



**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 10. OF 2022

BETWEEN

ABBA LIMITED.....APPELLANT

AND

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

[Appeal from the Judgment of the First Instance Division at Arusha (Yohane Masara, PJ; Audace Ngiye, DPJ; Charles Nyachae; Richard Muhumiza and Richard Wejuli, JJ.) dated 23rd June, 2022 in Reference No. 18 of 2018]

JUDGMENT OF THE COURT

INTRODUCTION.

1. **ABBA Limited (the Appellant)** has preferred this Appeal against the Judgment of the First Instance Division of this Court (the Trial Court) dated 23rd June 2022 arising from **Reference No. 18 of 2018**. In the said Judgment, the Trial Court dismissed the Appellant's Reference but directed each party to bear its own costs.
2. The Appellant is a legal person incorporated in the Republic of Rwanda, with its registered office in Nyarugenge District, Kigali City. In this Appeal the Appellant is represented, pursuant to rule 19(1) and (3) of the **East African Court of Justice Rules of Procedure, 2019 (the Rules)**, by its Managing Director and sole shareholder, **Eng. Nsabimana Christophe**.
3. **The Respondent** is the Attorney General of the Republic of Rwanda, a State Party to the **Treaty for the Establishment of the East Africa Community (the Treaty)** and is represented in this Appeal by **Mr. Emile Ntwali**, Principal State Attorney and **Mr. Ntarugera Nicholas**, Senior State Attorney.

BACKGROUND.

4. Pursuant to the Respondent State's policy of privatisation of Government assets, the **District Council of Rubavu District** in **Western Province** floated an open competitive tender for the sale of **Gisenyi Modern Market**. The Appellant was declared the successful bidder and on 19th September 2014 the Appellant and the District Council entered into a contract for the sale of the Market.

5. On 26th March 2015, the District Council sent a letter to the Appellant advising it to temporarily suspend the works it had embarked upon in the Market, pending investigation as to how the Market was privatised. The Appellant unsuccessfully sought judicial intervention in the Respondent Republic and ultimately on 25th June 2015, the District Council revoked the sale of the Market to the Appellant on the ground that the Market, being a public asset, was erroneously sold to the Appellant.

6. The Appellant, again, unsuccessfully challenged the revocation of sale of the Market in the Respondent State's courts all the way to the Supreme Court, the apex and final Judicial institution in Rwanda. Undeterred, the Appellant turned to the Ombudsman and requested for a review of the decision of the Supreme Court pursuant to Articles 79 and 81 of **Organic Law No. 3/2012/OL** of 13th June 2012 determining the organization, functions and jurisdiction of the Supreme Court. On 17th July 2018, the Ombudsman rejected the Appellant's request for review of the decision of the Supreme Court after finding that there was no injustice. The Ombudsman further found that the sale of the Market was illegal because it was not the private property of the District Council but was instead inalienable public property. The Appellant received the decision of the Ombudsman on 1st August 2018.

REFERENCE TO THE TRIAL COURT.

7. On 20th September 2018, the Appellant lodged Reference No. 18 of 2018 in the Trial Court, contending that in revoking the contract for the sale of the Market, the Respondent had violated its own Constitution and laws. The Appellant averred, among others, that the Respondent had violated its Constitution and laws by: revoking the contract of sale

through an administrative act whilst the same was governed by laws of civil domain; by revoking the contract unilaterally without the Appellant's consent and for reasons not based on law contrary, to Law No. 45/2011 of 25th November 2011 governing contracts; by revoking the contract whilst the same provided for settlement of disputes amicably, through arbitration, or through competent court; and by revoking the contract on grounds of alleged mistake.

8. It was the Appellant's further averment that the Respondent contravened the Constitution and laws of Rwanda: by revoking the contract instead of amending it as provided in clause 6 thereof, in the event of conflict between the contract and the law; by pretending that the Market was public property whilst the same was private property under a certificate of freehold; by ignoring the fact that the certificate of freehold was authentic and binding on all the parties and that its authenticity could not be challenged except in the event of prosecution on grounds of falsification or forgery; by revoking a contract which was binding on the contracting parties; by ignoring the fact that the Market had passed on to the Appellant once the parties agreed on the terms and the purchase price; by ignoring the fact that once the Market was handed over to the Appellant, it was no longer the property of the District Council; by ignoring that there was no third party claiming ownership of the Market; by revoking the contract without acting in good faith, and by violating the Appellant's right to property.

9. Accordingly, the Appellant prayed for remedies as follows: -

a. a declaration that the revocation of the contract was invalid;

b. award of Rwf. 3,565,026,257 for losses due to delay of the project;

- c. award of Rwf. 0.05 billion for loss due to deterioration of materials and works;*
- d. award of Rwf. 0.02 billion for administration and court processes*
- e. total Award of 3,635,026,257 Rwf. or 4,276,500 USD.*

10. The Respondent filed its response to the Reference on 22nd October 2018. The Respondent pleaded that it would raise a preliminary objection that the Reference did not disclose a cause of action showing violation of the Treaty. The Respondent further averred that the Trial Court did not have jurisdiction to entertain the Reference because the same was filed out of time contrary to Article 30(2) of the Treaty. Additionally, it was contended that the Trial Court did not have jurisdiction because the acts that the Appellant was complaining of were neither the acts of the Respondent State, nor those of the Secretary General of the East African Community (EAC).

11. Accordingly, the Respondent prayed for declarations that:-

- a. the Reference was filed out of time;*
- b. the Trial Court lacked jurisdiction to hear and determine the Reference;*
- c. the Reference did not disclose any cause of action; and*
- d. an order dismissing the Reference with costs.*

12. In its Reply to the Response filed on 8th November 2018, the Appellant maintained that the acts of the District Council and the Ombudsman were those of the Respondent; that the Reference disclosed violation of the Treaty because it was made under Article 6(d)

thereof; that the decision of the Ombudsman was unlawful and in violation of Article 30 of the Treaty; that the decision complained of was that of the Ombudsman which in turn confirmed the decision of the District Council and thus violated the fundamental principles in Article 6(d) of the Treaty, namely, good governance, including adherence to the principles of democracy, the rule of law, accountability, transparency, social justice and equal opportunities; and that the Reference was not time barred because the decision alleged to violate the Treaty was that of the Ombudsman dated 17th July 2018.

THE SCHEDULING CONFERENCE, HEARING AND DECISION OF THE TRIAL COURT

13. At the scheduling Conference before the Trial Court, the following issues were framed for determination, namely:-
 - a. *whether the Trial Court had jurisdiction to hear and determine the Reference;*
 - b. *whether the Reference was filed out of time;*
 - c. *whether the revocation, on 25th June 2018, of the contract between the Appellant and Rubavu District Council was a violation of Article 6(d) of the Treaty;*
 - d. *whether the Respondent was liable for acts of Rubavu District Council;*
 - e. *whether the decision of the Ombudsman received by the Appellant on 1st August 2018 was unlawful and a violation of the Treaty; and*
 - f. *what remedies were the parties entitled to.*

14. After hearing the parties, the Trial Court, by its judgment dated 23rd June 2022, which is impugned in this appeal, held as regards issues No. 1 and 2, that the Reference was filed out of time and for that

reason, the Trial Court did not have jurisdiction to entertain the same. Accordingly, having found that it did not have jurisdiction in the matter, the Trial Court downed its tools and declined to determine the other issues. The ultimate result was, as we have already pointed out, that the Trial Court dismissed the Reference but directed each party to bear its own costs.

APPEAL TO THE APPELLATE DIVISION

15. The Appellant was aggrieved by the decision of the Trial Court and filed a Notice of Appeal on 21st July 2022, followed by a Memorandum of Appeal dated 18th August 2022. The Memorandum of Appeal is drawn in blatant violation of rule 97 of the Rules, which provides as follows:

*“97. (1) A memorandum of appeal shall set forth concisely and under distinct heads, without argument or narrative, the grounds of objection to the decision appealed against, specifying the points which are alleged to have been wrongly decided, and the nature of the order which it is proposed to ask the Court to make.”
(Emphasis added)*

16. Instead, the Memorandum of Appeal is a prolixious, verbose and argumentative narration of the history of the dispute, a mixed grill of theories, opinions, suppositions and a rant about the perceived merits of the Appellant’s case and demerits of the impugned Judgment. The purported memorandum of appeal even contains a table! As regards the grounds of appeal, they are not grounds as understood under the Rules, but submissions in disguise.

17. We wish to reiterate at this early stage that parties must comply strictly with the Rules. The rules on pleadings, including the drawing of the Memorandum of Appeal, are intended to focus on the real issues in

dispute, rather than to cloud or obscure them with irrelevancies. Be that as it may, since the Respondent did not raise any objection to the purported Memorandum of Appeal and granted that the same is obviously not drawn by a lawyer, we shall not say more on the same.

18. As far as we can surmise from the jumble presented in the name of grounds of appeal, the Appellant's complaint is that the Trial Court erred by:

- a. holding that the Reference was time barred;
- b. holding that the decision of the Mayor was different and distinct from that of the Ombudsman, whilst the two were intertwined and could not be separated;
- c. reckoning time from the date of the decision of the District Council rather than from the date of the decision of the Ombudsman; and
- d. failing to hold that the Appellant's complaint was against the decision of the Ombudsman.

19. The Appellant therefore asked the Court to:

- a. *allow the Appeal and reverse the decision of the Trial Court;*
- b. *hold that the Court has jurisdiction to hear and determine the Reference; and*
- c. *direct the Trial Court to hear and determine all the issues identified in the Scheduling Conference.*

20. At the Scheduling Conference of the Appeal held on 9th November 2022, the parties, with the assistance of the Court, framed the following two issues for determination:-

- a. *whether the First Instance Division erred in law by holding that the Appellant's Reference No. 18 of 2018 was time-barred; and*
- b. *what remedies, if any, are the parties entitled to?*

ISSUE NO. 1: Whether the First Instance Division erred in law by Holding that the Appellant's Reference No. 18 of 2018 was time-barred.

THE APPELLANT'S CASE.

21. On Issue No. 1, the Appellant submitted that it filed its Reference on time as required by the Treaty. The Appellant argued that it received the decision of the Ombudsman that upheld the decision of the Supreme Court of Rwanda and those of courts of the Respondent on 1st August 2018 and filed the Reference on 20th September 2018, which was within two months as prescribed by the Treaty. It was the Appellant's contention that its complaint was not against the decision of the District Council but that of the Ombudsman and that the Trial Court erred by computing time from 25th June 2015 when the District Council revoked the agreement for sale of the Market. It was further contended that the Trial Court erred by creating its own cause of action instead of relying on the cause of action which was pleaded by the Appellant.

22. The Appellant further contended that although it had prayed in the Reference for the setting aside or dissolution of the decision of the District Council which revoked the agreement for sale of the Market, that was not the cause of action but a mere consequence of the setting aside of the decision of the Ombudsman. The appellant added that a finding that the decision of the ombudsman was illegal automatically meant that the decisions of the other courts in the chain, including that of the District Council was also illegal. In the Appellant's view, the decision of the Trial Court was in violation of Article 23(1) of the Treaty which requires the Court to ensure adherence to the law in the application and interpretation of and compliance with the Treaty.

THE RESPONDENT'S CASE

23. Instead of addressing the two issues agreed upon and framed at the Scheduling Conference on 9th November 2022, the respondent fashioned and addressed its own four issues. Those issues, which the Respondent claims were agreed on 19th November 2022, were whether the appellant's appeal satisfies the conditions in Article 35 of the Treaty and Rule 88 of the Rules; whether the decision of the Trial Court dismissing the Appellant's Reference for being out of time was in violation of Article 30(1) and (2) of the Treaty; whether the decision of the Ombudsman was unlawful and an infringement of the Treaty; and whether the parties were entitled to the reliefs sought. We shall say more on these issues later in this Judgment.

24. The Respondent submitted that under Article 35 of the Treaty the Appellant can prefer an appeal to this Court on three grounds only, namely, on points of law, lack of jurisdiction and procedural irregularity. It was contended that the Appellant's appeal did not disclose any of those three grounds and that on that account, the appeal should be dismissed. In the Respondent's view, the Appellant was merely inviting the Court to rehear and determine afresh the matters of fact and law that the Trial Court had determined, which this Court cannot do. The Respondent relied on the judgment of this Court in **Simon Peter Ochieng v. Attorney General of Uganda**, EACJ Appeal No. 4 of 2015 to support its submission.

25. In addressing its issue Nos. 2 and 3, which largely correspond to issue No. 1 as framed by the parties with the assistance of the Court, the Respondent submitted that the Trial Court did not err when it held that the Appellant's Reference was time barred and that the Court

lacked jurisdiction *rationae temporis* to entertain the Reference. It was submitted that the Appellant averred that its cause of action in the Reference arose from the decision of the District Council to revoke the sale of the Market on 25th June 2015. The Respondent further contended that the letter of the Ombudsman date 17th July 2018 was not the cause of action because it merely advised the Appellant that there was no injustice occasioned to warrant a review by the Supreme Court.

26. Accordingly, the Respondent submitted that the Trial Court correctly reckoned from 25th June 2015 the two months period provided by **Article 30(2)** of the Treaty for filing a Reference and that when the Appellant lodged its Reference on 20th September 2018, the same was filed out of time. The Respondent relied on the Judgment of this Court in **Republic of Kenya v. Independent Medico Legal Unit**, EACJ Appeal No. 1 of 2011, in support of the proposition that the limitation of time set by the Treaty is mandatory and cannot be extended by the Court. The Respondent also cited the decision of this Court in **Attorney General of the Republic of Rwanda v. Plaxeda Rugumba**, EACJ Appeal No. 1 of 2012 and submitted that the Appellant was solely to blame for filing the Reference out of time because there was no requirement under the Treaty to first exhaust local remedies before approaching the Court.

27. Lastly on this issue, the Respondent submitted that under the Constitution of the Republic of Rwanda, the Ombudsman is a specialised organ with jurisdiction to monitor and review complaints on injustice and to request the Supreme Court to examine and review acts, decisions and judgments that are vitiated by injustice. As far as the Respondent was concerned, the decision of the Ombudsman was

consistent with the laws of the Respondent and did not violate the Treaty.

THE COURT'S ANALYSIS AND DETERMINATION OF ISSUE NO. 1

28. As we have already pointed out, on 9th November 2022 the parties, with the assistance of the Court framed two issues for determination. That position is reflected in both the transcript of the proceedings of the day (pages 7 and 9) as well as in the Joint Scheduling Conference Notes duly signed on 9th November 2022 by **Nsabimana Christophe** for the Appellant and **Ntarugera Nicholas** for the Respondent. The Respondent claims that the four issues it has addressed in its written submissions were framed on 19th November 2022. However, the record shows that the scheduling conference was held on 9th November 2022 and not 19th November 2022. Indeed, 19th November 2022 was a Saturday, a day on which the Court does not sit.

29. It is important to reiterate that once the parties have agreed on the issues for determination which have subsequently been adopted by the Court, it is not open to them or any one of them to introduce other different or additional issues. The purpose of settling the issues for determination at the Scheduling Conference is to focus the matters in dispute and avoid obfuscation, so the parties and the Court are clear on the real issues in dispute. This approach is meant to ensure that the parties and the Court focus only on submissions, arguments and authorities that are relevant to the appeal. In addition, the practice of framing issues assists greatly in saving time and costs, by ensuring that valuable time is not wasted on irrelevant matters.

30. We must further point out that when a party departs from agreed issues and introduces new and different matters, the effect is to take the opposite party by surprise and deny it a fair opportunity to respond to the new matters. Such approach amounts to denial of the right to a fair trial, which the Court will not countenance.

31. In its new issues, the Respondent has introduced contentions that the Appeal is not properly before the Court because it does not precisely raise issues of matters of law, lack of jurisdiction or procedural irregularity as decreed by the Treaty. Because these issues were brought surreptitiously, the Appellant did not have a proper opportunity to respond to them. Those issues therefore do not merit our consideration. We must however add that in any case, the appeal before us has properly raised the question whether the Trial Court erred by holding that it did not have jurisdiction because the Appellant's Reference was time barred. That issue of whether or not the Trial Court lacked jurisdiction falls squarely within Article 35 A(b) of the Treaty as one of the grounds in which an appellant can appeal to this Court from a decision of the Trial Court. Indeed, that issue is at the heart of this appeal and is what is captured in issue No. 1 as approved by the Court, namely, *"Whether the First Instance Division erred in law by holding that the Appellant's Reference No. 18 of 2018 was time-barred."*

32. For the foregoing reasons, there is absolutely no merit in the first issue introduced by the Respondent.

33. Turning to the proper issue No. 1, we begin by setting out the provisions of Article 30 of the Treaty, which provides as follows:-

"1. 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.

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; (Emphasis added).

3..."

34. Article 31 of the **Vienna Convention on the Law of Treaties, 1969**, requires the Court to interpret the Treaty in good faith in accordance with the ordinary meaning to be given to the terms of the Treaty in their context and in light of the Treaty's objects and purposes. See **Attorney General of Uganda v Omar Awadh & 6 Others**, EACJ Appeal No. 2 of 2012. Those are the principles that should guide the interpretation of Article 30 of the Treaty. It should also be emphasised that under Article 30 of the Treaty, a cause of action against a Partner State or Institution of the Community must be founded on alleged violation of the Treaty. (See **Legal Brains Trust v Attorney General of the Republic of Uganda**, EACJ Appeal No. 4 of 2012).

35. This Court has previously considered Article 30 of the Treaty in a number of cases. Thus, for example, in **Republic of Kenya v. Independent Medico Legal Unit** (supra), one of the issues was whether the Trial Court had erred by entertaining a Reference which it was contended was time barred. The Court explained that the reason for the strict limitation of time set by the Treaty was to ensure legal certainty among the diverse Partner States. The Court held as follows:-

“It is clear that the Treaty limits References over such matters like these to two months after the action or decision was first taken or made, or when the Claimant first became aware of it. In our view, the Treaty does not grant this Court any express or implied jurisdiction to extend the time set in the Article above. Equally so, the Court below could not rule otherwise on the face of the explicit limitation in Article 9(4) to the effect that the Court must act within the limits of its powers under the Treaty...

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.”

36. Subsequently in **Alcon International Ltd v. Standard Chartered Bank of Uganda & 2 Others**, EACJ Appeal No. 3 of 2013, the Court reiterated that under the Treaty, a Reference must be filed within two months of the crystallisation of the cause of action or knowledge by the Claimant of the existence of the cause of action.

37. As regards the cause of action, in **Angella Amudo v. Secretary General of the East African Community**, EACJ APPEAL No. 4 of 2014, this Court cited with approval the decision of the Privy Council in **Muhammad Hafiz v. Muhammad Zakariya** [1922] 49 I.A. 9 that:

“...the cause of action is what gives occasion for and forms the foundation of the suit.”

The Court further explained that any claim or suit, be it in tort, contract, etc. must always be based on a cause of action and that a cause of action is the reason or basis for which a suit or claim is brought.

38. A Claimant's cause of action is determined by his or her pleadings. Again, in **Angella Amudo v. Secretary General of the East African Community** (supra) the Court held:-

"We take it to be settled law that there can be no suit, without a cause of action having accrued to the claimant or plaintiff. It is equally settled that a cause of action should always be gleaned from the plaint or statement of claim and not from the claimant's assertions from the bar or submissions. In this particular case, the Appellant's cause of action could only be traced in her Statement of Claim..." (Emphasis added).

39. In **Attorney General of Uganda v. Omar Awadh & 6 Others** (supra) the appellants were arrested in the Republic of Kenya on diverse dates between 22nd July and 17th September 2010. They were subsequently surrendered to the Republic of Uganda where they were detained and charged with criminal offences. On 9th June 2011, they filed a Reference in this Court alleging violation of the Treaty. Objection was taken that the Reference was time barred. The Trial Court dismissed the objection, holding that the alleged violations were continuous acts which were not amenable to mathematical computation of time. On appeal, this Court allowed the appeal, holding that the Court must determine the specific actions complained of or the dominant actions complained of. The Court further held that for purposes of Article 30(2) of the Treaty, time must be reckoned from the date when the alleged illegal detention started, not when it ended.

40. In the present Appeal, the Trial Court carefully considered the Appellant's pleadings and concluded, rightly in our view, that the real cause of action as pleaded by the Appellant was the alleged violation of the Treaty by what he considered to be the illegal and unlawful revocation by the District Council of the agreement for the sale of the Market. The Trial Court observed as follows:-

“Whereas the Applicant broadly contended that his cause of action arises from the decision of the Ombudsman, in Paragraph 23 of the Reference, the Applicant seeks for ‘Dissolution of the decision revoking the sale agreement and for award of compensation to ABBA by the District of Rubavu due to their alleged illegal decision.’ It is discernible from this very paragraph that the offending act for which the Applicant seeks relief is indeed the revocation of the sale agreement of Gisenyi Modern Market by the Mayor of Rubavu and further that the compensation sought is to be exclusively realised from the District of Rubavu on account of their alleged illegal decision.”

41. Having carefully considered the record, it is sufficiently clear from the statement of claim and the Appellant’s submissions both before this Court and the Trial Court, that the gravamen of its claim is the alleged violation of the Treaty by what it considers to be the illegal revocation of the sale of the Market to it. The express and unequivocal reliefs that the Appellant sought in the statement of claim are restoration of the revoked agreement for sale of the Market or compensation. Such reliefs are directed at the decision of the District Council rather than at the decision of the Ombudsman. Accordingly, from the Appellant’s own pleading rather than from its submissions and assertions, we agree with the Trial Court that time for purposes of Article 30(2) of the Treaty, was to be reckoned from the date of the cancellation of the agreement for sale, namely, 25th June 2015. For that reason, the Appellant’s Reference No. 18 of 2018 which was lodged on 1st August 2018 was time barred and the Trial Court did not have jurisdiction to entertain it.

42. The decision of this Court in **Attorney General of the Republic of Kenya v. Martha Wangari Karua & 2 Others**, EACJ Appeal No. 4 of 2021 does not assist the Appellant. In that appeal, the 1st Respondent’s election petition in the High Court of Kenya was struck out vide a decision which the Court of Appeal subsequently found to

have been erroneous. The Court of Appeal restored the petition and remitted the same back to the High Court for trial. By the time the petition was heard and determined, the period prescribed by the laws of the Partner State for determination of election petitions had expired. The 1st Respondent's second appeal to the Court of Appeal was dismissed on account of expiry of the prescribed period. Her appeal to the Supreme Court was similarly dismissed on 7th August 2019 and she moved to this Court on 4th October 2019 alleging violation of the Treaty and her right of access to justice by the decision of the Supreme Court.

43. The Trial Court found in the 1st Respondent's favour and one of the issues on appeal to this Court was whether her Reference in the Trial Court was time barred. The appellant contended that time must be reckoned from the date of the decision of the Court of Appeal and not from that of the Supreme Court. In rejecting that argument, this Court found that as expressly pleaded, the 1st Respondent's cause of action was against the decision of the Supreme Court of 7th August 2019 and that therefore the Reference was not time barred. It was the Appellant who was alleging, contrary to the 1st Respondent's express pleadings, that her cause of action arose from the decision of the Court of Appeal. The Court concluded that from the pleadings, the complaint was the alleged violation of the 1st Respondent's right of access to justice and violation of the Treaty by the decision of the Supreme Court. In the present Appeal, the Appellant's submissions, assertions, and prayers regarding its cause of action are not borne out by its own pleadings.

44. Accordingly, we answer Issue No. 1 in the negative.

ISSUE NO. 2 - What Remedies, if any, are the Parties Entitled to?

APPELLANT'S CASE

45. As regards remedies, the Appellant submitted that it was entitled to an order allowing the appeal, a declaration that the Trial Court has jurisdiction to hear and determine Reference No. 18 of 2018, a declaration that the decision of the Ombudsman dated 17th July 2018 is illegal and in violation of Article 6(d) of the Treaty, an order setting aside the said decision of the Ombudsman as well as that of the District Council dated 25th June 2015, and costs of the Reference.

46. The Appellant further submitted that it was entitled to the above remedies because under the law of Rwanda, the Ombudsman has the mandate to petition the Supreme Court to review its final decision due to injustice. For almost 20 pages of written submissions, the Appellant veered off from the two framed issues for determination and dwelt at length on what it considered to be the merits of its Reference. Those are the same matters that we have set out in paragraph 8 of this Judgment on the basis of which the Appellant impugned the decision of the District Council.

RESPONDENT'S CASE

47. On its part, the Respondent presented short written submissions in which it argued that the Appellant was not entitled to the remedies it had sought because the Trial Court did not err in finding that the Respondent's reference was filed out of time. The Respondent urged the Court to dismiss the appeal with costs.

THE COURT'S ANALYSIS AND DETERMINATION

48. We must reiterate that the merits of the Reference is not an issue before us because the Trial Court did not address itself to the merits, having concluded that the same was time barred and therefore that it did not have jurisdiction to entertain it. For that simple reason, there is no justification to rehash the Appellant's lengthy submissions, purportedly on remedies, but which are in fact on merits of the appeal. Those submissions are not relevant to the framed issue No. 2 on remedies.
49. We have answered issue No. 1 in the negative, meaning that the Trial Court did not err when it held that the Appellant's Reference No. 18 of 2018 was time-barred and that the Court did not have jurisdiction to entertain it. Having so found, it means that the decision of the Trial Court is upheld and therefore the Appellant is not entitled to the remedies it had prayed for.
50. On costs of the Reference, the Trial Court directed each party to bear its own costs. Having carefully considered this issue, we are satisfied that the Trial Court did not err in the exercise of discretion as regards costs. We therefore do not have basis for interfering with its order on costs.
51. As regards costs of this Appeal, Rule 127 of the Rules provides that costs shall follow the event unless the Court, for good reasons, orders otherwise. In **Margaret Zziwa v. The Secretary-General of EAC**, EACJ Appeal No. 2 of 2017, the Court held that:-

"costs are in the discretion of the Court (and that) in exercising such discretion, the Court bears in mind that costs follow the

event and that a successful party may only exceptionally be deprived of costs depending on the particular circumstances of the case such as the conduct of the parties themselves or their legal representatives, the nature of the litigants, the nature of the proceedings or the nature of the success."

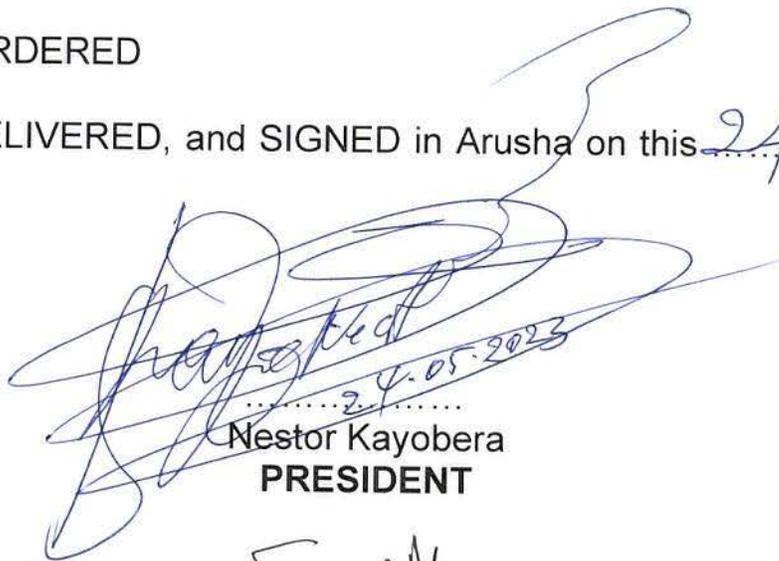
52. Considering the conduct of this appeal, we are not impressed by the fact that although the Respondent duly approved and signed the two issues agreed at the scheduling Conference, nevertheless it disregarded those issues and introduced other unnecessary and irrelevant issues for consideration and determination by the Court. Such conduct unnecessarily wastes the time of the parties as well as that of the court and increases costs unnecessarily. For that reason, we direct each party to bear its own costs of this Appeal.

DISPOSITION

53. The upshot of our consideration of the Appellant's Appeal is that:-
- a. The Appeal is dismissed; and
 - b. Each party to bear its own costs.

IT IS SO ORDERED

DATED, DELIVERED, and SIGNED in Arusha on this 24th day of May 2023.



.....24.05.2023.....

Nestor Kayobera
PRESIDENT

Sauda Mjasiri
Sauda Mjasiri
VICE PRESIDENT



Anita Mugeni
JUSTICE OF APPEAL



Kathurima M'Inoti
JUSTICE OF APPEAL



Cheborion Barishaki
JUSTICE OF APPEAL