



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



(Coram: Yohane B. Masara, PJ; Audace Ngiye, DPJ; Charles Nyachae,
Richard Muhumuza & Richard W. Wejuli, JJ)

REFERENCE NO.18 OF 2018

ABBA LIMITED.....CLAIMANT

VERSUS

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

23rd June, 2022

JUDGMENT OF THE COURT

A. INTRODUCTION

1. ABBA Limited (“the Applicant”) is a legal person duly registered in the Republic of Rwanda, vide company code no. 10260991. The Respondent is the Attorney General of the Republic of Rwanda (“the Respondent”), sued on behalf of the Government of Rwanda in the capacity of the Principal Legal Advisor and Representative of the Government.
2. The Applicant filed this Reference on 20th September 2018 under Article 6(d) of the Treaty for the Establishment of the East African Community (“the Treaty”) and Rules 8, 14, 17 and 24 of the East African Court of Justice Rules of Procedure, 2019 (“the Rules”).

B. REPRESENTATION

3. The Applicant was represented by Mr Bernard Kwizera and Mr Tom Mitsindo, learned Advocates, while the Respondent was represented by Mr Emile Ntwali, Principal State Attorney and Mr Nicholas Ntarugera, Senior State Attorney.

C. BACKGROUND

4. On the 7th March 2014, the District Council of Rubavu resolved to sell Gisenyi Modern Market to the Applicant.
5. In July 2014, an advert to sell the market was run in the media. The Applicant emerged as the winner and a Sale Agreement for the market was entered between Rubavu District Council and the Applicant on 19th September 2014.

6. On the 25th June 2015, the Sale Agreement was revoked by the Mayor of Rubavu on grounds that the District had sold the market in error and contrary to the laws governing assets that fall in the public domain.
7. The Applicant sued the Respondent in the National Courts contending that the decision by the Mayor to revoke the Sale Agreement was illegal. The Applicant lost and eventually referred his claim to the Ombudsman's office seeking a declaration that there had been an injustice occasioned upon him. The Applicant sought the Ombudsman's intervention to have the judgment of the Court of Appeal, it having been the Court of last jurisdiction in the instance, revisited by the Supreme Court.
8. On the 1st August 2018, the Applicant received a letter from the office of the Ombudsman dated 17th July 2018 informing it that there had been no injustice nor damages occasioned on the Applicant. That the Applicant having known that the Market was an asset in the public domain should not have entered into an agreement to purchase the property.

D. THE APPLICANT'S CASE

9. Dissatisfied with the Ombudsman's decision, the Applicant filed the instant Reference in which they contend that in arriving at his decision, the Ombudsman did not take into consideration the injustice and illegality of the decision of the National Courts. That the Ombudsman's decision was therefore in turn unlawful, unjust and contravened Article 6(d) of the Treaty.

10. The orders sought in the Reference are stated as follows (reproduced verbatim):

- a) **To pronounce the dissolution of the decision revoking unilaterally the sale Agreement of Gisenyi Modern Market between the District of Rubavu and ABBA Ltd and to declare the continuation of the Agreement in a new timeline referred to that described in the Agreement;**
- b) **To pronounce, in accordance with Article 258 CCL III saying: “Any fact whatever of man, which causes damage to another, obliges him by whose fault he has succeeded in repairing it”, the compensation of ABBA Ltd, by the District of Rubavu, due to his illegal decision, of:**
 - i. **Losses incurred in the delay of the acquired business project;**
 - ii. **Losses in deteriorated materials and works;**
 - iii. **Administrative and Court fees.**

11. Precisely, the Applicant seeks a reversal of the revocation of the Sale Agreement, its reinstatement and also seeks to be compensated by the District of Rubavu, for the loss and damages suffered as a result of the Mayor’s alleged illegal actions.

E. THE RESPONDENT’S CASE

12. On his part, the Respondent contends that whereas ABBA Ltd entered into an agreement with Rubavu District for the sale of Gisenyi Modern Market to ABBA Ltd, the transaction was revoked by the Mayor of Rubavu District on 25th June 2015.

13. The Respondent further contends that the sale had been conducted illegally and that although the Applicant seeks to base its case on the Ombudsman's letter dated 17th July 2018 and communicated to the Applicant on 1st August 2018, the letter did not infringe or violate any of the provisions of the Treaty and could not therefore have given rise to a cause of action.
14. That the case arises from the act of revocation of the Sale Agreement by the Mayor of Rubavu District on 25th June 2015 and that this is when the cause of action arose.
15. Counsel for the Respondent contended that the acts of the Mayor of Rubavu do not bind the government of Rwanda as the former is a decentralized entity with independent juridical persona.

F. ISSUES FOR DETERMINATION

16. At the scheduling conference held on 9th September 2021, the following issues were framed for determination by Court:
- a) Whether the matter fell under the jurisdiction of this Court;**
 - b) Whether the Reference was filed within the prescribed time;**
 - c) Whether the act of the Mayor of Rubavu District, dated 25th June 2015, revoking the Sale Agreement between ABBA Ltd and Rubavu District, infringes Article 6(d) of the Treaty for the Establishment of the East African Community;**
 - d) Whether the Respondent is answerable for the actions of Rubavu District local Council as a decentralized entity;**

e) Whether the challenged decision of the Ombudsman communicated to the ABBA Ltd on the 1st August 2018 is unlawful and infringes the provisions of the Treaty for the Establishment of the East Africa Community and ought to be revoked by this Honorable Court; and

f) Whether the parties are entitled to the reliefs sought.

G. COURT'S DETERMINATION

ISSUES 1 & 2:

**a) Whether the matter falls under the jurisdiction of this Court;
and**

b) Whether the reference was filed within the prescribed time as provided by the law.

17. The first and second issues can be hardly determined separately. To determine the first issue, one has to first interrogate whether the Reference was properly filed within the context of the requirements stipulated under Article 30(2) of the Treaty.

18. The two issues for determination are therefore intertwined, they both touch on the propriety of the matter before this Court and will therefore be addressed concurrently.

19. Counsel for the Applicant made very brief submissions on the first issue. He argued that the East African Court of Justice has jurisdiction over this Reference, premised on Article 30(1) of the Treaty. He was also emphatic that since the Applicant had exhausted all local remedies, this

made them eligible for audience in this Court. He Referenced the Ombudsman's letter as proof that all local remedies had been exhausted.

20. With utmost respect, the second limb of the Applicant's submission, which suggests that this Court's jurisdiction is founded on exhaustion of local remedies by a party, is misconceived in the context of the Treaty and the Rules of this Court and ought to be corrected upfront.

Whereas the obligation to exhaust local remedies is a tenet of customary international law, it is not a prerequisite for filing any matter or seeking remedies in this Court under the Treaty. (See **Attorney General of the Republic of Rwanda vs Plaxeda Rugumba, Appeal No. 1 of 2012**).

The Treaty provides no requirement for exhaustion of local remedies as a precondition for accessing it. The fact that a matter has been filed in this Court after a party has exhausted local remedies does not per se warrant audience to such a party nor accord jurisdiction to this Court over such a matter.

21. On the second issue, as to ***whether the Reference was filed within the prescribed time***, Counsel for the Applicant submitted that the two months period within which to file a Reference as stipulated under Article 30(2) of the Treaty was respected, given that the decision of the Ombudsman which the Applicant seeks to challenge was received by the Applicant on 1st August 2018 who then filed his Reference on 20th September 2018. That the Reference was therefore filed within the prescribed time as provided for by the Treaty.

22. In reply, Counsel for the Respondent submitted that this Court does not have jurisdiction over the matter before it.

23. To uphold his contention that the Respondent was not liable for termination of the Sale Agreement, he addressed Court on the origins of this Reference.
24. Mr Ntarugera vehemently submitted that the cause of action arose when the Rubavu District Mayor revoked the Sale Agreement between ABBA Limited and Rubavu District on 25th June 2015. That this however, was an act by a decentralised entity created under the laws of the Republic of Rwanda.
25. He drew Courts attention to Article 3 of **Law No.87/2013 of 11th September 2013** which establishes that the District as a decentralised entity with its own legal persona, financial independence and independent in decision making. That, consequently, the decision that was taken by the Mayor was an act of a competent authority acting in its capacity as a decentralised District and that it is this act that triggered off all the issues brought before this Honourable Court by the Applicant.
26. He however, contended that be that as it may, the matter was time barred and that consequently Court had no jurisdiction over the Reference because the cause of action arose on 25th June 2015 and so having filed the Reference on 20th September 2018 the Reference is time barred. That the two months' period prescribed by Article 30(2) of the Treaty for one to file a Reference before this Honourable Court for determination had already lapsed and consequently this Court lacks jurisdiction to entertain the Reference.

27. In **Manariyo Desire vs Attorney General of the Republic of Burundi, Appeal No. 1 of 2017, Court** succinctly addressed the three key limbs of what constituted jurisdiction in the context of the Treaty. This position was adopted by this Court when determining the question of jurisdiction in the case of **Joseph Kipkoech Sigei vs Secretary General of the East African Community, Claim No. 1 of 2018** where it was stated that;

“Jurisdiction in a judicial context has long been held to be a unitary concept that denotes three essential elements; namely, jurisdiction *ratione materiae* (subject matter), *ratione personae* (*locus standi*) and *ratione temporis* (temporal condition)”.

28. In **Adam Kyomuhendo vs The Attorney General of Uganda & 6 Others, Reference No. 11 of 2020**, when addressing the same issue of jurisdiction, this Court relied on the case of **The Attorney General of the United Republic of Tanzania vs Anthony Calist Komu, EACJ Appeal No. 2 of 2015** in which it was stated that lack of *ratione personae* will arise where one of the parties is devoid of the requisite capacity or *locus standi*-to appear before a Court while *ratione materiae* may be questioned on the basis of the subject matter in issue. *Ratione temporis*, on its part, refers to time-frame prescribed for the institution of cases in a Court.

29. In the instant case, the Respondent’s contest to the Reference is premised on *ratione temporis*, which refers to time-frame prescribed for the institution of cases in Court.

30. Whereas the Applicant contended that the cause of action arises from the Ombudsman’s refusal to find that there was an injustice and that this omission is what gives rise to the cause of action and that it is upon communication of the Ombudsman’s decision to the Applicant that time

starts reckoning, the act whose legality is contested is the revocation of the Sale Agreement as communicated by the Mayor of Rubavu in his letter of the 25th June 2015 to the Applicant.

31. In order to inform our determination of the question regarding the jurisdiction of this Court it was important for us to address our minds to the possible origins of the dispute, as presented in the facts and submissions by Counsel, in relation to the reliefs sought.
32. Whereas the Applicant broadly contended that his cause of action arises from the decision of the Ombudsman, in paragraph 23 of the Reference, the Applicant seeks for ***“dissolution” of the decision revoking the Sale Agreement and for award of compensation to ABBA by the District of Rubavu due to their alleged illegal decision***. It is discerned from this very paragraph that the offending act for which the Applicant seeks relief is indeed the revocation of the Sale Agreement of Gisenyi Modern Market by the Mayor of Rubavu and further that the compensation sought is to be exclusively realized from the District of Rubavu on account of their alleged illegal decision.
33. In his submissions, the Applicant consistently and variously makes Reference to perpetuation of the injustices occasioned by the alleged illegality of the decision of the Mayor of Rubavu by the Ombudsman.
34. In Paragraph 5 at page 4 of the Reference, the Applicant states his grievance against the Ombudsman to be **the confirmation of the Mayor’s alleged illegal decision**. This position is reaffirmed by the Applicant in Paragraph (c) at page 1 of its Written Submissions and was also upheld by Counsel for the Applicant during the oral highlight of their submissions.


35. From the foregoing, it can be discerned that the Applicant's grievance is founded on the Mayor's revocation of the agreement.
36. In our observation, whereas in finding as he allegedly did, the Ombudsman evidently disappointed the Applicant, as can be discerned from its pleadings and submissions, the Ombudsman's action cannot conceivably have retrospectively influenced the Mayor's decision when he terminated the Sale Agreement, nor can the remedies being sought as stated in paragraph 23 of the Reference be justifiably premised on the alleged omissions of the Ombudsman.
37. The alleged illegality which the Applicant complains about and which in our opinion gives rise to the cause of action is the revocation, on 25th June 2015, of the Sale Agreement by the Mayor of Rubavu District.
38. Article 30(2) of the Treaty prescribes a period of two months from the occurrence of an alleged infraction of the Treaty to be that time within which proceedings can be filed in this Court.
39. It is an uncontroverted point of agreement by the parties that the Sale Agreement was revoked by the Mayor of Rubavu District on 25th June 2015 and that it is established from the Court record that the Reference was filed on 20th September 2018.
40. The two months period stipulated under Article 30(2) of the Treaty started reckoning on 25th June 2015 and so when the Applicants filed their Reference on 20th September 2018, they did so out of time and the Reference is therefore irredeemably time barred.
41. In the event, this Court is constrained by the lack of jurisdiction *ratione temporis* to entertain this matter.


42. Having found as such, we find no need to delve into the other issues raised for determination.


H. CONCLUSION

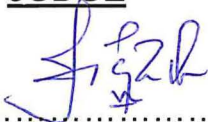
43. The Reference is dismissed for being filed out of time. However considering the circumstances of this case, in exercise our discretion we deviate from the dictates of Rule 127(1) of the Rules which provide for costs to follow the event and declare that, in the instance, each party shall bear its own costs.

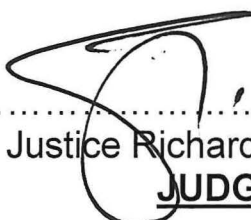
Dated, signed and delivered at Arusha this 23rd Day of June, 2022.


.....
Hon. Justice Yohane B. Masara
PRINCIPAL JUDGE


.....
Hon. Justice Audace Ngiye
DEPUTY PRINCIPAL JUDGE


.....
Hon. Justice Dr. Charles Nyachae
JUDGE


.....
Hon. Justice Richard Muhumuza
JUDGE


.....
Hon. Justice Richard Wabwire Wejuli
JUDGE