



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



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

APPLICATION NO. 34 OF 2022
(Arising from Reference No. 42 of 2021)

MIDO SAMUEL TALIGI APPLICANT

VERSUS

THE ATTORNEY GENERAL OF
THE REPUBLIC OF SOUTH SUDAN RESPONDENT

27TH NOVEMBER 2023

RULING OF THE COURT

A. INTRODUCTION

1. This Application arises from **Reference No. 42 of 2021** where Mr Mido Samuel Taligi (“the Applicant”) sued the Attorney General of the Republic of South Sudan (“the Respondent), on the ground that the Government of South Sudan has refused to compensate him after emerging a winner in a competition for the composition of the current melody of the National Anthem of the Republic of South Sudan.
2. That despite efforts to seek recognition and compensation from various Government officials, including serving notices through legal channels, the Government ignored his pleas. The Reference was filed urging this Court to order recovery of damages, compensation, royalties and a permanent injunction against further infringement of his copyright, among others.
3. Pending hearing of **Reference No. 42 of 2021**, the Applicant brought this Application under Rules 1, 2, 3, 4, 5, 18, 25, 32, 33, 39, 47(1), 48, 49, 52(1), (2), (3), (4), (5) & (6) and 53 of the East African Court of Justice Rules of the Court, 2019 (“the Rules”), seeking the striking out of the Respondent’s Response to the Statement of Reference in **Reference No. 42 of 2021** belatedly served on the Applicant.
4. The Applicant is a citizen and resident of the Republic of South Sudan. His address of service for the purposes of this Application is *c/o Shoebill Advocates, Ben Kiwanuka Street, 7th Floor, Arua Park Plaza, P.O Box 22662, Kampala.*

5. The Respondent is the Minister of Justice and the Attorney General of the Republic of South Sudan sued in his representative capacity as the Principal Legal Advisor of the Government of the Republic of South Sudan. His address of service for the purposes of this Application is: *c/o Office of the Attorney General, Airport Road next to CES Ministry of Education, Juba, Republic of South Sudan.*
6. In the Notice of Motion filed in Court on 17th March 2023, the Applicant sought the following orders:
- a) The Respondent's Response to the Reference herein be expunged from the Court's records;**
 - b) The Respondent meet the cost of this Application; and**
 - c) Any other remedy this Court deems fit.**
7. The Application is supported by the Affidavit deponed by the Applicant on 17th March 2023.

B. REPRESENTATION

8. At the hearing, the Applicant was represented by Mr Nelson Stephen, learned Advocate, while Mr Biong Pieng Kuol, Director, Civil Litigation, appeared for the Respondent.

C. GROUNDS FOR THE APPLICATION

9. The grounds on which the Application is based are contained in the Notice of Motion above stated. Briefly they are:
- a) That the Respondent served its Response to the Statement of Reference in Reference No. 42 of 2021 on the Applicant out of time;**

- b) That the service was not done within 45 days after being served with the Notification of the Reference;
- c) That the Respondent did not obtain leave of Court to serve its Response out of time; and
- d) That the delay in serving the Applicant has prejudiced him, is an abuse of court process and has delayed the hearing of the case. That it is just and equitable that the Application be heard and allowed on its merits and costs be provided for.

D. PRELIMINARY OBJECTION

10. In the course of the hearing of the Application, Mr Biong raised a preliminary objection on a point of law concerning the Court's Jurisdiction to hear and determine the Reference from which this Application emanates. He submitted that the Reference from which the Application arises is not properly before the Court as the same was filed out of time. He relied on Article 30(2) of the Treaty on the Establishment of the East African Community ("the Treaty") that provides the time frame for the Reference to be filed. He argued that the facts related to the Reference had started long time ago, before the independence of the Republic of South Sudan. That it was in 2010 when the Committees were formed to compose the National Anthem for the country.

11. Counsel submitted that there is no ambiguity under Article 30(2) of the Treaty as regards the timeframe for filing a reference in this Court and as such, **Reference No. 42 of 2021** which underpins the current Application, having been filed in Court after 10 years of the

impugned Act, was filed beyond the stipulated two-month period prescribed by the Treaty.

12. The Court deemed it appropriate to deal with the preliminary issue before the Application for expunging the Response. It directed parties to file written submissions with respect to the issue of time limitation raised.

E. PARTIES' SUBMISSIONS.

a. Respondents Submissions

13. In his submissions, Counsel for the Respondent submitted that Article 30(2) of the Treaty provides those instituting proceedings in the Court has to be done within two months of the enactment, publication, directive, decision or action complained of, or in the absence thereof, of the day in which it came to the knowledge of the complainant, as the case may be.
14. That, although the Applicant did not indicate in the Reference when the action complained of arose or came to his knowledge, which is very important for determination of time limitation in which the Reference should be filed as provided for in Article 30(2) of the Treaty, the Applicant was well aware that the said National Anthem was sang for the first time on the National Independence Day of the Country, the 9th of July 2011. South Sudan subsequently, continued to sing it on official occasions and every independence celebration, yearly, without any issue from the Applicant at the time.
15. Further, Counsel argues that laws including the Treaty are not applied retrospectively. That the action complained of having arisen

before the Respondent State joined the Community and acceded to the Treaty, the Court cannot portend to impugn such act.

16. That the Republic of South Sudan was granted membership of the Community in April 2016 in accordance with Article 3(2) of the Treaty. That it is his view that the obligations imposed by the Treaty apply to Partner States after obtaining membership of the Community, and therefore the Republic of South Sudan's Treaty obligations commenced in April 2016 when it was admitted as a member of the Community and not retrospectively as the Reference indicates.

17. Counsel referred Court to its jurisprudence on non-retroactivity of the Treaty in **Emmanuel Mwakisha Mjawasi & Others vs Attorney General of the Republic of Kenya, EACJ Reference No. 2 of 2010** and **Alcon International Limited vs Standard Chartered Bank of Uganda & 2 others, EACJ Appeal No. 3 of 2013.**

18. Furthermore, Counsel for the Respondent submitted that time for purposes of limitation reckons ***two months after the action or decision was first taken or made***” as held in the case of the **Attorney General of the Republic of Kenya vs Independent Medical Legal Unit, EACJ Appeal No. 1 of 2011.**

19. That in that case, the Court also held that:

“In our view, there is no enabling provision in the Treaty to disregard the time limit set by Article 30 (2), moreover, that Article does not recognize any continuous breach or violation of the Treaty outside the two months; nor is there any power to extend that time limit. Again, no such

intention can be ascertained from the ordinary and plain meaning of the said Article or any other provision of the Treaty.”

20. Counsel, likewise cited this Court’s decision in **Attorney General of Uganda & Another vs Omar Awadh & 6 Others, EACJ Appeal No. 2 of 2012** where the Court emphasized that the “**starting date of an act complained of under Article 30(2) ... is not the day the act ends, but the day it is effected.**”

21. Mr Biong, therefore urged the Court to declare that it has no jurisdiction to entertain the Reference, that the Reference is time-barred within the meaning of Article 30(2) of the Treaty and dismiss the entire Reference with Costs.

b. The Applicant’s Submissions

22. In reply, Counsel for the Applicant, while admitting that the limitation period for matters to be brought before this Court is two months from the date the cause of action arose, as per Article 30 (2) of the Treaty, stated that Counsel for the Respondent was wrong to put the reckoning date to be the day of independence.

23. The Applicant’s Counsel submits that the limitation period started running when the Applicant became aware that the Respondent did not heed on the demand notice/notice of intended suit. That all along, the Applicant thought that the Government of South Sudan was going to recognize and give him all his royalties.

24. In his view, the cause of action arose when the Respondent refused to honour the demands of the Applicant that were well stipulated in the notice of intended suit which was served on the Respondent on

12th October 2021, following which the Applicant immediately lodged the Reference on the 18th October, 2021.

25. Lastly Counsel prayed that the Court be pleased to dismiss the preliminary points of law raised in the Reference by the Respondent, and allow the prayers therein.

F. THE COURT'S DETERMINATION

26. The issue of time limitation having been raised by the Respondent, it is appropriate to consider and determine whether the aforementioned Reference was submitted in compliance within the legally stipulated two-months period.

27. The Court's jurisdiction on time limitation (*ratione temporis*) is provided for in Article 30(2) of the Treaty, where it states that:

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

28. To elucidate this jurisdictional facet, the Court deems it expedient to delineate the chronological sequence pertinent to the current dispute.

29. The Court acknowledges several pivotal dates: initially, the Applicant contends that the invitation for the South Sudan Anthem Composition Contest was disseminated on 10th October 2010.

30. That subsequently, on 16th February 2011, the University of Juba dispatched a communication addressed to 'Whom it May Concern',

(marked as Annex B). The essence of this correspondence was to advocate for the assignment of copyright in the Melody to the Applicant, Mr Mido Samuel Taligi, then a lecturer at Juba University.

31. Another significant date is 9th July 2011, when the Applicant received a certificate acknowledging his status as the 'Composer of National Anthem, South Sudan', (marked as Annex C).
32. The Reference was filed in Court on 18th October 2021, after the Applicant had issued a Demand Notice signalling an intention to initiate legal proceedings.
33. Also worth noting is the fact that both parties acknowledge that 9th July 2011 was the inaugural occasion of the National Anthem in question.
34. With these events in mind, the Court examines the assertions presented by the respective parties.
35. The Applicant contends that the limitation period commenced upon his realization that the Respondent disregarded the Demand Notice by failing to comply with the stipulations therein.
36. In contrast, the Respondent asserts that the limitation period began on 9th July 2011, the date when the National Anthem was first performed. This forms the crux of the debate surrounding the issue of time limitation.
37. The issue of time limitation has been extensively explored by this Court. In **Attorney General of Kenya vs Independent Medical Legal Unit** (supra), this Court stated that a claimant cannot avoid

the time limitation by alleging a continuing breach or violation of the Treaty. The Court held:

“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.”

38. Indeed, the Applicant alleges that he first became aware of the potential infringement of his copyright when the Respondent failed to honour his demands stipulated in the Demand Notice served on 11th October 2021. However, the Court does not understand what prompted the Applicant to issue a demand notice against the Respondent after 10 years when the National Anthem was first sang, that is on 9th July of 2011.

39. As rightly argued by Counsel for the Respondent, the question of time limitation was well settled in **Attorney General of the Republic of Uganda & Another vs Omar Awadh and 6 Others** (supra) where the Court held that **“the starting date of an act complained of under Article 30 (2) ... is not the day it ends but the day it is first effected.”**

40. In the instant Application, it is noted that the copyright in question started on or before 9th July 2011, which was marked by the issuance of a certificate to the Applicant as the 'Composer of National Anthem, South Sudan'. This date signifies the official recognition and attribution of the copyright to the Applicant.

41. It is the Court's view, therefore, that any utilization of the National Anthem post 9th July 2011 is considered a direct utilization of the copyright in question. The Court's focus, however, is not whether such use constitutes an infraction or otherwise, though this seems to be the contention brought forth by the Applicant.
42. The Court recognizes that the first performance of the National Anthem of the Republic of Sudan was on 9th July 2011. One would assume this date to be the date of reckoning for the Applicant to realize that, in the absence of a contract committing a future date for payment, no financial recognition was forthcoming.
43. Further, it is the Applicant's averment, in his attempt to explain the subject matter of the Reference at paragraph 9, that:

“The applicant was expecting that the Government of the Republic of South Sudan would compensate him by way of payment of any amount as consideration for the melody of the National Anthem and cover all the expenses directly and indirectly obtained or as appreciation for the production of the melody of the National Anthem. This never happened and it was coming to 11 years with no reaction from the government of the Republic of South Sudan.”

44. By the above quote, the Applicant was aware or had reasons to know that the Government was not going to compensate him, having failed to do so for the past 11 years.
45. At paragraphs 12 and 13 of the same document, the Applicant narrates:

“12. The claimant contacted several government officials including Elia Lomuro, the current Minister of Cabinet Affairs of The Republic of South Sudan, Nadia Arop the former minister of Culture, office of the First Vice President Taban Deng Gai, and Security advisor at the office of the President of the Republic of South Sudan, Honorable Tutkew Gatluak Manimch through Emanuel Lowila, former Minister in the office of the President, so that he gets paid for composing the melody of the National Anthem.”

“13. Despite all these networking with intent to meet the President of the Republic of South Sudan, the Applicant was ignored by the officials of the Republic of South Sudan.”

46. From the above, the Court has no reasons to doubt that the Applicant knocked at its doors out of frustration, having awaited for a long period to be compensated and having experienced the indifference on the part of the Respondent government.

47. Unfortunately, he came to Court late. He has not even attempted to prove to the Court that there was a decision, immediately before he decided to come to Court, which would impute lack of knowledge on his part.

48. As was stated in **Attorney General of the Republic of Uganda & Another vs. Omar Awadh and 6 Others** (supra), the Treaty does not grant the Court any authority to extend, condone, waive, or alter the prescribed timeframe for filing, even in cases of ongoing violations.

G. CONCLUSION

49. In view of the foregoing, the Court finds that the Reference underlying this Application is time-barred, in the meaning of Article 30(2) of the Treaty;


50. The Court, therefore, lacks jurisdiction, *ratione temporis*, to entertain the Reference, and, by extension, this Application;


51. In the result, the preliminary objection by the Respondent is sustained. The Application, as well as **Reference No. 42 of 2021**, are dismissed;


52. In the exercise of our discretion, we direct that each party bears its own costs;


53. It is so ordered.

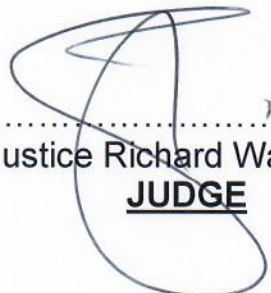
Dated, signed and delivered at Arusha this 27th day of November 2023.



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Hon. Justice Yohane B. Masara
PRINCIPAL JUDGE


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Hon. Justice Dr Charles O. Nyawello
DEPUTY PRINCIPAL JUDGE


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Hon. Justice Charles A. Nyachae
JUDGE


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Hon. Justice Richard Muhumuza
JUDGE


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Hon. Justice Richard Wabwire Wejuli
JUDGE


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Hon. Justice Dr Léonard Gacuko
JUDGE