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

(Coram: Monica K. Mugenyi, PJ; Isaac Lenaola, DPJ; Faustin Ntezilyayo, J; Fakihi A. Jundu, J & Audace Ngiye, J)

REFERENCE No.07 of 2014

EAST AFRICAN LAW SOCIETY..... APPLICANT

VERSUS

THE SECRETARY GENERAL OF
THE EAST AFRICAN COMMUNITY..... RESPONDENT

22ND MARCH 2016

JUDGMENT OF THE COURT

A. INTRODUCTION

1. This is a Reference filed by the **East African Law Society** (hereinafter referred to as the "**Applicant**"), which is the apex regional Bar Association of East Africa registered as a Company Limited by Guarantee in Tanzania, and as a Foreign Company Limited by Guarantee in Kenya, Rwanda and Uganda. Its address for service, for the purpose of this Reference is No. 6, Corridor Area, Arusha, Post Office Box Number 6240 Arusha, in the United Republic of Tanzania.

2. The Reference was filed on 28th April 2014 under Articles 4, 5, 6, 7, 27, 30, 71 and 124 of the Treaty Establishing the East African Community and Rules 1(2) and 24 of the East African Court of Justice's Rules of Procedure (hereinafter referred to as the "**Treaty**" and the "**Rules**", respectively).

3. The Respondent is the Secretary General of the East African Community and issued on behalf of the East African Community in his capacity as the Principal Executive Officer of the Community.

B. REPRESENTATION

4. The Applicant was represented by Prof. Frederick Ssempebwa, Mr. Samuel Olumo and Mr. Humprey Mtuy while Dr. Anthony Kafumbe appeared for the Respondent.

C. BACKGROUND

5. The Applicant is a dual membership organization comprising of individual lawyers and 6 Law Societies namely, Burundi Bar Association, Rwanda Bar Association, Law Society of Kenya, Tanganyika Law Society, Uganda Law Society and Zanzibar Law

Society. It has formal Observer Status with the East African Community.

The abridged background to this Reference is that:

6. Beginning from around August 2013, Rwandan and Burundian immigrants from Ngara and Karangwe in the Kagera region of the United Republic of Tanzania were expelled from that region.

7. On 20th August 2013, the Applicant issued a statement whereby it, among others, expressed concerns over reports of the expulsion of the said immigrants and thus called on the Respondent to take remedial actions ensuring that the expulsion was done in accordance with international and regional legal standards and principles.

8. By its letter of 27th February 2014, the Applicant inquired from the Respondent of the remedial steps taken over the expulsion.

9. The Respondent, in his letter dated 19th March 2014, indicated that the said expulsion had been considered by the Council of Ministers in its meeting of 31st August 2013 and had given directives to address the problem.

10. The Applicant, considering that, by failing to abide by, or to implement Council's directives in order to resolve the problem of the immigrants, the Respondent had abdicated his duties and obligations under Article 71(1) of the Treaty, filed the present Reference seeking orders as pleaded below in the Applicant's case.

11. When the matter came for scheduling conference, on 05th November 2014, the Court, proceeding under Rule 54 of the Court's Rules, took note of the statement of the parties that the Reference had potentiality for settlement and directed parties to engage in

that process. But, on 14th July 2015, having been informed by the Parties that no settlement had been reached, the Court resolved that the matter had to be fixed for hearing and timelines were given for submissions.

D. THE APPLICANTS' CASE

12. The Applicant's case is contained in the Reference dated 28th April 2014, an Affidavit sworn on 28th April 2014 by Mr. James Aggrey Mwamu, the then President of the East African Law Society, the Applicant's Reply to the Respondent's Response filed on 21st July 2014 and the Applicant's written submissions filed on 03rd August 2015.

13. The Applicant alleged that, on 27th February 2014, it requested in writing from the Respondent, information on the remedial steps taken by the East African Community over the irregular expulsion of immigrants from the Kagera Region by the Government of United Republic of Tanzania and that the said communication was the second in a series by which the Applicant had called upon the Respondent to take remedial measures.

14. The Applicant then averred that the Respondent replied by letter 19th March 2014 indicating that the EAC Council of Ministers had considered the matter at its meeting of 31st August 2013 and directed that arrangements be made for Tanzania and Rwanda to meet to resolve the issue.

15. The Applicant further alleged that following the directives of the Council, the Respondent indicated that:

(a) A fact-finding mission took place in the affected areas and made findings and recommendations to be considered by Council; and

(b) The Secretariat of the Community was working out modalities to establish a Peace and Security Council to address such problems.

16. It also alleged that after the Respondent's aforementioned letter, it came to the Applicant's knowledge that, at the 28th Council of Ministers meeting of 22nd – 29th November 2013, it was noted that the Council's directives to the Respondent regarding the matter of unlawful expulsions of EAC Partner Sates' citizens from the Kagera region of the United Republic of Tanzania were still outstanding. It thus pointed out that, contrary to the Respondent's letter of 19th March 2014, no action had been taken.

17. In this regard, the Applicant alleged that, since the Respondent had produced any status report on remedial measures undertaken to implement the EAC Council of Ministers' decisions made in the aforesaid meeting, he had "**demonstrated failure and negligence in the performance of his obligations and responsibilities under the Treaty which is inimical to the principles and objectives of the Treaty.**"

18. In summing up its case, the Applicant alleged that it was the issue of non-compliance with Council's directives by the Respondent and the failure to play a monitoring and oversight role, rather than the illegal expulsion of EAC citizens that was the basis of this Reference.

19. The Applicant thus pleaded for the following declarations and orders against the Respondent:

(1) A declaration that the Respondent has failed and/or neglected his obligations under the Treaty Establishing the East African Community;

(2) An order compelling the Respondent to convene and facilitate the execution of Resolution EAC/CM/28/Decision 04 directing the United Republic of Tanzania and the Republic of Rwanda to urgently meet to resolve the issues regarding the Republic of Rwanda's concerns on the Kagera Region expulsion of Rwandans by 30th January 2014;

(3) In the alternative, an order compelling the Respondent to within thirty (30) days submit a detailed Report setting out the remedial measures taken by the Respondent pursuant to Resolution EAC/CM/28/Decision 04 as reproduced herein above;

(4) An order that the costs of and incidental to this Reference be met by the Respondent;

(5) This Honorable Court be pleased to make such further orders as may be necessary in the circumstances.

E. THE RESPONDENT'S CASE

20. The Respondent filed a response to the Reference on 10th June 2014 together with an Affidavit in support sworn by Dr. Enos S. Bukuku, EAC Deputy Secretary General, as well as written Submissions on 10th August 2015.

21. The Respondent first of all alleged that, long before the intervention of the Applicant, he had taken up the matter of the expulsion of immigrants from the Kagera Region by taking it to the Council of Ministers of 31st August 2013. Moreover, he stated that he had proposed a meeting between the Republic of Rwanda and the United Republic of Tanzania for 4th October 2013 which aborted due to the inability of Tanzania to attend as the relevant Tanzanian

Minister who would have attended was conducting a fact finding mission in Manyovu and Rusumo border at about the time of the meeting.

22. The Respondent also alleged that he had, on or about 11th September 2013, constituted a fact-finding mission which visited the Rusumo border areas to witness the situation and prepared a report that was to be availed to among others the two Partner States concerned and the EAC Policy Organs for appropriate action. He hastened to add that the findings would at the earliest opportunity have been considered by the United Republic of Tanzania and the Republic of Rwanda which were yet to meet.

23. Basing on the decision-making mechanism within the Community, the Respondent argued that the resolution of the problem of irregular immigrants expelled from the Kagera Region was work in progress and that it was premature for him to be faulted for negligence and or inaction, about the plight of the immigrants.

24. The Respondent also averred that, while still in the process of addressing this challenge, the matter was considered on 28th March 2014 by a Joint Meeting of the Sectoral Council on Cooperation in Defence, Interstate Security and Foreign Policy Coordination which directed that a detailed concept paper on the Proposed Peace and Security Council be developed and circulated to the Partner States for consideration at an Extraordinary Joint Meeting of the said Sectoral Council by 30th June 2014. He stressed that that was work in progress and that a relevant report was to be submitted to the 29th Meeting of the Council that was scheduled for August 2014.

25. The Respondent categorically refuted the Applicant's allegation that he had acted irresponsibly or failed to act in any matter

complained of or as alleged in the Statement of Reference. He rather alleged that the Council directive being targeted at the aforementioned countries, the responsibility to expeditiously convene a meeting and implement the directive lay squarely with them and that consequently, they should be held individually liable for not doing so.

26. In summing up his case, the Respondent pleaded that, since he had ably performed his duty; there was no cause of action against him, that all claims against him were misconceived; that the granting of declarations and orders sought by the Applicant did not arise and that the Reference was time-barred as it was instituted outside the two-month time limit required under Article 30(2) of the Treaty.

27. For the above reasons, the Respondent submitted that no breach of the Treaty arose and that, therefore, the Reference should be dismissed with costs.

F. SCHEDULING CONFERENCE

28. On 5th November 2014, a Scheduling Conference pursuant to Rule 53 of the Court's Rules was held and Parties agreed upon that the following issues fall for determination:

1. *Whether the Reference is time barred under Article 30(2) of the Treaty;*
2. *Whether the Respondent failed to discharge his obligations under Article 71(d) and (l) of the Treaty;*
3. *Whether the Applicant is entitled to the remedies sought.*

G. DETERMINATION OF THE ISSUES BY THE COURT

Issue No. 1: Whether the Reference is time barred under Article 30(2) of the Treaty

Submissions

29. The issue as to whether the Reference was time barred was raised by the Respondent. In this regard, his Counsel submitted that the Reference was time barred in terms of Article 30(2) of the Treaty considering that the expulsion of foreigners from the Kagera Region was done in August 2013 but, the Reference was only filed in April 2014 more than two months since the matters came to the attention of the Applicant.

30. Learned Counsel relied on the case in **Attorney General of the Republic of Kenya Vs. Independent Medical Legal Unit, EACJ Appeal 1 of 2011** to argue that "***Article 30(2) of the Treaty is unambiguous and categorical that the Reference ought to have been instituted within the time specified therein. Moreover, it is easy to ascertain and subject the time within which the Reference could be lodged to mathematical computation of time on the basis of the reports of the events since those reports were recorded and widely publicized.***"

31. He further argued that it was clear that the Treaty limits References over such matters like the one at hand to two months after the action or decision was first taken or made, or when the Claimant first became aware of it. He maintained that the Treaty does not grant this Court any express or implied jurisdiction to extend the time set in the article above. It was also his stance that, as provided by Article 9(4) of the Treaty, the Court ought to act within the limits of its powers under the Treaty.

32. In light of the foregoing submissions, Counsel for the Respondent urged the Court to find that this matter was time barred.

33. Conversely, Counsel for the Applicant contended that the Reference was lodged on 28th April 2014 well within the time prescribed by Article 30(2) of the Treaty.

34. As arguments in support of his position, learned Counsel submitted that the gist of the complaint was that the Respondent failed to effectively fulfil his obligations as provided for under Article 71(1) of the Treaty, in particular; (a) by failing to investigate, collect or verify matters affecting the Community, the forceful expulsion of immigrants by a Partner State to another Partner State [Article 71(1)(d)], and (b) by failing to implement the decisions of the Council [Article 71(1)(l)].

35. Counsel then stated that the aforesaid infringement came to the knowledge of the Applicant after receipt of the letter dated 19th March 2014 signed by the Secretary General of the East African Community in response to the Applicant's letter dated 27th February 2014 requesting for a feedback on the action taken by the Community over the forceful expulsion of immigrants.

36. Counsel thus stressed that the date of the Secretary General's letter which is 19th March 2014, is the date that led to the Applicant's inquiries from which it was realized that no effective action had been taken by the Respondent as this was evident from the proceedings of the Council.

37. Reiterating his argument that the action complaint of was not the expulsion of the immigrants, but the failure of legal duty by the Respondent, Counsel for the Applicant, therefore, submitted that the

Reference was lodged within the two-month time limit prescribed by Article 30(2) of the Treaty.

Determination of Issue No. 1

38. Having carefully reviewed the parties' respective pleadings and submissions on the issue at hand, we consider that its determination requires determining the cause of action of the present Reference.

39. The Respondent's position was that, since the Reference was triggered by the expulsion of alleged irregular immigrants from the Kagera Region that occurred in August 2013 and since it was filed on 28th April 2014, this was evidently outside the two months required by Article 30(2) of the Treaty.

40. For ease of reference, Article 30(2) 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 the absence of thereof, of the day in which it came to the knowledge of the complainant, as the case may be.***"

41. On its part, the Applicant, both in its pleadings and submissions, has emphatically and repeatedly stressed the point that the Reference did not rely on the expulsion of the immigrants as a cause of action although it stated that that action itself run afoul of the fundamental principles enshrined in the Treaty and other international instruments to which the United Republic of Tanzania was signatory. The Applicant, instead, argued that the cause of action was the alleged failure by the Respondent to effectively perform his Treaty obligations and address the problem pertaining

to the expulsion of immigrants as per the Council of Ministers' directives.

42. The Applicant also pointed out that the alleged infringement came to its knowledge after receipt of the Respondent's letter dated 19th March 2014 from which it found that no effective action had been taken by the Respondent. The Applicant affirmed that it was that failure or inaction by the Respondent that triggered the Reference filed on 28th April 2014.

43. The Respondent forcefully asserted that, since the Reference hinged on the irregular expulsion of immigrants, it was not enough for the Applicant to issue a Press Statement; it should have instead instituted an action before this Court.

44. It is worth noting that, although the Applicant, in his statement dated 20th August 2013, has condemned the expulsion of citizens of Partner States from another Partner State without following the due process as running afoul of the fundamental principles enshrined in the Treaty and other relevant international instruments, it nevertheless did not file any action in that regard. Instead, it instituted an action against the Respondent, faulting him for non-compliance with the Council's directives and failure to play the monitoring and oversight role as provided by Article 71(1) of the Treaty.

45. Given the case as it stands, therefore, we find no reason to disagree with the Applicant's assertion made in his pleadings and constantly reaffirmed in oral and written submissions that the fact that gives it the right to seek judicial redress or relief against the Respondent, that is the cause of action of the Reference, is the alleged failure of legal duty by the Respondent.

46. Having said that, we now revert to the computation of time to assess whether the Reference was filed within the required two-month time limit. If we consider, as submitted by the Applicant, that the starting time is when the alleged infringement came to the knowledge of the Applicant, that is on 19th March 2014, and that the Reference was filed on 28th April 2014, it is evident that the Applicant was within the timeframe prescribed by Article 30(2) of the Treaty.

47. Consequently, we answer issue No.1 in the negative.

Issue No.2: Whether the Respondent failed to discharge his obligations under Article 71(1) (d) and (e) of the Treaty

Applicant's Submissions

48. On this issue, the Applicant's Counsel submitted that the Respondent failed in his Treaty obligations for different reasons.

Firstly, he argued that, in the performance of his duties, the Respondent ought to be vigilant as this is the standard cast upon him by this Court in **James Katabazi and 21 Others Vs Secretary General of the East African Community and Another, EACJ Reference No. 01 of 2007.**

Secondly, learned Counsel further contended that the judgment of this Court in the aforementioned Reference placed a duty on the Respondent to be even more vigilant once a legal action has been commenced against him. He asserted that the said Court's stand was in response to the Respondent's defence that he could not have taken action because he was not aware of the infringement by a Partner State. He then quoted the Court as stating:

"... **The moment this Application was filed (Respondent) became aware, and if he was mindful of his obligations under Article 29, he should have taken the necessary actions under that Article."**

In line with that argument, Counsel also submitted that the Respondent was aware of the alleged infringement by a Partner State (Tanzania) and that, by analogy with the **Katabazi case,** performance of his obligations became more exigent after this Reference was filed.

49. Thirdly, in light of the Respondent's own line of defence outlining measures taken to address the matter, the Applicant's Counsel castigated the Respondent's failure to take effective action in compliance with his Treaty obligations. It was thus Counsel's argument that the Respondent cannot claim to have diligently discharged his obligations by simply initiating meetings which did not take place, or establishing a fact finding mission whose report was never availed or considered or alleging that it was only the duty of the Partner States concerned to implement Council's directives to resolve the immigrants' problem.

50. Asserting that all the above did not exhibit vigilance required for such a serious matter, Counsel submitted that it was the Respondent's duty to ensure that a meeting to resolve the issue as per Council's directives took place. Further, he contended that Article 71(1) of the Treaty was clear, as it was incumbent upon the Respondent to implement Council's directives. In the same vein, learned Counsel argued that it was not tenable for the Respondent to shun his responsibility by pointing out that the two Partner States had not carried out theirs. It was his view that if the States were *in pari delicto,* they had to answer individually for infringing

the Treaty, and that, therefore, the fact that the Applicant could have sued the Partner States as suggested by the Respondent was irrelevant.

51. It was Counsel's final submission that the substance of the Reference was that there had been no effective intervention and remedial measures taken by the Respondent. He further argued that the Respondent was aware that recalcitrant States could be brought to order in terms of Article 29 of the Treaty which he could have utilized with respect to one or both of the Partner States.

Respondent's Submissions

52. Counsel for the Respondent refuted the Applicant's allegation that he had failed to execute his obligations under the Treaty. Citing the provisions of Article 71(1)(d) & (l) of the Treaty, he contended that he had already ably discharged his obligations under the Treaty because he had made credible initiatives to cause the implementation of directive EAC/CM28/Decision 04 requiring the United Republic of Tanzania and the Republic of Rwanda to meet and resolve issues relating to the expulsion of Rwandans from Kagera Region. He added that the above initiative did not bear fruits owing to reasons beyond his control as evidenced by requests for postponement of the Meeting and that since then, none of the two Partner States concerned had notified him of the new dates convenient for them to meet and execute the said Council's directive.

53. With regard to Article 71(1)(l) of the Treaty, learned Counsel asserted that the matter had been considered by the 27th Meeting of Council of Ministers in 2013 and that the latter had directed the United Republic of Tanzania and the Republic of Rwanda to urgently meet and resolve the issue of mass expulsion of Rwandans

by the United Republic of Tanzania. He, however, pointed out that the said directive has not been implemented for a long time and as such, while considering that outstanding decision, at its 30th Meeting in November 2014, the Council had directed the Secretariat to always coordinate the implementation of the Summit Decisions/Directives to the Council and Council's Decisions/Directives to Partner States as a whole. In line with the foregoing, he averred that the Secretariat had attempted to cause the implementation of that outstanding directive by convening another meeting which would have taken place on 27th-28th February 2015, but with no success.

54. For ease of reference, Article 71(1)(d) and (l) provides as follows:

> 1. ***The Secretariat shall be responsible for***:
>
> ***(d) the undertaking either on its own initiative or otherwise, of such investigations, collection of information, or verification of matters relating to any matter affecting the Community that appears to it to merit examination;***
>
> ***(...)***
>
> ***(l) the implementation of the decisions of the Summit and the Council."***

Determination of Issue No.2

55. We have considered the pleadings of both parties, as well as their respective arguments in submissions. As the case stands, the bone of contention is whether or not, given the issue of the expulsion of immigrants from the Kagera Region of the United Republic of Tanzania and the Council's directives aimed at resolving the matter,

the Respondent failed to comply with his obligations under Article 71(1) (d) & (l) of the Treaty.

56. In this regard, the heart of the Applicant's arguments was that, beyond the steps taken, the Respondent did nothing; there has been no appraisal of any concrete action taken with regard to this issue, and this was, in the Applicant's view, a breach of the Treaty in several aspects considering that the issue was a very fundamental matter within the Community. The Applicant thus opined that the Respondent ought to have done more for an effective resolution of the matter and this in fulfilment of his duties embodied in Articles 29 and 71(1)(d) & (l) of the Treaty. The latter Article is reproduced herein above. As for Article 29, it states that:

"***1. Where the Secretary General considers that a Partner State failed to fulfil an obligation under this Treaty or has infringed a provision of this Treaty, the Secretary General shall submit his or her findings to the Partner State concerned for that Partner State to submit its observations on the findings.***

2. If the Partner State concerned does not submit its observations to the Secretary General within four months, or if the observations submitted are unsatisfactory, the Secretary General shall refer the matter to the Council which shall decide whether the matter should be referred by the Secretary General to the Court immediately or be resolved by the Council.

3. Where a matter has been referred to the Council under the provisions of paragraph 2 of this Article and the Council fails to resolve the matter, the Council shall direct the Secretary General to refer the matter to the Court."

57. It is on record that the Respondent did initiate two meetings intended for the two Partner States concerned, as clearly indicated in his pleadings and submissions, but all the said meetings aborted, the first due to the unavailability of one Partner State, the second for undisclosed reasons.

58. The Respondent has also averred that pursuant to the directives made by the 27th Meeting of Council of Ministers held on 31st August 2013 vide EAC/CM27/Directive 66, a fact-finding mission took place in the affected areas and made findings and recommendations which had to be considered by the Council. In another part of his submissions, however, Counsel for the Respondent maintained that the said findings and recommendations had not been considered due to the fact that the meeting between the two Partner States concerned did not take place.

59. But, are the arguments of the Respondent tenable in light of his Treaty obligations enshrined in Article 71(1)?

60. As canvassed during the Court hearing on 3rd November 2015, one of the functions of the Secretariat, as provided for by Article 71(1)(d), is **"the undertaking of such investigations, collection of information, or verification of matters relating to any matter affecting the Community that appears to it to merit examination."** It is undeniable, for us, that a matter such as the alleged illegal expulsion of citizens of a Partner State by another Partner State of the Community is one that calls for examination in order to assess the truth about it and take appropriate remedial measures.

61. It is our considered view that, faced with alleged violations of some of the objectives and fundamental principles encapsulated in the

Treaty as it could be the case with the alleged illegal expulsion of immigrants at issue, the Respondent ought to have been vigilant (See **Katabazi case**, supra) and taken effective and proactive measures in order to ensure a thorough investigation into the matter and come up with a comprehensive report with relevant recommendations on how to resolve the matter.

62. It was also possible for the Respondent, informed by the findings of the investigative mission as regards instances of failure by a Partner State to fulfil its Treaty obligations or infringement of a provision of the Treaty, to take appropriate remedial actions in line with the Respondent's responsibility under Article 29 of the Treaty.

63. We can only assume that it was in that regard that the Respondent has established the aforementioned fact-finding mission to investigate the matter and come up with recommendations on how to resolve the problem of the said immigrants.

64. The normal course of action would have been then to submit the findings and recommendations from the mission's report to the Council for consideration. This would have been in fulfilment of the Secretariat's other function of initiating, receiving and submitting recommendations to the Council [(Article 71(1) (a)].

65. We are of the firm view that, although some actions have been undertaken in line with the Respondent's responsibilities under Article 71(1) of the Treaty, no effective action was initiated by the Respondent to effectively resolve the issue of the expulsion of immigrants from the Kagera Region of the United Republic of Tanzania. The Respondent cannot shun his responsibilities by stating that he took ineffective measures such as initiating meetings which never took place or establishing a fact finding

mission whose report was never submitted to the relevant organ of the Community for consideration.

66. Given the imperative need to shed light on the foresaid alleged illegal expulsion of immigrants which, if its illegality was confirmed, would constitute a flagrant violation of the objectives and fundamental principles of the Community and gravely undermine the spirit of regional integration high on the Community agenda, the Respondent should have, as a matter of utmost urgency, submitted the findings and recommendations of the aforesaid fact finding mission to the Council of Ministers for consideration. In those circumstances, indeed, the Respondent ought to have exercised due diligence in carrying out his Treaty obligations. Due diligence is defined as **"the diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation."** (See Black's Law Dictionary, 9th Edition, 2004, p. 523). The Respondent has failed to pass this test for the above reasons.

67. We hold, therefore, that by failing to do so, he breached his statutory obligations under Article 71(1) (d) & (l) of the Treaty. We shall make an order in this regard later in the judgment.

Issue No. 3: Whether the Applicant is entitled to the remedies sought

68. We have addressed all the issues as framed during the Scheduling Conference and we now proceed to determine the prayers sought in the Reference in light of our findings.

69. The Applicants urged the Court to grant the prayers and orders as reproduced elsewhere above in this judgment.

70. Conversely, the Respondent submitted that, since there was no violation of the Treaty on his side and that the Reference was time-barred, the Applicant was not entitled to any of the prayers sought and pleaded that the Reference be dismissed with costs to the Respondent.

71. Given our findings on Issue No.2, Prayer (i) is granted in the following terms: By failing to submit to the Council of Ministers the report of the fact-finding mission that had been established and had visited areas of the Kagera Region of the United Republic of Tanzania, affected by the alleged illegal expulsion of immigrants, the Respondent breached his statutory obligations under Article 71(1) (d) & (l) of the Treaty.

72. When the matter came for hearing, on 5th November 2015, the Applicant abandoned Prayer (ii) which was seeking an order compelling the Respondent to convene and facilitate the execution of the Council's *Resolution EAC/CM28/Decision 04* because it was overtaken by events. It should be recalled that the said resolution directed the United Republic of Tanzania and the Republic of Rwanda to urgently meet to resolve the issues regarding the Republic of Rwanda's concerns on the Kagera Region expulsion of Rwandans by 30th January, 2014.

73. As for Prayer (iii), given the matter in issue, a practical order would be as follows: An order is hereby issued directing the Respondent to submit to the next meeting of the Council of Ministers for consideration, the findings and recommendations of the fact-finding mission that had been established and had visited areas of the Kagera Region of the United Republic of Tanzania, affected by the alleged illegal expulsion of immigrants.

74. As for costs, considering that the matter in issue falls in the category of public interest litigation, we deem it just that each party bears its own costs.

H. CONCLUSION

75. In light of our findings above, judgment is hereby entered in favour of the Applicant in terms of the following declaration and orders:

(a) A declaration be and is hereby issued that, by failing to submit to the Council of Ministers the report of the fact-finding mission that had been established and had visited areas of the Kagera Region of the United Republic of Tanzania, affected by the alleged irregular expulsion of immigrants, the Respondent breached his statutory obligations under Article 71(1) (d) & (l) of the Treaty.

(b) An order be and is hereby issued directing the Respondent to submit to the next meeting of the Council of Ministers for consideration, the findings and recommendations of the fact-finding mission that had been established and had visited areas of the Kagera Region of the United Republic of Tanzania, affected by the alleged irregular expulsion of immigrants.

(c) Each party shall bear its own costs.

It is so ordered.

Dated, delivered and signed at Arusha this 22nd day of March 2016.

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MONICA K. MUGENYI
PRINCIPAL JUDGE

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ISAAC LENAOLA
DEPUTY PRINCIPAL JUDGE

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FAUSTIN NTEZILYAYO
JUDGE

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FAKIHI A. JUNDU
JUDGE

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AUDACE NGIYE
JUDGE