



**IN THE EAST AFRICAN COURT OF JUSTICE
AT ARUSHA
FIRST INSTANCE DIVISION**



*(Coram: Richard Wabwire Wejuli, DPJ; Richard Muhumuza,
& Kayembe Ignace Rene Kasanda; JJ)*

REFERENCE NO. 15 OF 2019

HOPE FOR HUMANITY AFRICA (H4HA) 1ST APPLICANT

PAN AFRICAN LAWYERS UNION (PALU) 2ND APPLICANT

VERSUS

**THE HON. MINISTER OF JUSTICE/ATTORNEY GENERAL
OF THE REPUBLIC OF SOUTH SUDAN 1ST RESPONDENT**

**HON. ATTORNEY GENERAL
OF THE REPUBLIC OF KENYA 2ND RESPONDENT**

25TH MARCH 2026

JUDGMENT OF THE COURT

A. INTRODUCTION

1. This Reference was lodged before this Court on 2nd July 2019 by Hope for Humanity Africa (H4HA) and the Pan African Lawyers Union (PALU), the 1st and 2nd Applicants respectively, under Articles 6 (c) and (d), 7(2), and 30 of the Treaty for the Establishment of the East African Community (“the Treaty”) and Rules 1(2) and 24 of the Rules of the East African Court Rules of Procedure, 2013; and all enabling provisions of the law.
2. The Reference challenges the alleged abduction, enforced disappearance, unlawful and/or extraordinary rendition, arbitrary detention, torture, and subsequent suspected extra judicial killings of Mr Dong Samuel Luak, a South Sudanese human rights lawyer, and Mr Aggrey Ezbon Idri, a South Sudanese political figure and refugee (collectively, “the Subjects”), purportedly carried out by agents of the 1st Respondent and/or the 2nd Respondent.
3. The 1st Applicant, Hope for Humanity Africa (H4HA), presents itself as a non-profit National Non-Governmental Organization (NNGO), legally incorporated under South Sudan NGO Act 2016, whose areas of intervention are Research, Human Rights, Democracy, Rule of law, Law Reform and Mentorship.
4. The 2nd Applicant, PALU, is a continental membership forum for African Lawyers and Lawyers’ Associations. It describes itself as an organization committed to advancing the rule of law, good governance, democracy, and the protection of human and peoples’ rights across the African Continent. The Applicants’ address for

service for the purposes of this Reference is c/o Mr Donald Deya, Pan African Lawyers Union (PALU), Number 3, Jandu Road, Corridor Area, Arusha, P.O. Box 6065, Arusha, United Republic of Tanzania.

5. The 1st Respondent is the Minister of Justice/Attorney General of the Republic of South Sudan, sued in his official capacity as the Principal Legal Adviser to the Government of the Republic of South Sudan. His address of service for purposes of this Reference is c/o Ministry of Justice and Constitutional Affairs, Juba, Republic of South Sudan.
6. The 2nd Respondent is the Attorney General of the Republic of Kenya, sued in his official capacity as the Principal Legal Adviser to the Government of the Republic of Kenya. His address of service for purposes of the Reference is c/o Office of the Attorney General, Sheria House, Harambee Avenue, P.O. Box 40112-00100, Nairobi, Republic of Kenya.
7. On 20th September 2021, under Rule 61 of the East African Court of Justice Rules of the Court, 2019 (“the Rules”), the 1st Applicant, citing personal reasons, filed a Notice of Withdrawal and Discontinuance of the Reference. The Court, during the Scheduling Conference hearing on 5th September 2022, duly noted the withdrawal and granted the prayer; and as a result, PALU remained the sole Applicant, (“the Applicant”).

B. REPRESENTATION

8. At the hearing, the Applicant was represented by Ms. Esther Wanjiru Muigai Munaro and Praise-God Joseph Millen, learned Counsel.

9. The 2nd Respondent was represented by Mr Thande Kuria, Deputy Chief State Counsel in the Office of the Attorney General of Kenya.
10. The 1st Respondent, the Attorney General of the Republic of South Sudan, though duly notified of the hearing date and having previously participated in the scheduling conference through Mr. Biong Pieng Kuol, Director of Civil Litigation and Legal Opinion in the Ministry of Justice and Constitutional Affairs, failed to attend the hearing and the Court proceeded with the hearing in his absence.

C. THE APPLICANT'S CASE

11. The Applicant's case is set out in the Statement of Reference lodged in Court on 2nd July 2019, in the Applicant's rejoinder to the 1st Respondent's Response to the Statement of Reference of 17th October 2019 and in the Applicant's rejoinder to the 2nd Respondent's Response dated 7th October 2019.
12. The Applicant contends that Mr Dong was last seen on 23rd January 2017 at the Dream Bean House Restaurant in Nairobi, while Mr Aggrey was last seen the following morning during his routine jog along Argwings Kodhek Road. Missing persons reports were subsequently lodged with the Kenyan police.
13. That, information subsequently emerged suggesting that the Subjects had been apprehended by Kenyan security authorities and were at risk of deportation to South Sudan.
14. Further that, the families of the two men promptly sought judicial intervention before the High Court of Kenya by filing *Habeas Corpus* proceedings (**Miscellaneous Criminal Application No. 28 of 2017**) on 26th January 2017. In a ruling delivered on 22nd February

2017, the High Court declined to issue the writ, having found no evidence that the two individuals were in the custody of Kenyan authorities, but nonetheless directed the police to investigate their disappearance.

15. Further proceedings were instituted through **Judicial Review Application No. 193 of 2017** seeking orders of *mandamus* to compel Kenyan investigative authorities to conduct thorough investigations. Those proceedings were also dismissed.

16. The Applicant identifies a later “turn of events” as decisive to its case. It is the Applicant’s case that on 30th April 2019, the UN Security Council published a Report of the Panel of Experts on South Sudan, and that this Report revealed that South Sudan’s Internal Security Bureau (ISB) transported the Subjects from Kenya to Juba on a commercial plane on 27th January 2017, with assistance of the South Sudan Embassy in Nairobi; that, once in Juba the Subjects were taken to the National Security Service Headquarters detention facility (“Blue House”); and that they were thereafter tortured and allegedly killed. The Applicant relies heavily on this report in support of the present Reference.

17. The Applicant therefore maintains that the Respondents’ actions and omissions violated the fundamental and operational principles of the Treaty, especially principles of the rule of law, good governance and the protection of human rights as enshrined in Articles 6(d) and 7(2) of the Treaty; and accordingly, prays that the Court be pleased to declare that:

- i. **The 1st and 2nd Respondents violated the principles of good governance, the rule of law, and human and**

- peoples' rights as guaranteed under the Treaty and applicable international instruments;
- ii. The Respondents violated the right to due process and a fair trial by failing to afford the Subjects an opportunity to be heard prior to their deportation and subsequent death;
 - iii. The Respondents violated the right to dignity and humane treatment by subjecting the Subjects to inhumane and degrading treatment;
 - iv. The 1st Respondent breached its constitutional and statutory obligations, including the rights to personal liberty, fair trial, access to justice, and the proper treatment of arrested persons, including access to legal counsel;
 - v. The 2nd Respondent violated the principle of non-refoulement by deporting the Subjects to a jurisdiction where their lives and freedoms were at risk;
 - vi. The 2nd Respondent breached its obligations under international law, including the 1951 Refugee Convention, the 1969 OAU Convention, and the Convention Against Torture, by exposing the Subjects to a real risk of persecution, torture, and death;
 - vii. The 2nd Respondent violated its domestic legal obligations, including constitutional guarantees of security and liberty of the person and statutory duties under refugee protection laws;

viii. The 2nd Respondent failed to conduct prompt, effective, and professional investigations, and instead misled the Court through false or inaccurate information;

ix. The actions of the agents of the 2nd Respondent amounted to contempt of court, by deliberately misleading judicial proceedings and undermining the administration of justice;

18. The Applicant further prays that this Court be pleased to order that:

i. The 1st and 2nd Respondents, jointly and/or severally, conduct a thorough, independent, and transparent investigation into the fate of the Subjects, and provide a full, truthful, and detailed report to the Court and to the next of kin, close friends, and associates;

ii. The Respondents identify, investigate, and prosecute and/or sanction all persons responsible for the violations complained of, in accordance with national and international law;

iii. The Respondents provide full reparations to the victims' families and associates, including but not limited to:

a) Truth-telling and official acknowledgment;

b) A formal public apology;

c) Payment of general, exemplary, and/or punitive damages.

- iv. **The Respondents pay the costs of this Reference;**
- v. **The Respondents submit periodic reports to this Honorable Court on the implementation and compliance with its Orders; and**
- vi. **Any other or further reliefs, orders, or directions that this Honorable Court may deem just, fit, and appropriate in the circumstances.**

D. THE RESPONDENT'S CASE

19. The Respondents' respective cases are set out in their Responses to the Statement of Reference. The 1st Respondent's position is contained in the Response dated 2nd September 2019, while the 2nd Respondent's position is articulated in the Response lodged on 8th August 2019 and in the Replying Affidavit sworn by Chief Inspector Fidelis Ndolo on 23rd April 2024.

20. In general terms, both Respondents deny liability for the alleged abduction or enforced disappearance of the Subjects and reject the Applicant's attempt to attribute responsibility for the disappearance to state organs of either Respondent State.

i. 1st Respondent

21. The 1st Respondent advances two principal arguments. First, that the Reference is time-barred within the meaning of Article 30(2) of the Treaty and second, that the claim that South Sudanese state organs abducted, received, or detained the Subjects is disputed.

22. The 1st Respondent maintains that the Subjects were ordinary South Sudanese citizens who did not constitute a political threat and

were at liberty to leave the country. The 1st Respondent further disclaims any knowledge of the Subjects' whereabouts following departure from South Sudan and denies that the National Security Service received or detained the Subjects in any facility.

23. The 1st Respondent also challenges the credibility and probative value of the UN Panel report relied upon by the Applicant. The 1st Respondent submits that the report lacks credibility, is founded on hearsay, and cannot constitute reliable evidence in the absence of proof of its veracity.

24. On the basis of the foregoing, the 1st Respondent seeks declarations that the Reference is time-barred under Article 30(2) of the Treaty and that the claims lack legal foundation as they are premised on uncertain and hearsay material. Consequently, the 1st Respondent prays for dismissal of the Reference with costs.

ii. 2nd Respondent

25. The 2nd Respondent, the Attorney General of Kenya, likewise denies any involvement in the alleged abduction or transfer of the Subjects. While acknowledging that missing persons reports were made to the Kenyan police and that investigations were undertaken, the 2nd Respondent maintains that the Subjects were never in the custody of Kenyan authorities.

26. The 2nd Respondent further contends that no adverse findings were made against Kenya in the UN Panel report and denies any breach of Treaty obligations, including alleged violations of the rule of law, good governance, and human rights.

27. Particular reliance is placed on findings in the *habeas corpus* proceedings indicating that the Subjects were not in the custody of the Kenyan Police, the Directorate of Criminal Investigations, or immigration authorities. The 2nd Respondent submits that, even if an abduction or rendition occurred, Kenya neither participated in nor facilitated such acts and cannot be held responsible for the conduct of non-state actors.

28. In conclusion, the 2nd Respondent seeks dismissal of the Reference against Kenya with costs.

E. ISSUES FOR DETERMINATION

29. During the Scheduling Conference held in Arusha on 5th September 2022, the following issues for the Court's determination were raised:

- i. Whether the Reference is time-barred;**
- ii. Whether the Reference raises a cause of action against the 1st and the 2nd Respondent States;**
- iii. Whether the actions taken by the 1st and 2nd Respondent States, if any, meet the expectations of Articles 6(d) and 7(2) of the Treaty and various national laws and international instruments; and**
- iv. Whether the parties are entitled to reliefs sought?**

F. COURT'S DETERMINATION

ISSUE 1: Whether the Reference is time barred

30. Upon careful consideration of the Parties' pleadings, the Court makes a preliminary observation regarding the applicable

procedural regime. The present Reference was instituted under the East African Court of Justice Rules of Procedure, 2013. These Rules have since been revised and replaced by the East African Court of Justice Rules, 2019.

31. Pursuant to Rule 136 of the Rules, the Court shall apply the current Rules “without prejudice to the validity of anything previously done,” provided that where it is impracticable to do so, the previous practice and procedure shall apply.
32. The Court further notes that during the Scheduling Conference held on 5th September 2022, the Parties were directed to file Affidavits and written Submissions. This direction was largely not complied with. By the time the matter proceeded to hearing on 7th November 2025, only the 2nd Respondent had made partial compliance, albeit without addressing the agreed issues.
33. In the circumstances, the Court shall determine the matter on the basis of the material properly on record, with particular focus on the preliminary objection concerning jurisdiction. As stated earlier, this issue was raised as a preliminary objection by Counsel for the 1st Respondent. It is necessary to deal with it at this stage, since if it is answered in the affirmative, it would dispose of the whole Reference.
34. The 1st Respondent raised a preliminary objection grounded in law, contending that the Reference is time-barred under the Treaty and fails to meet procedural requirements under the Rules.
35. Specifically, the 1st Respondent submits that the Reference, filed on 2nd July 2019, falls outside the mandatory two-month limitation

period prescribed by the Treaty, given that the impugned acts occurred in January 2017.

36. The 1st Respondent further contends that the Reference offends Rule 24(4) of the 2013 Rules for failure to provide proof of the Applicants' legal existence.
37. The Court finds no merit in this latter contention. The record clearly shows that the Applicants' Certificates of Incorporation and Registration were duly annexed to the Statement of Reference. The objection under Rule 24(4) is therefore dismissed.
38. The Applicant contests the objection on limitation and argues that time should be computed from 30th April 2019, being the date of publication of the United Nations Panel of Experts report, which allegedly revealed the material facts underlying the claim.
39. The Applicant further submits that, on this computation, the two-month limitation period would have expired on 1st July 2019, but was validly extended to 2nd July 2019 pursuant to Rule 3(d) of the Rules, as 1st July fell on an official Court holiday.
40. The issue of time limitation having been raised by the 1st Respondent, it is appropriate for the Court to first address and determine whether the Reference was filed in compliance with the legally prescribed two-month period. This preliminary question goes to the Court's jurisdiction *ratione temporis* and must be resolved before any consideration of the merits.

41. The Court's jurisdiction on time limitation (*ratione temporis*) is provided for under Article 30(2) of the Treaty, which stipulates as follows:

"The proceedings provided for in this Article shall be instituted within two months of the enactment, publication, directive, decision or action complained of, or in the absence thereof, of the day in which it came to the knowledge of the complainant, as the case may be."

42. This provision establishes a strict temporal framework within which a Reference must be lodged, calculated either from the date of the impugned act or, where applicable, from the date on which the Applicant became aware of it.

43. This Court has consistently held that this time limitation is a strict jurisdictional requirement, not a mere procedural technicality. In **Attorney General of the Republic of Kenya & 4 Others vs Independent Medical Legal Unit, EACJ Appeal No. 1 of 2011**, and **Hilaire Ndayizamba vs Attorney General of the Republic of Burundi & Another, EACJ Reference No. 3 of 2012**, it was affirmed that non-compliance with Article 30(2) deprives this Court of *jurisdiction ratione temporis*.

44. It is equally settled that the Court has no power to extend, waive, or modify this limitation period. As emphasized in **Independent Medical Legal Unit** (*supra*), the time bar admits of no discretion, and once exceeded, the Reference is rendered incompetent.

45. In the above case the Court stated at paragraph 51:

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

46. The Court’s jurisprudence establishes a structured approach to determining compliance with Article 30(2).
47. First, the Court must identify the specific “action complained of.” As stated by this Court in **Attorney General of the Republic of Uganda vs Omar Awadh & 6 Others, EACJ Appeal No. 2 of 2012**, the Court must precisely locate the impugned act before turning to the question of time.
48. Second, the Court must determine when that action was first effected or, in the alternative, when it came to the knowledge of the complainant. In **Omar Awadh** (*supra*), the Court clarified that the relevant starting point is “not the day the act ends, but the day it is first effected.”
49. Third, the Court must guard against attempts to circumvent the limitation period through reliance on continuing-violation theories or delayed evidentiary confirmation. In **Independent Medical Legal Unit** (*supra*), the Court rejected such approaches as inconsistent with the principle of legal certainty underpinning Article 30 (2) of the

Treaty. The Court was clear on the principle of legal certainty; and gave the following interpretation of Article 30 (2):

“Again, no such intention [to extend the time limit] can be ascertained from the ordinary and plain meaning of the said Article [30 (2)] or any other provision of the Treaty. The reason for this short time limit is critical – it is to ensure legal certainty among the diverse membership of the Community.”

50. Applying this framework, the Court begins by identifying the actions complained of. The pleaded grievances arise from:

- i. the alleged abduction and disappearance of the Subjects in Nairobi on 23–24 January 2017;**
- ii. the alleged extraordinary rendition or deportation; and**
- iii. the alleged failure by the Respondents’ agents to investigate and disclose their fate.**

51. The next inquiry is when these actions were first effected or came to the knowledge of the Applicant. The record shows that by late January 2017, the families of the Subjects had reported the disappearance and instituted legal proceedings before national courts, including *habeas corpus* applications premised on the allegation that the Subjects were in state custody and at risk of imminent deportation.

52. In line with **Omar Awadh** (*supra*), the Court finds that time began to run when these events were first effected and became known to

- the Applicants in January 2017. The fact that the alleged violations may have had continuing consequences does not alter this position.
53. The Applicant's argument that time should instead run from 30th April 2019, being the date of the United Nations Panel report, cannot be sustained. That report did not constitute a new "action complained of" within the meaning of Article 30(2); rather, in our opinion, it could have provided additional evidentiary detail concerning events already known to the Applicant.
54. The Court equally rejects any attempt to characterize the alleged violations as "continuing" so as to avoid the time bar. In **Independent Medical Legal Unit** (*supra*) and reaffirmed in **Omar Awadh** (*supra*), the Court made it clear that the doctrine of continuing violations cannot be invoked to defeat the strict temporal limits set by the Treaty.
55. The Court further observes that the Applicant has not identified any distinct directive, decision, or action occurring within two months prior to the filing of the Reference that could give rise to a fresh and independent actionable claim under Article 30(2).
56. Accordingly, the Court finds that the Applicant had knowledge of the impugned acts in January 2017. The two-month limitation period therefore expired in March 2017. The Reference filed on 2nd July 2019 was consequently lodged well outside the prescribed time.
57. In these circumstances, the Applicant's reliance on Rule 3(d) of the Rules concerning computation of time is misplaced. Such provisions operate only within a subsisting limitation period and cannot revive a claim that is already time-barred.

58. In light of the foregoing, and consistent with the holdings cited herein, the Court finds that it lacks *jurisdiction ratione temporis* to entertain this Reference.

59. Once jurisdiction is lacking, the Reference is rendered legally untenable, and the Court must decline to consider the merits.

60. In view of this finding, the Court finds it unnecessary to address the remaining issues.

G. CONCLUSION

61. The Court finds that the Reference was filed outside the two-month limitation period prescribed under Article 30(2) of the Treaty.

62. This delay deprives the Court of *jurisdiction ratione temporis*. Consequently, the Court cannot assume *jurisdiction ratione materiae* to determine the merits of the case.

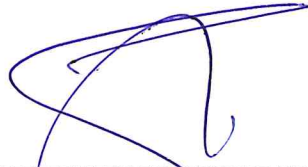
63. Resultantly, **Reference No. 15 of 2019** is hereby dismissed in its entirety for being time-barred.

64. As to costs, Rule 127(1) of the Rules provides that “Costs in any proceedings shall follow the event unless the Court for good reasons otherwise order”.

65. In exercise of our discretion, given the peculiar circumstances of this Reference, it would not serve the ends of justice to condemn the Applicant to costs. We accordingly deem it just that each party shall bear its own costs.

66. It is so ordered.


Dated, signed and delivered at Arusha this 25th Day of March, 2026.



Hon. Justice Richard Wabwire Wejuli
DEPUTY PRINCIPAL JUDGE



Hon. Justice Richard Muhumuza
JUDGE



Hon. Kayembe Ignace Rene Kasanda
JUDGE