



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



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

**REFERENCE NO. 12 OF 2018**

**KABAREGA MANZI JEAN MARIE ..... APPLICANT**

**VERSUS**

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

**23<sup>rd</sup> MARCH, 2022**

*68*

## JUDGEMENT OF THE COURT

### A. INTRODUCTION

1. This Reference was filed by **Kabarega Manzi Jean Marie** (“the Applicant”) against the Attorney General of the Republic of Rwanda (“the Respondent”) on 25<sup>th</sup> July 2018. It was brought under Article 6(d) of the Treaty for the Establishment of the East African Community (“the Treaty”) and Rule 7(2) of the East African Court of Justice Rules of Procedure, 2013 (“the Rules”).
2. The Applicant prays for the following orders:
  - a) that the Respondent pays him the amount decreed in the judgment RSOC 00252/2016/TGI/NYGE dated 21/10/2016;
  - b) that the Respondent pays him damages caused by unpaid amounts over 1 year and 6 months due to its failure to enforce the said judgment;
  - c) that the Respondent pays to him an amount equivalent to 45,611,870 Rwf as unpaid social security contribution; and
  - d) that the Respondent be compelled to cause Great Lakes Initiative on AIDS (“GLIA”) to deliver a work certificate for the period the Applicant worked for it.
3. The Applicant deposed an Affidavit in support of the Reference.
4. The Respondent filed a Response to the Statement of Reference on 20<sup>th</sup> August, 2018 which was supported by the affidavit attested by Nkerabigwi Etienne, a legal advisor in the Ministry of



Foreign Affairs and International Cooperation of the Republic of Rwanda.

## **B. REPRESENTATION**

5. Mr Vincent Karangwa, learned Advocate, represented the Applicant up to the time of filing written submissions; however, the Applicant appeared in person on the day of written submission highlights. The Respondent was represented by Mr Nicholas Ntarugera and Ms Specioza Kabibi, both learned Senior State Attorneys.

## **C. THE APPLICANT'S CASE**

6. It is the Applicant's case that he was employed by GLIA as an Internal Auditor from 14/03/2006 to 31/12/2013 when his services were terminated. That, GLIA is a regional organisation comprised of six Member States: Burundi, South Sudan, Kenya, Rwanda, Tanzania and Uganda.
7. That, after he was terminated, he sued GLIA before the Intermediate Court of Justice at Nyarugenge, Sitting in Civil Matters in the First Instance Division. He won that case against GLIA on 21<sup>st</sup> October, 2016, which judgment was communicated to him on 14<sup>th</sup> November, 2016. The said decision was later stamped with an enforcement formula on 19<sup>th</sup> December, 2016 as there was no appeal preferred against it.
8. That, GLIA did not honour the terms of the decision, which prompted the Applicant to seek help for enforcement of the decision from different government institutions, including the Ministry of Justice, the Ministry of Health and the Ministry of



Foreign Affairs and International Cooperation. None of the three responded to his request.

9. The Applicant alleges that the Respondent violated the Treaty, particularly Article 6(d) by its failure to enforce the judgement which had an enforcement formula thus causing him damages arising from failure to pay him salary arrears, pension and others.
10. Regarding the jurisdiction of this Court and whether the Reference was filed within the prescribed time, the Applicant urged the Court to hold that the basis of his Reference is anchored on the refusal of the Respondent to enforce the Intermediate Court of Justice decision and not the decision itself. In his view, therefore, time should be counted from March 2018 and not 2016 as contended by the Respondent. He concluded that the Court is vested with jurisdiction to try the Reference.
11. As to whether the Reference discloses a cause of action against the Respondent, it was the Applicant's submission that considering the knowledge that the Respondent has on the matters complained about and the Response filed, there is a cause of action against the Respondent. That the Labour Laws of Rwanda were binding on GLIA and that the Respondent had a duty to ensure that its subjects are treated in accordance with such laws, including the enforcement of judgments made by its Courts. He added that the Ministry of Justice has exclusive competence in terms of execution of judgments, including the judgment rendered in his favour.



#### **D. THE RESPONDENT'S CASE**

12. In reply, the Respondent contested all the claims made by the Applicant. It is its view that the acts complained of are neither acts of a Partner State nor an institution of the Community as stipulated in Article 30(1) of the Treaty.
13. That the Applicant was accorded a fair trial by a competent judicial organ of the Respondent in the case stated and that he was given an enforcement formula which he was at liberty to enforce.
14. That GLIA being a regional organisation with immunities and privileges, the Government of Rwanda has no power of enforcement over it. That such powers lie with the Council of Ministers of GLIA. That the Respondent did advise GLIA on how to liquidate and deal with consequential matters, including the Applicant's claims.
15. The Respondent also challenges the legality of the Application, contending that the same is time barred, that it does not disclose a cause of action and that this Court is not vested with jurisdiction to deal with the same.

#### **E. POINTS OF AGREEMENT**

16. During the Scheduling Conference held on 8<sup>th</sup> July, 2020, Parties were in agreement that:
  - a) **From 14<sup>th</sup> March 2006 to 31<sup>st</sup> December, 2013 the Applicant was a member of staff of an international organisation known as Great Lakes Initiative on AIDS (GLIA) composed of the 6 member States which has**



its headquarters in the Republic of Rwanda in the City of Kigali; and

- b) The Applicant's Case No. RSOC 00252/2016/TGI/NYGE of 21/10/2016 was decided in his favour; it contains an enforcement formula that has not been enforced to date.

#### **F. ISSUES**

17. The following issues for determination were agreed upon:

- a) Whether the Court has jurisdiction to determine this matter;
- b) Whether the Reference was filed out of time;
- c) Whether the Reference discloses a cause of action;
- d) Whether the acts being challenged by the Applicant contravene Article 6(d) of the Treaty; and
- e) Whether Parties are entitled to the Reliefs sought.

#### **G. COURT'S DETERMINATION OF THE ISSUES**

**ISSUE NO.1: Does the Court have Jurisdiction to determine the Reference?**

18. The Applicant vehemently opposed the assertion that the Court is not vested with jurisdiction to try the Reference. To him, the assertion that the inaction by the Respondent violated both the Rwanda domestic law and Article 6(d) of the Treaty made in the Reference, bestows jurisdiction upon this Court.

19. Mr Ntarugera, on his part, appears to relate the issue of jurisdiction with time limitation. To him as long as the Reference



was filed out of the prescribed time, the Court does not have jurisdiction to deal with the Reference.

20. Taking into consideration what was submitted by the Applicant and the Respondent, we deem it appropriate to handle the issue of jurisdiction together with the next issue relating to time limitation. We, however, need to reiterate the jurisprudence of this Court relating to the issue of jurisdiction.

21. The jurisdiction of this Court is stated in Article 27(1) of the Treaty as follows:

**“The Court shall initially have jurisdiction over the interpretation and application of this Treaty.”**

22. Further, Article 30(1) of the Treaty provides for References to the Court by legal and natural persons as follows:

**“Subject to the provisions of Article 27 of this Treaty, any person who is resident in a Partner State may refer for determination by the Court, the legality of any Act, regulation, directive, decision or action of a Partner State or an institution of the Community on the grounds that such Act, regulation, directive, decision or action is unlawful or is an infringement of the provisions of this Treaty.”**

23. From the two provisions of the Treaty above cited, this Court has jurisdiction to *interpret* and *apply* the Treaty in the case of a Reference by a legal or natural person that is resident in any of the current 6 Partner States, where the impugned act is an act, regulation, directive, decision, or action of a *Partner State* or an



institution of the Community, on the grounds that such impugned act is unlawful or is an infringement of the provisions of the Treaty.

24. This Court had an opportunity to discuss the issue of its jurisdiction in the case of The Attorney General of the United Republic of Tanzania vs. Anthony Calist Komu, EACJ Appeal No.2 of 2015. In that case, the Appellate Division of this Court delineated three types of jurisdictions: *ratione personae*, *ratione materiae* and *ratione temporis*. It explained them as follows:

“Lack of *ratione personae* would arise where one of the parties is devoid of the requisite capacity or *locus standi* to appear before a court. On the other hand, court’s *ratione materiae* may be questioned on the basis of the invoked subject matter, an international court having no *ratione materiae* to try a matter where the treaty or convention under which it derives its mandate does not grant it jurisdiction over designated actions. In the case of the Treaty for the Establishment of the East African Community, such *ratione materiae* is outlined in Articles 30, 31 and 32 thereof. *Ratione temporis*, on its part, refers to time-frame prescribed for the institution of cases in a court.”

25. This Court, in the case of Attorney General of the United Republic of Tanzania vs. African Network of Animal Welfare, EACJ Reference No.9 of 2010, had the following to state regarding the importance of jurisdiction:





**“Jurisdiction is a most, if not the most, fundamental issue that a Court faces in any trial. It is the very foundation upon which the judicial edifice is constructed; from which springs the flow of the judicial process. Without jurisdiction, a Court cannot take even the proverbial first Chinese step in its judicial journey to hear and dispose of the case.”**

26. We consider determination of the issue of jurisdiction paramount. That said, we note from the pleadings and submissions made by the Respondent, that the jurisdiction contested is *ratione temporis*. As time limitation is raised as a separate issue, we feel obliged to address the two issues jointly.

**ISSUE NO.2: Is the Reference Out of Time?**

27. According to the Applicant’s Statement of Reference, the Affidavit in support thereof, his written submissions and the submissions in Court, this Reference was filed within the time in tandem with Article 30(2) of the Treaty.

28. In his view, the cause of action arose after it became apparent that the Respondent, through the Ministries of Foreign Affairs, Justice and Health, was not going to implement the decision of the Intermediate Court of Justice at Nyarugenge, Sitting in Civil Matters in First Instance Division, which awarded him payments relating to employment claims on 21<sup>st</sup> October, 2016. That the last communication from him to the said Ministries was on 5<sup>th</sup> March, 2018.



29. Mr Ntarugera harbours a different view. According to him, the cause of action arose when the Applicant obtained the enforcement formula on 19<sup>th</sup> December, 2016. That, when the Applicant filed the Reference on 25<sup>th</sup> July, 2018, he was out of time. To him, as there was no other decision or directive by the Respondent towards the Applicant denying him the right to institute the case relating to the award he won against GLIA, the Reference is out of time.

30. Mr Ntarugera further submitted that the Respondent has failed to see the nexus between the subject or action complained of by the Applicant and the duty of the Respondent. To him, as there is no directive or decision of the institution of the Republic of Rwanda, or the Government itself, stopping any Court Bailiff to execute the court order, there is no cause of action against them that can be used in computing the time limitation.

31. Responding to questions from the Bench, Mr Ntarugera was of the view that it was the responsibility of GLIA to comply with the judgment issued against it and not the Government of the Republic of Rwanda.

32. We took time to consider the rival submissions of the parties on this matter. Article 30(2) of the Treaty provides:

**“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.”**

(Emphasis added)



33. To satisfy the Court that the Reference was made within time prescribed under Article 30(2) of the Treaty, the Applicant has to state succinctly when the decision or action complained of took place or when it came to his knowledge. The Appellate Division of this Court, while dealing with the issue of computation of time in The Attorney General of the Republic of Kenya vs. Independent Medical Legal Unit, EACJ Appeal No.1 of 2011, held that time would start to run ‘two months after the action or decision was first taken or made.’ This position was affirmed in the case of The Attorney General of the Republic of Uganda & Another vs. Omar Awadh & 6 Others, EACJ Appeal No.2 of 2012 where it was held 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’.

34. In the latter case, the Court went further to state as follows:

**“The principle of legal certainty requires strict application of the time-limit in Article 30(2) of the Treaty. Furthermore, nowhere does the Treaty provide any power to the Court to extend, to condone, to waive, or to modify the prescribed time limit for any reason (including for ‘continuing violations’).”**

35. We have aptly considered the claims made in this case, it is our opinion that the Applicant’s cause of action arose when his claims were adjudicated by the Intermediate Court of Justice at Nyarugenge, Sitting in Civil Matters in First Instance Division. The said Court decided that his claims against GLIA were justified. In order to enforce the said judgment, an enforcement



formula was issued to him when the decision was stamped on 19<sup>th</sup> December, 2016. In our view, after getting the enforcement formula, the Applicant was entitled to enforce his rights.

36. We note that the Applicant, instead of asking GLIA to honour the terms of the Court decision, sought assistance in that respect from the Respondent's various ministries. It is on evidence that the Applicant wrote a letter of supplication to the Minister of Foreign Affairs and International Cooperation on 10/01/2017. This letter, according to the evidence supplied, was not responded to. He wrote again to the same minister on 03/03/2017, which letter was likewise not responded to. Undaunted, the Applicant wrote to the President of the Republic of Rwanda on 05/06/2017 and the Minister of Justice on 06/07/2017. These two letters did not yield the results he expected as the addressees remained mute. There is no record of any other communication thereafter until on 05/03/2018 when the Applicant's Advocate, Mr Karangwa Vincent, wrote to three Ministers; namely, Minister of Foreign Affairs and International Cooperation, Minister of Health and Minister of Justice/Attorney General, complaining of the injustice occasioned by GLIA on his client.

37. According to the submissions made by the Applicant, the letter to the three Ministers was the last communication made by him before he filed this Reference before this Court on 25<sup>th</sup> July, 2018.



38. In his written submissions filed on 2<sup>nd</sup> October, 2020, the Applicant was not clear regarding the issue of time limit. He stated as follows:

**“The Legal Advisor of the Ministry of Foreign Affairs (MFA) Mr Etienne NKERABIGWI, who swore (sic) the Affidavit, removed the Preliminary Objections that ‘the Reference was filed out of time and the Court has no jurisdiction to entertain it’, because he knows that if he had answered in January 2017 that ‘the Respondent has no powers to enforce the Court’s decision with enforcement formula over GLIA as an organisation with diplomatic immunity’ (Respondent’s Affidavit in Reply, bullet 13), the Applicant would have immediately filed the Reference for refusal of enforcement of the judgment and the objection of “time barred” would not have been even raised.”**

39. Our scrutiny of the Affidavit in Support of the Respondent’s Response to the Reference does not support the Applicant’s assertion regarding the removal of issues of time limit and jurisdiction. The Respondent’s Response dated 20<sup>th</sup> August 2018 contains the objections regarding both the jurisdiction of this Court and time limitation. The two being legal issues, it was not expected that they be reiterated by the Affidavit of Mr Etienne Nkerabigwi. In fact, the Respondent’s reply to the Written Submissions by the Applicant reiterated the objection. Affidavits are ordinarily limited to assertions of facts supporting one’s case.



40. We are surprised that the Applicant took the said view in his written submissions, as he had not raised the same during the Scheduling Conference which took place after the alleged affidavit had been brought to his attention. In his reply to the Respondent's written submissions, the Applicant was evasive on the computation of the two months provided by Article 30(2) of the Treaty and sought reliance from the phrase "*within two months of the day in which the decision or action complained of came to the knowledge of the complainant.*" The Applicant did not attempt to expound on when the action or inaction of the Respondent came to his knowledge.

41. During the submission highlights, the Applicant insisted that the action (or inaction) complained of does not arise from the decision of the Rwanda Court which decided in his favour, but on the refusal by the Respondent to enforce the judgment of the said Court. Mr Ntarugera, on the other hand, reiterated that the Reference was time barred as the cause of action arose on 19<sup>th</sup> December, 2016 when the Applicant received the enforcement formula and was at liberty to enforce the judgment through a Court bailiff. That, as the Reference was filed on 25<sup>th</sup> July 2018 (nineteen months after), the same was time barred.

42. We are inclined to agree with Mr Ntarugera that the Reference was filed beyond the two months sanctioned by Article 30(2) of the Treaty. We also agree with him about when the cause of action relating to enforcement of the decision of Intermediate Court of Justice at Nyarugenge, Sitting in Civil Matters in First Instance Division arose. Even if we were to agree with the Applicant that his action related to the refusal of the Respondent



to assist him in the enforcement of the decision given in his favour, we still find that the matter was filed beyond the time prescribed. We say so considering all the circumstances of the case and the evidence submitted before the Court.

43. In his own admission, the Applicant states that his letters dated 10/01/2017, 03/03/2017, 05/06/2017 and 06/07/2017 were not responded to. At that juncture he must have known that the Respondent was not likely to assist him in his enforcement endeavour. Further, the last letter by his advocate to the three Ministers is dated 5<sup>th</sup> March, 2018. That means it was written more than four months before he eventually filed this Reference. We were not referred to any other act or failure to act thereafter which would be utilised to mitigate the two months limitation rule. His attempt to find solace on the letters addressed to the Respondent's agents is defeated both ends. He manifestly failed to point into a particular date or incident of the Respondent which would put this Reference within the precincts of Article 30(2) of the Treaty.

44. We thus find that this Court lacks jurisdiction to entertain and decide on the merits of this Reference as the same was filed after the expiry of two months since the action complained of occurred.

45. Having concluded that we lack jurisdiction, our hands are tied. We see no basis for dealing with the rest of the issues agreed for determination. The two issues above highlighted sufficiently dispose this matter. We, however, feel obliged to observe, albeit briefly, on the following points.



46. One, we noted with concern that, despite the numerous letters written by the Applicant to the Respondent's officials, those officials did not deem it appropriate to respond. Such ineptness does not augur well not only with the fundamental and operational principles of the Treaty, but also with the Constitution and the laws of Rwanda. The Applicant was in a dire situation, holding a decision which he had no idea of how to enforce. The debtor happened to be an international organisation headquartered in Rwanda. Prudence demanded that the persons responsible with international matters would have helped to broker an amicable solution or, at the least, advise the Applicant on how to deal with the matter. Instead, they completely ignored him. The Respondent is a member of GLIA and was also in default of the contributions that would have assisted in settling claims, including that of the Applicant. During the highlights, we were further taken aback by the assertion by the counsel for the Respondent who seemed to argue that the Applicant did not prove that he wrote any of the letters! In another twist of events, he admitted that GLIA being an international body hosted in the Republic of Rwanda, a private bailiff would not have an authority to enforce a decision such as the one issued in favour of the Applicant. We hope that the attitude exhibited by the various officials whose help was sought was a once off and will not be replicated in similar circumstances.

47. Two, we also noted that the Applicant, despite his claims of inaction by the Respondent, received some payments in March, 2017. In the Statement of Reference, he annexed a letter written

*105*



to the President of the Republic of Rwanda in which he stated that in March 2017 GLIA Secretariat paid him one month's salary instead of eight months. March 2017 was after the enforcement formula was issued to him. In essence, the Applicant was admitting that GLIA was aware of his claims and had actually started paying him. However, other than his oral submissions in Court, no evidence was led to prove that the Applicant informed GLIA of the decision in his favour. Likewise, we see no communication from him demanding payment decreed in his favour. This blatant inaction on the part of the Applicant serves to exonerate the Respondent from a similar blame geared to it.

48. Lastly, we note that there had been developments towards resolving the Applicant's issue. In his affidavit in reply to the Respondent's Response to the Reference, the Applicant annexed minutes of the meeting to discuss GLIA issues dated 4<sup>th</sup> December, 2018. In those minutes, the Ministry of Foreign Affairs and International Cooperation recommended that *"Rwanda to take lead in paying contribution arrears and encourage other member states to honour their obligations"*. This recommendation was geared towards assisting GLIA to meet its obligations including settling claims subject of this Reference. Following the recommendations, the issue was presented in the meeting of the Council of Ministers dated 16-17 April, 2019. There is no doubt that the Applicant's claims are in the books of GLIA which undoubtedly is facing financial difficulties.




## **H. CONCLUSION**


49. Having so observed, and considering what we endeavoured to explain, we decline to grant the orders sought by the Applicant. The Reference is hereby dismissed in its entirety for being preferred outside the time prescribed under Article 30 of the Treaty.

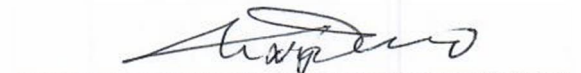
50. Considering the circumstances of the matter herein and in the exercise of our judicial discretion, we direct that each Party bears their own costs.

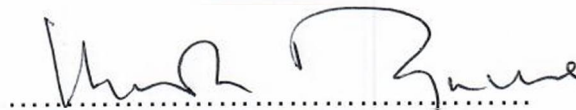
51. It is so ordered.


Dated, signed and delivered in Arusha this 23<sup>rd</sup> day of March, 2022

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

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

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

  
.....  
Hon. Justice Charles Nyachae  
**JUDGE**

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