

SADC loses appeal over Malawian Judge's ouster

August 15, 2021 Collins Mtika - Nyasa Times **Be the first to comment**

A three Judges panel at the Southern Africa Development Community Administrative Tribunal sitting in Gaborone, Botswana has thrown out an appeal by the SADC not to award a 'golden hand shake' to Judge Mankhambira Charles Mkandawire for illegally and unfairly terminating his contract as the first ever Registrar of the SADC Tribunal which was based in Windhoek, Namibia.

The 12th August, 2021 Judgement, ends a five year 'torturous and tumultuous' battle, in which Judge Mkandawire had fought SADC to pay him his contractual emoluments.

The Judgment also means that SADC has swallowed its pride for the second time and will have to folk



USD380,184.71 (approximately MK209,636,469.18) plus 10 per cent interest.

The Judges also ordered that the 10 per cent interest be calculated from November 2016 per annum up to the day SADC pay the entire USD380,184.71.

This is the final judgment from the SADC Appellate Tribunal presided over by three Supreme Court Justices namely; Justice Mbufo Mamba from eSwatini, Justice Fulgency Chisanga from Zambia and Justice Pedro Nhatitima from Mozambique.

In addition to Judge Mkandawire's contractual costs, the three Judges panel has also saddled SADC with all costs that Judge Mkandawire expended in the case such as Lawyers' fees, air travel, hotel accommodation and food among others.

In summary, the SADC Appellate Tribunal came up with an unanimous decision and dismissed SADC's appeal in its entirety.

“On the question of whether the respondent (Judge Mkandawire) rendered himself redundant by declining to be redeployed to the SADC secretariat...the short answer to this point or ground of appeal is that there was no post that was offered to the respondent.

Therefore, there was nothing for him to decline. This point must fail and is hereby dismissed,” declared Justice Mamba.

And Justice Chisanga agreed with Justice Mamba on fact that Judge Mkandawire could not be faulted for declining an offer to be redeployed “because the offer was vague and considering his profile and qualifications, the offer did not comply with the considerations identified in the terms of reference as drawn before the mediation.”

Justice Chisanga also faulted the SADC secretariat for focusing on the emoluments and not the suitability of the position for which Judge Mkandawire would have considering his experience and qualifications.

“Moreover, the job content, duties, reporting and disciplinary mechanism were not satisfactorily indicated and addressed,” she said.

Justice Nhatitima said he concurred with the reasoning and conclusions reached in the judgment.

Labour experts in Malawi have hailed the Judgement describing it as a milestone in the history of SADC saying “it teaches SADC to respect the terms and regulations governing employment between SADC and its employees.

The First Instance Panel of the SADC Administrative Tribunal in its 7th October, 2020, Judgement under application number 2 of 2019, chastised SADC for humiliating Judge Mkandawire.

“The Applicant’s departure from SADC was characterised by extreme humiliation which negatively impacted on the general welfare of his family.

“His wife and son who were enrolled at some universities in Namibia had to cut short their studies,” Justice Francis Bere noted.

Justice Bere also noted that following the abrupt termination of his contract, Judge Mkandawire had to quickly find some solutions to settle some loans which he had taken in anticipation of his second full four-year contractual term of employment.

“In short, the Applicant made an unceremonious exit from SADC. The whole script makes sad reading,” he said.

The former SADC Tribunal, which was established under article 16 of the Treaty of SADC to advance and ensure the rule of law by strengthening the rights of SADC citizens by providing legal redress, was suspended in 2012 and was expected to resurrect under a new protocol.

SADC's decision to shelve the Tribunal followed the disbandment of the Tribunal at the 32nd SADC Summit in Mozambique in August 2012 and later a proposed two-year review of the protocol on the Tribunal that seemed to have significantly changed its operations.

SADC adopted the controversial decision following incessant complaints by Zimbabwe over the Tribunal's rulings that sought to nullify Zimbabwe's revolutionary land reform programme, which the country had launched at the turn of the millennium.

<https://www.nyasatimes.com/sadc-loses-appeal-over-malawian-judges-ouster/>