



**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. 43 OF 2023

ATLAS LOGISTICS LTD..... APPLICANT

VERSUS

**L'OFFICE DE GESTION DU FRET MULTIMODAL
(OGEFREM), A GOVERNMENT AGENCY OF THE
DEMOCRATIC REPUBLIC OF CONGO (DRC) 1ST RESPONDENT**

**THE ATTORNEY GENERAL OF THE
DEMOCRATIC REPUBLIC OF CONGO (DRC) 2ND RESPONDENT**

25TH NOVEMBER 2025

RULING OF THE COURT

A. INTRODUCTION

1. This Reference was filed on 4th December 2023 by Atlas Logistics Ltd. (“the Applicant”) against **L’Office de Gestion du Fret Multimodal (“OGEFREM”)**, a Government Agency of the Democratic Republic of Congo and **The Attorney General of the Democratic Republic of Congo (“DRC”)** (“the Respondents”). The Reference was brought under Articles 27, 30, 7(1)(c), 76(1), 82(1)(c), 97(3) and 104 of the Treaty for the Establishment of the East African Community (“the Treaty”); Articles 5(1), 16(1), (2), (3) and (5) of the Protocol on the Establishment of the East African Community Common Market (“the Protocol”), as well as Rules 11, 25 and 46 of the East African Court of Justice Rules of the Court, 2019 (“the Rules”).
2. The Reference arises from a contractual dispute between the Applicant and the 1st Respondent, OGEFREM, regarding the suspension and subsequent termination of a freight management services agreement. The Applicant alleges that the suspension and termination of the contract were unlawful and in violation of the Treaty and the Protocol and thus, seeks declaratory and compensatory reliefs for alleged infringements on its business operations within the East African Community (“EAC”) Partner States.
3. The Reference is supported by an Affidavit of Daniel Balinda, a shareholder, legal representative and Managing Director of the Applicant Company, deponed on 4th December 2023 and a Supplementary Affidavit of Alloys Mutabingwa, Advocate for the Applicant, filed in Court on 31st January 2024.

4. The Applicant presents itself as a company duly incorporated under the laws of Rwanda, with operational offices in Uganda, Burundi and the DRC, engaged in freight management and shipping services. The Applicant's address for the purposes of the Reference is indicated as *KCT Building, 14th Floor, Kinyinya, Nyarugenge District, Kigali-Rwanda.*
5. The 1st Respondent is a public enterprise established under the laws of the DRC tasked with overseeing Multimodal Freight Management Operations. The 1st Respondent's address of service for the purposes of the Reference is *Av. TSF, House No.9, Kinshasa/Gombe, DRC.*
6. The 2nd Respondent is the Principal Legal Advisor to the Government of the DRC and is sued in that capacity. The address of service of the 2nd Respondent is *"Minister of Justice Chambers, Office of the Ministry of Justice, Palais de Justice, Kinshasa-Gombe, DRC."*
7. It is averred by the Applicant that the 1st Respondent's acts are under the general auspices and direction of the 2nd Respondent.

B. BACKGROUND

8. On 25th October 2021, the Applicant and the 1st Respondent entered into a Special Mandate Contract under which the Applicant was authorized to provide freight management services in Uganda, Rwanda and Burundi. The contract set out a remuneration structure tied to the services rendered and was intended to operate for an initial three-year term, subject to renewal by mutual agreement.
9. According to the Reference, on 18th February 2022, the 1st Respondent issued a written notice suspending the Applicant's contractual rights without prior notification. Subsequently, on 20th April 2022, the 1st Respondent issued a further directive restricting the Applicant's access

to the operating system, thereby preventing it from performing its contractual obligations.

10. Efforts to resolve the matter amicably were reportedly undertaken, including a meeting held on 19th August 2022 between the parties. During this meeting, the 1st Respondent is said to have acknowledged the losses incurred by the Applicant as a result of the suspension and indicated that the issue would be presented to its Board of Directors for possible reinstatement and compensation. However, no resolution was ultimately reached.
11. The Reference further indicates that despite continued engagement and repeated requests for reconsideration, the 1st Respondent later communicated that the contract had been terminated following a directive from the Minister of Transport and Communication of the DRC. This directive was allegedly issued without reference to the contractual terms and without according the Applicant a hearing.
12. These actions are described as amounting to a violation of the Applicant's rights to conduct business within the East African Community, as protected under the Treaty and the Protocol.
13. Seeking redress, the Applicant instituted proceedings before the High Court of Kinshasa. However, the claim was dismissed for lack of jurisdiction. Consequently, the Applicant filed the present Reference on 4th December 2023, invoking the Court's jurisdiction to adjudicate the alleged breaches of the Treaty.
14. On 21st February 2024, the Applicant lodged in this Court **Application No. 8 of 2024** arising from the instant Reference, moving the Court to issue an Order that this Reference be granted urgent status and an early

date for hearing on the grounds that the Applicant was facing financial difficulties and could only be salvaged by the hearing of **Reference No. 43 of 2023** at the earliest possible date and ordering the Respondents to pay compensation for the alleged breach of the contract.

15. On 10th November 2024, Prof. Ivon Mingashang, for the 2nd Respondent, filed written submissions challenging the admissibility of both the Reference and the Application arising therefrom for want of *jurisdiction ratione temporis*, among others.

C. REPRESENTATION

16. At the hearing of **Application No. 8 of 2024** on 15th November 2024, the Applicant was represented by Mr Alloys Mutabingwa and Mr Seni Songwe, learned Advocates. Mr Norbert Murwalle, Mr Benedict Ishabakaki and Mr Samuel Gerald learned Advocates, represented the 1st Respondent; while Mr Elisha Ongoya, Ms Emily Osiemo and Dr Harrison Mbori, learned Advocates, appeared for the 2nd Respondent.

D. PRELIMINARY OBJECTION

17. During the hearing of **Application No. 8 of 2024**, the Respondents raised preliminary objections on points of law similar to those in the main Reference, challenging the Court's jurisdiction to hear and determine the matter. They argued, among others, that the Reference from which the Application arises was filed out of time and is therefore improperly before the Court.
18. In view of pending objections in the main Reference, the Applicant realized that the Application could no longer be sustained and consequently withdrew **Application No. 8 of 2024**. The withdrawal was intended to allow the Court to address the substantive issues in the main

Reference beginning with jurisdiction. The Court duly endorsed the withdrawal and made no order as to costs.

19. The Court thereafter directed the parties to file written submissions on the preliminary objections. For detail, the 1st Respondent informed the Court that their preliminary objections are based on the original Statement of Reference. The 2nd Respondent complied and submitted its arguments for the Court's consideration.

E. ISSUES FOR DETERMINATION

20. From the parties' submissions, the following are issues for the Court's determination:

- i. Whether the Reference is time-barred;**
- ii. Whether the Court has jurisdiction to entertain a dispute arising from a commercial agreement that contains no clause conferring jurisdiction on this Court;**
- iii. Whether the Reference is inadmissible because the cause of action arose before the DRC joined the EAC; and**
- iv. Whether the Applicant is entitled to the reliefs sought.**

F. COURT'S DETERMINATION

ISSUE 1: Whether the Reference is Time-Barred

21. The issue of time limitation, having been raised by the Respondents, it is appropriate for the Court to consider and determine whether the Reference was submitted within the legally stipulated time, as any determination on substantive issues is contingent upon resolving the question of jurisdiction and admissibility.

i. **The Respondents' Submissions**

22. In his submissions, Counsel for the 1st Respondent challenges the jurisdiction of this Court and submits that the Reference is inadmissible on two grounds: First, he contends that the Reference is hopelessly time-barred, having been filed on **4th December 2023** while the cause of action arose on **18th February 2022** as admitted by the Applicant, which is well outside the two-month period prescribed for instituting actions under Article 30(2) of the Treaty.
23. Secondly, that the time of the alleged violation predates DRC's accession to the Treaty and accordingly, the matter falls outside the Court's mandate under the Treaty and as such, the Reference improperly seeks to apply the Treaty retroactively, contrary to established principles of treaty law.
24. For the reasons above, the 1st Respondent prays that the Court dismisses the Reference with costs for want of jurisdiction and non-compliance with the Treaty.
25. Similarly, Counsel for the 2nd Respondent raised a preliminary objection that the Reference is filed outside the two-month time limit prescribed under Article 30(2) of the Treaty and is therefore inadmissible for want of jurisdiction *ratione temporis*.
26. Mr MINGASHANG submitted that questions of jurisdiction particularly those concerning limitation of time must be determined before delving into the merits of the Reference. Reliance is placed on **Alcon International Ltd vs Standard Chartered Bank of Uganda & Others, EACJ Appeal No. 2 of 2011**, where the Court held that doubts about jurisdiction must be resolved first, as the Court cannot proceed without it.

27. Counsel MINGASHANG argued that the cause of action arose on 18th February 2022, the date on which the Applicant admits it became aware of the suspension of the contract at the centre of the dispute. However, the Reference was filed on 4th December 2023, well beyond the mandatory two-month period.
28. He submitted that this Court has no jurisdiction to extend the timelines set under Article 30(2). He cited **Attorney General of Kenya vs Independent Medical Legal Unit, EACJ Appeal No. 1 of 2011**, where the Appellate Division held that the Treaty provides no express or implied power to enlarge time for filing a Reference.
29. Finally, he placed further reliance on **Attorney General of Uganda & Another vs Omar Awadh & 6 Others, EACJ Appeal No. 2 of 2012**, where the Court clarified that time begins to run from the date the impugned action is effected, not from when its effects cease and that the second limb of Article 30(2) of the Treaty applies only where the claimant does not know the date of the act complained of.
30. Applying the above principles, Counsel for the 2nd Respondent maintains that time began to run on 18th February 2022 when the Applicant was first notified of the suspension. Since the Reference was filed long after the two-month limit, the Respondent contends that it is time-barred, rendering the matter inadmissible and the Court without *jurisdiction ratione temporis* to entertain it.

ii. **The Applicant's Submissions**

31. The Applicant opposes the Respondents' objections and maintains that the Reference is properly before this Court.

32. First, the Applicant asserts that the Reference was filed within the 60-day limit set under Article 30(2) of the Treaty. That the cause of action did not arise on 18th February 2022, when the suspension notice was issued, because that notice did not terminate the contract but merely initiated a temporary pause requiring further engagement between the parties. Instead, the dispute crystallized on 16th October 2023, when the 2nd Respondent's courts declined jurisdiction, making it clear that no amicable resolution was possible. The Applicant contends that, as the Reference was filed on 4th December 2023, it is well within time.
33. The Applicant further submits that, in line with the principles of legal certainty and good faith, the period spent pursuing remedies before the 2nd Respondent's courts should be excluded from the limitation period. Reliance is placed on **Plaxeda Rugumba vs Attorney General of Rwanda, EACJ Appeal No.1 of 2012**, where the Court recognized that fairness may justify flexibility in procedural timelines.
34. Additionally, the Applicant invokes the doctrine of continuing violation, arguing that the Respondents' actions have had an ongoing adverse impact on its business operations within the EAC. On this basis, the Applicant states that the limitation period should not run from the initial suspension, but from the last act constituting the continuing breach.
35. In light of the above, the Applicant prays that the Court finds the Reference not time-barred, affirm its jurisdiction, exclude from computation the time spent in the 2nd Respondent's courts, hold that the Treaty applies to the dispute as the violations continued beyond the DRC's Accession to the EAC, and dismiss the preliminary objections with costs.

iii. The Court's Determination of Issue 1

36. This issue revolves around the Court's jurisdiction *ratione temporis*. The principal question for determination is the point at which the Applicant's cause of action crystallized. Jurisdiction *ratione temporis*, the Court's authority measured against time, is a foundational threshold that must be satisfied before the Court enquires into the substantive merits of the Reference. This Court has repeatedly affirmed that Article 30(2) of the Treaty imposes a strict and inflexible limitation period, not amenable to extension, waiver, or suspension.

37. Article 30(2) of the Treaty stipulates:

“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.”

35. Accordingly, it is incumbent upon the Applicant to establish that this Reference was lodged within the mandatory two-month time frame.

36. Both the 1st and the 2nd Respondents contend that the Reference was lodged in the Court after the lapse of the two-month period envisaged in the Treaty. That the cause of action arose on 18th February 2022, when the Applicant was notified of the suspension of the contract.

37. The Respondents submit that the impugned act, namely, the suspension of the contract, occurred on 18th February 2022 when the Applicant was formally notified of that suspension. That, even if the Applicant did not know the full consequences or finality of the decision at

that time, the obligation to file within two months remains anchored to that date.

38. The Applicant, by contrast, pursued relief in the 2nd Respondent's courts, which eventually declined jurisdiction on 16th October 2023. That the accrual of its cause of action is pegged to that date, reasoning that only then did it become clear that it had no alternative remedy.
39. This Court has repeatedly held that the pursuit of local remedies does not halt or reset the limitation period under Article 30(2) of the Treaty. In **Attorney General of Kenya vs Independent Medical Legal Unit** (*supra*), the Court emphasized that the two-month limitation period is strict and not subject to extension or suspension due to the pendency of other proceedings. It was reaffirmed in the above case that time starts reckoning from the date the initial action or decision was taken. Similarly, the Appellate Division in **Attorney General of Uganda & Another vs Omar Awadh & 6 Others** (*supra*), made it clear that the starting date for the two-month period is the date on which the initial act or decision occurred, rather than a later date on which its effects may have culminated.
40. Comparative jurisprudence from other jurisdictions underscores the same principle. For instance, the United States Supreme Court has persuasively held that a limitation period begins to run when the wrongful act occurs and is not delayed by the pendency of other proceedings. In **Wallace vs Kato, 549 U.S. 384 (2007)**, the U.S. Supreme Court affirmed that a claim for false arrest was time-barred because the petitioner's cause of action accrued at the time of his arrest, not when his conviction was later set aside. The Court explained that once the petitioner had a complete and present cause of action, the statute of

limitations commenced, and the existence of ongoing criminal proceedings did not postpone that accrual.

41. This reasoning is analogous to the position under Article 30(2) of the Treaty. A claimant cannot postpone the running of time by pursuing alternative forums or waiting for another tribunal's decision, when the operative breach or act has already occurred.

42. In the present case, the Applicant was notified of the suspension of the contract on 18th February 2022. This action had an immediate and significant effect on its business operations. There was no concealment of the breach as the Applicant received written notice of the suspension, and subsequently a clear communication on 20th April 2022 about the disconnection from the operational system. The Applicant was therefore fully aware, by those dates, of the acts now complained of.

43. Consequently, the limitation period began to run from the date of suspension which is 18th February 2022, or at the very latest, from 20th April 2022 when the disconnection occurred, rather than from the 2nd Respondent's court's decision in October 2023.

44. The Applicant's contention that the cause of action only accrued upon the 2nd Respondent's court's decision is untenable. The alleged breach of the contract is what prompted the Applicant to seek recourse in the 2nd Respondent's courts in the first place. The breach was the genesis of the claim, and it is at that point in time the Court must look in determining the start of the limitation period.

45. The Applicant further attempts to distinguish between a *suspension* and a *termination*, arguing that the cause of action did not crystallize until the contract was definitively terminated or confirmed as such by the 2nd

Respondent's court outcome. We are not persuaded by this distinction. By the Applicant's own account, the suspension on 18th February 2022 and the subsequent disconnection on 20th April 2022 fundamentally disrupted the Applicant's ability to perform its contractual obligations. The following paragraphs of the Applicant's pleadings attest to this reality. Paragraphs 8, 9 and 11 of the amended Statement of Reference read:

Par. 8: "The dispute arose on 18/02/022 when the Claimant was informed in writing about the immediate suspension of the contract without any plausible cause. For all the subsequent months, the Claimant made all the necessary efforts to plead with the 1st Respondent to refrain from the unfounded suspension as it amounts to a breach of contract. The effort involved numerous correspondences made by the Claimant to the Respondent, including one dated 07/03/2023 Ref:087/CMM/CAB/JPLS/023 addressed to OGEFREM;

Par. 9: On 20/04/2022, the 1st Respondent issued another written notice with Ref: DG/No.0789/JMV/04/2022 informing the Claimant that the same was effectively disconnected from the operating system and not allowed to create any new file in the system. **In effect this act by the 1st Respondent amounted to an unlawful termination of the contract.** (emphasis added)

Par. 11: The Claimant's expectations hit a snag when the 1st Respondent informed the Claimant that the contract

had to be terminated following a written directive of the Minister for Transport and Communication. Undoubtedly, such an act constitutes breach of the contract concluded on 25th October 2021 and implemented with effect from the date. The contract implementation was effective only for a period of not more than five [5] months until 18th February 2022 when the 1st Respondent interrupted it through a suspension letter. The Claimant had suffered enormous losses, especially those relating to the establishment of service delivery offices in Uganda and Burundi.”

46. From the Applicant’s narration above, the actions by the Respondents constituted a repudiatory breach of the contract at the time they occurred. They went to the very root of the agreement and rendered further performance impossible for the Applicant. The cause of action, therefore, accrued at the time of that breach; specifically on 18th February 2022 when the suspension was communicated or, at the latest, by 20th April 2022 when the disconnection took effect. The Applicant’s subsequent pursuit of remedies in the 2nd Respondent’s courts does not alter the fact that the breach had already crystallized by that point, nor does it pause the running of time.

47. The Applicant also invokes the “continuing violation” doctrine, suggesting that the violation was ongoing and that time should only start running from the last occurrence of harm, which presumably would be the continued exclusion from the system or the final termination confirmation. However, this Court has consistently rejected the

applicability of the continuing violation doctrine to Article 30(2) of the Treaty. Instructive here, is the case of **Alcon International Ltd vs Standard Chartered Bank of Uganda & 2 Others, EACJ Appeal No. 3 of 2013**. The Court, refusing to treat a bank's continued failure to honour a financial guarantee as a fresh breach for limitation purposes, observed that a reference should be filed within two months of the crystallization of the cause of action or knowledge of its existence by the complainant. The argument that a continuing failure to honour a contract constitutes a continuing violation was rejected. The Court stated:

“The substance of the provision is that a Reference should be filed within two months of the crystallization of the cause of action or of actual knowledge of its existence by the Complainant.”

48. In the **Alcon** case, the Court ruled instead that time ran from the first failure to honour the guarantee. The Court has even drawn on common-law principles to bolster this stance. In **Attorney General of Uganda & Others vs Omar Awadh & 6 Others** (*supra*), the Court cited the U.S. Supreme Court's test from **Toussie vs United States, 397 U.S. 112 (1970)**, to determine whether an offence is continuous: unless the statute or Treaty, in this case, clearly contemplates a continuing violation, or the nature of the offence is such that it must be treated as continuing; the default rule is that a violation is not continuing for purposes of the limitation period.

49. Applying that test, the Court found that acts like unlawful arrest and rendition are discrete one-time acts, not continuous violations, so the clock was not reset by the ongoing detention or the continuing effects of the initial act. In sum, once a Treaty violation crystallizes as a cause of

action, the two-month countdown begins and is not extended by the persisting consequences of that violation.

50. Relatedly, in **Attorney General of Kenya vs Independent Medical Legal Unit** (*supra*), the Court firmly rejected the notion that a continuing failure to act (such as an ongoing failure to investigate alleged atrocities) could extend the limitation period by being characterized as a “continuous breach”. The clock starts at the initial wrongful act, and subsequent inaction or ancillary processes do not restart it. The Court stated:

“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.”

51. Guided by the above principles and authorities, this Court finds that the cause of action in the present matter accrued on 18th February 2022, when the Applicant was notified of the suspension of its contractual rights and effectively cut off from the contract’s performance platform. The acts complained of were clear and complete by that date and certainly not later than April 2022. The Applicant’s subsequent resort to the 2nd Respondent’s courts did not and could not reset this accrual date. Accordingly, the two-month limitation period under Article 30(2) of the Treaty commenced on 18th February 2022 and expired on 18th April 2022. The Applicant did not file this Reference until 4th December 2023, well beyond the prescribed period. It therefore follows that the Reference is ***time-barred***.

52. Having found that the Reference is time-barred under Article 30(2) of the Treaty, the Court's jurisdiction *ratione temporis* is ousted.

53. This finding is dispositive of the Reference. In the premises, the Court need not consider the remaining preliminary objections or the substantive merits of the Reference. Any further analysis on whether the Court has jurisdiction *ratione materiae* or whether the claims have merit is unnecessary, since the Reference cannot be entertained due to its being filed out of time.

54. Finally, regarding 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".

55. We discern no justification for departing from this general principle. Accordingly, the costs of this Reference shall follow the event, as no exceptional circumstances have been demonstrated that would warrant a different order.

56. For the reasons set out above, this Court lacks jurisdiction to determine the Reference on its merits.

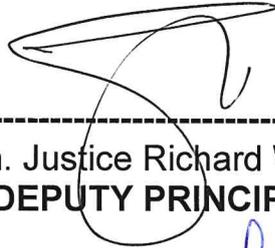
57. The Reference is time barred and is hereby dismissed **with costs**.

58. It is so ordered.

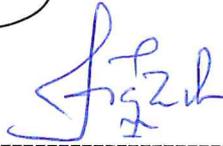
Dated, signed and delivered at Arusha this 25th day of November 2025.



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