


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		

THE MATTER OF

MISOZI CHARLES CHANTHUNYA

V.

REPUBLIC OF MALAWI

APPLICATION NO. 001/2022

ORDER
(REOPENING OF PLEADINGS)

11 NOVEMBER 2024



The Court composed of: Imani D. ABOUD, President; Modibo SACKO, Vice-President; Rafaâ BEN ACHOUR, Suzanne MENGUE, Chafika BENSOUOLA, 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

Represented by

Mr Neverson Chisiza, Deputy Director Civil Litigation in the Ministry of Justice

After deliberation,

Issues the present Order:

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 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 MAIN 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. He alleges violation of his right to a fair trial in proceedings before domestic courts in particular:
 - 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 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), Article 14(1), (3)(a) of the ICCPR; part A, Article 2(e), (h) and (i), and Part N, Article 1(a) of the Fair Trial Guidelines.
- iv. The right to be given reasons for the decisions protected by article 7(1) of the Charter as read together with Article 14(1) of the ICCPR, Part A, Article 2(i) of the Fair Trial Guidelines.

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

8. The main Application, together with a request for provisional measures was filed on 23 December 2021. It was served on the Respondent State on 27 May 2022 and requested to file its responses to the Request for provisional measures and to the main Application within 15 and 90 days, respectively.
9. At the expiry of the above stated deadlines, respectively on 15 June 2022 and 31 August 2022, the Respondent State did not file any response.
10. On 7 March 2023, by virtue of Rule 63(1) of the Rules, the Registry drew the attention of the Respondent State to the fact that the time-limit to respond to the Application had elapsed, and that the Court would proceed to give a judgment in default should it fail to file its submissions within 45 days of receipt of the notification.
11. At the expiry of the above stated time, which was on 24 April 2023, the Respondent State did not file any response.
12. Pleadings were closed on 28 June 2023, and the Parties were duly notified thereof on 30 June 2023.

13. On 24 January 2024, the Court issued a Ruling on provisional measures, declining to order the measure sought by the Applicant, which is to stay execution of the sentences meted out against him by the High Court of Malawi and upheld by the Malawi Supreme Court of Appeal. The Parties were notified of the said Ruling.
14. On 4 November 2024, the Court served the Parties with a notice of delivery of judgment which was scheduled for delivery on 13 November 2024.
15. On 6 November 2024, the Respondent State filed a request for extension of time to file pleadings.

IV. ON THE REQUEST FOR REOPENING OF PLEADINGS

16. The Respondent State states that its request for extension of time to file submissions is based on Rules 44(3), (5), (7); 45(2)(3) of the Rules; Directions 18 and 19 of the Practice Directions of the Court and the Jurisprudence of the Court, namely in *Bernard Mornah v. Benin and Others* (Intervention by Sahrawi) and *Ghati Mwita v. Tanzania*.
17. According to the Respondent State, it emerges from the affidavit of Mr Neverson Chisiza, Deputy Director Civil Litigation in the Ministry of Justice that, at the time of the filling of the Application, it had not appointed a focal point responsible for accepting the service of Court process and that the Application was not effectively served on the office of its Attorney General, which thus, was not aware of the proceedings before the Court until it received the notice of delivery of the decision in the instant case.
18. The Respondent State further submits that failure on its part to make due representations was not deliberate but due to challenges on their part to properly coordinate communications from the Court.
19. The Respondent State further avers that these are sufficient grounds for the Court to exercise its discretion in favour of granting its request and

therefore, allow it to file its pleadings before a decision on the Application is made.

20. The Court is of the view that although the Respondent State has requested for an extension of time to file pleadings pursuant to Rule 45(2) of the Rules, such cannot be entertained unless pleadings, which had been closed on 28 June 2023, are reopened. As such, the Court is bound to make a preliminary determination as to whether pleadings should be reopened in the instant case before it considers the request for extension of time, if necessary.
21. The Court observes in this respect that, pursuant to Rule 46(3) of the Rules, it has discretion to determine whether pleadings can be reopened.
22. The Court recalls that, as indicated in paragraphs 8 and 9 of the present Order, it complied with the Rules as far as service of the Application and pleadings is concerned. Furthermore, on 7 March 2023, the Registry sent a notice drawing the Parties' attention to the provisions of Rules 63(1) intimating that the Court would proceed and render a decision in default should the Responded State fail to participate in the proceedings. In spite of these notifications, the Respondent State did not file any response, and pleadings were subsequently closed on 28 June 2023.
23. The Court finds it relevant to refer to paragraph 12 of the affidavit sworn by Mr Neverson Chisiza, Deputy Director Civil Litigation of the Respondent States, from which it appears that the Respondent State was aware of the proceedings in the present Application. In the above-mentioned paragraph, the Deputy Director states as follows: "*I engaged relevant officer at our Ministry of Foreign Affairs and International cooperation who acknowledged to have received Court processes in respect of this matter and that they could recall how the same was handled then.*"

24. In light of the foregoing, the Court is not satisfied with the reasons provided by the Respondent State in support of its request for extension of time and therefore does not deem it necessary that pleadings should be reopened.
25. As a consequence, the Court does not grant the request for extension of time to file pleadings.

V. OPERATIVE PART

26. For these reasons,

THE COURT,

Unanimously

- i. *Decides* that pleadings should not be reopened in this Application;
- ii. *Dismisses* the Respondent State's request for extension of time to file pleadings.

Signed:

Imani D. ABOUD, President;



Robert ENO, Registrar.



Done at Arusha, this Eleventh Day of November in the Year Two Thousand and Twenty-Four, in English and French, the English version being authoritative.

