IN THE EAST AFRICAN COURT OF JUSTICE

AT ARUSHA

FIRST INSTANCE DIVISION

*(**Coram**: Yohane B. Masara, PJ; Richard Muhumuza & Kayembe Ignace Rene Kasanda; JJ)*

CONSOLIDATED APPLICATIONS NOS 4, 5, 15 AND 16 OF 2024

(Arising from **Reference No. 33 of 2023** and **Application No. 13 of 2023**)

MINISTER OF JUSTICE OF THE
DEMOCRATIC REPUBLIC OF CONGO ..... APPLICANT

VERSUS

THE ATTORNEY GENERAL OF

THE REPUBLIC OF RWANDA ..... RESPONDENT

21ST NOVEMBER 2025

RULING OF THE COURT

A. INTRODUCTION

1. These Consolidated Applications arise from **Reference No. 33 of 2023** ("the Reference") and **Application No. 13 of 2023** both filed by the Minister of Justice of the Democratic Republic of Congo ("DRC" or "the Applicant") against the Attorney General of the Republic of Rwanda ("the Respondent") on 25th September 2023. In **Reference No. 33 of 2023,** the Applicant is challenging, among others, alleged actions of aggression against DRC, which actions are said to have violated DRC's sovereignty, territorial integrity, political stability, political independence and caused massive human rights violations in the North Kivu (Eastern DRC) region, Contrary to the provisions of the Treaty for the Establishment of the East African Community ("the Treaty"). In **Application No. 13 of 2023**, the Applicant is urging the East African Court of Justice ("the Court") to issue a number of interim reliefs against the Respondent.

2. Following the filing of **Reference No. 33 of 2023** and **Application No. 13 of 2023**, the Respondent, acting under the provisions of Rules 4, 47(1) & (2) and 52(1) & (4) of the East African Court of Justice Rules, 2019 ("the Rules"), filed **Application No. 4 of 2024** and **Application No. 5 of 2024** both dated 2nd February 2024, respectively urging the Court to, among others, strike out "all pleadings and documents" attached to the affidavits in support of the Amended **Reference No. 33 of 2023** and **Application No. 13 of 2023** with no leave to amend, on the grounds that they are scandalous, frivolous or vexatious.

3. Before the Court could schedule the above Applications for hearing, the Applicant, acting in accordance with Rules 4, 11(7), 44(1) and 52 of the Rules, filed **Application No. 15 of 2024** and **Application No. 16 of 2024** beseeching the Court to grant the Applicant leave to produce additional documents, being translations into English of the untranslated relevant documents contained in **Reference No. 33 of 2023** and **Application No. 13 of 2023**, respectively, and the additional documents so filed be deemed properly on record. The Applicant also requested leave to include recently discovered new documents in the said Reference and Application.

4. On 26th September 2024 when the **Applications Nos 4, 5, 15** and **16** were scheduled for hearing, the Court, with concurrence of Counsel for the Parties consolidated the four Applications and directed that they be heard simultaneously.

B. REPRESENTATION

5. The Applicant, DRC, was represented by Mr Ivon Mingashang, Ms Emily Osiemo, Mr Elisha Ongoya and Dr Harrison Mbori, learned Advocates; while the Respondent was represented by Mr Emile Ntwali, Principal State Attorney and Mr Nicholas Ntarugera, Senior State Attorney from the Office of the Attorney General, Rwanda.

C. BACKGROUND TO THE DISPUTE

6. The parties herein are sovereign States and Partner States of the East African Community ("the Community"). Whereas the Respondent joined the Community in July 2007, the Applicant became a member of the Community in July 2022.

7. In **Reference No. 33 of 2023** and **Application No. 13 of 2023**, the Applicant raised serious allegations in relation to the purported actions of the Respondent. These actions are said to be a continuation of actions which took place even before the Applicant became a party to the East African Community.

8. In the affidavits deponed by Hon. Mutombo Kiese Rose, the Minister of Justice of the Applicant, some of the impugned actions attributed to the Respondent include:

    a) **That the Respondent is sponsoring and/or funding the coalition of Rwanda Defence Forces (RDF) and the rebel militia group known as *Mouvement du 23 Mars* (M23), attacks against the armed forces of the DRC (FARDC) in the Eastern DRC;**

    b) **That on 17th August 2022, M23 caused unprecedented attack on the Virunga National Park's staff and infrastructure at the hydro-electric power plant station at Rwanguba, Rutshuru District, to which M23 claimed responsibility;**

    c) **That on 16th February 2023, 365 RDF soldiers crossed the border to DRC through Kasizi entry point and attacked Rusinda and Mubuwo the Kitchanga Road;**

    d) **That on 19th and 20th February 2023, the RDF/M23 launched general attacks on 4 FARDC positions in Kyahemba, Butchalwichi, Kihisha and Lubula in Masisi territory in outright violation of the ceasefire;**

e) **That on 13th and 15th March 2023, RDF weapons, ammunitions and military uniforms were recovered in an abandoned M23 and/or RDF position 3 kms north east of Sake town in Masisi territory;**

f) **That on 15th March 2023, RDF weapons, ammunitions and military uniforms were recovered in an abandoned M23 and/or RDF position north of Sake town in the Masisi territory;**

g) **That on 18th March 2023, the M23/RDF attacked different FARDC positions in Mpati, Kabaya, Nyabibwe, Kadirisha, Rubare and Nyamimanzu in Masisi territory;**

h) **That on 28th March 2023, the Respondent sent troops and equipment to the DRC causing the RDF and M23 to attack Mweso town in Masisi territory;**

i) **That between November 2022 and March 2023 soldiers in the RDF military attire were seen in Rutshuru, Masisi and Nyiragongo territories; and**

j) **That the Respondent has declined to cooperate with the Applicant State to extradite persons implicated in causing political instability in North Kivu and also neglected/refused or despised efforts made by the Community to bring a ceasefire and restoration of political stability in the Eastern DRC.**

9. While filing the Reference and the Application above stated, the Applicant presented a number of documents as proof of its allegations against the Respondent. Some of the said documents

were in languages other than English, which is the language of the Court and no certified translations were presented at the time of filing.

10. The Respondent's Response to the Statement of Reference dated 9th November 2023 refuted all the allegations against it in general terms. The Respondent also raised a number of preliminary objections. These objections are as follows:
    a) **The Reference is time barred;**
    b) **The Court lacks jurisdiction to entertain the Reference;**
    c) **The Reference does not disclose a cause of action against the Respondent;** and
    d) **The Reference is misconceived, frivolous and an abuse of the Court process and procedure.**

11. The Respondent, therefore, prayed that the hearing of **Reference No. 33 of 2023** be bifurcated so that hearing of the preliminary objections precede hearing of the merits of the Reference.

D. APPLICATIONS

12. Before providing details of what transpired during the consolidated hearing of the Applications, we deemed it imperative to give a summary of the respective Applications.

i. Application No. 4 of 2024

13. In the Amended Notice of Motion dated 6th September 2024, the Respondent urged the Court to, *inter alia*, strike out all pleadings and documents attached to the Affidavits in the Amended **Reference No. 33 of 2023**, with no leave to amend, on the grounds that they are scandalous, frivolous or vexatious.

14. The grounds thereof are contained in the Affidavit of one Kabibi Specioza, the Director General of the Civil Litigation Directorate in the Ministry of Justice.

15. The Respondent contended that the Affidavit in support of the Reference was an abuse of the Court process as it is full of hearsays that are not justifiable.

16. The Respondent further stated that the exhibits attached to the Affidavit supporting the Reference are in total violation of the Treaty and the Rules, especially Article 46 and Rule 11(1), (3) and (7) thereof.

17. The Respondent also challenged the capacity of the deponents of the Affidavits in support of the Reference and urged the Court to strike all the pleadings and documents supporting **Reference No. 33 of 2023.**

ii. <u>Application No. 5 of 2024</u>

18. **Application No. 5 of 2024** was filed on 2nd February 2024 challenging the authenticity of **Application No. 13 of 2023**. Like **Application No. 4 of 2024**, the Notice of Motion was preferred under Rules 4, 52(1) & (4) and 47(1) & (2) of the Rules. It is supported by the Affidavit deponed by one Kabibi Specioza, the Director General of the Civil Litigation Directorate in the Ministry of Justice.

19. The Application sought orders, *inter alia*, that all pleadings and documents attached to the Affidavits in support of **Application No. 13 of 2023** be struck out with no leave to amend, on the grounds that they are scandalous, frivolous or vexatious.

20. The grounds for the craved orders are that:

a) **Application No. 13 of 2023 contain documents filed in violation of Article 46 of the Treaty and Rule 11(1) & (7) of the Rules which states that the language of the Court is English and that all documents for the use of the Court ought to be in English or translated into English and accompanied by a certificate of translation;**

b) **That the deponents of the affidavits in support of the Application; namely, Hon. Lutundula Apala Pen'Apala Christophe and Hon Mutombo Kiese Rose, had no capacity to depone on behalf of the Applicant; and**

c) **That the averments contained in Application No. 13 of 2023 are argumentative and thus an abuse of the Court process.**

iii. **Application No. 15 of 2024**

21. The Applicant filed **Application No. 15 of 2024** on 25th March 2024 pursuant to Rules 4, 11(7), 44(1) and 52 of the Rules. In the Application, the Applicant implored the Court to grant it leave to produce additional documents, being translations into English of the untranslated relevant documents contained in **Reference No. 33 of 2023** and the additional documents filed be deemed properly on record. The Applicant also requested leave to include recently discovered new documents in the said Reference.

22. The justifications put forth by the Applicant, through the Affidavit of Hon. Mutombo Kiese Rose, is summarised as follows:

a) **The Applicant had not provided English translation of Ordinance No. 3/030 and some pages of the United Nations' reports at the time of filing the Reference;**

b) **The Applicant had managed to have the documents translated; thus, a need to furnish the same so as to enable the Court determine the real issues in dispute between the parties;**

c) **That the delay to furnish the Court with translated documents was regrettable but was not deliberate;**

d) **That the Applicant had newly discovered new documents which were not available at the time of filing the Reference. That those documents are important and critical to the dispute; and**

e) **The Respondent stands to suffer no prejudice if the documents are admitted as the matter was yet to be set down for Scheduling and it may be allowed to respond to them, if need be.**

iv. **Application No. 16 of 2024**

23. The Applicant filed **Application No. 16 of 2024** on 25th March 2024 pursuant to Rules 4, 11(7), 44(1) and 52 of the Rules. In the Application, the Applicant implored the Court to grant it leave to produce additional documents, being translations into English of the untranslated relevant documents contained in **Application No. 13 of 2023** and the additional documents filed be deemed properly on record. The Applicant also requested leave to include recently discovered new documents in the said Application.

24. The grounds put forth are the same as those contained in **Application No. 15 of 2023**.

E. CONSOLIDATED HEARING

25. As earlier stated, on 26 September 2024, the Court fixed all the four Applications for hearing. It was also agreed that the hearing be on both the preliminary objections raised and the substance of the Applications.

26. As reflected in the proceedings of the day, Counsel for the Applicant raised other objections in additions to the ones contained in the notice of objections above stated. Some objections were determined during the hearing and we see no reasons to deal with them at this stage. One of such objections related to whether Counsel on record for the Applicants were properly instructed.

27. The Court was informed that the Applicant issued a Power of Attorney authorising Counsel on record to represent it in the matters before the Court. Unfortunately, the document attached had no English translation. The Court directed that the same be translated and if it was to be found that Counsel misrepresented, then everything done by them would be nullified.

28. The decision was made after a scrutiny of the Practicing Certificates of the relevant Counsel and the fact that the said Counsel are seasoned lawyers, some of them regularly appearing before the Court.

F. PRELIMINARY OBJECTIONS

I. Authenticity of Applicant's Affidavits and Documents

29. During hearing, Counsel for the Respondent, relying on Rule 52(7) of the Rules, sought that the affidavit and all documents filed in reply to **Applications Nos 4 and 5 of 2024** and those in support of **Application Nos 15** and **16 of 2024** be expunged from the record as they were not properly authenticated.

30. Mr Ntwali submitted that the Commissioner for Oath in all those document, Jasper Odhiambo Lubeto, is an advocate from Kenya but the deponents of the affidavit stated that they deponed the said affidavits in Kinshasa.

31. Counsel argued further that there is no proof that Advocates in Kenya are allowed to practice in DRC, thus, the said documents were commissioned by unqualified person and ought to be expunged.

32. Responding to the point raised by the Respondent, Ms Osiemo, in addition to stating that the issue of authentication was a new one, added that there is nowhere in the Treaty or the Rules saying that affidavits can only be notarised or commissioned by an advocate from a specific country.

33. She added that as there is no challenge as to the qualification of the Commissioner for oath and the Notary who stamped the documents, the affidavits should be held to have been properly commissioned and notarised.

34. We do not intend to spend time on this objection as it is not a pure point of law. Whether or not Jasper Odhiambo Lubeto is or is not authorised to practice in the DRC is a question of fact which can only be determined after a thorough examination of the evidence.

35. We therefore are not in a position to hold, as urged by Counsel for the Respondent, that the affidavits commissioned and the documents notarised by Jasper Odhiambo Lubeto contravene the Rules of this Court.

II. Whether the Reference is Time barred

a) Respondent's Submissions

36. Submitting on the issue whether the Reference herein falls within the jurisdiction of this Court, Mr Ntwali, stated that the Reference was time barred as it refers to events that preceded the Applicant's admission as a Partner State of the Community. Relying on the decision of this Court stated in the case of **Rashid Salim Ady and 39,999 Others vs Attorney General of the Revolutionary Government of Zanzibar and 2 Others, EACJ Reference No. 9 of 2016,** Counsel argued that the Court has no jurisdiction to interrogate events which happened before the Treaty was established or before a party became a member of the Community.

37. Mr Ntwali also submitted that although the time frame for filing References under Article 28 of the Treaty is not specified, the two months limitation provided for under Article 30(2) of the Treaty equally applies in this case.

38. That, as DRC joined the Community on July 11, 2022 and was aware of what was happening in Eastern DRC and North Kivu, it was

precluded by time limitation by the time it filed the Reference on 18th September 2023.

39. The Respondent deferred submissions on the other aspects to the time of hearing of the Reference, if the issue of lack of jurisdiction is not decided in its favour.

b) Applicant's Submissions

40. Submitting on behalf of the Applicant, Mr Ongoya, premised his submission on the cherished principle that a preliminary objection has to be on a pure point of law which is to be argued on the assumption that all the facts pleaded by the other side are correct.

41. Counsel Ongoya stated that the claim that the Applicant sought reliefs on events preceding its being admitted to the Community is not true. That Part E of the Reference has two parts; Part I (paras 16 to 24) relates to historical facts while Part II (paras 25 to 27) details facts relating to the Reference.

42. That, the objection founded on Paragraphs 16 to 24 is misplaced as it relates to irrelevant aspect of the Reference. He therefore opposed the argument that this Court is called to determine a dispute which started at the time when the Applicant was not a member of the EAC.

43. On the issue of time limitation, Counsel Ongoya submitted that Article 28 and Article 30 of the Treaty are distinct jurisdictional heads. That the current Reference is premised on Article 28 and not 30 of the Treaty. To him, Counsel for the Respondent did not justify why the limitation set out in Article 30(2) should be imported into Article 28, more so when the dispute is instituted by a Partner State against another Partner State.

44. Counsel Ongoya implored the Court not to be swayed from exercising its jurisdiction in order to build a jurisprudence that is upright and which foster substantive justice. He concluded that the Court is properly seized of the jurisdiction over this matter. He urged the Court to disallow the objection raised with costs.

c) Respondent's Rejoinder

45. In rejoinder, Counsel Ntwali reiterated his earlier submission but added that Article 30 deals with References by legal and natural persons and that DRC is a legal person bound with the time limitation provided for in Article 30(2) of the Treaty.

46. On the issue of the distinct causes of action in Part E of the Reference, Counsel Ntwali submitted that the Applicant should not be allowed to delink the cause and the continued acts alleged to have been committed. As the said acts of aggression commenced 25 years ago, long before the Applicant joined the Community, the Reference is time barred.

d) The Court's Determination

47. The gravamen of the Respondent's assertion on jurisdiction is duo faceted. First, it is contended that the Applicant seeks to impugn acts which took place 25 years ago when the Applicant (and the Respondent) were not members of the Community and had not committed to be bound by the Treaty, whose provisions the Respondent is said to have contravened. This is a challenge on jurisdiction over the subject matter, *ratione materiae*.

48. The second limb of jurisdictional challenge relates to events that, although alleged to have been committed when parties herein were

members of the Community, the Reference was filed outside the two-month limitation period. This fits on the challenge on *ratione temporis*.

i. Jurisdiction *Ratione Materiae*

49. This Court has in a number of past decisions confirmed the internationally recognized *sine qua non* principle that a treaty cannot have retrospective application. In **Juba Airport City Park Ltd vs The Attorney General of the Republic of South Sudan, EACJ Reference No. 17 of 2020**, it was stated that:

> ***"This Court does not have requisite jurisdiction to deal with issues that arose before a Respondent became a member of the Community. It is common knowledge that the Respondent, the Republic of South Sudan, was admitted to the EAC in 2016. The impugned acts appear to have taken place before or in 2011. It is therefore not within the jurisdiction of this Court to impugn acts or omissions of a State which occurred before it became a party to the Community."***

50. The above position had been advanced in **Emmanuel Mwakisha Mjawasi & Others vs Attorney General of the Republic of Kenya, EACJ Reference No. 2 of 2010**. The Court held as follows:

> ***"A Treaty cannot be applied retrospectively unless a different intention appears from the Treaty or is otherwise established. In the absence of the contrary intention, a Treaty cannot apply to acts or facts which took place or***

situations which ceased to exist before the date of its entry into force."

51. That decision was cited with approval in **Alcon International Limited vs Standard Chartered Bank of Uganda & 2 Others, EACJ Appeal No. 3 of 2013** where it was held:

> ***"Where then, one may ask, did the Court derive its jurisdiction since the Treaty which normally confers the jurisdiction on the court, did not apply? Non retroactivity is a strong objection: where it is upheld, it disposes of the case there and then. As non-retroactivity renders the Treaty inapplicable forthwith, what else can confer jurisdiction on the Court?"***

52. Indeed, in the **Emmanuel Mwakisha Mjawasi** case, this Court concluded:

> ***"The objection of the non-retroactivity of the Treaty is a fundamental issue, one that goes to the root of the case. The Court cannot avoid the question. It must determine it at the outset before dealing with any other issue. True, it is not possible to deal with the objection of non-retrospectivity without considering the cause of action of the particular case. However, such consideration helps only to situate the objection in a certain period and it does not transform the principle of non-retroactivity into a matter of facts. ... the objection of non-retroactivity is interconnected with the question of jurisdiction. The Court must consider the question even where the parties fail to raise it."***

See also the decision of this Court in **Kiir Chol Deng vs Attorney General of the Republic of South Sudan, EACJ Reference No. 4 of 2018.**

53. From the jurisprudential point of view, therefore, this Court cannot interrogate events of alleged aggressions by the Respondent that took place prior to 11th July 2022, when the Applicant joined the Community through its accession to the Treaty.

54. The Applicant's Counsel vehemently opposed the objections as to jurisdiction stating that the Reference was specific on the acts complained against and that those acts do not include events preceding the Applicant's accession to the Treaty.

55. Indeed, when one scrutinizes the Amended Statement of Reference, the argument made by Counsel for the Applicant is vindicated. It is apparent that events subject of the Reference are those that took place from 17th August 2022, a month or so after the Applicant joined the Community on 11th July 2022.

56. It is true that Part E of the Statement of Reference is titled "*Subject matter of the Reference*", which may connote that all facts stated from para 16 to 27 are impugned. We, however, note that Part E has two sections: (i) and (ii). Section (i) covering paragraphs 16 to 24 of the Statement of Reference, details events which took place from 1998 to about November 2021. The section is titled "*Background facts to the Reference*". These events, we cannot interrogate as they fall outside the mandate of this Court.

57. Section (ii) covering paragraphs 25 to 27 and titled "*Facts relating to Dispute*" concerns events running from August 2022 to March

2023. These ones are within the jurisdiction of the Court as they happened when both the Applicant and the Respondent were bound by the Treaty provisions.

58. That said, we do not agree with Counsel for the Respondent's assertion that the Court is devoid of jurisdiction relating to the subject matter of the Reference. The Court has jurisdiction *ratione materiae* to deal with the subject of this Reference.

59. The first limb of jurisdictional challenge fails.

ii. Jurisdiction *Ratione Temporis*

60. Counsel for the Respondent urged the Court to dismiss the Reference on the ground that it was filed outside the two months limitation period specified under Article 30(2) of the Treaty. Counsel, while acknowledging that the Reference was filed under Article 28 of the Treaty, nevertheless argued that the limitation applies to disputes between Partner States filed under Article 28 as, for him, a Partner State is not exempt from the limitations spelt out under Article 30(2). He implored the Court to apply the same standards to the Applicant as, for him, a Partner State, as a country, is a legal person.

61. The Applicant's Counsel, on the other hand urged the Court not to be swayed by the analogy propounded by Counsel for the Respondent.

62. Indeed, the jurisprudence of this Court is replete with pronouncements on the primacy of determining jurisdiction where the issue is raised. Like all international Courts and tribunals, this Court derives its jurisdiction from its constituting instrument, the

Treaty. The relevant provisions are Articles 23(1), 27(1), 28, 29, 30 and 31 thereof, among others.

63. Article 23(1) provides:

> **"The Court shall be a judicial body which shall ensure the adherence to law in the interpretation and application of and compliance with this Treaty."**

64. Article 27(1) provides:

> **"The Court shall initially have jurisdiction over the interpretation and application of this Treaty:**
>
> > ***Provided that the Court's jurisdiction to interpret under this* paragraph *shall not include the application of any such interpretation to jurisdiction conferred by the Treaty on organs of Partner States."***

65. Thus, Articles 23 and 27 lay a foundation of the Court's jurisdiction. Article 28 relates to Reference by Partner States. For clarity we reproduce it herein below:

> "**1. A Partner State which considers that another Partner State or an organ of the Community has failed to fulfil an obligation under this Treaty or has infringed a provision of this Treaty, may refer the matter to the Court for adjudication; and**
>
> **2. A Partner State may refer for determination by the Court, the legality of any Act, regulation, directive, decision or action on the ground that it is utra vires or unlawful or an infringement of the provisions of**

the Treaty or any rule of law relating to its application or amounts to a misuse or abuse of power."

66. For the purposes of this Reference, we will not reproduce Articles 29 and 31 of the Treaty as they are not very relevant to the subject of the dispute. Suffices it to state, that the two relate to References by the Secretary General and Disputes between the Community and its Employees, respectively. We will, however, refer to them in our discourse relating to timeframes for preferring disputes to the Court.

67. On the other hand, Article 30 provides:

> **"1. Subject to the provisions of Article 27 of this Treaty, any person who is resident in a Partner State may refer for determination by the Court, the legality of any Act, regulation, directive, decision or action of a Partner State or an institution of the Community on the grounds that such Act, regulation, directive, decision or action is unlawful or is an infringement of the provisions of this Treaty;**
>
> **2. The proceedings provided for in this Article shall be instituted within two months of the enactment, publication, directive, decision or action complained of, or in the absence thereof, of the day in which it came to the knowledge of the complainant, as the case may be; and**
>
> **3. The Court shall have no jurisdiction under this Article where an Act, regulation, directive, decision**

or action has been reserved under this Treaty to an institution of a Partner State."

68. In any situation where the Court is considering if it has jurisdiction to hear and determine a matter, all the above Articles must be considered. In **Eric Kabalisa Makala vs Attorney General of the Republic of Rwanda, EACJ Reference No. 1 of 2017**, this Court stated:

> ***"...to succeed on a claim of lack of Jurisdiction in this Court, a party must demonstrate the absence of any of the three (3) types of jurisdiction: ratione personae/locus standi, ratione materiae and ratione temporis. Simply stated, these 3 jurisdictional elements respectively translate into jurisdiction on account of the person concerned, matter involved and time element."***

69. As earlier alluded to, the challenge on this Court's jurisdiction over the matter involved/subject matter of the Reference does not stand. Equally, the Respondent has not raised issue with the locus standi/ *ratione personae* of any of the parties. What is in issue is the challenge on the time limitation/*ratione temporis*.

70. This Court has severally given pronouncements on what the limitations under Article 30(2) entails. It has time and again stated that a legal or natural person who intends to challenge the "*legality of any Act, regulation, directive, decision or action of a Partner State or an institution of the Community on the grounds that such Act, regulation, directive, decision or action is unlawful or is an infringement of the provisions of this Treaty*" has no latitude but to

prefer the matter for determination within the two months limitation period.

71. There has not been similar pronouncement when the matter involved falls under Articles 28, 29 or 31 of the Treaty. There exist no similar time limitations in those provisions. Whereas Article 28 is silent on the time an aggrieved Partner State can come to Court, Article 29, much as it does not say how long the Secretary General should take before informing the concerned Partner of the finding of the breaches it is accused of, it gives the concerned Partner State four (4) months within which to submit its observations. Thereafter, the Secretary General shall, if response is not filed or if dissatisfied with the observations made, refer the matter to Council, which Council may direct that the Secretary General refers the matter to the Court.

72. Similarly, the time limitation for filing a Claim under Article 31 is different from the one provided for under Article 30 of the Treaty. In **Joseph Kipkoechi Sigei vs The Secretary General of the East African Community, EACJ Claim No. 1 of 2018**, this Court, citing in affirmation the Appellate Division decision in **Angella Amudo vs Secretary General of the East African Community, EACJ Appeal No. 4 of 2014** held that the limitation period specified in Article 30 of the Treaty does not apply to Claims preferred under Article 31. In both cases, the limitation time was held to be the one provided for under Regulation 104 of the EAC Staff Rules and Regulations 2006 which states:

> **"A member of Staff who may have been entitled to receive allowances, grants or other payments due under these rules and Regulations shall not be entitled to Claim such**

allowances, grants or other payments retrospectively, unless a written Claim has been submitted within 12 months of the date when the initial payment would have otherwise been due."

73. As rightly submitted by Counsel Ongoya, had the framers of Article 28 intended to limit the time frame for filing of a Reference by a Partner State, they would have expressly done so, specifically because the time frame of two months for natural and legal persons only came into existence when the Treaty was amended in 2006.

74. The argument put forth by Counsel for the Respondent that References under Article 28 should be subjected to Article 30(2) merely because countries are in law legal persons, which is a fallacy, as countries are sovereign States, fails when one analogizes the same with the provisions of Articles 29 and 31, as those also are instituted by purportedly legal or natural persons.

75. This Court has consistently treated Partner States as falling exclusively under Article 28 and not Article 30 of the Treaty. In **East African Centre for Trade and Law vs Attorney General of Uganda & Others, EACJ Reference No.9 of 2012**, this Court stated that Article 30 of the Treaty applies only to natural and legal persons and not to Partner States. This position was upheld by the Appellate Division in **the Attorney General of Kenya vs Independent Medical Legal Unity, EACJ Appeal No. 1 of 2014**, where it was reaffirmed that the two-month limitation in Article 30(2) of the Treaty does not apply to Reference brought by Partner States under Article 28.

76. On the basis of the foregoing, it is the finding of this Court that the time limit stated in Article 30(2) of the Treaty is inapplicable to a Reference preferred under Article 28 of the Treaty.

77. The objection as to the Court's exercise of jurisdiction based on time limitation therefore fails.

G. MERIT OF THE APPLICATIONS

i. Parties Submissions

78. In determining the merits of the Applications herein, we deem it necessary to outline, albeit briefly, the rival submissions made in support or against the Applications herein. In doing so, we combine arguments for and against **Applications Nos 4 and 5**. We also combine submissions made for and against **Applications Nos 15 and 16** conjointly.

79. As earlier stated, the Respondent, who is the Applicant in Applications 4 and 5 seeks this Court to hold that both **Reference No. 33 of 2023** and **Application No. 13 of 2023** contravene the Treaty and the Rules, specifically, Article 46 and Rule 11 thereof. Those provisions provide for the language of the Court.

80. Mr Ntarugera urged the Court to strike them out with no leave to amend as they are an abuse of the Court process. To him, the Applicant had ample time before filing the Reference and Application to translate the relevant documents so as to abide with the Rules of the Court, failure upon which renders the omission inexcusable. That by presenting untranslated documents, it rendered the pleadings scandalous, frivolous or vexatious.

81. In response, Ms Osiemo challenged the Respondent's prayers seeking to have the affidavits and documents expunged. She argued that Rule 47 relied upon by the Respondent only applies to pleading as opposed to affidavits and documents, which is primarily evidence. She sought reliance on the decision in **Attorney General of the Republic of Burundi vs the Secretary General of the East African Community, EACJ Appeal No. 2 of 2019** where the Court stated at page 28 that an affidavit is not a document or pleading envisaged in Rule 47(1).

82. Regarding whether the untranslated documents are scandalous, frivolous or vexatious, Ms Osiemo submitted that they are none of that. She fortified her stance based on this Court's decision in **Attorney General of the Republic of Rwanda vs Union Trade Centre Limited, EACJ Appeal No. 2 of 2018** which defined those terms in not analogous terms as presented by Counsel for the Respondent.

83. Ms Osiemo also urged the Court to find that the alleged defects had been cured by the filing of **Applications 15** and **16 of 2024**. She thus implored the Court in the exercise of its discretion under Rule 4 and by virtue of Article 23 of the Treaty to desist from making a decision that goes against substantive justice, specifically where, like in this case the defect has already been cured. Counsel made reference to the Appellate Division's decision in **the Attorney General of the Republic of Uganda vs the East African Law Society & Another, EACJ Appeal No. 1 of 2013**, which held that the greatest commandment and biggest objective of the Court is to deliver justice.

84. She prayed that **Applications 4 and 5** be dismissed and each party bear their own costs for equality of arms because all parties are at fault, considering that the Amended Applications (**Nos. 4 and 5 of 2024**) were filed without leave of the Court.

85. In rejoinder, Counsel Ntwali, sought to challenge the mode by which the Applicant, the Respondent in **Applications 4 and 5**, approached the matter. That, DRC sought to introduce the Amendments through an affidavit while replying to their Notice of Motion instead of filing an application, as they eventually did in **Applications Nos 15 and 16 of 2024.**

86. Rejoining on the distinction made between an affidavit and a pleading, Counsel Ntwali reiterated the Respondent's assertion that an affidavit cannot be treated in a lesser way than a pleading. That an offending affidavit and the documents attached thereto ought to be expunged as earlier submitted. That filing of **Applications 15 and 16** were meant to pre-empt the gravamen of **Applications 4 and 5.**

87. With respect to **Applications 15 and 16 of 2024**, the Applicant, through its Counsel, Dr Mbori, submitted that the two were filed for the purposes of seeking leave of the Court to allow DRC to file translated documents which had not been translated at the time of filing **Reference No. 33 of 2023** and **Application No. 13 of 2023** and also to allow the Applicant to file new evidence, which was not within their reach at the time of lodging the disputes.

88. Dr Mbori opposed the Respondent's prayer seeking striking out of not only the untranslated documents, but all pleadings, including those which complied with the Rules as they are in the language of the Court.

89. Counsel urged the Court to find that the problem of untranslated documents has completely been cured and that the said problem ought not to be sufficient for the Court to expunge the entire pleadings.

90. Counsel Mbori also beseeched the Court to admit the new evidence sought to be introduced through the two Applications, owing to their importance to guide the Court in its understanding of the dispute between the parties herein. Counsel cited the decision in **the Attorney General of the Republic of Uganda vs the East African Law Society & Another** *(supra),* imploring the Court to dispense substantive justice as opposed to procedural irregularities.

91. In response, Counsel Ntwali reiterated the Respondent's prayer that the documents sought to be admitted should not be admitted as the Applicant had sufficient time to do so before filing the pleadings in Court.

92. Counsel Ntwali opposed the two Applications stating that they were not filed in good faith but were filed in response to issues the Respondent had raised in **Applications 4 and 5** in order to cure the defects raised therein.

93. Regarding admission of new evidence, Counsel urged the Court, in case it admitted them, to accord the Respondent ample time to review the said new evidence and the translated documents and submit an appropriate defence as the Respondent failed to do so given the language in which those documents were.

94. Counsel concluded that as **Applications 15 and 16** were filed in a "*mischievous manner*", the Applications should be dismissed with costs.

95. In rejoinder, Counsel Mbori, while reiterating his earlier submissions, stated that this Court has a discretion to allow extension of time for parties to file pleadings; that it is not outside its mandate to admit the requested documents, given that the Applications were filed 6 months before the date of hearing and that the Respondent had ample time to prepare. He therefore argued that the Applicant was not mischievous as Counsel for the Respondent put it. He urged the Court to find that the filing of untranslated documents is a curable defect, and that the same has since been cured.

96. On the question of filing evidence, Counsel Mbori took issue with the imputation of bad faith attributed to the Applicant. That imputing bad faith on another State, a Partner of the Community, is not good, not only in the halls of diplomacy, but even in the house of justice.

The Court's Determination

97. We have carefully scrutinised the pleadings, evidence and rival submissions pertaining to all the Applications hitherto consolidated. There is no dispute that, at the time of filing **Amended Reference No. 33 of 2023** and **Application No. 13 of 2023**, on 25th September 2023, some of the documents relied upon by the Applicant herein were not in the language of the Court; namely, English.

98. It is also not in dispute that there have been Summit of the Heads of State decisions directing that French and Kiswahili be added as

official language of the Community. Nevertheless, Articles 46 and 137 of the Treaty are yet to be amended to include those languages.

99. Article 46 of the Treaty provides that the official language of the Court is English. Until it is amended, it remains the position.

100. On the other hand, knowing that parties transact in other languages, the Court, in its wisdom, crafted into its Rules, Rule 11(1) and (7). Rule 11(1) provides, *inter alia*, that "*All documents prepared for the use of the Court shall be in the official language of the Court...*" Further, Rule 11(7) provides as follows:

> ***"Any document submitted to the Court that has been translated from a language other than the official language of the Court shall be accompanied by a certificate of translation."***

101. The Registrar is empowered to reject any document or pleading which does not comply with Rule 11, among others. Apparently, the Registrar did not exercise that discretion while receiving **Reference No. 33 of 2023** and **Application No. 13 of 2023**.

102. In its Response to the Statement of Reference and the Replying Affidavit dated 9th November 2023, the Respondent contested the said documents in paragraphs 36, 37 and 40(i) stating, rightly so, that the said documents, in as far as they were not in the English language, contravened the Treaty and the Rules. The Respondent also filed a Notice of Preliminary Objections/Points of Law.

103. Acting in accordance with Rule 47 of the Rules, the Respondent deemed it appropriate to file **Applications 4 and 5** on 2nd February 2024, seeking that **Reference No. 33 of 2023** and **Application No.**

13 of 2023 be struck out on grounds we stated earlier. The Respondent later filed the Amended Notice of Motion with respect to both Applications on 6th September 2024 maintaining the same prayers.

104. Up to the time of filing the original Applications, the Respondent was correct that there existed documents on record which were not in the language of the Court. The same cannot be said with the Amended Applications as they were filed six months after the Applicants had filed **Applications 15 and 16** craving leave of the Court to allow them file translated documents.

105. The issue that the Court has to address is whether the Respondent's prayers to have both **Reference No. 33 of 2023** and **Application No. 13 of 2023** struck out for containing documents which contravene the language of the Court is maintainable at this stage.

106. Rule 47(1) upon which the prayers by the Respondent are anchored provide as follows:

> **"The Court may, on application of any party, strike out or expunge all or part of a pleading or other document, with or without leave to amend, on the ground that the pleading or other document: -**
>
> ***(a) May prejudice or delay the fair trial of the case;***
>
> ***(b) Is scandalous, frivolous or vexatious; or***
>
> **(c) *Is an abuse of the process of the Court."*** (Our emphasis)

107. There were rival arguments on whether the impugned documents, being annexures to the affidavits, are pleadings for the purposes of Rule 47(1) of the Rules. We do not intend to belabour this point. While the jurisprudence of this Court defines pleadings to exclude evidence, Rule 47(1) covers both pleading and "*other document*". Thus, the impugned documents cannot escape the wrath of Rule 47, if found to constitute one or more of the stated grounds.

108. The Respondent relied on grounds (b) and (c) in their quest to have the said documents expunged. We are reluctant to agree with the Respondent that merely because a document is in a language other than the language of the Court that renders it scandalous, frivolous or vexatious. We are aware of the definitions given to the said terms by the Appellate Division in **Attorney General of the Republic of Rwanda vs Union Trade Centre Limited** (*supra*). We do not subscribe to the invitation made by the Respondent for the Court to hold the impugned documents to be scandalous, frivolous or vexatious.

109. As stated by the Appellate Division in the **UTC case**, the Respondent used those terms rather loosely.

110. The Respondent also stated that the said documents, filed without translation, are an abuse of the Court Process. We do not subscribe to that. We are equally guided by the Appellate Division decision in the **UTC case** (*supra*) whereby at paragraph 30, the term abuse of the court process was defined. The Court confirmed the *Black's Law Dictionary, 9th Edition's* definition. The term is defined to mean: "*the improper and tortious use of a legitimately issued Court process to obtain a result that is either unlawful or beyond the process scope*".

111. Both in **Reference 33** and **Application 13,** the Applicant was not acting under any order or instruction from the Court. There is no suggestion that by attaching untranslated documents, the Applicant intended to obtain an unlawful result which would be outside the scope. That the Applicant attached untranslated documents, cannot, in our view, be said to be an abuse of the Court process.

112. The Court has also taken into consideration the fact that the Applicant cured the defects contained in the impugned Reference and Application through filing of **Applications 15 and 16**. Simply put, the mistakes or errors done at the stage of filing have been rectified. The errors were made right before the hearing of the impugned Reference and Application.

113. We hasten to add that, even if the stated errors had remained unrectified up to the time of hearing, the Court has discretion under Rule 47 of the Rules to order rectification of the same in lieu of striking out or expunging the impugned documents. This discretion can also be exercised under Rule 4 where the interest of justice so requires.

114. Thus, whereas we cannot hold the filing of **Application No. 4 of 2024** and **Application No. 5 of 2024** to have been made in bad faith, the filing of **Application No. 15** and **Application No. 16** both of 2024 renders the prayers therein rather moot. The errors they intended to impugn have since been rectified.

115. Having examined the prayers and the submissions made in **Applications 15 and 16 of 2024**, the Court sees no justification to deny the Applicant the opportunity to file the translated documents and the new evidence as prayed. The Applicant, in the Applications,

craved the indulgence of the Court and regretted the delay. As alluded to during hearing, this Court has in a number of occasions allowed documents and evidence filed late, including substantive pleadings. This, we have done in the interest of justice, even where the application is orally made under Rule 52(7) of the Rules.

116. In allowing the Applicant's prayers to have the translated documents and new evidence deemed filed, we will be upholding the very foundation of the Court's primary mandate of dispensing substantive justice, as was held in **Attorney General of the Republic of Uganda vs East African Law Society & Another** (*supra*).

117. We believe that the Respondent will suffer no prejudice once the said translated documents and newly discovered evidence are admitted. Counsel for the Respondent requested time to scrutinise the translated document and the new evidence for it to make a proper defence. This request is in order. The Respondent is at liberty to do so, notwithstanding the fact that the said documents were served to it since March 2024. We allow the Respondent 45 days within which to file Responses to the Amended Statement of Reference and the Amended Notice of Motion.

118. As to costs, Rule 127(1) of the Rules provides as follows:

> **"Costs in any proceedings shall follow the event, unless the Court shall for good reasons otherwise order."**

119. As the subject matter of the Reference from which the Applications herein arise is obviously of public and regional interest, we exercise

our discretion accordingly and are inclined to decide that each Party should bear their own costs at this stage.

H. CONCLUSION

120. Finally, considering the circumstances of the matter herein, we make the following **Declarations** and **Orders**:

a) This Court possesses requisite jurisdiction to determine Reference No. 33 of 2023 on its merit;

b) Reference No. 33 of 2023 is not time barred;

c) Application No. 4 of 2024 and Application No. 5 of 2024 are hereby dismissed;

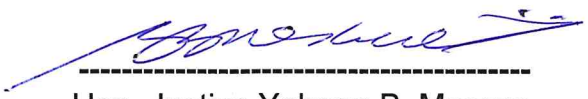
d) Application No. 15 of 2024 and Application No. 16 of 2024 are allowed;

e) The Respondent is allowed 45 days within which to file Responses to the Amended Statement of Reference and the Amended Notice of Motion; and

f) Each Party to bear their own costs at this stage.

121. It is so ordered.

Dated, signed and delivered at Arusha this 21st Day of November 2025.



Hon. Justice Yohane B. Masara
PRINCIPAL JUDGE

Hon. Justice Richard Muhumuza
JUDGE

Hon. Kayembe Ignace Rene Kasanda
JUDGE