



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



(Coram: Isaac Lenaola, DPJ; Faustin Ntezilyayo, J; Audace Ngiye, J)

REFERENCE NO.2 OF 2016

PAUL JOHN MHOZYA.....APPLICANT

VERSUS

**THE ATTORNEY GENERAL OF
THE UNITED REPUBLIC OF TANZANIA.....RESPONDENT**

27TH JUNE 2018

ku

JUDGMENT OF THE COURT

A. INTRODUCTION

1. This Reference was filed by the Applicant on 3rd June, 2016. However, before the same could be heard, the Applicant filed an Amended Reference ("**the Reference**") on 7th March, 2017.
2. The Reference has been brought under Articles 6(d), 7(2) and 30(1) of the Treaty for the Establishment of the East African Community ("**the Treaty**") and Rules 24, 12 and 48(b) of the East African Court of Justice Rules of Procedure 2013 ("**the Rules**").
3. The Applicant is a natural person, a citizen and a resident of the United Republic of Tanzania, a Partner State of the East African Community. His address for service for the purpose of this Reference is Kongowe Mzingo B, Temeke Municipality, Dar-es-Salaam, Tanzania.
4. The Respondent is the Attorney General of the United Republic of Tanzania and he is sued in his capacity as the Principal Legal Advisor of the said Government. His address for service of this Reference is care of the Attorney General's Chambers, 20 Kivukoni Road, P.O. Box 9050, Foreign Affairs Building, 11492, Dar-es-Salaam.

B. REPRESENTATION

5. The Applicant, acting in person never appeared in Court for reasons that he was unable to fund the cost of so doing as well as for security reasons, according to him. Mr. Richard John Kilanga, Senior State Attorney represented the Respondent.

C. BACKGROUND

6. The Reference was prompted by an alleged illegal survey conducted on a plot of land that is between the Applicant's residential premises and the main Kilwa Road leading to Southern Tanzania by one of the Respondent's agencies, the Temeke Municipal Authority, on 19th April 2008. He alleged that the said piece of land was, by a court order, to be left open for use as an access by the Applicant to the main road.
7. By his letters of 22nd April, 2008, 16th November, 2009 and 21st November 2013, addressed to the Temeke Municipal Solicitor and the Municipal Director, the Applicant complained that in carrying out the said survey, the Temeke Municipal Council had tampered with his passage rights.
8. After not getting a response, the Applicant alleged that, on various dates, he unsuccessfully approached different services and institutions of the Respondent, including the Office of the President of the United Republic of Tanzania, to have his passage rights restored and protected, to no avail.
9. Finally, on 24th February, 2016, a notice of intention to sue the Government of the United Republic of Tanzania was served upon the President of the Republic by the Applicant which elicited no response.
10. There are numerous other averments in the Reference, many of which are unnecessary and irrelevant to the substance of the dispute before us as we have summarized above. With due respect to the Applicant therefore, we are also constrained to observe that the material placed before the Court by way of letters, affidavits and submissions have led to some degree of confusion in regard to the jurisdiction of this Court and the Applicant's cause of action.

11. The above notwithstanding, we have understood the substratum of his case and we note that aggrieved by the alleged violation of his property rights, the Applicant instituted the present Reference seeking orders *inter alia* directing the United Republic of Tanzania to comply with its obligations under Articles 6(d) and 7(2) of the Treaty in that regard.

D. THE APPLICANT'S CASE

12. The Applicant's case is as contained in his Statement of Reference as amended and filed on 7th March 2017, his affidavit sworn on 13th October 2017 and filed on 16th October 2017, his affidavit in rejoinder sworn on 28th November, 2017 and filed the same day as well as in his written submissions.

13. In summary, the Applicant has complained of alleged actions of harassment by persons within the Office of the President of the United Republic of Tanzania, various Ministries as well as local Municipal Authorities which have led among other things to his alleged complete physical isolation.

14. The Applicant alleged that, as a result of the said actions, redress has been difficult to come by under the local legal and administrative institutions hence his choice of this Court vide his Reference aforesaid.

15. He further argued that his isolation and harassment started years ago when he was suspended from employment by the Ministry of Education and Vocational Training before the same taking the form of a land dispute orchestrated by the Director of Temeke Municipal Council as explained above.

16. In that regard, the Applicant contended that the surveyed piece of land by the Temeke Municipal officers had been disputed in Court twice and

passage to his plot granted both times. He further alleged that both the survey and the blockage of the passage were intentionally carried out to crash and harass him.

17. It was the Applicant's further contention that the above acts of the Respondent were in violation of the fundamental principles of the East African Community as stipulated in Articles 6(d) and 7(2) of the Treaty.

18. On the basis of the foregoing, the orders sought can be summarized as follows:

- a) ***A declaration that the Respondent's actions against the Applicant violate Articles 6(d) and 7(2) aforesaid;***
- b) ***An order that all current violations as against the Applicant be removed and the Applicant be accorded the means for enjoyment of rights as defined under the Treaty and the African Charter on Human and People's Rights;***
- c) ***A declaration that, for as long as 14 years now the Applicant has been subjected to blatant violations of his rights and therefore, a token compensation be awarded to him;***
- d) ***An order that the costs of and incidental to this Reference be met by the Respondent.***

E. THE RESPONDENT'S CASE

19. The Respondent's case is contained in his Response to the Reference as amended and filed on 1st December, 2016 which was supported by an Affidavit sworn by Richard John Kilanga on 17th November, 2017 and filed on the same day as well as in his written submissions.

20. The Respondent's rebuttal is premised on two (2) points of law. First, it is the Respondent's case that this Court is not clothed with jurisdiction to determine this Reference as all the issues raised are reserved for institutions of the United Republic of Tanzania since they do not concern the application and interpretation of the Treaty. The Respondent further contended that adequate, satisfactory and effective remedies are available in the United Republic of Tanzania but the Applicant had not exhausted them before approaching this Court. He thus contended that the instant Reference is incompetent and bad in law for contravening the settled principle of international law to the effect that a person should first exhaust all available local remedies before seizing the jurisdiction of an international court.

21. Secondly, it was the Respondent's contention that this Reference is incompetent for being time-barred. According to him, it was filed on 3rd June, 2016 and this means that all the challenged directives, decisions or actions must have occurred on or after 3rd April, 2016 so as to comply with the provisions of Articles 30(2) and this was not the case in the present Reference.

22. In the alternative, it was the Respondent's further case that all the allegations raised by the Applicant are baseless since the Applicant had failed to prove any wrong doing on the part of the mentioned institutions and that it is trite law that he who asserts must prove.

23. The Respondent, for the above reasons, prays that the Reference be dismissed with costs.

F. ISSUES FOR DETERMINATION

24. At the Scheduling Conference held on 18th September, 2017 in the absence of the Applicant who had expressed his intention not to attend the same, the following issues were frame for determination by this Court:

- i. Whether the Director of Temeke Municipal Council has failed to take action on the complaints raised by the Applicant;**
- ii. Whether the Applicant has been threatened to be killed by the office of the Director of Temeke Municipal Council if he continues to make a follow up on his issues;**
- iii. Whether there are persons who harass the Applicant;**
- iv. Whether the PCCB (Prevention and Combating of Corruption Bureau) has not taken any action against the Temeke Municipal Council Director;**
- v. Whether the President's Office has failed to take any action against the PCCB and Temeke Municipal Council Director;**
- vi. Whether on the 24th February 2016 the Applicant lodged a notice of intention to sue the Government under the Government Proceedings act;**
- vii. Whether on the 29th February 2016 the Applicant wrote a letter to the President asking for an appointment to see him and tell his complaints;**
- viii. Whether the Reference is properly before the Court;**

- ix. **Whether the Reference is time-barred;**
- x. **Whether the Court has jurisdiction to enforce the basic rights and duties provided for under the Constitution of the United Republic of Tanzania;**
- xi. **Whether the Court has jurisdiction to enforce the basic rights and duties provided for under the African Charter on Human and Peoples' Rights;**

25. The parties also agreed that the hearing would proceed on the basis of Affidavit evidence, written submissions and oral highlights on the latter.

26. The Applicant and the Respondent have each filled written submissions on the aforesaid issues and at the hearing of 8th March, 2018, Mr. Kilanga made oral highlights of his submissions again in the absence of the Applicant who had expressed his intention not to do so.

G. COURT'S DETERMINATION

27. In determining the issues in contest within the Reference herein, we deem it appropriate and prudent to first dispose of the preliminary objections raised by the Respondent on grounds *inter alia* of jurisdiction and limitation of time before considering the merits of this Reference if need be. Therefore, issue No.(viii) becomes issue No.(i), issues Nos.(x) and (xi) become, respectively, Issues No.(ii) and No.(iii) while issue No.(ix) becomes issue No.(iv).

Issue No. (I): Whether the Reference is Properly Before the Court

Respondent's Submissions

28. The question as to whether this Reference is properly before this Court was a point of law challenging this Court's jurisdiction and was raised by the Respondent.
29. The objection made by the Respondent on this issue is therefore that Articles 23(1), 27(1), 30(1), 30(3) of the Treaty do not vest this Court with jurisdiction to determine the Reference as all the issues raised by the Applicant are reserved for institutions of the United Republic of Tanzania and do not concern the application and interpretation of the Treaty. The Respondent further contended that the Applicant has adequate, satisfactory and effective remedies in the United Republic of Tanzania which are available, but, have not been exhausted by the Applicant.
30. The Respondent also submitted that the Applicant has a right and a duty to enforce his rights in accordance with Articles 26 and 30 of the Constitution of the United Republic of Tanzania and the Government Proceedings Act as well the Local Government (Urban Authorities) Act. In addition, he submitted that the President's Office of the United Republic of Tanzania has nothing to do with Courts of law since the Judiciary of Tanzania is independent and discharges its duties in accordance with the Constitution and laws of the land.
31. Furthermore, it was the Respondent's submission that the Reference as framed is incompetent and bad in law for contravening the settled principle of international law to the effect that a person should first

exhaust all available local remedies before seizing the jurisdiction of an International Court.

Applicant's Submissions

32. On the question of the Court's jurisdiction, it was the Applicant's contention that the Respondent is being sued for lack of transparency and good governance on behalf of his officers in handling a land issue which is within the jurisdiction of the Temeke Municipal Authority in violation of Articles 6(d) and 7(2) of the Treaty.

33. The Applicant also contended that even though the means to provide such local remedies may exist, the agents of the Respondent have knowingly not made them available at the times the Applicant needed them; and, that a system of government accused of hiding a means of redress lacks in accountability and transparency and cannot therefore achieve social justice. In support of his submission, the Applicant cited the provisions of Articles 6(d) and 7(2) of the Treaty as the international obligations that had been violated by the United Republic of Tanzania, and sought to hold the said Partner State responsible for violation of the principle of good governance that includes adherence to the rule of law, transparency, social justice and promotion and protection of human and individual rights of the Applicant.

Court's Determination on Issue No.(i)

34. We have carefully considered the arguments of both parties. And at this juncture, we have to recall that this Court's jurisdiction is explicitly spelt out in Articles 23(1), 27(1) and 30 of the Treaty. We reproduce the pertinent provisions thereof for ease of reference.

“Article 23(1)

The Court shall be a judicial body which shall ensure the adherence to law in the interpretation and application of and compliance with this Treaty; and

Article 27(1)

The Court shall initially have jurisdiction over the interpretation and application of this Treaty:

Provided that the Court’s jurisdiction to interpret under this paragraph shall not include the application of any such interpretation to jurisdiction conferred by the Treaty on organs of Partner States; and

Article 30(1)

Subject to the provisions of Article 27 of this Treaty, any person who is a resident in a Partner State may refer for determination by the Court, the legality of an 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; and

Article 30(3)

The Court shall have no jurisdiction under this Article where an Act, regulation, directive, decision or action has been reserved under this Treaty to an institution of a Partner State.”

35. Whereas Article 27(1) thus designates the jurisdiction of this Court as the interpretation and application of the Treaty, Article 30(1) provides the context within which such jurisdiction would be exercised.
36. In addition, unlike other legal regimes, the Treaty provides no requirement for exhaustion of local remedies as a condition for accessing the Court. See The Attorney General of the Republic of Rwanda vs. Plaxeda Rugumba EACJ Appeal No.1 of 2012 and Emmanuel Mwakisha Mjawasi & 748 others vs. The Attorney General of the Republic of Kenya EACJ Ref. No.1 of 2010. We are therefore satisfied that there is no express provision barring this Court from determining any matter that is otherwise properly before it simply because the Applicant has not exhausted local remedies.
37. Furthermore, this Court has had occasion to address the question of its jurisdiction in various past decisions. It has consistently found in that regard that its jurisdiction to have been sufficiently established and exercised where it was averred on the face of the pleadings that the matter complained of constituted an infringement of the Treaty in a relevant manner. See Hon. Sitenda Sebalu vs. The Secretary General, East African Community & Others EACJ Ref. No.1 of 2010 and Prof. Peter Anyang' Nyong'o & 10 Others vs. The Attorney General of the Republic of Kenya & 2 Others EACJ Ref. No.1 of 2006.
38. We hold the same view in this Reference and accordingly, Issue No.(i) is answered in the affirmative.

Issue No.(ii): Whether the EACJ has Jurisdiction to Enforce the Basic Rights and Duties provided for under the Constitution of the United Republic of Tanzania.

Parties' Submissions

39. In answer to the above issue, it has not been denied by the Respondent that the Basic Rights and Duties Enforcement Act of the United Republic of Tanzania was enacted with a view of providing the procedures for enforcing constitutional basic rights and duties under Article 30(4) of the Constitution of the United Republic of Tanzania.

40. He however submitted that the Applicant's submission on this issue was misconceived and out of context because in the United Republic of Tanzania, there is an adequate and satisfactory legal framework available for enforcing the basic rights and duties enshrined under its Constitution.

41. On his part however, the Applicant contended that the concerned local institutions had mismanaged the processes required to provide redress and left his case pending without any recourse for appeal therefrom. He further argued that, in his understanding, it was the Respondent who was blocking all the local institutions from tackling issues that are within their jurisdiction. The Applicant also submitted that the foregoing are in essence issues of abuse of the legal process thus an infringement of Articles 6(d) and 7(2) of the Treaty.

Court's Determination on Issue No.(ii)

42. The point of departure between the parties in the determination of this issue must lead to a resolution of the question whether this Court can properly delve into obligations created on the Respondent by the

Constitution of the Republic of Tanzania. As we have stated elsewhere above, this Court has primacy in the interpretation of the Treaty.

43. It is also the law that this Court can only “interpret” and “apply” the Treaty under Article 27 and in doing so, adherence to law in the interpretation and application of and compliance with the “Treaty” shall be its guiding principle under Article 23(1) of the Treaty. Further, in doing so, it can only inquire into the **“legality of an 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 principles of the Treaty”** within the meaning given by Article 30 thereof.

44. But that is not the end of the matter because we heard the Applicant to be saying that failure to handle his complaints within the processes known to the Constitution and the laws of the United Republic of Tanzania is a violation of Articles 6(d) and 7(2) of the Treaty.

45. From a plain reading of the aforesaid Articles, it is clear to us, as this Court had decided in **Democratic Party vs. Secretary General, East African Community & 4 Others EACJ Appeal No.1 of 2014**, that where a Partner State fails to honor commitments made under its Constitution and laws then with appropriate facts placed before the Court, a decision to ensure compliance therefore may be made in favour of a party that fits the description in Article 30 of the Treaty and which has a genuine complaint in that regard.

46. In stating the above, the only rider is that this Court cannot purport to operate outside the framework of the Treaty and usurp the powers of

the organs created for the enforcement of obligations created by other instruments, including the United Republic of Tanzania's Constitution.

47. Issue No.(ii) is consequently answered in the affirmative save that the context is as explained above.

Issue No. (iii): Whether the EACJ has Jurisdiction to enforce the Basic Rights and duties provided for under the African Charter on Human and Peoples' Rights.

Parties' submissions

48. It is not disputed by either Party that the fundamental principles of the Treaty provided for under Article 6(d) call for Partner States to promote and protect the human rights provided by the African Charter on Human and Peoples' Rights.

49. However, it is the Respondent's contention that, as the Partner States have not concluded a protocol to operationalize the extended jurisdiction of the Court on human rights matters as provided by Article 27(2) of the Treaty, the Court has no jurisdiction to adjudicate over any human rights matter under the African Charter on Human and Peoples' Rights.

50. The Applicant, on his part argued that the jurisdiction of the Court to interpret and apply human rights enshrined in the African Charter on Human and Peoples' Rights is fully granted by the Treaty.

51. In support of his argument on this issue, the Applicant relied especially on the case of **Democratic Party** (supra), where it was held that:

“Articles 6(d) of the Treaty obligates the Partner States to adhere to the principles of democracy, the rule of law,

accountability, transparency, social justice, as well recognition, promotion and protection of Human and Peoples' Rights in accordance with the provisions of the African Charter on Human and People's' Rights.

The wording "... in accordance with the provisions of the African Charter on Human and People's' Rights", creates an obligation on the Partner States to act in good faith and in accordance with the provisions of the Charter. Failure to do so constitutes an infringement of the Treaty. Such violation can be legally challenged before the Court by virtue of its jurisdiction *ratione materiae*, which is provided for especially under Article 23 read together with Article 27 of the Treaty."

52. He finally submitted that, in as far as the Articles quoted above, specifically Article 6(d), recognize the Charter's relevance in promotion and protection of human and peoples' rights, then compliance with those provisions of the Charter become, *ipso jure*, an obligation imposed by the Treaty upon Partner States. See **Democratic Party** (Supra).

Court's Determination on Issue No.(iii)

53. With respect, we are of the considered view that the contention by the Respondent that the Applicant has wrongly invoked the human rights jurisdiction of this Court is untenable. While we agree with the Respondent's submission that as long as the Protocol to operationalize the extended jurisdiction is not concluded, this Court is not vested with direct and explicit jurisdiction to entertain human rights matters, we are certain that as to whether the functionality of Article 30(1) of the Treaty is subject to the provisions of Article 27(2) is not a matter for debate if

we are to look into this Court's application and interpretation of Article 6(d) of the Treaty in the past.

54. In that context, in Mbugua Mureithi Wa Nyambura vs. The Attorney General of The Republic of Uganda & The Attorney General of The Republic of Kenya EACJ Ref. No.11 of 2011 this Court concluded that:

“A reference under Article 30 of the Treaty is to be construed as an action to challenge the legality under the Treaty of an activity of a Partner State or an institution of the Community. It is undeniable that under Article 27(1) of the Treaty, this Court has jurisdiction to interpret and apply any and all provisions of the Treaty save those excepted by Article 27(2)”.

55. One of the provisions thus consistently held to be justifiable is that enshrined in Article 6(d) of the Treaty as regards Partner State's compliance with the principles of human rights in the African Charter. We further find and hold that the United Republic of Tanzania is before this Court in a contest revolving around an unresolved land issue. Article 27(2) of the Treaty cannot in such a case be invoked to deny this Court jurisdiction to resolve such an issue because *prima facie* the issue being one regarding alleged violations of Articles 6(d) and 7(2) then it fits within the purview of Article 30(1) of the Treaty.

56. In any event, this Court has consistently held that it has jurisdiction to interpret each Article of the Treaty; and that mere mention of allegations of human rights violation in a Reference will never distract this Court from exercising its interpretative jurisdiction under Articles 27(1) and 30(1) of the Treaty. See James Katabazi and 21 Others vs. Secretary General, East African Community and The Attorney General of the

Republic of Uganda EACJ Ref. No.1 of 2007 and **Samuel Mukira Mohochi vs. The Attorney General of The Republic of Uganda EACJ Ref. No. 5 of 2011** and **Mbugua Mureithi Wa Nyambura**(supra).

We adopt the reasoning in these decisions in as far as they are relevant to the issue at hand.

57. For the above reasons therefore, it is our finding that this Court has jurisdiction to entertain the Reference.

Issue No. (iv): Whether the Reference is Time-Barred

58. As stated earlier, this issue was raised as a preliminary objection by the Respondent. It is however necessary to deal with it at this stage, because if it is answered in the affirmative, then it would dispose of the whole Reference and there would be nothing else to determine.

Parties' Submissions

59. It is not disputed by either Party herein that the specific act or decision in issue in this Reference is the alleged unlawful land survey and demarcation carried out by the Temeke Municipal Authority on 19th April, 2008 on the Applicant's neighbor's piece of land which according to him, infringed on his property rights. The other actions complained of have been qualified as consequential or related issues by the Applicant himself. This is a fact borne out by the parties' pleadings and submissions.

60. Counsel for the Respondent on this issue however submitted that in light of the limitation period set to institute a reference of this nature pursuant to Article 30(2) of the Treaty, the matter was time-barred. For avoidance of doubt, Article 30(2) provides that:

lll

“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.”

61. The Respondent further argued that the Applicant lodged his Reference on 3rd June, 2016 which means that all the issues raised in the Reference must involve directives, decisions or actions that occurred on or before 3rd April, 2016. He also submitted that, from the Applicant's averments, it is clear that all the actions and decisions complained of in fact long occurred before that date and outside the two months' rule.

62. In conclusion, he submitted that the Reference was therefore filed out of time and prayed that this Court be pleased to dismiss it with costs.

63. In response, the Applicant submitted that most of the issues raised in the Reference are independent of any limitation of time in that they are still pending in the jurisdiction of local institutions for redress; and that they cannot fit into the timeframes designed under Article 30(2) of the Treaty because they all depend on the Respondent's will to act on them at his own time.

64. He further submitted that, in this Reference, the only document that could be certainly used to determine the timeframe prescribed by Article 30(2) of the Treaty was the Notice to sue served upon the President of the United Republic of Tanzania on 24th February, 2016. That notice according to the Applicant, fixed the time for action and so the omission came to the knowledge of the Applicant when no response or action was taken by 24th May, 2016, when the 90 days limit of the Notice

expired. Therefore, according to him it is on 24th May, 2016 when the two months count required under the Treaty started to run, and the two months count should therefore have ended on 24th July, 2016. The Applicant argued that, by this criterion, the Reference survived the time bar by more than fifty (50) days.

65. Furthermore, in order to fix the time of triable issues raised in this Reference, the Applicant prayed this Court to rely on “good faith” and accept the given timeframe by giving priority to the “object and purpose” the Treaty is intended to be accorded. He cited **Mbugua Mureithi Wa Nyambura** (supra) and **The Attorney General of the Republic of Rwanda vs. Plaxeda Rugumba EACJ Appeal No.1 of 2012** in support of his submissions.

66. For the above reasons, the Applicant urged the Court to find that the objection on time bar brought up by the Respondent is not tenable and should be rejected without further ado.

Court’s Determination on Issue No.(iv)

67. We have carefully considered the rival submissions before us and we must begin by noting that, in his written submissions, the Applicant did seem to concede that the issues raised in the Reference are time-barred “*because the two conditions provided for under Article 30(2) of the Treaty may not apply*”.

68. In order to save his case however, the Applicant pleaded the principal of continuing violation and the absence of any response to his Notice of intention to sue served upon the President of the United Republic of Tanzania on 24th February, 2016 for a response to be made within ninety (90) days of service aforesaid.

69. In the above context, it is our understanding from a plain reading of Article 30(2) that a Reference challenging any unlawfulness or infringement provided for under Article 30(1) must be instituted within a period of two months of their occurrence or in the absence thereof, when the complainant came to know of the act or action complained of. That is the clear and ordinary meaning to be given to the Article 30(2). See **Mbugua Mureithi Wa Nyambura** (supra).

70. Having read the pleadings on record and considered the submissions on this issue, we are of the firm view that all the actions, events and facts stated in the Applicant's pleadings and submissions as summarized above occurred before the prescribed time and are therefore time-barred.

71. Specifically, whether the Temeke Municipal Council had failed to take action once he complained to it or that the Office of the President had failed to take action against the Prevention and Combating of Crime Bureau (PCCB) or that the Applicant was the subject of harassment and death threats as a result of his opposition to the land survey in dispute, are all events that took place between the year 2006 and 24th February, 2016 when he issued a notice to sue the Office of the President. The Reference having been filed on 3rd June, 2016 then it means that all the complaints are-time barred by fact of Article 30(2) of the Treaty as time stopped running on 24th April, 2016 if we take that date as the operative date under that Article. In fact, the Applicant's first complaint regarding the allegation that his house No.TNG/MZG 63 Kongowea Mzinga had been "landlocked" by the Temeke Municipal Council was made on 21st November, 2013 for an action that had elicited previous actions as far back as 1993, 2006 and 2009. The gravamen of his case being the

said action, then the present Reference cannot be allowed to stand on account of limitation of time.

72. However, noting the only explanation given by the Applicant as to time bar we revert now to the issue of the alleged failure to respond to the Applicant's Notice of intention to sue served upon the President of the United Republic of Tanzania under the Government Proceedings Act. With respect, we found this assertion not to be helpful at all. Firstly, the act in question doesn't constrain the recipient thereof to respond to the notice on the stated timeframe. It was thus up to the Applicant to lodge a suit in any competent court including this one before and after the expiry of ninety days from the lodging of the notice of intention to sue the Government. Secondly, the President the United Republic of Tanzania cannot, as an Institution, sue and be sued in this Court. The Government of Tanzania can only sue or be sued through the Attorney General of the Republic of Tanzania and therefore we see no connection between a notice to that office and any proceedings to be lodged in this Court.

73. On the question of continuing violations, the Appellate Division of this Court has previously rejected the concept of continuing violations and opted for a strict interpretation of Article 30(2) of the Treaty in order to protect the principle of legal certainty. It stated that thus on that point.

“The principal of legal certainty requires strict application of the time limit in Article 30(2) of the Treaty. Furthermore, nowhere does the Treaty provide for any power to the Court to extend, to condone, to waive or to modify the prescribed time limit for any reason.” See Attorney General of the Republic of Uganda &

Attorney General of the Republic of Kenya vs. Omar Awadh's & 6 Others EACJ Appeal No.2 of 2012.

74. We are guided by the above decision. In the end therefore, we conclude that the Applicant filed his Reference out of the prescribed time, and that, consequently, the Reference is time-barred for not complying with the provisions of Article 30(2) of the Treaty.
75. Having answered this issue in the affirmative, we would otherwise accordingly refrain from determining the remaining issues for the simple reason that the Reference is no longer alive.
76. Be that as it may, had we considered the Reference on merits, it is our considered view that it would not stand an evidential test. We have in that regard weighed the evidence tendered by the Applicant, who has the burden to prove his allegations against the Respondent, and did not find sufficient and admissible evidence in support of his case.
77. We say so because in the instant case, the Reference is substantially premised on the alleged illegal land survey carried out by the Temeke Municipal Authority in Dar-es-Salaam. But no tangible and admissible evidence has been placed before us in support of the said claim. Nothing was also placed before us to show that the Applicant has been threatened to be killed for exposing that alleged unlawful action or that he has been for example the victim of harassment, isolation and corruption for the same reason. No connection also exists between those allegations and violation of the Treaty.
78. In fact, reading the Applicant's "Final Submission", it is obvious that even he was aware of the evidential limitation in his case. In that regard we reproduce hereunder the following specific paragraphs:

Paragraph 9 (p.13):

Every other officer this applicant sought assistance from has kept no record of the complaint and letters are ignored. Officers are afraid of putting themselves on paper lest they in future be held responsible for the illegal transactions involved.

Paragraph 10 (p.14)

In the end and after this applicant got fed up with the lack of records of the transactions he made, he opted for the only alternative left open for him, that of recording events on video and phone conversations on sound tracks ...

Paragraph 16 in fine (p.21)

..... the harassments are so competently planned and expertly executed that there is not any evidence to incriminate anyone. (Emphasis added)

79. While this evidence was supposed to be solid and unassailable and despite the fact that parties had agreed to adduce their evidence in the form of affidavits, the Applicant only filed as an annexure to his written submissions a recording in a compact disc (CD) containing what he called evidence. Such evidence should be regarded with caution because the producer or maker of did not swear any affidavit in support of the electronic evidence that was produced before the Court. It is also our understanding that evidence that is produced without adhering to procedure and whose authenticity cannot be proved is inadmissible. See **East Africa Law Society vs. The Attorney General of the**

Republic of Uganda and Secretary General, East African Community EACJ Ref. No.2 of 2011.

80. In a nutshell, we are of the firm view that the evidence tendered by the Applicant is weak and cannot lead any court to conclude that the Respondent's agents and institutions breached the United Republic of Tanzania's laws, its Constitution and the Africa Charter on Human and Peoples' Rights or even the Treaty.

81. The above holding resonates with the decision in the case of East African Law Society vs. The Attorney General of the Republic of Uganda & The Secretary General of the East African Community, EACJ Ref. No.2 of 2011 where it was held among other things that "it is not enough to allege a fact, however notorious one may consider it to be, and fail to bring forth credible, authentic, reliable and admissible evidence to support such an allegation." We reiterate that holding as applicable to this Reference.

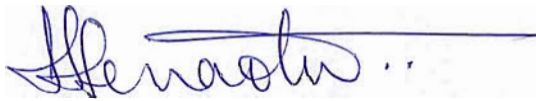
H. DISPOSITION

82. From the foregoing, and in light of our findings, the present Reference is dismissed.

83. As to costs, due to the peculiar circumstances of this case, we deem it just for each Party to bear its own costs.

84. It is so ordered.

Dated and delivered at Arusha this 27th day of June 2018.



.....
HON. JUSTICE ISAAC LENAOLA
DEPUTY PRINCIPAL JUDGE



.....
HON. JUSTICE FAUSTIN NTEZILYAYO
JUDGE



.....
HON. JUSTICE AUDACE NGIYE
JUDGE