



**IN THE EAST AFRICAN COURT OF JUSTICE AT ARUSHA  
FIRST INSTANCE DIVISION**



*(Coram: Monica Mugenyi, PJ; Isaac Lenaola, DPJ; Fakihi A. Jundu, J)*

**REFERENCE NO.11 OF 2014**

**MR. AUDACE NGENDAKUMANA..... APPLICANT**

**VERSUS**

**THE ATTORNEY GENERAL  
OF THE REPUBLIC OF BURUNDI ..... RESPONDENT**

**27<sup>TH</sup> NOVEMBER, 2015**

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## JUDGMENT OF THE COURT

### A. INTRODUCTION

1. This Reference was lodged by the Applicant in this Court on 18<sup>th</sup> July, 2014. However, before the same could be heard, the Applicant filed an Amended Reference (“The Reference”) on 3<sup>rd</sup> February, 2015.
2. The Reference has been brought or filed under Articles 3(3)(b), 6(d), 7(2), 12, 27(1), 30(1) and (2) of the Treaty for the Establishment of the East African Community (“The Treaty”).
3. The Applicant is a natural person and resident of Bujumbura in the Republic of Burundi, a Partner State of the East African Community. His address for service for the purpose of this Reference is care of Mr. Horace Ncutiyumuheto, a member of Burundi Bar Association and Advocate before the Courts and Tribunals in the Republic of Burundi. His address is Avenue Boulevard, Patrice Lumumba Immeuble “Kwangoma”, P.O. Box 374, Bujumbura, Burundi.
4. The Respondent is the Attorney General of the Republic of Burundi and he is sued in his capacity as the Principal Legal Advisor of the said Government. His address for service for the purpose of this Reference is care of the Ministry of Justice, the Republic of Burundi, and P.O. Box 1870, Bujumbura, Burundi.
5. Initially, the Secretary General of the East African Community had been joined as the 2<sup>nd</sup> Respondent by the Applicant. However, he

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later on withdrew or discontinued the Reference against the said Respondent as reflected in the proceedings of this Court dated 13<sup>th</sup> February, 2015.

**B. REPRESENTATION**

6. Mr. Horace Ncutiyumuheto, Learned Counsel represented the Applicant. On the other hand, Mr. Nestor Kayobera, Learned Director of Judicial Organization in the Ministry of Justice, Burundi represented the Respondent.

**C. THE APPLICANT'S CASE**

7. The Applicant recounted in his Statement of Reference and supporting Affidavit that the Reference principally refers to a disputed house which is located outside Ruhero I and II which are in Nyakabingi area. The said house initially belonged to one Sebastian Ntirandekura who was killed during the war crisis in 1972. He was the husband of Kizininda Catherine who is a cousin of Audace Ngendakumana, the Applicant in this Reference. It is stated that on 6<sup>th</sup> August, 1975, the said Kizininda Catherine, sold the said house to his said cousin Audace Ngendakumana, the Applicant and that on 3<sup>rd</sup> March, 1976, a Senior State Attorney wrote to the Land Registry recognizing the transfer of title from Kizininda Catherine to the Applicant. Later, the Applicant also sold the disputed house to

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Ntukamazina Jean who on his death left the sold house to Niyonzima Leocadie, his wife.

8. The Applicant further contends that in 1972, a Commission was formed to manage and take care of land and properties whose owners had been killed during the war period in Burundi for the reason that there were many claims that some people were allegedly occupying houses which belonged to people killed during the war. In that regard, on 29<sup>th</sup> March, 1972, and 8th August, 1973, the Applicant claims that the Minister of Justice of Burundi had written letters confirming that the houses located outside Ruhero I and Rohero II were still private property and were not affected by proceedings of the said Commission. The Applicant therefore, alleges that from 1976 to 2013, the occupation of the disputed house was peaceful and that no one contested or claimed title or ownership of that property neither did anyone seek a nullification of the title thereto.

9. The Applicant claimed that, the Commission of Lands and Other Assets later nullified the sale of the house between Kizininda Catherine and Audace Ngendakumana, the Applicant as well as the sale from the Applicant to Ntukamazina Jean and declared both sales as null and void. It proceeded to award the disputed house to Ntaconayisige Sebastian, stating that he was the child of the late Ntirandekura Sebastian the deceased husband of Kizininda

Catherine who had sold the house to the Applicant. It also directed that Niyonzima Leocadie should look for another house from the Applicant having nullified the sale to her.

10. The Applicant contends further in his pleadings and submission before this Court that he is aggrieved by the decision of the said Commission (Provincial Level) in that he had not been summoned by the said Commission to defend himself or explain what had happened on his part as far as the sale of the disputed house was concerned. He further argues that the said decision is contrary to Article 38 of the Constitution of the Republic of Burundi as the said Article provides for a right to be heard to anyone who has a case before a judicial or administrative tribunal.

11. In challenging the decision, the Applicant therefore wrote a letter to the President of the Appellate Chamber of that Commission on 21/5/2014 complaining that he was not summoned by the Provincial Chamber of that Commission to explain himself on the said sale of the disputed house before it made its decision. To date, he has not received any response from the said Appellate Chamber and argues that such silence from an established authority is tantamount to a refusal to act under Articles 371 and 372 of the Civil Procedure Code of Burundi.

12. Based on the aforesaid assertions, the Applicant prays for the following declarations and orders from this Court:-

- a) *A declaration order that the judicial power given to the Commission of Goods and Other Assets by the Respondent is an infringement of Articles 6(d) and 7(2) of the Treaty;*
- b) *A declaratory order that the proceedings and decision made by the First Instance Division of the Commission was unlawful and infringes Articles 6(d) and 7(2) of the Treaty;*
- c) *An order that an agreement made between Kizininda Catharine and Audace Ngendakumana is legal and made in respect of the Law of Burund.*
- d) *Direct that the Respondent shall pay all the costs of this Reference.*

#### **D. THE RESPONDENT'S CASE**

13. In its Reply, Supporting Affidavits and Submission before this Court, the Respondent vigorously contests and opposes the Reference. He asserts that the owner of the disputed house was one Ntirandekura Sebastian who was killed in 1972 following the war crisis in Burundi, leaving the said house located at Nyakabinga, 111 area, 14<sup>th</sup> Avenue No.14 Bujumbura to Bazukondi Rose, his first wife as his second wife one Kizinda Catherine was living upcountry. Thereafter, the said

Bazukondi Rose fled to the Democratic Republic of Congo (DRC) in the wake of the killings that were taking place in Burundi.

14. The Respondent contends further that, following the killings of people during the war and those forced to flee Burundi like Buzukondi Rose, had most of their houses and properties that they had left behind illegally and unprocedurally seized and occupied by other people who had no title or ownership thereof. In that regard, on 6<sup>th</sup> August, 1975, the Applicant, who is a cousin of Kizininda Catherine, the second wife of the late Ntirandekura Sebastian, purported to have bought the disputed house from her. In 1977, the Applicant then sold the disputed house to one Ntukamazina Jean who left the said house to his wife Niyonzima Leocadie upon his death. In 1983, it transpired that they found the disputed house occupied by Niyonzima Leocadie who alleged that her late husband Ntukamazina Jean had bought the said house from the Applicant in 1977.

15. With the signing of the Arusha Peace and Reconciliation Agreement in 2000, and the formation of the Commission of Lands and Other Assets in 2006, Bazukondi Rose and her son, Ntaconayisige Sebastian, filed a complaint in the said Commission at the Provincial level in Bujumbura against the occupation of the disputed house by Niyonzima Leocadie, the wife of the late Ntukamazina Jean. The Respondent asserted that both the Applicant and Kizininda

Catherine were invited to testify before the said Commission and the said Kizininda Catherine, in her testimony categorically denied that she had sold the disputed house to the Applicant.

16. In its decision made on 2<sup>nd</sup> May, 2013, the said Commission at the Provincial Level restored the disputed house to Ntaconayigize Sebastian, the son of the late Ntirandekura Sebastian, the initial legal owner for the said disputed house. It further decided that Niyonzima Leocadie, the illegal occupier of the house should deal with Audace Ngendakumana the Applicant who had purportedly sold the disputed house to her well knowing that did not belong to him.

17. The Respondent strongly contends that it is not true that the Applicant was not summoned by the said Commission at the Provincial level to explain himself on the disputed house. Further, that the Law establishing the Commission provides for a period of 60 days to appeal to the Appellate level of the said Commission and thereafter any appeal is to the Special Court on Lands and Other Assets. That the Applicant has never appealed against the decision of the Commission delivered on 2<sup>nd</sup> May, 2013 and that it was only on 21<sup>st</sup> May, 2014 that the Applicant wrote a simple letter to the Appellate Chamber of the said Commission disagreeing with its decision (Provincial level). The Respondent also avers that in terms of the Law establishing the Commission, the Applicant was time-



barred in his appeal against the said decision of the Commission dated 2<sup>nd</sup> May, 2013 and that he is also time-barred in filing the Reference before this Court in terms of Article 30(2) of the Treaty taking into account that the decision of the Commission (provincial level) was made on 2<sup>nd</sup> May, 2013 and the Reference was only filed on 18<sup>th</sup> July, 2014. Apart from alleging that the matter is time-barred, the Respondent further alleges that the Court has no jurisdiction to entertain the Reference in terms of Articles 27(2) and 30(3) of the Treaty.

18. Based on the aforesaid, the Respondent prays for the following orders:-

*(a) That this Honourable Court is requested to dismiss the Reference as a whole with costs for being time-barred;*

*(b) That this Honourable Court lacks jurisdiction to determine the Reference and therefore is requested to dismiss the Reference with costs.*

#### **E. SCHEDULING CONFERENCE**

19. Pursuant to Rule 53 of the Rules of this Court, a Scheduling Conference was held on 13<sup>th</sup> day of February, 2015 where all the Parties were present and agreed that:-

- i) The National Commission on Lands and Other Assets, its composition, functions and operations was established by Law No.1/13 of 4<sup>th</sup> April, 2006 which was amended in 2009 and 2011;
- ii) Audace Ngendakumana sold a house situated in Nyakabinga 111,14<sup>th</sup> Avenue No.14 to Ntukamazina Jean in 1977;
- iii) Sebastian Ntaconayisige filed a matter to the National Commission on Lands and Other Assets in Bujumbura alleging that the house of his father Ntirandekura Sebastian who was killed in 1972 was occupied by Niyonzima Lecoadie who indicated that her husband had bought it from Audace Ngendakumana in 1977;
- iv) The National Commission on Lands and Other Assets at the Provincial level rendered its decision on 2<sup>nd</sup> May, 2013;
- v) There are triable issues based on the provisions of Articles 6, 27 and 30 of the Treaty for the Establishment of the East African Court of Justice.

20. On the other hand, the following points were framed as points of disagreement or issues for determination by the Court:-

- i) Whether the Reference is time-barred;

ii) Whether the East African Court of Justice has jurisdiction to entertain the Reference;

iii) Whether the Applicant is entitled to the remedies sought.

**F. CONSIDERATION OF ISSUE NO.2: WHETHER THE EAST AFRICAN COURT OF JUSTICE HAS JURISDICTION TO ENTERTAIN THE REFERENCE**

21. Although at the Scheduling Conference, the above named issue was framed as Issue No.2, we deem it necessary to consider it first because the determination of all other framed issues depends first on whether this Court has jurisdiction to entertain the Reference. We propose to determine issue No.1 thereafter.

22. In that context, the Applicant and the Respondent have each submitted on the aforesaid issue as reflected below:

**G. THE APPLICANT'S SUBMISSION**

23. The Applicant contends that this Court has jurisdiction to entertain and determine the Reference and that it derives its jurisdiction from Articles 23(1), 27(1) and 30(1) of the Treaty. In support thereof, the Applicant has cited a number of authorities of this Court where it has held that it has jurisdiction on interpretation, application and compliance with the provisions of the Treaty (see: **Independent Medical Legal Unit vs. Attorney General of the Republic of Kenya & 4 Others, EACJ Ref. No.3 of 2010 and the East African Centre for**

**Trade Policy and Law vs. The Secretary General of the East African Community, EACJ Ref. No.1 of 2011).**

24. The Applicant further asserts that nullification of the sale of the disputed house between the Applicant and Kizininda Catherine by the Commission on Lands and Other Assets (provincial level) on 2<sup>nd</sup> May, 2013 by a mere declaration without involving the Applicant and without cogent proof is contrary to Article 199 of the Civil Procedure Code of Burundi and Articles 6(d) and 7(2) of the Treaty and that under the above cited provisions of the Treaty and from the various cited decided cases, this Court has jurisdiction to entertain the Reference for determination. He also contends that once there is an allegation of infringement of the provisions of the Treaty as is the case in the present Reference, it follows that the Court is clothed with jurisdiction to determine the Reference. (citing: **Hon. Sitenda Sebalu vs. Secretary General of the EAC & 3 Others EACJ Ref. No.1 of 2010; and Samuel Mukira Mohochi vs. AG of Uganda, EACJ Ref. No.5 of 2011).**

**H. THE RESPONDENT'S SUBMISSION**

25. The Respondent contends that the Court does not have jurisdiction to entertain and determine the Reference except on matters relating to interpretation and application of the provisions of the Treaty under Articles 27(2) and 27(3). Elaborating further, the Respondent asserts that this Court has in its various past decisions

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extensively explained that it is clothed with jurisdiction to interpret and apply the provisions of the Treaty including Articles 6(d) and 7(2) of the same [citing: The Attorney General of the Republic of Rwanda vs. Plaxeda Rugumba, EACJ Appeal No.10 of 2012; and James Katabazi & 21 Others vs. The Secretary General of the East African Community & The Attorney General of Uganda, EACJ Ref. No. 1 of 2007.

26. Relying on the aforesaid authorities, the Respondent further contends that the Court is not clothed with jurisdiction to grant prayer (c) in the Reference as it would contradict the provisions of Articles 30(3) of the Treaty and also contradict Article 30(2) of the same as being time-barred having been filed 39 years after the alleged sale agreement was made in 1975. It further asserts that, although the Court has jurisdiction to entertain prayers (a) and (b) in the Reference, it prays for the same to be dismissed as similarly time-barred as will further be elaborated in issue No.1 below. The Respondent has cited decided cases of this Court in his submission that the Court may have jurisdiction on some of the prayers and not have jurisdiction on others, (citing: Hilaire Ndayizamba vs. The Attorney General of Burundi and The Secretary General of the East African Community, EACJ Ref. No.3 of 2012; and Prof. Nyamoya Francois vs. the Attorney General of Burundi and the Secretary General of the East African Community, EACJ Ref. No.8 of 2011).

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## **I. DECISION OF THE COURT ON ISSUE NO.2**

27. We have carefully considered the rival submissions and arguments of both parties on **Issue No.2** above and our determination is as hereunder.

28. The contention of the Applicant is that this Court has jurisdiction to entertain and determine this Reference under Article 23(1), 27(1) and 30(1) of the Treaty. However, the Respondent in reply has strongly contended that jurisdiction under the said provisions applies only to prayers (a) and (b) in the Reference but not to prayer (c) thereof in view of the provisions of Articles 27(2) and 30(3) of the Treaty. In any event, the Respondent argued further that even the said prayers (a) (b) and (c) in the Reference are time-barred under Article 30(2) of the Treaty.

29. What is therefore, the position of this Court on the aforesaid arguments of the Parties? In answer to that question, there is need to have a glance at the Applicant's prayers in the Reference above (para.12) in order to understand the basis for our decision.

30. It is very clear in our considered view that the Applicant has invoked Article 30(1) of the Treaty in accessing this Court. It provides:-

***“Subject to the provisions of Article 27 of this Treaty, any person who is resident in a Partner State may refer for determination by***

*the Court, the legality of any Act, regulation, directive, decision or action of a Partner State or an institution of the Community on the grounds that such as regulation, directive, decision, or action is unlawful or is on infringement of the provisions of this Treaty.”*

31. Thereafter, notwithstanding the exceptions which the Respondent has tried to address in his submission, it is our position that this Court has jurisdiction under Articles 23(1) and 27((1) to interpret and apply the provisions of the Treaty as well as ensure compliance of the same in that context. We note that in this Reference, the Applicant has alleged that there is an infringement of Articles 6(d) and 7(2) of the Treaty and therefore given the fact that this Court has jurisdiction under Articles 23(1) and 27(1) read together with Article 30(1) to interpret and apply the said provisions of the Treaty, then it similarly has jurisdiction to interpret and apply Articles 6(d) and 7(2). In numerous past decisions, this Court has asserted itself that once there is an allegation of infringement of the provisions of the Treaty then it is seized with jurisdiction to interpret and apply the same (see: **Hon. Sitenda Sebalu vs. Secretary General of the EAC & 3 Others, EACJ Ref. No.1 of 2010; and Samuel Mukira Muhochi vs. Attorney General of the Republic of Uganda, EACJ Ref.No.5 of 2011).**

32. We will revert to argument of the Respondent that though this Court has jurisdiction to grant prayers (a) and (b), the same should not be granted because they are time-barred under Article 30(2) of the Treaty. In our considered view, whether the said prayers are time barred or not under Article 30(2) of the Treaty is a matter to be considered when considering Issue No.1, hereinafter. At the moment, it is our considered view that the Court under Articles 23(1), 27(1) read together with Article 30(1), and as argued by the Respondent himself, the Court has jurisdiction to grant prayers (a), (b) and (d) depending on their merit. This leads us to the contention of the Respondent that this Court has no jurisdiction to grant prayer (c) in the Reference as per the provisions of Articles 27(2) and 30(3) of the Treaty. The Applicant has not responded to this Submission at all and we shall shortly revert to our decision on it.

33. It is the argument of the Respondent that this Court has jurisdiction to grant some prayers in a Reference only and that it does not have jurisdiction to grant other prayers on account of Articles 27(2) and 30(3) of the Treaty. This Submission was backed by previous decisions of this Court. In that regard, in Hillarie Ndayizamba (supra), the Court stated as follows:-

***“... we are of the decided opinion and in agreement with the respondent that this Court has jurisdiction to entertain prayers (a), (c) and (e) of the Reference and that it is not***



*clothed with the jurisdiction to grant prayers (c) and (d) since the latter clearly falls outside the Court's jurisdiction as provided for by Articles 23, 27 as read together with Article 30 of the Treaty."*

34. In Prof. Nyamoya Francois (supra), the Court considered a similar contention and held as follows:-

*"Without belabouring the point we hold that this Court has jurisdiction to entertain the Reference in so far as prayers (a), (b) and (e) of the Reference are concerned. As regards prayer (c) and (d) we have no jurisdiction to make such orders and we decline the invitation to perform the duties properly conformed on the National Courts of Burundi."*

35. We have carefully considered prayer (c) in the Reference which requests this Court to make **"an order that the agreement between Catherine Kizininda and the Applicant is legal and made in respect of the Law of Burundi."** We have also carefully read Articles 27(2) and 30(3) of the Treaty as cited by the Respondents, we are of the firm view that prayer (c) is a matter within the jurisdiction of the National Courts in Burundi hence, this Court has no jurisdiction to entertain the same [see: Prof. Nyamoya Francois (supra)].

36. In conclusion subject to the aforesaid considered views of this Court on Issue No.2, we hold that this Court has jurisdiction to entertain this Reference to the extent explained above.

**J. CONSIDERATION OF ISSUE NO.1: WHETHER THE REFERENCE IS TIME-BARRED**

37. Each Party submitted on the above issue as below reflected here below.

**K. THE APPLICANT'S SUBMISSION**

38. The Applicant contends that the Reference is not time-barred. He avers that he was aggrieved by the decision of the Commission of Lands and Other Assets (Provincial Level) to nullify the sale agreement of the disputed house without summoning him to explain himself on the matter as an intervener under Article 70 of the Civil Procedure Code of Burundi as read with Article 38 of the Constitution of Burundi. These provisions provide for the right of hearing to every affected party to be heard before any judicial or administrative body makes a decision on a dispute before it.

39. The Applicant avers further that, having been aggrieved by the decision of the Commission on 21<sup>st</sup> May, 2014, he wrote a letter to the President of the Commission of Lands and Other Assets (Appellate Chamber) in which he explained the events that led to the sale of the disputed house. He contends that todate he has not

received any reply to the said letter from the said Appellate Chamber of the said Commission.

40. The Applicant contends that the thrust of the Reference hinges on the failure of the Appellate Chamber of the said Commission to respond to his letter of 21<sup>st</sup> May, 2014 which was received on the same date by the said Appellate Chamber of the said Commission. He argues that the Reference was filed before this Court on 18<sup>th</sup> July, 2014 well within the period of two months stipulated under Article 30(2) of the Treaty. For these reasons, he strongly asserts that the Reference is not time-barred contrary to the Respondent's contention.

#### **L. THE RESPONDENT'S SUBMISSION**

41. On the other hand, the Respondent strongly contends that taking into account the facts and events set out in the Applicant's Statements of Reference as well as the Prayers therein, the Reference is hopelessly time-barred under the provisions of Article 30(2) of the Treaty.

42. First, the Respondent contends that in prayer (a) of the Reference, the Applicant's complaint is based on the fact that the law that grants power to the National Commission on Lands and Other Assets infringes Articles 6(d) and 7(2) of the Treaty. However, the said law

has been in use or place since 2006 and was also subsequently revised in 2009, 2011 and 2013.

43. Secondly, the Respondent further contends that the Applicant's prayer (b) in the Reference seeks to reverse the decision of the National Commission of Lands and Other Assets (Provincial level). However, the said decision was delivered by the said Commission on 2<sup>nd</sup> May, 2013.

44. Thirdly, the Respondent alleges that in prayer (c) in the Reference, the Applicant prays that, this Court ought to declare that the above sale agreement executed with Kizininda Catherine, which was nullified by the said Commission, is lawful. However, the Respondent contends that the said sale agreement is said to have been entered into on 6<sup>th</sup> August, 1975.

45. Fourthly, the Respondent contends that taking into account the dates of the events stated above, clearly when the Applicant filed this Reference on 18<sup>th</sup> July, 2014, he did so beyond the limit of the two months period provided for under Article 30(2) of the Treaty. The Respondent further contends that in its previous decisions, this Court has given strict interpretation and application to Article 30(2) of the Treaty and has held that it does not provide room for extension of time [see: **Independent Medical Legal Unit (Supra)**];

Hilaire Ndayizamba (supra); and Prof. Nyamoya Francois case (supra)].

**M. DECISION OF THE COURT ON ISSUE NO.1**

46. We have carefully considered the rival submissions and arguments of the Parties as far as the above named issue is concerned. The Applicant in his pleadings, submission and arguments before this Court has tried to impress upon the Court that the Reference is not time-barred in terms of Article 30(2) of the Treaty in that, his Reference is hinged or based on the failure of the National Commission on Lands and Other Assets (Appellate Chambers) to reply to his letter dated 21<sup>st</sup> May, 2015.

47. His argument in that regard is that, since the Reference was filed on 18<sup>th</sup> July, 2014, it was still well within the time limit of two months period as provided for in Article 30(2) of the Treaty.

48. We have carefully considered the Respondent's pleadings, submissions and arguments before this Court to the effect that the facts, events and prayers stated in the Reference clearly showed that the Reference is time-barred in terms of Article 30 (2) of the Treaty.

49. What does Article 30(2) of the Treaty provide? It states as follows:-

***“The proceedings provided for in this Article shall be instituted within two months of the enactment, publication, directive, decision or action complained of or in the absence thereof, of the day in which it came to the knowledge of the complainant, as the case may be.”***

50. The Applicant in his response before this Court hinged his claim on the date he wrote his letter to the Appellate Chamber of the National Commission of Lands and Other Assets that is on 21<sup>st</sup> May, 2014. In other words, this is the starting date for computation of the time on his part and he has argued that since he filed the Reference on 18<sup>th</sup> July, 2014, the Reference was filed well within the time limit provided for under Article 30(2) of the Treaty.

51. After careful consideration, we are in full agreement with the contention of the Respondent that at a close glance of the facts, events and prayers by the Applicant in the Reference, it clearly emerges that the complaints are based on the law that provides administrative powers to the National Commission of Lands and Other Assets which has been in operation since 2006 and revised in 2009, 2011 and 2013. His complaints are also based on the decision of the said Commission (Provincial Level) dated 2<sup>nd</sup> May, 2013, which nullified the sale of the disputed house entered into on 6<sup>th</sup> August, 1975. Taking into account the said dates, it is clear to us that the filing of the Reference on 18<sup>th</sup> July, 2014, as was done by the

Applicant was well beyond the limit of two months period provided for under Article 30(2) of the Treaty aforesaid.

52. It is certainly clear to us, as correctly argued by the Respondent, that the Applicant was fully aware or ought to have been aware of the Law that establishes the aforesaid Commission in 2006, and the amendments to it in 2009, 2011 and 2013. He was also aware of the decision of the said Commission (Provincial Level) on 2<sup>nd</sup> May, 2013 that nullified the sale agreement of the disputed house.

53. In the above regard, the stand of this Court as far as the issue of limitation of time provided for under Article 30(2) of the Treaty is concerned has widely been expressed in the cases of The Attorney General of the Republic of Uganda, and the Attorney General of the Republic of Kenya, vs. Omar Awadh, EACJ Appeal No.2 of 2003 (supra); the Independent Medical Legal Unit (supra), Hilaire Ndayizamba (supra) and Prof. Nyamoya Francois (supra). It has been stated by the Court in all these cases that Article 30(2) of the Treaty demands “strict application of the time limit” stated therein and there is no “*room for the Court to extend*” the time limit set under the said provision (see: Prof. Nyamoya Francois (supra)).

54. In conclusion, based on the aforesaid matters, we find that, the Reference is time-barred and we agree with the Respondent on his interpretation of prayers (a) and (b) as set out while addressing Issue

No.2 above. Having so found, we need not deal with the remaining issues having held that the Reference is time-barred [see: **Prof. Nyamoya Francois** (supra)].

We are also not persuaded by the assertion of the Applicant that his complaint is merely based on the failure of the Commission (appellate level) to respond to his letter dated 22<sup>nd</sup> May, 2014.

**N. CONCLUSION**

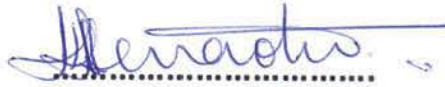
55. Having held that the Reference is time-barred, we hereby strike it out. However, the nature of the matter necessitates that we should not make any order as to costs.

56. We so order.

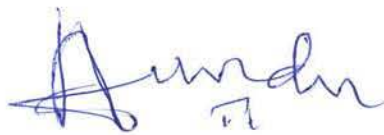




**MONICA MUGENYI  
PRINCIPAL JUDGE**



**ISAAC LENAOLA  
DEPUTY PRINCIPAL JUDGE**



**FAKIHI JUNDU  
JUDGE**