, therefore, adhere to the Charter's provisions.

39. Consequently, the Respondent State submits that the Application should be declared inadmissible for the Applicant's failure to exhaust local remedies.

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40. Citing the Court's decision in *African Commission on Human and Peoples' Rights v. Kenya*, the Applicant submits that a matter brought before this Court need not have been previously raised before domestic courts by the same applicants. Rather, what is required is that the Respondent State was afforded a genuine opportunity to address the grievance through its national

legal processes. In this regard, he avers that Mr Abdul Pillane filed a case before the High Court of Malawi, which implicated the Respondent State.

41. Furthermore, the Applicant avers that the Application raises, in substance, the same issues that were litigated before the Constitutional Court of Malawi pertaining to the conduct of the Attorney General in seeking to dissolve the Board of MACRA and set aside its resolutions, including the resolution purporting to extend the roll-out period of the MML network. The Applicant argues that local remedies were exhausted, since the Attorney General did not appeal the decision of the Constitutional Court.

42. According to the Applicant, MML separately instituted proceedings before the High Court against the Respondent State, seeking damages for loss of profit arising from breach of contract. Judgment was delivered in favour of MML on 20 April 2012. He asserts that the Respondent State challenged the High Court's decision, while MML cross-appealed in respect of the damages awarded. On 10 March 2015, the MSCA reversed the High Court's judgment, allowed the Respondent State's appeal, and dismissed MML's cross-appeal. He thus submits that the MSCA's decision marked the exhaustion of local remedies.

43. The Applicant avers that the burden lies with the Respondent State to prove that he has not exhausted domestic remedies with regard to "the question of the alleged tort of inducement and the breach of contract". The Applicant also asserts that "there is no available or effective remedy with respect to human rights violations".

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44. Article 56(5) of the Charter, whose provisions are restated in Rule 50(2)(e) of the Rules, provides that any application filed before the Court shall fulfil the requirement of exhaustion of local remedies, unless such remedies are

unavailable, ineffective and insufficient or the domestic proceedings thereof are unduly prolonged.[5]

45. The Court underscores that the objective of the rule of exhaustion of local remedies is to provide States with the opportunity to resolve cases of alleged human rights violations within their jurisdiction before an international human rights body is called upon to determine the State's responsibility for the same, in accordance with the principle of subsidiarity.[6]

46. Furthermore, for local remedies to be exhausted, an applicant must have presented before domestic courts the claims that he raises before this Court.[7] The Court further recalls that exhaustion of local remedies is assessed as at the time the application is filed before it, and compliance with this requirement entails that applicants must await the outcome of pending domestic proceedings before seising the Court.[8] The exceptions to this rule are where the applicable remedy is unavailable, ineffective or insufficient, or where the domestic proceedings are unduly prolonged.[9]

47. In the instant case, the Applicant alleges the violations of the right to property, right to non-discrimination, right to be recognised as a person, right to equal protection of the law and the right to have one's cause heard. The Court will thus determine whether he exhausted local remedies in relation to each of the claims.

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[5] *Peter Joseph Chacha v. United Republic of Tanzania* (admissibility) (28 March 2014) 1 AfCLR 398, §§ 142-144; *Almas Mohamed Muwinda and Others v. United Republic of Tanzania*, ACtHPR, Application No. 030/2017, Judgment of 24 March 2022 (merits and reparations), § 43.
[6] *Lohe Issa Konate v. Burkina Faso* (merits) (5 December 2014) 1 AfCLR 314, § 78; *Chacha v. Tanzania*, *ibid*; *Muwinda and Others v. Tanzania*, *ibid*.
[7] *Harouna Dicko and Others v. Burkina Faso*, ACtHPR, Application No. 037/2020, Ruling of 13 November 2024 (jurisdiction and admissibility), § 42.
[8] *Dicko and Others v. Burkina Faso*, *ibid*, § 43.
[9] *Ibid.*

a. Exhaustion of local remedies in relation to the claim on the right to property

48. The Applicant argues that he exhausted all local remedies when the MSCA delivered its decision on 10 March 2015.

49. For its part, the Respondent State contends that the "issues litigated upon in the domestic courts" related to a breach of contract by MACRA and an alleged tort of inducement to commit a breach of contract. It thus argues that no human rights violations were pleaded.

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50. With regard to the Applicant's claim on the right to property, the Court must determine whether the evidence provided by the Applicant concerning the cases decided by the national courts satisfies the requirements of exhaustion of local remedies in accordance with Article 56(5) of the Charter.

51. The Court has held that, in determining whether proceedings instituted by a company may be attributed to an individual applicant for the purposes of Article 56(5) of the Charter, regard must be had to the link between the Applicant and the company whose interests form the basis of the claim before the Court.[10]

52. The Court also observes that limited liability companies constitute legal vehicles through which investors pool and deploy capital, while the shareholder's proprietary interest is embodied in his shares. Section 43(1) of the Malawi Companies Act 1984 expressly recognised that "the shares or other interest of any member in a company shall be personal estate and movable property". Although the company's assets are legally distinct from those of its shareholders, the value of a shareholder's proprietary interest is

[10] *Jean Claude Roger Gombert v. Republic of Côte d'Ivoire* (jurisdiction and admissibility) (2018) 2 AfCLR 270, § 48.

necessarily affected by the economic position of the company in which the shares are held.

53. Thus, conduct which materially diminishes the assets, business or value of the company may correspondingly prejudice the shareholder's own property interest in his shares. The Court, therefore, recognises the economic and proprietary connection between the company's fortunes and the value of the shareholder's investment.

54. In the present case, MML may accordingly be regarded, for the limited purpose of establishing the requisite nexus between the domestic proceedings and the Applicant's claim, as the corporate vehicle through which the Applicant's economic and proprietary interests were invested.

55. Applying these principles to the facts of the present case, the Court finds that the Applicant has established a sufficient link to MML through his indirect shareholding. The domestic proceedings instituted by MML placed before the national courts the substance of the dispute arising from the impugned measures attributable to the Respondent State, and were pursued through the domestic judicial hierarchy up to the MSCA. Those proceedings consequently afforded the Respondent State the opportunity to examine and, where appropriate, remedy the underlying matters now brought before this Court.

56. To require the Applicant, notwithstanding his established proprietary connection with MML and the adjudication of the substance of the dispute by the domestic courts, to institute separate proceedings raising substantially the same underlying grievance would elevate the formal identity of the domestic litigant over the substantive purpose of the exhaustion requirement. As a consequence, in the circumstances of the present case, the domestic proceedings pursued by MML satisfy the requirement of exhaustion of local remedies in respect of the Applicant's claim.

57. The Court accordingly finds that the Applicant has exhausted local remedies with regard to the claim on the right to property.

b. Exhaustion of local remedies in relation to the claim on the right to have one's cause heard

58. With regard to the allegation that the MSCA was inquorate when it delivered its judgment of 10 March 2015, the Court notes that the Applicant has not submitted any proof of exhaustion of local remedies. Rather, the Applicant argues that the remedies are ineffective.

59. In this regard, the Court recalls that it has consistently held that it is not enough for the Applicant to cast aspersions on the effectiveness of the Respondent State's local remedies. It is incumbent on him to take all necessary steps to exhaust, or at least attempt to exhaust, all local remedies.[11]

60. The Court therefore finds that the Applicant has not exhausted local remedies with regard to the claim that the MSCA was inquorate.

c. Exhaustion of local remedies in relation to the claim on the right to equality before the law and equal protection of the law

61. The Applicant's claims in relation to his rights to equality before the law and equal protection of the law relate to the alleged non-execution of the Constitutional Court's judgment. In this regard, the Applicant has not pointed to any specific domestic proceedings, whether before the High Court, the Constitutional Court, or the MSCA, in which he initiated execution proceedings as the decree holder.

[11] *Diakité Couple v. Republic of Mali* (jurisdiction and admissibility) (28 September 2017) 2 AfCLR 118; *Koutché v. Benin* (jurisdiction and admissibility), *supra*, § 92; *Ajaye Jogoo v. United Republic of Tanzania*, ACtHPR, Application No.014/2018, Ruling of 26 June 2025 (jurisdiction and admissibility), § 52.

62. The Court therefore finds that the Applicant has not exhausted local remedies with regard to the claim on the right to equality before the law and equal protection of the law.

d. Exhaustion of local remedies in relation to the claims on the rights to non-discrimination and to be recognised as a person before the law

63. With regard to the Applicant's claim that he was discriminated against on grounds of nationality and race despite having complied with all legal requirements for the roll-out of the mobile services, the Court notes that he has neither adduced any evidence of exhaustion of local remedies nor shown that any of the exceptions to that rule apply.[12]

64. The Court therefore finds that he has not exhausted local remedies with regard to these claims.

65. In light of the foregoing, the Court finds that the Applicant exhausted local remedies only in respect of the claim concerning the right to property. Accordingly, it dismisses the Respondent State's objection on this ground but upholds the objection in respect of the other three claims.

ii. Objection on the basis that the Application was not filed within a reasonable time

66. Citing the decisions of *Anudo Ochieng Anudo v. Tanzania* and *Alex Thomas v. Tanzania*, the Respondent State avers that the Court's assessment of whether an application was filed within a reasonable time depends on factors such as the status of the applicant and the conduct of the Respondent State or its officials.

67. The Respondent State contends that the reasonableness of time is assessed on the basis of "objective considerations". It further submits that

[12] *Ibid*.

the decision of the MSCA was delivered on 10 March 2015, while the final decision of the COMESA CJ was delivered on 23 April 2021. The Respondent State therefore asserts that more than one year elapsed from the time the COMESA CJ delivered its final decision to the time the Applicant seised the Court.

68. The Respondent State contends that the Applicant was neither imprisoned nor subject to restrictions on his freedom of movement; that he is not indigent; and that he has enjoyed continuous legal representation. In those circumstances, the Respondent State submits, the Applicant must be presumed to have been aware of the Court's existence. The Respondent State further argues that the Applicant has advanced no sufficient justification for the delay in instituting the present proceedings.

69. According to the Respondent State, the Application should be declared inadmissible for not having been filed within a reasonable time.

70. The Applicant avers that a delay of one year cannot be considered inordinate given the complexity of the case and the time needed to prepare the Application "after lengthy protracted proceedings in pursuit of judicial remedies".

71. The Applicant argues that the violations are continuing and they "renew themselves day by day as long as they remain unsettled".

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72. The Court notes that Rule 50(2)(f) of the Rules, which in substance restates the contents of Article 56(6) of the Charter, requires an application to be filed within a reasonable time after exhaustion of domestic remedies or from the date set by the Court as being the commencement of the time limit within which it shall be seised with the matter.

73. As the Court has previously held, "… the reasonableness of the timeframe for seizure depends on the specific circumstances of the case and should be determined on a case-by-case basis."[13]

74. In the instant case, the Court observes that the Application was filed on 17 October 2022, that is, seven years, seven months and seven days after the MSCA's decision of 10 March 2015, which marked the exhaustion of local remedies. The Court will therefore determine whether this period is reasonable within the meaning of Rule 50(2)(f) of the Rules.

75. The Court also observes that although the Applicant exhausted local remedies on 10 March 2015, he subsequently pursued litigation before the COMESA CJ for six years. However, the proceedings before the COMESA CJ cannot form part of the exhaustion of domestic remedies, as that Court is a regional tribunal operating within a distinct legal order. Accordingly, the Court will calculate the reasonable time period starting from the date of the final domestic court's ruling, namely, 10 March 2015, when the MSCA rendered its decision.

76. The Court observes that the Applicant seized the Court after a period of seven years, seven months and seven days. Such a period is significantly longer than that considered acceptable and, in the absence of compelling justification, weighs decisively against the reasonableness of the Applicant's conduct in the present case.

77. The Court thus finds that the period of seven years, seven months and seven days which elapsed after the exhaustion of local remedies constitutes unjustified excessive delay.

[13] *See Beneficiaries of the late Norbert Zongo, Abdoulaye Nikiema Alias Ablasse, Ernest Zongo, Blaise Ilboudo and Mouvement Burkinabe des Droits de l'Homme et des Peuples v. Burkina Faso* (merits) (28 March 2014) 1 AfCLR 219, § 92; *Gerald Karoso Kalonge v. United Republic of Tanzania*, ACtHPR, Application No. 024/2018, Judgment of 13 November 2024 (merits and reparations), § 46.

78. The Court accordingly upholds the objection of the Respondent State and finds that the Application was not filed within a reasonable time after the exhaustion of local remedies, and finds the Application inadmissible.

B. Other conditions of admissibility

79. Having found that the Application does not satisfy the requirement of Article 56(6) of the Charter as restated under Rule 50(2)(f) of the Rules, the Court does not need to rule on the admissibility requirements set out in Article 56(1), (2), (3), (4) and (7) of the Charter as restated in Rule 50(2)(a), (b), (c), (d) and (g) of the Rules, as the admissibility requirements are cumulative.

VII. COSTS

80. The Applicant does not make any submissions on costs. The Respondent State prays that the costs be borne by the Applicant.

81. The Court observes that Rule 32(2) of the Rules provides that "[u]nless otherwise decided by the Court, each Party shall bear its own costs, if any."

82. The Court recalls that proceedings before it are free of charge. Furthermore, although the Respondent State prays that the costs be borne by the Applicant, it has not demonstrated that it incurred any such costs. Accordingly, the Court sees no reason to depart from the above provision and decides that each Party shall bear its own costs.

VIII. OPERATIVE PART

83. For these reasons:

THE COURT,

Unanimously,

On jurisdiction

i. *Declares* that it has jurisdiction.

On admissibility

ii. *Dismisses* the objection to the admissibility of the Application in relation to the non-exhaustion of local remedies on the alleged violation of the right to property;

iii. *Upholds* the objection to the admissibility of the Application in relation to the non-exhaustion of local remedies on the alleged violations of the rights to equality before the law and equal protection of the law, to non-discrimination, to be recognised as a person before the law, and to a fair trial;

iv. *Upholds* the objection to the admissibility of the Application for failure to file the Application within a reasonable time; and

v. *Holds* that the Application is inadmissible.

On costs

vi. *Orders* that each Party shall bear its own costs.

Signed:

Blaise TCHIKAYA, President; 

Chafika BENSAOULA, 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.

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