



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

*(Coram: Nestor Kayobera, P.; Anita Mugeni, VP; Kathurima M'Inoti,
Cheborion Barishaki & Omar O. Makungu, JJA.)*

APPEAL NO. 4 OF 2023

BETWEEN

**CENTRE FOR FOOD AND ADEQUATE
LIVING RIGHTS (CEFROHT) 1st APPELLANT
AFRICA INSTITUTE FOR ENERGY
GOVERNANCE (AFIEGO)2nd APPELLANT
NATURAL JUSTICE KENYA3rd APPELLANT
CENTER FOR STRATEGIC LITIGATION LIMITED4th APPELLANT**

AND

**ATTORNEY GENERAL OF
THE REPUBLIC OF UGANDA1st RESPONDENT
ATTORNEY GENERAL OF THE
UNITED REPUBLIC OF TANZANIA2nd RESPONDENT
SECRETARY GENERAL OF THE
EAST AFRICAN COMMUNITY3rd RESPONDENT**

[Appeal from the Judgment of the First Instance Division of the East African Court of Justice at Arusha by Hon. Justice Yohane B. Masara (PJ), Hon. Dr. Justice Charles O. Nyawelo (DPJ) and Hon. Justices Richard Muhumuza, Richard W. Wejuli, and Dr. Leonard Gacuko J.J.) dated 29th November 2023 in Reference No. 39 of 2020]

JUDGMENT OF THE COURT

INTRODUCTION

1. This is an Appeal from the decision of the First Instance Division of this Court (hereinafter referred to as the "Trial Court") arising out of Reference No. 39 of 2020 dated 29th November, 2023.
2. The Appellants filed the said Reference before the Trial Court challenging the Respondents' actions and omissions regarding execution of the Inter-Governmental Agreement (IGA) to transport Crude Oil from Hoima District in the Republic of Uganda to Tanga District in the United Republic of Tanzania, for being in contravention of various provisions of the Treaty for the Establishment of East African Community ("the Treaty") and the Protocol for Sustainable Development of the Lake Victoria Basin ("the Protocol").
3. In the Trial Court, the Appellants contended that the 1st Respondent embarked on the East African Crude Oil Pipeline ("EACOP") Project without a Certificate of Approval from the National Environmental Management Authority (NEMA) and an approval of the Environmental and Social Impact Assessment Report of the Project. They averred that the EACOP Project was therefore proceeding in breach of human rights obligations, and disregard of environmental considerations, such as preservation of forest reserves, water bodies, wetlands, international conservation sites, birds, animals and wildlife and that it will have a significant impact on

food security in the region.

4. In their Responses to the Reference, the Respondents argued, among others, that the Reference was time-barred and that the EACOP Project was being undertaken in accordance with the Treaty and the Protocols thereof.
5. The Trial Court dismissed the Reference on 29th November, 2023 for being time-barred and awarded costs against the Appellants, jointly and severally. The correct order should have been to strike out the Reference, but nothing turns on that in this Appeal.
6. Being dissatisfied with the Ruling and Orders of the Trial Court, the Appellants filed this Appeal based on five grounds, which we shall consider later in this Judgment. The Appellants pray this Court to allow the Appeal, set aside and quash the decision of the Trial Court, and order that the Reference be heard on merits.
7. The parties were represented by learned Counsel as follows. 1st and 2nd Appellants were represented by Mr. Justin Semuyaba and Mr. David Kabanda; the 3rd Appellant was represented by Mr. Onyango Odel and Mr. Mark Odagga while the 4th Appellant was represented by Mr. Jeremiah Mutobesya and Mr. Anthony Oduol.
8. The 1st Respondent was represented by Mr. Martin Mwambutsya, Director Civil Litigation; Mr. George Kalemera, Commissioner, Civil Litigation; Mr. Richard Adrole, Assistant Commissioner, Civil Litigation; Ms. Charity Nabaasa, Senior State Attorney and Mr. Mugisha Twinomugisha, State Attorney.

9. The 2nd Respondent was represented by Mr. Mark Mulwambo, Principal State Attorney; Ms. Irene Tesuli, Principal State Attorney; Mr. Hangi Chang'a, Principal State Attorney; Ms. Vivian Method, Senior State Attorney and Mr. Stanley Kalokola, State Attorney, while the 3rd Respondent was represented by Dr. Anthony Kafumbe, Counsel to the Community.

BACKGROUND

10. The Appellants contended that in May 2017, the 1st and 2nd Respondents signed an Inter-Government Agreement (IGA) on the implementation of the EACOP Project prior to the signing of the Host Government Agreement (HGA) by the 1st Respondent in 2021, with Total Exploration and Production Limited (Total E&P) to construct the EACOP to transport crude oil from Hoima District, Republic of Uganda to Tanga District, in the United Republic of Tanzania.

11. On 6th November, 2020 the Appellants filed Reference No. 39 of 2020 in the Trial Court contesting the actions and/or omissions of the Respondents relating to the signing of the IGA for the EACOP. They contended that the Project breached various provisions of the EAC Treaty and the Protocol.

12. At the Trial Court, the Appellants sought the following remedies: -

- i. A declaration that the actions of the 1st and 2nd Respondents in signing the EACOP Project HGA and the IGA violated and was contrary to the Treaty;

- ii. A declaration that the actions of the 1st and 2nd Respondents in signing the EACOP Project, HGA and the IGA without a Certificate of approval for the Project of the 1st Respondent violated and was contrary to various provisions of the Treaty and the Protocol on Environment and Natural Resources Management;
- iii. A declaration that signing of the Agreements by the 1st and 2nd Respondents without the submission of the Environmental Impact Assessment Report to the 3rd Respondent and approval of the Council of Ministers contravened various provisions of the Protocol for Sustainable Development of Lake Victoria Basin;
- iv. A declaration that the execution of the EACOP through legally protected spaces contravened the Treaty;
- v. An order that the 1st and 2nd Respondents, must in constructing the pipeline, adhere to the obligations of the EAC and National laws on conservation of the environment.
- vi. An order against the 1st and 2nd Respondents to ensure that prior to any similar project a number of activities are conducted;
- vii. A declaration that the 3rd Respondent failed to discharge its obligations of undertaking, collection of information or verification of matters affecting the Community that appear to merit examination contrary to Article 71(1)(d) of the Treaty;
- viii. An order that the 3rd Respondent directs the Lake Victoria Basin Commission to execute its duties in relation to the



EACOP;

- ix. A permanent injunction against the Respondents to restrain them from constructing the pipeline through protected spaces in the 1st and 2nd Respondents' jurisdiction;
- x. An order against the Respondents to ensure that before resuming the project implementation, the mandated authorities conduct regular environmental, human rights and social impact assessments, with meaningful public participation;
- xi. An order that the Respondents compensate all project-affected persons because of losses already incurred due to restrictions issued on use of their property by the developer and violation of their rights to livelihoods; and
- xii. An order to the Respondents to pay costs.

FINDINGS BY THE TRIAL COURT

13. The following preliminary points of law were agreed upon by the parties for determination by the Trial Court:

- (1) *Whether the Reference raises a matter for the interpretation of the Treaty in line with Articles 23(1) and 27 of the Treaty for the Establishment of the East African Community;*
- (2) *Whether the Reference has been brought within time as required under Article 30(2) of the Treaty for the Establishment of the East African Community; and*
- (3) *Whether the pleadings are properly verified in accordance to (sic) Rule 46 of the East African Court of Justice Rules, 2019.*



14. According to the Trial Court, the issue of jurisdiction of the Court over the Reference having been raised as one of the preliminary issues for determination it had to be addressed and determined first before delving into the merits of the Reference.
15. In relation to the issue as to whether the Reference had been brought in time as required under Article 30 (2) of the Treaty, the Trial Court held that the Reference was time-barred and could not be adjudicated for having been filed outside the time period prescribed by the Treaty. Therefore, the Court lacked jurisdiction *ratione temporis* to entertain the Reference.
16. Relying on the provision in Rule 127(1) of this Court's Rules which provides that costs shall follow the event unless the Court, for good reason, decides otherwise, the Trial Court found no reasons to deviate from the general rule and awarded costs against the Appellants, jointly and severally. The decision of the Trial Court resulted in the present Appeal.

THE APPEAL

17. The Appellants raised a number of grounds of appeal in their Memorandum of Appeal, namely: -
 - i. That the Trial Court erred in law when it misinterpreted and/or misapplied the principles established in the case of **Mukisa Biscuits Manufacturing Co. Ltd v. West End Distributors Ltd** (1969) EA regarding the nature of preliminary objections and when a matter becomes a point of law;
 - ii. That the Trial Court erred in law when it held that the



Appellants' Reference was time-barred and could not be adjudicated for having been filed out of the time prescribed by the Treaty;

- iii. That the Trial Court committed a procedural irregularity when it misapplied Article 30(2) of the Treaty;
 - iv. That the Trial Court erred in law when it held that it lacked jurisdiction *ratione temporis* to entertain the Reference; and
 - v. That the Trial Court erred in law when it awarded costs against the Appellants.
18. Accordingly, the Appellants prayed that this Court allows the Appeal, sets aside and quashes the decision of the Trial Court, with an order that the Reference be heard on merits.

ISSUES FOR DETERMINATION

19. The following issues were agreed upon by the parties and approved for determination by this Court during the Scheduling Conference, which was held on 19th February, 2024:
- (1) Whether the Trial Court erred in law in finding that the Respondents had raised a proper Preliminary Objection;
 - (2) Whether the Trial Court erred in law in holding that the Reference was filed out of time and therefore the Court had no jurisdiction;
 - (3) Whether the parties are entitled to the Remedies sought.

ISSUE NO.1: WHETHER THE TRIAL COURT ERRED IN LAW IN FINDING THAT THE RESPONDENTS HAD RAISED A PROPER PRELIMINARY OBJECTION

APPELLANTS' SUBMISSIONS

20. In relation to Issue No.1, Counsel for the Appellants submitted that the Trial Court erred in law in finding that the Respondents had raised a proper Preliminary Objection. They argued that the arguments in support of the preliminary objection raised by the Respondents and the Trial Court's ruling indicate an unlawful stretch of the principles in the case of **Mukisa Biscuits** (supra) regarding the nature of a preliminary objection and an overreach beyond pleadings to make inferences from affidavit evidence and the attachments thereon to determine the preliminary points of law.
21. Counsel argued that on the invitation of the 1st and 2nd Respondents, the Trial Court delved into matters of evidence, reconciled clashing facts, analysed clashing dates, considered affidavit evidence and the attachments thereon which is a departure from the well-established principles governing determination of a preliminary objection.
22. Counsel further submitted that a preliminary objection raises a pure point of law which is argued on the assumption that all facts pleaded by the other side are correct, and that it cannot be raised if any fact has to be ascertained. Citing the cases of **James Katabazi & 21 Others v. the Attorney General of the Republic of Uganda & 2 Others**, Reference No.1 of 2007 and **Mukisa Biscuit** (supra), Counsel argued that factual or evidentiary evidence are matters of substantive adjudication on merit in the litigation, which requires adducing of evidence, sifting of facts, weighing of testimony; calling and cross-



examination of witnesses, and the making of findings of fact by the Court.

23. Counsel argued that when considering a preliminary objection, the Court will not accept as true conclusions of law, unwarranted inferences from the facts, argumentative allegations, or expressions of opinion. Further, that the Court will also not decide as part of a preliminary objection on facts that require analysis beyond the pleadings, and will not reach a determination based upon its view of the controverted facts, but will wait to resolve the dispute by receiving evidence thereon.
24. It was further argued that the Trial Court erred in law when it misapplied the principles in **Mukisa Biscuits** case (supra), which states that a preliminary objection raises a pure point of law, which is argued on the assumption that all facts pleaded by the other side are correct and cannot be raised if facts have to be ascertained.
25. It was Counsel's submission that the Trial Court erroneously considered evidence from the EACOP Brief awash with facts in controversy, which was about the IGA signing date, rather than confining itself to the pleadings in deciding the preliminary objection. Counsel relied on **Attorney General of the United Republic of Tanzania v. Africa Network for Animal Welfare (ANAW)**, Appeal No. 3 of 2014, where it was held that preliminary points of law exclude matters that entail the clash of facts, production of evidence and assessment of testimony. Counsel added that a preliminary objection is



determinable purely on the basis of law and not evidence or a mixture of law and evidence.

26. It was further contended that in the EACOP Brief, the 1st and 2nd Respondents were required to execute the HGA in order to implement the IGA for the EACOP Project signed between themselves on the 25th May 2017. Counsel submitted that Annexure C of the affidavit of Nkasiima Janet are not pleadings but constitutes evidence on facts in controversy including the IGA date which was the sole subject of the preliminary objection on limitation of time.
27. Counsel contended that to hold that a preliminary objection must be proved by evidence would clearly run afoul of the law on preliminary points of law. Further that this Court has firmly pronounced itself on the position that a preliminary objection that necessitates proof by evidence is not a pure point of law as envisaged in law, and therefore, when so prematurely raised, they are tantamount to an abuse of court process.
28. It was Counsel's argument that the Trial Court ran afoul on points of law when it proceeded to consider evidence, including the affidavit evidence of Nkasiima Janet, and that in so doing condoned the Respondents' abuse of court process, resulting in dismissal of the Reference. They further submitted that the Respondents' time-bar preliminary objection about the date of the signing of the IGA was not grounded on pure points of law, but were prematurely raised.
29. Counsel submitted that to understand the nature of their Reference, the Trial Court had to examine all twelve (12)

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reliefs sought in the Reference and that the preliminary objection centered on limitation of time was relevant to only one of the twelve reliefs sought and could not have been the basis for dismissing the entire Reference, including the twelve (12) reliefs to which the time limitation argument was irrelevant, even if the Trial Court was inclined to allow the preliminary objection.

30. Counsel argued that the Reference was largely immune to the time-bar preliminary objection because the objection did not touch the Reference subjects regarding compensation for the EACOP Project-affected persons (PAPS); the Environmental and Social Impact Assessment, the 3rd Respondent's role, the parties' human rights obligations; the Protocol on Sustainable Developments of Lake Victoria Basin, and consequential orders, among other claims and reliefs.

31. Finally, Counsel for the Appellants invited the Court to answer Issue No. 1 in the affirmative.

1ST RESPONDENT'S SUBMISSIONS

32. Counsel for the 1st Respondent made a brief summary of background to the Reference in the Trial Court which we do not find necessary to reproduce here. As far as is relevant, Counsel submitted that the Trial Court did not err in law in finding that the Respondents had raised a proper Preliminary Objection and that the Court did not delve into disputed matters of evidence in arriving at its findings on this issue.

33. Counsel cited the principles on preliminary objections as set out in the **Mukisa Biscuit case** (supra) where the former



Court of Appeal for Eastern Africa defined a preliminary objection. They argued that it was within the jurisdiction of the Trial Court to determine a preliminary objection on pure points of law where the facts that are pleaded were not contested or disputed and were sufficient to determine the legality of the claim and that, in this appeal, it was evident that the Trial Court restricted itself to the parameters of the **Mukisa Biscuit case** (supra), which, in the 1st Respondent's view, is still good law.

34. Counsel for the 1st Respondent submitted, based on the definition of a pleading in Rules 2 and 37 of the EACJ Rules of Procedure 2019, ("the Rules") that the document in issue that led to the finding of the Court that the Respondents had raised a proper Preliminary Objection in line with the principles set out in **Mukisa Biscuits case** (supra) was the Appellants' Reply to the 1st and 3rd Respondents Response to the Statement of Reference and annexures attached thereto, which the 1st Respondent submitted to be pleadings.
35. Counsel further submitted that the Court rightly relied on the same in making its determination that the Respondents had raised a proper Preliminary Objection. Counsel contended that the Trial Court considered the pleadings and respective attachments thereto alone, to determine whether the preliminary point of law raised by the Respondents could be sustained or otherwise, and that the Court made specific reference to the Brief from EACOP dated 2nd December 2020, which was part of the Appellant's pleadings and clearly indicated that the 1st and 2nd Respondents were required to



execute the HGA in order to implement the IGA for the EACOP Project signed between themselves on 25th May 2017.

36. Counsel submitted that the authorities cited by the Appellants on what amounts to a Preliminary Objection are in consonance with the instant case as the facts used to dispose of the preliminary objection were based on the Appellants' specific pleadings which the Respondents did not dispute. It was further argued that the Trial Court's only role was to determine the issue of pure point of law and whether it was seized of jurisdiction to entertain the Reference; and that having interrogated the pure point of law based on the pleadings, the Trial Court came to a logical conclusion that the Reference was filed out of time.

37. Concluding on this issue, Counsel for the 1st Respondent invited this Court to find that the Trial Court did not err in law in finding that the Respondents had raised a proper Preliminary Objection and to answer Issue No.1 in negative.

2ND RESPONDENT'S SUBMISSIONS

38. Counsel for the 2nd Respondent submitted that the Trial Court properly ruled that the question of time limit is a pure point of law based on the fact that the question as to the time limit within which to lodge a Reference in the EACJ is expressly stated under Article 30(2) of the Treaty, which is a controlling provision with regard to the computation of the time limit within which the Reference should be instituted before the Court. Counsel further submitted that for a preliminary objection to



stand, it must be a point of law that is capable of disposing of the Reference; prosecuted on the assumption that the facts pleaded are true; and founded on the pleadings.

39. The 2nd Respondent contended that the time limit within which a Reference must be filed is stipulated in the Treaty and that the preliminary objection in this case met all the requirements set out in **Mukisa Biscuits (supra)**. In that case, it was held that a preliminary objection consists of a point of law, pleaded or arising by necessary implication which may dispose of a suit or a reference, examples being, among others, objection to jurisdiction and limitation of time. Counsel submitted that the above view was approved by this Court in the case of the **Secretary General of the EAC v. Rt. Hon. Margaret Zziwa**, Appeal No.7 of 2015 specifically para. 21.
40. Counsel contended that a plea of time limitation is accepted as a pure point of law as guided by the jurisprudence of this Court, including the judgment in **Attorney General of the Republic of Kenya v. Independent Medical Legal Unit**, Appeal No. 1 of 2011, p 6 and **Alcon International Ltd v. Standard Chartered Bank of Uganda & 2 Others**, Appeal No. 2 of 2011, at p.12 which underlined the principles that were employed by the Trial Court in upholding that a preliminary objection on time limitation is a pure point of law if it arises from the pleadings.
41. The 2nd Respondent further submitted that the brief on the EACOP project was an integral part of the Appellants' pleadings and indicated when the IGA between the 1st and 2nd



Respondents was signed. Counsel argued that the Statement of Reference and the Reply to the Response by the Appellants were duly supported by affidavits as required under Rule 25(3) of the Court's Rules and that whatever is pleaded in the Statement of the Reference and its supporting affidavits, form part and parcel of the pleadings.

42. It was Counsel submission that since the EACOP Brief Project was lodged before the Court and it related to the subject matter and was pleaded by the Appellants when responding to the denials by the 1st and 2nd Respondents, then it was correct for the Trial Court to rely on the same when disposing of the preliminary objection. Counsel relied on the decision of this Court in **Union Trade Centre Limited (UTC) v. the Attorney General of Rwanda**, Appeal No. 1 of 2015, at p.15 to the effect that what was pleaded in the Statement of Reference or Response to the Statement of Reference constitute pleadings. Counsel contended that even if the Trial Court would have not acted on the EACOP Brief, the Response by the 2nd Respondent referred to and attached the extract of IGA dated 25th May 2017 and formed part of the pleadings.
43. Finally, Counsel for the 2nd Respondent submitted that their objection to the time-limit was a pure point of law and thus consistent with the requirement of rule 39(1) of this Court's Rules. They prayed this Court to dismiss this ground of appeal with costs for being devoid of merit.



3rd RESPONDENT'S SUBMISSIONS

44. On behalf of the 3rd Respondent, Counsel to the Community (CTC) submitted, on the first issue, that the Trial Court did not err in law in finding that the Respondents had raised a proper preliminary objection. He contended that the two preliminary objections raised involved a point of jurisdiction, firstly whether the Reference raised an issue of interpretation of the Treaty and whether the Reference was filed out of time contrary to Article 30(2) of the Treaty. It was Counsel to the Community submission that both objections raised pure points of law and that the Trial Court cannot be faulted for having entertained and determined them.
45. Counsel argued that there were no facts in dispute for the Trial Court to establish and, accordingly, the Trial Court did not depart from the principles on preliminary objections as set out in the **Mukisa Biscuits** (supra), namely, that a preliminary objection should be raised on a pure point of law; that it cannot be raised if any fact has to be ascertained; that a preliminary objection is argued on the assumption that all the facts pleaded by the other side are correct; and that if argued as a preliminary point of law, it may dispose of the suit or Reference.
46. Counsel further submitted that the Trial Court did not delve into matters of evidence as alleged by the Appellants but considered the Preliminary Objection based entirely on points of law and the pleadings before it, because the facts in issue were not contested and were indeed well known and variously



so stated in the pleadings of both parties to the effect that the IGA was signed on 25th May 2017 which issue was no longer in dispute between parties. According to Counsel to the Community, the Trial Court was only called upon to determine whether the Reference complied with Article 30(2) regarding limitation and jurisdiction as set out in the Treaty and Rules of the Court.

47. In the circumstances, Counsel to the Community invited the Court to find that the Trial Court did not commit any error and as such uphold all its findings in respect of Issue No. 1.

APPELLANTS' REJOINDER TO THE RESPONDENTS' SUBMISSIONS

48. In their rejoinder, Counsel for the Appellants emphasized that the Respondents' submissions and arguments were untrue and diversionary because the EACOP Project Brief and the Affidavit of Nkasiima Janet were matters of evidence and that the Respondents' arguments amounted to stretching the well-known principles in **Mukisa Biscuits** case (supra). Citing rule 63(1) (c) of this Court's rules, Counsel for the Appellants submitted that Affidavits are used as evidence of the deponents. Counsel further argued that their reply to the Respondents' Response was not pleadings.

49. Counsel contended in rejoinder that the only pleadings described by the Rules of this Court is a Statement of Reference as provided for under rule 25(2), contrary to the averments by the Respondents that the EACOP Project Brief is a pleading or part of pleadings. Counsel further submitted



that the Trial Court was prohibited by the law on Preliminary Objections from considering the date of an IGA buried deep in the annexures to the Reply to the 1st and 2nd Respondents' Response.

50. Counsel invited the Court to consider the decision of the High Court of Uganda in **Friendship Taxi (U) Limited v. Adrana Matovu**, High Court Miscellaneous Civil Revision No. 0003 of 2019, at p. 20, where Stephen Mubiru, J. stated that: -

"A Court is said to exercise jurisdiction with material irregularity when such a court is seized with jurisdiction but does so wrongly through some procedural or evidential defect."

51. They further submitted that the purported Preliminary Points of law raised by the Respondents could only be dealt with in the full trial after the Court had exhaustively interrogated the facts pleaded by each party and the evidence in support. In their view, the Respondents' preliminary point was at best a mixture of points of law, and of facts. Citing the case of **Attorney General of the United Republic of Tanzania v. African Animal Network for Animal Welfare (ANAW)**, Appeal No. 3 of 2011, and the case of **Alcon International Ltd** (supra), Counsel for the Appellants submitted that the points of law raised by the Respondents in the Trial Court were tainted and stained by unascertained facts and clash of facts which could only be determined by evaluation of evidence at a full trial.

52. Counsel further argued that the EACOP brief relied on by the



Trial Court was only published on the 2nd of December 2020, and therefore, the alleged date of the signing of the 2017 IGA only became public on that date, and that any allegation by the Respondents that the Appellants could have known the contents of the EACOP Project Brief before it was published on the 2nd December 2020 defeats all logic.

53. Finally, the Appellants submitted that the IGA and HGA were implemented by the EACOP (Special Provisions) Act, 2021 which received Presidential assent on 20th December 2021 and was gazetted on 24th December 2021, which was after the Statement of Reference had been filed on 6th November 2020.

COURT'S ANALYSIS AND DETERMINATION

54. In relation to issue No.1, whether the Trial Court erred in law in holding that the Respondents had raised a proper preliminary objection, we have considered the rival submissions of the parties, the authorities cited and the law. It was the Appellants' case that the preliminary objection on limitation of time regarding the date of the signing of the IGA was not grounded on pure points of law.

55. Limitation of time and the period within which a reference is to be lodged at the EACJ is clearly spelt out under Article 30(2) of the Treaty and as regards this Appeal, the date of the signing of the IGA was very paramount in determining whether in filing the Reference, the Appellants had complied with the Treaty.

56. The case of **Mukisa Biscuits** (supra) to which all the parties

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in this Appeal and in the Trial Court referred, and whose reasoning was also approved by this Court in **Margaret Zziwa** (supra), para 21 of the Judgment, established what constitutes a preliminary objection. Law, JA held as follows:

“So far as I am aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point of law may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

On his part, Sir Charles Newbold, P., added at p.701 of the Judgment, that: -

“A preliminary objection is the nature of what used to be a demurrer. It raises a pure point of law which is argued on assumptions that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”

57. In **Margarat Zziwa case** (supra), a preliminary objection was defined in similar terms, as: -

“...a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point of law may dispose of the suit. Examples are an objection to jurisdiction of the Court or pleas of limitation.”

58. In the Trial Court, the Respondents raised the preliminary



objection based on the date of the signing date of the IGA arguing that the Court lacked jurisdiction *ratione temporis*, meaning that the Reference was filed out of the two months provided under Article 30(2) of the Treaty. For avoidance of doubt, that Article provides as follows:

“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.”

59. According to the Respondents, the action complained of by the Appellants was the signing of the IGA in May 2017 and that date cannot be in contest because it is borne out by the Appellant’s own pleadings. Therefore, it cannot be gainsaid that in the circumstances of this Appeal, the issue of time-limitation, once raised, constituted a proper point of law as defined in the authorities we have cited, and could dispose of a Reference because it related to jurisdiction.

60. The case of **Attorney General of the United Republic of Tanzania v. Africa Network for Animal Welfare (ANAW)** (supra) cited by the Appellants does not assist their case. In that case, the Court held that:-

“Preliminary points of law exclude matters that entail “the clash of facts, production of evidence, and assessment of testimony. In short, points of law pertain to matters that are determinable purely on the basis of law and not evidence or a mixture of law and evidence.”

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61. The Respondent's preliminary objection raised a pure point of law; a question of jurisdiction regarding when the Appellants' cause of action, namely, the signing date of the IGA, took place. From the pleadings of the parties, determination of that date neither entailed a clash of facts nor required production of evidence or assessment of further testimony. We say so because there was no dispute between the parties that the IGA was signed in May 2017 while the HGA between the 1st Respondent and the EACOP was signed in April 2021, long after Reference No. 39 of 2020 was filed on 6th November 2020. The Appellants have contended that the EACOP Project Brief and the Affidavit of Nkasiima Janet were not pleadings but constituted evidence on facts in controversy.

62. The Black's Law Dictionary, 10th Edition, Thomas Reuters 2014 defines pleading as follows:

"a formal document in which a party to a legal proceeding, especially a civil lawsuit, sets forth or responds to all allegations, claims, denials, or defenses...the main pleadings are the plaintiff's complaint and the defendant's answer."

63. Rule 2 of the rules of this Court defines pleadings as follows:

"Any document lodged by or on behalf of a party relating to a matter before the court in which the parties set forth or responds to allegations claims, denials or defenses."

64. Section VII of the Rules of the Court provide for pleadings and in particular, the Statement of Reference (rule 25); Response to Reference (rule 32(1) and Reply to Response (rule 32(2)).



Specifically, rule 37(1) provides as follows:

“There shall be annexed to the original of every pleading certified copies of any relevant document in support of the contention contained in the pleading.”

65. A clear distinction must be made between pleadings properly so called and evidence in support of the pleadings. The distinction was succinctly explained by this Court in **UTC v. Attorney General of the Republic of Rwanda**, Appeal No. 1 of 2015 as follows:-

“We start from the point that it is trite law that pleadings in Court (whether in the form of Reference, Response to the Reference, Motion on Notice, Statement of Claim or by whatever other name called) are not evidence.

They are averments the proof of which is submitted to the trier of fact. Evidence on the other hand is the means by which those averments are proved or disproved.

Proof is essential unless the matter is admitted, or is one of which judicial notice may be taken, or there is an applicable presumption (rebuttable or irrebuttable) in favour of the matter averred, or the burden of proving such a matter is by law shifted to the adverse party; or an estoppel operates to exclude proof of such matter.

The proof may take the form of testimonial evidence (oral or affidavit), documents produced in Court, or things (real evidence). Needless to state, submissions are not evidence.”



66. The affidavit of Nkasiima Janet was filed in support of the Reference while the EACOP Project brief was part of the Affidavit filed by the Appellants to verify their Reply to the 1st and 3rd Respondent's Response to the Reference. They both state the same fact, namely, that the 1st and 2nd Respondents were required to execute the HGA in order to implement the IGA for the EACOP Project signed between them on 25th May 2017. The Respondents do not dispute those facts in the Appellants' pleadings. While the Statement of Reference, the Response to Reference and the Reply to Response constitute pleadings, the documents specified in rule 37(1) constitute evidence.
67. It was pursuant to the rule 37(1) that the Appellants' annexed the EACOP Project Brief to their Reply to the Respondents' Response, which clearly indicated the date when the IGA was signed. That date was not disputed by the Respondents. Accordingly, when the Trial Court held that there was a proper preliminary objection before it on whether the Reference was time barred, it did not err, nor did it wade into and sift disputed evidence as alleged by the Appellants. What was pleaded by the Appellants was not disputed by the Respondents, and therefore, the Trial Court could properly determine, on the basis of the pleadings on record, whether the Appellants' Reference was time barred.
68. From the pleadings and submissions, the signing date of the IGA was not a fact in controversy between the parties. The Appellant's contention really is that in reckoning time for purposes of determining whether the Reference was filed



within the time prescribed by the Treaty, the date of the signing of the IGA between the 1st and 2nd Respondents should not be the starting date. We shall revert to this point in Issue No. 2.

69. To the extent that both **Mukisa Biscuits case** (supra) and **Margaret Zziwa case** (supra) establish the principle that a preliminary objection involves a pure point of law and may be raised as regards jurisdiction of a court or limitation of time, it is our finding that the Trial Court did not err in holding that the Respondents had raised a proper preliminary objection. Based on the foregoing, Issue No. 1 is answered in the negative.

ISSUE NO.2:

WHETHER THE FIRST INSTANCE DIVISION ERRED IN LAW IN HOLDING THAT THE REFERENCE WAS FILED OUT OF TIME AND THEREFORE THE COURT HAD NO JURISDICTION.

APPELLANTS' SUBMISSIONS

70. Counsel for the Appellants submitted, in a nutshell, that their complaints were based on non-compliance with the Treaty requirements, and that the Reference contained various claims and was not restricted to the legality or otherwise of the IGA. Counsel contended that the Trial Court erred by adopting a narrow approach which led it to an erroneous conclusion that the Reference was time-barred and that the Court did not have jurisdiction.

71. It was Counsel's submission that the Reference was filed on

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6th November 2020, within two (2) months of the actions and omissions complained about, which occurred on the 11th September 2020 for the 1st Respondent and on 27th October 2020 for the 2nd Respondent, but the Trial Court delivered a Ruling narrowly based only on the disputed date of the IGA, despite the fact that the IGA was merely related to only two (2) out of the twelve (12) reliefs sought. Counsel argued that the Reference had issues regarding compensation of the Project Affected Persons (PAPs) which were not the subject of the time limitation objections. Counsel also submitted in paragraph 62 of their written submissions that unlike other aspects of the case that were found to be time-barred, the first twelve reliefs set out in the Reference were presented within the prescribed timeframe, thus meriting separate consideration. Consequently, Counsel for the Appellants prayed for their severance from the broader proceedings, consistent with the principle of equitable adjudication.

72. It was also contended by Counsel for the Appellants that the dismissal of the entire Reference based solely on limitation of time in a preliminary objection was unjustified and disproportionate because, among other aspects, the Reference encompasses twelve (12) claims, with only one concerning the IGA, which was the focus of preliminary objection based on limitation of time. The Appellants submitted that the subject matter of the Reference extended beyond the scope of the preliminary objection on limitation of time and encompassed crucial issues such as relevant environmental approvals and certificates, breaches of human



rights obligations, disregard of environmental considerations, and the significant implications of the EACOP for food security in the region, as well as the issue of compensation for EACOP Project-Affected Persons (PAPs).

73. Counsel contended that the Trial Court's conclusion regarding the preliminary objection on limitation of time was flawed and did not align with the comprehensive nature of the Reference and the complexities involved in it. Finally on this issue, Counsel for the Appellants invited the Court to revisit the conclusion of the Trial Court, consider the entirety of the Reference for adjudication, allow the Appeal and order that each party bears its own costs.

1st RESPONDENT'S SUBMISSIONS

74. Counsel for the 1st Respondent submitted that the Trial Court correctly identified both the IGA and the HGA as the basis of the challenge to the legality or otherwise of the Respondents' actions and omissions presented in the Reference. Counsel referred to paragraph 54 of the Judgment of the Trial Court and submitted that the Court correctly found that the violation of the Treaty alleged by the Appellants stemmed from the IGA and HGA. Counsel further submitted that the Trial Court did not err and that indeed the Appellants confirmed to the Court that the crux of their case was that they were aggrieved by the failure of the 1st Respondent to ensure that all the risks pertaining to human rights had not been addressed before agreeing to undertake the EACOP project.

75. It was also contended that from the parties' pleadings, the



IGA was executed on 25th May 2017 and that the Court correctly found that this was the point at which the Appellants' cause of action accrued due to their averment that the Respondents embarked on the EACOP Project prior to agreeing to human rights mitigation measures. Counsel further submitted that Article 30(2) of the Treaty makes it clear that for an Applicant to bring a Reference to this Court, the action or decision complained of must have occurred within two months prior to the filing of the Reference.

76. Counsel contended that the issues regarding the signing and implementation of the IGA cannot be adjudicated for being outside the time prescribed by the Treaty and that the Trial Court cannot be faulted for holding that the Reference was filed well over 2 months after the execution of the IGA. Counsel submitted that the EACOP Brief produced and relied upon by the Appellants expressly stated that the 1st and 2nd Respondents were mandated to execute the HGA to implement the IGA for the EACOP Project signed between themselves on 25th May 2017. Counsel contended that the EACOP Brief was presented by the Appellants in line with Rule 37 of the Court's Rules as part of their pleadings and that it is trite law that parties are bound by their pleadings.

77. Counsel relied on the case of **Jani Properties Ltd v. Dar es Salaam City Council 1966 (EA) 281** in which the Court stated that:-

"The parties in civil matters are bound by what they say in their pleadings which have the potential of forming part of the



record moreover. The court itself is also bound by what the parties have stated in their pleadings as to facts relied on by them. No party can be allowed to depart from its pleadings."

78. It was contended that in the circumstances of this Appeal, the doctrine of severance was not applicable to the Reference and that the Trial Court could not be faulted for not applying the doctrine since all the contentions by the Appellants were in regard to averments that allegedly occurred prior to the execution of the singular event, being the signing of the IGA. Counsel also referred to the case of **Attorney General of the Republic of Kenya v. Independent Medical Legal Unit** (supra) where this Court stated that the period set in Article 30(2) of the Treaty is strict and inflexible and does not countenance the idea of a continuing breach.

79. Accordingly, Counsel submitted that there was no basis for special consideration for particular alleged violations, including environmental matters, to be brought before the Court outside the set time limit of two (2) months. Concluding on this issue, Counsel for the 1st Respondent invited the Court to find that the Trial Court did not err in law in holding that the Reference was time-barred and that the Court had no jurisdiction *ratione temporis* to entertain the Reference.

2ND RESPONDENT'S SUBMISSIONS

80. As a prelude to their submissions, Counsel for the 2nd Respondent argued that the basis for the Reference was the execution of IGA dated 25th May 2017 between the 1st and 2nd Respondents to implement the EACOP Project; that the IGA is



the foundation for the execution of the HGA and other project agreements and that such cause of action started to run against the Appellants from the date when the IGA was executed, which is the reason the Trial Court did not separate the allegations premised on the IGA and HGA as the same were connected.

81. Counsel further submitted that since the connection between IGA and HGA was founded on Appellants' pleadings, they were bound by their own pleadings; and they indeed confirmed before the Trial Court the connection between the IGA and HGA as reflected in paragraph 54 of the Ruling. Counsel relied on the case of **North Mara Gold Mine Limited vs. Khalid Abdallah Salum** (Civil Appeal 463 of 2020) [2022] TZCA 1 (10 January 2022) and submitted that there is a presumption regarding the accuracy of a court record and that the same cannot be easily impeached.
82. Counsel submitted that having found that the Appellants' own pleadings disclosed that the cause of action accrued in 2017 which the Respondent did not contest, the Trial Court was correct in finding that the Reference was time-barred and therefore the Court had no jurisdiction. Counsel cited the Judgment in the case of **Attorney General of the United Republic of Tanzania v. Anthony Callist Komu**, EACJ Appeal No.2 of 2015, at page 31, and submitted that the Court has no jurisdiction to extend time if the reference is time-barred under Article 30(2) of the Treaty, even where there is alleged continuous violation.

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83. Finally on this issue, Counsel for the 2nd Respondent submitted that the Trial Court had no jurisdiction to entertain the Reference brought outside the two months stipulated in Article 30(2) of the Treaty; that the severance doctrine argued by the Appellants was not applicable and that the Court rightly dismissed the Reference.

3rd RESPONDENT'S SUBMISSIONS

84. Counsel for the 3rd Respondent submitted that it was not in dispute that the IGA between the 1st and 2nd Respondents was signed on 25th May, 2017 and that the Reference was not filed until 6th November 2020 contrary to Article 30(2) of the Treaty, and that the HGA was not signed until 11th April 2021. Counsel further submitted that the above undisputed facts as set out in the pleadings were duly considered by the Trial Court in its Ruling dated 29th November 2023.

85. In that context, Counsel argued that in the Appellants' Statement of Reference dated 6th November, 2020, they did set out in paragraph 38 the following as the subject matter of the Reference namely:

- A. *The signing of the HGA by the 1st Respondent and the IGA between the 1st and 2nd Respondents to build a pipeline that goes through protected areas and has an adverse impact on the livelihood, biodiversity, climate change and social economic aspects is a violation of the provisions of the EAC Treaty and protocols therein;*
- B. *The signing of the HGA by the 1st Respondent and the IGA between the 1st and 2nd Respondents without a*



certificate of approval of the Environmental and Social Impact Assessment is a violation of the EAC Treaty and Protocols therein;

C. The signing of the HGA by the 1st Respondent and the IGA between the 1st and 2nd Respondents without notification, submission and approval of the Environmental and Social Impact Assessment by the 3rd Respondent and the Council of Ministers violates the provisions of the EAC Law as will be set out in detail below...”

86. Counsel for the 3rd Respondent submitted that considering that the Reference was filed out of time, well over the two (2) months after the IGA was signed, the Trial Court was right to dismiss the Reference because of the imperatives of Article 30(2) of the Treaty and that having found that the matter was time-barred, the Court was not required to delve into the severance doctrine as the Appellants would have wished it to do. Counsel added that the Trial Court rightly declined to discuss whether the pleadings had been properly verified in accordance with Rule 46 of the Court's rules much as it had been identified as a preliminary issue, once it concluded that the Reference was filed out of time.

87. Counsel further submitted that it is firmly established in law that a court must down its tools in respect of the matter the moment it finds that it has no jurisdiction. The decision of this Court in **Alcon International Ltd v. Standard Chartered Bank of Uganda**, EACJ Appeal No.2 of 2011 (*supra*) was



cited in support of the proposition. Counsel urged the Court to uphold the findings of the Trial Court because they are consistent with the position propounded in the **IMLU case** (supra), where it was held that the Treaty does not grant the Court power to extend, waive or modify the prescribed time-frame for instituting proceedings.

88. Counsel argued that in the **IMLU case**, the Court clarified that the overall framework of Article 30(2) of the Treaty was designed to balance the interest of an individual complainants against the collective interest of all other citizens of the EAC. Accordingly, Counsel for the 3rd Respondent urged the Court to find that the Trial Court did not err in law in holding that the Reference was time-barred and that it had no jurisdiction.

APPELLANTS' SUBMISSIONS IN REJOINDER TO THE 1ST, 2ND AND 3RD RESPONDENTS' SUBMISSIONS

89. In their rejoinder to this issue, Counsel for the Appellants reiterated that their Reference had twelve (12) distinct claims and causes of action and sought twelve (12) remedies each of which required an independent time-bar analysis that the Trial Court omitted to make; and that there was no time-bar objection to any of the other claims in the Reference other than the date of the IGA. Counsel further submitted that the Trial Court ought to have weighed the Reference against Article 30(2) of the Treaty, and applying the severance doctrine, separated the good from the bad. They relied on the case of **Johannesburg City Council vs. Chesterfield House (Pty) Ltd 1952 (3) SA 809** at p.882 and added that the same



approach was applied by this Court in the **IMLU case** (supra).

90. Counsel contended that the IGA and HGA were separate agreements and that each of them had to be given an independent time-bar analysis under Article 30(2) of the Treaty. It was contended that the two cannot be clamped together and subjected to an omnibus blanket time-bar analysis. Finally, Counsel for the Appellants submitted that the point of the severance doctrine should be applied to guarantee parties' entitlement to effective remedies as a feature of the rule of law, and that the Trial Court was enjoined to apply it in the event it was inclined to uphold the Preliminary Objection that only concerned one or two of the twelve (12) claims contained in the Reference.

COURT'S ANALYSIS AND DETERMINATION

91. In relation to issue No. 2, whether the First Instance Division erred in law in holding that the Reference was filed out of time and therefore the Court had no jurisdiction, we have carefully considered the pleadings of parties as well as their rival submissions and the authorities that they cited.

92. We have already set out in this Judgment, verbatim, the provisions of Article 30(2) of the Treaty. In the case of **Attorney General of the Republic of Kenya vs. Independent Medical Legal Unit (IMLU)** (supra), this Court held that: -

"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 is critical - it is to ensure legal certainty among the diverse membership of the Community; see Case 209/83 Ferriera VA Isabbia Sps v. EC Commission OJ C2009, 9.8.84 p.6, para 14, ECJ quoted in Halsbury's Laws (supra) para 2.43.

The Reference lodged in the First Instance Division on 12th July 2010, is hereby ordered struck out for having been filed outside the time limit prescribed under Article 30(2) of the EAC Treaty."

- 93. Similarly in the case of Attorney General of the Republic of Uganda & Another vs Omar Awadh & 6 Others, EACJ Appeal No. 2 of 2012 this Court, while determining whether the Reference therein was filed within the prescribed time, held as follows: -**

"The objective of Article 30(2) is legal certainty. It still notes that the purpose of this amended provision of the Treaty was to secure and uphold the principle of legal certainty; which requires a complainant to lodge a reference in the EACJ within the relatively brief time of only 2 months. It is clear that both the content and intent



of Article 30(2) provide a legal framework for determining a starting date of an act complained of, or alternatively the date on which the complainant first acquired the requisite knowledge - all with the objective of ascertaining the commencement and expiry of the time limit of 2 months. Both justice and equity abhor a claimant's indolence or sloth, ...the overarching rationale for statutes of limitation such as the time limit of Article 30(2) of the Treaty, is to protect the system from the prejudice of stale claims and their salutary effect on the twin principles of legal certainty and of repose...In light of all these considerations, the Court concludes...the underlying Reference to this Appeal is time barred for not complying with the provision of Article 30(2) of the Treaty."

94. Counsel for the Appellants, in their arguments contended that the Trial Court ought to have applied the severance doctrine while considering the issue of time limitation and made reference to the above two Judgments which in our view do not assist in proving their case. For ease of reference and avoidance of doubt, we reproduce the pertinent events and respective dates of occurrence as captured from the record.

- (1) Signing of the IGA between the 1st and 2nd Respondent: 25th May 2017.*
- (2) Filing of Reference No.39 of 2020, subject of this Appeal, in the Trial Court: 6th November 2020.*
- (3) Publication of the EACOP Brief: 2nd December 2020, the date which the Appellants indicated to have come to be*



aware about the existence of an IGA (see para 28 of the Appellants' submissions in rejoinder).

(4) Signing of the HGA between the 1st Respondent with EACOP on 11th April 2021 (See para 1.8 of the 1st Respondent's written submissions).

(5) Enactment of the EACOP (Special Provisions) Act, 2021 to implement the IGA and the HGA, with a date of assent of 20th December 2021 and gazettelement on 24th December 2021.

95. From the above chronology of events, any reasonable person would deduce that the Reference filed on 6th November 2020 could not have been challenging the contents of the EACOP Brief published on 2nd December 2020, the HGA signed on 11th April 2021 between the 1st Respondent and the EACOP or the EACOP Act gazetted on 24th December 2021. These came long after the Reference was filed.

96. Clearly, having been signed on 25th May 2017, any Reference filed on 6th November 2020 challenging the IGA would run afoul of the two-month time limit prescribed in Article 30(2) of the Treaty. In the case of **Baranzira Raphael & another v. The Attorney General of the Republic of Burundi**, Reference No. 15 of 2014, para 36, this Court reiterated as follows:-

"Both cases (IMLU case) (supra) and Omar Awadh case (supra) addressed the import and scope of Article 30(2) of the Treaty, categorically designated the time limit prescribed therein as fixed and binding, and negating any



considerations of continuing violations on account of the principle of legal certainty advanced therein. We do most respectfully abide by those positions."

97.It is common ground as evident from the parties' respective pleadings and submissions that the act complained of happened from 25th May 2017 when the 1st and 2nd Respondent entered into an Inter-Government Agreement (IGA). Indeed, the Trial Court captured this issue as follows:

"The import of paragraphs 18,22 and 38 of the Reference is that both the IGA and HGA are the basis of the challenge to the legality or otherwise of the Respondents' actions or omissions presented to the Reference before this Court. This was indeed confirmed in the Court by Counsel Semuyaba when he was asked by the Court to read out the provision of paragraph 38 of the Reference during the highlights of his submission in Court. In the circumstances, the dates of signing the IGA and HGA are both material dates in considering when the time starts reckoning for purpose of determining whether or not the Reference was lodged within the limits of the time stipulated under Article 30(2) of the Treaty."

98.Time, therefore, started running on 25th May 2017 and stopped running on 24th Juillet 2017.

99.The assertion by the Appellants that some claims, including compensation of Project-Affected Persons (PAPs) are still alive and that the Trial Court ought to have invoked the severance doctrine to separate the good reliefs from the bad

are unfounded under the Treaty. Once the Reference was found to have been filed out of the prescribed time of two months under Article 30(2) of the Treaty, any claims founded on that Reference could not survive independently of the Reference.

100. In this Appeal, all the claims made by the Appellants were founded on the alleged violation of the Treaty by the Respondents on account of signing and implementing the EACOP Project. Once it was established that the Court had no jurisdiction *ratione temporis* to consider the Reference challenging the action on which the claims were based (the signing of the IGA), there was no way that the claims would have survived for consideration independently out of the Reference. In **Attorney General of the United Republic of Tanzania v. Anthony Callist Komu (supra)** the Court reasoned as follows:

“... the Court has jurisdiction in respect of disputes only to the extent that the Treaty has granted the jurisdiction. For instance, this Court cannot exercise jurisdiction over a dispute, however manifest or gross violation is, if the matter is time-barred.”

101. Similarly, in the case of **Nyamoya Francois vs. The Attorney General of the Republic of Burundi & another**, Reference No. 8 of 2011, at para 61, which is also applicable to the present case, this Court held that: -

“In light of the above, we refrain from entertaining the remaining issues for the one obvious and simple reason that the

Reference is no longer alive and any attempt at determining those issues will be a mere academic exercise."

102. For the same reason, the Trial Court having found that Reference No. 39 of 2020 was time-barred, it could not delve into the merits of the Reference. It had no option but to down its tools. We agree with the finding of the Trial Court in that respect. Therefore, we answer issue No.2 in the negative.

ISSUE NO. 3: WHETHER THE PARTIES ARE ENTITLED TO THE REMEDIES SOUGHT

103. Having answered Issue No. 1 and Issue No. 2 in the negative, the consequence is that the Appellants are not entitled to the remedies sought.

104. As for costs, they ordinarily follow the event but the Court has discretion for good reason to depart from the general rule. Taking into account the public interest involved in this Appeal and the Appellants' public-spirited endeavor to ensure compliance with the Treaty, we direct that each party shall bear their own costs in this Court and in the Trial Court.

DISPOSITION

105. For the reasons we have given above:

(a) The Appeal is hereby dismissed; and

(b) Each party to bear its own costs.

IT IS SO ORDERED

DATED, DELIVERED, AND SIGNED in Arusha on this 26th day of November 2025.

Nestor Kayobera
26.11.2026

Nestor Kayobera
PRESIDENT

Anita Mugeni

Anita Mugeni
VICE PRESIDENT

Kathurima M'Inoti

Kathurima M'Inoti
JUSTICE OF APPEAL

Cheborion Barishaki

Cheborion Barishaki
JUSTICE OF APPEAL

Omar O. Makungu

Omar O. Makungu
JUSTICE OF APPEAL

Certified as a True Copy of the Original
of 10/11/2026
Deputy Registrar
East African Court of Justice
Dated 26.11.2026