AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي		UNIÃO AFRICANA
UNIÓN AFRICANA		UMOJA WA AFRIKA

AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS
COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

THE MATTER OF

INSTITUTE FOR HUMAN RIGHTS AND DEVELOPMENT IN AFRICA

V.

THE REPUBLIC OF MALAWI

APPLICATION No. 006/2025

RULING
(PROVISIONAL MEASURES)

4 DECEMBER 2025

The Court composed of: Chafika BENSAOULA, Vice President; Rafaâ BEN ACHOUR, Suzanne MENGUE, Blaise TCHIKAYA, Stella I. ANUKAM, Imani D. ABOUD, Dumisa B. NTSEBEZA, Dennis D. ADJEI, Duncan GASWAGA – Judges; and Grace W. KAKAI, Deputy 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 the 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:

Institute for Human Rights and Development in Africa (hereinafter referred to as "IHRDA")

Represented by:

Advocate Michael Gyan NYARKO, Deputy Executive Director, IHRDA

Versus

REPUBLIC OF MALAWI

Not represented

After deliberation,

Issues this Ruling:

I. THE PARTIES

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

2. The 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, it became a party to the Protocol and deposited the Declaration prescribed under Article 34(6) of the Protocol (hereinafter referred to as "the Declaration") accepting the jurisdiction of the Court to receive cases from individuals and NGOs.

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

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

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

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

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

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

7. The President of the Respondent State and former Secretary to the President and Cabinet subsequently, appealed to the Supreme Court of Appeal, alleging that the Order of the High Court imposing the cost of litigation on them personally was erroneous as section 91 of the Constitution of the Respondent State provided them with unqualified immunity. On 8 November 2024, the Supreme Court of Appeal reversed the decision of the High Court, found in favour of the appellants and ordered the HRDC and the others to reimburse the costs paid by the President and Secretary to the President and Cabinet, and to further pay the costs of litigation at the Supreme Court of Appeal, the total amount due being Malawian Kwacha

One Hundred and Six Million, and Five Hundred and Fifty Eight Thousand (MWK 106, 558, 000). It emerges from the Application, that the HRDC and others have already paid Malawian Kwacha Thirty-Five Million, Five Hundred and Nineteen Thousand, Three Hundred and Thirty-Five Kwacha and Forty Tambala (MWK 35, 519, 335.40) and therefore owe the judgment creditors, Malawian Kwacha Seventy-One Million, Thirty-Eight Thousand, Six Hundred and Sixty-Four and Sixty Tambala (MWK 71, 038, 664.60).

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

B. Alleged violations

9. In the main Application, the Applicant alleges as follows:

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

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

10. On 10 October 2025, the Applicant filed the main Application together with a request for provisional measures.

11. The Application was served on the Respondent State on 7 November 2025 for its responses within seven days for the request on provisional measures and, 90 days for the main Application. The Respondent State has not responded to the request for provisional measures.

IV. *PRIMA FACIE* JURISDICTION

12. Article 3(1) of the Protocol provides that

> 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.

13. Under Rule 49(1) of the Rules of the Court "the Court shall conduct preliminarily examination of its jurisdiction…". However, with respect to the provisional measures, the Court need not satisfy itself that it has jurisdiction on the merits of the case, only that it has *prima facie* jurisdiction.[2]

14. In the instant case, the Applicant alleges the violations of rights protected under Articles 1, 7, 9, 10 and 14 of the Charter to which the Respondent State is a party. The Court further notes, as indicated at paragraph 2 of the present Ruling, the Respondent State is a party to the Protocol and has filed the Declaration.

[2] *Komi Koutche v. Republic of Benin* (provisional measures) (2 December 2019) 3 AfCLR 725, § 11.

15. The Court finds, therefore, that it has *prima facie* jurisdiction to hear the request for provisional measures.

V. PROVISIONAL MEASURES REQUESTED

16. The Applicant prays the Court for an order to stay the assessment of costs, and enforcement of the order of costs by the Supreme Court of Appeal of the Respondent State against the HRDC and the others, pending the determination of this Application on the merits.

17. According to the Applicant, the costs levied on the HRDC, which is an NGO that relies on donations and contributions from members for its operations, represents an existential threat. It further avers that the extreme financial burden is of such gravity that it risks causing the insolvency of the HRDC, which is an irreparable harm.

18. The Applicant submits a copy of a notice of garnishee proceedings against the HRDC, dated 10 November 2025, and contends that this document substantiates the claim of urgency.

19. To further support its request for provisional measures, the Applicant cites the Court's decision in *Charles Kajoloweka v. Malawi*. It avers that the Court ordered provisional measures in that case with facts similar to the present one, where a public interest litigant was required to pay costs after an unsuccessful claim.

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20. The Court notes that, pursuant to Article 27(2) of the Protocol:

> In cases of extreme gravity and urgency and when necessary to avoid irreparable harm to persons, the Court shall adopt such provisional measures as it deems necessary.

21. The Court observes that, pursuant to Rule 59(1) of the Rules:

> …the Court may, at the request of a party, or on its own accord, in case of extreme gravity and urgency and where necessary to avoid irreparable harm to persons, adopt such provisional measures as it deems necessary, pending determination of the main Application.

22. It is therefore, for the Court to decide in each case if, in the light of the particular circumstances, it should make use of the power vested in it by the aforementioned provisions.

23. The Court notes that, urgency refers to "imminent risk", while extreme gravity, means risk of serious damage. The Court emphasizes that the risk in question must be real, which excludes a purely hypothetical risk and explains the need to remedy it immediately.[3] Furthermore, the Court observes that irreparable harm is damage that cannot be sufficiently redressed or compensated through any subsequent reparation.

24. The Court underscores that the requirements of urgency or extreme gravity and irreparable harm, are cumulative, so that if one of them is lacking, the provisional measures requested cannot be ordered.

25. In determining requests for provisional measures, therefore, the Court relies on the principles outlined above and notes, particularly, the fact that provisional measures are of a preventative nature and thus can only be granted if a party fulfils all the prerequisites.

26. In the present case, the Applicant prays for two measures, that is, the Court to order the stay of the assessment of costs, and also order the stay of the enforcement of the order of costs by the Supreme Court of Appeal.

[3] *Houngue Éric Noudehouenou v. Republic of Benin*, ACtHPR, Application No. 004/2020, Ruling of 15 August 2022 (provisional measures); *Sebastien Germain Marie Aïkoue Ajavon v. Republic of Benin* (provisional measures) (17 April 2020) 4 AfCLR 123, § 61.

27. Regarding the first request, from the record, the Court notes that the costs were assessed and decided by an Order of the Supreme Court of Appeal of 29 August 2025, and therefore, the Court finds that this request is moot.

28. The Court observes that the Applicant's second request seeks a stay of the Supreme Court's decision, premised on the contention that enforcement will result in the bankruptcy and potential dissolution of the HRDC and others. The Applicant characterizes this alleged situation as a circumstance of extreme gravity and urgency necessitating provisional measures.

29. In assessing this request, the Court notes that the assertion of impending bankruptcy, however grave in its potential consequences, remains an unsubstantiated allegation. The burden rests upon the Applicant to demonstrate such a risk with concrete and verifiable evidence. However, the Applicant has failed to discharge its burden.

30. Consequently, the alleged harm constitutes a hypothetical and speculative risk, insufficient to establish the required threshold of extreme gravity, urgency and irreparable harm. Without the substantiation, the Court finds no basis upon which to grant the request for provisional measures.

31. In the circumstances, therefore, the Court dismisses the Applicant's request for provisional measures.

32. For the avoidance of doubt, this Ruling is provisional in nature and does not in any way prejudge the findings of the Court on its jurisdiction, the admissibility of the Application and merits thereof.

VI. OPERATIVE PART

33. For these reasons,

THE COURT,

Unanimously,

i. *Holds* that the Court has *prima facie* jurisdiction;
ii. *Dismisses* the request for provisional measures.

Signed by:

Chafika BENSAOULA, Vice-President;

And Grace W. KAKAI, Deputy Registrar.

Done at Arusha, this Fourth Day of the month of December in the Year of Two Thousand and Twenty-Five, in English and French, the English version being authoritative.