



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



*(Coram: Monica Mugenyi, PJ; Isaac Lenaola, DPJ; Faustin Ntezilyayo, J)*

**REFERENCE NO.2 OF 2014**

**BETWEEN**

**THE UPRONA PARTY.....1<sup>ST</sup> APPLICANT**

**MR. GABRIEL SINARINZI.....2<sup>ND</sup> APPLICANT**

**MR. ONESIME KABAYABAYA.....3<sup>RD</sup> APPLICANT**

**VERSUS**

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

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

## JUDGMENT OF THE COURT

### A. INTRODUCTION

1. The Reference herein was filed on 28<sup>th</sup> February, 2014 and is premised on Articles 6(d), 7(2), 27, 30, 67(3)(d) and 71(d) of the Treaty for the Establishment of the East African Community (hereinafter **“The Treaty”**).
2. The 1<sup>st</sup> Applicant is a political organization registered under Act No.1 of 2006 in the Republic of Burundi while the 2<sup>nd</sup> and 3<sup>rd</sup> Applicants are advocates and members of the Burundi Bar Association. Their common address is care of Mr. Vital Nshirimimana, Advocate before the Courts and Tribunals of the Republic of Burundi, 6 Avenue de la Maison de coordination (Journal NDONGOZI), P.O. Box 1745 Bujumbura, Burundi.
3. The Respondent is the Attorney General of the Republic of Burundi. His address is Avenue du Gouvernement (Grand Bureau), P.O. Box 1870 Bujumbura, Burundi.
4. Although the Secretary General of the East African Community (hereinafter **“The Community”**) had initially been sued as the 2<sup>nd</sup> Respondent, by a notice of withdrawal dated 25<sup>th</sup> July, 2014 and filed on 29<sup>th</sup> July, 2014, the Applicants wholly withdrew and discontinued the Reference as against him.

## **B. REPRESENTATION**

5. The Applicants were initially represented by Mr. Vital Nshirimimana whose address has been cited above but later, Mr. Horace Ncutiyumuheto, Advocate, took over their representation while Mr. Nestor Kayobera, Director of Judicial Organisation, Ministry of Justice, Republic of Burundi appeared as the representative of the Attorney General of Burundi.

## **C. BACKGROUND**

6. The Reference herein was filed to challenge certain provisions of Law No.1/31 of December, 2013 (hereinafter "**The Law**") enacted by the Parliament of Burundi and promulgated into law by the President of Burundi. The Applicants allege that the said Law which relates to the mandate and function, composition and organization of the National Commission on Land and Other Assets (*Commission Nationale Des Terres et Autres Biens*) violates Articles 6(d) and 7(2) of the Treaty particulars of which shall be shortly enumerated.

7. In the Reference, they therefore seek the following orders:-

*a) A DECLARATION that the system of administration of Justice and Governance adopted by the Act of Parliament No./31 of 31<sup>st</sup> December, 2013 is not conducive and enabling for the effective operation of the justice as envisaged in the spirit of Articles 6(d) and 7(2) of the East African Community Treaty ;*

- b) A *DECLARATION* that with regard to the competence given to the National Commission for Lands and Other Assets by the up-said Act, the Judiciary power is usurped by the Executive which constitutes a breach of the relevant provisions in Articles 6(d) and 7(2) of the East African Community Treaty;
- c) A *DECLARATION* that the procedure adopted by the Act and employed by the National Commission is a breach of the international instruments on the right to an independent and impartial judge, and on the right to a fair trial as provided by Articles 6(d) and 7(2) of the East African Community;
- d) A *DECLARATORY ORDER* for immediate annulment of the Act No.1/31 of 31<sup>st</sup> December, 2013 on National Commission for Lands and Other Assets;
- e) AN *ORDER* directing the Second Respondent to constitute and Commission an evaluation process to establish whether or not the decisions made by the National Commission within the Republic of Burundi adhere to and are in order with principles and spirit of Article 6(2) and 7(2) of the East African Community treaty; and to advise both the Council and Summit of The East African Community on whether the Republic of Burundi should be subject to an appropriate sanction for its continuous

*violations of the fundamental principles governing the objectives of the Community;*

*f) AN ORDER directing the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to appear and file before this Honourable Court a progress report on consequent steps taken towards implementation of the order sought by the Applicants in prayers (d) and (e) above;*

*g) AN ORDER that the costs and incidental to this Reference be met by the Respondents; and*

*h) THAT this Honourable court be pleased to make such further or other orders may be necessary in the circumstances.*

#### **D. THE APPLICANTS' CASE**

8. In their Reference, the Applicants allege that by dint of Articles 4, 5, 9, 22, 23, 25 and 31 of the said Law, the National Commission on Land Other Assets (hereinafter "**The Commission**") has usurped the jurisdiction, mandate and authority of Judicial Institutions in Burundi and further that, although an organ of the Executive and which reports directly to the President of Burundi, the Commission has engaged in scandalous intervention and interference with judicial functions and allegedly does so at the whims and under the influence of the same Executive that appoints its members and who report to it through the President of Burundi.

9. It is also the Applicants' case that the creation of the Commission jeopardizes, unavoidably, the principles of separation of power, access to justice and an independent and impartial Judiciary, the right to the assistance of an advocate as well as the right to a fair trial.
10. The Applicants further contend that the Commission denies those who appear before it the fundamental right to an appeal or to exercise any useful means of seeking redress, if dissatisfied by its decisions .
11. It is their other contention that all the above complaints are sufficient to show that the Government of the Republic of Burundi has acted in breach of the principles of good governance, rule of law, democracy and human rights as enshrined in Articles 6(d) and 7(2) of the Treaty and that they are entitled to the Prayers elsewhere set out above.
12. Lastly, and in addition to the above, the Applicants in the supporting Affidavits of Charles Nditije and Supplementary Affidavit of Onesime Kabayabaya have restated the point that while the Commission was only mandated by the Arusha Peace and Reconciliation Agreement to mediate in land related disputes, the Law instead gave it wide and unique judicial powers, hence the Reference.

## **E. RESPONDENTS' CASE**

13. The Respondent filed a Response to the Reference on 30<sup>th</sup> April 2014 and later filed a Supplementary Response on 15<sup>th</sup> December, 2014. His case is:-

Firstly, that Charles Nditije, who deponed to the facts in the Affidavit in support of the Petition, had no capacity to do so as he was not the lawful representative of UPRONA, the 1<sup>st</sup> Applicant, and all his depositions should therefore be struck off the record as should UPRONA as a Party;

Secondly, that in fact Law No.1/31 of 31<sup>st</sup> December, 2013 did not create the Commission as alleged because the said Law was merely an amendment to Law No.1/01 of 4<sup>th</sup> January 2011 which itself was an amendment to Act No.01/17 of 4<sup>th</sup> September, 2009 on the mandate, composition, organization and function of the Commission. That therefore, since the substratum of the Reference was faulty, the same should be disallowed;

Thirdly, that the Commission has no judicial function as it is not a judicial institution within the legal framework of the Republic of Burundi;

Fourthly, that there is no evidence before the Court that the composition of the Commission or its work is heavily

influenced by the Executive neither did the Applicants in their evidence prove that any specific individuals have become victims of the alleged lack of independence by the Commission;

Fifthly, that none of the provisions of the Law deny a party before the Commission the right to representation by an advocate and no such provisions have been cited by the Applicants;

Sixthly, that the principle of separation of powers is well and alive in Burundi and that none of the principles of the Law contravene the Treaty as alleged; and

Lastly, he contends that the enactment of the law was made in the context of the Arusha Peace and Reconciliation Agreement which brought stability to Burundi and no challenge has been made to it before the Constitutional Court of Burundi and it remains a valid Law within that country's legal regime.

14. In Supplementary Affidavit sworn on 15<sup>th</sup> August, 2014, by Sylvester Nyandwi, Permanent Secretary in the Respondent's office, it is the Respondent's further case that since the filing of the Reference, a special Court on Lands and Other Assets had been created to handle appeals from decisions of the Commission and



which had previously been handled by existing competent Courts and Tribunals.

15. Further, that Law No.1/86 which created the Special Court aforesaid also specified that the said Court would have two Divisions; the First Instance Division and the Appellate Division. That advocates are specifically granted right of audience before the said Divisions contrary to the Applicants' contentions.

16. For the above reasons, it is the Respondent's assertion that the Reference is misguided and ought to be dismissed with costs.

#### **F. SCHEDULING CONFERENCE**

i) On 13<sup>th</sup> November, 2014, a Scheduling Conference pursuant to Rule 53 of the East African Court of Justice Rules of Procedure was held and Parties agreed that the following issues fall for determination:-

ii) *Whether the UPRONA Party has locus standi under Article 30(1) of the Treaty to institute the Reference;*

iii) *Whether Act No.1/31 of 3<sup>rd</sup> December, 2013 is inconsistent with the Republic of Burundi's commitment under Articles 6(d) and 7(2) of the treaty;*

iv) *Whether the Court has jurisdiction to order the annulment of Act No.1/31 of 31<sup>st</sup> December, 2013; and*

v) *Whether the Applicants are entitled to the remedies sought.*

17. We shall proceed to determine the above issues as framed but before doing so, we deem it necessary to address the principles by which we shall so determine them under the Treaty.

**G. PRINCIPLES OF INTERPRETATION OF THE TREATY**

18. It has been stated by this Court in many References to it that the Vienna Convention on the Law of Treaties is a good guide to the interpretation of a treaty such as the one for the EAC and which by virtue of Articles 23 and 27 thereof is to be interpreted and applied by this Court in the event of a dispute in that regard. That is why in the case of Case Stated No.1 of 2014, between the Attorney General of Uganda and Tom Kyahurwenda, the Appellate Division of this Court stated as follows:

*“The Court is mindful of the fact that it has on several occasions had an opportunity to apply rules of the Vienna Convention of 1969 on the Law of Treaties in interpreting the provisions of the EAC Treaty. The rules of interpretation of the Vienna Convention that the Court has resorted to in case of interpretation of the EAC Treaty provisions are Articles 31 and 32 of the Convention. The Articles provide:-*

**Article 31: General Rule of Interpretation**

- 1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the term of the treaty in their context and in the light of its object and purpose.***
- 2. The context for the purpose of the interpretation of a treaty shall comprise in addition to the text, including its preamble and annexes:***
  - (a) Any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty; and***
  - (b) Any instrument which was made by one or more parties in connection with the conclusion of the treaty.***
- 3. There shall be taken into account, together with the context:***
  - (a) Any subsequent agreement between the parties regarding the interpretation of the treaty or application of its provisions;***
  - (b) Any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;***
  - (c) Any relevant rules of international law applicable in the relations between the parties; and***

4. *A special meaning shall be given to a term if it is established that the parties so intended.*

**Article 32: Supplementary means of interpretation**

*Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and circumstances of its conclusion, in order to confirm meaning resulting from the application of Article 31, or determine the meaning when the interpretation according to Article 31:*

*(a) Leaves the meaning ambiguous or obscure; or,*

*(b) Leads to a result which is manifestly absurd or unreasonable.*

*The Court has not lost sight of the indisputable fact that Art. 31 and 32 of the Vienna Convention reflect pre-existing customary international law and can be applied as valid canons of interpretation to treaties such as the EAC Treaty. (See, also Territorial Dispute (Libyan Arab Jamahiriya/Chad), Judgment, ICJ Reports 1994, pp. 21-22, para. 41; Sovereignty over Pulau Litigan and Pulau Sipadan (Indonesia, Malaysia), Judgment, ICJ Reports 2002, p. 625 at pp. 645- 46, paras 37-8; Case Concerning Kasikili Sedudu Island (Botswana/ Namibia), ICJ Reports 1999, p. 1059, para. 108. "*

19. We reiterate the above rendition of the law and it is by the above principles that we shall determine the issues framed for such determination and set out elsewhere above.

**H. WHETHER THE UPRONA PARTY HAS LOCUS STANDI UNDER ARTICLE 30(1) OF THE TREATY**

20. Article 30(1) of the Treaty provides as follows:

***“1. 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 Act, regulation, directive, decision or action is unlawful or is an infringement of the provisions of this Treaty.”***

21. The Respondent has submitted that because Charles Nditije was not the legal representative of UPRONA, neither he nor UPRONA had any *locus standi* to institute the present Reference.

22. The Applicants on the other hand submitted that the fact that Nditije aforesaid may no longer be the legal representative of UPRONA does not mean that at the time of filing the Reference, he was not such a representative. Further, that in any event, the 2<sup>nd</sup> and 3<sup>rd</sup> Applicants have the proper *locus standi* to institute the

Reference and striking out of UPRONA would not mean that the Reference also stood as struck out.

23. We have considered the rival positions on this issue and with respect to the Respondent, it is not the person of the legal representative of UPRONA that clothes it with *locus standi* to approach this Court. It is instead whether, in the language of Article 30(1) of the Treaty, UPRONA is a legal or natural person resident in a Partner State.

24. In that context, both Parties agree that UPRONA is indeed properly registered and an existing political organization in the Republic of Burundi and has therefore met the criteria set out above. Whether therefore one, Ms. Concilie Nibigira, is recognized by the Respondent as the legal representative of UPRONA or that Mr. Charles Nditije is not so recognized, is a matter internal to UPRONA and does not go to its *locus standi* before this Court.

25. We say so because we have no evidence before us that the registered officials of UPRONA have a problem with the name of the said political organization being used in the Reference and the Respondent is certainly not suited to take the place of those officials.

26. In the event, we find no reason to uphold the objection that UPRONA has no *locus standi* in this matter.

**I. WHETHER ACT NO.1/31 OF 3<sup>RD</sup> DECEMBER, 2013 IS INCONSISTENT WITH THE REPUBLIC OF BURUNDI'S COMMITMENT UNDER ARTICLES 6(D) AND 7(2) OF THE TREATY**

27. Articles 6(d) and 7(2) of the Treaty provides as follows:

**“The fundamental principles that shall govern the achievement of the objectives of the Community by the Partner States shall include:-**

***“.....good governance including adherence to the principles of democracy, the rule of law, accountability, transparency, social justice, equal opportunities, gender, equality, as well as the recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights.”***

Article 7(2) of the Treaty reads:-

***“.....The Partner States undertake to abide by the principles of good governance, including adherence to the principles of democracy, the rule of law, social justice and the maintenance of universally accepted standards of human rights.”***

28. In invoking the above fundamental and operational principles of the EAC, the Applicants have submitted that the following Articles of the impugned Law are in violation of the principles above:-

- i) **Article 4:** by making the Commission an administrative organ of the President's office;*
- ii) **Article 5:** by granting the Commission jurisdiction to entertain and determine any kind of litigation between any victims of disaster and any other private or public person relating to land and other assets;*
- iii) **Articles 9 and 31:** by providing that members of the Commission should be appointed by the President of Burundi and reports quarterly to him;*
- iv) **Article 22:** by providing that the decision of the Commission is immediately enforceable;*
- v) **Article 25:** by providing that the filing of an appeal against a decision of the Commission does not automatically stay such a decision.*

29. In submissions, Counsel for the Applicant therefore stated that all the above provisions, if read together, infringe on the principle of independence of the judiciary and deny litigants the right to a fair trial.



30. In response, Counsel for the Respondent submitted that the proper body to determine the legality or otherwise of the impugned Law is the Constitutional Court of Burundi which is mandated to determine whether any law enacted by the Parliament of Burundi has passed constitutional muster. He relied on the decision of **Benoit Ndorimana vs. Attorney General of Burundi, Ref. No.2 of 2014** in support of that submission.
31. On specific Articles of the impugned law, counsel submitted that no evidence at all has been given by the Applicant that in its content or application, the said Law violates the Treaty.
32. As to the allegations that the Commission has usurped the judicial authority of judicial organs in Burundi, the Respondent submitted that the Special Court on Land and Other Assets was created by **Act No.1/26 of 15<sup>th</sup> September, 2014** and that is the judicial body that is seized of judicial powers over disputes related to Land and Other Assets as opposed to the Commission.
33. On our part, this Court has previously had the opportunity to address the applicability of Articles 6(d) and 7(2) to proceedings before it and specifically, in the case of **Burundian Journalists Union vs. Attorney General of Burundi & Others EACJ Reference No.7 of 2013**. It stated as follows:-

“This Court has in a number of its decisions interpreted the two Articles as being justiciable and not merely aspirational and binds all Partner States to the principles enunciated therein. For example, in Samuel Mukira Mohochi vs. AG of Uganda (supra) the Court stated thus:-

*“we are of the firm belief that herein lays the explanation why the framers of the Treaty went beyond stating the principle and instead negotiated and agreed upon a specific minimum set of requirements that constituted the good governance package that, in their wisdom, suited the EAC integration agenda. The package, for purposes of the EAC integration, as set out in Article 6(d), includes:*

- a) Adherence to the principles of democracy,*
- b) The rule of law, accountability,*
- c) Transparency,*
- d) Social justice,*
- e) Equal opportunities,*
- f) Gender equality, as well as*
- g) The recognition, promotion and protection of human and peoples’ rights in accordance with the provisions of the African Charter on Human and Peoples’ Rights.*

*Apart from asserting that the provisions are aspirations and broad policy provisions for the Community [with a], political character and with a futuristic and progressive application, Counsel did not substantiate. They did not explain how and why these fundamental principles are mere aspirations. They failed to show us why we should depart from the position of this Court succinctly stated in the IMLU Case (supra) that these provisions constitute responsibilities of Partner States to citizens which, through those States' voluntary entry into the EAC, have crystallized into actionable obligations, breach of which gives rise to infringement of the Treaty."*

34. We reiterate the above holding and would only add that we are also guided by the words of the Appellate Division of this Court in Tom Kyahurwenda (Supra) where it stated that *"these Fundamental Objects and Fundamental Operational Principles of the Treaty are just that: truly fundamental – solemn, sacred and sacrosanct. They are the rock foundation upon which the solid pillars of the Treaty, the Community and the Integration Agenda are construed. They stand deeper, larger and loftier than 'mere aspirations' that certain Counsel for Partner States would make them out to be. The Court, therefore, holds that Articles 6, 7 and 8 are justiciable both before this Court and before the National Courts and Tribunals. "*

35. Applying the above principles to the present Reference, only two principal complaints were made by the Applicants against the impugned Law, namely:-

*a) That the Commission's operations are an affront to the principles of separation of powers and independence of the Judiciary; and*

*b) That its operations are an impediment to the right to a fair trial including the right to an appeal.*

36. We have read the Reference in the above context and at paragraphs 16, 17, 18, 19 and 20, the same allegations are broadly made. In submissions, they are similarly broadly made and repeated but no evidence has been laid before this Court to support those allegations. No concise, credible nor persuasive submissions were also made and no authority was cited to show how Articles 6(d) and 7(2) were thereby violated.

37. However, in an Affidavit filed on 13<sup>th</sup> January, 2015, the 3<sup>rd</sup> Respondent deponed that when the Commission was set up in 2006, it was designed to entertain disputes between returnees and residents of Burundi and to reconcile them. Further, that it was not mandated to entertain land disputes *per se* which was a preserve of Courts including the Special Courts on Land and Other Assets. All

depositions made were however not supported by any tangible evidence, convincing authority or submission on the record.

38. To address this aspect of the Reference therefore, it is imperative to state that like in all cases that the onus of proving an allegation rests on the Party making the allegation. Further, it has been urged at paragraph 9 of the Reference that *“Under Article 23 of the same Act, any injured party is entitled to adduce a claim against the Decision of the Commission to the Special Court for Lands and Other Assets”* but that the said Court had *“not so far even [been] created.”*
39. By the date of the hearing of the Reference however, it is now a common point that the said Special Court had been created by **Law No.1/26 of 15<sup>th</sup> September, 2014** and the said Law is also the subject of proceedings in **EACJ Reference No.15 of 2014, Barazira Raphael & Anor vs. AG of Burundi** which is pending determination by this Court.
40. For obvious reasons, we cannot delve into the subject of the legality or otherwise of the Special Court save to state that the issue of creation of the said Court is a matter overtaken by events while the question as to whether its creation is inconsistent with the right to an independent and impartial judicial system, is a matter to be determined substantively in **Reference No.15 of 2014.**

41. Can we then say that the impugned Law in Articles 4, 5, 9, 22, 25 and 31 is inconsistent with Articles 6(d) and 7(2) of the Treaty?
42. The Applicants did not connect the dots as elegantly as expected and did not create a nexus between the principles espoused in Articles 6(d) and 7(2) and the issues they have raised i.e. an independent judiciary, separation of powers and fair trial.
43. We cannot, therefore presuppose what their arguments would be on those issues without entering the arena of conjecture and speculation. We further agree with the Respondent that by merely citing a number of Articles in the impugned Law alongside Articles 6(d) and 7(2) and not present any evidence or nexus with the alleged violations, the Applicants have failed the test of credibility.
44. If any comparison is needed, in the **Burundian Journalists Case** (supra), the Applicants, with clear evidence and elaborate submissions were able to obtain favourable orders from this Court.
45. We are unable to make the same findings in the present case with scanty, unclear pleadings and submissions.
46. However, suppose we are to read and find that the nexus between the impugned Law and Articles 6(d) and 7(2) of the Treaty, as vaguely alluded to at page 10 of the Applicant's submissions, is the alleged lapse with regard to the rule of law and good governance as happened in the enactment of the impugned Law and the breach of

the said principles would be a breach of the cited Articles of the Treaty.

47. In the circumstance, we understand that generally and in a broad sense independence of the Judiciary and separation of powers are principles of good governance while the right to a fair trial is an aspect of human rights. But having said so, do the provisions of the cited Articles of the impugned Law violate these principles and rights in the way they were framed? A judicious answer to the question can only be made in the affirmative where evidence has been placed before the Court or where proper submissions have been made on the same question. With respect to the Applicants however, we are unable to find such evidence and submissions. Again, we cannot enter the realm of speculation and conjecture and will decline the invitation to grope in the darkness of the matter placed before us.

**J. WHETHER THE COURT HAS JURISDICTION TO ORDER ANNULMENT OF ACT NO1/31 OF 31<sup>ST</sup> DECEMBER, 2013**

48. On this issue, the Applicants submitted that by dint of Articles 8(4), 33(2) and 126(1) of the Treaty, Community Law supersedes National Laws on the same issue. Further, following the decision in **R vs. Secretary of State for Transport, ex-parte Factor Tame Ltd & Others (1990) ECR 1 – 2433**, national institutions, including parliaments, must enact and apply their laws in a manner that gives effect to

Community objectives and laws. Further, having subscribed to the Treaty, Partner States have limited their sovereign rights and accepted the new legal order contained in Community Law.

49. On his part, the Respondent has submitted that the impugned Law was properly enacted in the year 2006 as a creature of the Arusha Peace and Reconciliation Agreement and this Court has no jurisdiction under Articles 27(2) and 30(3) of the Treaty to annul any law that is lawfully enacted by a Partner State within its legal regime.

50. Further, that following the decision in Masenge Venant vs. Attorney General of Burundi Reference No.9 of 2012 and Hilaire Ndayizamba vs. Attorney General of Burundi; Reference No.3 of 2012 where this Court has found that it has no jurisdiction, in any matter placed before it, it has proceeded to deny any remedy to an Applicant.

51. We have considered the issue at hand and we are of the firm view that the Burundian Journalists Case (supra) is a good pointer to the manner in which this Court should treat allegations that a national law or some of its provisions, in enactment, content or application are a breach of the Treaty. In that case, a similar submission was made by the Respondent that Burundi's laws are subject only to



interpretation by its Constitutional Court. The Court pointed him to the right direction when it stated thus:-

*“By acceding to the Treaty and based on our finding above that Articles 6(d) and 7(2) are justiciable, Partner States including Burundi, are obligated to abide and adhere by each of the fundamental and operational principles contained in Articles 6 and 7 of the Treaty and their National Laws must be enacted with that fact in mind. In stating so, we have previously held that whereas this Court cannot superintend the organs of Partner States in the ways they enact their Laws, it is an obligation on their part not to enact or sustain laws that completely negate the purpose for which the Treaty was itself enacted – see Mohochi, (supra); and*

*Having said so, what is the test to be applied by this Court in determining whether a National Law, such as the Press Law, meets the expectations of the Treaty? The Treaty gives no pointer in answer to this question but by reference to other courts, it has generally been held that the tests of reasonability and rationality as well as proportionality are some of the tests to be used to determine whether a law meets the muster of a higher law. In saying so, it is of course beyond peradventure to state that Partner States by dint of Article 8(2) of the Treaty are*

*obligated to enact National Laws to give effect to the Treaty and to that extent, the Treaty is superior law.”*

We reiterate the above holding in the context of the present Reference and the submissions by the Respondent to the contrary are misplaced to that extent.

**K. WHETHER THE APPLICANTS ARE ENTITLED TO THE REMEDIES SOUGHT**

52. Firstly, we have stated that we have been unable to find any evidence and sufficient submissions on the record to reach a conclusion that Articles 6(d) and 7(2) of the Treaty have been violated. Consequently, prayers (a), (b) and (c) of the Reference cannot be granted.

53. Secondly, we have found that while we have the jurisdiction to determine whether there is violation of the Treaty in the enactment, content or application of the whole or parts of **Act No.1/1 of 31<sup>st</sup> December, 2013**, like any other national legislation, in the circumstances of the present Reference and because of the limitations exhibited in pleadings, evidence and submissions we are unable to do so and consequently, prayer (d) of the Reference is denied.

54. On costs, granted, the Applicants have not succeeded in their claim but the issues they raised were dismissed substantially for reasons

other than their analyzed merit but more to do with lack of precision and clarity of pleadings, and submissions. The Applicants were also not pursuing any personal benefit and we are satisfied that they were pursuing higher ideals in public interest rather than personal comfort. In the circumstance, each Party shall bear its own costs.

#### **L. CONCLUSION**

55. This Reference raised important questions at face value but on closer scrutiny and analysis, the Applicants failed one of the simplest expectations of this Court; the need to ensure that allegations, however lofty sounding and however important to the Applicants, must ultimately be clothed with the legitimacy of evidence based on clear and detailed facts as well as the Law including legal authorities submitted by Counsel. Sympathy and expectations that the Court can fill in evidential gaps and give interpretations based on nothing more than that is unacceptable.

56. In the end, and for the above reasons, the Reference herein is dismissed with the further order that each Party shall bear its own costs.

57. Orders accordingly.



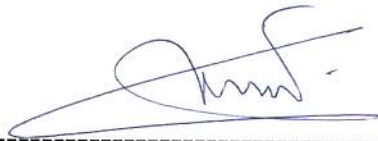
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**Hon. Lady Justice Monica K. Mugenyi**  
**PRINCIPAL JUDGE**



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**Hon. Justice Isaac Lenaola**  
**DEPUTY PRINCIPAL JUDGE**



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**Hon. Justice Faustin Ntezilyayo**  
**JUDGE**