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

APPLICATION NO. 001/2022

MISOZI CHRLES CHANTHUNYA.. APPLICANT

V.

REPUBLIC OF MALAWI...RESPONDENT STATE

CASE SUMMARY

I. THE PARTIES

1. Mr. Misozi Charles Chanthunya ("the Applicant'') is a national of Malawi who, at the time of filing this Application, was imprisoned at Zomba Central Prison after having been convicted and sentenced as follows: life imprisonment for murder, two years imprisonment for hindering the burial of a dead body and two years' imprisonment with hard labour for perjury. Sentences were to run concurrently.

2. The Application is filed against the Republic of Malawi ("the Respondent State"), which became a party to the African Charter on Human and Peoples' Rights ("the Charter") on 23 February 1990 and to the Protocol on 9 October 2008. On 9 October 2008, the Respondent State deposited the Declaration provided for under Article 34(6) of the Protocol by which it accepts the jurisdiction of the Court to receive cases directly from individuals and non-governmental organisations ("the Declaration").

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. The Applicant alleges that on 1 March 2018, he was extradited from South Africa to the Respondent State. On 4 June 2018, he was arraigned before the High Court of Malawi, Zomba District charged with murder of Ms Linda Gaza. The said murder allegedly occurred on or about 4 August 2010 at Monkey Bay in Mangochi district.

4. On 9 January 2020, the Applicant filed a notice of motion before the High Court on preliminary issues seeking a declaration that his rights accruing from statutory and constitutional provisions had been violated. By a Ruling

dated 23 January 2020, the High Court dismissed the Applicant's aforesaid motion and allowed leave to appeal. The Applicant filed a notice of appeal against the ruling on preliminary issues on 27 January 2020.

5. The Applicant further filed an application for stay of the High Court's proceedings pending determination of his appeal, which was refused by the High Court on 27 January 2020 and by the Supreme Court of Appeal on 22 July 2020.

6. The Applicant alleges that some actions of the Respondent State's national Courts led to his appeal not being heard, including the refusal by the High Court and the Supreme Court of Appeal to grant a stay of the High Court's proceedings pending determination of the Applicant's appeal at the Supreme Court of Appeal; I, and; the failure of the Registrar of the High Court to systematically prepare the records of appeal and to send to the Supreme Court of Appeal.

7. The Applicant further asserts that, on 31 January 2020, before close of the hearing relating to the murder charge, the Prosecution made an application to amend the original charge by adding two counts of hindering the burial of a dead body contrary to section 131 of the Penal Code, and perjury contrary to section 101 of the Penal Code. On 2 March 2020, the High Court allowed the amendment regardless of the Applicant's objections. He pleaded not guilty to all the charges and, upon close of the Prosecutions' case, he exercised his right to remain silent.

8. On 28 August 2020, the High Court found the Applicant guilty of all the charges and on 4 September 2020, sentenced him to life imprisonment for the offence of murder, and two (2) years imprisonment for the offence of hindering burial of dead body and two years' imprisonment with hard labour for perjury, the sentences running concurrently.

9. The Applicant avers that on 25 September 2020, he filed an appeal against the High Court's judgment to the Supreme Court of Appeal, the highest appellate court in the Respondent State, which on 14 July 2021 dismissed the appeal and upheld both his conviction and sentence. The Applicant claims that the Supreme Court of Appeal has, till the date of filing of the instant Application, never given any reasons for its judgment.

10. In addition, the Applicant contends that his conviction and sentence by the High Court and upheld by the Supreme Court of Appeal were not based on strong and credible evidence and he was not given adequate opportunity to challenge the evidence as the prosecution failed and/or neglected to bring key and material witnesses as required by the principle of a fair trial. In this regard, he alleges that the conviction was not based solely on evidence presented but rather, the High Court judge relied on facts that were not adduced by witnesses.

11. The Applicant maintains that the said judgment was also based on fraudulent documents presented in court by the Prosecution as "Call logs" but which, in fact, were not call logs and, therefore, not evidence. The Applicant further alleges that the evidence used by the Prosecution against him, on the basis of which the High Court found him guilty, was not admissible since it was obtained through violation of provisions of statutory law, the Constitution of the Respondent State and the principles of rule of law.

B. Alleged Violations

12. The Applicant alleges the violation of the right to fair trial protected by Article 7(1) of the Charter together with Article 4(1) of the African Charter on Democracy, Elections and Governance (hereinafter referred to as the "ACDEG"), Article 14(1) and (3) (a) of the International Covenant on Civil and Political Rights ("ICCPR"), Article 8 of the Universal Declaration on Human Rights ("UDHR") and Part A, Article 2(e), (h), (i), and (j); Part C,

Article (b)(i), Part N, Article 1 (a) and 6 (e) of Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa.

C. APPLICANT'S PRAYERS

13. The Applicant prays the Court to:

   i.   Declare or find that his right to fair trial guaranteed under relevant human rights instruments has been violated, and that such violation occasioned miscarriage of justice;
   ii.   Order restitution by way of restoration of his liberty and/or release from prison; and
   iii. Order compensation to be assessed by the Court.