

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

**IN THE MATTER OF**

**MISOZI CHARLES CHANTHUNYA**

**V.**

**THE REPUBLIC OF MALAWI**

**APPLICATION NO. 001/ 2022**

**JUDGMENT**

**13 NOVEMBER 2024**



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

Misozi Charles CHANTHUNYA

*Represented by*

Advocate Michael Goba CHIPETA

Gobz & Rechtswissenschaft

Versus

REPUBLIC OF MALAWI

*Not represented*

After deliberation,

*Renders this Judgment:*

## **I. THE PARTIES**

1. Misozi Charles Chanthunya (hereinafter referred to as “the Applicant”) is a national of Malawi. At the time of filing the Application, he was serving a life sentence at Zomba Central Prison, having been convicted by the High Court of Malawi, for the offence of murder. He was sentenced to two years imprisonment for hindering the burial of a dead body, and two years’ imprisonment with hard labour for perjury. He alleges violation of his right to a fair trial in proceedings before domestic courts.
2. The Application is filed against the Republic of Malawi (hereinafter referred to as “the 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 and to the Protocol on 9 October 2008. It further deposited, on 9 October 2008, the Declaration under Article 34(6) of the Protocol (hereinafter referred to as “the Declaration”) by which it accepted 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.

## **II. SUBJECT OF THE APPLICATION**

### **A. Facts of the matter**

3. 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.

4. 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.
5. 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. On 27 January 2020, the High Court dismissed the application. The dismissal was subsequently upheld by the Malawi Supreme Court of Appeal on 22 July 2020.
6. On 28 August 2020, the High Court convicted the Applicant for the offences of murder, hindering the burial of a dead body and perjury. He was sentenced to life imprisonment for murder, two years imprisonment for hindering the burial of a dead body and another two years imprisonment with hard labour for perjury, the sentences to run concurrently. He later appealed to the Supreme Court of Appeal, which upheld the conviction and sentence on 14 July 2021.

## **B. Alleged Violations**

7. The Applicant alleges violation of his right to a fair trial as follows:
  - i. The right to an appeal to competent national organs against acts violating his fundamental rights as recognized and guaranteed by Conventions, laws, regulations and customs in force, protected by Article 7(1)(a) of the Charter as read together with Article 8 of the Universal Declaration on Human Rights (UDHR), Part A, Article 2(j) and Part C, Article (b)(i) of the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (Fair Trial Guidelines);
  - ii. The right to be presumed innocent until proved guilty by a competent court or tribunal, protected by Article 7(1)(b) of the Charter as read together with Article 14(2) of the International Covenant on Civil and

Political Rights (ICCPR); Article 11(1) of UDHR Article and Part N, Article 6(e) of the Fair Trial Guidelines;

- iii. The right to defence, protected by Article 7(1)(c) of the Charter read together with Article with Article 4(1) African Charter on Democracy, Elections and Governance (ACDEG), Article14(1)(3)(a) of the ICCPR; Part A, Article 2(e), (h), (i), and Part N, Article 1(a) of the Fair Trial Guidelines.

### **III. SUMMARY OF THE PROCEDURE BEFORE THE COURT**

8. The Application, together with a request for provisional measures dated 13 December 2021, was filed on 23 December 2021. It was served on the Respondent State on 27 May 2022 for its responses to the Request for provisional measures and to the main Application, respectively, within 15 and 90 days.
9. Upon the expiry of the deadlines, respectively on 15 June 2022 and 31 August 2022, the Respondent State did not file any response.
10. On 7 March 2023, the Registry reminded the Respondent State that the time-limit to respond to the Application had elapsed, and the Court would proceed to give a judgment in default should it fail to file the Response within 45 days of receipt of the notification, as provided under Rule 63(1) of the Rules.
11. At the expiry of the above stated time which was on 24 April 2023, the Respondent State did not file the Response as requested.
12. Pleadings were closed on 28 June 2023, and the Parties were duly notified thereof.

13. On 24 January 2024, the Court issued a Ruling in which it dismissed the request for provisional measures. The Parties were notified of the Ruling on 30 January 2024.

#### **IV. PRAYERS OF THE PARTIES**

14. 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;
  - iii. Order compensation to be assessed by the Court.
15. The Respondent State did not file any Response and, therefore, did not make any prayers.

#### **V. ON THE DEFAULT OF THE RESPONDENT STATE**

16. Rule 63(1) of the Rules provides:

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 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.

17. The Court notes that the afore-mentioned Rule sets out three conditions on which the Court may pass judgment in default, 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) the request made by the other Party or the discretion of the Court.<sup>1</sup>

18. In the instant case, the Application was served on the Respondent State as earlier stated. However, the Respondent State neither appeared nor filed any response, even after being reminded to do so as recounted above. The Court, therefore, finds that the Respondent State chose not to exercise its right to defence.
19. With respect to the second condition, the Court notes that, on 8 March 2023, the Application and all supporting documents were served on the Respondent State, and it was requested to file its Response within 45 days thereto. The Respondent State was further notified that the Court would render a judgment in default if it failed to file its Response within an additional period of 45 days, which elapsed on 24 April 2023. The Respondent State still did not file its Response. The Court thus concludes that the defaulting Party, that is, the Respondent State, was duly notified.
20. Lastly, the Court notes that in the present case, the Applicant did not file any request for a judgment in default. However, as Rule 63(1) permits, the Court may do so *suo motu*. In this regard, the Court considers that, as it has previously held, it may render a judgment in default where the interests of justice require it to do so.<sup>2</sup> The Court decides to do so in the present Application.
21. Based on the foregoing, the Court finds that all requirements under Rule 63 are met, and proceeds to render the present Judgment in default.

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<sup>1</sup> *Leon Mugesera v. Republic of Rwanda* (judgment) (27 November 2020) 4 AfCLR 834, §§ 13-18; *Fidele Mulindahabi v. Rwanda* (merits and reparations) (26 June 2020) 4 AfCLR 291, § 22; See *African Commission on Human and Peoples' Rights v. Libya* (merits) (3 June 2016) 1 AfCLR 153, §§ 38-42.

<sup>2</sup> *Mugesera v. Rwanda*, *ibid*; *Mulindahabi v. Rwanda*, *ibid*; *African Commission on Human and Peoples' Rights v. Libya*, *ibid*.



## VI. JURISDICTION

22. The Court recalls 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.

23. The Court further notes that in terms of Rule 49(1) of the Rules, “[t]he Court shall conduct preliminary examination of its jurisdiction ... in accordance with the Charter, the Protocol and these Rules.”<sup>3</sup>

24. Based on the above-cited provisions, the Court must conduct a preliminary examination of its jurisdiction and dispose of objections thereto, if any.

25. The Court observes that no objection has been raised with respect to its material, personal, temporal and territorial jurisdiction. However, in line with Rule 49(1) of the Rules, it must satisfy itself that conditions relating to all aspects of its jurisdiction are met before proceeding.

26. Given that nothing on the record indicates that it does not have jurisdiction, the Court, therefore, concludes that it has:

- i. Material jurisdiction, since the Applicant alleges violations of rights protected by the Charter, the ACDEG, which this Court has held is a human rights instrument,<sup>4</sup> and the ICCPR, instruments to which the Respondent State is a party.<sup>5</sup>

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<sup>3</sup> Formerly, Rule 39(1) of Rules of Court, 2 June 2010.

<sup>4</sup> *Actions pour la Protection des Droits de l’Homme v. Republic of Côte d’Ivoire* (merits) (18 November 2016) 1 AfCLR 668, § 65.

<sup>5</sup> Malawi ratified the ICCPR and ICESCR on 22<sup>nd</sup> December 1993, ratified and deposited its declaration on the African Charter on Democracy, Elections and Governance (ACDEG) on 11 October 2012 and 24 October 2012 respectively.

- ii. Personal jurisdiction, since the Respondent State has made the Declaration as indicated in paragraph 2 of the present Judgment.
  - iii. Temporal jurisdiction, in as much as the alleged violations took place after the Respondent State became party to the Protocol.
  - iv. Territorial jurisdiction as the facts of the case occurred in the territory of the Respondent State.
27. Considering all the above, the Court holds that it has jurisdiction to hear the present Application.

## **VII. ADMISSIBILITY**

28. 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”.
29. In line 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.”
30. 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.
31. The Court notes that the Respondent State did not file any submission in the present Application.
32. The Court notes, from the record, that the Application's compliance with the requirements in Article 56(1), (2), (3), (4), (5), (6) and (7) of the Charter, which are reiterated in sub-rules 50(2)(a), (b), (c), (d), (e), (f) and (g) of the Rules, are not in contention between the Parties. Nevertheless, it must ascertain that these requirements have been fulfilled.
33. In particular, the Court notes that the requirement laid down in Rule 50(2)(a) of the Rules is met since the Applicant has indicated his identity.
34. The Court also notes that the claims made by the Applicant seek to protect his 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 Rule.
35. The Court further observes 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.

36. Regarding the condition stated in Rule 50(2)(d) of the Rules, the Court notes that the Application fulfils the said condition as it is not based exclusively on news disseminated through the mass media but it is derived from court records.
37. 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 the High Court convicted the Applicant for the offences of murder, hindering the burial of a dead body and perjury. He was sentenced to life imprisonment for murder, two years imprisonment for hindering the burial of a dead body and another two years imprisonment with hard labour for perjury, the sentences to run concurrently. He later appealed to the Supreme Court of Appeal, which upheld the conviction and sentence. Since the Supreme Court of Appeal of Malawi is the highest court of the Respondent State, this Court finds that local remedies were exhausted in the present Application, and the requirement set out under Rule 50(2)(e) of the Rules is thus met.
38. 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".
39. The Court recalls that in assessing the reasonableness of time, it has held that in instances where the time being assessed is relatively short, such time will be considered as manifestly reasonable.<sup>6</sup>

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<sup>6</sup> *Niyonzima Augustine v. United Republic of Tanzania*, ACtHPR, Application No. 058/2016, Judgment of 13 June 2023 (merits and reparations), §§ 56-58; *Simon Vuwa Kaunda v. Republic of Malawi*, ACtHPR, Application No. 013/2021, Judgment of 5 September 2023 (merits and reparations), §§ 34, 35; *Sébastien Germain Ajavon v. Republic of Benin* (merits and reparations) (29 March 2021) 5 AfCLR 94, §§ 86-87.

40. From the record before the Court, the Applicant exhausted local remedies by filing an appeal against the High Court's convictions and sentences to the Supreme Court of Appeal, which is the country's highest and final court. The Supreme Court of Appeal dismissed the Applicant's appeal on 14 July 2021. Thereafter the Applicant filed this Application on 13 December 2021. It thus took the Applicant five months to file this Application, after exhausting domestic remedies. In the circumstances, the Court finds the period of five months to be manifestly reasonable within the meaning of Article 56(6) of the Charter as restated in Rule 50(2)(f) of the Rules.
41. 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.
42. 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.

## **VIII. MERITS**

43. The Court notes that the Applicant has made several allegations regarding the possible violation of his right to a fair trial protected by Article 7 of the Charter, Article 4(1) of the ACDEG as read together with Article 14 of the ICCPR, Article 8 of the UDHR, and Article 2 of the Fair Trial Guidelines, Specifically, he invokes his entitlement to appeal to a higher judicial body (A); he also challenges his conviction based on what he alleges was unreliable evidence (B); invokes his right to challenge opposing evidence, as well as his right to be presumed innocent (C); to be notified of the

amended charge (D); and his right to be given reasons for the decisions (E).  
The Court will now address each of the Applicant's allegations.

#### **A. Alleged violation of the right to be heard**

44. The Applicant alleges that the High Court's refusal to grant a stay of its proceedings pending 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. Therefore, he claims that his right to a fair trial, protected by Article 7(1) of the Charter, as read together with Article 8 of the UDHR; Part A, Article 2(j) and Part C, Article (b)(i) of the Fair Trial Guidelines has been violated.

45. The Respondent State did not file its Response.

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46. The Court observes that Article 7(1)(a) of the Charter provides that:

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

47. Regarding the right to have one's cause heard by a higher court under Article 7(1)(a) of the Charter, the Court recalls that in the case of *Kalebi Elisamehe v. United Republic of Tanzania*,<sup>7</sup> it held that every person convicted of a crime shall have the right to have his conviction and sentence reviewed by a higher tribunal according to law.

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<sup>7</sup> *Kalebi Elisamehe v. United Republic of Tanzania* (judgment) (26 June 2020) 4 AfCLR 265, § 69.

48. In the instant Application, it emerges from the record, 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. The Court notes that the Applicant's appeal on preliminary issues was heard in the MSCA, and which gave its ruling on 22 July 2020.<sup>8</sup> The MSCA could not determine the said appeal without the records of appeal being filed. Consequently, the Court finds that this allegation is unfounded.
49. In relation to the 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 notes that the MSCA, in its ruling, 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.<sup>9</sup> Therefore, it cannot be said that the Applicant's right to be heard was breached at any stage of the domestic proceedings.
50. As a consequence of the above, the Court dismisses the alleged violation of Article 7(1)(a) of the Charter as read together with Article 8 of the UDHR, Part A, Article 2(j) and Part C, Article (b)(i) of the Fair Trial Guidelines regarding the Applicant's right to be heard by the MSCA.

**B. Alleged violation of the right not to be convicted based on unreliable evidence**

51. The Applicant alleges that the judgment of the High Court, which was upheld by the MSCA, was not based solely on evidence presented to the trial court, which made up some of the evidence by considering facts that were not stated by witnesses. The Applicant also avers that the High Court's judgment, as affirmed by the MSCA, was based on fraudulent documents described as "call logs" but they were not and that there were several procedural defects on how the evidence adduced by the prosecution was

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<sup>8</sup> *Misozi Charles Chanthunya v. The Republic*, MSCA Criminal appeal No 2 of 2020 (Malawi Supreme court of appeal) (ruling) (22 July 2020).

<sup>9</sup> *Ibid.*

obtained. He alleges that the evidence was obtained through violation of provisions of statutory law, the Constitution of the Republic of Malawi and the principle of the rule of law. It is the Applicant's contention that these actions violated Article 7(1) of the Charter read together with Article 4(1) of the ACDEG, Article 8 of the UDHR, Article 14(1) of the ICCPR and Part A, Article 2(h) of the Fair Trial Guidelines.

52. The Respondent State did not file any response.

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53. The Court notes that pursuant to Article 7(1) of the Charter, as well as the above cited provision are to the effect that every individual has the right to have their cause heard.

54. The Court recalls that, as it has held in *Mohammed Abubakari v. United Republic of Tanzania*,<sup>10</sup> a fair trial requires that where a person faces a heavy prison sentence, the finding that he or she is guilty, must be based on strong and credible evidence.

55. The Court however recalls 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.<sup>11</sup> The rationale of such intervention is to ensure that the consideration of facts and evidence by domestic courts was not manifestly arbitrary or did not result in a miscarriage of justice.<sup>12</sup>

56. The Court notes that in the present Application, the Applicant avers that his conviction by the High Court and the upholding of the same by the MSCA

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<sup>10</sup> *Ibid*, § 174.

<sup>11</sup> See *Abubakari v. Tanzania* (merits), §§ 26, 173; *Guehi v. Tanzania* (merits and reparations), §§ 105-111; and *Werema and Another v. Tanzania* (merits), §§ 59-64.

<sup>12</sup> *Abubakari v. Tanzania* §§ 26 and 173.



was relied on facts not stated by witnesses, or, based on fraudulent documents presented as evidence by the prosecution.

57. The Court observes that the High Court, in convicting the Applicant, relied on exhibits such as pictures of the room in which the body of Linda Gasá was exhumed, call logs, picture of Linda Gasá's dead body, video recording of the exhumation processes, the Applicant's reply to his caution statement, immigration exit report and testimonies of 11 witness.
58. The Court is of the view that, in doing so, the High Court did not breach any procedural requirements as provided under the Respondent State's criminal procedure and the evidence laws. As such, it cannot be said that the proceedings as conducted by the trial court was manifestly arbitrary or resulted in a miscarriage of justice.
59. The Court therefore finds that there was no violation of Article 7(1) of the Charter as read together with Article 4(1) of the ACDEG, Article 8 of the UDHR, Article 14(1) of the ICCPR and Part A, Article 2(h) of the Fair Trial Guidelines regarding the Applicant's conviction.

### **C. Alleged violation of the right to challenge opposing evidence**

60. The Applicant alleges that his right to fair trial was violated due to being denied the opportunity to challenge the opposing evidence presented by the prosecution. He avers 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. It is the Applicant's contention that such act was a violation of Article 7(1) of the Charter read together with Article 8 of the UDHR, Article 14(1) of the ICCPR and Part A, Article 2(e) of the Fair Trial Guidelines.
61. The Respondent State did not file any response.

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62. The Court observes that Article 7(1)(c) of the Charter and the other above cited provisions are to the effect that every individual has the right to have his cause heard, including the right to defence.
63. As this Court held in *Sébastien Germain Ajavon v. Republic of Benin*,<sup>13</sup> 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.
64. The Court notes that, as it emerges from the records, the Applicant was represented by different lawyers of his own choice in the domestic proceedings. As noted from the High Court's judgment, all prosecution witnesses were cross examined by the Applicant's counsel.
65. Furthermore, the records show that in the course of domestic proceedings, the Applicant was asked to adduce evidence in defence but he was recorded as electing to exercise his right to remain silent.
66. The Court finds, therefore, that the Applicant was granted the opportunity to challenge the prosecution's evidence as presented by prosecution witnesses and to raise his defence in the course of domestic proceedings but he chose to exercise his right to remain silent.
67. The Court is holds therefore, that the Respondent State did not violate Article 7(1) of the Charter read together with Article 8 of the UDHR, Article 14(1) of the ICCPR and Part A, Article 2(e) of the Fair Trial Guidelines in respect of the right to challenge opposing evidence.

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<sup>13</sup> *Sébastien Germain Ajavon v. Republic of Benin* (merits) (29 March 2019) 3 AfCLR 130, § 149.

#### **D. Alleged violation of the right to be presumed innocent**

68. The Applicant alleges that his right to fair trial, namely, the right to be presumed innocent till found guilty, was violated since the conviction and imposition of his sentences were not based on strong and credible evidence. It is the Applicant's contention that this action was a violation of Article 7(1)(b) of the Charter read together with Article 11(1) of the UDHR, Article 14(2) of the ICCPR and Part N, Article 6(e) of the Fair Trial Guidelines.

69. The Respondent State did not file any response.

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70. The Court observes that Article 7(1)(b) of the Charter, and other instruments cited above provide for the right to be presumed innocent until proven guilty by a competent court or tribunal.

71. The Court recalls the general principle that he who alleges a violation must prove the same. As the Court held in *Armand Guehi v. United Republic of Tanzania*,<sup>14</sup> an applicant cannot infer "presumption of guilt", from the allegation that his trial was not conducted in a proper and professional manner.

72. In the present Application, the Applicant did not adduce any evidence to support his claim. He merely inferred that he was not presumed guilty because his conviction was not supported by strong evidence.

73. The Court notes that the Applicant was given the right to plead on both the first and amended charge, where he pleaded not guilty. Furthermore, a full trial was conducted, and the Applicant cross examined all prosecution witnesses and was given the opportunity to challenge the documents before

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<sup>14</sup> *Armand Guehi v. United Republic of Tanzania* (merits and reparations) (7 December 2018) 2 AfCLR 477.

their admission. He further filed several applications during trial including an application to challenge the violation of his rights under the Constitution of the Republic of Malawi and an application for a stay of proceedings pending his appeal. Therefore, the Court finds that the Applicant did not prove how his right to be presumed innocent was violated.

74. In view of the above, the Court finds that the Respondent State did not violate Article 7(1)(b) of the Charter read together with Article 11(1) of the UDHR, Article 14(2) of the ICCPR and Part N, Article 6(e) of the Fair Trial Guidelines regarding presumption of innocence.

#### **E. Alleged violation of the right to be notified of charges**

75. The Applicant alleges that the addition of the charges of hindering burial of dead body and perjury were not competent charges, on the ground that their addition to the case flouted provisions of the Constitution of the Respondent State and the rule of law. The Applicant alleges that the way the evidence used to charge him for the additional charges was obtained contrary to the provisions of the Constitution of the Respondent State. The Applicant alleges that this act was a violation of Article 7(1) of the Charter read together with Article 4(1) of the of the ACDEG, Article 14(3)(a) of the ICCPR, Article 8 of the UDHR, and Part N, Article 1(a) of the Fair Trial Guidelines.
76. The Respondent State did not file any response.

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77. The Court observes that Article 7(1) of the Charter and other above cited provisions are to the effect that every individual shall have the right to have his cause heard.
78. The Court notes that as it emerges from the record the charge of hindering burial of dead body is provided for under section 131 of the Penal Code,

and perjury is provided for under section 101 of the Penal Code of the Respondent State.

79. The Court also notes that, in accordance with section 21 of the Respondent State's Extradition Act, a fugitive can be prosecuted for crimes other than those for which they were extradited provided that these additional offenses are lesser in severity and are based on the same facts that justify the extradition. It cannot be said therefore that, the manner in which the additional charges were instituted was arbitrary or contrary to a fair trial. As such, no miscarriage of justice to the Applicant was occasioned, who was dully afforded the right to plead to the additional charges.
80. In the circumstances, therefore, the Court finds the allegation of procedural defects in collection of evidence used to institute additional charges of hindering burial of dead body and perjury to be unsubstantiated.
81. As a consequence, the Court finds that there was no violation of Article 7(1) of the Charter as read together with Article 4(1) of the ACDEG, Article 14(3)(a) of the ICCPR, Article 8 of the UDHR, and Part N, Article 1(a) of the Fair Trial Guidelines with regard to the notification of the charge.

#### **F. Alleged violation of the right to reasoned court decisions**

82. The Applicant alleges that his right to a fair trial regarding the right to be provided with reasons for the Supreme Court of Appeal's decisions was violated. The Applicant claims that the Supreme Court of Appeal, as at the date of filing of this application, has not given him reasons for its decision or judgment. The Applicant alleges that this act constitutes a violation of Article 7(1) of the Charter read together with Article 14(1) of the ICCPR, Article 8 of the UDHR, and Part A, Article 2(i) of the Fair Trial Guidelines.
83. The Respondent State did not file any response.

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84. The Court observes that Article 7(1) of the Charter and other above cited provisions are to the effect that every individual shall have the right to have his cause heard.
85. The Court finds that with regard to this allegation on the failure of the MSCA to provide the Applicant with reasons for its decision, the Supreme Court of Appeal, in its ruling as attached by the Applicant to this Application, stated that after reviewing the arguments and supporting law, they have decided unanimously to dismiss all appeals, and uphold convictions and sentences.<sup>15</sup>
86. The Court further observes that section 139(1) of the Criminal Procedure and Evidence Code of the Respondent State<sup>16</sup> provides that the judgment in every trial, other than a jury trial, in any criminal court in the exercise of its original jurisdiction, shall be pronounced, or the substance of such judgment shall be explained, in open court, either immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties. However, as per the same provisions, the whole judgment shall be read out by the presiding judge or magistrate if he or she is requested to do so either by the prosecution or defence.
87. The Court further observes that, in the present case, the Applicant did not supply a copy of the judgment of the MSCA while the Respondent State did not take part in the proceedings before this Court let alone ascertain whether the judgment requested was available or not.
88. Notwithstanding the above, this Court takes judicial notice that on 14 July 2021, the MSCA delivered a judgment in the concerned matter, which is

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<sup>15</sup> We have read and considered the arguments put before us including the law cited in support, and it is our unanimous decision that the appeals herein should be dismissed in their entirety and that for the avoidance of doubt, that is in relation to all appeals, all convictions and all sentences. The Appeals are accordingly dismissed, the decision of the High Court is maintained, a formal judgement will be circulated soonest.” – *Misozi Charles Chanthunya v. The Republic*, Criminal appeal No 1 of 2021 (Malawi Supreme court of appeal) (Judgement) (14<sup>th</sup> July 2021).

<sup>16</sup> Section 139(1) of the Criminal Procedure and Evidence Code of Malawi, Act 36 of 1967.

published on the official website of the Respondent State's Judiciary.<sup>17</sup> It appears from the reading of the said judgment that the MSCA indeed provided reasoning for its decision as evidenced on page 12.

89. Therefore, this Court finds that there was no violation of Article 7(1) of the Charter read together with Article 14(1) of the ICCPR, Article 8 of the UDHR, and Part A, Article 2(i) of the Fair Trial Guidelines regarding the right to reasoned court's decision.

## **IX. REPARATIONS**

90. The Applicant prays the Court to find that the Respondent State violated his right to fair trial guaranteed under relevant human rights instruments and such violation has occasioned miscarriage of justice, order for restitution by way of restoration of his liberty and/or release from prison, and order for compensation to be assessed by the Court.

\*

91. The Respondent State did not file any response.

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92. Article 27(1) of the Protocol provides that: "if the Court finds that there has been violation of a human or peoples' rights, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation."

93. In the instant case, given that no violation has been found, the Court holds that no reparations are warranted. The Court, therefore, dismisses the Applicant's prayer for reparations.

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<sup>17</sup> *Misozi Charles Chanthunya v. The Republic*, Criminal Appeal no 1 of 2021 (Malawi Supreme Court of Appeal) (Judgment) (14<sup>th</sup> July 2021).

## **X. COSTS**

94. There was no submission on costs.

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95. The Court observes that Rule 32(2) of the Rules provides that “unless otherwise decided by the Court, each party shall bear its own costs, if any.”

96. The Court notes that in the present case there is no reason to depart from the above provision and therefore each Party shall bear its own costs.

## **XI. OPERATIVE PART**

97. For these reasons:

THE COURT,

*Unanimously and in default,*

*On jurisdiction*

- i. *Declares* that it has jurisdiction.

*On admissibility*

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

*On merits*

- iii. *Holds* that the Respondent State did not violate the right to fair trial protected under article 7(1)(a) of the Charter as read together with



- Article 8 of the UDHR, Part A, Article 2(j) and Part C, Article (b)(i) of the Fair Trial Guidelines regarding right to be heard by the MSCA;
- iv. *Holds* that the Respondent State did not violate the right to fair trial protected under article 7(1) of the Charter as read together with Article 4(1) of the ACDEG, Article 8 of the UDHR, Article 14(1) of the ICCPR and Part A, Article 2(h) of the Fair Trial Guidelines regarding the Applicant's conviction;
  - v. *Holds* that the Respondent State did not violate the right to fair trial Protected under Article 7(1) of the Charter as read together with Article 8 of the UDHR, Article 14(1) of the ICCPR and Part A, Article 2(e) of the Fair Trial Guidelines, with regard to being given adequate opportunity to challenge opposing evidence;
  - vi. *Holds* that the Respondent State did not violate the right to fair trial protected under Article 7(1)(b) of the Charter as read together with Article 11(1) of the UDHR, Article 14(2) of the ICCPR and Part N, Article 6(e) of the Fair Trial Guidelines with regard to the right to be presumed innocent;
  - vii. *Holds* that the Respondent State did not violate the right to fair trial protected under Article 7(1) Charter as read together with Article 4(1) of the ACDEG, Article 14(3)(a) of the ICCPR, Article 8 of the UDHR, and Part N, Article 1(a) of the Fair Trial Guidelines with regard to be notified of the charge;
  - viii. *Holds* that the Respondent State did not violate the right to fair trial protected under Article 7(1) of the Charter as read together with Article 14(1) of the ICCPR, Article 8 of the UDHR, and Part A, Article 2(i) of the Fair Trial Guidelines with regard to be given reasons for court decisions.

*On reparations*

- ix. *Dismisses* the Applicant's prayers on reparations.

*On costs*

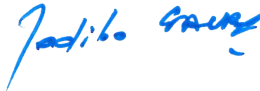
- x. Orders that each Party shall bear its own costs.

**Signed:**

Imani D. ABOUD, President;



Modibo SACKO, Vice-President;



Rafaâ BEN ACHOUR, Judge;



Suzanne MENGUE, Judge;



Chafika BENSAOULA, Judge;



Blaise TCHIKAYA, Judge;



Stella I. ANUKAM, Judge;



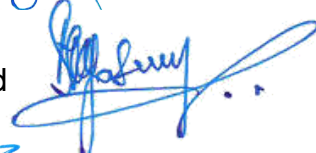
Dumisa B. NTSEBEZA, Judge;



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-Four, in English, the English version being authoritative.

