



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



(Coram: Yohane Masara, PJ; Charles O. Nyawello, Charles A. Nyachae, Richard Muhumuza & Richard W. Wejuli JJ)

REFERENCE NO.10 OF 2018

ISAT SURL..... APPLICANT

VERSUS

**THE ATTORNEY GENERAL OF THE
REPUBLIC OF BURUNDI RESPONDENT**

24TH MARCH, 2022

JUDGEMENT OF THE COURT

A. INTRODUCTION

1. This Reference was brought under Articles 3(3)(b), 6(d), 7(2), 8(4), 27(1), and 30(1) & (2) of the Treaty for the Establishment of the East African Community (hereinafter "the Treaty") and Rules 1(2), 8 and 24 of the East African Court of Justice Rules, 2013 (hereinafter "the Rules"). It challenges the decision of both the Supreme Court of the Republic of Burundi and the Minister of Justice on the matter of rendering final the decision of the lower Court which has annulled the land-sale contract alleged to have been concluded by the Applicant and a third party.
2. The Applicant is a company incorporated under the laws of the Republic Burundi, a member of the East African Community. The Respondent is the Attorney General of the Republic of Burundi, sued on behalf of the Government of the Republic of Burundi in the capacity of the principal legal advisor of the Government.

B. REPRESENTATION

3. At the trial the Applicant was represented by Mr Justin Semuyaba, learned Advocate. On the other hand, the Respondent was represented by Mr Diomedé Vyizigiro, Learned Director, and State Attorney's Office of the Republic of Burundi.

C. BACKGROUND

4. On 15th day of January, 2004, the Applicant, represented by its Director Salim Allibhai, entered into a contract for the sale of land comprised in the Asian cadastral quarter under N06520 Division A,



Vol el XX Folio.17 in Burundi (hereinafter referred to as “the suit Property”) with Antoine Ntisigana, who was represented by Attorney, Maitre Augustin Mabushi, at a purchase price of BIF 350,000,000.

5. The Applicant, through its Director Salim Allibhai, paid Antoine Ntisigana the purchase price as follows:

(a) On the 15th day of January 2004, BIF 100,000,000 (Burundi Francs one hundred million only) was deposited into Antoine Ntisigana’s personal bank account in Burundi;

(b) On the 16th day of July, 2004, BIF 80,000,000 (Burundi Francs Eighty million only) was deposited into the personal account of Antoine Ntisigana in Burundi;

(c) On the 16th day of July, 2004, BIF 20,000,000 (Burundi Francs Twenty million only) was deposited into the personal account of Antoine Ntisigana in Burundi;

(d) On the 14th day of July, 2004, Antoine Ntisigana was given BIF 25,000,000 (Burundi Francs Twenty five million only) in cash and signed receipt for the same; and

(e) On the 29th day of December, 2004, the final payment of BIF 125,000,000 (Burundi Francs One Hundred Twenty five million only) was deposited into Antoine Ntisigana’s personal bank account held at INTERBANK;

6. The certificate of title for the building was then transferred to the name of ISAT Surl by the Registrar of Land.

7. Later, this contract was the subject of dispute between the two parties wherein Antoine Ntisigana alleged that there was never a



contract of sale because Mr. Augustin Mabushi, his Attorney, did not have the mandate to conclude the contract of sale on his behalf and that any contract Mr. Augustin Mabushi had allegedly entered with ISAT Surl on his behalf was null and void.

8. A suit was filed against the Director of Titles and Mr Augustin Mabushi for cancellation of the agreement of sale between ISAT Surl as the registered proprietor of the property comprised in the Asian cadastral quarter under N06510 Division A, Vol el XXI Folio 17. ISAT Surl was joined in this suit as an interested party.
9. The suit proceeded through the Court of First Instance in the Administrative Court to the final Court of Cassation in the Supreme Court and a reference to the Minister of Justice. The following decisions were made in the course of trying this case:
 - a) **On 28th January, 2008, the Administrative Court of Burundi issued its decision in RAEP 93, cancelling the contract of transfer of lease made on April 1, 2005 in favour of the ISAT Surl, contract of sale of the 1st April, 2005 between the Director of Land Titles and ISAT Surl, as well as the Certificate of Registration of the property covered by the sales contract;**
 - b) **On 28th January, 2011, in an Appeal by ISAT Surl, the Administrative Chamber of the Supreme Court issued its decision in RAA 781 overturning the decision of the Administrative Court in RAEP 93 and reinstating the contract of transfer of lease and registration of ISAT Surl as the registered proprietor of the suit property;**



- c) On 24th June 2011, in a criminal case instituted by Antoine Ntisigana alleging offenses of forgery in authentic writing and complicity in the forgery in writing against Celestin Karuhariwe (the Registrar of Land Titles), Augustin Mabushi and Salim Allibhai (Owner of ISAT Surl), the Judicial Chamber of the Supreme Court issued its decision in RPS 70 acquitting the three accused of the charges against them and cancelling the certificate of registration of ISAT Surl in regard to the suit property but declaring valid the contract of sale between ISAT Surl and Antoine Ntisigana;
- d) On 14th February 2013, in an appeal by the Public Prosecutor's office against the decision of the Court in RPS 70, the Judicial Chamber of the Supreme Court issued its decision in RPSA 283 *bis* dismissing the appeal and affirming the judgment of the Court in RPS 70;
- e) On 17th February 2014, in an appeal by Antoine Ntisigana against the ruling of Court in RAA 781, the Supreme Court's Chamber of Cassation rendered its decision in RCC 19782 overturning the decision of Court and declaring the contract of lease between ISAT Surl and Antoine Ntisigana, the certificate of registration in favour of ISAT Surl and the transfer of title in favour of ISAT Surl null and void;
- f) On 27th August 2015, in an appeal by ISAT Surl, the national Court rendered Judgment RAA 1172 *bis* granting the motion for an appeal initiated by Antoine



Ntisigana declaring it entirely well founded and annulling accordingly the decision to transfer the lease of 1/04/2005 in favour of the company ISAT Surl, the contract of sale of 1/04/2005 between the Director of Land Titles and ISAT Surl, as well as the certificate of registration of the property in question on behalf of ISAT Surl;

- g) On 2nd December, 2015, ISAT Surl appealed against judgment RAA 1172 *bis*, but on 1st January, 2017, the Supreme Court rendered Judgment RTC 1141 declaring inadmissible the second appeal against Judgment RAA 1172 *bis* on grounds that it did not raise any points of law as required. As a result, Judgment RAA 1172 *bis* became final;
- h) In RTC 1141, the Attorney of Burundi who was representing the Director of Titles did not proceed and admitted that the Director of Titles was wrong to transfer the certificate of title for the land comprised in the suit property to ISAT Surl;
- i) ISAT Surl subsequently appealed to the Minister of Justice under Article 44 of the Law governing the Supreme Court for revision of Judgment RAA 1172 *bis* on grounds that it was contradictory to the decision of Court in RPS 70 which was already *res judicata*; and
- j) On 28th March 2018, the Minister for Justice rejected Applicant's request "for lack of a legal basis" (File IG/6012/BI2017) and finding that there was no



contradiction between RPS 70 and RAA 1172 *bis* and that the two decisions were consistent.

10. The Applicant was dissatisfied by the Minister of Justice's refusal to ask the Supreme Court to review its decision. Hence this Reference.

D. APPLICANT'S CASE

11. The Applicant's case is set out in the Statement of Reference, the Affidavit of Salim Allibhai deponed in South Africa on 25th May 2018; the Supplementary Affidavit of the same Salim Allibhai deponed in Umhlanga Ridge, South Africa, on 27th July 2020, the written submissions and oral highlights thereof made during the hearing. The case is captured in the background hereinabove. In summary, the Applicant avers that:

- a) The decision of the Attorney General of the Republic of Burundi in not pursuing the 2nd Appeal in RTC 1141 is a violation of Articles 6(d) and 7(2) of the Treaty;**
- b) The acts and omissions of the Director of Title Deeds while registering the transfer of the suit property into the name of ISAT Surl and subsequently leading to the loss of income and property by the Applicant is a violation of Articles 6(d) and 7(2) of the Treaty;**
- c) The decision of the Minister of Justice of the Republic of Burundi in the revision of Judgement RTC 1141 delivered on 28th March, 2018 is a violation of Articles**



3(3)(b), 6(d), 7(2), 8(4), 27(1) and 30(1) & (2) of the Treaty;

d) The decision of the Supreme Court in RTC 1141 violates Articles 3(3)(b), 6(d), 7(2), 8(4), 27(1) and 30(1) & (2) of the Treaty;

e) The decrees, decisions or orders of the Minister of Justice of the Republic of Burundi are incompatible with Burundian Constitution of 2005; and

f) The decrees, decisions or orders of the Supreme Court in RTC 1141 delivered on 15th March 2017 are incompatible with the Constitution of Burundi.

12. Thus, it is the Applicant's case that the decision of the Minister of Justice of the Republic of Burundi is unlawful and constitutes gross infringement of the Treaty.

13. The Applicant seeks the following reliefs:

a) A declaration that the decision of the Attorney General of the Republic of Burundi in not pursuing the 2nd Appeal in RTC 1141 - Surl against Ntisigana Antoine is a violation of Articles 6(d) and 7(2) of the Treaty;

b) A declaration that the acts and omissions of the Registrar of Title while registering the transfer of the suit property into the names of ISAT Surl and subsequently leading to the loss of income and



property by the Applicant is a violation of Articles 6(d) and 7(2) of the Treaty;

- c) A declaration that the decision of the Minister of Justice and Seal of the Republic of Burundi in the revision of the judgement RTC 1141 delivered on 28th March, 2018 bis between the ISAT Surl against the estate of Ntisigana Antoine violates Articles 3(3)(b), 6(d), 7(2), 8(4), 27(1), 30(1) & (2), 81(2) and 127(2)(a) of the Treaty;
- d) A declaration that the decision of the Supreme Court in RTC 1141; ISAT Surl Versus Ntisigana Antoine delivered on 15th March, 2017, violates Articles 3(3)(b), 6(d), 7(2), 8(4), 27(1), 30(1) and (2), 81(2) and 127(2)(a) of the Treaty;
- e) A declaration that any decrees, decisions or orders of the Minister of Justice and Seals of the Republic of Burundi are and shall be considered incompatible with the Arusha Accord, Burundi's Constitution of 2005 and therefore, unconstitutional;
- f) A declaration that any decrees, decisions or orders of the Supreme Court in RTC 1141; ISAT Surl Versus Ntisigana Antoine delivered on 15th March, 2017, are and shall be considered incompatible with Arusha Accord, the Constitution of Burundi and therefore, unconstitutional;



- g) An order for the re-instatement of the Applicant as the registered proprietor of land comprised in the Asian cadastral quarter under No. 6510 Division A, Vol el XXI Folio 17;**
- h) An order of compensation for the loss of income and property suffered by the Applicant amounting to BIF 350,000,000,000;**
- i) Costs of and incidental to this Reference borne by each party; and**
- j) That this Honourable Court be pleased to make such further or other orders as may be just and necessary in the circumstances.**

D. THE RESPONDENT'S CASE

14. Similarly, the Respondent's case is set out in the Response to the Statement of Reference, in the Affidavit of Pacifique Barankitse deponed in Bujumbura on 13th July, 2018 and in the written submissions and oral highlights thereof made during the hearing.

15. It is the Respondent's case that the subject-matter of this Reference cannot be brought before this Court on ground of both time limitation and lack of jurisdiction. It is also the Respondent's case that the validity of the alleged contract of sale has been settled by the Supreme Court of Burundi.

16. Further, that the subject-matter of this Reference cannot be brought before this Court because doing so would make this Court




an Appellate Court over and above highest Courts of the Partner States.

17. On the basis of the foregoing argument, the Respondent's prayer is that the Reference be dismissed with costs.

E. ISSUES FOR DETERMINATION

18. At the Scheduling Conference held on 25th June 2020, the following issues for determination were framed:

- a) Whether the East African Court of Justice has jurisdiction to entertain the Reference;**
- b) Whether the Reference is time-barred;**
- c) Whether the National Courts of the Republic of Burundi failed to uphold the principles of the rule of law, good governance and human rights in violation of Articles 3(3)(b), 6(d), 7(2), 8(4), 27(1), 30(1) & (2), 81(2) and 127(2)(a) of the Treaty; Article 15(1) of the Protocol and Article 14 of the African Charter on Human and Peoples' Rights;**
- d) Whether the acts and omissions of the Director of Title Deeds while deregistering the Certificate of Title and transferring the suit property is a violation of Articles 6(d) and 7(2) of the Treaty, Article 15(1) of the Protocol and Article 14 of the African Charter on Human and Peoples' Rights;**
- e) Whether the decision of the Minister of Justice of 28th March 2018 violates Articles 3(3)(b), 6(d), 7(2), 8(4), 27(1),**



30(1) & (2), 81(2) and 127(2)(a) of the Treaty; Article 15(1) of the Protocol and Article 14 of the African Charter on Human and Peoples' Rights; and

f) Whether the Applicant is entitled to the reliefs sought.

F. COURT'S DETERMINATION

19. We commence our determination of this Reference by addressing the points of law raised in issues No.1 and No.2. We do so because these are legal issues which take precedence over competing points of fact, as a point of law once resolved has the potential of resolving the entire Reference.

ISSUE NO. 1: Whether the Court has Jurisdiction to entertain the Reference

20. Submitting in support of this issue, Counsel for the Respondent contended that this Court does not have jurisdiction over this Reference on the ground that the Minister of Justice's decision to reject the request for review submitted by ISAT Surl was within his discretionary powers conferred on him by Burundi law. To lend support to his argument that the Minister's decision falls within the power conferred by law, the learned Counsel cited Article 163 of Law No. 1/21 of 3rd August 2019 relating to the modification of Law No. 1/07 of 25th February 2005 on the Supreme Court which stipulates that **"the request for revision is to be directed to the Minister having justice in his activities"**. Mr Vyizigiro also cited Article 53, which provides that the Minister shall ask the entire Supreme Court to review a case if the request made by a party fulfils one of the following conditions:



- a) **If it turns out, after the judgement, that the decision was taken by fraud of the party for whose benefit it was made or his representative;**
- b) **If since the judgement, decision item has been recovered which had been lost or retained either by parties or by a third party;**
- c) **If it has been judged on documents which have been judicially recognised or declared false since the judgement;**
- d) **If it was judged on certificates, testimonies or oaths judicially declared since the judgement;**
- e) **When it is proved that a witness called in the first degree or in the degree of appeal was not physically available to be heard, unless the Applicant agreed to have the case taken under deliberation despite the absence of this witness;**
- f) **If there is a conflict between two decisions which have been final;**
- g) **If it is a judicial decision tainted with a manifest bad judgement which had been corrected.**

21. Further, Mr Vyizigiro relied on Article 30(1) of the Treaty to clarify the grounds on which a case can be brought before this Court. Article 30(1) reads:



“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.”

22. In relation to jurisdiction conferred by the Treaty on organs of Partner States, Mr Vyizigiro made reference to Article 27(2) of the Treaty contending that he is not aware of the existence of a protocol operationalising the extended jurisdiction of the Court so as to cloth the Court with jurisdiction on matters specified by Article 27(2). Article 27(2) provides:

“The Court shall have such other jurisdiction 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.”

23. Mr Vyizigiro made reference to a number of decisions by this Court on the issue of jurisdiction. These are: **Attorney General of the Republic of Rwanda vs. Plaxeda Rugumba, Appeal No. 1 of 2012, James Katabazi & 21 Others vs. Secretary General of the EAC & Attorney General of the Republic of Uganda, Reference No. 1 of 2007** and **Hilaire Ndayizamba vs. the Attorney General of the Republic of Burundi & the Secretary General of the EAC, Reference No. 3 of 2012.**



24. On the basis of those provisions and authorities, the learned Counsel maintains that the Court has no jurisdiction on ground that there is no evidence given by the Applicant showing the unlawful situation alleged against the Minister's decision when rejecting the Applicant's request. The absence of any such grounds implies, from his perspective, lack of jurisdiction of this Honourable Court.
25. On his part, Counsel for the Applicant contends that this Court has jurisdiction to entertain this Reference on three grounds. First, the request for revision made to the Minister demonstrated the contrast between Judgement **RAA 1172 bis** and Judgement **RPS 70**. That, the Minister failed to order revision of the decisions for the rectification of the contradictions. Second, the impugned decision of the Minister of Justice is not a matter reserved for an organ of a Partner State, within the meaning of Article 30(2), but is an act of a judicial procedure which can be challenged before this Court under Article 30(1), on ground of violation of the Treaty. Third, the impugned decision of the Minister is a violation of the Treaty because it was "*marred with flagrant, notorious and gross legal errors*". On these grounds, the learned Counsel maintains that the impugned act can be contested before this Court, and that the Court has jurisdiction to hear and determine the subject-matter of the Reference.
26. To support that position, Counsel for the Applicant sought to rely on Articles 27(2) and 30(1) & (2) of the Treaty; Articles 53 and 163 of **Law No. 1/21** of 3rd August 2019 and this Court's decision in **Manariyo Desire vs. the Attorney General of the Republic of Burundi, Reference No.8 of 2015**, regarding the matter of

questioning the decision of a national court if those decisions reflect errors. He also made reference to the case of **Union Trade Centre (UTC) vs. Attorney General of the Republic of Rwanda & Others, EACJ Reference No. 10 of 2013**, on the matter of the appearance of a company under Rule 19(5) of the Rules. By invoking those provisions and authorities, the learned Counsel maintained that the Court has jurisdiction to entertain the matter and, in essence, asked the Court to resolve the issue in the Appellant's favour. We however need to point out, at the outset, that the decision of this Court in **Manariyo Desire vs. the Attorney General of the Republic of Burundi** referred to by Counsel for the Applicant was reversed by the Appellate Division of the Court in **Manariyo Desire vs. the Attorney General of the Republic of Burundi, EACJ Appeal No. 1 of 2017**. It cannot therefore be relied upon as purported by Counsel.

27. We carefully considered the pleadings before us and the submissions by Counsel on this issue. As rightly argued by Counsel for the Applicant, the Court's jurisdiction is delineated in Articles 27(1) and 30(1) of the Treaty. We reproduce them below for ease of reference.

“Article 27(1):

The Court shall initially have jurisdiction over the interpretation and application of this Treaty.

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.”

28. Whereas Article 27(1) categorically designates the jurisdiction of this Court to be the interpretation and application of the Treaty, Article 30(1) provides the context within which such jurisdiction would be exercised. In the matter before us, the latter issue was not canvassed in Submissions.

29. This Court has in a number of decisions stated that for a party to succeed on a claim of lack of jurisdiction of this Court, he must demonstrate the absence of any of the three (3) types of jurisdiction: jurisdiction *ratione personae*, *ratione materiae* and *ratione temporis*. See **The Attorney General of the United Republic of Tanzania vs. Anthony Calist Komu, EACJ Appeal No. 2 of 2015**. Simply stated, these three jurisdictional elements respectively translate into jurisdiction on the person concerned, jurisdiction on the matter involved and on account of the time involved. In the instant case, we understand the Respondent to be challenging the Court's jurisdiction *ratione materiae* (matter involved).

30. Jurisdiction *ratione materiae* challenged by Mr Vyizigiro has been a subject of several pronouncements by this Court. It is now well-established law that this Court's jurisdiction is sufficiently established where it is demonstrated on the face of the pleadings that the matter complained of constitutes an infringement of the



Treaty. See Hon. Sitenda Sebalu vs. The Secretary General of the East African Community & Others, EACJ Reference No. 1 of 2010 and Prof. Peter Anyang' Nyong'o & 10 Others vs. The Attorney General of the Republic of Kenya & 2 Others, EACJ Reference No. 1 of 2006.

31. The Court has gone further to expound on this matter, adjudging the violation of Partner States' domestic laws to constitute a Treaty violation that is justiciable before it. See: Plaxeda Rugumba vs. The Attorney General of Rwanda, EACJ Reference No. 8 of 2010 and Samuel Mukira Muhochi vs. The Attorney General of Uganda, EACJ Reference No. 5 of 2011. In the case of Simon Peter Ochieng & Another vs. The Attorney General of Uganda, EACJ Reference No. 11 of 2013, it was further clarified that for a matter to be justiciable before the Court, the subject matter in question must be one "the legality of which is in issue in the context of the national law of a Partner State or one that constitutes an outright infringement of any provision of the Treaty".

32. The foregoing legal position was conclusively summed up in Henry Kyarimpa vs. The Attorney General of Uganda, EACJ Appeal No. 6 of 2014 as follows:

"Where the complaint is that the action was inconsistent with internal law and, on that basis, a breach of a Partner State's obligation under the Treaty to observe the principle of rule of law, it is the Court's inescapable duty to consider the internal law of such Partner State in

determining whether the conduct complained of amounts to a violation or contravention of the Treaty.”

33. It does then become abundantly clear that the Respondent's argument that the Court is not vested with the jurisdiction to entertain a matter relating to the violation of a Partner State's domestic laws is fundamentally flawed.

34. In light of the foregoing, we are in agreement with Counsel for the Applicant that this Court is not deprived of jurisdiction merely because the matter challenged relates to violation of domestic law. Under the Treaty, as elaborated by the EACJ's jurisprudence, the Court has jurisdiction to hear and determine a matter in which the allegation is a violation of the Treaty. A violation of the Treaty can also be imputed from the violation of a Partner State's domestic laws. In this Reference, the Applicant alleges violation of the Treaty and violation of the Burundi law. Therefore, the Court has jurisdiction to hear and determine the subject-matter of this Reference. Accordingly, we answer Issue No. 1 in the affirmative; that is, in favour of the Applicant.

ISSUE NO. 2: Whether the Reference is Time-Barred

35. Counsel for the Respondent submitted that as the Reference initiated by the Applicant is against Judgement **RTC 1141** and Judgement **RAA 1172 bis**, then the same is time-barred. It is his further contention that in relation to the Judgement **RTC 1141**, the two-month period began to run from 17th May 2017. For this reason, it is Mr Vyizigiro's submissions that the legal proceedings initiated before the Minister of Justice by the Applicant cannot permit the Court to disregard the time limit prescribed by Article



30(2) of the Treaty. We understand him to be saying that what applies to **RTC 1141** also applies to **RAA 1172**, because **RAA 1172** was notified to the Applicant on 16th October 2015, 20 months before the notification of **RTC 1141** to the Applicant.

36. To substantiate his argument, learned Counsel relies on both the Treaty, the Rules and the jurisprudence of this Court. Mr Vyizigiro made reference to Article 30(2) of the Treaty, where the two-month time period is stipulated. In addition, he invites the Court to have regard to Rule 3 of the Rules which specifies the moment when the two-month time period begins to run. Finally, he relied on the authority of the case of Attorney General of the Republic of Kenya vs. Independent Medical Unit, EACJ Appeal No. 1 of 2011 where it was held that:

“The Treaty does not contain any provision enabling the Court to disregard the time limit of two-months and that Article 30(2) 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.”

37. Conversely, learned Counsel for the Applicant contends that the two-month period for bringing proceedings before the Court begins with the decision of the Minister which rejected the Applicant's request for review, and not from the date of Judgement **RTC 1141** and Judgement **RAA 1172**. He elaborates on this point by stating that Judgement **RAA 1172 bis**, having been the subject of the request for review, does not serve as the starting point for calculating the two-month period because the two judgments, **RAA 1172** and **RTC 1141**, were not final. In the written submissions

regarding this issue, learned Counsel faulted Counsel for the Respondent for mistakenly holding that the starting point of the deadline for referral to this Court's was the date of Judgement **RAA 1172 bis** and Judgement **RTC 1141**.

38. To buttress his contention, learned Counsel for the Applicant drew our attention to Article 30(2) of the Treaty, which stipulates the two-month period during which a matter can be brought to the Court. He also referred us to the decisions in **Union Trade Centre (UTC) vs. Attorney General of the Republic of Rwanda & Others** (Supra). Further, Mr Semuyaba made reference to the case of **The Attorney General of the Republic of Kenya & Another vs. Omar Awadh & 6 Others, EACJ Appeal No. 2 of 2012** where the Court held that the Reference was filed within the two-month period prescribed by Article 30(2). Furthermore, he sought reliance on the case of **The Attorney General of Kenya vs. Independent Medical Legal Unit** (Supra) where the Court also held that the Reference was filed within the two-month period prescribed by Article 30(2). Finally, the learned Counsel relied on the case of **Male Mabirizi Kiwanuka vs. The Attorney General of Uganda, EACJ Reference No. 6 of 2019** where the determination was that the Applicant filed his case after a decision of the Supreme Court of Uganda and the time was calculated from the time that decision was delivered.

39. We have carefully considered the rival arguments of Counsel for the Parties. The facts, as stated by the parties, can be summarised as follows:

- a) On 27th August 2015 Judgement RAA 1172 was delivered and was notified to the Applicant on 16th October, 2015;
- b) On 1st March 2017, Judgement RTC 1141 was delivered and was notified to the Applicant on 16th March 2017;
- c) On 28th March 2018 the Minister of Justice issued the decision which rejected the Applicant's request for review by the Supreme Court; and
- d) On 28th May 2018, the Applicant filed this Reference.

40. Both Parties are in agreement that Article 30(2) of the Treaty is the basic provision governing the two months' period of limitation for filing disputes in this Court. However, they have brought different precedents to bear on the interpretation of the Article in relation to the moment from which the two-month period begins to run.

41. We also note the admission by Mr Semuyaba on this issue, especially his admission that Judgement 1172 *bis* having been the subject of the request for review, does not serve as the starting point for calculating the two-month period because either Judgement **RAA 1172** *bis* or Judgement **RTC 1141** has become final. (See the first and second paragraphs of page 11 of the Applicant's Written Submission in Rejoinder; paragraphs 16 and 18 of the Supplementary Affidavit in Support of the Reference). That admission drops Judgement **RAA 1172** *bis* and Judgement



RTC 1141 from the list of contended issues and leaves only the decision of the Minister of Justice for consideration.

42. If the Minister of Justice's decision is to be taken as the impugned decision for the purposes of this Reference, it is evident that the Reference was lodged on the last day, counting from the date of the decision of the Minister. Under Article 30(2) of the Treaty and appending precedents of this Court, the Reference challenging the decision of the Minister of Justice was filed on the last day of the stipulated period, thus within time. Consequently, we answer Issue No. 2 in the negative. The Reference is not time-barred in relation to the impugned decision of the Minister of Justice of the Respondent State.

43. This finding, being a finding on a point of law, disposes of issues (3) and (4) on account of being hinged on the decisions of the National Courts of Burundi and the alleged actions and omissions of the Director of Title Deeds. What remains for consideration is Issue (5) pertaining to the decision of the Minister of Justice and issue (6) relating to remedies.

ISSUE NO.5: Whether the decision of the Minister of Justice of 28th March 2018 violates Articles 3(3)(b), 6(d), 7(2), 8(4), 27(1), 30(1) & (2), 81(2) and 127(2)(a) of the Treaty; Article 15(1) of the Protocol and Article 14 of the African Charter on Human and Peoples' Rights

44. The learned Counsel for the Applicant submits that the decision of the Minister of Justice of Burundi constitutes a violation of the Treaty. His ground for this assertion is the inconsistency displayed



by the Supreme Court in applying the law to the case of his client. Mr Semuyaba's further ground is three-fold: failure to abide by the principles of good governance and adherence to the rule of law in handling the case of his client, failure to render equal enforcement of the Burundian land law in the case of his client and inconsistency with international human rights standards in the case of his client.

45. To lend support to his assertion, the learned Counsel for the Applicant relied on a combination of provisions and precedents. Thus, he invited the Court to have regard to **Law No. 1/08 of 13th March 2019** Revising **Law No. 1/26 of 15th September 2014 on the Creation, Organisation, Operation and Jurisdiction of the Special Court of Land and Other Assets** as well as the procedure followed before it. Further he cites Article 6(d) and Article 7(2) of the Treaty, relating to the fundamental and operational principles of the Community; particularly, relating to adherence to the principles of good governance and the Rule of Law. Finally, he made reference to Article 39 of the Protocol Establishing the EAC Common Market, which states that "the Partner States of the East African Community accept to have decent work and living conditions for the citizens of Partner States in developing similar social policies which relate to good governance."

46. On the other hand, the learned Counsel for the Respondent contended that the contradictions alleged by the Applicant between Judgement **RAA 1172 bis** and Judgement **RTC 1141**, upon which the Applicant had founded his request for review, are

non-existent. It is Mr Vyizigiro's further contention that the Applicant's attempt to request the revision from the Minister of Justice failed because it did not satisfy the legal requirement which qualifies a case and, thus, the Minister rejected the request in accordance with Law No. 1/07 of 25th February 2005. It is also learned Counsel's submission that the decision of the Minister of Justice rejecting the Applicant's request for review was issued within the powers vested to the Minister by law. He concluded his argument on this issue by stating that the decision of the Minister of Justice of 28th March 2018 does not violate Articles 3(3)(b), 6(d), 7(2), 8(4), 27(1), 30(1) & (2), 81(2) and 127(2)(a) of the Treaty; Article 15(1) of the Protocol and Article 14 of the African Charter on Human and Peoples' Rights. On this issue, the learned Counsel for the Respondent relied on Law No. 1/07 of 25th February 2005.

47. We have carefully considered the submissions of the Counsel for the Parties regarding this issue. We have also examined Law No. 1/07 of 25th February 2005; Law No. 1/08 of 13th March 2019 Revising Law No. 1/26 of 15th September 2014 **on the Creation, Organisation, Operation and Jurisdiction of the Special Court of Land and Other Assets** as well as the procedure followed before it; the decision of the Minister of Justice Designate contained in the letter Ref. NO. 550/500/CAB/2018 of 28th March, 2018 from the Minister of Justice rejecting the appeal for review of ISAT Surl (Annex 3 in the Documents of the Applicant), Judgement RPS 70 and Judgement RAA 1172 bis. We then proceed with analysis toward the determination of the issue.



48. Our reading of Judgements **RPS 70** and **RAA 1172 bis** does not reveal contradictions on the matter in issue. In the first place, **RPS 70** was a criminal matter, whereas **RAA 1172 bis** related to a civil matter. Second, it is an established principle of law that the decision on a criminal matter need not be consistent with the decision on a civil matter involving the same parties because the allegations and standard of proof are different. Lastly, Judgement **RPS 70** annulled the certificate **Vol. ECL XXI Folio 17** to restore the ownership of the property to the original owner; along the same line, Judgement **RAA 1172 bis** cancelled all the documentation to restore the same property to the original owner. Therefore, we find that the two judgements are consistent as between the parties and as between Court levels.

49. From the reading of both **Law No. 1/07** of 25th February 2005 and **Law No. 1/08** of 13th March 2019 Revising **Law No. 1/26** of 15th September 2014, it is clear to us that the law does not lay down a procedure to be followed in disposing of a request for review. The review process is confined to the analysis of the submitted cases with the purpose of spotting contradictions between them. **Under Article 90(6) of Law No. 1/08 of 13th March 2019 Revising Law No. 1/26 of 15th September 2014 on the Creation, Organisation, Operation and Jurisdiction of the Special Court of Land and Other Assets**, if the alleged contradictions are found, the Minister orders the review by the Supreme Court because of those apparent contradictions. If, on the other hand, the allegation is not established, the Minister rejects the request. Thus, the outcome of the request for review, whether or not the contradictions exist, is determined by the contents of the judgements submitted.

50. In the answer to the Applicant via Letter **No. 550/500/Cab/2018** of 28th March 2018 from the Minister of Justice Rejecting the Appeal for Review of ISAT Surl, the Minister specifies the ground of rejecting the request for review from the Applicant. In that reply, the Minister made reference to both the annulment of Certificate *Vol ECL XXI Folio 17* via RPS 70 and cancellation of all documentation via **RAA 1172 bis**. Then the Minister indicated the consistency between **RPA 70** and **RAA 1172 bis**, which served as the legal ground for declining the request for review.

51. On the foregoing analysis of the law, we conclude that the laws of the Republic of Burundi require the Minister of Justice to order a review by the Supreme Court if a contradiction exists between any two judgements which have become *res judicata*. In the case of the Applicant, the Minister found no contradictions between **RPS 70** and **RAA 1172 bis**. He therefore rejected the request for review. In our view, we see nothing wrong with the decision of the Minister. He was acting within the precincts of the law giving him power to exercise discretion to refer the matter for review or otherwise. We understood the Applicant to be submitting that the letter by the Minister of justice was not detailed to enable him to comprehend the reasons for rejecting his plea for a review. We do not agree with him. The relevant law does not require that a detailed decision be given by the Minister of Justice. The letter sufficiently informed the Applicant that, according to the Minister, the two impugned decisions contained no apparent contradictions necessitating a review by the Supreme Court. Accordingly, we answer Issue No. 5 in the negative; that is to say, the decision of



the Minister of Justice of the Republic of Burundi does not violate the Treaty.

ISSUE NO. 6: Whether the Applicant is entitled to the Reliefs Sought

52. The Reference is hinged on the decision of the Minister of Justice of the Republic of Burundi. Our holding in the preceding issue is that the decision of the Minister does not violate the Treaty as alleged. That being the core issue, we find no basis to grant any of the reliefs sought by the Applicant.

53. On the question of costs, Rule 111 of Rules stipulates that costs should follow the event unless the Court, for good reasons, decides otherwise. In The Attorney General of the United Republic of Tanzania vs. Anthony Calist Komu, (Supra) the Court made the following decision:

“This Court has on numerous occasions followed the general rule that costs follow the event. However, where a case has been instituted by a public spirited person and it is arguable and raises significant issues as to the interpretation and future application of the Treaty provisions, this Court has exercised its jurisdiction not to award costs against this kind of litigant when he/she loses the reference.”

54. We believe that the circumstances in this case militate against awarding costs against the Applicant. We believe that the Applicant brought this Reference in good faith and with a view to correct what he believes to be an outright injustice against his


proprietary interest. In the exercise of our judicial discretion we refrain from upholding the rule on costs following the event. This is a clear case to depart from the general rule in the interest of justice.

G. CONCLUSION


55. In the final result, we hereby dismiss this Reference in its entirety. We direct that each Party bears their own costs.

56. It is so ordered.


Dated, signed and delivered this 24th day of March, 2022.



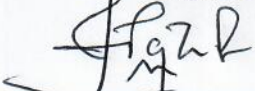
Hon. Justice Yohane B. Masara
PRINCIPAL JUDGE



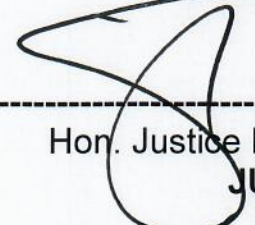
Hon. Justice Dr Charles O. Nyawello
JUDGE



Hon. Justice Charles A. Nyachae
JUDGE



Hon. Justice Richard Muhumuza
JUDGE



Hon. Justice Richard W. Wejuli
JUDGE