IN THE EAST AFRICAN COURT OF JUSTICE AT ARUSHA

FIRST INSTANCE DIVISION

(Coram: Monica K. Mugenyi, PJ; Charles O. Nyawello & Charles Nyachae, JJ)

CONSOLIDATED APPLICATION NO. 5 & 22 OF 2020

(Arising from Reference No. 4 of 2020)

FRANK KANYAMBO RUGASARA

& ANOTHER ..... APPLICANTS/ RESPONDENTS

VERSUS

THE ATTORNEY GENERAL OF
THE REPUBLIC OF RWANDA ..... RESPONDENT/ APPLICANT

26TH NOVEMBER 2020

RULING OF THE COURT

A. Introduction

1. On various dates between 2014 and 2015, Gen. (Rtd.) Frank Kanyambo Rusagara and Col. Tom Byabagamba ('the Applicants') were arrested, detained and indicted by the Government of the Republic of Rwanda ('the Respondent State') for offences including spreading rumours intended to incite the public to oppose an established government; committing acts intended to tarnish the image of the Republic of Rwanda, and illegal possession of arms. Their detention was subsequently endorsed by the Court of Appeal of the Respondent State vide its decision of 27th December 2019.

2. The Applicants did thereupon lodge **Reference No. 4 of 2020** in this Court challenging the legality of the Court of Appeal decision, which they allege to be in violation of the Treaty for the Establishment of the East African Community ('the Treaty'), as well as other related laws including international human rights laws.

3. It is the Applicants contention that the Court of Appeal having only given notification of the impugned decision and not the reasoned judgment; had not delivered the reasoned judgment therein as at the time of the filing of **Application No. 5 of 2020** hereof, and had not certified a translated copy of the said notification and court pleadings in respect of the Applicants' case that was before it.

4. In order to propel the Reference, the Applicants filed **Application No. 5 of 2020** seeking the intervention of this Court to compel the Respondent State to furnish them with a certified copy of the

judgment of the Rwanda Court of Appeal in respect of the said court's notification of 27th December 2019.

5. Before that Application had been heard, the Respondent State filed **Application No. 22 of 2020** seeking to have **Reference No. 4 of 2020** and all the applications emanating therefrom heard by a full bench on account of its being a matter of public importance and the complexity of the laws entailed.

6. At the hearing thereof, the Court did consolidate the two (2) Applications within the ambit of Rule 6 of the East African Court of Justice Rules, 2019 ('the Court's Rules') and for reasons of efficient case management, a principle that is aptly encompassed within the renown notion of judicial economy. The Applicants/ Respondents were represented by Mr. Ashioya Biko and Ms. Cynthia Sheunda, while Mr. Nicholas Ntarugera and Ms. Mackline Ingabire (both Senior State Attorneys) appeared for the Respondent State/ Applicant.

B. **Applicants' Submissions in** *Application No. 5 of 2020*

7. It is the Applicants' contention that when the Court of Appeal decision was rendered on 27th December 2019, they were given a notification that it had been so delivered but all efforts by their advocates to access the judgment and record of proceedings had been futile thus far. It was argued on their behalf that the foregoing position is aptly reflected in the affidavit of Mr. Osundwa, it being reiterated that it was not asking too much to request to be furnished with the court documents sought, the same being documents that should be in the public domain so as to enhance the Applicants' access to justice.

8. The Applicants thus sought the production in Court of certified copies of the translated Court of Appeal judgment and the applicable record of proceedings. They further sought to have the same documentation duly translated into English furnished upon them so as to enable them amend their Reference, it having been filed in the absence of either a copy of the judgment or the attendant court proceedings.

C. **Respondent State's Submissions in** *Consolidated Application 5 & 22 of 2020*

9. Learned Respondent Counsel opted to argue **Application No. 22 of 2020** first, seeking that **Reference No. 4 of 2020** and all the applications thereunder should be heard by a full bench. The reasons advanced for the said application were that the case involves matters of public importance that would necessitate the interpretation of a complexity of laws. The violations for which the Respondents had been prosecuted in the Republic of Rwanda were opined to reflect the importance of the matter. On the other hand, its complexity was espoused in terms of the different laws that denote Treaty violations by the Respondents, including their alleged incitement and collaboration with armed groups that are hostile to Rwanda and harboured by EAC Partner States, and the supposed human rights connotations of the Reference.

10. It was argued that whereas Rule 69 of the Court's Rules of Procedure provides for corams of three (3) or five (5) judges, the same Rule makes reference to a full bench thus suggesting that a coram is different from a full bench. In that regard, the definition of 'full bench' was cited to suggest that a full bench entails all the judges of a court. This was construed by learned Counsel to mean the *'six*

judges representing the six partner states of the East African Community who are represented in the East African Court of Justice.' Mr. Ntarugera did further opine that failure to grant the application would prejudice his client and proper justice would not be achieved given that Rule 69 does provide for applications for a full bench.

11. With regard to **Application No. 5 of 2020**, it was learned Counsel's contention that the Rwandan Judiciary operates an Integrated Electronic System for the Management of Cases that allows litigants easy access to all court documents, therefore the Respondent State was under no obligation to furnish the impugned judgment, attendant pleadings and/ or record of proceedings as requested by the Applicants.

12. He further argued that litigants were at liberty to translate Rwandan court documentation from Kinyarwanda to English, the Respondent State being under no obligation to procure such translation on their behalf. He thus opined that the Applicants were at liberty to obtain the sought judgment and pleadings from the Case Management System and secure the necessary translations and certification thereof themselves. With regard to the incidental amendment of pleadings accruing therefrom, we understood learned Respondent Counsel to opine that the Applicants could amend their pleadings with or without the leave of Court but, having opted to secure the leave of Court, they were obligated to lodge a formal application for that purpose in the Court.

D. **Respondents' Submissions in** *Application No. 22 of 2020* **& Submissions in Reply in** *Application No. 5 of 2020*

13. On his part, Mr. Biko (for the Applicants in **Application No. 5 of 2020**) opined that the Respondent State had not only conceded that the sought documents had been uploaded on the Case Management System later, they as Counsel for the Applicants had gone to great lengths to access the said system but failed, hence the filing of **Application No. 5 of 2020**. He maintained that they would prefer the translation of the judgment and other sought documentation to originate from the Respondent State in order to forestall unnecessary quibbling about the veracity of the translation at trial. He further reiterated that upon his clients being furnished with the sought documents, the Court be pleased to grant them leave to amend their pleadings.

14. In terms of **Application No. 22 of 2020**, Mr. Biko construed a full bench of the court to entail a five-judge bench as provided in Rule 69(1) of the Court's Rules of Procedure. In his view, the same Rule states in mandatory terms that the coram of the Court shall be three or five judges, one of whom would be the Principal Judge. He opined that to the extent that the question of a full bench arose in the proviso to Rule 69(1), parties that sought to invoke the said proviso would be required to demonstrate the need therefor by furnishing evidence as to why it was important that a full bench be constituted. In his estimation, therefore, the empanelling of a full bench ought only to be made where it was absolutely necessary but in this case such necessity had not been demonstrated.

15. Learned Respondent Counsel did also argue that the prudent utilization of judicial resources would require that a matter that can be handled by a three-judge bench be handled as such. He argued that the decision to empanel a full bench was a matter of discretion that must be exercised judiciously but the limited number of judges available presently posed time constraints to the expeditious adjudication of the matter in the event that recourse was made to a full bench. He invoked the importance of the matters raised in the Reference as the basis for the expeditious adjudication of the matters in issue.

E. **Submissions in Reply in** *Application No. 22 of 2020*

16. In reply, Mr. Ntarugera reiterated his earlier position that the case, presumably **Reference No. 4 of 2020**, was very important and complex, and therefore should be determined by a full bench.

F. **Court's Determination**

17. We carefully listened to both parties in this Consolidated Application. Given the nature of arguments advanced by learned State Counsel for the Republic of Rwanda, it becomes imperative that we commence our consideration thereof with a determination of **Application No. 22 of 2020**. This application was brought under Rule 69(1) of the Court's Rules of Procedure. For completion and in order to contextualise the terms used therein, we reproduce Rule 69 in its entirety.

> **1. The quorum of the Court shall be three (3) or five (5) Judges, one of whom shall be the Principal Judge or Deputy Principal Judge:-**

Provided that having regard to the public importance of the matter or to any conflict or other complexity in the law applicable, the Principal Judge or on application by any party, the Court may direct such matter to be heard and determined by a *Full Bench*.

2. **The following interlocutory matters may be dealt with and determined by a single Judge:-**
    a. **Applications for extension of time prescribed by these Rules or by the Court;**
    b. **Applications for an order for substituted service;**
    c. **Applications for examining a serving officer;**
    d. **Applications for leave to amend pleadings, and**
    e. **Applications for leave to lodge one or more supplementary affidavits under Rules 52(6) and 54(2).**

3. **A party dissatisfied with a decision of a single Judge may apply informally to the Judge at the time when the decision is given or by writing to the Registrar within seven (7) days after the decision of the Judge to have it varied, discharged or reversed by a *Full Court*.**

4. **At the hearing by the *Full Court* of an application previously decided by a single Judge, no additional evidence shall be allowed.**

18. Rule 69 makes reference to both a full bench and a full court albeit in arguably different contexts. Both terms are construed to entail the same thing in Black's Law Dictionary[1], and defined as '**a court session that is attended by all the court's judges; an *en banc* court.**' Against that backdrop, we draw apposite inspiration from the practice in the Court of Justice of the European Union (CJEU) as to the construction to be made of Article 69 of this Court's Rules of Procedure.

[1] 8th Edition, p. 381.

19. The CJEU is established under Section 5 of Part VI of the Treaty on the Functioning of the European Union ('the EU Treaty'). Article 251 thereof mandates the CJEU to sit in Chambers, a Grand Chamber or as a Full Court. The EU Treaty does also establish a General Court, the decisions of which (in some instances) are appealable to the CJEU. Related provision is also made for the General Court in the Statute of the Court of Justice of the European Union ('the CJEU Statute'). Indeed, the provisions of Article 251 of the EU Treaty with regard to the composition of the CJEU are re-echoed in Article 17 of the CJEU Statute. That provision highlights Chambers of three or five judges, the Grand Chamber of eleven judges and the Full Court of seventeen judges.

20. By dint of Article 47 of the same Statute, however, the General Court's mandate is only exercised in Chambers of three or five judges and, in designated cases, as a Full Court of seventeen judges. Meanwhile, Article 48(c) of the same Statute enumerates the number of judges of the General Court as two judges per European Union (EU) Member State effective 1st September 2019. This would place the total number of judges at about 54, there being 27 Member States in the EU. Clearly therefore, although the General Court is comprised of about 54 judges, the Full Court thereof is by Statute limited to 17 judges. This would dispel the notion that a Full Court in international judicial practice would necessarily comprise of all the judges of a court for purposes of Member States' representation, or at all.

21. Similarly in the East African Community, although Article 24(2) of the Treaty does provide for ten judges in the First Instance Division, that would not necessarily translate into the full court thereof comprising of all the judges in the Division. Consequently, whereas

we do agree with the approach in Black's Law Dictionary that the terms 'full court' and 'full bench' may be used interchangeably, we are not persuaded by the proposition therein that those terms would necessarily mean all the judges of a court. Inspired by the circumstances that pertain in the CJEU, we are more inclined to and do hereby adopt the following position as advanced by Wikipedia (the free online encyclopedia):

> **A Full Court (less formally, a full bench) is a court of law with a greater than normal number of judges. For a court which is usually presided over by one judge, a Full Court has three (or more) judges; for a court which, like many appellate courts, normally sits as a bench of three judges, a Full Court has a bench of five (or more) judges.**

22. Turning to the scenario in this Court, Rule 69(1) of the Court's Rules of Procedure prescribes three-judge or five-judge corams for the determination of matters lodged therein. No distinction is made as to matters before the Appellate or First Instance Divisions of the Court. Meanwhile, Article 24 of the Treaty prescribes a maximum of ten judges in the First Instance Division where the present application was lodged. Thus, in principle, a Full Bench in that Division should comprise of five or more judges.

23. We are mindful, nonetheless, of the requirement in Article 35(2) of the Treaty that the Court deliver judgments reached by majority verdict. That Treaty provision notwithstanding, there is no provision for a casting vote by the presiding judge in a matter under trial. The inference therefore is that the majority verdict prescribed by the Treaty would be solely deduced from an odd-number bench. The

Court's Rules of Procedure or a contradictory definition contained in legal jurisprudence would not waive the express provisions of the Treaty, which is the Community's grund norm. This is recognised in Article 42 of the Treaty where the Court's Rules are succinctly subjugated to the Treaty in the following terms:

> **The Court shall make rules of the Court which shall, subject to the provisions of this Treaty, regulate the detailed conduct of the business of the Court.** *(Our emphasis)*

24. It thus becomes apparent that a Full Bench of the First Instance Division of the Court would of necessity entail an odd number of judges, and comprise of five or more judges of that Division as the Court would in its discretion determine. In the instant case, where the First Instance Division is comprised of a total number of 6 judges, we take the decided view that 5 judges would constitute the Full Bench of the Division.

25. Having so held, nonetheless, it will suffice to point out that the notion of Judicial Economy as raised by the Respondents cannot be ignored when constituting a court bench. Judicial economy denotes '**efficiency in the operation of courts and the judicial system, especially the efficient management of litigation so as to minimize duplication of effort and to avoid wasting the judiciary's time and resources.**'[2] That notion was approbated by this Court in **Rashid Salim Adiy & Others vs. The Attorney General of the United Republic of Tanzania & Others, EACJ Application No. 7 of 2018**, where it was held to entail '**the effective**

[2] Black's Law Dictionary, 10th Edition, p. 975. See also **Hassan Basajjabalaba & Another vs. The Attorney General of the Republic of Uganda, EACJ Reference No. 8 of 2018, p. 16, para. 44**.

utilization by courts of scarce judicial resources (and) **efficiency in courts' operations**'.[3]

26. Under Rule 65(1) and (2)(a) of its Rules of Procedure, the Court is under a duty to perform its adjudication function with expediency and efficiency, avoiding unjustified and unwarranted delays in the determination of cases. The said legal provisions are reproduced below for ease of reference.

> Article 65
>
> (1) **The Court shall, wherever possible, fix the date and place for the opening of the oral proceedings to take place within a period not exceeding six (6) months from the date of close of pleadings unless the Court is satisfied that there is adequate justification for deciding otherwise**.
>
> **(2) The Court shall, when fixing the date and place for the opening of oral proceedings or postponing the opening or continuance of such proceedings, have regard to:-**
>
> a. **The need to hold the hearing without unnecessary delay.**

27. In the instant case, we do take judicial notice of the fact that the judicial resources available to the Court in terms of judges are quite constrained presently, the First Instance Division having been down to four (4) out of the requisite 6 judges as at the date the present Application was heard. Nonetheless, it is required to operate

[3] Reasoned Ruling of the Court dated 12th November 2018, p. 18, para. 43.

optimally and with appropriate regard to the procedural standards elucidated in Rule 65(1) and (2)(a). In that context, not only would it be practically impossible to constitute a full bench to hear **Application No. 5 of 2020** as sought by the Applicant; more importantly, given the provision for a 3-judge coram under Article 69(1), insistence on a 5-person bench unduly and unnecessarily obviates the notion of judicial economy.

28. Such an eventuality would be inimical to the principle of good governance that this Court is enjoined to uphold under Articles 6(d) and 7(2) of the Treaty. Indeed, in **Basajjabalaba & Another vs. The Attorney General of the Republic of Uganda**,[4] the Court drew a nexus between judicial economy and the principle of good governance in the following terms:

> **This Court was established under Article 23 of the Treaty with the primary duty to '*ensure adherence to law in the interpretation and application of and compliance with this Treaty.*' That mandate of the Court is exercised within the framework of the fundamental and operational principles of the East African Community as encapsulated in Articles 6 and 7 of the Treaty. Good governance arguably being the king pin upon which the designated principles gravitate, the Court must of necessity execute its mandate and manage the public resources entrusted to it within the confines of good governance, that is, '*effectively, efficiently and in response to the critical needs of society.*' .... Undoubtedly, we are enjoined by the dictates of good**

[4] EACJ Reference No. 8 of 2018, pp. 16, 17, paras. 43, 44.

governance to entrench the principle of judicial economy.

29. On that premise alone, therefore, we would be disinclined to grant the application for a Full Bench as sought in **Application No. 22 of 2020**. In any event, even with recourse to the merits of the Application, we are so disinclined for the reasons we expound below.

30. The Applicant therein contends that owing to the public importance of the matter and the complexity of the laws applicable thereto, **Reference No. 4 of 2020** and all the applications that emanate therefrom (including **Application No. 5 of 2020**) should be heard by a Full Bench of the Court. The importance of the matters raised in that Reference was anchored by learned State Counsel on the gravity of the crimes for which the Respondents had been prosecuted in the Rwandan judicial system and the human rights undertones thereof, while the complexity of the case was alleged to be rooted in the interface between Rwandan national law and the applicable international legal regime. The point was made by learned Counsel for the Applicant that before us was the sort of case that required the participation of judges from all the 6 EAC Partner States – including a judge from the Republic of Rwanda (who would presumably have a better understanding of the complex Rwandan national laws).

31. We are constrained to state from the onset that the Applicant's contestations are rooted in the erroneous premise that the Court's judges represent or serve at the behest of their states of origin. That issue was laid to rest in **Advisory Opinion No. 1 of 2015: A Request by the Council of Ministers of the East African Community**, where it was observed:

> **Upon appointment by the Summit of both the Secretary General and the Deputy Secretary General, those appointees (just like all other officers and employees in the service of the Community) cease to be nominees of the particular Partner State of their nationality or nomination. ... they acquire the status and character of international civil servants, beholden to no single Partner State, nor to any Head of State or member of the Council of Ministers. They owe all their loyalty and fidelity only to their Employer: the Community.**

32. We take the view that the Court's judges being an integral part of the Community's Executive leadership (as are the Secretary General and Deputy Secretary Generals), they similarly assume the status of international civil servants upon their appointment and are no longer beholden to any single Partner State in the execution of their judicial duties. They are bound by the oath of office they take upon assumption of judicial office at the EAC and would be expected to abide by that oath.

33. The foregoing observation is in tandem with international best practice on judicial conduct as encapsulated in the *Bangalore Principles of Judicial Conduct, 2002* ('the Bangalore Principles'). Having been formally included in the Compendium of UN Standards on the Administration of Justice in 2016, the Bangalore Principles represent the standard for judicial conduct in both the common law and civil law jurisdictions. In the same vein, the Commentary to those Principles '**gives depth and strength to the Principles, and contributes significantly to furthering the global adaptation of**

the Principles as a universal declaration of judicial ethics.'[5] Both sets of instruments do therefore provide apposite direction on best judicial practice.

34. Principle 1 of the Bangalore Principles underscores the independence of judges from any form of external influence. At the heart of this principle is the liberty of judges to adjudicate matters without any external influence or pressure whatsoever from the State, pressure groups, individuals or even other judges.[6] Indeed, Principle 2 of the *UN Basic Principles on the Independence of the Judiciary* does similarly forestall pressure or threats from any quarter whatsoever in the following terms:

> **The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressure, threats or interferences, direct or indirect, from any quarter or for any reason.**

35. Against that background, we are unable to appreciate the bonafides of the Applicant's deference to the participation of all the Division's judges as purported indication of the Community's representation in the determination of **Reference No. 4 of 2020**. The fact of the matter is that the judges of the Court are international public officials that serve at the behest and in the interests of the Community; beholden to no particular Partner State and representing none, and with utmost fidelity to the dictates of the law. Consequently, the question of Community representation on a bench would not arise; any bench constituted to determine a matter before

[5] Weeramantry, C. G, Preface to the *Commentary on the Bangalore Principles of Judicial Conduct*, 2007, p. 4.
[6] See paragraph 22 of the Commentary on the Bangalore Principles of Judicial Conduct.

the Court is reflective of that organ of the Community in its entirety. It is so held.

36. We might add that Basic Principle 14 of the *UN Basic Principles on the Independence of the Judiciary* delineates the assignment of cases to judges as an internal matter of judicial administration. An objection thereto would thus smirk of the very external interference that is sought to be forestalled in Basic Principle 1 of the same instrument. The cited Articles read as follows:

> **1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.**
>
> **14. The assignment of cases to judges within the court to which they belong is an internal matter of judicial administration.**

37. Thus whereas parties are at liberty to apply for the determination of a matter by a full bench, the Court's exercise of its discretion should not unduly negate the duty placed upon the President or Principal Judge of the Court under Article 24(7)(b) and (8) respectively to **'regulate the disposition of the matters brought before the Court**.' Such regulation would undoubtedly include the determination of the Court bench; averts the possibility of judge shopping, and entrenches the independence of the Court from all forms of external influence. Needless to reiterate, as observed earlier

herein, the Rules of Procedure apply in subjugation to the express provisions of the Treaty.

38. With regard to the importance and complexities alluded to by learned State Counsel, without in any way negating the gravity of the issues posed by **Reference No. 4 of 2020**, we are not satisfied that the Applicant has established the public importance of the case; or indeed, such conflict in or other complexity of the applicable law so as to warrant the determination of the matter by a Full Bench as proposed by Rule 69(1).

39. In **Human Rights Awareness & Promotion Forum vs. The Attorney General of the Republic of Uganda & Another**[7], citing with approval **The Queen on the Application of Crompton vs. Wiltshire Primary Care Trust**[8], this Court observed that '**whether a matter was deduced to be of general public importance was ultimately a question of degree to be determined by judges on a case by case basis**.'

40. In the earlier case of **R (on the application of Corner House Research) vs. Secretary of State for Trade and Industry**[9] it had been persuasively observed that '**the issues** (therein were) **of importance to a sufficiently large section of the public to be of general public importance**.' It was thus the conclusion of this Court in **Human Rights Awareness & Promotion Forum** (supra) that '**a matter would only take on the stance of 'general public importance' where it is important to a sufficiently large section**

[7] EACJ Reference No. 6 of 2014.
[8] (2008) ECWA Civ. 749 at 989 (per Lord Justice Waller).
[9] (2005) 4 All ER 1 at 36.

of the public.' That has not been demonstrated in the instant case. The Applicant bore the onus of proof in that regard.

41. In addition, even if the Reference were deemed to present matters of public importance, it has not been established before us that a 3-judge coram would be incapable of effectively adjudicating the dispute as between the parties. The prejudice that might be occasioned to the Applicant in that eventuality was not established before us. The mere availability of a procedural option of hearing before a Full Bench does not warrant an automatic right to parties to access and obtain that remedy, as we understood Mr. Ntarugera to contend. The merits of the application must be established.

42. In the instant case, we are certainly not persuaded that the matters raised in **Application No. 5 of 2020** are of such public importance, and entail a magnitude of conflict of or complexity of laws as to warrant determination by a Full Bench of the Court. That application essentially seeks the production of documents that are alleged to be in the exclusive possession of the Respondent State and the amendment of the Applicants' pleadings pursuant to the production of the said documents. There is absolutely nothing novel about either of the prayers sought or the documents sought to be produced. The amendment of pleadings is fairly routine judicial practice before courts. In fact, Rule 69(2) of this Court's Rules of procedure designates applications for amendment of pleadings among such applications as may ensue before a single judge. We therefore find no reasonable justification for its determination by a Full Bench. We would therefore disallow **Application No. 22 of 2020**.

43. It is to **Application No. 5 of 2020** that we now turn. It did transpire that the sought judgment and related record of proceedings of the Court of Appeal of Rwanda is now supposedly available on the Respondent State's judicial case management system. Learned Counsel for the Applicants maintained, nonetheless, that a translation of the said judgment and record of proceedings be secured from the Respondent to avert the possibility of undue quibbling as to the veracity of a translation secured by his clients. The Applicants sought the following orders (paraphrased):

i. *An order compelling the Respondent State to produce in Court and furnish the Applicants' counsel with a certified copy in English of the judgment in respect of the notification of the Court of Appeal of Rwanda issued on 27th December 2019.*

ii. *Grant the Applicants leave to amend their pleadings upon receipt from the Respondent of the Court of Appeal judgment of 27th December 2019.*

iii. *An order compelling the Respondent State to deliver to the Court and to the Applicants' counsel certified copies in English of all the pleadings filed by the parties herein at the Military Tribunal, Military High Court and Court of Appeal of Rwanda with respect to the criminal prosecution of the Applicants.*

iv. *Any other reliefs that this Court may deem fit to grant.*

v. *Costs of the Application be provided for.*

44. In response, we understood learned Respondent Counsel to opine that the Respondent State was under no duty to secure the translation of the sought documentation for the Applicants, and it would be unfair to order it to do so.

45. In **Mani, V. S, *'International Adjudication: Procedural Aspects'***, it was opined that fundamental procedural rights in international

adjudication find expression in the principle of *audi alteram partem* (or due process) and the principle of equality of parties.[10] It is also opined in **Halsbury's Laws of England** that, save where it is negated in unequivocal terms by statute or court rules, the inherent jurisdiction of courts does abound as a residual source of powers that courts may draw from whenever it is just or equitable to do so, particularly to ensure the observance of the due process of the law, to prevent vexation or oppression; to do justice between the parties and to secure a fair trial between them.[11] Indeed, the principle of equality of parties before this Court requires that (as far as possible) all parties should be extended equality of treatment, all the parties being entitled to equal application of the law and none of them being subjected to undue oppression or vexation.

46. In the instant case, the Respondent State reportedly availed the judgment and record of proceedings to a judicial portal from which it may be accessed by the public. That factual position was neither denied nor confirmed by the Applicants. Our understanding of the matter is that as at the date of the hearing they had not accessed the said decision but were willing to presuppose that it had indeed been uploaded. In the premises, given that learned State Counsel was quite confident that the required judgment, record of proceedings and pleadings had indeed been uploaded, we do not readily discern any prejudice that would be suffered by the Respondent State were directions to ensue that underscore the duty upon it to make the said documents demonstrably available to the Applicants. On the contrary, such direction by the Court would be in tandem with the duty

[10] (1980), pp. 25 – 36.
[11] Civil Procedure, Volume 11, (2009), 5th Edition, para. 15.

upon it under Rule 4 of the Rules of Procedure to **'give such directions as may be necessary for the ends of justice**.'

47. However, we find no reason to impute futuristic quibbling to the Respondent State such as would warrant an order compelling it to translate the sought documentation; neither was any such eventuality sufficiently established before us. It seems to us that the accuracy of translations made by the Respondent State could very well be challenged by the Applicants too, with the resultant delay to the judicial process. We therefore decline to make such an order.

48. On the other hand, the amendment of pleadings in this Court is governed by Section 8 of the Court's Rules of Procedure. Rule 48 thereof confers the general power to amend pleadings with or without the leave of the Court, or by consent of the parties. In the instant case, the Applicants opted to seek the leave of the Court to amend their pleadings pursuant to securing the court documents sought under the same Application. This course of action resonates with Rule 48 (c), which makes provision for the amendment of pleadings with the leave of Court '**for purposes of determining the real questions in controversy between the parties, or correcting any defect or error in any pleading**.'

49. The Reference having been lodged in the absence of the judgment it seeks to challenge, it undoubtedly is inconclusive on the intrinsic nature of the dispute as between the Parties. That is a defect that the Applicants are well entitled to redress within the ambit of the Rule 48. Quite clearly, the certified copies of the impugned judgment, record of proceedings and related pleadings would shed light on the Respondent State's compliance with the rule of law principle that has

been invoked by the Applicants. They thus are critical to a determination of the real issues in controversy between the Parties. Mindful of the duty upon us in Rule 4 to determine matters in accordance with the ends of justice, we are satisfied that the justice of this case would support the grant of the application for amendment sought by the Applicants.

50. It will suffice to observe here that, given the dictates of judicial economy - particularly the efficient utilization of scarce judicial resources/ time, we find no reason to have the Applicants file a separate application for amendment of pleadings in this matter. Moreover, the argument by learned State Counsel that a formal application for leave to amend should be filed is clearly not tenable. It is clear from the pleadings that the amendment sought derives from the documentation sought to be produced. It would have defeated the import of judicial economy and strayed into the realm of abuse of court process had the Applicants filed 2 separate applications in respect of the same matter - one for documentation from the domestic court and another in respect of an amendment accruing from production of the said documentation. Indeed, the Court would have sought to cure this *modus operandi* by consolidating the 2 applications. In any event, **Application No. 5 of 2020** is in fact a formal application, albeit one that addresses two related reliefs. With respect, therefore, we would over-rule learned State Counsel's submission.

51. On the question of costs, Rule 127(1) of the Court's Rules of Procedure provides that costs shall follow the event unless the Court for good reason decides otherwise. This rule was emphatically reinforced in the case of **The Attorney General of the Republic of**

Burundi vs. The Secretary General of the East African Community & Another.[12] We find no reason to depart from that general rule.

G. **Conclusion**

52. Both Parties in this case did in their respective submissions underscore the importance of the matters in contention in **Reference No. 4 of 2020**. It is therefore necessary to treat the matter with the urgency that it requires, hence the need for explicit time lines within which the directions made by the Court should ensue. For clarity, it is within the Court's inherent jurisdiction as delineated in Rule 4 of the Court's Rules of Procedure that we do make the said directions.

53. The upshot of the Court's determination of this matter is that **Application No. 22 of 2020** is hereby dismissed with costs to the Respondents, while **Application No. 5 of 2020** is allowed in the following terms:

i. An order is hereby issued compelling the Respondent State to lodge in this Court by or on the 26th of December 2020 a certified copy of the judgment on the Applicants' prosecution and in respect of which the notification of the Court of Appeal of Rwanda issued on the 27th December 2019 was made, the same to be served on learned Counsel for the Applicants by the same date.

ii. An order is hereby issued compelling the Respondent State to lodge in this Court by or on the 26th of December 2020 a certified copy of the parties' pleadings at the Military Tribunal, Military High Court and Court of Appeal

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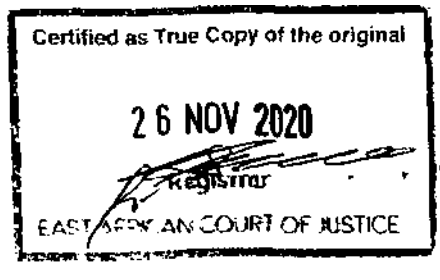
of Rwanda with respect to the criminal prosecution of the Applicants, the same to be served upon learned Counsel for the Applicants by the same date.

iii. Leave is hereby granted to the Applicants to amend their pleadings in **Reference No. 4 of 2020** upon receipt from the Respondent of the Rwanda Court of Appeal judgment described in paragraph 53(i) hereof.

iv. The Applicants are hereby directed to secure their own translation of the certified documentation availed to them by the Respondents from a duly recognised entity (natural or juridical person) in the Respondent State.

v. Costs of the Application are awarded to the Applicants.

It is so ordered.



Dated and delivered by Video Conference this 26th Day of November, 2020.

Hon. Lady Justice Monica K. Mugenyi

PRINCIPAL JUDGE

Hon. Justice Dr. Charles O. Nyawello

JUDGE

Hon. Justice Charles A. Nyachae

JUDGE

Certified as True Copy of the original

26 NOV 2020

EAST AFRICAN COURT OF JUSTICE