



**IN THE EAST AFRICAN COURT OF JUSTICE APPELLATE DIVISION
AT ARUSHA**

**(Coram: Nestor Kayobera,P; Sauda Mjasiri,VP; Anita Mugeni,
Kathurima M'Inoti and Cheborion Barishaki,JJ.A)**

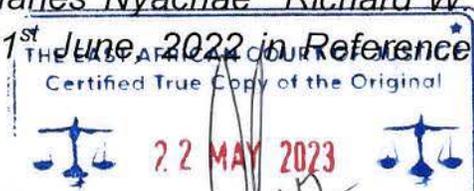
APPEAL NO. 9 OF 2022

**ISMAIL DABULE AND 1004
OTHERS.....APPELLANTS**

VERSUS

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

(An appeal from the Decision and Orders of the East African Court of Justice (First Instance Division at Arusha) delivered by Yohane B. Masara PJ, Charles O. Nyawello DPJ,, Charles Nyachae Richard W. Wejuli and Leonard Gachuko, JJ. dated 21st June 2022 in Reference No. 5 of 2016),





JUDGMENT OF THE COURT

INTRODUCTION

1. The Appellants lodged this appeal in this Court against the decision of the First Instance Division in Reference No. 5 of 2016 dated 21st June, 2022 by Notice of Appeal on 24th June 2022.
2. The Appellants are all Ugandan citizens represented by learned Counsel Mr. Richard Omongole registered and practising in the Republic of Uganda.
3. The Respondent is the Attorney General of The Republic of Uganda, a Partner State to the Treaty for the Establishment of The East African Community (the Treaty) and is represented in this Appeal by Ms Emelda Adongo, Senior State Attorney and Mr. Bichachi Odiambo and Ms Jackline Amusuggut State Attorneys.

BACKGROUND

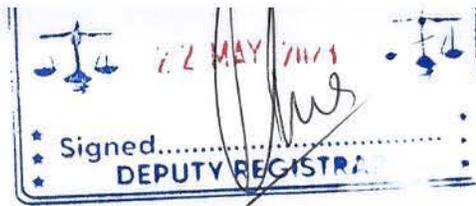
4. The Appellant's bank accounts were and continue to be frozen under the directives of the Ugandan Government. The freezing directives were initially made by the Government that succeeded the Idi Amin Government that was overthrown, in 1979 by the Uganda National Liberation Front (UNLF). The former through its interim legislature enacted the Banking Act (Amendment) Statute 18 of 1980 which amended the Banking Act of 1969 whose Sections 26A and 26B, gave the Minister for Finance powers to make Legal Notices No. 2 of 1982 and Nos. 2 and 3 of 1984 which required Commercial Banks in Uganda to freeze the accounts of individuals whose names were

annexed to the Legal Notices. These accounts included those of the Appellants. The Bank of Uganda subsequently took over custody of all these frozen accounts from the Commercial Banks.

5. In 1993, the legislature then, the National Resistance Movement's National Council (The Interim Parliament) of the Respondent passed the Financial Institutions Statute No. 4 of 1993, which repealed the Banking Act of 1969. Following the repeal, the Appellants made several attempts to recover their money from Bank of Uganda but in vain.
6. On 3rd February 1995, the then Minister for Finance of the Republic of Uganda wrote to the banks to unfreeze the said accounts. It was on that basis that counsel for the Appellants wrote a letter to Bank of Uganda on 21st March, 2003 seeking for implementation of the Minister's letter.
7. In April, 2004, the 1st Appellant and others filed Constitutional Petition No. 2 of 2004 in the Uganda Constitutional Court seeking several reliefs including an order to unfreeze their accounts, compensation for continued freezing of the accounts in question and payment of the principal amounts and interest. By its decision delivered on 14th September, 2007, the Uganda Constitutional Court dismissed the Petition. Dissatisfied with the decision of the Constitutional Court, the 1st Appellant and a few others appealed to the Supreme Court of Uganda and on 30th October, 2015, the Uganda Supreme Court dismissed their Appeal.



REFERENCE TO THE TRIAL COURT.



8. Consequently, the Appellants filed Reference No.5 of 2016 in the First Instance Division of the East African Court of Justice contending that the national courts in Uganda had clarified on the matter of the accounts in question and the continued refusal by the Government of Uganda to release those funds amounted to and constituted a violation of Articles 6(d) and 7(2) of the Treaty. The Appellants prayed for several declarations but in summary that the Government of Uganda be declared to have breached Articles 6(d) and 7(2) of the Treaty for wrongfully freezing their accounts and failing to unfreeze them as declared by the national courts of Uganda despite the said Articles 6(d) and 7(2) of the Treaty which enjoin all Partner States to govern while adhering to the rule of law. Further that the continued holding of their money amounted to violation of their right to property, right to fair hearing, fair administrative action and to freedom from discrimination. They also sought costs of the Reference.
9. The Respondent denied the claims in toto and stated that it had never been directed by any national court to pay the Appellants, was not in custody of the frozen accounts; has never violated the Appellants rights and had at all material times treated the Appellants fairly. In addition, the Respondent submitted that the Reference was time barred and disclosed no cause of action against it and prayed that the Reference be dismissed.
10. In its decision delivered on the 28th day of November 2018, the Trial Court held that the Reference was premised on a none existent court decisions and that there was no live dispute before Court. It dismissed the Reference with costs to the Respondent.

11. The Appellant was dissatisfied with that decision and filed Appeal No. 1 of 2018. On hearing the Appeal, this Court found that the appealed judgment was based on a point of law which had neither been agreed to nor were the parties given opportunity to address it. The Appeal was therefore, allowed and the Reference was remitted back to the Trial Court for rehearing on the same issues.

12. The rehearing took place on 11th March 2022 and the following issues were agreed to for determination by the Court: -

1. *whether the Applicants Reference was time barred;*
2. *whether the Applicants had locus standi;*
3. *whether the Government's alleged continued refusal to allow the applicants access to their frozen funds or its equivalent to date, is a violation of Articles 6(d) and 7(2) of the Treaty;*
4. *whether the Government's alleged refusal to release the Applicants documentation and account balances relating to their frozen funds is a violation of Articles 6(d) and 7(2) of the Treaty;*
5. *whether the alleged violations by the Government of Uganda of the Applicants rights to a fair hearing, right to property and freedom from discrimination are a violation of Uganda's obligations under Articles 6(d) and 7(2) of the Treaty;*
6. *whether the Applicants were entitled to any remedies sought.*



13. Upon rehearing the matter, the Trial Court in a decision rendered on the 21st June, 2022, found in respect of issue No. 1 that the Reference was time barred because it was filed far beyond the two-month period stipulated in Article 30(2) of the Treaty.
14. On issues 2 to 6, the Trial Court held that it had no jurisdiction to determine them in view of its holding in issue No. 1. The Reference was thus dismissed for being time barred.
15. The Court declined to grant costs to the successful party for the reason that the matter had not been decided on its merits.
16. The Appellants were dissatisfied with the decision of the Trial Court and now appeal to this Court.

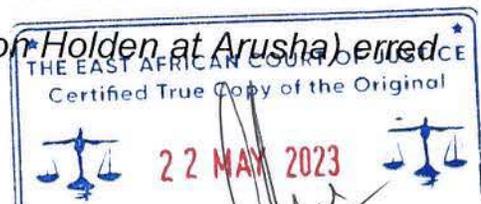
THE GROUNDS OF APPEAL

17. In the Memorandum of Appeal, the Appellants raised the following 9 grounds of appeal: -

1. *That the learned Justices of the East African Court of Justice (First Instance Division Holden at Arusha) erred in law when they declined to determine all the issues in Reference No.5 of 2016 as directed by the Appellate Division.*
2. *That the learned Justices of the East African Court of Justice (First Instance Division Holden at Arusha) erred in law by ignoring the directions of the East African Court of Justice (Appellate Division Holden at Arusha) in Reference No.2 of 2018.*



3. *That the learned Justices of the East African Court of Justice (First Instance Division Holden at Arusha) erred in law in determining the issue of limitation based on an action not complained of by the applicants.*
4. *That the learned Justices of the East African Court of Justice (First Instance Division Holden at Arusha) erred in law when they concluded that the Respondent had not returned the Applicants' money and yet refused to determine the act of refusing to return the same as infringement of principles set out in the Treaty.*
5. *That the learned Justices of the East African Court of Justice (First Instance Division Holden at Arusha) erred in law by not awarding costs after the East African Court of Justice (Appellate Division Holden at Arusha) in Reference No.2 of 2018 had awarded costs for the First Instance Division.*
6. *That the Learned Justices of the East African Court of Justice (First Instance Division Holden at Arusha) erred in law by ignoring the finding of the Appellate Division that there was a cause of action.*
7. *That the learned Justices of the East African Court of Justice (First Instance Division Holden at Arusha) erred in law when they stated that they had no jurisdiction to determine other issues whereas they did.*
8. *That the Learned Justices of the East African Court of Justice (First Instance Division Holden at Arusha) erred*



in law by failing to make findings on matters of law in respect to Articles 6(d) and 7(2) of the Treaty.

9. *That the learned Justices of the East African Court of Justice (First Instance Division Holden at Arusha) failed to properly evaluate the evidence on record and thereby arrived at a wrong decision which occasioned a miscarriage of justice.*

18. The Appellants prayed that this Court allows the Appeal, sets aside the Judgment and Orders of the Trial Court and substitute it with an appropriate Judgment of this Court. The Appellants also prayed that this Court grants them costs of the Appeal and of the Reference.

SCHEDULING CONFERENCE

19. At the scheduling conference held on 9th November 2022, the parties adopted the following three issues as framed by the Court for determination:-

1. *Whether the First Instance Division erred in law by holding that Reference No.5 of 2016 was time barred.*
2. *Whether the First Instance Division erred in law and committed procedural irregularities by declining to hear and determine all the issues as directed by the Appellate Division.*
3. *What remedies if any are the parties entitled to?*

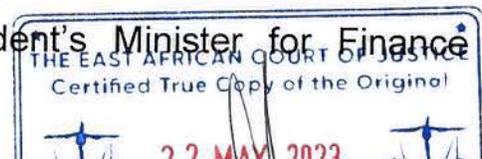


ISSUE NO.1: WHETHER THE FIRST INSTANCE DIVISION ERRED IN LAW BY HOLDING THAT REFERENCE NO. 5 OF 2016 WAS TIME BARRED.

APPELLANTS' SUBMISSIONS

20. Mr. Omongole learned counsel for the Appellants, adverted that the Trial Court in holding that the Reference was time barred. He grounded his argument on Article 30(2) of the Treaty which provides that proceedings provided for in that 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. It was his submission that the Appellants' Reference No. 5 of 2016 was based on the action of the Government of the Republic of Uganda's continued refusal to pay the Appellants' money in their accounts which remained frozen to date after the national courts had clarified that the freezing of the accounts was illegal. In his opinion it is this continued refusal to unfreeze the accounts which infringed Articles 6(d) and 7(2) of the Treaty.

21. The action in the instant case complained of by the Appellants is the continued refusal to pay their money held in the frozen accounts despite the fact that the national courts in the said Partner State had clarified issues of law relating to the freezing and the refusal by the Minister for Finance of the Respondent to respond to a demand letter written by counsel dated 5th August, 2016. In counsel's view, the assumption by the Trial Court that Reference No. 5 of 2016 was filed after 12 years from April, 2004 was misplaced because time began running from the moment the Respondent's Minister for Finance



received the said demand letter although he did not respond to it. Counsel was firm that the Reference was brought within the period of two months stipulated by Article 30(2) of the Treaty and was therefore, not barred by the law of limitation. He relied on the decision in ***Audace Ngendakumana v. The Attorney General of Burundi, EACJ Ref. No. 11 of 2014*** for the proposition that Article 30(2) of the Treaty demands strict application of the time limit stated therein.

22. Counsel submitted that the actions, directives and decisions of the Republic of Uganda in refusing to release the Appellants' funds even after the Appellants made the final demand are unlawful and infringe the provisions of the Treaty and for these reasons, the Appellants' Reference No.5 of 2016 disclosed a cause of action and was not time barred. In addition, that the Learned Justices of the Trial Court determined the issue of limitation based on an action not complained of by the Appellants.

23. Counsel further adverted that the refusal by the Government of Uganda to release the money came to the knowledge of the Appellants after their letter of 5th August, 2016 requesting the Minister for Finance to order for unfreezing of their accounts which letter went unanswered. Counsel vehemently argued that the Reference filed by the Appellants on 6th September, 2016, only one month after the refusal to unfreeze their bank accounts was therefore, within the two-month time frame set out under Article 30 (2) of the Treaty.

24. He contended that the actions of the Government of Uganda of freezing the Appellants' accounts formed part of a continuous chain of violations of the Treaty that continues to date and is therefore, not

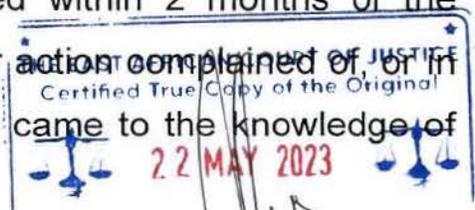


subject to time limitations under the Act. Counsel relied on *Plaxeda Rugumba v. The Secretary General of the East African Community and the Attorney General of the Republic of Rwanda, Reference No. 8 of 2010* although the decision was reversed on appeal, to support the proposition that such actions or omissions of a partner state cannot be limited by mathematical computation of time.

25. The Appellants' Reference No. 5 of 2016 in Counsel's view disclosed a cause of action for violation of the Treaty and ought to have been entertained by the Trial Court. He referred to *Hon. Sitenda Sebalu v. The Secretary General of the East African Community and 3 Others, Reference No. 1 of 2010* to support the proposition that it is enough if it is alleged that the matter complained of infringes a provision of the Treaty in a relevant manner.

RESPONDENT'S SUBMISSIONS

26. In reply to issue No. 1, Ms. Amusugut, Learned Counsel for the Respondent made reference to Article 30(2) of the Treaty which states that the proceedings provided for in this Article shall be instituted within 2 months from the date on which the right to bring the Reference arises and submitted that the import of Article 30 (2) had been discussed in several cases of this Court, such as *Independent Medico Legal Unit v. Attorney General of the Republic of Kenya* Reference No. 3 of 2010 and *Attorney General of the Republic of Kenya v. Independent Medico Legal Unit*, Appeal No. 1 of 2011 and that the settled position is that the proceedings shall be instituted within 2 months of the enactment, publication, directive, decision or action complained of, or in the absence thereof, on the day in which it came to the knowledge of



the complainant, as the case may be. Counsel submitted that this was the first limb of Article 30(2) which applies by counting the two months commencing from the day when the enactment, publication, directive, decision or action complained of started.

27. In Counsel's view, it was clear that the two months start to run from the day when the enactment, publication, directive, decision or action complained of were effected. She adverted that this was the proper interpretation to be given to the first limb of the Article based on its ordinary meaning given to its terms in their context.
28. The second limb of Article 30(2) of the Treaty in her opinion arises from the words "in the absence thereof, of the day in which it came to the knowledge of the complainant as the case may be" and this applies only where the first limb cannot apply. That while it seemed easy to interpret and apply the first limb of the provision, it was not the case with the second limb because it was not clear as to what should be absent, whether it is the enactment, publication, directive, decision or action complained of or was it the date of such enactment, publication, directive, decision or action? In Counsel's view, to any reasonable man, the first question can only be answered in the negative since one cannot complain against something that does not exist.
29. Counsel submitted that by the phrase "in the absence thereof", the framers of the Treaty meant "in the absence of any known date thereof" and the second limb would then apply where the claimant did not know the exact date of the action complained of. Counsel further submitted that in the circumstances, the Court must determine the time when the specific actions complained of occurred. She cited **Attorney General of the Republic of Uganda and Another v. Omar Awadh and 6 others**

Appeal No. 2 of 2012 where the Court pointed out that the Respondents indicated that the dominant action complained of was detention and that they also alleged other wrongful actions such as their arrest and rendition and they conceded that all those were “instantaneous actions” meaning that they were capable of being time barred unlike detention which was continuous.

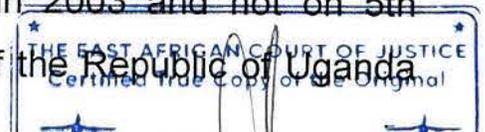
30. In the present Appeal and in Counsel’s view, retention of the monies is the action which the Appellants aver cannot be time barred on account of its being a continuous violation. However, applying the provisions of Article 30(2) of the Treaty and following the approach described above one would establish whether the first limb of the provision applied. Counsel submitted that the Court had a duty to interpret the Treaty according to its ordinary meaning, and that the ordinary meaning of Article 30(2) is that a claimant is required to file his Reference within two months of the occurrence of the act or when the offending act first came to the claimant’s knowledge.

31. Counsel adverted that the Respondents case is that the origin of the cause of action in the instant Appeal arose in 1982 after the enactment of the Banking (Freezing of Accounts) Order of 1982 which had the respective accounts of the claimants frozen but the Appellants expressed their knowledge of the infringement when they filed Constitutional Petition No. 2 in 2004 and not on 5th August, 2016 when the Minister for Finance of the Republic of Uganda allegedly refused and or failed to respond to the letter of 5th August, 2016 by the Appellants Counsel.



32. Counsel adverted that the submission by the Appellants that the action complained of arose in 2016 was incorrect because the Appellants had earlier on filed similar cases in the Republic of Uganda over the same cause of action. Counsel listed the said suits to wit; Uganda High Court Civil Suit No.138 of 2004, Ibrahim Ulego, Stephen Taban, Abdul Lokut and Others v. Attorney General of the Republic of Uganda, Uganda High Court Civil Suit No.300 of 2015, Ismail Dabule & 1004 Others v. Bank of Uganda and Attorney General of the Republic of Uganda, Constitutional Petition No.2 of 2004, Ismail Dabule & Another v. Bank of Uganda and the Attorney General of the Republic of Uganda, Supreme Court Constitutional Appeal No.3 of 2007, Ismail Dabule & Another v. Bank of Uganda and the Attorney General of the Republic of Uganda and High Court Miscellaneous Cause No.269 of 2019, Ismail Dabule v. Attorney General of the Republic of Uganda. It was argued that those suits were filed in respect of the same monies the Appellants are seeking to recover by their actions in this Court yet the impugned suits were conclusively determined and dismissed by the Ugandan Courts. The Appellants started seeking recovery of the monies being pursued in this matter as far back as 2004 and cannot therefore, claim that the complaint came to their knowledge in 2016.

33. Counsel submitted that the Trial Court did not err when it found that the Appellants came to know about their predicament in 2003 and in April, 2004 when they filed in the Republic of Uganda Constitutional Petition No.2 of 2004 to enforce recovery of their frozen accounts. It could not be argued, in her opinion, that the Trial Court erred in finding that the Appellants' Reference was time barred and for dismissing the same because their cause of action arose in 2003 and not on 5th August, 2016 when the Minister for Finance of the Republic of Uganda



allegedly refused to respond to the Appellant's letter. Counsel contended that the period of 12 years from 2004 when the appellants became aware of the alleged infringement of their rights until 2016 when they filed the Reference in the present case amounts to a contravention of Article 30 (2) of the Treaty.

34. Counsel further submitted that the Government of the Republic of Uganda as a Partner State to the Treaty performed and discharged her role under Articles 6(d) and 7(2) of the Treaty when its then Minister for Finance wrote to the National Banks directing them to unfreeze the Appellants' Bank Accounts.

35. In her opinion the Appellants were in breach of the principle of judicial economy because they filed High Court Miscellaneous Cause No. 269 of 2019 in Uganda when the Reference, they had filed in this Court was ongoing. The application was dismissed on 23rd November, 2021 and being dissatisfied, the Appellants appealed to the Court of Appeal of Uganda vide Appeal No.452 of 2022 which is pending hearing and the Appellants have at the same time appealed to this Court. In counsel's view, the Appellants' actions of pursuing similar remedies both in Ugandan courts and in this Court at the same time is a breach of the notion of judicial economy. She prayed that the Court finds as such and awards costs to the Respondent for the Appellant acting tenaciously and consistently making the Respondent defend their claim in different courts over the same issue thereby economically, financially and mentally straining and draining the Respondent.



THE COURT'S DETERMINATION



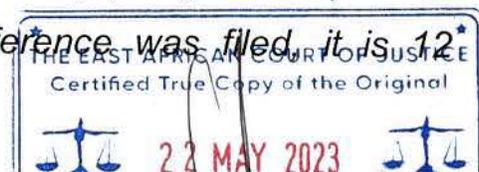
36. The Jurisdiction of the Appellate Division to hear appeals from the Trial Court is provided under Article 35A of the Treaty which provides that an appeal from the judgment or any order of the First Instance Division of the Court shall lie to the Appellate Division on; points of law, lack of jurisdiction or procedural irregularity
37. The Appeal proceeded both by way of written submissions and oral highlights in which all the 3 issues agreed to at the Scheduling Conference were canvassed by all Counsel.
38. We have carefully considered the rival submissions made by the parties on this appeal and note that they both agree that the Appellants' Bank accounts were frozen by the Government of Uganda and have never been unfrozen to date.
39. It was submitted for the Appellants on issue No. 1, that is; whether the Trial Court erred in law by holding that Reference No. 5 of 2016 was time barred, that the action complained of is the continued refusal of the Government of Uganda to release money frozen in the Appellants' accounts particularly the refusal by the Minister for Finance of the Respondent to reply to the Appellants' letter of 5th August, 2016 which called for unfreezing of the accounts and release of monies held therein.
40. Counsel for the Appellants contended that the Trial Court erred in coming to the conclusion that the Appellants' cause of action arose in April, 2004 and consequently finding that their Reference was filed

after 12 years. According to the Appellants, the correct starting point for computing the time for filing the Reference started to run from 5th August, 2016 when the Respondent's Minister for Finance received a demand letter from the Appellants' Counsel in respect of their frozen accounts but refused to respond to it. Thus, to them time started running from August 2016 and the Reference was brought within the period of 2 months stipulated in Article 30 (2) of the Treaty and was therefore, not barred by the law of limitation.

41. In reply, Counsel for the Respondent contended that the Trial Court was right in finding that the Appellants came to know about their predicament in 2003 and in April, 2004, they filed in the Republic of Uganda Constitutional Petition No.2 of 2004 to enforce recovery of their frozen accounts. It could not therefore, in Counsel's view, be argued that the Trial Court erred in finding that the Reference was time barred and dismissing it because the cause of action arose in 2003 and not on 5th August, 2016 when the Minister for Finance of the Republic of Uganda allegedly refused to respond to the said letter.

42. In resolving whether the Reference was time barred, the Trial Court held as follows:-

*"From the chronology, the applicants were aware of the decision or action complained of since April 2004, the date of filing Constitutional Petition No.2 of 2004. If we take the pertinent day in April 2004 as the point in time when the applicants became aware of the decision or action complained of, the period from that day (in April 2004) to 6th September 2016, when this Reference was filed, it is 12**



years. Evidently, it is far more than two months period stipulated by Article 30(2) of the Treaty.”

43. The first issue calls for determination of the meaning and scope of Article 30 (2) of the Treaty. It provides that:-

“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 absence thereof, of the day in which it came to the knowledge of the complainant, as the case may be.”

44. The Treaty, being an international treaty among sovereign states is subject to international law on interpretation of treaties. Article 31(1) of the Vienna Convention on the Law of Treaties (1969) provides that:-

1. *“A treaty shall be interpreted in good faith and in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.*
2. *(...)*
3. *There shall be taken into account:*
 - (a) *....*
 - (b) *any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation.*
 - (c) *any relevant rules of international law applicable in the relations between the parties.”*



45. Article 30(2) of the Treaty has two limbs when the period of two months begins to run. In the first limb, the starting point is the day when the enactment, publication, directive, decision or action complained of started or in the case of an act, when it occurred. The second limb arises when the first limb does not apply and it is when it comes to the knowledge of the complainant that transgression occurred.

46. The Court has on several occasions given Article 30(2) of the Treaty a strict interpretation and held that time starts to run when the alleged infringement commenced rather than when it ceased. In ***Mbugua Mureithi Wa Nyambura v. Attorney General of the Republic of Uganda [2014] EACJ Reference No. 11 of 2011*** a Kenyan lawyer who had been arrested and detained by Ugandan authorities instituted proceedings under Article 30(2) of the Treaty fifteen months later for breach of Articles 6(d) and 7(2) of the Treaty. The Court declined to hear the Reference because the two months limitation period under Article 30(2) of the Treaty had lapsed. The Court was emphatic that the applicant knew the reasons for his detention by virtue of the interrogation questions posed to him and therefore, had the requisite information to commence proceedings within two months of the date of the alleged infringement.

47. In ***Attorney General of the Republic of Kenya v. Independent Medico Legal Unit, Appeal No. 1 of 2011***, the Court determined the import of Article 30 (2) of the Treaty when it held thus;

“It follows, therefore, in our view, that this Court is limited by Article 30(2) to hear References only filed within two months from the date of action or decision complained of or the date the Claimant became aware of it.



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 after a relevant action comes to the knowledge of the Claimant; nor is there any power to extend that time limit. – see Case 24/69 Nebec v EC Commission [1975] ECR 145 at 151, ECJ.



Again, no such intention can be ascertained from the ordinary and plain meaning of the said Article 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: see Case 209/83 Ferriera Valsabbia Spa v EC Commission OJ C2009, 9.8.84 p.6, para 14, ECJ quoted in Halsbury’s Laws (supra) Para 2.43.”

48. The Appellants contended that their Reference concerned an “action complained of or absence of such action” within the meaning of Article 30 (2), and thus, their Reference would be deemed to have been timely filed if lodged within two months of the action complained of or where action was expected and in the absence of any such action, within two months of such absence. Reference in this regard was made to the failure by the Respondents’ Minister for Finance to respond to the letter by the Appellants’ Counsel.

49. In the Reference, the action complained of by the Appellants is the continued freezing and withholding of money in the Appellants’ bank accounts by the Government of Uganda even when circumstances required the Government to unfreeze the accounts. The highlighted circumstances included: the repeal of the law which authorised the

freezing of the accounts; a directive issued by the Minister for Finance on 3rd February, 1995 directing commercial banks which held the accounts to unfreeze them and the clarification by the national courts which ordered for the release of the funds. The Appellants averred in the Reference that the highlighted actions amounted to a violation of Articles 6 (d) and 7 (2) of the Treaty.

50. The questions to answer are; when was the action that entitled the Appellants to file a Reference in the Trial Court taken and when did the Appellants become aware of the said action or the absence of such expected action? It was submitted for the Appellants that the act or inaction complained of took place when the Minister for Finance refused to comply with the final demand contained in a letter by their Advocate dated 5th August, 2016 asking for the accounts to be unfrozen. To them this was the point in time when the Respondent came out explicitly to show that it was not going to release their money which meant that they filed their Reference within time.

51. The Trial Court considered the issue concerning the letter by the Appellants' Advocate to the Minister and held as follows:-

“The cause of action in this case was not the refusal of the Minister to engage in correspondence with the applicants’ advocate after the applicants had opted for judicial redress; it was the refusal of the banks to let the applicants resume access to their accounts after the defreezing letter of the Minister for Finance. We believe that the applicants were aware of the order and that the cause of action arose in April 2003, when they authorised their advocate to institute the Constitutional Petition in Uganda.”





52. The Minister for Finance had earlier on 3rd May, 1995 directed for the unfreezing of the Appellants' Bank Accounts but this did not happen. In the period between 1995 and 2003, the Appellants made a follow up on the demand for unfreezing of their bank accounts but were unsuccessful. In 2004, some of the Appellants opted for court action to have the accounts unfrozen, not in this Court but in the Uganda Constitutional Court, a domestic court. Their action there was unsuccessful and so was an appeal arising out of the Petition to the Supreme Court of Uganda.

53. In the pleadings in Reference No. 5 of 2016 which gave rise to this Appeal, the complaint of the Appellants made out in the Amended Statement of Reference filed on 26/10/2016 and in the affidavit by Ismail Dabule sworn on 18/10/2016 was that, after decisions of the national courts clarifying the unfreezing of the accounts in question, the persistent refusal of the Government of Uganda to release the funds constituted a violation of the Constitution of Uganda and a contravention of Articles 6(d) and 7(2) of the Treaty. The Appellants then prayed for a declaration that the refusal by the Government of Uganda to release their money that was wrongfully frozen in their accounts and ought to have been unfrozen as demanded by the Courts of Uganda amounted to a breach of Articles 6(d) and 7(2) of the Treaty which provisions enjoin all Partner States to observe the rule of law.

54. The Court has traced the origin of the complaint and it is common ground that following the overthrow of President Idi Amin of Uganda in 1979, the National Consultative Council enacted the Banking Act (Amendment Statute) No.18 of 1980 which amended the Banking Act of



1969 to include sections 26A and 26B which sections gave the Minister for Finance power to make legal Notice under which a private bank account could be frozen. The Minister by legal Notices No. 2 of 1982 and No. 2 and 3 of 1984 froze the Appellants bank accounts held in various commercial banks in Uganda.

55. In 1982 the said Minister wrote to the banks to unfreeze the accounts but the banks did not comply. As a result, some of the present Appellants in 2004 filed Constitutional Petition No. 2 of 2004; Ismail Dabule & 2 Others v. Attorney General and Bank of Uganda in the Constitutional Court of Uganda. In the Petition the Petitioners sought among others, orders to unfreeze their accounts and for compensation. The Petition was dismissed.

56. From the chronology of events highlighted above, it is clear to us that the act complained of is the refusal by the Government of Uganda to release the Appellants funds. This refusal came to the knowledge of the Appellants at least in April 2004 when they filed Constitutional Petition No. 2 of 2004 stating clearly in the pleadings therein that the Government of Uganda had refused to release the funds.

57. It was submitted for the Appellants that the act by the Government of Uganda of continuing to hold their monies without their consent constituted a continuing tort of detinue and that the limitation period provided under Article 30(2) of the Treaty was for that reason not applicable.

58. In *Attorney General of the Republic of Kenya v. Independent Medico Legal Unit*, (*supra*), the dispute concerned an alleged failure by the

Government of Kenya to investigate allegations of torture and forced disappearance of some residents of Mount Elgon District between 2006 and 2008. The reference was filed in July 2010. The Appellant argued that the infringement by the Government was continuous therefore the limitation of two months in the Treaty was not applicable but the Court affirmed that the limitation period in Article 30(2) of the Treaty started from the date the impugned inaction occurred and therefore the Reference was inadmissible.

59. In *Attorney General of The Republic of Kenya v. Independent Medico Legal Unit (supra)*, the appellant raised a preliminary objection that the Court had no jurisdiction to entertain the Reference because it was time barred. This Court held that Article 30(2) of the Treaty does not recognize any continuing breach or violation of the Treaty outside the two months period after the alleged infringement came to the knowledge of the Claimant. The Court went on to clarify that it had no power to extend the set time limit.

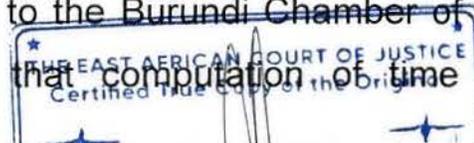
60. The Court notes that the Appellants had much earlier than 2016 filed other suits in the national courts of Uganda all arising from the same act of their accounts having been frozen. One of such suits was Ibrahim Ulego, Stephen Taban, Abdul Lokut and Others v. Attorney General of the Republic of Uganda, Uganda High Court Civil Suit No.138 of 2004, which was filed in 2004. This was proof that the cause of action had arisen much earlier than 2016 and the Appellants had as early as then known of the alleged transgression.

61. The Court agrees with the Trial Court that the action complained of by the Appellants for purposes of Article 30 (2) of the Treaty was the

refusal to release money held in frozen accounts of the Appellants. As rightly submitted by Counsel for the Respondent, the actual freezing of the Appellants' accounts took place in the early 1980s, starting in 1982 upon enactment of the Banking (Freezing of Accounts) Order, 1982. The Appellants began challenging the freezing of their accounts as soon as they were frozen. All along they were aware and contested the refusal of the Government to release their money. They were aware of a letter by the Minister for Finance written on 3rd May, 1995 directing for unfreezing of the accounts but took no prompt action, until 2004. They were equally aware of the coming into force of the Treaty on 7th July, 2000 and the opening of an avenue for filing of References in accordance with Article 30 of the Treaty. Instead, they opted in the period between 2004 to 2015 to pursue several actions in the domestic courts as highlighted above.

62. In the circumstances of the instant case, it is our considered opinion that the action of freezing and the Appellants knowing that the Respondent had refused to release the money held on the Appellants' accounts took place earlier than 2004 but they chose to lodge their Reference in complete disregard of the timelines set out in the Treaty. It appears that either the Appellants completely misunderstood the significance of the time set out in the Treaty or they filed their Reference as an afterthought after their actions in the domestic courts were unsuccessful.

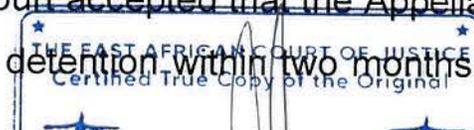
63. In ***Audace Ngendakumana v. Attorney General of Republic of Burundi Reference No. 11 of 2014 (persuasive)***, the appellant hinged his claim on the date he wrote a letter to the Burundi Chamber of the Commission of Lands and asserted that computation of time for



purposes of his reference started from the date he wrote the letter. The Court held that the appellant was aware or ought to have been aware of the law which established the Commission in 2006 and the subsequent amendments. That he also ought to have known of the decision of the said Commission in 2013 which nullified the sale agreement of the disputed house. The reference filed in 2015 was therefore found to be time barred. We are persuaded by this decision.

64. We are further persuaded by the finding of Court in the ***Awadh case (supra)*** that a person whose constitutional rights have been infringed should have some zeal and motivation to enforce his or her rights because in any type of litigation time is of the essence as evidence may be lost or destroyed which is the wisdom of time limitation in filing cases. In that case, the Court went on to give the rationale for time limitation of suits that; justice and equity abhor a claimant's indolence because it prejudices and negatively impacts on the efficacy and efficiency of the administration of justice. That the overriding rationale for statutes of limitation such as the time limit in Article 30(2) of the Treaty is to protect the system from prejudice of stale claims and their effects on the salutary principle of legal certainty.

65. We note that there have been incidences where the Court has allowed appeals brought beyond the two months limitation period. In ***Attorney General of Rwanda V. Plaxeda Rugumba [2007] Application No. 9 of 2007***, this Court upheld a decision of the Trial Court to hear and determine a matter which was brought under Article 30(1) of the Treaty which had been filed more than two months after the beginning of the impugned event. The Court accepted that the Appellant could not have challenged her brother's detention within two months of

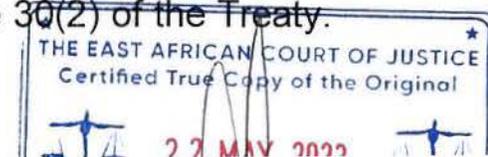


the commencement of the detention because she did not have sufficient information to enable her file the reference within the time provided in Article 30(2) of the Treaty although the Appellant had argued that she should have known through the media which had aired the story.

66. Similar reasoning was applied in ***Manariyo Desire V. Attorney General of Burundi [2016] EACJ Reference No. 8 of 2015*** where Court accepted the calculation of time to start from the date a Burundian national living abroad received through his lawyer in Burundi official notification of a judgment of the national court of Burundi regarding his land, rather than the date of the judgment.

67. We wish to point out that this Court in ***Plaxeda Rugumba (supra)*** did not introduce an exception to the strict interpretation of the two months limitation period in Article 30(2) of the Treaty. It simply clarified on when the time begins to run in the case of limb No. 2 of Article 30(2) of the Treaty. It is worth noting that in ***Mbugua Mureithi (supra)*** the Court declined to apply the decision in ***Plaxeda (supra)***. The Court is however, still of the same view as we have explained herein that that there is nothing in the express language of Article 30(2) of the Treaty that allows any deviation from the two months limitation period provided for filing References in the Court.

68. The Court therefore, agrees with the finding of the Trial Court that the Reference was filed after 12 years, that is from April 2004 when the cause of action arose to 6th September, 2016 when the Appellant's advocate filed Reference No. 5 of 2016 in the Trial Court. This was beyond the two-month period provided for by Article 30(2) of the Treaty. Issue No.1 is therefore, answered in the negative.

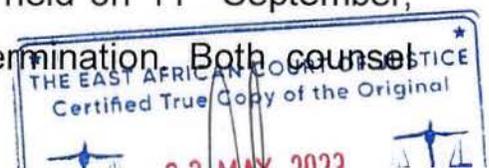


Issue No. 2 Whether the First Instance Division erred in Law and committed procedural irregularities by declining to hear and determine all issues as directed by the Appellate Division.

Appellants' Submissions

69. Mr Omongole complained that the Trial Court erred when it did not determine all the issues as directed by the Appellate Court. He submitted that on the 28th November, 2018, the Trial Court delivered its judgment in which it declined to adjudicate upon a number of issues that were raised during the Scheduling Conference on 11th September, 2017 but instead decided only issues of limitation and disclosure of cause of action which issues were not agreed upon by the parties. Further that on that basis, the Appellants appealed to this Court in Appeal No.1 of 2018 on various grounds and this Court quashed the judgment of the Trial Court dated 28th November 2018 and set aside the dismissal order. The Reference was remitted back to the Trial Court with directions to proceed with the hearing of the case by considering all the issues raised during the Scheduling Conference but the Justices of the Trial Court proceeded with the hearing and determined only one issue; namely whether the Reference was filed beyond the prescribed time and declined to deal with the remaining issues.

70. It was his further submission that rule 63(1) of the Rules of this Court, 2019 require the Trial Court to hold a Scheduling Conference to ascertain the issues in contention on which that Court is to make a decision. That at the Scheduling Conference held on 11th September, 2017 there were six agreed issues for determination. Both counsel

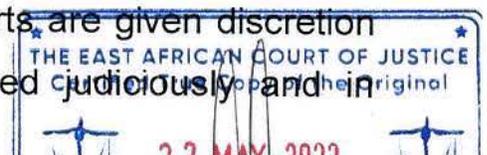


through their written submissions addressed all the issues but the Trial Court raised the issue of limitation as the first issue and did not determine all the issues as agreed upon by the parties having found that the matter was time barred. To counsel, this amounted to procedural irregularity.

71. He further submitted that failure by the Trial Court to make a finding on all the issues raised at the Scheduling Conference contravened the provisions of rule 79(5) of the Rules of Court, 2019 which require the contents of the Judgment to include the points for determination, the decision arrived at by Court on those points and the reasons for that decision. He relied on ***Alcon International Ltd v. Standard Chartered Bank & Others, EACJ Civil Appeal No.2 of 2011*** where the Trial Court did not make a finding on the issues raised at the Scheduling Conference and this Court held that the Court had acted in contravention of rule 68(5) now rule 79(5) of the Court Rules, 2019.

72. Counsel submitted that the Trial Court went on to deliberate on the issue as to when the Appellants became aware of the decision refusing to release the funds or of the action complained of and resolved it erroneously by finding that the Reference was filed after 12 years without determining the pertinent issues. In counsel's view, the said action was a procedural irregularity appealable as envisaged in Article 35A(c) of the Treaty. In his opinion the instant Appeal is on all fours with the case of ***Alcon International Ltd (supra)*** and he prayed that this Court overturns the decision of the Trial Court because of the said procedural irregularity.

73. Counsel added that the Trial Court did not conduct the hearing in accordance with its set procedures although courts are given discretion but that discretion is supposed to be exercised judiciously and in

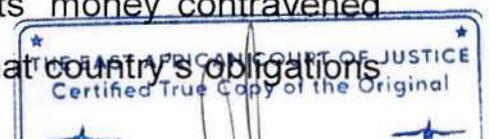


accordance with established procedures. In Counsel's view, to hold that the Trial Court was right in ignoring other issues that were raised during the Scheduling Conference would defeat the purpose of Scheduling Conferences and the provisions of Rule 63(1) of the Court's Rules of Procedure, 2019. He relied on ***Alcon International Ltd (supra)*** for the holding that failure by the Trial Court to consider the issues raised contravened rule 68(5) now rule 63(1) of the Rules of this Court.

74. As to whether the Trial Court complied with the decision of this Court, Counsel submitted that the Trial Court had ignored the findings of this Court that Reference No.5 of 2016 disclosed a cause of action and when the matter was remitted back to the Trial Court, it erred in its findings by not taking into consideration the findings of this Court on the cause of action. To Counsel, the Trial Court had relied on another cause of action and not the action of continued refusal by the Government of Uganda to pay the Appellants their money after clarification by the National courts.

75. Counsel made reference to the Treaty and adverted that the facts which can give a person a right to judicial relief or a situation which would entitle a party to sustain an action and give him a right to seek a judicial remedy in his or her behalf are clearly set out in Article 30(1) of the Treaty. He relied on the decision in ***Legal Brains Trust (LBT) Ltd v. The Attorney General of the Republic of Uganda, Appeal No. 4 of 2012*** for the holding that Article 30 confers jurisdiction on this Court to determine references lodged by legal and natural persons, such as the Appellants who are resident in a Partner State.

76. It was Counsel's further submission that the failure by the Government of Uganda to release the Appellants' money contravened the Constitution of the Republic of Uganda and that country's obligations

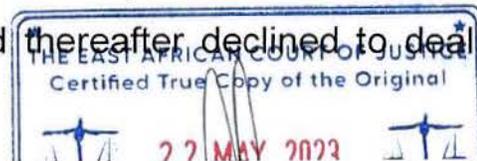


under the Treaty specifically Articles 6(d) and 7(2) which enjoin all Partner States to adhere to the rule of law in their governance. He maintained that for a Reference to have a cause of action, it must be based on the grounds that an act, regulation, directive, decision or action of a Partner State or an institution of the Community is unlawful or an infringement of the provisions of the Treaty. He cited ***Republic of Rwanda and Union Trade Centre Limited UTC v. Succession Makuza Desire & 2 Others, Appeal No.2 of 2018*** to support the submission that a cause of action in respect of a Treaty is different from a cause of action at common law where the persons seeking relief have to demonstrate a right or interest that has been violated and the liability of the defendant.

77. The actions of the Government of Uganda according to Counsel, also violated the right to property and the continued refusal to date to release the Appellants' money and give them access to their property was arbitrary and a violation of Article 14 of the African Charter on Human and People's Rights on the right to property and Article 26 of the Constitution of the Republic of Uganda on the right to own property. He added that the national courts had clarified on the law and had noted that there was continued refusal to release the said monies which was a breach of both the national laws and the Treaty that enjoins Partner States to govern in accordance with the rule of law.

Respondent's Submissions

78. On the contention of the Appellants that the Trial Court erred by hearing and by determining only one issue namely; that the Reference was filed beyond the prescribed time and thereafter declined to deal



with the remaining issues, Counsel for the Respondent submitted that the issue of time limitation was framed by the parties at the Scheduling Conference held on 11th September, 2017 and that the Court did not err or commit any procedural irregularity upon making a finding that the matter was time barred and that the finding rendered it unnecessary to determine the other issues.

79. In Counsel's opinion the Appellants should not be allowed to dictate the manner in which the Trial Court should have resolved the Reference or the style of writing its judgment, because these are matters for which the Court has discretion. The Court having found that the Reference was barred by limitation, it was not obligated to determine issues which it already had found to be time barred.

80. Ms. Adongo made reference to the decision of this Court in ***Attorney General of the Republic of Uganda and Another v. Omar Awadh and 6 Others EACJ, (supra)*** where the Court ruled that it is only enjoined to address the merits of a case upon the applicant surmounting the preliminary but formidable hurdle of time bar that is prescribed by Article 30(2) of the Treaty.

81. The Respondent invited the Court to find that the matter raised and submitted on by the Appellants as procedural irregularity did not meet the test set out in ***The Secretary General of East Africa Community v. Rt. Hon. Margaret Zziwa, Appeal No.7 of 2015*** and prayed that this Court finds that no procedural irregularity was occasioned by the Trial Court.

The Court's determination

82. The Trial Court determined the issue of limitation thus:-



“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 point and a point of law disposes of the matter. The finding we have made invariably disposes of this Reference in favour of the Respondent.”

83. Jurisdiction is the foundation upon which judicial authority stands and where there is no jurisdiction, a court cannot take even a single step. As Nyarangi, JA opined in ***Owners of Motor Vessel “Lillian S” V. Caltex Oil (Kenya) Ltd [1989] KLR at 14*** and quoted with approval in ***Attorney General of Tanzania v. African Network for Animal Welfare, Appeal No. 3 of 2011:-***

“Without jurisdiction, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction”.

84. In the instant case the decision of the Trial Court was in keeping with the Treaty requirement in Article 9(4) which enjoins all organs and institutions of the Community to act within the limits and powers conferred upon them while performing their functions.

85. Having agreed with the holding of the Trial Court that the Reference was filed out of time, we find that the Trial Court did not have jurisdiction and did not err in declining to determine the other issues which had been agreed at the Scheduling Conference.

86. Accordingly issue No.2 is answered in the negative.



ISSUE NO. 3 WHAT REMEDIES IF ANY, ARE THE PARTIES ENTITLED TO



APPELLANTS' SUBMISSIONS.

87. Counsel for the Appellants submitted that the Appellants were entitled to the remedies sought and that this Court had powers under Rule 120 of the Court Rules, 2019 to make incidental and consequential orders.

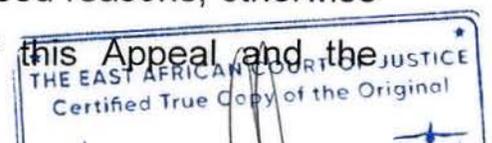
88. Counsel submitted that Reference No.5 of 2016 arose out of a tortious act of detinue, a claim which lies at the instance of a person who has immediate right to possession of the goods against a person who is in actual possession of them and who upon proper demand, fails to deliver them up without lawful excuse. That detinue is a continuing cause of action which accrues at the date of wrongful refusal to deliver up the goods and continues until delivery or judgment in the action of detinue. For purposes of this Appeal, he adverted that the money in the unfrozen accounts were goods belonging to the Appellants which were continuously and wrongfully being withheld by the Government of Uganda in violation of the Appellants' right to property as envisaged under Article 26 of the Constitution of the Republic of Uganda. He relied on ***Edward Fredrick Ssempebwa v. Attorney General, Constitutional Petition No. 1 of 1986***, where the Constitutional Court of the Respondent interpreted the meaning of property and held that money or debt was considered property.

89. Counsel contended that the continued holding of the Appellants' property amounted to detinue, a tort that is in violation of the national laws and the Constitution of the Republic of Uganda. He relied on ***Quick***

Cargo Handling Service Ltd V Iron Steel Wares Ltd & 2 Ors HCCS No.328 of 2002 where V.F. Musoke-Kibuuka, J. referring to the case of **Sajan Singh v. Sardar Ali (1960) 1 All ER 269** stated that the tort of detinue arises when the defendant detains the chattels or goods after a demand has been made for their restoration to the plaintiff.

90. The Appellants sought for a declaration that the continued holding on to their money by the Government of Uganda without any justification, due process or any form of administrative process was illegal, unlawful and in violation of their right to property, right to fair hearing, freedom from discrimination, right to fair administrative action and contrary to the provisions of Articles 6(d) and 7(2) of the Treaty. They prayed for a declaration that the continued holding onto their bank documents and account balances and details relating to the frozen accounts after the courts pronounced the accounts unfrozen was an infringement of the Treaty. The Appellants further prayed for an order directing the Government of Uganda to comply with the Treaty and release their money. Counsel referred to **Audace Ngendakumana v. The Attorney General of the Republic of Burundi (supra)** to support the proposition that this Court has jurisdiction under Articles 23(1) and 27(1) of the Treaty to interpret and apply the provisions of the Treaty as well as ensure compliance.

91. As regards to costs, Counsel for the Appellants submitted that this Court did award costs to the Appellants in Appeal No. 1 of 2018. The Trial Court, however, declined to award costs to either party, yet this Court had ruled on the same. Counsel referred to rule 127(1) of the Court's Rules of Procedure, which provide that costs in any proceedings shall follow the event unless the Court shall, for good reasons, otherwise order. He prayed to Court to award costs of **this Appeal and the**



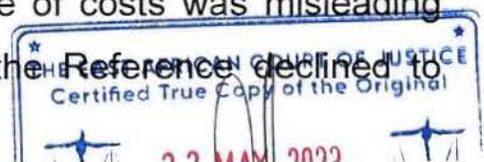
Reference to the Appellants because they were forced to incur costs of filing the Reference and subsequently this Appeal due to the illegal actions of the Government of Uganda.

RESPONDENTS' SUBMISSIONS.

92. Counsel for the Respondent made reference to rule 97(1) of the Rules of this Court and submitted that the remedies sought by the Appellants were in breach of the Rules which specifically provide for orders and not declarations. Secondly, that the prayers sought by the Appellants did not form part of the pleadings yet they were bound by the contents of their Memorandum of Appeal. She relied on the decision in *Hon. Margaret Zziwa v. The Secretary of the East African Community (supra)* on the holding that parties are bound by their pleadings and no relief will be granted by the Court unless it is founded on the pleadings.

93. Counsel further submitted that the Appellants had neither made out a case nor led evidence to prove their claim for grant of the remedies sought. In her opinion it was settled law that in all civil cases, the party who asserts bears the burden to prove his or her case on a balance of probabilities and the party defending does not have to prove anything to avoid a Court finding for the party asserting. In this case the Appellants had the burden to convince the Court that the facts were as presented by them which in the Respondents view, they failed to do.

94. On costs, it was argued for the Respondent that the submission by the Appellants that the Trial Court declined to award costs to either party yet this Court had already ruled on the issue of costs was misleading because the Trial Court while determining the Reference declined to



award costs to either party. It was submitted that the court complied with the rules of the Court and did not commit any error or procedural irregularity. That the Court awarded costs to the Appellants both in the Trial Court up to 28th November, 2018 when the Reference the subject of Appeal No. 1 of 2018 was determined as well as costs of the Appeal. Following the above decision, the Appellants filed a bill of costs and Taxation Cause No. 3 of 2022 which is yet to be taxed.

95. The Respondent prayed that the Appeal be dismissed with costs because the Appellant had made it incur a lot of costs due to the numerous suits it had filed against it right from the national courts up to this Court.

THE COURT'S DETERMINATION

96. Having upheld the finding of the Trial Court that Reference No.5 of 2016 was time barred and that the Trial Court did not have jurisdiction to entertain and determine the same, we find that the Appellants are not entitled to the remedies sought.

97. Rule 127 of the Court's Rules provide that costs in any proceedings shall follow the event, unless, for good reasons the Court orders otherwise. This means that generally, the successful party is entitled to costs to be paid by the losing party, unless the Court in exercise of its discretion decides that there is good reason to depart from the general rule.

98. Although the Appellants are unsuccessful in this Appeal and in the Reference, they had filed several suits in the Respondent's national courts where they obtained clarification that their accounts remain frozen up to



date despite a letter by the Respondent's Minister for Finance directing for unfreezing.

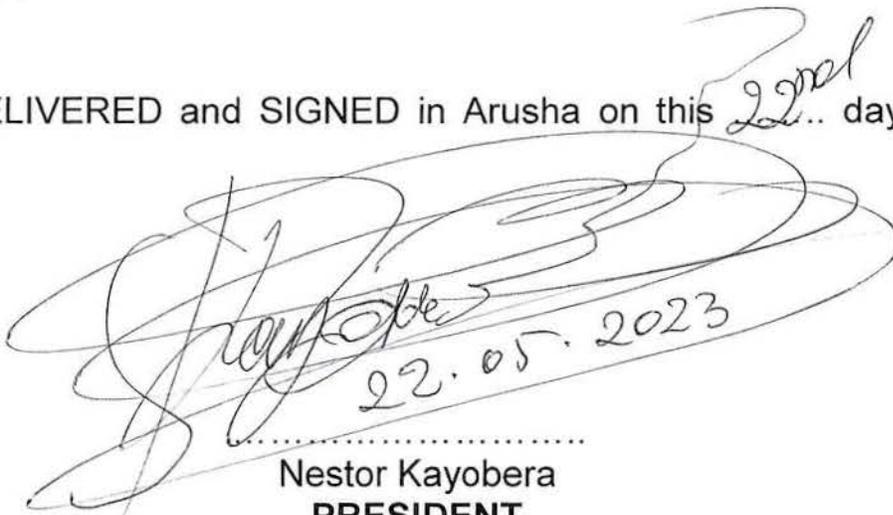
99. In the circumstances and taking the history of this matter into account, we find it judicious and equitable that we depart from the general rule that costs follow the event and order that each party to bear their own costs of this Appeal.

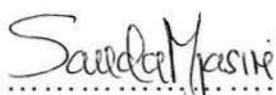
Disposition

93. In the result, the Appeal fails and it is hereby dismissed . We uphold the judgment and orders of the Trial Court. Each party shall bear their own costs of the Reference and of this Appeal.

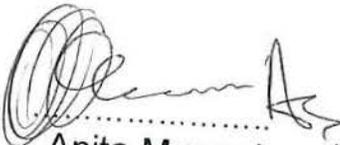
We so order.

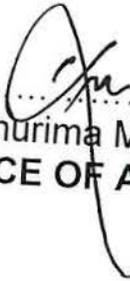
DATED, DELIVERED and SIGNED in Arusha on this 22nd day of May 2023.

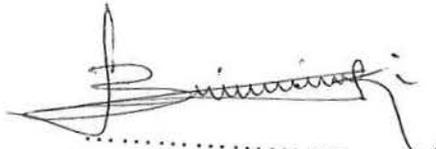

22.05.2023
.....
Nestor Kayobera
PRESIDENT


.....
Sauda Mjasiri
VICE PRESIDENT




.....
Anita Mugeni
JUSTICE OF APPEAL


.....
Kathurima M' Inoti
JUSTICE OF APPEAL


.....
Cheborion Barishaki
JUSTICE OF APPEAL

★ THE EAST AFRICAN COURT OF JUSTICE ★
Certified True Copy of the Original

 22 MAY 2023 

★ Signed..... ★
★ DEPUTY REGISTRAR ★