



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



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

**REFERENCE NO. 7 OF 2019**

**RUZIZI S.A. .... APPLICANT**

**VERSUS**

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

**28<sup>th</sup> NOVEMBER 2023**

## JUDGEMENT OF THE COURT

### A. INTRODUCTION

1. This Reference was made under Articles 6(d), 7, 23, 27 and 30(2) of the Treaty for the Establishment of the East African Community ('the Treaty') and Rules 4, 19, 25 and 49 of the East African Court of Justice Rules of the Court, 2019 ('the Rules') on 31<sup>st</sup> of March 2019. With leave of the Court, the Applicant lodged an Amended Statement of Reference on 29<sup>th</sup> November 2021, following change of Counsel.
2. The Reference seeks to challenge the decision RSTBA 0248 dated 25<sup>th</sup> January 2019 made by the Special Court on Land and Other Assets ('the Special Court') which returned to the State of Burundi all properties of the Applicant without compensation.
3. The Amended Reference is supported by the Affidavit of Muheto Serge, the Managing Director of the Applicant company. The Applicant also lodged an Affidavit deponed by the same person dated 1<sup>st</sup> July 2022 and an Affidavit in Rejoinder dated 31<sup>st</sup> August 2022.
4. The Applicant presented itself as a 'natural person' (we believe they meant a 'legal person') a resident of Bujumbura, in the Republic of Burundi. For the purposes of this Reference, the Applicant's address of service is *c/o Mr Jean Bosco Ngendakubwayo, 28 Avenue de l'industrie, Building Sella, P.O. Box 33, Bujumbura and M/s Kampala Associated Advocates, Plot 41 Nakasero Road, KAA House, P.O Box 9566, Kampala.*
5. The Respondent is the Attorney General of the Republic of Burundi. He is sued on behalf of the Government of the Republic of Burundi in the capacity of the principal legal advisor of the Government. For the

purposes of this Reference, the Respondent's address of service is *Ministry of Justice and Civic Protection, Avenue du Gouvernement No. 30, P.O Box 1880, Bujumbura.*

## **B. REPRESENTATION**

6. At the trial, the Applicant was represented by Mr Jean Bosco Ngendakubwayo, Mr Jet Tumwebaze and Ms Mercy Chemutai, learned Advocates. The Respondent was represented by Mr Diomedé Vyizigiro and Mr Pacifique Barankitse, learned Director and Senior State Attorney, respectively, from the Attorney General's Office, Republic of Burundi.

## **C. BACKGROUND**

7. The feud antecedent to this Reference arises from a dispute over a piece of land allegedly lawfully owned by the Applicant. For proper understanding of the same, we find it apt to reproduce the history thereof as garnered from the Statement of Reference.
8. The Applicant (RUZIZI company) was incorporated on 15<sup>th</sup> February 1928 as an Agro-Industrial Company in the then Rwanda-Urundi territory. After its incorporation, the Applicant acquired a number of properties which it developed for agricultural purposes. The suit land is one of the properties and constitutes a total area of 718 hectares, 50 ares and 74 ca ("the suit property").
9. The first title was issued to the Applicant in 1947 but was allegedly lost. In January 1962, two certificates were issued to the company in respect of the property comprised in Vol. U Folio 22 for 200 hectares 11 ares and Vol. U folio 23 for 59 hectares 89 ares. Further, in

January 1962 a transfer of land was made to RUZIZI Agricultural and Industrial Company for the above properties.

10. In 1974, a company by the name of Societe Financiere pour l'Etranger ("the Kivu company") invited SOBUMINE company to join its shareholding. Later, in 1980, the Government of the State of Burundi joined the shareholding of SOBUMINE with a 49% shareholding. In 1981, RUZIZI merged with SOBUMINE. By this merger, the Government of Burundi acquired 7% shares in the Applicant company.
11. After several mergers, in April 1982, RUZIZI Company was created vide No. 15.282. In 1992, Mr Pierre Kasubutare became the majority shareholder of Ruzizi company with 93% shares while 7% remained in the hands of the Government of Burundi.
12. On 12<sup>th</sup> January 1996, shares held by the State of Burundi were by a deed of sale transferred to Mr Pierre Kasubutare, who became the sole owner of the Applicant. After the death of Mr Kasubutare in the year 2000, his shares were transferred to his estate.
13. That, in May 2007 a certificate of title was issued to Societe Financier pour l'Etranger S.F.E in respect of land Vol. ECXCVII Folio 105, Kivoga for 458 Hectares 50 ares 74 ca.
14. However, before that, in 2002, the Burundian Army raided and cut the Applicant's Coffee plantation. Following that, the Applicant demanded some compensation. After an investigation made by the General Inspection (sic) of the State, the Applicant's right of ownership to the said land was proved and the report recommended that the Applicant be compensated for the loss. That, also the size of

the Applicant's land was determined to be 718 hectares 50 ares 74 ca.

15. Incidentally, in 2007, complaints were lodged by the 'population' of Rubirizi and Tenga in Mutimbuzi Community. After the government report, which confirmed the Applicant's right over the land, and after the population lost before the National Commission for Land and other Properties, the population made an appeal to the President of Burundi. In another twist of events, the National Commission, after dismissing the claims of the population in CNTB 1<sup>st</sup> Decision No. 407/09, it decided that the Applicant had titles over the land. It undertook to set boundaries on the land, which it failed to do.
16. On 25<sup>th</sup> July 2011, the President, pursuant to the appeal made by the population, asked the Commission to implement its decision. That in the course of implementing the decision, the Commission reduced the land previously held by the Applicant by 260 hectares.
17. That, after the establishment of the Special Court, the dispute over the land was resurrected and was registered on 15<sup>th</sup> December 2014 under RSTB 0063. That the Special Court summoned the Government as a party thereof.
18. On 28<sup>th</sup> May 2018, the Special Court rendered its decision and dismissed the claims by the Applicant and the 431 families. The whole land was given to the State of Burundi.
19. The Applicant and the 431 families decided to appeal against the decision to the Appellate Chamber of the Special Court under RSTBA 0248. The Appeal Chamber rendered its decision on 25<sup>th</sup> January 2019 whereby it dismissed all claims made by the Applicant and the

431 families of Kivoga. This decision was communicated to the Applicant on 18<sup>th</sup> February 2019.

20. The Applicant, therefore, decided to prefer this Reference before this Court on 18<sup>th</sup> April 2019.

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

21. The Applicant's case is set out in the Amended Statement of Reference, in the Reply to the Respondent's Response to the Amended Reference, in the two Affidavits in support of the Amended Reference dated 29<sup>th</sup> November 2021 and 1<sup>st</sup> July 2022 respectively, and in the Affidavit in Rejoinder dated 31<sup>st</sup> August 2022. The Applicant also filed written submissions in support of its case.

22. It is the Applicant's case that it was incorporated in 1928 and continues to exist in Burundi and that, until January 1996, the Government of Burundi was one of its shareholders.

23. Further, that over the years, the Applicant acquired a number of properties which it developed by planting various crops such as coffee and palm trees in several acreages of land; it conducted agricultural and industrial businesses on the said properties and disposed some. That it was also changing ownership over the years.

24. It is also the Applicant's case that in the year 2006, attempts were commenced by high profile individuals to dispossess it of its acquired land; including inciting the surrounding communities to claim that the suit land belonged to them. This led to some disputes between the year 2007 and 2014 before the National Commission for Land and other Assets ("the Commission").

25. That the Commission rendered two decisions, one in favour of the Applicant and another in favour of the Respondent. The Applicant unsuccessfully appealed to the first Chamber of the Special Court. Its decision was rendered on 28<sup>th</sup> May 2018. The Applicant further appealed to the Appellate Chamber of the Special Court.

26. That on 25<sup>th</sup> January 2019, the Special Court dismissed its appeal and that of the Kivoga population. Its land measuring 718 hectares and all the developments therein were confiscated and given to the State of Burundi without compensation to the Applicant.

27. It is therefore the Applicant's prayers to this Court that it restores the dispossessed land to it or direct the Respondent to adequately compensate it at the market rate. Specifically, the Applicant urges the Court to give the following reliefs to the Applicant (reproduced verbatim):

**a) An order nullifying the decision taken by the Government of Burundi RSTBA 0248 rendered by the Special Court of Land and other Property of Burundi dated January 25<sup>th</sup>, 2019;**

**b) A declaration that the RUZIZI Company is a legally recognised body with legal existence and undetermined statutory term;**

**c) A declaration that the different titles of the properties of the Applicant Company are authentic and valid and therefore the Applicant company has legal and unchallenged interest in the suit property;**

- d) A declaration that the Applicant Company is the registered and legal owner of all the land comprised in an area of 718HA 50A 74CA, the suit property and that all these lands as described are returned to the Applicant and in the alternative, without prejudice to this order, the Applicant Company is compensated for the full value of the land;**
- e) A declaration that the decision of the organs of the State of Burundi are in contradiction of the legal provisions of the national and international laws of the governing the State;**
- f) A declaration that the actions of the organs of the State contravene Articles of the Civil Code Book II of the Land Code and therefore amount to a contravention and violation of the provisions of Articles 6(d), 7(2) of the East African Treaty;**
- g) A declaration that the actions of the organs of the Respondent are in violation of the rules of natural justice and the principles that enshrine the East African Treaty of the East African Community and therefore ought to be nullified;**
- h) A declaration that the State of Burundi must compensate RUZIZI for all the damage resulting from the deprivation of its land, prejudice which will be specified later and provisionally after to the effective expropriation of the property by the state;**



- i) An award of special damages in the form of loss of property and earnings from the crop produces and sales amounting as further detailed below:**
- i. USD 186,448,579 (United States Dollars One Hundred Eighty Six Million Four Hundred Forty Eight Thousand Five Hundred Seventy Nine Cents Only) for the value of the Asset;**
  - ii. USD 1,431,827 (United States Dollars One Million Four Hundred Thirty One Thousand Eight Hundred Twenty Seven Cents) for loss of revenue in production of Oil Palm and 286,365 for loss of earnings;**
  - iii. USD 742,333 (United States Dollars Seven Hundred Forty Two Thousand Three Hundred Thirty Three Only) for loss of rental proceeds in the rented area of 458ha 50a 74ca;**
  - iv. USD 59,345 (United States Dollars Fifty Nine Thousand Three Hundred Forty Five Only) for loss of earnings for in exploitation of the land for maize;**
  - v. USD 29,714 (United States Dollars Twenty Nine Thousand Seven Hundred Fourteen Cents Only) for loss of earnings for in exploitation of the land for sorghum plantation;**
  - vi. USD 30,240 (United States Dollars Thirty Thousand Two Hundred and Forty Only) for loss of earnings for in exploitation of the land for sweet potato plantation;**

- vii. **USD 9,554 (United States Dollars Nine Thousand Five Hundred Fifty Four Only) for loss of earnings for in exploitation of the land for Robusta coffee;**
- viii. **USD 380,571 (United States Dollars Three Hundred Eighty Thousand Five Hundred Seventy One Only) for loss of earnings for in exploitation of land for Patchouli; and**
- ix. **USD 50,000 (United States Dollars Fifty Thousand Only) for legal cost incurred in pursuing this matter in different state organs and courts;**
- j) **Interest on the sums awarded above from the date of removal of the Applicant from its land until payment in full;**
- k) **General damages;**
- l) **Any other reliefs and/or remedies that his Honourable Court deems fit; and**
- m) **An order that the Respondent shall pay all the costs of this Reference.**

#### **E. THE RESPONDENT'S CASE**

28. The Respondent's case is set out in the Response to the Amended Reference, in the Affidavit in Support of the Respondent's Response to the Amended Statement of Reference deposed by Nkuriyngoma Pascal, dated 23<sup>rd</sup> December 2021 and in the Affidavit in Reply deposed by Hajayandi Gervais on 27<sup>th</sup> July 2022. The Respondent denies the allegations and claims by the Applicant on the following grounds:

- a) Article 3 of the RUZIZI's Statutes signed on 9<sup>th</sup> December 1963 specifies clearly that: "the Company is formed for a period of 30 years. It may be extended or dissolved at any time, by decision of the shareholders...";
- b) After the expiry of the period of 30 years the extension of RUZIZI Company was subjected to the approval of the General Assembly of the shareholders;
- c) Since the General Assembly has not been held, the existence of RUZIZI SA as a legal person end (*sic*) at the expiry of the period of 30 years;
- d) That the Applicant has no *locus standi* to sue the Government of Burundi as it does not exist legally since 6<sup>th</sup> January, 1994; and
- e) That the Court does not have jurisdiction to entertain a Reference initiated by RUZIZI SA which is neither a legal person or a natural person.

29. It is the Respondent's further contention that the decision of the Special Court that RUZIZI Company ceased to exist on January 6, 1994 was sound and is in no way unlawful and does not infringe the Treaty as alleged.

30. On the basis of that denial, grounds and contention, the Respondent urges the Court to dismiss the Reference with costs.

#### **F. ISSUES FOR DETERMINATION**

31. At the Scheduling Conference held on 1<sup>st</sup> day of June 2022, the following issues for determination were agreed upon; namely:

- a) Whether the Applicant has *locus standi* to sue the Republic of Burundi before this Honourable Court;**
- b) Whether the actions of the Respondent and its agents in dispossessing the Applicant of its land and property without due compensation are in violation of Articles 6(d) and 7(2) of the Treaty, national laws of the Republic of Burundi, international laws, norms and instruments;**
- c) Whether the Applicant Company is the rightful owner of the land comprised in an area of 718ha 50a 74ca at Kivoga; and**
- d) Whether parties are entitled to the remedies sought.**

#### **G. COURT'S DETERMINATION OF THE ISSUES**

32. Before we delve into the issues highlighted above, we deem it appropriate to point out that, although it had been agreed at the Scheduling Conference that Submissions Highlights will be made on the written submissions, the same was not conducted, primarily due to failure by Counsel to abide with the timelines agreed.

33. At the Scheduling Conference the order of hearing was made as follows:

- a. Supplementary Affidavits by the Applicant to be filed by 1<sup>st</sup> July 2022;**
- b. Affidavits in Reply by 1<sup>st</sup> August 2022;**
- c. Any affidavits in rejoinder by 8<sup>th</sup> August 2022;**
- d. Written submissions by the Applicant to be filed by 22<sup>nd</sup> August 2022;**
- e. Reply submissions by the Respondent by 22<sup>nd</sup> September 2022;**

- f. Any submissions in rejoinder by the Applicant by 6<sup>th</sup> October 2022; and**
- g. Dates on the highlights of submissions to be notified.**

34. When the Reference was fixed for purposes of submissions highlights on 18<sup>th</sup> November 2022, it became apparent that the parties had not complied with the timelines. As of that date, the Respondent had not filed a Reply to the Applicant's submissions. Mr Barankitse, Counsel for the Respondent, submitted that they were served with the Applicant's submissions on 4<sup>th</sup> November 2022 instead of 22<sup>nd</sup> August 2022. They had also filed an application to have the written submissions by the Applicant expunged from the Court's records.

35. Mr Tumwebaze, on his part, condemned the Respondent for failure to serve them with the Reply Affidavit on time. That, the same was served on his colleague on 9<sup>th</sup> August and on him on 16<sup>th</sup> August 2022 instead of 1<sup>st</sup> August 2022. He therefore urged the Court to exercise its discretion and condone the delays exhibited by both parties.

36. The Court indicated to Counsel its dissatisfaction on the dismal ways they were dealing with the orders of the Court. For the interest of justice, the Court deemed it appropriate to dismiss the Application filed by the Respondent and allowed the Respondent to file their Reply to the written submissions within three (3) weeks and rejoinder submissions by the Applicant within the same timeframe. We, in the circumstances, decided to proceed with the delivery of judgment without the option of the submissions highlights earlier contemplated.

37. The Court made that determination on the basis of Rule 63(7) of the Rules which does not make highlights of written legal arguments mandatory. It states as follows:

**“In any case where there is no need for evidence and all parties opt to present legal arguments in writing, the Court shall prescribe the time within which the parties shall file their respective written legal arguments and may fix the date on which the parties shall appear before a bench of three or five judges to deal with any other matter the Court thinks necessary.”** (Emphasis added)

38. Our reading of the above Sub-rule is that, highlighting of submissions by the parties is not a mandatory requirement of the Rules. Once parties have lodged their written arguments, the Court has a discretion to allow them to make oral highlights but it may also proceed to determine the dispute without requiring them to highlight the submissions, as was done in this case.

39. We now proceed to determine the issues framed in the order they were preferred.

**ISSUE NO. 1: Whether the Applicant has *locus standi* to sue the Republic of Burundi before this Honourable Court**

**And**

**Whether the Court has jurisdiction *ratione temporis* to deal with the Reference**

40. Whereas during the Scheduling Conference above stated only one issue of jurisdiction was agreed, during the filing of written submissions, following the directions of the Court dated 18<sup>th</sup> November 2022, one

additional issue was raised. We will first deal with the issue of *locus standi* (*ratione personae*) before dealing with the second jurisdictional issue on time limitation, *ratione temporis*.

**a. Whether the Applicant has *locus standi* to sue the Republic of Burundi before this Honourable Court**

41. The issue whether the Applicant had *locus standi* before the Court arose from the Respondent's Response to the Amended Statement of Reference filed in Court on 23<sup>rd</sup> December 2021. It also featured in the Affidavit in Reply to the Statement of Reference deposed on behalf of the Respondent by Hajayandi Gervais, the Permanent Secretary, Ministry of Justice.
42. Whereas Paragraphs 7, 12 and 14 of the said Response stated that the Applicant ceased to exist as a legal person in 1994, Paragraphs 3 and 6 of the Replying Affidavit states as follows (verbatim):

**“3. THAT Article 4 of the RUZIZI's Statutes signed on 9<sup>th</sup> day of December, 1963 that specifies that ‘the RUZIZI Company is formed for a period of thirty years. It may be extended or dissolved at any time, by decision of the General Assembly of shareholders’ ...**

**6. THAT since the RUZIZI Company ceased to exist as a legal person since 9<sup>th</sup> December 1993, it does not have *locus standi* neither before this Honorable Court nor did it have any before the Special Court on Land and other assets.”**

43. In the written submissions, Counsel for the Respondent referred to Article 33 of the Civil Code Book III of Burundi to the effect that there was nothing in the laws of Burundi that would have extended the life of

the Applicant after the expiry of the 30 years except the General Assembly of its shareholders, which never happened. Thus, that the Applicant did not exist as a “person” at the time of filing the Reference to bring it under the provisions of Article 30(2) of the Treaty.

44. Counsel for the Respondent further stated that whereas the Applicant, in their written submissions, had promised to prove to the Court, that they existed legally, there was no such evidence provided. Counsel, therefore, urged the Court to dismiss the Reference for lack of jurisdiction *ratione personae*.

45. Responding to this assertion, the Applicant disputed the same vehemently. In Paragraph 2(c) of its Reply to the Respondent’s Response to the Amended Reference, the Applicant stated that it had been in existent since 1928 “duly paying taxes and transacting in its shares and property with some transactions involving the Government of the Republic of Burundi being concluded up until 1996”.

46. In submissions, the Applicant’s Counsel, dismissed the claims of lack of *locus standi* raised by the Respondent. Counsel reiterated that the Applicant has existed as a legal person since the date of its incorporation to date.

47. He stated that on 28<sup>th</sup> March 1982 through a Ministerial Order No. 560/63 of March 23, 1982 on the creation of the company, a limited liability company, RUZIZI SARL, was approved. That the said Order extended the life of the Company for another 30 years, to expire in 2012.

48. Further, that Article 13 of Law No. 1 002 of March 6, 1996 on the Code of Private and Public Companies stated that “the duration of the



company is unlimited unless the partners desire to fix a duration for the company”. To him, by this law, all companies in Burundi were transformed into unlimited companies.

49. Counsel also averred that, in 2000, the company filed new statutes stating that it was constituted as a Limited Liability Company. That, the statutes transforming the Company in 1982 and in 2000 resulted from meetings of shareholders.

50. Citing the decision of this Court in **Rugo Farm vs The Attorney General of Burundi, EACJ Reference No. 14 of 2018**, Counsel conferred that the Respondent was precluded from acting legally with the Applicant Company only when it is to the benefit of the Respondent and then accusing it of being a non-existing party when it works to the disadvantage of the Respondent.

51. It was therefore Counsel’s submission that the Applicant exists as a legal person under the laws of Burundi; thus, it has *locus standi* both in the local courts of the Republic of Burundi and before this Court.

52. We have dispassionately considered the contentions made by the Respondent regarding the *locus standi* of the Applicant before this Court and the evidence and submissions both for and against the contention.

53. Indeed, for a person to knock the doors of this Court has to have *locus standi* as enshrined in Article 30(1) of the Treaty. Article 30(1) states as follows:

**“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.”** (Emphasis added)

54. The word “*person*” is defined in Section 1 of the Treaty to mean a *natural or legal person*. In the context of the case at hand, the Applicant claims to be a “person” as it falls in the legal personality.
55. We have endeavoured to comprehend the gist of the Respondent’s objection but are unable to agree with him based on the evidence before us. From the evidence on record, the Applicant did indeed state in its statute that it was to exist for 30 years from 1963 to 1993 unless the shareholders agreed otherwise.
56. From the evidence before us, the tenure of the Company was extended in 1982 for a further 30 years. Before that time expired, the Respondent enacted a law which removed time limits on the tenure of corporate bodies, unless the shareholders deemed it appropriate to do so.
57. By its own conduct, the Respondent continued to transact with the Applicant as a “person” and owned shares in it beyond the year 1993, when it allegedly ceased to exist. Thus, even if the allegations were true, the Respondent would be estopped from raising the issue at this stage.
58. Indeed, as correctly pointed out by Counsel for the Applicant, this Court partly dealt with an issue relating to the Applicant and to the land, the subject of this Reference, in **Rugo Farm vs The Attorney General of Burundi** (supra).

59. We are also aware, from the records availed to us, that the issue of the legal personality featured prominently in the decision of the Respondent, through its agent, the Special Court. It is the ground against which the subject matter of this Reference hinges. We cannot therefore, at this level, portend to uphold the challenge to the *locus standi* of the Applicant without delving into the merits of the Reference.

60. That position was pronounced by this Court in **Mary Ariviza & Another vs Attorney General of Kenya & Another, EACJ Application No. 3 of 2010** where it was cautioned that during the phase when the Court is considering the appropriateness of an interim order, the Court:

**“... must of course refrain from making any determination on the merits of the application or any defence to it. A decision on the merits or demerits of the case must await the substantive consideration of the facts and applicable law after full hearing of the Reference.”**

61. We accordingly overrule the objection and hold that the Applicant has *locus standi* before this Court.

**b. Whether the Court has jurisdiction *ratione temporis* to deal with the Reference**

62. In the written submissions by the Respondent, Counsel, before dealing with the issues for consideration, alerted the Court that the Reference was not filed within the two months' time limitation enshrined under Article 30(2) of the Treaty. That, the Applicant, having been notified of the impugned decision, RSTBA 0248, on 18<sup>th</sup> February 2019, filed the Reference in Court on 18<sup>th</sup> April 2019, which was beyond

the prescribed time. For the Respondent, the two months period expired on 17<sup>th</sup> April 2019.

63. Counsel for the Respondent made reference to Section 63(3) and (4) of the **Laws of the Community (Interpretation) Act, 2004** relating to the reckoning of years and months.

64. Counsel submitted, therefore, that as the Reference was filed out of time, this Court lacks jurisdiction *ratione temporis* to proceed with the determination of the merits of the Reference.

65. The Respondent's Counsel relied on the decisions in **Attorney General of the United Republic of Tanzania vs Antony Calist Komu, EACJ Appeal No. 2 of 2015**; **Attorney General of the United Republic of Tanzania vs African Network for Animal Welfare (ANAW), EACJ Appeal No. 3 of 2011** and **Angella Amudo vs The Secretary General of the East African Community, EACJ Appeal No. 2014**, all of which point to the Court's lack of mandate to deal with matters that it has no jurisdiction.

66. Responding to this issue, Counsel for the Applicant, while confirming that the Applicant was notified of the impugned decision, RSTBA 0248, on 18<sup>th</sup> February 2019, added that, as the Reference was filed on 18<sup>th</sup> April 2019, which was 59 days after the notification, the same was within the prescribed period.

67. In Counsel's view, *"[T]he month of February is an exceptional month as it has 28 days which is two days less than those of the other months in the year. Therefore, the period of 60 days/two months as purposively envisioned under the law lapse on 20<sup>th</sup> April 2019 and not April 17<sup>th</sup> 2019 as prescribed by the Respondent."*

68. Counsel for the Applicant concluded by urging the Court to exercise its inherent powers not to dismiss the Reference as the Applicant was diligent in pursuing its complaints all the time. That it is not true that the Reference was late by a day as contended.
69. Having heard the submissions of Counsel for the parties and considering the pleadings before this Court, it behoves us to determine *a priori* whether we are clothed with jurisdiction *ratione temporis* to consider the merits of the Reference before us. Indeed, if we realise that the matter before us was filed outside the time stipulated in Article 30(2) of the Treaty, we will down our tools and move not a toddler's first step towards considering the merits or otherwise of the allegations contained in the Statement of Reference.
70. Jurisdiction to us is sacrosanct. Without it, we cannot portend to exercise any of our powers under the Treaty. In the case of **Attorney General of the United Republic of Tanzania vs African Network of Animal Welfare** (supra), the Court stated:
- “Jurisdiction is a most, if not the most, fundamental issue that a Court faces in any trial. It is the very foundation upon which the judicial edifice is constructed; from which springs the flow of the judicial process. Without jurisdiction, a Court cannot take even the proverbial first Chinese step in its judicial journey to hear and dispose of the case.”**
71. There is a myriad of decisions by this Court where the Court has categorically stated that it considers determination of the issue of jurisdiction paramount. It is the first and fundamental question that we determine before going into the merit or otherwise of the matter before us. Having decided on jurisdiction *ratione personae*, we are mindful to

also examine our jurisdiction regarding the time frame, commonly referred to as time limitation or jurisdiction *ratione temporis*. Article 30(2) of the Treaty provides:

**“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.”**

(Emphasis added)

72. To satisfy the Court that the Reference was made within time prescribed under Article 30(2) of the Treaty, the Applicant has to state succinctly when the decision or action complained of took place or when it came to his knowledge. The Appellate Division of this Court, while dealing with the issue of computation of time in **The Attorney General of the Republic of Kenya vs Independent Medical Legal Unit, EACJ Appeal No. 1 of 2011**, held that time would start to run ‘two months after the action or decision was first taken or made.’ This position was affirmed in the case of **The Attorney General of the Republic of Uganda & Another vs Omar Awadh & 6 Others, EACJ Appeal No. 2 of 2012** where it was held 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 first effected’.

73. In the latter case, the Court went further to state as follows:

**“The principle of legal certainty requires strict application of the time-limit in Article 30(2) of the Treaty. Furthermore, nowhere does the Treaty provide any power to the Court to extend, to condone, to waive, or to modify the prescribed**

**time limit for any reason (including for ‘continuing violations’).**” (Emphasis added)

74. As stated above, the Applicant, through his Counsel, maintains that the Reference was filed within the prescribed time, the same having been filed 59 days after notification of the impugned decision.

75. It seems to us that Counsel for the Applicant comprehends the time limit stated in Article 30(2) to be 60 days, irrespective of the number of days the relevant months in question have. That comprehension is undoubtedly erroneous.

76. Literally interpreted, were his interpretation to be taken as the correct position, then if the cause of action was to arise on the 1<sup>st</sup> of July, or 1<sup>st</sup> of December, both of which have 31 days and are followed by months with 31 days, then the period within which to approach the Court could be the 29<sup>th</sup> of the following month, 2 days less than the duration of the said months.

77. That interpretation to us is flawed. In the EAC context, when the Treaty or any law of the Community refers to a “month”, that reference relates to the calendar month. This is in accordance with **Laws of the Community (Interpretation) Act, 2004**. Section 63(3) and (4) of the said Act provide as follows:

**“(3) A reference in an enactment to a month is to be construed as a reference to a month as directed by the Gregorian calendar.**

**(4) If a period indicated in an enactment begins on any date other than the day of any of the twelve months of the calendar year it is to be reckoned from the date on which it is to begin to**

the date in the next month numerically corresponding, less one, or if there is no corresponding date, to the last day of that month.

For example, a month beginning on 15<sup>th</sup> January ends on 14<sup>th</sup> February; a month beginning on 31<sup>st</sup> January ends on 28<sup>th</sup> February or (29 February in a leap year).” (Emphasis added)

78. Guided by the above law, when the Applicant was notified of the impugned decision on 18<sup>th</sup> February 2019, the two months within which to file a Reference before this Court expired on 17<sup>th</sup> April 2019. That is, the first month ended on 17<sup>th</sup> March 2019 and the second one ran from 18<sup>th</sup> March to 17<sup>th</sup> April 2019.

79. As correctly pointed out by Counsel for the Applicant, the month of February not being a leap year had only 28 days. If one was to make a numerical count of the number of days to the end of the first month, there were only 27 or 28 days. The next month had 31 days. Making a total of 59 days.

80. However, it does not matter the number of days that a month has. Section 30(2) of the Treaty gives the number of months and not days within those months.

81. We therefore agree with Counsel for the Respondent that the Reference under consideration was filed one day beyond the period specified in the Treaty. That one day strips this Court jurisdiction to hear and determine the Reference on its merits. The Reference is time barred rendering this Court devoid of jurisdiction *ratione materiae*.



82. On the question of costs, Rule 127(1) of this Court's Rules provides that costs shall follow the event unless the Court, for good reason, decides otherwise. This rule was emphatically reinforced in the Case of The Attorney General of the Republic of Burundi vs The Secretary General of the East African Community & Another, EACJ Appeal No. 2 of 2019.

83. However, in the instant Reference, we deem it appropriate to depart from the principle that costs follow the event. In the exercise of our discretion, we believe that this is a good case befitting a direction that each party shall bear its own costs.

#### **H. CONCLUSION**

84. For the foregoing reasons, this Court lacks jurisdiction to determine the Reference on its merits.

85. The Reference is hereby dismissed in its entirety for being time barred.

86. We direct that each party shall bear its own costs.

87. It is so ordered.

Dated, signed and delivered at Arusha this 28<sup>th</sup> day of November  
2023.



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



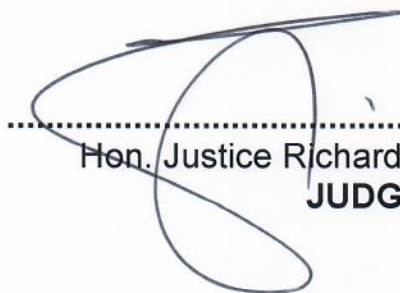
Hon. Justice Dr Charles O. Nyawello  
**DEPUTY PRINCIPAL JUDGE**



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



Hon. Justice Richard Muhumuza  
**JUDGE**



Hon. Justice Richard Wabwire Wejuli  
**JUDGE**