



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



*(Coram: Yohane B. Masara, PJ; Charles O. Nyawello, DPJ; Richard Muhumuza,  
Richard Wabwire Wejuli, Gacuko Leonard, JJ)*

**REFERENCE NO. 18 OF 2019**

**IZERE JEAN LUC ..... 1<sup>ST</sup> APPLICANT**  
**GAKWERERE MOSES ..... 2<sup>ND</sup> APPLICANT**  
**HATEGEKIMANA SILAS ..... 3<sup>RD</sup> APPLICANT**  
**SINGIRANKABO JEAN DE DIEU**  
**(Substituted by NYIRAHABIMANA ANNONCIATHE).. 4<sup>th</sup> APPLICANT**  
**MUNEZERO ELIAS ..... 5<sup>TH</sup> APPLICANT**  
**MOSES (MUSSA) RUSA ..... 6<sup>TH</sup> APPLICANT**  
**KUBWIMANA CHARLES ..... 7<sup>TH</sup> APPLICANT**  
**GATABANZI THOMAS ..... 8<sup>TH</sup> APPLICANT**  
**MUREZI VICTOR ..... 9<sup>TH</sup> APPLICANT**

**VERSUS**

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

**30<sup>TH</sup> NOVEMBER 2022**

## **JUDGEMENT OF THE COURT**

### **A. INTRODUCTION**

1. This is a Reference by the Applicants filed on 13<sup>th</sup> August 2019. It is made under:

- a) Articles 5, 6(d), 7, 27, 30, 71(1)(d), (e), (f), (p), (2), 74, 76 and 104 of the Treaty for the Establishment of the East African Community (hereinafter “the Treaty”);**
- b) Rules 1(2) and 24 of the EACJ Rules of Procedure 2013 (hereinafter “the Rules”);**
- c) Articles 3(2), 5 7(2)(b), (c) & (d), 7(3), 13, 14 of the Protocol on the Establishment of the East African Community Common Market;**
- d) Articles 2, 3, 5, 6, 7, 12 and 14 of the African Charter on Human and People's Rights;**
- e) Articles 5, 7, 8, 9, 12, 13 and 17 of the Universal Declaration of Human Rights;**
- f) Articles 7, 12 of the UN International Convention on Civil and Political Rights;**
- g) Sections 20, 21, 23, 24 and 26 of the Constitution of the Republic of Uganda; and**
- h) Articles 1 and 2 of the Draft Articles on State Responsibility adopted by the International Law Commission on the work of its fifty-third, 23<sup>th</sup> April - 1<sup>st</sup> June and 2<sup>nd</sup> July - 10<sup>th</sup> August 2001, Official Records of the General Assembly, fifty-sixth session, Supplement No. 10(A/56/10).**

2. The Reference is supported by six affidavits; namely, the Affidavit of **Izere Jean Luc**, the Affidavit of **Singirankabo Jean De Dieu**, the Affidavit of **Munezero Elias**, the Affidavit of **Mussa Rusa**, the Affidavit of **Gatabazi Thomas** and the Affidavit of **Murenzi Victor Peter**. On the other hand, the Respondent opposed the Reference by filing five affidavits. These are: two Affidavits of **Odyek Benedict** sworn in Kampala on 10<sup>th</sup> January 2022 and on 13<sup>th</sup> May 2022, two Affidavits of **Bwesigye Marcellino**, sworn in Kampala on 7<sup>th</sup> January 2022 and on 13<sup>th</sup> May 2022 and the Affidavit of **Col. Moses Wandera** deponed in Kampala on 10<sup>th</sup> January 2022.
3. The Applicants are natural persons who are citizens of Rwanda, a Partner State of the East African Community. Until the date of the alleged deportation, they resided in the Republic of Uganda, a Partner State of the East African Community. The Applicants bring this Reference as natural persons, resident in the East African Community. For the purpose of this Reference, the address of service of the Applicants is: **Care of MRB Attorneys, KG 268 St. 1, Nyarutarama, P.O. Box 682, Kigali, Rwanda.**
4. The Respondent is the Attorney General of the Republic of Uganda. He is sued in the capacity of legal representative of the Government of the Republic of Uganda in accordance with Article 119 of the Constitution of the Republic of Uganda. For the purpose of this Reference, his address of service is: **Plot 1, Parliament Avenue, Queens Chambers, P.O. Box 7183, Kampala, Uganda.**

## **B. REPRESENTATION**

5. At the hearing, the Applicants were represented by Mr Emmanuel Butare, learned advocate. On the side of the Respondent, two

Counsels appeared: Ms Maureen Ijang, Senior State Attorney and Mr Sam Tsubira, State Attorney.

### **C. THE APPLICANTS' CASE**

6. The Applicant's case is set out in the Statement of Reference and in the Affidavits in support of the Reference.
7. The Applicants are Rwandan citizens who relocated to Uganda for various reasons. While residing in Uganda, it is alleged that the security agents of the Government of Uganda arrested them from different locations. Subsequently, they were detained and tortured in various detention facilities. Thereafter, they were deported to the Republic of Rwanda on 12<sup>th</sup> and 29<sup>th</sup> June 2019. That, they were taken to different border posts of the Republic of Rwanda.
8. It is the Applicants' case that the arbitrary arrests and torture caused them physical injuries, permanent disabilities, terminal diseases and have endured signs of trauma.
9. It is their further case that the deportation from Uganda deprived them of their properties and separated them from their families. It is therefore the Applicants' contention that the acts of the Respondent constituted violation of Articles 74, 76 and 104 of the Treaty; the EAC Common Market Protocol; Articles 6, 14, 18 and 27 of the African Charter on Human and People's Rights; Articles 5, 9, 10, 12, 13, 17 of the Universal Declaration of Human Rights, and Articles 1 and 2 of the Draft Articles on State Responsibility adopted by the International Law Commission.
10. On the basis of the foregoing, the Applicants seek the following orders against the Respondent State (reproduced verbatim):

- a) A declaration that the acts of arrest, detention, torture and illegal deportation of the Applicants, is an infringement and in contravention of Articles 5, 6, 7, 27, 30, 71(1)(d), (e), (f), (p), (2), 74, 76 and 104 of the Treaty for the Establishment of the East African Community and other provisions of the legal instruments cited above;
- b) A declaration that the acts of the Respondent infringed the fundamental rights of the Applicants of free movement, establishment, residence and to carry out trade in the Republic of Uganda, a Partner state;
- c) A declaration that the Applicant's rights to their private property and families in Uganda were infringed by the Respondent's acts;
- d) A declaration that the Applicants are entitled to remedies against the Respondent;
- e) Orders that the Respondent compensates the applicants for lost private property and other remedies in law pursuant to Articles 30(b) and 31 of the Draft Articles on State Responsibility adopted by the International Law Commission on the work of its fifty-third session, 23rd April - 1st June and 2nd July - 10th August 2001, Official Records of the General Assembly, fifty-sixth session, Supplement No. 10(A/56/10);
- f) Order that the costs of and incidental to this Reference be met by the Respondent; and

## **E. ISSUES FOR DETERMINATION**

16. At the Scheduling Conference held on 12<sup>th</sup> November 2021, the following issues for determination were agreed (reproduced verbatim):

- a) Whether the East African Court of Justice has jurisdiction to adjudicate this Reference under Article 27 (1) and 30(1) of the Treaty for the Establishment of the East African Community;**
- b) Whether the Applicants have *locus standi* in this matter.**
- c) Whether the Reference is time barred;**
- d) Whether the Applicants were arrested, detained, tortured and deported;**
- e) Whether there was an infringement on the private property of the Applicants, as well as their rights to be accessed by their families;**
- f) Whether the Respondent violated Articles 5, 9, 10, 12, 74, 76, 104 of the Treaty for the Establishment of the East African Community and the Common Market Protocol and other International Treaties, Conventions and Instruments, as alleged; and**
- g) Whether the Applicants are entitled to the reliefs sought.**

## **F. COURT'S DETERMINATION**

**ISSUE NO.1: Whether the East African Court of Justice has jurisdiction to adjudicate this Reference under Article 27 (1) and 30(1) of the Treaty for the Establishment of the East African Community.**

17. Submitting on this issue, Mr Butare asserted that the Court has jurisdiction to hear and determine this Reference. He grounded his assertion on three premises. First, that the Treaty states clearly that the Court shall have jurisdiction to interpret and apply the Treaty on allegation of violation by a Partner State. Second, the Applicants are complaining of Treaty violation by the Government of Uganda. Finally, that the Applicants are requesting the Court to interpret and apply the Treaty in the matter of those violations.

18. To support his contention, Mr Butare made reference to the jurisprudence of this Court as stated in **Democratic Party vs The Secretary General of the East African Community & 4 Others, EACJ Reference No. 2 of 2012**, where this Court stated that:

**“Once a party has invoked certain relevant provisions of the Treaty and alleges infringement thereof, it is incumbent upon the Court to seize the matter and within its jurisdiction under Articles 23, 27 and 30 determine whether the claim has merit or not.”**

19. He also made reference to the case of **James Katabazi and 21 Others vs the Secretary General of the East African Community and the Attorney General of the Republic of Uganda, EACJ Reference No. 1 of 2007**, where the Court held that:

**“While this Honourable Court will not assume jurisdiction to adjudicate on human rights disputes, it will not abdicate from exercising its jurisdiction of interpretation under Article 27(1) merely because the case includes allegations on violation of human rights.”**

20. On the other hand, Ms Ijang contended, in her submissions, that this Court lacks jurisdiction to adjudicate this Reference. She argued that the Reference relates to allegations of human rights violations pertaining to freedom from torture. In this regard, the Counsel for the Respondent asserted that the provision for human rights and other jurisdiction is yet to be operationalised via a protocol to be concluded to that end. On the basis of the foregoing argument, she urged the Court to make a finding that it has no jurisdiction to entertain the Reference.

21. To lend support to the position on the issue of jurisdiction, Ms Ijang relied on Article 27 of the Treaty, which delineates the jurisdiction of the Court. Further, Ms Ijang drew our attention to Article 27(2) of the Treaty, which provides for the extension of the Court's jurisdiction to **“such other original, appellate, human rights and other jurisdictions as will be determined by the Council at a suitable subsequent date.”** Hence, it is her understanding that the Court lacks jurisdiction to entertain this Reference.

22. To clarify the legal regime established by Article 27 of the Treaty, Ms Ijang made reference to the case of **Hon. Sitenda Sebalu vs The Secretary General of the East African Community & 3 Others, EACJ Reference No. 1 of 2010**. In that case the Court held that:

**“The term 'jurisdiction' is defined in Words and Phrases Legally Defined (2nd Edition, Volume 3), *inter alia*, to mean:**

**“... the authority which a court has to define matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the Statute, Charter or Commission under which the court is constituted, and may be extended or restricted by the like means ...”**

23. The learned Counsel adopted the preceding definition of jurisdiction and maintained that the Court has no jurisdiction to entertain the Reference.

24. We have carefully considered the competing arguments of the parties regarding this issue. As rightly submitted by both Counsel, the Court’s jurisdiction is delineated in Articles 27 of the Treaty. We reproduce it below for ease of reference.

**“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.***

**2. *The Court shall have such other original, appellate, human rights and other jurisdiction as will be determined by the Council at a suitable subsequent date. To this end, the Partner States shall conclude a protocol to operationalise the extended jurisdiction.*”**

25. Article 27(1) categorically designates Court's jurisdiction as the interpretation and application of the Treaty, whereas Article 27(2) relates to the envisaged jurisdiction.

26. This Court has since established that the notion of jurisdiction has three dimensions: *ratione personae/locus standi*, *ratione materiae* and *ratione temporis*. These three jurisdictional aspects translate respectively into jurisdiction on account of the person concerned, jurisdiction on account of the matter involved and jurisdiction on account of the time involved. (See **The Attorney General of the United Republic of Tanzania vs Anthony Calist Komu, EACJ Appeal No. 2 of 2015**). Thus, to succeed on a claim of the lack of jurisdiction of this Court, a party must demonstrate the absence of any of the three types of jurisdictions. In the instant issue, the Respondent has challenged the Court's jurisdiction on account of *ratione materiae* (matter involved).

27. In relation to the *ratione materiae*, it is a well-established law that this Court's jurisdiction is sufficiently established where it is demonstrated on the face of the pleadings that the *matter complained of* constituted an infringement of the Treaty. Cases illustrating this point include: **Hon. Sitenda Sebalu vs. The Secretary General of the East African Community & Others** (supra) and **Prof. Peter Anyang' Nyong'o & 10 Others vs The Attorney General of the Republic of Kenya & 2 Others**.

28. The Court has gone further to hold that a violation of Partner States' domestic laws constitutes a Treaty violation that is justiciable before it. This is evident from the decisions of this Court in **Plaxeda Rugumba vs The Attorney General of Rwanda, EACJ Reference**

**No. 8 of 2010** and **Samuel Mukira Mohochi vs The Attorney General of Uganda, EACJ Reference. No. 5 of 2011.** In addition, in **Simon Peter Ochieng & Another vs The Attorney General of the Republic of Uganda, EACJ Reference No. 11 of 2013,** it was further held that for a matter to be justiciable before the Court, the subject matter in question had to be one **“the legality of which is in issue viz the national laws of a Partner State or one that constitutes an (outright) infringement of any provision of the Treaty.”**

29. The foregoing legal position was summed up in **Henry Kyarimpa vs The Attorney General of the Republic of Uganda, EACJ Appeal No. 6 of 2014,** as follows:

**“Where the complaint is that the action was inconsistent with internal law and, on that basis, a breach of a Partner State’s obligation under the Treaty to observe the principle of rule of law, it is the Court’s inescapable duty to consider the internal law of such Partner State in determining whether the conduct complained of amounts to a violation or contravention of the Treaty.”**

30. From the preceding, it is evident that the Treaty incorporates the domestic law of a Partner State by reference to the principle of rule of law. Hence, violation of the domestic law constitutes violation of the Treaty. It follows therefore that an allegation of violation of the domestic law of a Partner State clothes the Court with jurisdiction to deal with the matter of that alleged violation.

31. On the basis of the foregoing, and taking into consideration the allegations contained in the Statement of reference filed before this Court, we arrive at the conclusion on this issue as follows:

a. **From the law of jurisdiction, as expounded in the preceding paragraphs, any allegation of Treaty violation by a resident of a Partner State of the East African Community clothes the Court with jurisdiction to entertain the matter premised on that violation.**

b. **In the instant Reference, as the Applicants, who are residents of Rwanda, a Partner State of the EAC, allege violation of certain Treaty provisions by the Republic of Uganda, also a Partner State of the EAC, the Court has jurisdiction to hear and determine this Reference.**

32. Therefore, we answer the first issue in the affirmative; that is, the Court has jurisdiction *ratione materiae* to entertain the Reference.

**ISSUE NO. 3: Whether the Reference is Time Barred**

33. Flowing from the contest on this Court's jurisdiction *ratione materiae* in Issue No. 1, we deem it appropriate to deal with Issue No. 3 prior to a determination of Issue 2, where necessary which, in a way, has been touched on while canvassing issue No. 1.

34. On this issue, Counsel for the Respondent submitted that this Court cannot entertain the matters raised by the Applicants because the Reference is time barred. Taking the Applicants' averments pertaining to their arrest between 1<sup>st</sup> of May and 27<sup>th</sup> of May 2019 and subsequent deportation to Rwanda, Ms Ijang asserted that the alleged acts occurred three months before the Reference was filed on

13<sup>th</sup> August 2019. For that reason, it is her contention that the acts complained of are not actionable before this Court because they are time barred. Hence, the Court lacks jurisdiction *ratione temporis* to deal with the Reference.

35. To buttress her contention, learned Counsel relied on Article 30(2) of the Treaty, which provides for the two-month limitation period. Ms Ijang made reference to decision of this Court in **Attorney General of Uganda vs Omar Awadh & 6 Others, EACJ Appeal No. 2 of 2012**, where the Appellate Division of this Court stated that:

**“The starting date of an act complained of under Article 30(2) is not the day the act ends, but the day it is first effected. Therefore, the 2-month period limitation period under Article 30(2) started to run from the day that the arrest and detention were effected;**

**There is nothing in the express language of Article 30(2) that compels any conclusion that continuing violations are to be exempted from the two-month limit. Nor does the nature of the particular violation alleged in the instant case demonstrate any intent on the part of the drafters of the treaty to treat unlawful arrest and rendition as continuous violations for purposes of the time limit of Article 30(2).”**

36. Further, she referred to **Attorney General of Kenya vs The Independent Medical Legal Unit, EACJ Appeal No. 1 of 2011**, where the Court held that:

**“In our view there is no enabling provision in the Treaty to disregard the time limit set by Article 30(2). Moreover, that**

**Article does not recognize any continuing breach or violation of the Treaty outside the two months; nor is there any power to extend the time limit.”**

37. Counsel for the Applicants, on the other hand, argued that the Reference is not time barred. To substantiate this assertion, he displayed a chronology of events leading to the filing of the Reference, which can be summarised as follows:

- a) On 12.6.2019: the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> Applicants were deported from Uganda;**
- b) 24.6.2019: the 2<sup>nd</sup> Applicant was dropped at the gate of Rwandan Embassy;**
- c) 29.6.2019: the 6<sup>th</sup> Applicant was deported to Rwanda-Uganda Kagitumba border;**
- d) 19.7.201[sic]: the Applicants were able to meet with their legal representative;**
- e) 13.8.2019: the Reference was filed.**

38. Mr Butare contended that it was on the Applicants' last date of deportation and access to their lawyer when they got to know that what had happened to them constituted a cause of action. That, counting from the last date of deportation, the Reference is not time barred.

39. In this regard, Mr Butare relied on the Treaty provisions and the jurisprudence of this Court to buttress his contention. Mr Butare invoked the provisions of Article 30(2), which provides for the two-month period within which any matter can be brought to the attention

of the Court. From the jurisprudence of this Court, he referred to three cases. The first case is **Plaxeda Rugumba vs the Secretary General of the East African Community and the Attorney General of the Republic of Rwanda, EACJ Reference No. 8 of 2010** where the Court held that:

**“Where issues in contest are criminal in nature and the action complained of is continuous (such as detention), it would be against the principles known to the rule of law to dismiss the complaint on the basis of strict mathematical computation of time.”**

40. The second case referred to by Mr Butare is **Independent Medical Legal Unit vs the Attorney General of the Republic of Kenya and 4 Others, EACJ Reference No. 3 of 2010**, where the Court held that:

**“The matters complained of are failure in a whole continuous chain of events from when the alleged violation started until the Claimant decided that the Republic of Kenya had failed to provide any remedy of the alleged violation. They ruled that such action or omission of a Partner State cannot be limited by mathematical computation of time.”**

41. Mr Butare also made reference to the decision of this Court in **Omar Awadh Omar & 7 Others vs the Attorney General of the Republic of Kenya & 2 Others, EACJ Application No. 4 of 2011**. In that case, the Court ruled that **“The alleged violation constitutes a continuous chain of actions which could not be subject to mathematical calculation.”**

42. We have carefully considered the opposing pleadings and submissions of the parties, together with the supporting legal authorities cited by respective Counsel.

43. The relevant provision of the Treaty regarding time limitation, as submitted by Counsel for both Parties is Article 30(2), which reads:

**“(2) 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.”**

44. This Court has in numerous occasions dealt with this matter. In **Attorney General of the Republic of Kenya vs Independent Medical Legal Unit** (supra), the Appellate Division of this Court held that:

**“Again, no such intention can be ascertained from the ordinary and plain meaning of the said Article (30(2)) or any other provision of the Treaty. The reason for this short time limit is critical. It is to ensure legal certainty among the diverse membership of the Community.”**

45. In **Audace Ngendakumana vs the Attorney General of Burundi, EACJ Reference No. 11 of 2014**, the Court stated that **“Article 30(2) of the Treaty demands strict application of the time limit stated therein.”** Hence, the Court has no jurisdiction to entertain a violation brought to its attention after the expiry of two months from either the date of the occurrence of that violation or from the date the complainant becomes aware of the alleged violation.

46. In the instant Reference, the pleadings reveal the chronology summarised in paragraph 36 above. The application of Article 30(2) of the Treaty to the chronology leads to the conclusion that the Applicants were aware of the “decision or action complained of” in the period from 1<sup>st</sup> to 27<sup>th</sup> of May 2019.
47. Counting from the last day of that period; that is, 27<sup>th</sup> May 2019 to 13<sup>th</sup> August 2019, the period is far more than the two months sanctioned by the Treaty. It is almost three months. Further, counting from 12<sup>th</sup> June 2019 (the first item of the chronology) to 13<sup>th</sup> August 2019, again the period is more than two months.
48. Thus, the Applicants did not comply with the imperatives of Article 30(2) of the Treaty. It is therefore our finding that this Reference is time barred, as it was filed beyond the two-month period provided for by Article 30(2) of the Treaty.
49. The Court, therefore, lacks jurisdiction *ratione temporis* to deal with the Reference on merit. Having determined that the Reference was filed beyond the prescribed time, we find ourselves devoid of jurisdiction to deal with the remaining issues. Time limitation is a legal issue, and a point of law disposes of the matter. The finding we have made invariably disposes of this Reference in favour of the Respondent.
50. Regarding costs, Rule 127 of the Rules of the Court provides that **Costs in any proceedings shall follow the event unless the Court shall for good reasons otherwise order.** We are of the view that this is a fit case where the Court deems appropriate to depart from the general rule. In the exercise of our discretion, we decline to grant costs considering that the matter has not been decided on its merit.

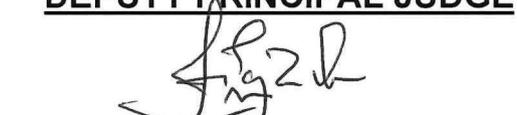
## **G. CONCLUSION**

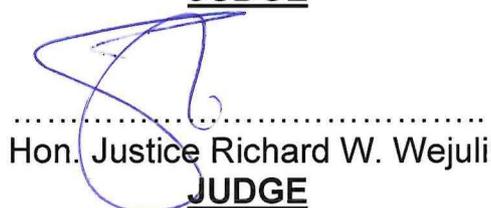
51. For the reasons set out above in this Judgement, we find that this Reference was filed out of time in terms of Article 30(2) of the Treaty. Therefore, this Court lacks Jurisdiction to entertain the Reference. The Reference is hereby dismissed for being time barred with no order as to costs.

Dated, signed and delivered at Kampala this 30<sup>th</sup> day of November 2022.

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

  
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Hon. Justice Dr Charles O. Nyawello  
**DEPUTY PRINCIPAL JUDGE**

  
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Hon. Justice Richard Muhumuza  
**JUDGE**

  
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Hon. Justice Richard W. Wejuli  
**JUDGE**

  
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Hon. Justice Dr Leonard Gacuko  
**JUDGE**