



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

*(Coram: Anita MUGENI, VP; Kathurima M'INOTI, Omar MAKUNGU, JJA.)*

**APPEAL NO. 7 OF 2020**

**BETWEEN**

**MALE H. MABIRIZI K. KIWANUKA .....APPELLANT**

**AND**

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

(Appeal from the Judgment of the First Instance Division of the East African Court of Justice at Arusha by Hon. Lady Justice Monica K. Mugenyi (Principal Judge); Hon. Justice Dr. Charles Nyawello, and Hon. Mr. Justice Charles Nyachae dated 30<sup>th</sup> September 2020 in Reference No. 6 of 2019)

## JUDGMENT OF THE COURT

### A. INTRODUCTION

1. This is an appeal from the Judgment of the First Instance Division of this Court (the Trial Court) delivered on 30<sup>th</sup> September 2020 in Reference No. 6 of 2019, Male H. Mabirizi K. Kiwanuka v Attorney General of the Republic of Uganda.
2. The Appellant, Male H. Mabirizi Kiwanuka, who describes himself as a public interest litigant is a citizen of the Republic of Uganda resident in Kampala. He is self-represented in this appeal.
3. The Respondent is the Attorney General of the Republic of Uganda, a State Party to the Treaty for the Establishment of the East African Community (The Treaty). In this appeal the Respondent is represented by Mr. Martin Mwambutsya, Director Civil Litigation, Mr. Richard Adrole, Assistant Commissioner, Mr. Geoffrey Madete, Principal State Attorney, and Ms. Jackie Amusgut, State Attorney.

### B. BACKGROUND

4. The Appellant's Reference before the Trial Court, namely Reference No. 6 of 2019, arose from a series of events surrounding the enactment and judicial validation of the Constitution (Amendment) Act, 2018 of the Republic of Uganda.
5. In 2017, a Private Member's Bill was introduced in the Parliament of the Republic of Uganda seeking among others, to amend the Constitution of the Republic of Uganda and remove the presidential age limit of seventy-five years and to extend the tenure of Parliament and Local Government Councils from five to seven years. The Bill provoked intense national debate and was marked by incidents that the Appellant described as "*unprecedented violations of*

*parliamentary procedure and constitutional order,"* including the alleged invasion of Parliament by security forces and the forcible removal of Members opposed to the Bill.

6. On 20<sup>th</sup> December 2017, Parliament passed the Bill, and the President assented to it on 27<sup>th</sup> December 2017, thereby enacting the Constitution (Amendment) Act, 2018. Dissatisfied citizens, including the Appellant, lodged several petitions before the Constitutional Court of Uganda challenging both the process and the substance of the amendment.
7. The Appellant filed Constitutional Petition No. 49 of 2017, arguing that the amendment contravened multiple Articles of the Constitution of the Republic of Uganda and violated the principles of constitutionalism and the rule of law. On 26<sup>th</sup> July 2018, by a majority decision the Constitutional Court delivered Judgment upholding the removal of the presidential age limit but nullified the extension of the parliamentary and local government terms.

### **C. THE REFERENCE**

8. The Appellant appealed to the Supreme Court of Uganda in Constitutional Appeal No. 2 of 2018. On 18<sup>th</sup> April 2019, by a majority, the Supreme Court affirmed the Constitutional Court's decision, holding that the removal of the presidential age limit did not contravene the Constitution of the Republic of Uganda.
9. Following that judgment, the Appellant filed Reference No. 6 of 2019 before the Trial Court on 3<sup>rd</sup> May 2019. He alleged that the entire process, from the introduction and passage of the Bill to the decisions of the national courts, constituted violations by the Republic of Uganda of its obligations under the Treaty, specifically Articles 6(d), 7(2), 8(1)(c) and 123(3)(c), which enjoin Partner States to observe the

principles of good governance, democracy, rule of law, and accountability.

10. The Appellant sought declarations that the Republic of Uganda, by its Parliament, Executive, and Judiciary, had breached the Treaty; that the acts complained of were null and void and that he be awarded damages and costs.
11. The Respondent denied all the allegations by the Appellant. It contended that the processes complained of were internal constitutional matters conducted in accordance with the law of Uganda and that, in any event, a substantial portion of the Reference was time-barred under Article 30(2) of the Treaty, as the impugned acts occurred long before the Reference was lodged.
12. After full hearing, the Trial Court, in its Judgment of 30<sup>th</sup> September 2020, held as follows:
  - i. That the Constitutional (Amendment) Act of 2018 was validly enacted under Ugandan law;
  - ii. That Claims relating to the enactment process were time-barred under Article 30(2) of the EAC Treaty, while the challenge to the Supreme Court Judgment was within time;
  - iii. That the Court had jurisdiction to hear the Reference, and the same was not barred by the doctrine of *res judicata*;
  - iv. That the Applicant had failed to meet the high standard of proof required to challenge the decision of an apex court; and
  - v. That the Appellant had not proved breach of the Treaty by the Supreme Court of Uganda.

Accordingly, the Trial Court dismissed the Reference with costs to the Respondent.

13. The Appellant was dissatisfied and instituted the present Appeal No. 7 of 2020, raising grounds centered on alleged procedural irregularity, misinterpretation of Article 30(2) of the Treaty, and misapplication of the fundamental and operational principles of the Community.

#### **D. THE APPEAL**

14. The Appellant challenges the Trial Court's Judgment both on points of law and on alleged procedural irregularities. He asserts that the Trial Court erred in finding a large portion of his Reference time-barred under Article 30(2) of the Treaty, and in concluding that the judicial processes of the Supreme Court of Uganda complied with the fundamental and operational principles of the Community.

#### **E. JURISDICTION OF APPELLATE DIVISION**

15. The jurisdiction of the Appellate Division of the East African Court of Justice is conferred by Article 35A (1) of the Treaty and Rule 86 (previously rule 77(1)) of the East African Court of Justice Rules of Procedure, 2019 (the Rules). Under these provisions, an appeal lies to the Appellate Division only on three specific grounds:
  - (i) points of law;
  - (ii) lack of jurisdiction; or
  - (iii) procedural irregularity in the judgment or order of the First Instance Division.
16. As was held in **Godfrey Magezi Attorney General of the Republic of Uganda**, EACJ Appeal No. 3 of 2015:

*“Appeals are correctional in nature and not an opportunity for a party to take a second bite at the pie.”*

The Appellate Division does not conduct a rehearing of the entire case or re-evaluation of factual evidence. Its role is correctional and supervisory, ensuring that the First Instance Division correctly applied the law, acted within its jurisdiction, and observed procedural fairness.

17. This principle was affirmed in **Mary Ariviza & another v. Attorney General of the Republic of Kenya**, Appeal No. 3 of 2012, where the Court held that the appellate function is circumscribed by the Treaty and is not intended as a full rehearing of facts.

Further, in **Secretary General of the East African Community v. Rt. Hon. Margaret Zziwa**, Appeal No. 7 of 2015, the Court clarified that procedural irregularity refers to defects affecting the fairness and integrity of the process, not the substantive merits of the case.

18. While the Appellate Division is not an appellate court over national judiciaries, when seized of a Reference or Appeal that alleges violation of the Treaty by a Partner State, it may examine whether the acts of any organ of that Partner State, including its Judiciary, engage the State's international responsibility. As was held in **Attorney General of Republic of Kenya v. Independent Medical Legal Unit**, Appeal No. 1 of 2011, such acts may be inconsistent with the Treaty's fundamental principles enshrined in Articles 6(d), 7(2), and 8(1)(c), obliging the Court to ensure compliance with the Treaty while respecting the autonomy of national courts.

## **F. THE SCHEDULING CONFERENCE**

19. At the Scheduling Conference held on 24th May 2021, the parties agreed on a number of uncontested facts, which this Court now adopts as forming the factual matrix of the present Appeal. The parties agreed on the following issues for determination in this Appeal:

- i. Whether the Trial Court committed procedural irregularities in the hearing and determination of Reference No. 6 of 2019;
- ii. Whether the Trial Court erred in law in holding that the process leading to the enactment of the Constitutional Amendment Act of 2018, the proceedings and decisions in Constitutional Petition No. 49 of 2017, Male Mbirizi Kiwanuka v. The Attorney General of the Republic of Uganda were time barred;
- iii. Whether the Trial Court erred in law in holding that the process and decision in Constitutional Appeal No. 2 of 2018, Male Mbirizi Kiwanuka v. Attorney General of the Republic of Uganda was in accordance with the laws of Uganda and Articles 6(d) and 7(2) of the Treaty; and
- iv. What remedies are available to the parties.

## **G. ISSUES FOR DETERMINATION.**

**ISSUE NO.1: Whether the Trial Court committed procedural irregularities in the hearing and determination of Reference No. 6 of 2019.**

### **a. Appellant's Case**

20. The Appellant mounted a vigorous challenge to the proceedings of the Trial Court alleging that they were tainted by procedural

irregularity which vitiated the fairness of the trial. His arguments, distilled from the Memorandum of Appeal and written submissions, may be summarized under the following three broad heads:

**i. Failure to determine all pleaded matters**

21. The Appellant catalogued eleven (11) specific matters which he submitted were pleaded and substantively argued but were not determined by the Trial Court. These included, but were not limited to: the legality of denying him access to Parliament's gallery; the failure to undertake reasonable public participation; proceeding in the absence of the opposition; the validity of the Speaker's Certificate of Compliance; and the admission of hearsay evidence by the Supreme Court of Uganda. He relied on rule 79(5)(f) & (g) of the Rules, which requires that a judgment should contain the points for determination and the decision thereon.

22. He cited **Ismael Dabule & 1004 Others v. Attorney General of the Republic of Uganda**, EACJ Appeal No. 1 of 2018, and the decision of the Supreme Court of Nigeria in **Ebenezer Nwokoro & others v. Titus Onuma & Another**, Nigeria Supreme Court Case No. 213 of 1988, and submitted that a party is entitled as of right to the consideration of his case as presented. He further argued that the Court's failure to expressly rule on these issues amounted to a denial of justice and offended the principle of *audi alteram partem*.

**ii. Unprocedural finding of abuse of process**

23. The Appellant further argued that the Trial Court made adverse findings on his character and conduct which were not in controversy. He pointed to paragraphs 146, 149, 151, and 281 of the impugned Judgment, where the Court, *suo motu*, characterized his pleadings as an "abuse of court process," made "snide remarks," and suggested his mode of operation amounted to "pressure, blackmail or threats."

24. He further contended that the Trial Court erred when it held that certain portions of his Reference were “an abuse of the process of the court.” He argued that this finding was not anchored in any specific pleading or application by the Respondent and that he was never given notice or opportunity to be heard on the allegation. He maintained that the Court descended into the arena of litigation and thereby denied him a fair hearing.

**iii. Failure to acknowledge and analyze authorities**

25. Finally, the Appellant submitted that the Trial Court failed to consider or analyze the legal authorities he cited. He pointed in particular to decisions such as **Union Trade Centre Ltd v. Attorney General of the Republic of Rwanda** (EACJ Appeal No. 1 of 2015) and **Henry Kyarimpa v. Attorney General of the Republic of Uganda** (EACJ Appeal No. 6 of 2014), which, he said, supported his position on judicial accountability under the Treaty. He asserted that the omission to cite or discuss these authorities amounted to a procedural irregularity apparent on the face of the record.

**b. The Respondent’s Case**

26. The Respondent opposed the Appellant’s contentions and urged the Court to dismiss this ground of appeal as misconceived. The Respondent’s reply was three-pronged:

**i. On the alleged failure to determine pleaded matters**

27. The Respondent submitted that the Trial Court did not ignore any of the issues raised by the Appellant, instead, it expressly considered the numerous matters he presented and held, at paragraphs 126–128 of its judgment, that they were “obviated by limitation of time” under Article 30(2) of the Treaty. According to the Respondent, a finding that certain claims are time-barred is itself a judicial

determination of those claims and cannot be construed as a refusal to determine them.

28. He submitted that the Trial Court addressed the core legal and factual issues arising from the pleadings. It was argued that a judgment is not required to be a line-by-line rebuttal of every submission.

**ii. On the alleged unprocedural finding of abuse of process**

29. The Respondent referred to its Affidavit in Reply sworn by Mr. George Kalemera, filed before the Trial Court, which explicitly averred that portion of the Appellant's Reference were scandalous, frivolous, and an abuse of court process. He referred the Court to the Respondent's pleadings at pages 293-294 of the Record, where the Respondent had described the Appellant as "habitually known to abuse court process," and to subsequent submissions where the Respondent prayed for offending pleadings to be struck out.

30. The Respondent further referred to its written submissions (Record, Vol. K, pp. 2738-2743) in which this prayer was reiterated. The Respondent noted that the Appellant filed a Rejoinder to the affidavit (Vol. F, pp. 1479-1492) and addressed the issue in his submissions (Vol. L, pp. 3073-3082). Accordingly, the Respondent submitted that the matter was properly before the Court and both parties were fully heard on the issue.

**iii. On the alleged failure to analyze authorities**

31. The Respondent maintained that the Trial Court's Judgment demonstrates clear engagement with the authorities cited by both parties. It highlighted, by way of example, the Trial Court's discussion of **Union Trade Centre Ltd v. Attorney General of the Republic of Rwanda**, (supra) at paragraph 20 and **Henry Kyarimpa v. Attorney**

**General of the Republic of Uganda**, (supra) at paragraph 86 of the judgment. The Respondent submitted that the mere fact that the Court distinguished or disagreed with certain authorities does not amount to procedural irregularity.

32. The Respondent thus urged the Court to find that the proceedings before the Trial Court were conducted procedurally and with fairness, and that the Appellant's complaints were, in essence, disagreements with the Trial Court's reasoning rather than demonstrations of procedural error.

### **C. Court's Analysis and determination**

33. The term procedural irregularity has received judicial elucidation in this Court's jurisprudence. In **The Secretary General of the East African Community v. Rt. Hon. Margaret Zziwa**, Appeal No. 7 of 2015, citing **The Attorney General of United Republic of Tanzania v. African Network for Animal Welfare (ANAW)**, EACJ Appeal No. 3 of 2011, this Court held that:

*"procedural irregularities are in character, irregularities that attach to the conduct of a proceeding or trial. It comprises such irregularities as the inadmissibility of documents or witnesses, denying a party the opportunity to be present or to be heard at all, hearing a matter in camera (where it should be heard in public and vice versa), failure to notify or serve in time or at all, etc... In short, procedural irregularities attach to a denial or failure of due process (i.e. fairness) of a proceeding or hearing."*

34. The Court found that a procedural irregularity refers to an irregularity that attaches to the process by which a decision was reached, not to the merits of the decision itself. It encompasses situations where a



party was denied a fair hearing, where a court acted in excess of or without jurisdiction, or where the procedure adopted was so defective as to occasion a miscarriage of justice.

35. The Court further observed that not every alleged procedural lapse will warrant appellate interference; only those that “go to the root of the fairness of the proceedings” justify reversal.

36. The same principle was enunciated in **Attorney General of the Republic of Kenya v. Independent Medical Legal Unit** (supra), where the Court emphasized that procedural fairness is to be assessed from the totality of the proceedings, and that appellate intervention is warranted only if the irregularity “substantially affected the outcome or integrity of the trial.” (See also **Angella Amudo v. The Secretary General of the East African Community**, EACJ Appeal No. 4 of 2014).

37. Guided by the foregoing principles, this Court has meticulously examined the Record of Appeal and the impugned Judgment and finds thus:

**i. On the alleged failure to determine matters.**

38. The Trial Court was faced with a Reference containing an extraordinary number of allegations, many of which pre-dated the filing of the Reference by several months or even years. Its first duty was to determine whether each of those complaints was properly before it in light of Article 30(2) of the Treaty.

39. At paragraph 127 of the Judgment, the Trial Court listed the Appellant’s numerous grievances and expressly held that these matters, being grounded in events occurring long before the Supreme Court’s decision, are time-barred and cannot be entertained.

40. In our view, that pronouncement constituted a valid judicial determination of those claims. Declaring a matter time-barred is not a



failure to decide it; it is a decision on admissibility, which is as much a part of the judicial function as a decision on the merits.

41. We find that while the Judgment may not have explicitly mentioned each and every one of the eleven sub-issues highlighted by the Appellant, it is evident that the Court distilled the core controversies from the voluminous pleadings. A court is not obligated to address every peripheral argument, so long as the substance of the case is determined. Accordingly, we find that the Appellant's contention that the Trial Court "failed to determine" pleaded issues is devoid of merit.

**(ii) On the alleged unprocedural finding of abuse of process**

42. We have also carefully reviewed the record as regards this issue.

The Respondent's affidavit in reply and written submissions both squarely raised the issue of abuse of process, and the Appellant himself responded in detail. It is the pleadings and the submissions on the issue that yielded the findings of the Trial Court on abuse of process. It is our finding that the rule of natural justice, *audi alteram partem* was not violated as alleged by the Appellant.

43. The record confirms that the Respondent raised the issue of abuse of process of the court. The Trial Court therefore did not venture into unpleaded territory when it commented on the Appellant's conduct. Although the language used by the Court was strong, the Court expressed itself in the context of assessing the pleadings and exercising its inherent power to regulate its process. This does not amount to a procedural irregularity within the meaning of Article 35A (1) of the Treaty and rule 86 of the Rules, warranting appellate intervention.

44. The Trial Court's finding that certain pleadings were "vexatious and scandalous" was reached after full argument by both parties.

Whether that conclusion was substantively correct or not, it was the product of due process. The Appellant's reliance on **Ismail Dabule & 1004 others v. Attorney General of the Republic of Uganda** (supra) where the Court raised an issue *sua sponte*, is misplaced; here, the issue was squarely joined by the parties.

45. Consequently, this ground of appeal fails.

**(iii) On the alleged failure to analyze authorities**

46. A perusal of the impugned Judgment reveals that the Trial Court cited and discussed numerous authorities, including those relied on by the Appellant. The fact that a particular authority is not expressly mentioned in the body of a judgment does not, by itself, establish that it was ignored. Occasionally, the principle in issue is so clear, so well established that it serves no purpose for the Court to invoke or laboriously discuss a multiplicity of authorities to demonstrate the principle.

47. More fundamentally, the omission to cite every case relied upon by a party is not a procedural irregularity; it pertains to the substance and style of judicial reasoning. The Trial Court's duty is to deliver a reasoned decision, not to catalogue every authority cited, some of which may be utterly irrelevant to the principle in question before the Court.

48. Having considered the totality of the record and the Judgment, we are satisfied that the proceedings before the Trial Court were conducted with scrupulous fairness. The Appellant was afforded every opportunity to present his case, to file voluminous written submissions, and to make oral arguments, which the Court considered. There is no indication of bias, denial of hearing, or other irregularity that would vitiate the proceedings.

49. Ultimately, we find that the Appellant has not proved procedural irregularities within the meaning of the Treaty and the Rules and as expounded in the decisions we have quoted above. There were no irregularities that would go to the root or vitiate the fairness of the trial.

50. Accordingly, Issue No.1 is answered in the negative.

**ISSUE NO. 2: Whether the Trial Court erred in law in holding that the process leading to the enactment of the Constitutional Amendment Act of 2018, the proceedings and decisions in Constitutional Petition No. 49 of 2017, Male Mabirizi Kiwanuka v. the Attorney General of the Republic of Uganda were time barred.**

**a. The Appellant's Case**

51. The Appellant argued that the Trial Court fundamentally erred in its interpretation and application of Article 30(2) of the Treaty, which requires a Reference to be instituted within two months of the "date of the action, decisions, omissions or incident complained of." The Appellant advanced the following arguments:

- i. continuing breach theory;
- ii. estoppel and procedural impropriety; and
- iii. alleged misapplication of the law.

52. On the theory of continuing breach, the Appellant contended that the violations that he alleged constituted a continuing breach spanning the introduction of the Bill, its passage by Parliament, assent by the President, and the subsequent national court challenges and decisions. He submitted that the limitation period should only start to

run from the final act of the Supreme Court of Uganda's judgment on 18 April 2019, rather than from the earlier events.

53. The Appellant's case was that the "action complained of" was not the distinct steps in the process, but a single, continuous process of constitutional amendment that was only finally validated and cemented by the Uganda Supreme Court's judgment on 18th April 2019. He further submitted that the Trial Court misapplied the limitation provisions by treating each act, Parliamentary debates, enactment, and Constitutional Court decisions, as distinct events, rather than part of a single, continuous constitutional transaction.
54. The Appellant relied heavily on the Uganda Supreme Court's decision in **Ssemwogerere & another v. The Attorney General, Uganda** Constitutional Court Petition No. 3 of 1999, wherein Kanyeihamba, JSC, expressed the view that an Act of Parliament under constitutional challenge remains uncertain until the appropriate court has pronounced itself upon it. He argued that until that final judicial pronouncement, the cause of action, which is a "bundle of facts" from Parliament to the Supreme Court, had not fully accrued. He further submitted that the Trial Court exhibited "double standards" by selectively considering some pre-Supreme Court events for jurisprudential background while dismissing others as time-barred.
55. On estoppel and procedural impropriety, the Appellant argued that the Respondent should be estopped from invoking Article 30(2) of the Treaty, claiming that any delay in filing the Reference was due to procedural barriers, including the non-disclosure of parliamentary records and the complexity of judicial proceedings.

**b. The Respondent's case**

56. The Respondent refuted the Appellant's arguments and submitted that the Trial Court's application of Article 30(2) was correct and legally sound. The main points advanced by the Respondent were on the strict interpretation of Article 30(2) adopted by the Court. The Respondent relied on the text of Article 30(2) and the decisions of this Court, including **Attorney General of the Republic of Kenya v Independent Medical Legal Unit**, Appeal No. 1 of 2011, where the Court emphasized that the limitation period begins from the date the act complained of was first effected.
57. The Respondent argued that each alleged infringement of the Treaty, be it an event in Parliament, the assent by the President, or the Constitutional Court judgment, constituted a distinct action with its own date from which time began to run. The Respondent cited the precedent of this Court in **The Attorney General of the Republic of Uganda & another v. Omar Awadh & 6 others**, EACJ Appeal No.2 of 2012, which emphasizes that time begins to run from when the cause of action arises, not when it last happens.
58. The Respondent further submitted that the Appellant's theory of continuing breach would unjustifiably extend the limitation period and undermine legal certainty. On the **Ssemwogerere** case (supra), the Respondent argued that it involved the validity of a law, not the effective date of a law, which is upon assent and gazette.
59. The Respondent detailed the chronology of the events leading to the Reference with relevant dates as follows:
- Tabling of the Bill in Parliament: 27 September 2017
  - Presidential Assent: 27 December 2017
  - Constitutional Court judgment: 28 July 2018
  - Supreme Court judgment: 18 April 2019
  - Filing of the Reference: 3 May 2019

60. From the above chronology of events, according to the Respondent, any challenge to events prior to the Supreme Court judgment was clearly filed outside the two-month limitation and was rightly held to be time-barred.
61. Concerning the theory of continuing breach, the Respondent submitted that the "continuing breach" argument lacks support in both the Treaty and the Court's jurisprudence. It was contended that adoption of such a theory would render the limitation period meaningless, enabling a complainant to delay filing indefinitely until the conclusion of national judicial proceedings. The Respondent concluded on this issue by submitting that the doctrine of continuing breach has no established place in the Court's jurisprudence; that each act or decision of a Partner State is independently challengeable; and that the limitation period begins to run from the date of occurrence of the act complained of, not from the culmination of a chain of related events.

### **c. Court's Analysis and Determination**

62. The Appellant's contention that the violation was continuous and crystallised only after the Supreme Court judgment has no foundation in the Treaty. Each act, starting from the introduction of the Bill, its passage, Presidential assent, up to the Constitutional Court judgment, was a distinct act capable of being challenged under the Treaty if it was alleged to be in violation of the Treaty. Treating them as a single event would nullify the purpose of Article 30(2).
63. The wording of Article 30(2) is clear and unambiguous. It refers to "the action" or "complained-of incident" in the singular, implying that each distinct alleged infringement can give rise to a separate cause of action. The Appellant's Reference meticulously detailed a series of

specific and distinct actions by different organs of the State of Uganda, occurring on different dates. The alleged denial of access to Parliament, the lack of public participation, and the ruling of the Constitutional Court are all distinct "incidents."

64. The jurisprudence of this Court is clear that the limitation period is designed to prevent delays that could compromise legal certainty. If every act were treated as a "continuing breach," it would allow parties to wait indefinitely until the conclusion of national judicial proceedings, which is precisely what Article 30(2) seeks to prevent.

65. In **The Attorney General of the Republic of Uganda & another v. Omar Awadh & 6 others** (supra), the Court held as follows:

*"that the starting date of an act complained of under Article 30 (2) (including the detention of a complainant), is not the day the act ends, but the day it is first effected"*

Similarly, in **Union Trade Centre v. Attorney General of the Republic of Rwanda**, EACJ Reference No.10 of 2013, the Court reiterated that:

*"As quite rightly argued by learned counsel for the applicant, the time would be computed from the date the action complained of in the Reference first accrued."*

66. The theory of continuing breach advanced by the Appellant was invoked and rejected by this Court in **Attorney General of the Republic of Kenya v Independent Medical Legal Unit** (supra). That was an appeal from the decision of the Trial Court which held that the matters complained of were a continuous chain of events and that limitation of time did not entail mathematical computation of time. On appeal this Court expressed itself as follows:



*“It follows, therefore, in our view, that this Court is limited by Article 30(2) to hear References only filed within two months from the date of action or decision complained of, or the date the Claimant became aware of it. In our view, there is no enabling provision in the Treaty to disregard the time limit set by Article 30(2). Moreover, that Article does not recognize any continuing breach or violation of the Treaty outside the two months after a relevant action comes to the knowledge of the Claimant; nor is there any power to extend that time limit.” (Emphasis added).*

67. The case of **Ssemwogerere** (supra) addresses the domestic legal effect of a challenged statute, not the computation of time for filing an international claim. It is therefore distinguishable. Further, the **Ssemwogerere** case cannot override a direct decision of this Court like **Attorney General of the Republic of Kenya v Independent Medical Legal Unit** (supra), which we have cited above.
68. After analyzing the distinct acts that formed the basis of the Appellant's Reference, the Trial Court, correctly in our view, applied Article 30(2) of the Treaty by assessing each act and found that the Parliamentary process and enactment as well as the Constitutional Court judgment were time barred. However, the Supreme Court judgment was within time.
69. This approach aligns with the precedent in **Attorney General of the Republic of Uganda v. Omar Awadh & 6 others** (supra) and **Attorney General of the Republic of Kenya v Independent Medical Legal Unit** (supra) and ensures that claims are considered only when brought strictly within the time set by the Treaty. The Trial



Court's reasoning was therefore legally sound and consistent with the jurisprudence of this Court.

70. The Appellant also argued that the Trial Court's application of the limitation period was biased. We find this allegation unsubstantiated. The Record shows that the Court applied Article 30(2) consistently and objectively to all relevant acts, and provided detailed reasons for its findings. No evidence of partiality or unfair treatment has been provided.

71. For the above reasons, we find that the Trial Court correctly applied Article 30(2) in determining whether the Reference or any part thereof was time-barred. The Appellant's arguments regarding continuing breach and bias have no merit. Accordingly, Issue No. 2 is answered in the negative.

**ISSUE NO.3: Whether the Trial Court erred in law in holding that the process and decision in Constitutional Appeal No. 2 of 2018, Male Mabirizi Kiwanuka v. Attorney General of the Republic of Uganda was in accordance with the laws of Uganda and Articles 6(d) and 7(2) of the Treaty.**

**a. The Appellant's Case**

72. The Appellant alleged several distinct errors under this omnibus ground. He submitted that the Trial Court misdirected itself on the applicable standard of proof by requiring "fully conclusive evidence" for allegations of a civil nature. He contended that this approach was inconsistent with the civil standard of proof of on a balance of probabilities as articulated by this Court in **Attorney General of the Republic of Uganda v. Omar Awadh & 6 others** (supra).



73. He further argued that the Court wrongly placed a preliminary evidentiary burden on the Appellant by insisting that he first establishes a *prima facie* case before the Respondent was obliged to respond. The Appellant maintains that this approach effectively reversed the principle in **Henry Kyalimpa v. Attorney General of the Republic of Uganda**, (supra), which provides that the burden of proof rests upon the party who asserts a fact.
74. The Appellant further faulted the Trial Court for failing to draw an adverse inference from the Respondent's refusal to produce records exclusively within its control, including judicial service records. He contended that the Court disregarded established principles governing the shifting of evidential burden as recognized in **Henry Kyalimpa v. Attorney General of the Republic of Uganda** (supra).
75. The Appellant further contended that the Trial Court erred by failing to find that the Supreme Court's unilateral extension of time for the Respondent, and its reduction of the Appellant's time for rejoinder, contravened the principles of equality of arms and the right to a fair hearing. He asserted that the Trial Court also disregarded credible evidence of apparent bias on the part of Justices Katureebe, Arach-Amoko and Tumwesigye. According to him, their political and familial associations with the Executive, the primary beneficiary of the impugned decision, created a real danger of bias contrary to the **Bangalore Principles of Judicial Conduct, 2002**.
76. The Appellant further submitted that the Trial Court erred by characterizing as a mere clerical error the judgment of the Supreme Court, whereas the reasoning in the Judgment contradicted the final orders. He argued that the inconsistency in the judgment amounted to a serious procedural irregularity constituting a denial of justice. It was also the Appellant's position that the Supreme Court violated his

right to a reasoned decision when it failed to provide any basis for declining to summon the Speaker of Parliament, and that the Trial Court erred in upholding that omission. Further, he contended that the Supreme Court's reliance on a letter from the Speaker, which was never adduced in evidence, was a fundamental defect that the Trial Court ought not to have condoned.

77. The Appellant also argued that the Supreme Court improperly granted an unpleaded remedy of partial validity or severance, thereby determining the matter on issues not placed before it, contrary to the rules of fair pleading. It was his contention that the Trial Court erred in upholding parliamentary proceedings that were tainted by non-compliance with the mandatory constitutional requirement to close the doors, prior to a roll-call vote. He also contended that the Trial Court erred by failing to address the evidence of violence within Parliament, which he argued created a coercive environment and vitiated the legitimacy of the legislative process.

78. Finally, the Appellant challenged the award of costs against him. He argued that the matter was of significant public importance and that the imposition of costs would have the effect of discouraging public-interest litigation, contrary to the principles set out in **Attorney General of the Republic of Burundi v. The Secretary General of the EAC & Another** (supra).

#### **b. The Respondent's Case**

79. The Respondent robustly defended the Trial Court's decision, contending that the requirement of "fully conclusive evidence" was appropriate given the gravity of the allegations, which implicated the integrity of the apex court of a Partner State. The Respondent relied



on the standard applied in **Bosnia and Herzegovina v. Serbia and Montenegro**, Judgment, ICJ Reports 2007.

80. The Respondent maintained that the Appellant bore the burden of proving the alleged Treaty violations, in line with the principle in **Henry Kyalimpa v. The Attorney General of the Republic of Uganda**, (supra). It argued that the Appellant failed to substantiate his allegations with credible evidence. It was the Respondent's case that the procedural decisions of the Supreme Court of Uganda, including extensions of time and management of hearing schedules, were exercises of its inherent jurisdiction and did not constitute Treaty violations.

81. The Respondent argued that the allegations of judicial bias were speculative and unsupported by evidence capable of rebutting the presumption of judicial impartiality. It maintained that the Trial Court rightly dismissed the Appellant's allegations of bias.

82. On the issue of inconsistencies in the judgment of the Supreme Court of Uganda, the Respondent argued that the matter fell within the Supreme Court's slip rule and was properly treated as a correctible administrative error. It was the Respondent's submission that the substantive issues raised by the Appellant, including the Speaker's certificate, the doctrine of severance and parliamentary procedure, were matters of national law which fell outside the supervisory jurisdiction of this Court.

### **c. Court's Analysis and Determination**

83. The Court reiterates the principle set out in **Sitenda Sebalu v. The Secretary General of the EAC & others**, EACJ Reference No.1 of 2010 that it does not sit as a further appellate court over national judicial process. Its role is confined to determining whether the

impugned judicial process, attributable to a Partner State, violated the Treaty. The Trial Court properly applied that principle in the present case.

84. With regard to the standard of proof, this Court finds no fault in the approach adopted by the Trial Court. Allegations impugning the judicial integrity of a Partner State's apex court as a violation of the Treaty must be proved by cogent and credible evidence, not bare assertions. That accords with international jurisprudence as explained in **Bosnia and Herzegovina v. Serbia and Montenegro** (supra).
85. The Court also agrees with the Trial Court that the burden of proof rested upon the Appellant, as the party asserting the alleged Treaty violations, to prove the violations. That is consistent with the decision in **Henry Kyalimpa v the Attorney General of the Republic of Uganda** (supra), and the Appellant did not discharge the burden on him.
86. The procedural decisions of the Supreme Court of Uganda, relating to extensions of time, case management and correction of accidental errors in its judgments fall within its jurisdiction and discretion. The same applies to the Appellant's complaints about Parliamentary procedure, the Speakers' certificate and severance. A decision of the courts or Parliaments of a Partner State on such matters cannot *per se* constitute a violation of the Treaty. Each case will depend on its peculiar circumstances. We reiterate that this Court is not a super court established to police institutions of the Partner States on the barest and minutest allegations of infraction of national law. The Appellant did not demonstrate that the procedural rulings and decisions in question, taken individually or collectively, amounted to a denial of justice constituting a violation of the Treaty.



87. Turning to the allegations of judicial bias, once more, we find that they were based on bare assertions and surmises, unsupported by any acceptable evidence from which a fair-minded person could have apprehended partiality. The test of judicial bias is an objective test requiring the Court to satisfy itself that the circumstances relied upon indeed give rise to reasonable apprehension in the mind of a reasonable, fair-minded and informed member of the public, that the judge or judges will not be impartial. In **Attorney General of the Republic of Kenya v. Prof. Peter Anyang Nyong'o & 10 others**, EACJ Application No. 5 of 2007 the Court held as follows on the test of bias:

*"We think that the objective test of "reasonable apprehension of bias" is good law. The test is stated variously, but amounts to this: do the circumstances give rise to a reasonable apprehension, in the mind of the reasonable, fair minded and informed member of the public that the judge did not (will not) apply his mind to the case impartially? Needless to say, (a) litigant who seeks disqualification of a judge comes to court because of his own perception that there is appearance of bias on the part of the judge. The court however, has to envisage what would be the perception of a member of the public who is not only reasonable but also fair minded and informed about all the circumstances of the case." (Emphasis added).*

No bias as defined above was proved which would have constituted a violation of Articles 6(d) and 7(2) of the Treaty.

88. In the circumstances, the Appellant has not proved that the Trial Court erred in law in its conclusions. Issue No. 3 is therefore answered in the negative and is accordingly dismissed.

**ISSUE NO. 4: What remedies are available to the parties**

**a. The Appellant's Case**

89. The Appellant prayed for the grant of one of two principal remedies. His primary prayer is that the matter be remitted to the Trial Court for hearing *de novo*. In the alternative, he sought an order directing that Court to reconstitute itself for purposes of determining what he terms as "undetermined matters." He further reiterated his prayer for damages, costs, and interest.

90. With respect to the primary remedy of a *de novo* hearing, the Appellant relied on **Ismael Dabule & 1004 others v. Attorney General of the Republic of Uganda**, (*supra*) which held that where a trial court fails to consider all issues properly placed before it, the appropriate remedy is to quash the impugned judgment and remit the matter back for a proper hearing. The Appellant contended that the Trial Court similarly failed to conduct a proper hearing.

91. He further invoked **Union Trade Centre Ltd v. Attorney General of the Republic of Rwanda** (*supra*) where the Court found that a grave procedural irregularity, namely proceeding to judgment without any evidence, occasioned "a most grave injustice," and that an appellate court could not cure such injustice without remitting the matter for a fresh hearing. By parity of reasoning, the Appellant argued that the "several procedural irregularities" he alleged equally justify the grant of a *de novo* hearing.

92. As regards the alternative prayer, the Appellant cited **Attorney General of the Republic of Uganda v. Media Legal Defense**

**Initiative & 19 others** Appeal No. 3 of 2016, in which this Court directed the trial court to reconstitute itself and determine a point fully argued but left undecided. The Appellant however submitted that the Court's more recent jurisprudence, as reflected in the **Ismael Dabule & 1004 others v. Attorney General of the Republic of Uganda** (supra), and **Union Trade Centre Ltd v. Attorney General of the Republic of Rwanda** (supra), supports the broader remedy of a full retrial where systemic procedural failures are alleged. He therefore urged the Court to prefer the primary remedy.

93. On damages, costs, and interest, the Appellant stated that consistent with the jurisprudence in **Ismael Dabule & 1004 others v. Attorney General of the Republic of Uganda** (supra), he sought costs both in this appeal and in the original proceedings.

#### **b. The Respondent's Case**

94. The Respondent opposed the grant of any remedies sought by the Appellant. It reiterated the principle that the burden of proof lies on the party alleging irregularity, and asserted that the Appellant had failed to establish any error of law or procedural defect committed the Trial Court.

95. The Respondent maintained that the Trial Court duly heard and determined all issues raised before it. It distinguished **Ismael Dabule & 1004 others v. Attorney General of the Republic of Uganda** (supra) on the basis that on appeal, there was a concrete finding that the Trial Court had failed to consider and determine an issue that was properly raised. In the instant appeal, it was submitted that there was no such error.

96. Regarding the alternative prayer, the Respondent submitted that there were no "undetermined matters" capable of being remitted to



the Trial Court for determination. In particular, the Respondent emphasised that several of the Appellant's claims were determined to be time-barred under Article 30(2) of the Treaty. Such determination, the Respondent argued, constituted a final adjudication on admissibility.

97. Concerning damages and interest, the Respondent submitted that the claim is fatally defective as it was not pleaded in the Memorandum of Appeal as required by rule 97 of the Court's Rules. The Respondent further submitted that damages cannot lie in the absence of liability, and that the Appellant had demonstrated no personal loss, particularly as the matter was framed as public interest litigation.

98. On costs, the Respondent contended that costs should follow the event. It characterized the appeal as frivolous and an abuse of process, owing to what it described as the Appellant's voluminous pleadings and attempts to re-litigate issues previously determined. The Respondent therefore prayed that the Appellant be condemned to pay costs of the appeal.

### **c. Court's Analysis and Determination**

99. The remedies sought are contingent upon the Appellant establishing the substantive grounds of appeal. Having found under the preceding issues that the Appellant has not proved the alleged procedural irregularities, this Court approaches the prayers for relief in that context.

#### **i. On the prayer for a trial *de novo***

100. A trial *de novo* is a far-reaching remedy that is granted only where the procedural defects in the original proceedings are so fundamental as to undermine the very integrity of the hearing. In **Ismael Dabule & 1004 others v. Attorney General of the Republic of Uganda**

(supra), the Court intervened because entire issues agreed at the scheduling conference were left unaddressed.

101. In the present case, however, the Record of Appeal shows that the Trial Court heard the parties, engaged with the issues presented, and rendered reasoned decisions, including on the issue of time-bar under Article 30(2) of the Treaty. The Appellant's complaints, upon scrutiny, amount to disagreement with the weight the Trial Court assigned to various arguments rather than demonstration of any fundamental procedural flaw.

102. Accordingly, **Ismael Dabule & 1004 others v. Attorney General of the Republic of Uganda** (supra), precedent is distinguishable. The threshold for a *de novo* hearing has not been met and this prayer therefore fails.

**ii. On the Alternative Prayer for Determination of Undetermined Matters**

103. The Appellant asserted that certain matters were left unresolved. The Respondent maintained that all matters were determined and that some were dismissed as time-barred.

104. This Court agrees with the Respondent. A determination that a matter is time-barred is a substantive legal finding on admissibility and constitutes a final resolution of that matter. The Court finds no evidence that any issue properly before the Trial Court was left undetermined. Consequently, the alternative prayer is without merit and fails.

**iii. On Damages, Costs and Interest**

105. Concerning damages and interest, the Court notes that the claim was not pleaded as required under rule 97. A litigant is bound by his pleadings, and a court cannot grant a remedy not founded upon pleadings.



106. Additionally, damages presuppose liability. As the Court has not found any violation of the Treaty or wrongful act attributable to the Respondent, no basis exists for such an award. The claim for interest fails for the same reason.

107. On costs, Rule 127(1) provides that costs shall follow the event unless the Court otherwise orders for good cause. The Appellant has failed on all substantive issues. However, the Court has considered the public interest dimensions of the matter and the Appellant's right to pursue an appeal. This Court has regularly exercised this discretion in matters of public interest litigation and in certain procedural circumstances, as seen in **Attorney General of the United Republic of Tanzania v. Africa Network for Animal Welfare (ANAW)**, Appeal No. 3 of 2014, where it held that:

*“since the Reference was brought in the interest of conservation and preservation of the Serengeti Park, “a gem of a heritage, one-for-all-mankind,” each party would bear its own costs”*,

In the circumstances, the Court finds it appropriate that each party bear its own costs.

108. As regards Issue No. 4 on remedies, and for the foregoing reasons, the Court hereby finds as follows:

- i. The prayer for an order directing a trial *de novo* is dismissed.
- ii. The alternative prayer for the Trial Court to determine alleged undetermined matters is dismissed.
- iii. The prayer for damages, interest and costs is dismissed.



**DISPOSITION**

109. For the reasons set forth above, this Court finds that:

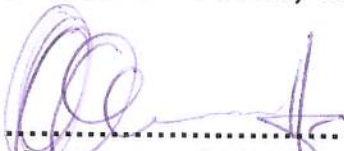
1. No procedural irregularity was committed by the Trial Court;
2. Parts of the Reference were correctly held time-barred under Article 30(2) of the Treaty;
3. The Trial Court correctly upheld the processes of the Supreme Court of Uganda; and
4. The Appellant is not entitled to the relief sought.
5. Accordingly, the Appeal is dismissed in its entirety, and the Judgment of Trial Court is affirmed.

**ORDERS**

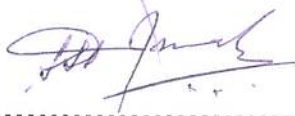
**IT IS HEREBY ORDERED THAT:**

1. The Appeal is dismissed.
2. Each party shall bear its own costs of this Appeal.

**Dated, Signed and Delivered at Arusha, this 24<sup>th</sup> day of November, 2025.**

  
.....  
**Lady Justice Anita MUGENI**  
**VICE PRESIDENT**

  
.....  
**Justice Kathurima M'INOTI**  
**JUSTICE OF APPEAL**

  
.....  
**Justice Omar Othman MAKUNGU**  
**JUSTICE OF APPEAL**