

MISOZI CHARLES CHANTHUNYA

V.

REPUBLIC OF MALAWI

APPLICATION No. 001/2022

JUDGMENT ON MERITS AND REPARATIONS

A DECISION OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

Arusha, 13 November 2024: The African Court on Human and Peoples' Rights (the Court), today, delivered a judgment in the case of *Misozi Charles Chanthunya v. Republic of Malawi*.

Misozi Charles Chanthunya (the Applicant) is a national of the Republic of Malawi (the Respondent State). He alleged the violations of his right to fair trial protected by Article 7 of the African Charter on Human and Peoples' Rights (the Charter) in particular, the right to appeal to competent national organs against acts violating his fundamental rights; the right to be presumed innocent until proved guilty by a competent court or tribunal; the right to defence; and the right to be given reasons for the decisions. He contended that all these rights are guaranteed and protected under Article 7(1) of the Charter read together with Article 4(1) of African Charter on Democracy, Elections and Governance (ACDEG); 8 of the Universal Declaration on Human Rights (UDHR); Article 14 of the International Covenant on Civil and Political Rights (ICCPR); Part A, Article 2(j) and Part C, Article b(i) of Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (Fair Trial Guidelines). The Applicant sought the Court's declaration that, his right to fair trial guaranteed under the aforementioned human rights instruments have been violated, and that such violation occasioned miscarriage of justice; that the Court order restitution by way of restoration of his liberty and/or release from prison, and order compensation as assessed by it.

It emerges from the Application that on 1 March 2018, the Applicant was extradited from South Africa to the Respondent State. He was arraigned before the High Court of Malawi Zomba District and charged with the murder of Ms Linda Gaza contrary to section 209 of the Respondent State's Penal Code. The said murder allegedly occurred on or about 4 August 2010 at Monkey Bay in Mangochi District. The charge was later amended to include the offences of hindering the burial of a dead body contrary to section 131, and perjury contrary to Section 101 of the Respondent State's Penal Code.

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Before the High Court, the Applicant filed a notice of motion on preliminary issues seeking declarations concerning alleged violations of statutory and constitutional provisions. This was dismissed by the High Court on 23 January 2020. Subsequently, the Applicant filed a notice of appeal together with an application for a stay of the High Court's proceedings pending determination of his appeal before the Malawi Supreme Court of Appeal (MSCA). On 27 January 2020, the High Court dismissed the application. The dismissal was subsequently upheld by the MSCA on 22 July 2020.

On 28 August 2020, the High Court convicted and sentenced the Applicant for the aforementioned offences and on 14 July 2021, the MSCA upheld the conviction and sentence.

Following MSCA's decision, on 23 December 2021 the Applicant filed this Application before the African Court together with a request for provisional measures, alleging violation of his right to a fair trial in proceedings before domestic courts.

The Respondent State defaulted.

On jurisdiction, pursuant to Rule 49(1) of its Rules, the Court had to satisfy itself that all aspects of its jurisdiction were met. The Court found that it has material jurisdiction, since the Applicant alleges violations of rights protected by the Charter, the ACDEG and the ICCPR, instruments to which the Respondent State is a party. It also held that it has personal jurisdiction, since the Respondent State has deposited its Declaration by which it accepts the jurisdiction of the Court to receive cases directly from individuals and Non-Governmental Organisations with Observer Status before the African Commission on Human and Peoples' Rights. The Court determined that it has temporal jurisdiction, in as much as the alleged violations took place after the Respondent State became Party to the Protocol and it has territorial jurisdiction as the facts of the case occurred in the territory of the Respondent State.

With regards to admissibility, the Court had to satisfy itself that all conditions were met, pursuant to Article 56 of the Charter, read together with Rule 50(2) of the Rules of Court. Although the admissibility of the Application was not challenged by the Respondent State since it defaulted, the Court nevertheless assessed whether they had been complied with. The Court held that the Applicant had been clearly identified by name and that the allegations by the Applicant sought to protect his rights protected under the afore-mentioned instruments. Furthermore, the Court found that the language used in the Application was not disparaging or insulting to the Respondent State or its institutions, the Application was not based exclusively on news disseminated through mass media but was based on legal documents and that the Applicant had exhausted all local remedies with respect to the allegations. Accordingly, the Court held that

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the Application had fulfilled all the conditions for admissibility and consequently declared the Application admissible

On the merits, the Court considered whether the Respondent State violated the Applicant's right to fair trial protected under Article 7 of the Charter, as read together with Article 4(1) of the ACDEG, Article 14 of the ICCPR, Article 8 of the UDHR, and Article 2 of Fair Trial Guidelines, by examining six allegations made by the Applicant as composing the breach to his right to fair trial, to wit: (i) violation of the right to be heard; (ii) conviction of the Applicant based on unreliable evidence (iii) violation of the right to challenge opposing evidence (iv) violation of the right to be presumed innocent, (v) violation of the right to be notified of charges and (vi) violation of the right to reasoned Court decisions.

On the first issue, the Applicant contended that the High Court's refusal to grant a stay of its proceedings pending the determination of his appeal to the Malawi Supreme Court of Appeal (MSCA) on preliminary issues, and the High Court's Registrar's failure to prepare the appeal record and send it to the MSCA, unjustly prevented his appeal on preliminary issues from being set down and heard; thus he claimed that his right to fair trial was violated.

The Court noted that, there is no evidence in support of the allegation that the High Court's Registrar failed to prepare the appeal record, and to send it to the MSCA; and that the Applicant's appeal on preliminary issues was heard by the MSCA which gave its ruling on 22 July 2020. The Court further found that, the MSCA could not determine his appeal if records of appeal were not submitted as alleged. Consequently, the Court found that this allegation was unfounded.

Concerning the alleged failure of the High Court to grant stay of proceedings pending the determination of the Applicant's Appeal to the MSCA on preliminary issues, the Court found that the MSCA, dismissed the application on preliminary issues, since the Applicant did not show what irreparable damage, and injustice he would suffer if the proceedings were not stayed. Therefore, it cannot be said that the Applicant's right to be heard was breached at any stage of the domestic proceedings. The Court, therefore, found that the Respondent State did not violate the Applicant's right to fair trial in respect of this issue.

On the second issue, the Applicant contended that his conviction by the High Court and the upholding of his conviction by the MSCA was based on facts not stated by witnesses and on fraudulent documents presented as evidence by the prosecution, and that there were procedural, statutory and constitutional violations in the process of obtaining this evidence. Based on this the Applicant claimed that his right to fair trial was violated.

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The Court observed that, while it does not substitute national Courts when it comes to assessing the evidence adduced in domestic proceedings, it retains the power to examine whether the manner in which such evidence was considered is compatible with international human rights norms. It is on this basis that the Court, after a thorough examination of the records, found that the High Court, in convicting the Applicant, only relied on unfalsified and concrete evidence that was presented in Court and thus the High Court was in full compliance with the procedural requirements under the Respondent State's criminal procedure and the evidence laws. Hence the procedures relied on by the High Court align with international human rights standards, specifically those enshrined in Article 14 of the International Covenant on Civil and Political Rights, which guarantees the right to fair trial, including right to be convicted after a lawful trial. The Court, therefore, found that the Respondent State did not violate the Applicant's right to fair trial regarding his conviction.

On the third issue, the Applicant alleged that his right to fair trial was violated due to being denied the opportunity to challenge the opposing evidence presented by the prosecution. The Applicant averred that he was not given adequate opportunity to challenge the opposing evidence as the prosecution failed and/or neglected to bring to court key and material witnesses. The Court held that the right to fair trial was also not violated in this instance, because from the records of the domestic court, the Applicant was represented by different lawyers of his own choice during domestic proceedings, and all prosecution witnesses were cross-examined by the Applicant's Counsel therefore the Applicant was granted the opportunity to challenge the prosecution's evidence and to raise his defence in the domestic court, but he chose to exercise his right to remain silent during the defence. The Court, therefore, found that the Respondent State did not violate the Applicant's right to fair trial with regard to being given an adequate opportunity to challenge opposing evidence.

On the fourth issue, the Applicant alleged that his right to fair trial, namely, the right to be presumed innocent until found guilty, was violated since the conviction and imposition of his sentences were not based on strong and credible evidence. The Court observed that during the proceedings before the Respondent State's High Court, the Applicant was given the right to plead on both the first and amended charge (where he pleaded not guilty to the charges), had the opportunity to cross-examine prosecution witnesses, and filed various applications. It is on this basis that the Court found that the Applicant did not provide evidence to support his allegations and that the Respondent State did not violate the Applicant's right to be presumed innocent.

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On the fifth issue, regarding the Applicant's allegation on the violation of his right to be notified of charge, he argued that the additional charges of hindering burial of a dead body and perjury were incompetent, in that they violated the Constitution of the Respondent State and the rule of law. The Applicant also claimed that the evidence used to support the additional charges was obtained in a manner contrary to the provisions of the Constitution of the Respondent State, resulting in a violation of his right to a fair trial.

This Court noted that, the charges of hindering burial of a dead body and perjury are covered under specific sections of the Penal Code of the Respondent State. According to the Respondent State's Extradition Act, a fugitive can be prosecuted for crimes other than those for which they were extradited, if the additional offences are less severe and based on the same facts that led to the extradition. Therefore, the Court found the claim of procedural defects in the collection of evidence for the additional charges to be unfounded. The Court concluded that there was no violation of the Applicant's right to have their cause heard, as the charges were lawfully and properly brought before the domestic court and did not result in any miscarriage of justice to the Applicant, since he was given an opportunity to plead to those charges.

On the sixth issue, the Applicant alleged that his right to a fair trial regarding the right to be provided with reasons for the MSCA's decisions was violated. The Applicant claimed that the MSCA, as of the date of filing of the application, had not given him reasons for its decision or judgment. However, the Applicant did not submit the formal judgment of the MSCA, and the Respondent State did not file a Response. The MSCA delivered a judgment on 14 July 2021, published on the official website of the Respondent State's Judiciary. That judgment provided reasoning for its decision. The Court therefore, held that the Respondent State did not violate the Applicant's right to fair trial in regard of this issue.

Consequently, the Court dismissed the Applicant's claim and held that the Respondent State had not violated the Applicant's right to fair trial guaranteed under 7(1) of the Charter read together with Article 4(1) of the ACDEG, Article 14(1) of the ICCPR, Article 8 of the UDHR, and Part A, Article 2(i) of Fair Trial Guidelines.

Since the Court had not found any violations of the Applicant's right to a fair trial, it did not order reparations.

Regarding costs, the Court ordered that each party should bear its own costs.

Further Information

Further information about this case, including the full text of the decision of the African Court, may be found on the website at: <https://www.african-court.org/cpmt/fr/details-case/0012022>.

For any other queries, please contact the Registry by email registrar@african-court.org.

The African Court on Human and Peoples' Rights is a continental court established by African Union Member States to ensure the protection of human and peoples' rights in Africa. The Court has jurisdiction over all cases and disputes submitted to it concerning the interpretation and application of the African Charter on Human and Peoples' Rights and any other relevant human rights instrument ratified by the States concerned. For further information, please consult our website at www.african-court.org.