



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



*(Coram: Yohane B. Masara, PJ; Charles Nyawello, DPJ; Charles A. Nyachae;  
Richard Wabwire Wejuli and Léonard Gacuko, JJ)*

**APPLICATION NO. 23 OF 2022  
(Arising from Reference No. 25 of 2022)**

**INSPECTORATE OF GOVERNMENT ..... APPLICANT**

**VERSUS**

**GEOFFREY KAZINDA ..... 1<sup>ST</sup> RESPONDENT**

**THE ATTORNEY GENERAL OF  
THE REPUBLIC OF UGANDA ..... 2<sup>ND</sup> RESPONDENT**

**23<sup>rd</sup> NOVEMBER 2023**

## RULING OF THE COURT

### A. INTRODUCTION

1. This Application arises from **Reference No.25 of 2022**. It was brought under Rules 4, 5, 27(3) and 52 of the East African Court of Justice Rules of Court, 2019 (“the Rules”), Articles 6(d) and 7(2) of The Treaty for the Establishment of the East African Community (“the Treaty”) and Articles 7(2), 23, 27 and 30 of the East African Community Act, No. 13 of 2002 of the Laws of Uganda.
2. The Applicant is a government institution established by Statute and entrenched under the Constitution of the Republic of Uganda, 1995. Her address of service is: Inspectorate of Government, Jubilee Insurance Building, Parliament Avenue, P.O. Box 1682 Kampala, Uganda.
3. The 1<sup>st</sup> Respondent is a male adult Ugandan of sound mind, resident in Uganda. His address of service for purposes of the Reference from which this Application arises is: c/o Upper Prison, Luzira, P.O. Box 5752, Kampala.
4. The 2<sup>nd</sup> Respondent is the Attorney General of the Republic of Uganda, sued in his representative capacity as the principal legal advisor of the Government of Uganda. His address of service is: c/o Attorney General’s Chambers, Plot 7, Bauman House, Parliament Avenue, P.O. Box 7183 Kampala, Uganda.
5. The Application seeks extension of time within which to lodge a Response in reply to **Reference No. 25 of 2022** and for orders that the Applicant, having investigated and prosecuted the 1<sup>st</sup> Respondent for illicit enrichment in **Criminal Case No. HCT-00-ACD-csc-004/2016** at the Anti-corruption Court in Uganda, from which the impugned



judgment in Criminal Appeal No. 179 and 208 of 2020 arises, is a necessary party to the proceedings in Reference No. 25 of 2022 and therefore ought to be joined and or added as a Respondent thereto.

6. The Applicant is not named as a Respondent in Reference No. 25 of 2022.

7. The Application is supported by the Affidavit deponed by Patricia Achan Okiria, a Deputy Inspector General of Government. Therein, the grounds of the Application are stated, but briefly are that:

a) The Applicant carried out investigations and verification of the declaration of income, assets, liabilities and amassing of wealth and prosecuted the 1<sup>st</sup> Respondent for illicit enrichment, for which he was convicted and confiscation orders made in Criminal Case No. 04 of 2016 at the Anti-corruption Court in Uganda;

b) The Applicant, who was party and Respondent to the contested Criminal Appeal No. 179 and 208 of 2020 is conversant with all factual and legal issues of Reference No. 25 of 2020 and is an interested party and should be joined as a Respondent;

c) The declarations and reliefs or remedies sought by the 1<sup>st</sup> Respondent seeking to annul Criminal Appeals No. 179 and 208 of 2020 and High Court Case No. 04 of 2016 will cause irreparable injury to the Applicant, who has partly executed the decree from Criminal Case No. 04 of 2016 and would require the Applicant to be heard; and

d) The joinder of the Applicant to Reference No. 25 of 2022 will not occasion any injustice to all the Respondents but will

**enable the Court to finally adjudicate on all the issues embedded in the Reference.**

8. Each of the Respondents filed their respective Affidavits in reply contesting the Application. The 1<sup>st</sup> Respondent also filed a Notice of Preliminary objection.

### **B. REPRESENTATION**

9. The Applicant was represented by her in-house legal team which included; Vincent Kasujja, Manager Civil Litigation; Nabale Haspha, Supervisor Civil Litigation; Asio Daisy, Supervisor Prosecution and Nantabazi Diana, Supervisor Prosecution.
10. The 1<sup>st</sup> Respondent was self-represented, while the 2<sup>nd</sup> Respondent was represented by Richard Adrole- Assistant Commissioner Civil Litigation, Elizabeth Namakula- Senior State Attorney and Mr Brian Musota- State Attorney.

### **C. BACKGROUND**

11. The brief background to the Application as averred by the Applicant in the Affidavit in Support of the Application is, that the 1<sup>st</sup> Respondent was investigated, charged and convicted for illicit enrichment. The investigation and prosecution of the case leading to his conviction was conducted by the Applicant.
12. The 1<sup>st</sup> Respondent filed **Reference No.25 of 2022** with this Court seeking to annul decisions of the **High Court in Criminal Case No.4 of 2016** in which the Applicant obtained the conviction, and of **Appeals No. 179 and 208 of 2020**. The Applicant was not joined as a Respondent in **Reference No. 25 of 2022**, which is the position she seeks to have ordered by this Court.



#### **D. PRELIMINARY OBJECTION**

13. When the matter came up for hearing, the 1<sup>st</sup> Respondent sought and was granted leave to proceed with his Preliminary objection under Rule 39(3) of the Rules. He submitted that:

- a) The Court has no jurisdiction to hear and determine the Application because the Applicant is neither a legal nor a natural person within the meaning of the Treaty;**
- b) The Applicant is not a proper party against whom to bring the Reference;**
- c) The Applicant is acting *ultra vires* the mandate conferred upon her by the Constitution of the Republic of Uganda; and**
- d) The Treaty has no provision that permits the Applicant to take out an action in the East African Court of Justice against the Attorney General of a Partner State.**

#### **E. SUBMISSIONS OF THE PARTIES**

##### **a) 1<sup>st</sup> Respondent**

14. The 1<sup>st</sup> Respondent submitted that the Court lacks jurisdiction to entertain the Application because the Inspectorate of Government is neither an institution of the Community nor a representative of a Partner State.

15. The 1<sup>st</sup> Respondent contended that including the Applicant as a party would mean proceeding against her, which Article 30 does not permit, as she is neither a Partner State nor an institution of the Community.

16. He argued that the central issue in the case is whether the Applicant should be a Respondent, and according to Article 30 of the Treaty, only Partner States or institutions of the Community can be Respondents.

17. To support his argument to have the Application dismissed, he cited the Court's decision in **Central Bank of Kenya vs Pontrillas Investments Limited, EACJ Application No. 6 of 2022** in which this Court held that the Central Bank of Kenya was not a proper party over which this Court can exercise jurisdiction. The reason being that it is not an institution of the Community in terms of Article 9 of the Treaty.
18. He further contended that the Inspectorate of Government, being a creation of the 1995 Constitution of Uganda, is represented by the Attorney General under Article 119 (3) and (4) of the Constitution of the Republic of Uganda, despite having some powers under Article 230 (1) and (2) of the said Constitution.
19. The 1<sup>st</sup> Respondent also included responses to the Applicant's arguments addressing issues related to the powers and functions of the Applicant under the Constitution of the Republic of Uganda.
20. He prayed for the Application to be dismissed with costs.

**b) 2<sup>nd</sup> Respondent**

21. On his part, the 2<sup>nd</sup> Respondent asserted that the Inspectorate of Government of Uganda does not have the legal capacity or personality to commence civil proceedings in any Court, including the East African Court of Justice.
22. He submitted that while the Rules only permit "persons" to apply to be made a party to a case, the term "person" is not defined in the Rules. He however questioned whether the Inspectorate of Government can be considered to be a "person" as referred to in Rule 27(3) of the Rules, which allows a "person" on whose behalf or for whose interest a claim or reference is instituted to apply to be made a party in a case and contended that the Inspectorate of Government does not fit in the definitions of a "party" or a "person" under the Treaty and the Rules.



23. That consequently, the Inspectorate of Government does not have the *locus standi* to bring the current Application, as it lacks the legal capacity and authority to sue or be sued in civil proceedings in the East African Court of Justice.
24. He also emphasized that Article 250(4) of the Constitution of the Republic of Uganda, 1995, does not grant the Inspectorate of Government the power or authority to sue and be sued in civil proceedings. He contended that Article 250(4) only addresses the enforcement of claims against the Government and that only the Attorney General has the mandate to represent all government institutions under Article 250 of the 1995 Constitution of the Republic of Uganda.
25. The 2<sup>nd</sup> Respondent dismissed the relevance of the fact that the Inspectorate of Government has been named as a party in previous cases, as this does not automatically grant them the authority to be made a party before the East African Court of Justice.
26. The 2<sup>nd</sup> Respondent also discounted the Applicant's attempt to distinguish the case of **Central Bank of Kenya vs. Pontrillas Investments Ltd and The Attorney General of the Republic of Kenya** (supra) from the present Application, arguing that the fundamental principle is that only Partner States or institutions of the Community can be legitimate Respondents in References lodged before the East African Court of Justice remains consistent.
27. The 2<sup>nd</sup> Respondent prayed for dismissal of the Application.

**c) The Applicant**

28. In response, the Applicant asserts her right to be included as a party in the Reference, despite objections from the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

She argues that her legal capacity to do so is supported by various provisions of the Ugandan Constitution and some municipal Court decisions.

29. The Applicant also cites the definition of "*person*" under the laws of *the East African Community (Interpretation) Act, 2004*, as a basis for her legal capacity to join the case. She distinguishes the Ugandan Court of Appeal case of **Gordon Sentiba & 2 Others vs Inspectorate of Government, Civil Appeal Case No.06 of 2008** from the present situation, emphasizing that the key issue is not about her institutional status, but rather her *locus standi* to be added as a party.
30. The Applicant contended that this Court's decision in **Central Bank of Kenya vs Pontrillas Investments Limited and Attorney General of Kenya, EACJ Application No. 06 of 2022** relied on by the Respondents to justify the argument that the Inspectorate of Government is not an institution of the Community is distinguishable and not persuasive or binding upon the Court.
31. Counsel for the Applicant argued that the objections raised by both Respondents relate to the constitutional and statutory powers of the Attorney General and the Inspectorate of Government, as defined in various legal instruments. She asserted her role in criminal matters and her representation of the interests of Uganda in such cases.
32. The Applicant submitted that the Court has a role, under the Treaty, to ensure adherence to the law and to interpret, apply, and comply with the Treaty, despite any objections.



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

33. The pivotal question that begs to be determined forthwith is *whether the Applicant has locus standi in this Court and whether the Court therefore has jurisdiction over the matter.*

34. It has long been stated that this Court is subject to the **Vienna Convention on the Law of Treaties** (“the Vienna Convention”), Article 31(1) of which provides that:

***“A Treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the Treaty in their context and in the light of its object and purpose.”***

35. Article 8(4) of the Treaty provides that:

***“Community organs, institutions and laws shall take precedence over similar national ones on matters pertaining to the implementation of this Treaty.”***

36. Where there is a conflict between international and national law, international law prevails. Article 27 of the Vienna Convention prohibits States from invoking national laws as justification for failing to perform treaty obligations.

37. National laws and decisions of national courts are therefore subject to this principle of international law.

38. It is in the foregoing spirit and letter of the Vienna Convention and of the Treaty that the facts and submissions in this matter have been considered and determined.

39. The matter for determination in this case is on all fours with what transpired in similar regard in **Alcon International Ltd vs Standard Chartered Bank of Uganda and Others [2005-2011] EACJR 195**. In

that case, citing Articles 1, 9(2) and 30(1) of the Treaty, this Court found that the 1<sup>st</sup> and 3<sup>rd</sup> respondents in that case had been improperly sued and all complaints against them were dismissed on grounds that they were neither Partner States nor institutions of the Community established by the Summit of the East African Community.

40. The question in the instant Application is as well, whether the Applicant can be a Respondent in **Reference No. 25 of 2022**.
41. The Applicant contended that Article 250(4) of the Constitution of the Republic of Uganda, 1995 confers on the Applicant the power and authority to sue and be sued in civil proceedings or in the East African Court of Justice. A position that the 2<sup>nd</sup> Respondent disagreed with and in rejoinder submitted that this proposition by the Applicant is misconceived.
42. The 2<sup>nd</sup> Respondent argued that Article 250 (4) of the Constitution of the Republic of Uganda does not confer upon the Applicant the mandate to sue and be sued in civil proceedings in any Court, including this Honourable Court.
43. In our opinion, the argument as to whether or not the Constitution of the Republic of Uganda designates the Applicant as an entity to be sued or sue in civil matters is secondary to the question before the Court.
44. This Court has the power to apply its own appreciation of national laws when considering allegations of actions or omissions that contravene the Treaty. -See **Henry Kyarimpa vs Attorney General of Uganda, EACJ Appeal No. 6 of 2014**.



45. The issue is not whether the Applicant is a body corporate or not, but rather whether under the Treaty, any action can be brought against the Applicant.

46. The answer to this is found in Articles 1, 9 and 30 of the Treaty.

47. Article 30(1) of the Treaty provides for the entities against whom an action can be brought under the Treaty. It states that:

***“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.”***

48. “Partner State” is defined by Article 1 of the Treaty as:

***“The Republic of Uganda, the Republic of Kenya, the United Republic of Tanzania and any other country granted membership to the Community under Article 3 of this Treaty.”***

49. The Republics of Burundi, Rwanda, South Sudan and the Democratic Republic of Congo have since been duly added as Partner States.

50. The word “*Institution*” as defined in Article 9(2) of the Treaty is limited to “***such bodies, departments and services as may be established by the Summit.***”

51. It is only the Summit that has the mandate to designate institutions of the Community. Article 9(3) designates the existing Institutions hitherto. These are the institutions against which action can be brought

under Article 30(1) and (2). The Applicant is not included among the institutions listed in Article 9(3) of the Treaty.

52. The Applicant is therefore not an institution of the Community as envisaged under Article 30(1) nor is she an organ of the Community as stipulated under Article 9(1) of the Treaty.

53. The Inspectorate of Government has no international legal personality and cannot therefore be held responsible for the Government of Uganda's acts or omissions under the Treaty.

54. It is not the duty of an individual Partner State, this Court or the parties to confer capacity to sue and to be sued in any form of proceedings, be they Civil proceedings or otherwise, before this Court.

55. The actions of the Applicant can therefore only be challenged in this Court through the Attorney General as the Applicant does not personally fall within the purview of the Treaty. She cannot be joined as a Respondent to any proceedings before this Court and the Court has no jurisdiction over her in that context.

56. The Applicant's attempt to try and distinguish the instant case from the case of the **Central Bank of Kenya** (*supra*) premised on the disparity of facts in the two scenarios is misconceived as the issue under consideration is a matter of law and not fact.

57. Having determined that the Applicant has no *locus standi* to appear in the capacity that she seeks to do in this Court, and that the Court has no jurisdiction over them in that regard, the Court cannot proceed beyond this point.

58. The absence of jurisdiction *ratione personae* renders the Court devoid of capacity to conduct any form of action except put down its legendary pen.



59. The Court would be acting outside its mandate if it attempted to address the arguments raised regarding the Applicant's and 2<sup>nd</sup> Respondent's respective mandates under the Constitution of the Republic of Uganda.

60. The preliminary objection raised by the 1<sup>st</sup> Respondent is upheld.

### **G. COSTS**

61. In the issue of costs, we wish to state that public institutions should strive to act in harmony. This case is a typically unfortunate example of how public resources are put to imprudent and unnecessary waste over a matter that could have been resolved intra-government without having two government agencies deriding each other in this Court over the improbable and otherwise avoidable costs to the taxpayer.

62. Whereas costs follow the event under Rule 127 of the Rules, in the instant case, we make no award of costs to the 2<sup>nd</sup> Respondent for the reason that, if costs were granted to the 2<sup>nd</sup> Respondent, this Court would be compounding the uneconomic disbursement of public resources as both parties draw from the same public coffers.

63. However, as the Applicant unnecessarily dragged the 1<sup>st</sup> Respondent to this Court in the instant Application, she will bear the costs of the 1<sup>st</sup> Respondent.

### **H. CONCLUSION**

64. The Applicant's Application to be joined as a party in **Reference No. 25 of 2022** is accordingly dismissed.

65. The 1<sup>st</sup> Respondent's costs to be paid by the Applicant.

66. It is so ordered.

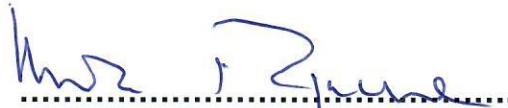
Dated, signed and delivered at Arusha this 23<sup>rd</sup> day of November 2023.



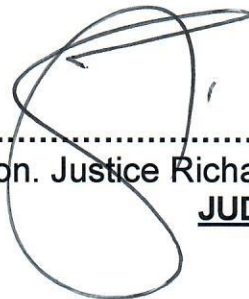
Hon. Justice Yohane B. Masara  
**PRINCIPAL JUDGE**



Hon. Justice Dr Charles O. Nyawello  
**DEPUTY PRINCIPAL JUDGE**



Hon. Justice Charles A. Nyachae  
**JUDGE**



Hon. Justice Richard Wabwire Wejuli  
**JUDGE**



Hon. Justice Dr Léonard Gacuko  
**JUDGE**