IN THE EAST AFRICAN COURT OF JUSTICE

AT ARUSHA

FIRST INSTANCE DIVISION

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

REFERENCE NO. 14 OF 2020

ISAAC E.N. OKERO ..... 1ST APPLICANT

GEOFFREY YOGO ..... 2ND APPLICANT

RAYMOND OLENDO ..... 3RD APPLICANT

JARED SALA ..... 4TH APPLICANT

MOSES M. OMONDI ..... 5TH APPLICANT

VERSUS

THE ATTORNEY GENERAL OF THE REPUBLIC OF UGANDA ..... 1ST RESPONDENT

THE SECRETARY GENERAL OF THE EAST AFRICAN COMMUNITY ..... 2ND RESPONDENT

LAKE VICTORIA BASIN COMMISSION ..... 3RD RESPONDENT

27th NOVEMBER 2025

JUDGMENT OF THE COURT

A. INTRODUCTION

1. On 22nd May 2020, Isaac E.N. Okero, Geoffrey Yogo, Raymond Olendo, Jared Sala and Moses M. Omondi (hereinafter, "the Applicants") filed this Reference against the Attorney General of the Republic of Uganda, the Secretary General of the East African Community and Lake Victoria Basin Commission (hereinafter, "the Respondents"). The Reference also impleaded the Attorneys General of the Republic of Kenya and the United Republic of Tanzania as Interested Parties. On 23rd August 2021, the Applicants filed an Amended Reference, which basically removed the interested Parties from the Reference.

2. The Reference was brought under the provisions of Articles 6, 7, 8(1)(a) and (c), 8(4), 27(1), 30(1) and (2) of the Treaty for the Establishment of the East African Community (hereinafter, "the Treaty"); Article 2(5) of the Constitution of the Republic of Kenya, 2010; Articles 7(1), 14, 23 and 24 of the African Charter on Human and Peoples Rights; Articles 2, 3(5), (7), (11), (13) & (15), 4(2)(a), (d) & (f), 4(4), 5(1), 6(1), 11 and 12(1) of the Nile River Basin Cooperative Framework Agreement; and Rules 4, 25, 27, 132 and 133 of the East African Court of Justice Rules of the Court, 2019 (hereinafter, "the Rules").

3. The Reference impugns the Respondents' actions of purportedly failing to adhere to water release policies, culminating into serious floods in March 2020, which affected the Applicants and other East African residents.

4. The Reference is supported by the Affidavits of Isaac E.N. Okero, Geoffrey Yogo, Raymond Olendo, Jared Sala and Moses M. Omondi, deponed in May 2020 at Kisumu in the Republic of Kenya.

5. The Applicants presented themselves as citizens and residents of the County of Kisumu in the Republic of Kenya. For the purposes of this Reference, the Applicants' address of service is c/o *TripleOKLaw LLP Advocates, ACK Garden House 5th Floor Wing C, 1st Ngong Avenue, P.O. Box 43170-00100, Nairobi, Kenya*.

6. The 1st Respondent is the Attorney General of the Republic of Uganda, sued on behalf of the Government of the Republic of Uganda in the capacity of the Chief legal advisor of the Government of Uganda. For the purposes of this Reference, the 1st Respondent's address of service is c/o *Ministry of Justice and Constitutional Affairs Headquarters, Plot No. 1 Parliament Avenue, Queen's Chambers, P.O. Box 7183 Kampala, Uganda.*

7. The 2nd Respondent is the Secretary General of the East African Community, sued in his capacity as the Principal Executive Officer of the Community, his address of service for the purposes of this Reference is *P.O. Box 1096, Arusha, Tanzania*.

8. The 3rd Respondent is a specialised institution of the Community established under Article 114(2)(b)(vi) of the Treaty and governed by the Protocol for Sustainable Development of Lake Victoria Basin 2003. Its address of service for the purposes of this Reference is c/o *the Lake Victoria Basin Commission, 6th Floor Reinsurance Plaza, P.O. Box 1520-40100, Kisumu, Kenya*.

B. REPRESENTATION

9. At the trial, the Applicants were represented by Mr Kelvin Njuguna, learned Advocate. The 1st Respondent was represented by Mr George Kalemera, Commissioner, Civil Litigation; Ms Imelda Adongo, Principal State Attorney and Ms Elizabeth Namakula, Senior State Attorney, all from the Attorney General's Office, Republic of Uganda. The 2nd and 3rd Respondents were jointly represented by Dr Anthony Kafumbe, Counsel to the Community.

C. THE CASE FOR THE APPLICANTS

10. The Applicants' case is contained in the Statement of Reference lodged in Court on 22nd May 2020, the Amended Statement of Reference dated 23rd August 2021; in the supporting affidavits of the Applicants dated 22nd May 2020 and in the Supplementary Affidavit of Isack E.N. Okero dated 2nd April 2024. Their case is also stated in the Applicants' Reply to the 1st Respondent's Response to the Reference. The Applicants also filed written submissions, which they highlighted in Court on 20th November 2024.

11. It is the Applicants' case that they own real property on or within the shores of Lake Victoria, in Kisumu County, which fall within the definition of riparian property. That, on or about the 23rd March 2020, they experienced severe and extensive lake water flooding onto their respective properties and properties of their neighbours, causing displacement of people, damage to property and ruination of businesses.

12. The Applicants further state that, upon enquiries, they discovered that remedial work to reduce the rising water levels was being undertaken by Eskom Uganda Limited, the largest hydroelectric

generation company in Uganda. That, the exercise of releasing water from Lake Victoria at the rate of 1,500 cubic metres per second started on 24th March 2020.

13. It is further averred that upon further enquiry, the Applicants discovered that the Respondents have violated the provisions of the Treaty through various actions, including violation of the "*the Agreed Curve*" which governs the management of the outflow of Lake Victoria waters into River Nile at Jinja.

14. That, the Agreed Curve policy is incorporated into the Treaty under the provisions of Articles 5(1), (3)(c) and (f), 6(d), 7(1)(b), (f), (g) and (h), 8(1)(c), (4) and (5), 111(1)(b) and (d), (2)(a), (b), (c) and (d), 112(1)(a), (c), (d) and (2)(j), 114(1)(c) and (2)(b)(iv) and 123(3)(c).

15. The Applicants claim that the 1st Respondent breached its responsibilities under the Treaty during the construction of the Kiira Dam extension of the Owen Falls Complex and the Bujagali Hydropower project, thereby causing, so excessive, a release of water leading to reduction of water levels.

16. That, the Council of Ministers of the 2nd Respondent (*sic*) intervened to resolve this issue by formulation, through the 3rd Respondent, of a policy known as the "*New Water Release and Abstraction Policy*" which the 1st Respondent has failed to implement in contravention of the Treaty.

17. It is further the Applicants' case that the actions of the 1st Respondent have resulted in unprecedented increase of water levels in Lake Victoria. That, this has in turn caused the 1st Respondent to resort to spilling of large quantities of water. That, Eskom Uganda Limited, an institution of the 1st Respondent, with the

responsibility of managing outflow of the water from the Lake into the Nile at Jinja, has been at the forefront of this.

18. That, as a result, the Applicants have suffered disruption of lives, damage to properties, economic loss consequent thereto and the erosion of the environment in which they live in.

19. It is the Applicants' last assertion that the 1st Respondent is in violation of the provisions of the Treaty by failing to abide by policies designed to protect the interests of all Partner States and their Riparian resident citizens.

20. The Applicants therefore prayed for:

    a) **A DECLARATION that the 1st Respondent's failure, neglect and/or refusal to otherwise adhere to the policy for the release of water into the River Nile at Jinja in the promotion of the mutual interests of all Partner States and their Riparian resident citizens is a violation of the letter and spirit of the provisions of the Treaty;**

    b) **A DECLARATION that the 1st Respondent's failure, neglect and/or refusal to implement the Community Release Policy is a violation of the letter and spirit of the provisions of the Treaty;**

    c) **A DECLARATION that the 1st Respondent is responsible for the compensation of loss and/or damage suffered by the Applicants;** and

    d) **An ORDER that loss and/or damage suffered by the Applicants assessed by the Court be paid by the 1st Respondent.**

D. THE 1st RESPONDENT'S CASE

21. The 1st Respondent's case is contained in its Response to the Applicants' Statement of Reference dated 20th August 2020. It is further amplified in the Affidavit in Support of the 1st Respondent's Response to the Reference deponed in Kampala on 24th October 2022 by Dr Florence Grace Adongo. The 1st Respondent filed written submissions in support of its case and highlighted the same in Court on 20th November 2024.

22. The 1st Respondent specifically denies the allegations that it infringed and or violated the letter and spirit of any Treaty provisions and that it did not abdicate its responsibilities in the management of the outflow by release of water from the Lake.

23. The 1st Respondent contends that Lake Victoria is an international water body, shared by 5 of the East African Partner States, whose outlet and control is at Owen Falls Dam, Jinja, where water from the Lake flows out or is released into River Nile.

24. The 1st Respondent further contends that, in order to maintain the hydrological balance of Lake Victoria and the Nile System to the natural conditions, the Agreed Curve Policy was signed by the Arab Republic of Egypt and Uganda in 1954.

25. That, the Agreed Curve Policy was followed until it became problematic due to the high levels of water experienced in 1997, prompting the 1st Respondent to conduct independent preliminary studies on the need to improve the Agreed Curve Policy and the preliminary results were presented to the EAC Partner States in 2005, who raised the question whether the Agreed Curve continued to be the optimum policy.

26. That, as a result, the Partner States directed Lake Victoria Basin Commission, in liaison with the Partner States, to develop a New Water Release Policy based on a modified agreed curve to regulate releases of water at Jinja.

27. It is further the 1st Respondent's case that a consultant was engaged and his report was adopted by the EAC Council of Ministers through EAC/CM 26/Directive 05, as a *New Water Release and Abstraction Policy*. That, the Policy had conditional approval of four years of implementation and ceased to exist upon its expiry in 2016.

28. It is also the 1st Respondent's averment that the **Reference** should not be sustained on its merits as it is time barred, bad in law and moot.

E. THE 2ND AND 3RD RESPONDENTS' CASE

29. The 2nd and 3rd Respondents' case is contained in their Response to the Statement of Reference dated 21st August 2020, in the Affidavit of Ladislaus Kyaruzi Leonidas and in the Affidavits in Reply to the Statement of Reference by Ali Sayyid Matano, Simon Otuong, Benjamin Ssekamuli and Arsene Mukubwa, deponed in Kisumu on 10th July 2020. The 2nd and 3rd Respondents also filed written submissions and highlighted them in Court on 20th November 2024.

30. The 2nd and 3rd Respondents argue that the Reference is not supported by any scientific evidence on water flows in and out of the Lake and as such the Applicants' case is merely speculative on what causes floods and destructions associated therewith.

31. They also contend that, in any case, the 2nd and 3rd Respondents have nothing to do with the alleged damages and claims by the Applicants and there is no cause of action against them.

32. The 2nd and 3rd Respondents state that flooding is scientifically occasioned by climate change phenomena, environmental degradation, population growth and other climate change drivers and, as such, water release policies are not a cure or to blame. Further, that the floods are not associated with any action or inaction of the 2nd and 3rd Respondents.

33. They further argue that the Applicants by their own admission owned land within the shores of the Lake which is an encroachment into the Lake and was an illegality under the law; and as such, it is not tenable for them to seek remedies from such dishonourable actions.

34. It is the 2nd and 3rd Respondents' case that the New Water Release and Abstraction Policy, intended to override the curve in use, adopted during the colonial era, designed to mitigate over releasing of water that was going down rapidly and, even then, there were difficulties in implementing the said policy because certain studies had to be done prior to use; thus, the region is studying the matter and other related matters; and it is premature to apportion blame accordingly.

F. POINTS OF AGREEMENT

35. Parties are in agreement that:

a) **Rippon Falls rocks naturally controlled water flow from Lake Victoria into River Nile before development of Owen Falls Dam at Jinja;**

b) **The natural control formation at Rippon Falls was replaced with Owen Falls Dam through the Agreed Curve Operation Policy which was signed by the Arab Republic of Egypt and Uganda in 1954 to maintain the hydrological balance of Lake Victoria and the Nile System;**

c) **In the period 2000-2006 due to prolonged drought, the Lake levels sharply fell and the 11th EAC Council of Ministers meeting discussed the state of the falling Lake level and directed Lake Victoria Basin Commission in liaison with the EAC Partner States to develop a New Water Released Policy;**

d) **The Lake Victoria Basin Commission put in place a taskforce comprised of representatives from EAC Partner States which engaged a consultant to undertake a study whose report was adopted as the New Water Release and Abstraction Policy;** and

e) **In March 2020, Eskom Uganda Ltd, the operator of Nalubaale and Kiira power plants, released water from Lake Victoria into the River Nile at a rate of 1500 cubic meters per second.**

G. ISSUES FOR DETERMINATION

36. In the Scheduling Conference held in Arusha on 29th February 2024, the following issues for determination were framed:

    i. **Whether this Honourable Court has jurisdiction to entertain this matter;**

    ii. **Whether the actions of the Respondents infringe on the Treaty Provisions;** and

    iii. **What remedies are available to the parties?**

H. COURT'S DETERMINATION

ISSUE 1: Whether this Honourable Court has jurisdiction to entertain this matter

37. The issue whether this Court has jurisdiction to entertain the Reference herein was raised by the 1st Respondent. In the 1st Respondent's written submissions in support of the issue, it became apparent that the specific jurisdictional issues are whether the Reference is time barred and whether the same is moot. The 2nd and 3rd Respondents, on the other hand, raised an issue regarding the *locus standi* of the 3rd Respondent.

38. With due respect to the Counsel to the Community who represented the 2nd and 3rd Respondents, we do not find the arguments made with respect to the *locus standi* of the 3rd Respondent necessary. We hold so based on the express provisions of Article 30(1) of the Treaty which states:

> **"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." (Emphasis added)

39. Notably, Dr Kafumbe does not dispute the fact that the 3rd Respondent is an institution of the Community established under Article 9(2) of the Treaty. His challenge is based on the fact that the legislation bestowing the 3rd Respondent a juridical status came into force after the Reference was filed.

40. It is our holding that whether the 3rd Respondent did not possess legal persona, that alone cannot strip this Court the jurisdiction to determine a claim brought against it or against its actions as long as it qualifies as an institution of the Community. We will leave it at that.

41. We, therefore, turn to consider whether the Reference is time barred or otherwise. Time bar is a jurisdictional issue. If we find that the Reference was not filed within the time prescribed by Article 30(2) of the Treaty, then we will not deal with the merits of the Reference enshrined in issues 2 and 3.

a) The 1st Respondent's submissions

42. Submitting in support of the 1st issue, the 1st Respondent stated that this Reference is time barred and moot as it is pegged on the Agreed Curve Policy and the New Water Release and Abstraction Policy both of which ceased to operate long before the Reference was filed.

43. Referring to the Applicant's claim, that the 1st Respondent violated the terms of the Agreed Curve Policy during the construction of the Kiira dam extension of Owen Falls Complex and Bujagali Hydro Power Project, thereby causing excessive release of water which culminated into reduction of the water levels of Lake Victoria during the period between 1999 to 2005, it is the 1st Respondent's response that the allegations regarding the period 1999 to 2005 cannot be raised in 2020 as they fall outside the time limit of two months prescribed by Article 30(2) of the Treaty.

44. The 1st Respondent made Reference to the decision of the Appellate Division of this Court in the case of **the Attorney General of the Republic of Uganda vs Omar Awadh & 6 Others, EACJ Appeal No. 2 of 2012**. The 1st Respondent also stated that the Agreed Curve Policy ceased to have the force of law when, following the El-Nino rains of 1997/98, the 1st Respondent decided not to abide with it as doing so would have led to bursting of the River Nile Banks. In consequence, a new release policy came into existence.

45. Regarding the allegation attributed to non-adherence to the EAC New Water Release Policy, the 1st Respondent submitted that the allegations pegged on failure to abide with the said Policy are not actionable in this Court as they are moot. Expounding on the issue of mootness, Counsel for the 1st Respondent averred that the Policy had conditional approval of four years and ceased to exist upon expiry in 2016 as shown in paragraph 10 of the Affidavit of Dr Florence Grace Adongo. Further, that at the time of filing the Reference in 2020, the said Policy had expired and was not operational.

46. The 1st Respondent relied on the decision of the Supreme Court of Canada in the case of **Joseph Borowski vs Attorney General of Canada (1989) 1 SCR 342** which confirmed that:

> ***"... if subsequent to the initiation of the action or proceeding, events occur which affect the relationship of the parties so that no live controversy exists which affect the relationship of the parties, the case is said to be moot."***

47. Counsel also cited the decision in **Legal Brains Trust Ltd vs Attorney General of Uganda, EACJ Appeal No. 4 of 2012** where this Court declined to hear a case in the abstract or one which is purely academic or speculative in nature.

48. Counsel for the 1st Respondent, therefore, urged the Court to find that the Reference is both time barred and moot as the policies alleged to have been violated are not in existence.

b) The 2nd and 3rd Respondents' Submissions

49. Dr Kafumbe, on behalf of the 2nd and 3rd Respondents, while referring to the Affidavit of Dr Ali Sayyid Matano, the then Executive Secretary of the 3rd Respondent, supported the averments of the 1st Respondent that the EAC Water Release and Abstraction Policy lapsed in 2016. That, at the time of filing the Reference there was nothing in existence to base on. Counsel made reference to the Council decision (EAC/CM/26/Directive 05) which adopted the consultant's report for a New Water Release and Abstraction Policy which was to expire in 2016.

50. Counsel Kafumbe also stated that as flooding along Lake Victoria has been happening for many years prior to 2020, the Applicants

could not rely on continuing violations to maintain their claims, as that principle was rejected in favour of legal certainty in the case of **Attorney General of the Republic of Kenya vs Independent Medico Legal Unit, EACJ Appeal No. 1 of 2011**.

51. Counsel Kafumbe urged the Court to dismiss the Reference for being time barred.

c) The Applicant's Submissions

52. The Applicants denied the contention that the Reference was filed outside the prescribed two-month limitation. In the written submissions prepared on their behalf by one James Ochieng' Oduol, the Applicants cause of action arose from the "*extensive flooding they witnessed on their properties on 23rd March 2020.*"

53. That, upon enquiry, on 24th March 2020 they realised that they were affected due to failure of the 1st Respondent to abide with the Treaty provisions and the Agreed Curve Policy. That, as the Reference was filed on 22nd May 2020, it was filed within the two months required by Article 30(2) of the Treaty.

54. Counsel for the Applicants, therefore, urged the Court to sustain the Reference on its merit and hold that the same was filed within time.

d) The Court's Determination

55. This Court has on numerous occasions stated that jurisdiction is sacrosanct. Without it, it cannot portend to exercise any of the powers bestowed upon it by the Treaty. Like any Court, the Court has to satisfy itself that it is bestowed with the requisite powers to address a Reference or Claim in its merits. In the case of **Attorney**

General of the United Republic of Tanzania vs African Network of Animal Welfare, EACJ Appeal No. 3 of 2011, the Court stated:

> ***"Jurisdiction is a most, if not the most, fundamental issue that a Court faces in any trial. It is the very foundation upon which the judicial edifice is constructed; from which springs the flow of the judicial process. Without jurisdiction, a Court cannot take even the proverbial first Chinese step in its judicial journey to hear and dispose of the case."***

56. Guided by the above decision, we deem it appropriate to scrutinise the evidence and the submissions by Counsel so as to ascertain whether the instant Reference falls within the powers of this Court. As earlier stated, the jurisdictional aspect contested in this Reference is with respect to time limitation.

57. In the case of **The Attorney General of the United Republic of Tanzania vs Anthony Calist Komu, EACJ Appeal No. 2 of 2015,** this Court delineated three types of jurisdictions: *ratione personae, ratione materiae* and *ratione temporis*. It explained them as follows:

> ***"Lack of ratione personae would arise where one of the parties is devoid of the requisite capacity or locus standi to appear before a court. On the other hand, court's ratione materiae may be questioned on the basis of the invoked subject matter, an international court having no ratione materiae to try a matter where the treaty or convention under which it derives its mandate does not grant it jurisdiction over designated actions. In the case of the Treaty for the Establishment of the East African Community, such ratione materiae is outlined in Articles 30, 31 and 32***

thereof. Ratione temporis, on its part, refers to time-frame prescribed for the institution of cases in a court." (Our emphasis)

58. Article 30(2) of the Treaty provides:

> **"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."** (Emphasis added)

59. To satisfy the Court that the Reference was made within time prescribed under Article 30(2) of the Treaty, the Applicant has to succinctly state in the Reference the date when the decision or action complained of took place or when it came to his knowledge.

60. The Appellate Division in the case of **the Attorney General of the Republic of Uganda & Anor vs Omary Awadh & 6 Others** (*supra*) stated, *inter alia*, that:

> ***"The starting time of an act complained of under Article 30(2) is not the day the act ends, but the day it is first effected."***

61. Similarly, the same Court, while dealing with the issue of computation of time in **The Attorney General of the Republic of Kenya vs Independent Medical Legal Unit** (*supra*) held that time would start to run **"two months after the action or decision was first taken or made."**

62. In **the Attorney General of the Republic of Uganda & Anor vs Omary Awadh & 6 Others** (*supra*), the Court went further to state as follows:

> ***"The principle of legal certainty requires strict application of the time-limit in Article 30(2) of the Treaty. Furthermore, nowhere does the Treaty provide any power to the Court to extend, to condone, to waive, or to modify the prescribed time limit for any reason (including for 'continuing violations')."*** (Emphasis added)

63. It is against the above authorities that we now turn to consider the Reference herein with regard to the time limitation aspect.

64. According to the Applicants, the cause of action leading to filing of this Reference arose from the extensive flooding they witnessed on their properties on 23rd March 2020. That, the excessive floods led them to inquire and realised that they were attributable to the 1st Respondent's inaction or action with regard to two Policies by which it was bound. These are the Agreed Curve Policy and the EAC Water Release and Abstraction Policy.

65. The Applicants aver that their knowledge is attributable to the action of Eskom Uganda Limited, which, on 24th March 2020, commenced the release of water at the rate of 1500 cubic meters per second from the Lake into the Nile at its sole outlet at Jinja. This information, according to the Affidavit of the 1st Applicant, was drawn from various internet sources, including twitter.

66. In light of the above, the Applicants contend that the Reference was filed on time.

67. The Applicants' contentions are vehemently challenged by the Respondents. According to them, reliance on the alleged violation of the two Policies renders this Reference moot, as both of them were not in operation at the time the Applicants allege that they were violated.

68. We have examined the pleadings, evidence and the rival submissions regarding the issue of time limitation and mootness of the Reference.

69. As correctly submitted by Counsel for the 1st Respondent, the Applicants were duty bound to prove that the Reference was filed within two months of the actions complained of, or within two months of their getting to know of the impugned actions or violations. This Court had the opportunity to pronounce itself on the issue of burden of proof in the case of **British American Tobacco (U) Ltd vs The Attorney General of Uganda, EACJ Reference No. 7 of 2017**. It was stated as follows:

> ***"We are constrained, from the onset, to underscore a pertinent evidential rule. The burden of proof in international claims was articulated in the case of Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia & Herzegovina vs Serbia & Montenegro), Judgment, ICJ Reports 2007, p. 43 as follows:***
>
> > ***'On the burden or onus of proof, it is well established in general that the applicant must establish its case and that a party asserting a fact must establish it; as the Court observed in the case***

of Military and para-military activities in and against Nicaragua (Nicaragua vs United States of America) ***"it is the litigant seeking to establish a fact who bears a burden of proving it." ... Various International tribunals, including the International Court of Justice, have generally and consistently accepted and applied the rule that a party who asserts a fact, whether the claimant or the respondent, is responsible for providing proof thereof. Also, it is a generally accepted canon of evidence in civil law, common law and in fact, most jurisdictions, that the burden of proof rests with the party, whether complaining or defending, who asserts the affirmative of a particular claim or defence. If that party adduces evidence sufficient to raise a presumption that what is claimed is true, the burden then shifts to the other party, who will fail unless it adduces sufficient evidence to rebut the presumption."*** (Emphasis added)

70. Thus, the Applicants were obliged to satisfy the Court that they brought this Reference within the two months limitation period. That they could do by satisfying the Court that the Respondents, jointly or severally, had violated the Treaty and that such violation occurred two months or less before filing of the Reference. In the alternative, they ought to have proven that, although the violation took place long before they came to Court, they only got to know of such violations not more than two months before they filed the Reference.

71. From the evidence availed to this Court, the dates picked by the Applicants as constituting the cause of action are not supported by the evidence. Further, the Applicants have not pin pointed the point at which the violations of one or both of the alleged Policies, assuming they were in force, were violated.

72. That one of the agencies of the 1st Respondent was reported to have commenced releasing water at the rate of 1500 cubic meters of water from Lake Victoria into the Nile River cannot, from the evidence on record, be a trigger of floods which affected the Applicants whose residences are not downstream.

73. It was incumbent upon the Applicants to satisfy the Court that such release was either in consonance with or contrary to an obligation vested on the 1st Respondent.

74. The other issue pertaining to jurisdiction and which has a bearing on the time limitation aspect relates to whether the Reference is moot or otherwise. The Respondents have ardently argued that the Policies alleged to have been violated in this Reference ceased to exist long before the Reference was filed. In their view, therefore, this Court cannot be called to decide upon a no longer live dispute.

75. In essence, the Applicants did not successfully satisfy the Court that the Agreed Curve Policy and or the Community Water Release and Abstraction Policies were still in existence, thus obliging the Respondents to abide with them. Thus, the Applicants seem to rely on a continuous violation obligation to cement their case. That is not open to them considering the jurisprudence of this Court.

76. In numerous decisions, this Court has rejected the concept of legal continuing violations. These decisions include: **The Attorney**

General of the Republic of Kenya vs Independent Medical Legal Unit *(supra);* **The Attorney General of the Republic of Uganda & Attorney General of the Republic of Kenya (as Interested Party) vs Omar Awadh and 6 Others** (*supra*); **Malcom Lukwiya vs The Attorney General of the Republic of Uganda and the Attorney General of the Republic of Kenya, EACJ Reference No. 6 of 2015** and **Adam Kyomuhendo vs Attorney General of the Republic of Uganda & 6 Others, EACJ Reference No. 11 of 2020**.

77. As to whether or not the Reference is overtaken by events and therefore stale, moot and academic, it is worthy to recall that the Court is generally required to decide on the matter when the orders or declarations to be granted are live, not when they appear to be academic and of no practical value.

78. In the case of **Alcon International Ltd vs The Standard Chartered Bank of Uganda and others** *(supra),* this Court stated:

> ***"It must be said by this Court that the doctrine of mootness or academic adventure by the Courts of Justice is well known. The raison d'être of Courts of Justice is to give binding decisions on live disputes submitted to them by the parties or, where applicable, to render advisory opinions in limited cases where their constitutive Constitutions, Statutes or Treaties so provide. If there is no live dispute for resolution ...or the Court is not exercising any advisory opinion jurisdiction it may have, a Court of Justice would be wasting the public resources of time, personnel and money by engaging in a futile and vain exposition of the law."***

79. The Appellate Division, in the above case, cited with approval the holding in **Borowski vs the Attorney General of Canada** (*supra*), where the Supreme Court of Canada expressed itself in the same way as follows:

> ***"The doctrine of mootness is an aspect of a general policy practice that a Court may decline to decide a case which raises merely a hypothetical or abstract question. The general principle applies when the decision of the Court will not have the effect of resolving some controversy which affects or may affect the rights of the parties. If the decision of the Court will have no practical effect on such rights, the Court declines to decide the case. This essential ingredient must be present not only when the action or proceeding is commenced but at the time when the Court is called upon to reach a decision. Accordingly, if, subsequent to the initiation of the action or proceeding, events occur which affect the rights of the parties, the case is said to be moot. The general policy or practice is enforced in most cases unless the Court exercises its discretion to depart from its Policy or Practice."***

80. Similarly, in the case of **the Attorney General of the United Republic of Tanzania vs African Network for Animal Welfare,** (*supra*), the Court held that:

> ***"In the above cases, the message is strong, comprehensive, and clear:***
>
> ***i. The function of courts is to contribute to justice in concrete disputes, not to give opinions on general hypothetical questions;***

ii. ***Jurisdiction is conferred on courts not to deal with hypothetical, academic or political questions;***

iii. ***The court must not deal in matters that are clearly lifeless, spent, academic, speculative or hypothetical;*** and

iv. ***Judicial power is the right to determine actual controversies arising between adverse litigants."***

81. The Applicants, in their pleadings, confirmed that the 1st Respondent ceased to apply the Agreed Curve Policy in 2005 due to certain difficulties it encountered in the course of implementing the same.

82. The Applicants and the Respondents are also at one that the EAC Water Release and Abstraction Policy was concluded in 2012. The only disagreement is whether the Policy had a sunset clause as contended by the 1st Respondent and confirmed by the 2nd and 3rd Respondents.

83. We are persuaded by Counsel for the Respondents that the Policy had conditional approval of four years and ceased to exist upon expiry in 2016 as shown in paragraph 10 of the Affidavit of Dr Florence Grace Adongo. Thus, at the time of filing the Reference in 2020, the said Policy had expired and not operational.

84. That being the case, we are satisfied that the Reference is moot as it is based on alleged violations of Policies which do not exist and

were not in existence at the time they were alleged to have been violated.

85. Thus, dealing with the dispute in its merit will be an exercise in futility.

86. From the foregoing, the Applicants have not succinctly satisfied the Court that they filed this Reference within the time prescribed by Article 30(2) of the Treaty. We are satisfied that this Reference was filed outside the time prescribed by Article 30(2) of the Treaty.

87. That delay strips this Court of the jurisdiction *ratione temporis* to hear and determine the Reference on its merits. Lack of jurisdiction *ratione temporis* strips this Court of the legal basis to exercise its jurisdiction *ratione materiae*. We have to down our tools.

88. We are also satisfied that the same is moot.

89. On the question of costs, Rule 127(1) of this Court's Rules provides that costs shall follow the event unless the Court, for good reason, decides otherwise. In the exercise of our discretion, we direct that each party bears its own costs in this Reference.

I. CONCLUSION

90. For the foregoing reasons, this Court lacks jurisdiction to determine the Reference on its merits.

91. The Reference is hereby dismissed in its entirety for being time barred and moot.

92. Each Party bears its own costs for this Reference.

93. It is so ordered.

Dated, signed and delivered at Arusha this 27th day of November 2025.

Hon. Justice Yohane B. Masara
PRINCIPAL JUDGE

Hon. Justice Richard Wabwire Wejuli
DEPUTY ~~PRINCIPAL~~ JUDGE

Hon. Justice Richard Muhumuza
JUDGE

Hon. Justice Dr Leonard Gacuko
JUDGE

Hon. Kayembe Ignace Rene Kasanda
JUDGE