



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



*(Coram: Yohane B. Masara, PJ; Audace Ngiye, DPJ; Charles Nyachae, Richard Muhumuza & Richard W. Wejuli, JJ)*

**REFERENCE NO. 11 OF 2018**

**MIRONKO FRANCOIS XAVIER .....APPLICANT**

**VERSUS**

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

**6<sup>th</sup> APRIL, 2022**

## JUDGMENT OF THE COURT

### A. INTRODUCTION

1. This Reference was filed on 4<sup>th</sup> June 2018 by MIRONKO FRANCOIS XAVIER (“the Applicant”) against the Attorney General of the Republic of Rwanda (“the Respondent”). The Reference was preferred under Articles 6(a), 9, 23, 27 and 30 of the Treaty for the Establishment of the East African Community (“the Treaty”), Articles 2 and 60 of the African Charter on Human and People’s Rights and Rules 8(1) - (6), 21(1) (2) & (3) of the East African Court of Justice Rules of Procedure, 2013 (“the Rules”).
2. The Applicant alleges a violation by the Respondent State of the latter’s obligations in the Treaty, particularly, Articles 6(d) and 7(2) thereof.
3. The Respondent filed a Response to the Reference on 28<sup>th</sup> June 2018 pursuant to Rule 30(1) of the Rules.
4. The Respondent denies violation of the Treaty as alleged in the Reference or at all.
5. The Applicant’s place of residence is at Amajyambere Village, Kimihurura Cell, Kimihurura Sector, Gasabo District, Kigali City.
6. The Respondent’s address is P.O. Box 160 Kigali, located at Boulevard de L’umuganda in Kimihurura Sector, Gasabo District, Kigali City. He has been sued as the Principal Legal Advisor of the Republic of Rwanda.

## **B. REPRESENTATION**

7. At the hearing, the Applicant was represented by Mr William Ernest, learned Advocate, while the Respondent was represented by Mr Nicholas Ntarugera and Ms Specioza Kabibi, both learned Senior State Attorneys.

## **C. THE APPLICANT'S CASE**

8. The Applicant's case is to be found in the Statement of Reference, the Reply to the Respondent's Response to the Reference filed on 23<sup>rd</sup> August 2018, the Applicant's Supplementary Affidavit filed on 17<sup>th</sup> July 2020, the Applicant's written submissions filed on 28<sup>th</sup> September 2020, the Rejoinder Submissions filed on 11<sup>th</sup> November 2020 and the highlights of submissions made at the hearing.
9. It is the Applicant's case that sometime in 1993 and 1994, through a public tendering process, he was awarded a tender by the Respondent State to supply various military equipment, which he did supply. The Applicant states further that due to the confidential character, the urgency of the tender and from exceptional circumstances that the country was crossing (sic), the tender was awarded on mutual agreement between both parties as provided by law.
10. The Tender was awarded to INTERNATIONAL INDUSTRIES, SA, a company based in Belgium, and MIRONKO EURAFRIC SPRL, based in Luxembourg. Both companies were represented by the Applicant. These companies later assigned the debt owed to them by the Respondent to the Applicant.



11. The Applicant claims that following certain payments made by the Respondent, there remained an unpaid balance, in respect of the delivered goods amounting to BF 7,100,000 (Seven Million, One Hundred Thousand Belgian Francs).
12. The Applicant made various attempts through different Rwanda Government entities and offices to recover the payment of the said claimed debt, to no avail.
13. The Applicant filed a case for recovery of the said debt at the Commercial Court of Nyarugenge, being **RCOM 0665/13/TC/NYGE**, wherein the said Court entered Judgment for the Applicant in the sum of FRW 3,815,644,925, (Three billion, eight hundred and fifteen million, six hundred and forty four thousand, nine hundred and twenty five Rwandan francs).
14. The Respondent appealed against the decision to the Commercial High Court. The Commercial High Court found in favour of the Respondent.
15. The Applicant appealed to the Supreme Court of Rwanda, which, however, dismissed the appeal, upholding the lower Court's findings.
16. Believing that he had found fresh evidence to justify a review of the matter by the Supreme Court, the Applicant applied for the review. However, on 6<sup>th</sup> April 2017, the Supreme Court declined to entertain a review on the basis that the new evidence alleged did not meet the threshold to justify a review.



17. The Applicant then approached the Ombudsman requesting for a review on the basis of injustice caused to him. This request was declined by the Ombudsman on 24<sup>th</sup> April 2018.

18. Thereafter, as stated in paragraph 1 of this Judgment, the Applicant filed the Instant Reference in which he seeks the following:

**a) A declaration that the Government of Rwanda violated Articles 6(d) and 7(2) of the Treaty for the Establishment of the East African Community, its national laws, international conventions as well as the general principles of law;**

**b) A declaration that the Government of Rwanda committed injustices against the Applicant;**

**c) To order the Government of Rwanda to re-establish the Applicant in his rights (sic); and**

**d) Any other reliefs as this Honourable Court may deem just to grant.**

#### **D. RESPONDENT'S CASE**

19. The Respondent's case is found in the Response to the Reference, the Respondent's Supplementary Preliminary Objection to the Reference filed on 18<sup>th</sup> June 2020, the written submissions filed on 16<sup>th</sup> October 2020 as well as the highlights thereof made at the hearing.

20. In the Response to the Reference, the Respondent denies that there was any commitment by the Respondent to the Applicant. That the Applicant has not been able to demonstrate and prove the



agreement. That various Rwanda Government Officials tried to establish the truth of the Applicant's claims to no avail; but, in any event, it is the Applicant's responsibility to prove those claims.

21. The Respondent further argues that the Applicant having chosen to approach the Courts of Rwanda, the Judicial System provided him a fair and just process, but he was not able to prove his claims.

22. The Respondent raises two preliminary objections stated hereunder.

23. The Respondent argues that the Applicant approached this Court on an Appeal disguised as a Reference. That, this is not a case for interpretation or application of the Treaty, but an invitation for this Court to sit in an Appellate capacity over the decision of Rwanda's Supreme Court and that of the Ombudsman.

24. The Respondent also contended that the Reference was, in any event, time barred and could not therefore be entertained by the Court, in exercise of its Jurisdiction under the Treaty. Further, the Reference does not disclose any cause of action. The Respondent therefore, asked the Court to dismiss the Reference with costs.

#### **E. ISSUES FOR DETERMINATION**

25. At the Scheduling Conference held by video link on 3<sup>rd</sup> July 2020, the following were agreed as issues to be determined by the Court:

**a) Whether the Reference is time barred;**

**b) Whether this Court has Jurisdiction to entertain the Reference;**



c) Whether the acts complained of by the Applicant constitute a violation of Articles 6(d) and 7(2) of the Treaty for the Establishment of the East African Community; and

d) Whether the parties are entitled to the remedies sought.

#### **F. THE COURT'S DETERMINATION**

26. Prior to a substantive determination of the issues listed above, we wish to make the following clarification. Although the Reference was instituted under the East African Court of Justice Rules of Procedure, 2013, those Rules were, with effect from 1<sup>st</sup> February, 2020, replaced by the East African Court of Justice Rules of Procedure, 2019 ("the Court Rules"). The latter Rules shall therefore be applied without prejudice to the validity of anything previously done under the 2013 Rules and produced as enjoined by Rule 136, that if and so far as it is impracticable to apply the 2019 Rules ***"the practice and procedure heretofore followed shall be allowed."***

27. Having studied the pleadings filed and submissions made by the Parties herein, we now proceed to determine the issues.

28. As a matter of course, if either of the first two issues (limitation of time and jurisdiction) is determined against the Applicant, the Court will not proceed to consider the other issues. For reasons which will become apparent below and for the convenience of the Court, we shall first consider Issues No.2 and 1 in that order, and only if necessary, then consider the remaining issues set out in paragraph 25 above.



**ISSUE NO.2: Whether this Court has Jurisdiction to entertain the Reference**

29. Both in its written submissions, and in the highlights of the same at the hearing, the Respondent argued that this Court has no jurisdiction to entertain and determine this matter, primarily because the Reference is an attempt by the Applicant to appeal against the decisions by the domestic Courts of Rwanda. That, this Court has no such appellate jurisdiction.
30. The Respondent relies on both a plain reading of Articles 23(3) and 27 of the Treaty, as well as pronouncements of this Court in various cases. In **EASCO vs. The Attorney General of Burundi, EACJ Reference No. 2 of 2015**, the Court stated: **“this Court is not clothed with appellate jurisdiction over the decision of National Courts. Article 23(3) of the Treaty specifically designates it as a court of First Instance in matters of Treaty interpretation.”**
31. This Reference, the Respondent contended, is in its nature, an appeal because **“the subject matter was determined by the local Courts up to the Supreme Court that there was not enough evidence for the Applicant to be paid the outstanding bill as mentioned.”** The Respondent further submitted **“that the Applicant is only trying to drag this Honourable Court to sit in the shoes of an appellate division over matters of National Court’s whereas this Honourable Court has made a precedence that it is not vested with appellate jurisdiction on National Courts decisions.”**
32. The Applicant on his part submitted that, pursuant to Article 27 of the Treaty, the Court has jurisdiction to interpret and apply the

Treaty. This is on account of the fact that, the Reference alleges that the Respondent State has violated specific provisions of the Treaty; namely Articles, 6(d) and 7(2).

33. The Applicant also referred the Court to the case of **Prof. Peter Anyang Nyong'o and 10 Others vs. The Attorney General of the Republic of Kenya and Others, EACJ Reference No.1 of 2016**, where the Court stated: **“Article 30 confers on a litigant resident in any Partner State the right of guided access to the Court for determination of issues set out therein.”**

34. In the submission of the Applicant, **“Where a Partner State does act or action to a resident of any Partner State to the Community which violates the provisions of the Treaty, the said actions give the claimant a *locus standi* and create a direct cause of action to that person entitles him or her to refer his or her claims to this Court. The Republic of Rwanda violated Articles 6(d) and 7(2) of the Treaty and that constitutes a cause of action.”**

35. We find it helpful to here below reproduce Articles 23, 27 and 30 of the Treaty.

**ARTICLE 23:**

- 1. 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;**
- 2. The Court shall consist of a First Instance Division and an Appellate Division; and**
- 3. The First Instance Division shall have jurisdiction to**



hear and determine, at first instance, subject to a right of appeal to the Appellate Division under Article 35A, any matter before the Court in accordance with this Treaty.

ARTICLE 27:

1. 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.*

2. The Court shall have such other original, appellate, human rights and other jurisdiction as will be determined by the Council at a suitable subsequent date. To this end, the Partner States shall conclude a protocol to operationalise the extended jurisdiction.

ARTICLE 30:

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;
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.

36. In Geoffrey Magezi vs. The Attorney General of Uganda, EACJ Reference No. 5 of 2013, this Court, in interpreting Articles 27 and 30 of the Treaty, stated that this Court will assume jurisdiction where the Applicant is a natural or legal person, resident of an East African Community Partner State and is challenging the legality of any Act, regulation, directive, decision or action of a Partner State or an Institution of the Community. The Reference must be filed within two months of the enactment, publication, directive, decision or action complained of or of the day in which it came to the knowledge of the Applicant.

37. Very specifically, in Democratic Party vs. The Secretary General EAC and the Attorney General of the Republics of Uganda, Kenya, Rwanda, EACJ Reference No. 20 of 2012, the Court said:

“Once a party has invoked certain relevant provisions of the Treaty and alleges infringement thereon, it is incumbent upon the Court to seize the matter and entertain its jurisdiction under Article 23, 27 and 30 to determine whether the claim has merit or not.”

38. This Court also takes cognizance of its decisions in James Katabazi and 21 Others vs. The Attorney General of the Republic of Uganda and Another, EACJ Reference No.1 of 2007; East African Law Society vs. The Attorney General of the Republic of Burundi, EACJ Ref. No. 1 of 2014; and Burundian Journalists Union vs. The Attorney General of Burund EACJ Ref. No.7 of 2013.

39. The jurisprudence of this Court on jurisdiction, in applying Articles 23, 27 and 30 of the Treaty, is that, once an applicant claims an alleged violation of the Treaty, this Court will assume jurisdiction and determine the issue on the merits.

40. This is of course, subject to the provisions of Article 30(2) on limitation of time. This is the subject of Issue No.1, dealt with below in this Judgment.

41. In the case of Eric Kabalisa vs. The Attorney General of Rwanda, EACJ Reference No.1 of 2017, the Court summarised the Court's jurisdiction as follows:

**“--- 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 jurisdictions: *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 the time element.”**

42. No challenge has been made by the Respondent as regards the *locus standi* of the Applicant. Jurisdiction *ratione personae* is therefore accepted as being present.



43. On *ratione materiae*, we have no difficulty, when we apply the jurisprudence of the Court set out above, in concluding that the Court does have jurisdiction *ratione materiae*, the cause of action being based on an alleged violation of the Treaty.

44. The issue of jurisdiction *ratione temporis*, is dealt with below, as the question of whether the Reference is time barred.

45. On Issue No.1 therefore, we find that the Court has jurisdiction *ratione personae/locus standi*, and *jurisdiction ratione materiae*, to entertain this Reference.

46. We answer Issue No.2 in the affirmative.

**ISSUE NO. 1: Whether the Reference is time barred**

47. It was the Respondent's submission that the Reference was time barred and should be dismissed with costs as it was filed out of time, beyond the two months period stipulated in Article 30(2) of the Treaty.

48. Article 30(2) provides 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.”**

49. The Respondent argued that the act complained of by the Applicant in this Reference is the act that the Applicant termed as the Respondent refusing to pay for the military equipment supplied by the Applicant's company in 1993, not the letter from the

Ombudsman's office of 4<sup>th</sup> April 2018 that informed the Applicant that there is no legal ground that could lead to the review of the case.

50. Applying the Provisions of Article 30(2), the Respondent argued that the Applicant's cause of action, if any, would have arisen on 28<sup>th</sup> June, 1994 when the Ministry of Defence ordered the paymaster to transfer the different figures in Belgian Francs currency, for the payment of the supplied equipment, to the Rwanda Army on bank account No.52-110232-86 of Luxembourg in favour of INTERNATIONAL INDUSTRIES, SA.

51. The Respondent invited the Court to pay attention to the Statement of Reference, where the Applicant **“requests the Court to confirm that the action of Rwanda to refuse to pay the Bill of the ordered military equipment and the negligence to implement its own law is illegal to the provisions of the Treaty ....”**

52. On his part, the Applicant submitted that the Reference was filed within the two months' period envisaged by Article 30(2) of the Treaty. In his argument, the essence of what he complained of as violating the Treaty is represented and captured in the letter of the Ombudsman received by the Applicant on 6<sup>th</sup> April 2018. The Reference was filed on 4<sup>th</sup> June 2018, before expiry of the two months. The Applicant, thus, states that he acted diligently and within the Treaty timeframe.

53. Indeed, on the issue of whether the Reference was time barred, the Applicant's submissions were as brief as stated in the preceding paragraph. He insisted that the Treaty violation was embedded in

the letter issued by the Ombudsman and not in any other earlier act by the Respondent State.

54. It is our view, that the diametrically opposed positions of the Parties herein on the question of the application of the time limit contemplated in Article 30(2) arise from the differing views of what exactly is the **“enactment, publication, directive, decision or action complained of”** in this matter.

55. In the submissions of the Respondent, what is complained of according to the pleadings is the failure by the Respondent State to pay a claimed debt, ostensibly arising from the supply of military equipment in 1993 and 1994. On his part, the Applicant insisted, in submissions, that what the Reference challenges is the action of the Ombudsman in issuing the letter referred to above, and it is that action that violates the Treaty.

56. From the preceding paragraph, it follows that Issue No.1 on time bar, will be answered by identifying what the Applicant complains of.

57. This Court has, on several occasions, been called upon to interpret the meaning and the effect of Article 30(2). In **Mbugua Mureithi Wa Nyambura vs. The Attorney General of the Republic of Kenya, EACJ Reference No. 11 of 2011**, this Court observed as follows:

**“The general Rule of Interpretation set out by the Vienna Convention on the Law of Treaties ..... is applicable to the interpretation of this Article. It is our understanding from the plain reading of Article 30(2) that a Reference challenging any unlawfulness or infringement provided for under Article 30(1) must be instituted within a period of two months of their occurrence or in the absence thereof, when the complainant**



came to know the Act or action complained of. This is the clear and ordinary meaning to be given to Article 30(2).”

58. In Attorney General of the Republic of Kenya vs. Independent Medical Legal Unit, EACJ Appeal No.1 of 2011, the Appellate Division of this Court stated as follows:

“In our view, the Treaty does not grant any express or implied Jurisdiction to extend the time set in the Article ..... 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.”

59. Further, in the same decision the Court stated: “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.”

60. The Appellate Division of this Court, in Attorney General of the Republic of Uganda and the Attorney General of the Republic of Kenya vs. Omar Awadh and 6 Others, EACJ Appeal No. 2 of 2012 reaffirmed its position on Article 30(2) of the Treaty, as stated in Independent Medical Legal Unit (supra). It stated:

“The Court is still of the same view: that the objective of Article 30(2) is legal certainty. It still notes that the purpose of this amended provision of the Treaty was to secure and uphold the principle of legal certainty; which requires a complainant to lodge a Reference in the East African Court of Justice within the relatively brief time of only two months. Nowhere does the Treaty provide for any “exception” to the

two month's period. Therein lies the critical difference between the EAC Treaty (which governs trade matters as the objective of cooperation between Partner States) on the one hand; and, on the other hand, Human Rights Conventions and Treaties which provide "exceptions" (for continuing violations) on the grounds that securing the fundamental rights of the citizens is of paramount essence. For this reason, the Judicial Bodies that have Human Rights jurisdiction must strenuously uphold and protect all such rights through a liberal and purposive interpretation."

61. The Court went further to state:

"It is clear that both the context and intent of Article 30(2) provide a legal framework for determining the starting date of an act complained of, or alternatively the date on which the complainant first acquired the requisite knowledge – all with the objective of ascertaining the commencement and expiry of "the time limit of the two months." In that spirit, the Article does not contemplate the concept of "continuing" breach or violation, in as much as the acts complained of, or the time when a claimant had knowledge of the breach of infringement, have a definitive starting date and expiry date within the two month period. The only "continuing" period envisaged under the Article is the grace period (implicitly allowed in the second limb of that Article) for the complainant to have knowledge of the act. From the date of such knowledge, the legal clock for the two month period starts to tick."



62. On a purposive reading of Article 30(2) and as applied by this Court, the issue of whether a Reference was filed within the time limit required by Article 30(2) is, in the first instance, dependent on what the claim is and on what is the cause of action on which the Applicant approaches the Court. Only then, can it be determined either when did the violation complained of happen (first limb of Article 30(2)) or, when did such violation come to the attention of the Applicant (second limb). In either case, that will be the date on which the count of the two months' limitation required by Article 30(2) commences.

63. In paragraph 4 of the Statement of Reference, the Applicant states, under the heading; "(c) The Subject Matter of the Reference":

**"4. Request the Court to confirm that the action of Rwanda to refuse to pay the Bill of the ordered military equipment and the negligence to implement its own law is illegal to the provision of the Treaty of the East African Court Article 6 (sic)."**

64. This is followed in paragraphs 5 to 24, by a narrative, from the Applicant's perspective of:

- i. The basis of the cause – paragraphs 5 to 7 inclusive;
- ii. The alleged default by the Respondent – paragraph 8;
- iii. The sequential attempts by the Applicant to engage various offices of the Respondent State, with a view to getting the claimed payment – paragraphs 9 to 17; and
- iv. The Applicant's attempt to recover the claimed debt through the Courts and Judicial system of the Respondent State – paragraphs 18 to 24 inclusive.

65. We note that, neither in the pleadings nor in the submissions by the parties, was there any substantive contestation on the sequence of events as set out in the preceding paragraph.

66. In paragraphs 5, 6 and 7 of its Response to the Reference, the Respondent states:

- “5. The Respondent avers that the statement in paragraphs 6 to 9 of the Statement of Reference are not justifiable for the Applicant has not provided any proof to support the statements;**
- 6. The Respondent contends that all the statements raised by the Applicant in paragraphs 10, 11, 12, 13, 14, 16 and 17 have nothing to be challenged since the Rwandan officials were trying their best to find out the truth about the Applicant’s claim, but the fact being that the Applicant was unable to produce proof to his claim, then the officials were and are not to be blamed nor to have played their role towards resolving the problem and it does not mean that their acts of resolving the claim was illegal; and**
- 7. The Response to the Applicant’s Statements from paragraphs 18 to 26 is what the Applicant states therein is not evident because the only way he had to settle this injustice issue as he said was by way of filing a suit to Courts of Law and this was done to the last level of justice of the Ombudsman, thus by exhausting all the local remedies.”**



67. Thus, the Respondent accepts the Applicant's sequence of events, but contests the effect of those events.

68. From the said sequence of events, it was the Applicant's submission that, for the purposes of Article 30(2) and the limitation stated therein, time was to be reckoned from the last of those events; namely, the decision by the Ombudsman communicated on 18<sup>th</sup> April 2018. On that basis and by that reckoning, the Reference filed on 4<sup>th</sup> June 2018, was within the two months contemplated in Article 30(2).

69. On its part, the Respondent submitted that, from the pleadings, it is clear that the Treaty violation that the Applicant alleges is the failure and refusal by the Respondent State to make payment of the claimed debt. Further, the failure or refusal came to the knowledge of the Applicant when **“the Ministry of Defence pronounced itself upon the so called unpaid bill.”**

70. Counsel for the Respondent further submitted:

**“...this is when the Ministry of Defence committed itself to pay the Applicant that never complained. So, this is where the cause of action arose to our understanding because this is a letter that commits the Ministry of Defence to pay this amount of which today the Applicant claims that he was not paid. So, from that date my Lords, it is now over 23 - 25 years and it is clear under Article 30(2) of the Treaty for Establishment of the East African Community that any reference may be referred to this honourable Court for determination within 60 days.”**

71. The Respondent's Counsel went on to state as follows:



**“If the Ministry of Defence committed to pay and didn’t pay, this is when the cause of action arose vis-à-vis the subject matter of the Reference.”**

72. Having carefully listened to the oral submissions on the issue of limitation of time; we are persuaded that the cause of action in this Reference arises from the Applicant’s contention that the Respondent State was in violation of the Treaty by reason of its refusal to pay the debts claimed by the Applicant.

73. The Applicant submitted, with regard to the Reference, that **“paragraph 4 is the cause of action and the rest of the paragraphs are facts that are establishing that cause of action.”** We find this statement disingenuous. The question is, at what point did the Respondent refuse to pay the debt if such refusal is what constitutes a violation of the Treaty?

74. According to the Applicant this was **“when the Ombudsman’s letter was issued because that is when the Applicant realized that he could not get his right, through the systems of the Republic of Rwanda and that constitutes a violation of the Treaty”**.

75. With respect, we are not persuaded by that argument. From the facts set out in the pleadings and which are not contested, it is patently clear that the Applicant approached the domestic Courts, beginning with the Commercial Court at Nyarugenge, precisely because the Respondent had refused or in any case failed to pay the debt as claimed by the Applicant.

76. If indeed there was a lack of clarity on the Respondent’s position *vis-a vis* the alleged debt, prior to the suit referred to in the



preceding paragraph, can the move by the Respondent to appeal the decision of that Court which was in favour of the Applicant be seen in any other light other than as an express refusal to acknowledge or pay the claimed debt? We think not. In our view, at the very latest, that is the point when it became or ought to have become manifestly clear to the Applicant that the Respondent did not acknowledge or accept the debt. That, therefore, in our view, is the latest point that the Respondent could be said to have violated the Treaty, if indeed the refusal to pay the debt amounted to such violation, as claimed in the Reference. That is the point at which the two-month limitation period contemplated in Article 30(2) would begin.

77. We are fortified in our view, by both a plain as well as a contextual reading of paragraph 4 of the Reference which states: **“Request the Court to confirm that the action of Rwanda to refuse to pay the Bill of the ordered military equipment and negligence to implement his own law is illegal to the provisions of the Treaty...”**

78. The said paragraph 4 was stated by the Applicant in submission to be the cause of action. **“The action of Rwanda to refuse to pay the Bill”** is self-explanatory. **“... the negligence to implement his own law ...”**, in our understanding, relates to the contested position maintained by the Applicant throughout the litigation in the domestic Courts; that Rwandan Law allowed the contract to subsist even in the absence of proof of a written formal contract.

79. Perhaps, upon a belated realization of his difficult position as regards Article 30(2), the Applicant nonchalantly sought to argue



that **“the cause of action arose when the Ombudsman’s letter was issued because that is when the Applicant realized that he could not get his rights through the system to the Republic of Rwanda and that constitutes a violation of the Treaty.”**

80. We are however, persuaded by the submission of the Respondent that **“they got knowledge of the refusal to pay the bill at the time when the Ministry of Defence disclosed to them that without a contract they won’t pay.”**

81. The Ombudsman’s letter was merely the culmination of the process in the Rwandan Judicial system, which the Applicant had approached upon realization that the Respondent had refused or, in any event, failed to pay. We observe that at that time the Applicant had a choice to approach this Court (within Article 30(2) of the Treaty time frame) either alongside or instead of the domestic courts. He did not do so.

82. The Jurisprudence of this Court favours a strict interpretation and application of Article 30(2). And for good reasons. In the **Independent Medical Legal Unit Case** (supra), the Appellate Division of this Court had this to say relating to the application of Article 30(2): ***“The reason for this short time limit is critical – it is to ensure legal certainty amongst the diverse membership of the Community.”***

83. So too in the **Omar Awadh Case** (supra), the said Appellate Division stated:

**“Both Justice and equity abhor a claimant’s indolence or sloth. Stale claims prejudice and negatively impact the efficacy and efficiency of the administration of Justice. The**



**overarching rationale for Statutes of Limitations, such as the time limit of Article 30(2) of the EAC Treaty, is to protect the system from the prejudice of stale claims and their statutory effects on the twin principles of legal certainty and of repose (namely: affording peace of mind, avoiding the disruption of settled exceptions and reducing uncertainty about the future.” Further, “time limits provide predictability both to litigants and to society at large.”**

84. Applying the said Jurisprudence to the instant Reference, and after careful consideration of the pleadings and submissions herein, we have no hesitation in determining that the Reference was filed well beyond the time limit set out in Article 30(2). We are fully persuaded that having understood clearly that the Respondent State contested the alleged debt and was not willing to pay the same, the Applicant chose to pursue his remedies in the domestic Courts of the Respondent. To the extent that it is his submission that in not paying the subject alleged debt which he argues was due and payable under the Laws of Rwanda, the Respondent violated the Treaty, the Applicant was undoubtedly aware of such Treaty violation, at the time he first approached the domestic Courts of Rwanda for relief.

85. In our view, at the very latest, the Applicant was manifestly aware of the refusal to pay the debt, when the Respondent appealed the decision of the Commercial Court at Nyarugenge, which had been in the Applicant’s favour. Within two months of such appeal would have been the latest point at which the Applicant would have approached this Court under Article 30(1) without falling foul of Article 30(2) of the Treaty.

86. We hold, in answer to Issue No.1 that in filing this Reference when he did, many years after the date referred to in the preceding paragraph, the Applicant was irredeemably out of time.

87. We find, therefore, that this Court lacks jurisdiction *rationae temporis* to hear and determine this Reference. We answer Issue No.1 in the affirmative.

88. Having found as we have, in the preceding paragraph, the Court has no capacity to consider any of the other issues agreed at the Scheduling Conference, as set out in paragraph 25 of this Judgment.

## **G. CONCLUSION**

89. For the reasons set out above in this Judgment, we find:

a) That this Court does have jurisdiction *ratione personae/locus standi* and jurisdiction *ratione materiae* to entertain this Reference; and

b) That this Reference was filed out of time in terms of Article 30(2) of the Treaty, and therefore, the Court lacks jurisdiction *ratione temporis* to hear and determine the Reference.

90. As regards costs, Rule 127 of the Rules of the Court provides that:

**“Costs in any proceedings shall follow the event unless the Court shall for good reasons otherwise order.”**

91. In exercising our discretion, and considering the ground upon which this Reference has been determined, we deem this to be a fit case to direct each party to bear its own costs.

92. We accordingly dismiss the Reference with no orders as to costs.



93. Order accordingly.

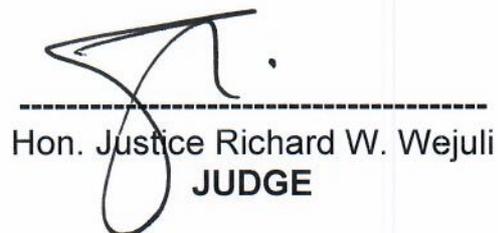
**Dated, signed and delivered at Arusha this 6<sup>th</sup> Day of April, 2022**

  
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Hon. Justice Yohane B. Masara  
**PRINCIPAL JUDGE**

  
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Hon. Justice Audace Ngiye  
**DEPUTY PRINCIPAL JUDGE**

  
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Hon. Justice Charles Nyachae  
**JUDGE**

  
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Hon. Justice Richard Muhumuza  
**JUDGE**

  
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Hon. Justice Richard W. Wejuli  
**JUDGE**