

AFRICAN UNION



الاتحاد الأفريقي

UNION  
AFRICAINNE  
UNIÃO AFRICANA

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

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IN THE MATTER OF

ERNEST FRANCIS MTINGWI

V.

REPUBLIC OF MALAWI

APPLICATION No. 001/2013

DECISION

**The Court composed of:** Sophia A.B. AKUFFO, President; Fatsah OUGUERGOUZ, Vice President; Bernard M. NGOEPE, Gérard NIYUNGEKO, Augustino S.L. RAMADHANI, Elsie N. THOMPSON, Sylvain ORÉ, Ben KIOKO, El Hadji GUISSSE and Kimelabalou ABA - Judges; and Robert ENO - Registrar,

In the matter of:

**ERNEST FRANCIS MTINGWI**

**V.**

**REPUBLIC OF MALAWI**

Having regard to the above stated application and having deliberated thereon, the Court decides as follows:

*The Facts*

1. In his application, the Applicant alleges as follows: –
  - That he, Ernest Francis Mtingwi (hereinafter referred to as the Applicant), was employed by the Malawi Revenue Authority (MRA), a state agency of the Republic of Malawi (hereinafter referred to as the Respondent), on a 4-year contract for the period of 1 January, 2003 to 31 December, 2006;
  - That on 4 November, 2004, the Board of Directors of the Malawi Revenue Authority held an extra-ordinary meeting at

night at which a resolution to immediately terminate his contract of employment was passed, and approved.

- That he was informed of the termination of his contract the following morning.
2. The Applicant sued the MRA for damages for wrongful and unfair termination of employment in the High Court of Malawi, Civil Cause No 3389 of 2004: Ernest F. Mtingwi v. Malawi Revenue Authority.
  3. The matter was heard in the High Court of Malawi on 24 March 2005, and the Court declared the dismissal unlawful and ordered that three months salary and benefits be paid to the Applicant because the Applicant's contract was terminated without notice.
  4. According to the Applicant, after the award of damages, he found that a number of items of benefits as damages were accidentally omitted during the preparation of exhibits submitted to the Registrar, and therefore the order of assessment of damages did not reflect or embody the manifest intention of the High Court order on damages. According to the Applicant, benefits that were in the contract of employment and conditions of service of MRA were accidentally omitted.
  5. An application was made to the High Court in January 2007 by the Applicant which brought to the attention of the Court the said accidental omissions and asked the Court to consider correcting

it. The Application was placed before His Honor, Assistant Registrar Chigona, who determined that there were no accidental omissions in the order of assessment of damages and dismissed the Application.

6. The Applicant then appealed to a Judge in chambers. The appeal was placed before Hon. Justice Kamwambe of the High Court who ruled that there were indeed accidental omissions in the order of assessment of damages.
7. The MRA then appealed the ruling to the Malawi Supreme Court of Appeal. On 28 May 2010, the Malawi Supreme Court allowed the appeal and dismissed the High Court judgment of Kamwambe J.
8. The Applicant has appealed against the ruling of the Malawi Supreme Court of Appeal to the African Court on Human and Peoples' Rights, praying the latter for:
  - "A Reversal of the lower court's order;
  - An order that the words "all terminal benefits" in the contract of employment between the Applicant and MRA means salary and benefits as per the contract of employment and conditions of service of MRA to the end of the contract of employment;
  - An order that all items of terminal benefits that were accidentally omitted for the remainder of the contract of



employment to be paid to the Applicant as damages for the unlawful dismissal of the Applicant;

- Costs of this action".

#### *Procedure*

9. The application dated 17 January, 2013, was received at the Registry of the Court on 1 February, 2013, and was registered as Application 001/2013 – Ernest Francis Mtingwi v. the Republic of Malawi.
10. On 6 February, 2013, the Registrar wrote to the Applicant acknowledging receipt of the application.

#### *Applicable Law*

11. 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 (the Protocol) and Rule 8(2) of the Rules of Court (the Rules), Justice Duncan Tambala, member of the Court of Malawian nationality, recused himself.
12. Having regard to Article 3 of the Protocol, the Court deliberated on its competence to receive the application.
13. 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".

14. The Court notes that it does not have any appellate jurisdiction to receive and consider appeals in respect of cases already decided upon by domestic and/or regional and similar Courts.

15. As this is an appeal by the Applicant against the decision of the Malawi Supreme Court of Appeal, a domestic Court in the Respondent State, the Court concludes that, it does not have the jurisdiction to receive the application.

16. For these reasons,

THE COURT, unanimously:

- i. Finds that, in terms of Article 3 of the Protocol, it has no jurisdiction to receive the application instituted by Mr. Ernest Francis Mtingwi against the Republic of Malawi.
- ii. Rules that this application be and the same is hereby struck out for want of jurisdiction.

Done at Arusha, this fifteenth day of March, Two Thousand and Thirteen, in English and French, the English text being authoritative.

Signed:

**Justice Sophia A.B. AKUFFO, President**



Robert ENO, Registrar.