IN THE EAST AFRICAN COURT OF JUSTICE

AT ARUSHA

FIRST INSTANCE DIVISION

(**Coram**: *Yohane B. Masara, PJ;* Richard Wabwire Wejuli, DPJ; *Richard Muhumuza;* Gacuko Leonard & Anne Amadi; *JJ)*

APPLICATION NO. 10 OF 2025

(Arising from **Reference No. 3 of 2025)**

ISAAC JUGAR ..... APPLICANT

VERSUS

THE ATTORNEY GENERAL OF

THE REPUBLIC OF SOUTH SUDAN ..... RESPONDENT

27TH NOVEMBER 2026

RULING OF THE COURT

A. INTRODUCTION AND BACKGROUND

1. The Applicant filed this Application dated 14th July 2025 on 21st July 2025 under a Certificate of Urgency, seeking orders that leave be granted to amend the Statement of Reference in **Reference No. 3 of 2025** filed herein on 10th January 2025, and that the amended Statement of Reference be filed within such time as the Court may prescribe. The Application is made pursuant to Rules 4, 48, 51(2)(c), 52(1), (2), (4), (5) and 132 of the East African Court of Justice Rules, 2019 ("the Rules"). The Application is supported by the Affidavit of Isaac Jugar sworn in Juba, South Sudan on 21st July 2025.

2. In the Reference, the Applicant challenges the alleged unlawful occupation and appropriation of his land, and the setting up and operation thereon of a media/radio station (Taarab Media), by or with the involvement of the Respondent State. He contends that these acts violate the fundamental and operational principles of the Treaty, in particular Articles 6(d), 7(2) and 8(1)(a) and (c) thereof.

3. The Application is premised on the grounds that the Applicant has new material facts which give rise to a substantively congruent cause of action essential for the just, comprehensive and definitive adjudication of the Reference.

4. The new facts alleged by the Applicant are that the Respondent, in furtherance of the actions complained of by the Applicant in **Reference No. 3 of 2025**, publicly organized and hosted its Independence Day

celebrations on 9th July 2025 on land registered as **Plot No. 69, Block A III, Lologo, Rajaf Payam** in Juba, South Sudan ("the disputed land").

5. The Applicant claims that the holding of the Independence Day celebrations on the disputed land without the Applicant's consent or authority, and the presence of senior state officials at the celebrations, constitute a visible assertion of dominion and control over the Applicant's private property, and further underscores the State's direct involvement and endorsement of the occupancy and unlawful appropriation.

B. PARTIES

6. The Applicant, Isaac Jugar, is a male adult citizen of South Sudan, residing in Juba, in the Republic of South Sudan.

7. The Respondent is the Attorney General of the Republic of South Sudan who is the chief legal advisor of the Government of South Sudan and is being sued on behalf of the Government of South Sudan.

C. REPRESENTATION

8. When the Application came up for hearing on 5th November 2026, the Applicant was represented by learned Advocate John Gerry Emmanuel, while the Respondent was represented by Mr Angelo Sabit Gaetano, Director Civil Litigation, Ministry of Justice and Constitutional Affairs, Republic of South Sudan.

D. ISSUE FOR DETERMINATION

9. The sole issue for determination is whether the orders sought herein should be granted.

E. PARTIES' SUBMISSIONS

10. The Applicant asserts that subsequent to the filing of the Reply to the Respondent's Response, he discovered new facts material to the core dispute, facts that were previously unknown to him and could not have been ascertained with reasonable diligence at the time of filing the Reference.

11. According to the Applicant, these new facts unequivocally demonstrate a deeper and more direct involvement of the Respondent's government in the operations and control of the radio station subject matter of the Reference.

12. The Applicant states that the newly discovered facts are intrinsically linked to the core allegations already pleaded and provide direct and compelling evidence of the Respondent State's impugned actions.

13. It is the Applicant's argument that the balance of fairness and the imperative of a complete factual record overwhelmingly support granting the requested leave to amend, and that precluding these critical facts would result in an adjudication based on an incomplete record which would be prejudicial to the Applicant as it would hinder the Court's ability to render a just and comprehensive decision on the merits.

14. The Applicant avers that granting leave to amend the Statement of Reference in the manner set out in the proposed amendment is therefore in the interest of justice.

15. The Applicant further states that inclusion of these facts is important for the Court to fully and fairly assess the true nature and extent of the violations of the rights of the Applicant, and the failure of the Respondent to adhere to the fundamental principles of rule of law, good governance and human rights, enshrined in Articles 6(d), 7(2), 8(1)(a) and (c) of the Treaty.

16. On the other hand, the Respondent opposes the Application and invited the Court to adopt in whole the contents of the Affidavit of **Winni Elisha Matayo,** Assistant Director for Legal Services at the National Communication Authority (NCA), sworn on 17th October 2026 and filed on 18th October 2026.

17. The Respondent denies that the Applicant possesses any new facts that are material, relevant or admissible to warrant amendments to the Statement of Reference in **Reference No. 3 of 2025** post close of pleadings under Rule 48 of the Rules.

18. The Respondent contends that the fact that national celebrations were held at the disputed property does not constitute an act of unlawful occupation, appropriation or assertion of dominion over private property, and that the attendance of senior officials at the event was merely for ceremonial purposes and that the Respondent has no role in mattes of land allocation.

19. The Respondent further contends that the pleadings in the Reference closed on 14th April 2025 and all the facts on the setting up of the media station on the subject land were well within the knowledge of the Applicant.

20. The Respondent further asserts that the inclusion of "irrelevant post-pleading events" is unnecessary and that the Applicant does not stand to suffer any prejudice. Rather, it is the Court that will be prejudiced by introducing municipal property claims that fall outside the strict non-extendable 2-months limitation period under Article 30(2) of the Treaty.

21. The Respondent also states that allowing the proposed amendments would result in unnecessary expense and delay, and that the Applicant is merely trying to expand the scope of the dispute by attempting to tactfully bring it under Rule 48 of the Rules.

22. The Respondent prays for orders that the Application be dismissed with costs.

F. COURT'S DETERMINATION

23. To arrive at our determination of the issue herein, we have considered the Affidavit in Support of the Application with Annexture "A" and Annex 1" (A poster welcoming the public to the Celebration and Taarab Media Anniversary).

24. We also considered the Respondent's Affidavit in Reply and the submissions made by the respective Counsel in Court.

25. Rule 4 of the Rules provides that:

> "**Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders or give such directions as may be necessary for the ends of justice or to prevent abuse of the process of the Court**"

26. Likewise, Rule 48(c) of the Rules allows that, for the purpose of determining the real questions in controversy between the parties or of correcting any defect or error in any pleading, a party may amend its pleading with leave of the Court.

27. In **Central Bank of Kenya vs Pontrilas Investments Limited & Another, EACJ Appeal No. 3 of 2020,** the Appellate Division directly addressed the principles governing amendment of pleadings. It considered amendments made to the Reference, including amendments made after the close of pleadings and observed that Rule 51 of the Rules gives the Court broad powers to allow amendments at any stage of proceedings, on terms that may be just.

28. The primary consideration is to avoid injustice and ensure that the real question in controversy between the parties is before the Court. Amendments should, as a general rule, be freely allowed where they can be made without injustice to the other party.

29. In **Attorney General of Uganda vs Johnson Akol Omunyokol EACJ Application No. 10 of 2015**, this Court considered the application of Rule 48 of the 2013 Rules (the predecessor of Rule 51 of the Rules) and recognised that a party may amend pleadings after the close of pleadings, with leave of the Court.

30. In **Omunyokol** (*supra*), the Court relied on **Eastern Bakery vs Castelino [1958] EA 461,** in which the former East African Court of Appeal laid down important principles governing applications for leave to amend pleadings stating that:

"Amendments to pleadings sought before the hearing should be freely allowed if they can be made without injustice to the other side, and that there is no injustice if the other side can be compensated by costs."

31. The Court further explained the principles, that:

i. **Amendments should generally be freely allowed and courts should adopt a liberal approach to applications for amendment before the hearing;**
ii. **An amendment should not be allowed where it causes injustice to the opposite party. However, where any prejudice can adequately be compensated by costs, that should not ordinarily prevent the amendment;**
iii. **The Court will not refuse an amendment merely because it introduces a new case;**
iv. **The power to amend should not be used to substitute one distinct cause of action for another or change the action into one of a substantially different character;** and
v. **Leave should be refused where the amendment would prejudice rights already accrued to the opposite party, for example, by depriving that party of an accrued defence of limitation.**

32. The overriding consideration should be whether the proposed amendments may enable the Court to determine the real questions in controversy between the parties.

a) Whether the Matters Sought to be Pleaded are New

33. The Respondent contends that all the facts on the setting up of the media station on the disputed land were within the Applicant's knowledge when pleadings closed on 14th April 2025. With respect, that contention misapprehends the Application. The amendment is not founded on the setting up of the media station, which is already pleaded. It is founded on an event that took place on 9th July 2025, almost three months after pleadings closed and six months after the Reference was filed on 10th January 2025.

34. It follows that the question whether the Applicant could, with reasonable diligence, have discovered the matter earlier does not arise. The event had not yet occurred and could not have been pleaded at any earlier stage. The only proper avenue for bringing it before the Court was an application for leave to amend, which is what the Applicant has done, promptly, twelve days after the event.

b) Whether the Amendment Introduces a Distinct Cause of Action

35. Principle (iv) above directs us to ask whether the amendment would substitute one distinct cause of action for another, or change the Reference into one of a substantially different character. The Respondent submits that the Applicant is seeking to expand the scope of the dispute.

36. The case pleaded in the Reference is that the Respondent State, through its organs, is involved in the unlawful occupation and appropriation of the disputed land, in breach of Articles 6(d), 7(2) and

8(1)(a) and (c) of the Treaty. The proposed amendment pleads that on 9th July 2025 the Respondent organised and hosted its Independence Day celebrations on the same land, in the presence of senior state officials, and that this was a further assertion of dominion and control over it. The amendment concerns the same land, the same parties and the same Treaty provisions. It is pleaded expressly as an act in furtherance of the actions already complained of.

37. In our view, the amendment does not substitute a new cause of action. It supplies further particulars of the cause of action already pleaded, and goes directly to the question at the centre of the Reference; namely, the nature and extent of the Respondent State's involvement in the alleged occupation. Even if it were regarded as introducing new matter, the Court will not refuse an amendment merely because it introduces a new case (principle (iii)), provided, as here, that the essential character of the Reference is unchanged.

38. The Respondent's contentions that the celebrations were merely ceremonial, and that it has no role in land allocation, go to the merits. They are matters for the Respondent's response and for the hearing of the Reference. As stated at paragraph 32 above, the question at this stage is not whether the Applicant will prove the additional allegations, nor are we persuaded that the amendment converts the Reference into a municipal property claim. The amendment does not invite the Court to determine title to the disputed land under the law of South Sudan; it pleads conduct of organs of a Partner State said to infringe the Treaty, which falls within the Court's jurisdiction under Articles 23, 27 and 30

of the Treaty. Whether that characterisation is ultimately sustained is a matter for the hearing.

c) Whether the Amendment is Barred by Article 30(2) of the Treaty

39. Article 30(2) of the Treaty provides that proceedings under 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 on which it came to the knowledge of the complainant. It is settled that this period is strict and that the Court has no power to extend it: **Attorney General of Uganda v Omar Awadh & 6 Others, EACJ Appeal No. 2 of 2012**. Principle (v) above accordingly requires us to consider whether the amendment would deprive the Respondent of an accrued defence of limitation.

40. The action complained of in the proposed amendment occurred on 9th July 2025. The Applicant filed the present Application, together with the proposed amendment, on 21st July 2025, twelve days later and well within the two-month period. By that date, the Respondent had been put on notice, through a filing before this Court, of the precise matter the Applicant sought to add to the Reference.

41. The question that remains is whether time should be reckoned to the date of filing of the Application, or to the date on which the amendment takes effect by order of the Court. In our considered view, where a party, within the period prescribed by Article 30(2), applies to the Court for leave to amend and places the proposed amendment before the Court, the matter has been brought before the Court within time for the purposes of that Article. Once the Application was filed, the time taken

to determine it was a matter outside the Applicant's control. To hold otherwise would make compliance with Article 30(2) depend on how quickly the Court is able to list and determine an application, which cannot have been the intention of the Treaty.

42. We emphasise that this finding is limited to the matter pleaded in the proposed amendment. It does not determine, and should not be read as determining, any question of limitation that may arise in respect of the matters pleaded in the original Statement of Reference.

d) Prejudice, Delay and Costs

43. The Respondent will have full opportunity to respond to the amended pleading. Any additional expense occasioned by the amendment can be met by an appropriate order as to costs, which, on the authority of **Eastern Bakery** (*supra*), means that no injustice arises. Since the amendment results from events that took place after the close of pleadings, and not from any default on the part of the Applicant, we see no reason to depart from the ordinary order that costs be in the cause.

G. CONCLUSION

44. For the reasons set out above, and taking into account the Rules and the aforementioned authorities, we find that the proposed amendments are necessary for the determination of the real questions in controversy, do not introduce a distinct cause of action, and are not barred by Article 30(2) of the Treaty.

45. Allowing the amendments will not occasion any injustice or prejudice to the Respondent that cannot be met by costs.

46. The Application therefore succeeds.

H. ORDERS

47. We accordingly make the following orders:

a) **The application for amendment of the Statement of Reference is allowed;**

b) **The proposed Amended Statement of Reference annexed to the Application as Annex A is deemed filed and served as of the date of this Ruling;**

c) **The Respondent shall file and serve their response within 21 days from the date hereof;**

d) **The Applicant may file and serve a reply, if any, within 14 days of service of the Respondent's response;** and

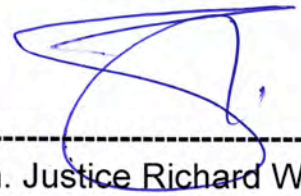
e) **Costs of the Application to abide the outcome of the Reference.**

48. It is so ordered.

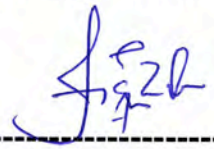
Dated, signed and delivered at Arusha this 27th Day of November 2026.



Hon. Justice Yohane B. Masara
PRINCIPAL JUDGE



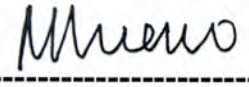
Hon. Justice Richard Wabwire Wejuli
DEPUTY PRINCIPAL JUDGE



Hon. Justice Richard Muhumuza
JUDGE



Hon. Justice Dr Leonard Gacuko
JUDGE



Hon. Lady Justice Anne Amadi
JUDGE