



**IN THE EAST AFRICAN COURT OF JUSTICE
APPELLATE DIVISION AT KAMPALA**

(Coram: Nestor Kayobera, P; Sauda Mjasiri, VP and Anita Mugeni, JA)

APPEAL No. 4 OF 2020

BETWEEN

ERIC KABALISA MAKALA..... APPELLANT

VERSUS

THE ATTORNEY GENERAL

OF THE REPUBLIC OF RWANDA..... RESPONDENT

[Appeal from the Judgement of the First Instance Division of the East African Court of Justice at Arusha by Hon. Lady Justice Monica K. Mugenyi (Principal Judge); Hon. Dr. Faustin Nteziryayo (Deputy Principal Judge); Hon. Audace Ngiye and Hon. Charles Nyawello, JJ.) dated 18th June 2020 in Reference No.1 of 2017].

JUDGMENT OF THE COURT

A. INTRODUCTION

1. This is an appeal by Kabalisa Makala Eric (Appellant) against the Judgement of the First Instance Division of this Court (hereinafter referred to as the "Trial Court"), in Reference No.1 of 2017 dated 18th June, 2020 which dismissed the Reference.
2. The Appellant is a citizen of the Republic of Rwanda resident in Kigali City, Nyarugenge District, Nyamirambo Sector, Cyivugiza Cell, Karisimbi village. He was self-represented.
3. The Respondent is the Attorney General of the Republic of Rwanda, who was sued on behalf of the Government of Rwanda as its Legal Advisor.
4. The Respondent opposed the Appeal and filed a cross-appeal under Rule 102(3) of the East African Court of Justice Rules of the Court, 2019 (hereafter "the Court Rules") challenging the Court's decision of granting the Appellant one-third (1/3) of the costs on dismissing the Reference.
5. In this Appeal, the Appellant is self-represented whereas the Respondent is represented by Mr. Ntwali Emile, Principal State Attorney, Mr. Nicolas Ntarugera, Senior State Attorney, and Mr. Timothy Gaseswa, State Attorney.

B. BACKGROUND.

6. This appeal originates from Reference No.1 of 2017 which was brought before the Trial Court under Articles 6(d) and 9(e) of the Treaty for the Establishment of the East African Community (hereinafter "the Treaty"), challenging the termination of the Appellant's services with Rwanda Utilities Regulatory Authority (RURA) in the process of the restructuring

and downsizing of the institution in accordance with the policy of the Government of the Republic of Rwanda.

The Reference.

7. The Reference hinged on the allegation that the termination process violated the Rwandan law, the Treaty, and other international conventions.
8. The Appellant was employed by RURA (Rwanda Utilities Regulatory Authority) since April 27th, 2009.
9. Around 2013 and under the new Prime Minister's order No. 139 of 19/10/2011 in determining the organisational structure and summary of job positions for the Rwanda Utilities Regulatory Authority and following the re-organization and downsizing through the reduction of a number of its employees' positions, the Appellant was suspended from his services for six months and thereafter he was dismissed for the same reasons indicated in the suspension letter that he was provided.
10. Subsequently after the dismissal by RURA, the Appellant felt that he was unlawfully dismissed and lodged Case No. RAD 0153/12/HC/KIG before the High Court of Rwanda based on the fact that RURA has a legal personality to sue and/or be sued in the courts of justice. The Appellant lost the case on the grounds that RURA had followed all the required procedures for dismissing an employee. Therefore, the Court rejected all the prayers sought in his claim.
11. The Appellant filed Appeal No. RADA 0034/13/CS of 11th October, 2013 to the Supreme Court of Rwanda which in turn held that the appeal filed by Kabalisa Makala Eric had no merit thus the Court upheld the decision of case No. RAD 0153/12/HC/KIG of 26th April 2013.

12. Dissatisfied with the Supreme Court's Ruling in Case No. RADA 0034/13/CS, the Appellant sought to have the decision reviewed by the same court and was unsuccessful. He subsequently lodged the Reference No.1 of 2017 challenging the legality thereof.

13. During the scheduling conference, in the Trial Court, the following issues were agreed upon by the parties: -

- i. Whether this Honourable Court has jurisdiction over the matter before it for determination.
- ii. Whether or not the acts complained of by the Applicant are in contravention of article 6 of the Treaty.
- iii. Whether or not the Applicant is entitled to remedies.

14. On 18th January, 2020 in its judgment, the Trial Court dismissed the Reference and awarded one-third (1/3) of the costs to the Appellant.

C. THE APPEAL.

15. Aggrieved with the Judgment of the Trial Court, on 25th June 2020, the Appellant filed a notice of appeal against the said decision, based on the following grounds which are reproduced as under: -

- i. The First Instance Division was biased in the manner to be both judge and judged.
- ii. That, the First Instance Division made the final verdict before receiving substantial evidence composed of a case No. RADA 0034/13/CS because the evidence they did not see could not have helped them to make a fair conclusion without bias.
- iii. The First Instance Division by rendering the Judgment they did change his lawsuit where in the article copy of the Judgment

copy of Court REFERENCE NO.1 of 2017 stated that: "I filed a lawsuit of being dismissed from my Job by RURA" The case I submitted to the Honorable Court is: On the 11th November 2016, the government of Rwanda, flouted the laws and ignored the EAC of which it is the signatory and as a citizen I bear the brunt"

- iv. In its Judgment, the First Instance Division favoured the Respondent in a very obvious manner, where I explained that the laws were flouted by the Government of Rwanda, they said that the laws were not flouted while it is very visible to everyone.
- v. The First Instance Division relied on the document, Respondent's document that he submitted in the manner that did not comply with the legal procedures (Affidavit), even the judge raised the same question on the hearing day on 12/11/2019, if the defendant should explain the procedure they used while preparing that document if it is an affidavit".

D. CROSS-APPEAL

16. On 14th August, 2020 the Respondent on his part filed a notice of Cross-Appeal under Rule 102(2) of the Court Rules challenging the Court's decision of awarding the Appellant one-third (1/3) of the costs upon the dismissal of the Reference.

E. THE SCHEDULING CONFERENCE.

17. At the scheduling conference of the Appeal held on 08th February 2022, the parties, with the assistance of the Court, framed the following issues for determination: -

- i. Whether the First Instance Division exercised its jurisdiction properly.
- ii. Whether the First Instance Division committed a procedural irregularity by not properly analysing the evidence tendered by the Appellant.
- iii. Whether the First Instance Division of the Court exercised its discretion judiciously by awarding the Appellant one-third (1/3) of the costs.
- iv. What remedies are the parties entitled to?

F. ISSUES FOR DETERMINATION.

ISSUE NO.1: Whether the First Instance Division exercised its jurisdiction properly.

a. Appellant's case:

18. In his submissions, the Appellant reiterated at length the facts and background of the dispute with RURA, an institution in the Respondent State as earlier highlighted, and lamented about how the courts of the Respondent's State failed to administer justice to him, the narration of which we will not repeat because the background of the case has already been highlighted herein above.
19. On this first issue on whether the First Instance Division exercised its jurisdiction properly, the Appellant contended that according to Article 35 of the Treaty and Rule 86 of the Court Rules his grounds of appeal are

based on points of law, lack of jurisdiction, and procedural irregularities. He is praying for the Court to review the disputed judgment and to dismiss it.

20. The Appellant averred that in reaching the verdict, the Trial Court was biased: - *“in a manner to be both judges and judged”*. The Appellant contended that despite contesting the illegality of the decisions of the Rwandan Courts for violation of the Treaty, the Trial Court leaned on the opponent's side on the RURA, case while RURA is not an institution of the Community. The Appellant referred this Court to Rule 86 of the Court Rules as well as to Article 30(1) and 30(3) of the Treaty.

21. The Appellant further submitted that the Trial Court judgment was not based on his lawsuit as he did not complain for being dismissed from his job by RURA. According to him the Reference filed to the Court was as follows: -

“That on the 11th November, 2016 the Government of Rwanda flouted the laws and ignored the EAC agreement of which it is the signatory and as its citizen I bear the brunt.”

Therefore, by doing this, the Trial Court acted contrary to the requirements of Articles 30(1) and 35(2) of the Treaty.

22. The Appellant argued that the Trial Court reached a decision in the same way as the High Court in Rwanda when the judgment in respect of RAD 0153/12/HC/KIG was entered. He reiterated that the East African Court of Justice (EACJ) has an international jurisdiction, unlike the defunct East African Court of Appeal which only dealt with Appeals from National Courts. The major responsibility of the Court is to ensure respect for the law in the interpretation and application of the EAC Treaty.

23. To support his case, the Appellant relied on the provisions of Articles 27, 30(1) and (3), 35(1) and (2) of the Treaty.

24. The Appellant further submitted that in paragraph 52 of the Judgment, the Trial Court upheld the argument of the Respondent based on Article 93(5) of Law No. 86/ 2013 of 11 September 2013 while this law which the Court relied on was not relevant to his problem since he had been dismissed from his job in 2011 well before the coming into effect of the said law. Accordingly, pursuant to Rule 86(b) of the Court Rules, the Appellant submitted therefore, that the Trial Court lacked jurisdiction.

b. Respondent's case

25. In his response to the entire grounds of Appeal, the Respondent in the first place objected to the whole substance of the Appeal lodged by the Appellant and submitted that the Appeal is devoid of merit.

26. The Respondent submitted that the Appeal does not meet the criteria of an appeal as stipulated under Article 35 A of the Treaty and Rule 86 of the Court Rules which require that any appeal must demonstrate and establish grounds of Appeal on either, a point of law, lack of jurisdiction of the Court or procedural irregularity.

27. The Respondent referred this Court to the case of *Simon Peter Ochieng and Others versus the Attorney General of the Republic of Uganda, EACJ Appeal No.4 of 2015* where the Court in its Judgement analysed the question of the propriety of an Appeal for determination before it, especially in paragraphs 21 and 22 of the Judgment. It was held that the Appellant must establish either a point of law, lack of jurisdiction or procedural irregularity.

28. The Respondent averred that failure to satisfy the mandatory conditions as set out in Article 35(A) of the EAC Treaty and Rule 86 of the Court Rules, 2019 automatically renders the Appeal devoid of merit. The Appellant has failed to establish any error on a point of law, lack of Jurisdiction, or any procedural irregularity that was committed by the Trial Court.

Based on the Respondent's submissions, the Appellant has failed to establish the requirements under Article 35 A of the Treaty and Rule 86 of the Court Rules.

c. Determination by the Court.

29. This Court has carefully reviewed the case, considered the submissions made by both parties and the relevant laws, and it is now our duty to assess whether the Trial Court exercised its jurisdiction properly.

30. First and foremost, it is very surprising to note that the Appellant being a party who brought his claim before the Court, is now challenging its jurisdiction!

31. In order to determine on this issue, we had to revisit the pleadings in the Trial Court and we found that it was the Respondent who challenged the jurisdiction of the Court and it was the Appellant who was the Applicant and was the one who emphasized that the Court had jurisdiction. The First Instance Division in paragraph 24 of the Judgment ruled in his favour that the Court had jurisdiction to entertain the matter.

32. In the impugned Reference No.1 of 2017, in paragraph 24 the Trial Court held as follows: -

"It does then become abundantly clear that the Respondent's argument that the Court is not vested with jurisdiction to entertain a

*matter relating to the violation of the Partner States' domestic laws is fundamentally flawed. This Court is most evidently adorned with the *ratione materiae* to adjudicate the present Reference. Having found that the Court is similarly vested with *ratione personae vis the Respondent State*, we would answer this Issue in the affirmative."*

33. From the above paragraph, the jurisdiction of the Court was made clear by the First Instance Division under Articles 27(1) and 30(4) of the Treaty.

34. Therefore, this Court is unable to find any basis from Appellant's submissions, in what way the Trial Court erred in law while exercising its jurisdiction. Given the fact that the Appellant failed to point out that the Trial Court committed an error by entertaining the matter which it found it had jurisdiction.

35. Consequently, Issue No.1 is answered in the affirmative

ISSUE NO.2: Whether the First Instance Division committed a procedural irregularity by not properly analysing the evidence tendered by the Appellant.

a. Appellant's case

36. Regarding this issue, the Appellant submitted that in its Judgment the Trial Court favoured the Respondent in a very obvious manner and declared that the organs of the Government of Rwanda did not flout any laws.

37. In substantiating the above argument, the Appellant averred that the Trial Court failed to point out how the Rwandan Court reached a decision based on the Annex of official gazette no.43 of 24/10/2011 at page 69. That in its Judgment, the same Court relied only on one pay slip for June

2009, which had been submitted after the proceedings have been closed in the case RAD 0153/12/HC/KIG.

38. The Appellant also argued that under Rwandan laws of procedure whenever new evidence is adduced after the proceedings have closed, the court has the obligation to reopen the proceedings in order to allow parties to discuss the fresh evidence. This principle was not followed by High Court of Rwanda and the First Instance Division held that it does not have jurisdiction to interpret the laws of a Partner State.
39. The Appellant further submitted that the Trial Court ignored the fact that the verdict of the High Court of Rwanda, was based on the French Jurisprudence which violated the provisions of Article 6 paragraph 4 of law no. 21/2012 of 14/06/2012 relating to the Civil, Commercial Labour, and Administrative Procedure.
40. The Trial Court failed to consider that the High Court of Rwanda stated that the Respondent had no academic qualifications and ignored the evidence submitted before it showing that he was dismissed due to poor performance which was not the case as it was not reflected in the relevant letters.
41. The Appellant averred that he suffered injustice as the Courts of the Respondent's State failed to consider that all the other employees of RURA who were on the same level were retained.
42. He further submitted that in its Judgment the Trial Court ignored the discrimination that the Appellant was subjected to, ignoring the provisions of the Constitution of the Republic of Rwanda.
43. The Appellant contended that in paragraph 48 of the Judgement, the Trial Court mentioned that there is no information indicating that the judgment in case No. RADA 0034/13/CS was available. He stated further

that the Trial Court ignored that Article 148 was not honoured by the Courts of the Respondent's State, including paragraph 141(2) of the Rwandan Constitution.

44. The Appellant also averred that while passing the judgment the Trial Court ignored the fact that the Courts of the Respondent's State violated article 186, paragraph 2 of the law relating to Civil, Commercial, Labour and Administrative Procedures.
45. The Appellant further submitted that the Trial Court entered the Judgment before receiving the substantive evidence of the case RAD 0034/13/CS which would have helped the Court to make a fair conclusion.
46. The Trial Court did not have the relevant Judgment but rather chose not to consider it despite having a copy of the said judgment since July 31, 2017. Hence this is a procedural irregularity committed by the court. In view of this, the Appellant asked the Appellate Court to consider the said Judgment that the Trial Court claimed that it did not have.
47. The Appellant further argued that the Supreme Court of Rwanda in paragraph 14 of its Judgment RADA/0034/CS exceeded its jurisdiction therefore acted contrary to the Article 96 of the 2003 Constitution of the Republic of Rwanda as amended.
48. Lastly, on this issue, the Appellant requested this Court to take into consideration the Supplementary Record of Appeal in addition to the Supreme Court Judgment of Rwanda. He also asked the Court to make a Ruling on his Assets which were seized by the Respondent's State.

b. Respondent's case.

49. The Respondent submitted that there was no procedural irregularity in adjudging the case at the Trial Court. Therefore, the Respondent

requested this Court to put the Appellant to strict proof thereof to justify the three legal basis of the appeal as per rule 86 of the Court Rules.

50. The Appellant referred this Court to the Case of **Angela Amudo versus the Secretary General of the East African Community (EACJ) appeal No.4 of 2014**) where the Court defined what constitutes an error of Law and procedural error by the Court when it: -

a) misapprehends the nature, quality, and substance of the evidence.

b) draws wrong inferences from the proven facts.

c) acts irregularly in the conduct of a proceeding or hearing leading to a denial or failure of due process (i.e. fairness) e.g irregularly admits or denies admission of evidence, denies a party a hearing, ignores a party's pleadings, etc.

In addition, the Respondent relied on **Simon Peter Ochieng Case (Supra)** in paragraph 29 which reiterated that: -

"He who alleges must prove". In that regard, a Party alleging whatever error must explain what the alleged error is and how it leads to miscarriage of justice. Equally, in the instant Appeal, it is up to the Appellant who is alleging an error of law occasioned by the Trial Court to identify, establish and explain the alleged error of law and how it invalidates the impugned decision".

51. Procedural irregularity was defined by this Court in **Attorney General of the United Republic of Tanzania versus the African Network of Animal Welfare (ANAW), EACJ Appeal No. 3 of 2011** where the Court held as follows: -

"...procedural irregularities are "irregularities that attach to the conduct of a proceeding or trial" such as "the inadmissibility of

documents or witnesses, denying a party the opportunity to be present or to be heard at all, hearing a matter in camera (where it should be heard in public and vice versa), failure to serve in time or at all, etc.”

52. The Respondent contended that the Appeal did not specify any errors committed by the Trial Court in the above-mentioned grounds of appeal. The memorandum of appeal filed by the Appellant raised very general and vague grounds of appeal. In the premises the Respondent submitted that the submitted grounds of Appeal by the Appellant constitutes a general dissatisfaction with the judgment of the Trial Court, but with no proven facts on non-compliance with Article 35 A of the Treaty and Rule 86 of the Court Rules.
53. The Respondent further submitted that the Appeal and all the pleadings do not indicate, identify or establish the alleged errors of law, in the legal arguments and submissions on the Appeal and in all the documents in support of the Appeal.
54. Finally, the Respondent submitted that the Appeal is without merit and should be dismissed with costs.

C. Determination by the Court

55. The Court has taken into consideration the parties' submissions as well as their pleadings filed before this Court. What this Court has to determine is whether or not the Appellant has satisfied the requirements under Article 35 A of the Treaty as well as Rule 86 of the Court Rules.
56. In addressing this issue, we note that the submissions and pleadings of the Appellant are very general, speculative, ambiguous to the extent that this Court is unable to see or find any point of law or errors and/or

any procedural irregularity that the Appellant is trying to contend. What the Court sees is a clear lamentation and a general complaint without any legal basis.

57. This Court is of the considered view that the Appellant being dissatisfied with Trial Court Judgement is introducing the same issues as per the Reference before the Trial Court to be determined afresh in this Court which is not possible.

58. Under Article 35 A of the Treaty and Rule 86 of the Court Rules, an appeal to the Appellate Division may be initiated on the following grounds:

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“An appeal from the judgement or any order of the First Instance Division of the Court shall lie to the to the Appellate Division on:

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(a) points of law;

(b) grounds of lack of jurisdiction; or

(c) procedural irregularity”.

59. The Court finds that the Appellant has failed to meet the requirements under Article 35 A of the Treaty and Rule 86 of the Court Rules.

60. The Court notes that, in the impugned Judgment, the Trial Court addressed all the issues complained by the Appellant as procedural irregularities and found no basis for his claim.

61. Given the above, this Court finds that the Appellant in his appeal failed to meet the test and indicators as provided for under Article 35 A of the Treaty as well as Rule 86 (c) on procedural irregularity.

62. The Court is of the view that a procedural error occurs where the Court acts irregularly in the conduct of a proceeding or hearing leading to a denial or failure of due process (i.e. fairness) e.g irregularly admits or

denies admission of evidence, denies a party a hearing, ignores a party's pleadings, etc.

63. This Court has in its various decisions repeatedly defined in detail what constitutes a procedural irregularity. In the case of **Angela Amudo** (Supra), the Court by defining what constitutes an error of Law and procedural error, at paragraph 65, this court held as follows:

"We are fully aware that a court commits an error of law or a procedural error when it: -

(a) misapprehends the nature, quality, and substance of the

evidence: See, for instance, Peters v. Sunday Post (1958) EA 424; Ludovick Sebastian v. R, (CAT) Criminal Appeal No. 318 of 2007 (unreported);

(b) draws wrong inferences from the proven facts: see, Trevor Price & Another vs. Raymond Kelsal [1957] EA 752, Wynn Jones Mbwambo v. Waadoa Petro Aaron (1966) E.A 241; or

(c) acts irregularly in the conduct of a proceeding or hearing leading to a denial or failure of due process (i.e. fairness) e.g irregularly admits or denies admission of evidence, denies a party a hearing, ignores a party's pleadings, etc: see, The Hon. Attorney General v. ANAW (supra)".

64. In the case of **Attorney General of the United Republic of Tanzania versus the African Network of Animal Welfare** (Supra), at pages 22, held that:

"... procedural irregularities are in character, irregularities that attach to the conduct of a proceeding or trial. It comprises such

irregularities as the inadmissibility of documents or witnesses, denying a party the opportunity to be present or to be heard at all, hearing a matter in camera (where it should be heard in public and vice versa), failure to notify or serve in time or at all, etc.”

65. In the case of **Simon Peter Ochieng'**(Supra) this Court held as follows in paragraph 29: -

“...he who alleges must prove in regard that “A party alleging whatever error must explain what the alleged error is and how it leads to miscarriage of justice”.

Therefore, in the instant Appeal, it was the onus of the Appellant who is alleging an error of law occasioned by the Trial Court to identify, establish and explain what is the alleged error of law and how it invalidates the impugned decision.

66. In the same case of **Simon Peter Ochieng' (supra)** in paragraph 26, this Court categorically held that: -

“Litigants should bear in mind that this Court is not tasked to undertake a rehearing de novo of questions of facts and law examined by the First Instance Division. The right of appeal to the Appellate Division is restricted to the grounds provided under Article 35 (A) of the Treaty”.

67. In the premises, this Court finds that the Appellant failed to demonstrate and establish proof on the grounds of appeal as required under Article 35 A of the Treaty and Rule 86 (c) the Court Rules.

68. Consequently, issue No. 2 is answered in the negative.

ISSUE No.3: Whether the First Instance Division of the Court exercised its discretion judiciously by awarding the Appellant one-third (1/3) of the Costs.

Cross Appeal.

69. The Respondent filed under Rule 102(3) of the Court Rules, a cross-appeal challenging the Court's decision of awarding the Appellant one-third (1/3) of the costs upon dismissal of the Reference. During the scheduling conference, parties with the assistance of the Court framed the above issue which is similar to the cross appeal.

a. Respondent's Submissions on the cross appeal.

70. On this issue, the Respondent referred this Court to Rule 127(1) of the Court Rules and submitted that according to the said Rule there is no justifiable ground as to why the Trial Court granted 1/3 of the costs to the Appellant based on the fact that his conduct both at the Trial Level and even at the Appellate level regarding his lack of cooperation with the Court.

The Respondent further submitted that the Appellant should not be granted any costs, as such decision prejudices the Respondent who has incurred unnecessary expenses in this case from National Courts to the Appellate Division of EACJ.

71. The Respondent averred that the principle of granting appropriate remedies to parties was propounded in the case of **Attorney General of the Republic of Burundi and the Secretary General of the EAC, Appeal No.2 of 2019** where the Court held that: -

"...and we find no reason that the 1st Instance Division would depart from its established jurisprudence that the Respondent was entitled to be granted costs of the reference".

72. The Respondent further contended that there was no justification for the Court to grant costs to the losing party having dismissed the Appellant's Reference. That was a clear sign of a violation of the Court's Rules and a demonstration of sympathy to the Appellant.

73. Therefore, the Respondent prayed for remedies on the ground that the decision of the Trial Court and the conduct of the Appellant in general was prejudicial to the Respondent. The Appellant wasted the Respondent's time and resources unnecessarily while attending to this matter from 2017.

a. Appellant's submissions on the cross appeal.

74. The Appellant referred this court to Rule 104 (1) of the Court Rules 2019 and submitted that the notice of cross appeal should not be taken into consideration by this Court because he was served with the notice via email beyond the 7 days period as provided for by this Rule.

75. On this issue, the Appellant referred to Rule 127(1) of the Court Rules which provides that "*Costs in any proceedings shall follow the event unless the Court shall for good reasons otherwise order*". He contended that the above Rule gives the Court discretion to determine whether any party is entitled to costs. He further submitted that the responsibility lies with the Honourable Court of the East African Community to justify the reasons for awarding costs.

76. Therefore, the Appellant requested the Court to reject the cross-appeal which was filed by the Respondent.

C. Determination by the Court

77. We have carefully considered the submissions from both parties and now we have to assess and determine whether the Trial Court was right to award 1/3 of the costs to the Appellant who had lost the case.
78. Before making a determination on this issue, we revisited the impugned judgment in order to understand the basis of the decision of the Trial Court to award costs to the losing party.
79. When this Court reviewed paragraphs 57 of the impugned Judgment, the Trial Court stated that both parties succeeded in one of the substantive issues that had been framed and that therefore their success in the Reference is evenly balanced.
80. The Trial Court further acknowledged and stated that the point of law raised by the Respondent has been a substantive issue in the Reference given its vitality to the determination of the parties' respective interests.
81. Given this acknowledgment by the Trial Court it was implied that the Appellant has lost the case.
82. However, on the contrary, the Trial Court despite this finding went ahead to award 1/3 of the costs to the Appellant. In paragraph 58 of the Judgment of the Trial Court held as follows: -

"In terms of hardship, it is not lost upon us that the Applicant propagated his case personally without the benefit of advocacy services that, given his circumstances, he was seemingly unable to afford. Perhaps had he had the benefit of legal advice he might have forgone the present legal proceedings and spared himself and the opposite party the costs incurred. It seems to us, therefore, that the circumstances of this case do warrant a departure from the general rule as espoused in Rule 127(1) of

this Court's Rule. Consequently, we would exercise our discretion to award one third of the costs hereof to the Applicant".

83. Rule 127(1) of Court Rules provides that: -

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

This is the position of the Court in the case of **Mary Ariviza & Other v. Attorney General of Kenya & Other**, Ref. No. 7 of 2010, at p.29 where the Court held that:-

"The successful party normally gets costs of the litigation unless the Court in its discretion, which should be exercised judicially, directs otherwise".

84. In general, the principle is that costs follow the **event** (our emphasis); this means that the costs of an action are usually awarded to the successful party. This Court has defined the "event" in the case of **Secretary General of EAC v. Rt. Hon. Margaret Zziwa**, Appeal No. 7 of 2015, at 23 (May 27, 2016) as follows: -

"...the outcome of the matter before the Court for consideration when the order for costs is made." (Emphasis ours)

This means that in principle, the successful party normally gets costs of the litigation.

85. However, it should be noted that there is an exception which allows the Court in its discretion, for good reasons to otherwise order. This means that a judge at his discretion can depart from this principle and not award the costs to the winning party but not to a losing party.

86. In the case of **Hon. Margaret Zziwa v. Secretary General of East African Community, Appeal No. 2 of 2017**, at page 45 (May 25, 2018) where the Court held that a successful party may only exceptionally be deprived of costs depending on the particular circumstances as follows: -

“... costs are in the discretion of the court; in exercising such discretion, the Court bears in mind that costs follow the event and that a successful party may only exceptionally be deprived of costs depending on the particular circumstances of the case such as the conduct of the parties themselves or their legal representatives, the nature of the litigants, the nature of the proceedings or the nature of the success. Those are the guiding principles to the court deciding at first instance on whether to award costs.”

(Emphasis ours)

87. There are by now precedents set by this Court, where in some cases, a Court for plausible reasons, decided not to award costs to the winning party and ordered that each party bears its own costs. We would like to make reference to the following cases: -

- i. In the case of **Attorney General of Tanzania. v. Africa Network for Animal Welfare (ANAW)**, (Supra) at p 31 (July 29, 2014) the Court held that:-

“Since the Reference was brought in the interest of conservation and preservation of the Serengeti Park, ‘a gem of a heritage, one-for-all-mankind’ each party would bear its own costs”.

- ii. In the case of **Attorney General of Tanzania v. Anthony Calist Komu, Appeal No. 2 of 2015**, at 33-34 (Nov. 25, 2016) the court ordered that:

“each party bear its own costs as the case raised ‘challenging issues’ pertinent to the proper interpretation and application of various Treaty articles”

The above cases provide guidance on the circumstances in which a Court may depart from the principle of the cost follow the event.

88. We find that much as the Trial Court applied its discretion in the manner demonstrated above by awarding costs to a losing party, we are of the considered view that this move is **unprecedented** (Emphasis ours) and without any legal basis. It has never happened that a Court would deprive the winning party of costs and award the losing party costs whatever the proportion or percentage is. By doing so, the Trial Court misapplied and misinterpreted Rule 127(1) of Court Rules.

89. In the circumstances, the Trial Court did not exercise its discretion judiciously by awarding the Appellant (the losing party) one third (1/3) of the Costs.

90. Therefore, it follows as night follows day that we answer issue No.3 in the negative.

Issue No. 4: What remedies are the parties entitled to.

91. The Appellant prayed this Court to find that the First Instance Division actually violated the provisions of the Treaty. And that the Court should also find the Courts of the Republic of Rwanda violated Article 6(d) and 7(2) of the Treaty and should condemn them to pay costs and any other

penalties that the Court may deem appropriate and applicable in this case.

92.As to remedies, the Respondent averred that he is entitled to remedies on grounds that the decision of the Trial Court and the conduct of the Appellant in general prejudiced the Respondent and wasted the Respondent's time and resources unnecessarily while attending to this matter since 2017.

93.Rule 127(1) of the Court Rules provides that :-

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

In this appeal, the Appellant lost and the Respondent won on the cross-appeal. However even if the principle is that cost follows the event, given the nature of the case this Court is of the view that, each party bears its own cost both in the Reference and in this Appeal.

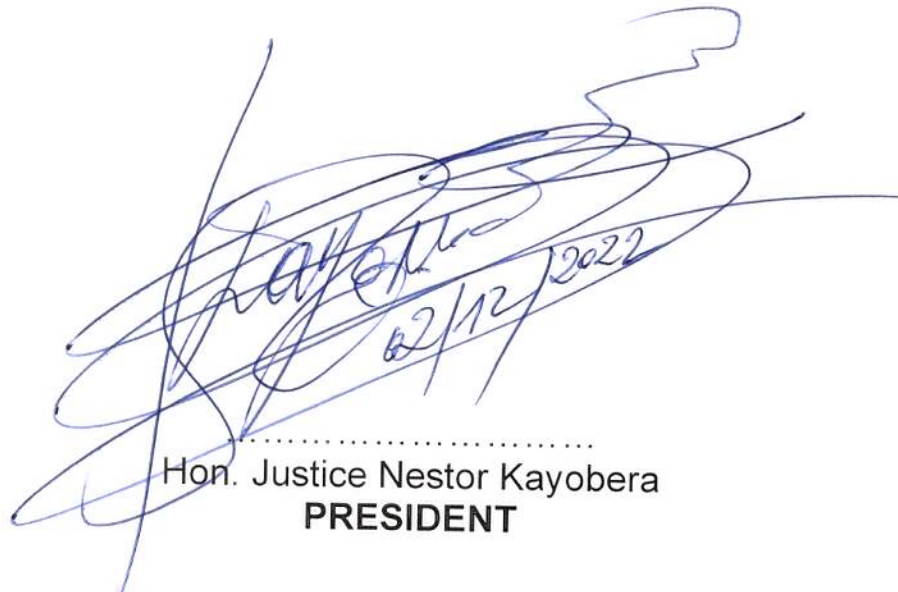
CONCLUSION

94.In the final result: -

- (1)The Appeal is hereby dismissed.
- (2)The Cross appeal is hereby allowed.
- (3)The Judgment of the First Instance Division is hereby upheld save for costs.
- (4)Each Party shall bear its own costs both in the Reference and in the Appeal.

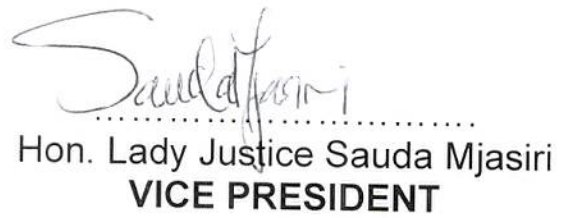
It is so ordered.

Dated, Signed and Delivered at Kampala, this 2nd day of December, 2022.



Handwritten signature in blue ink, including the date 02/12/2022.

.....
Hon. Justice Nestor Kayobera
PRESIDENT



Handwritten signature in blue ink.

.....
Hon. Lady Justice Suda Mjasiri
VICE PRESIDENT



Handwritten signature in blue ink.

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Hon. Lady Justice Anita Múgeni
JUSTICE OF APPEAL