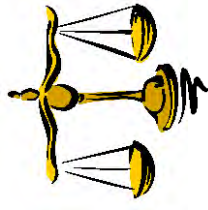


**IN THE EAST AFRICAN COURT OF JUSTICE AT ARUSHA  
FIRST INSTANCE DIVISION**



*(Coram: Monica K. Mugenyi, PJ; Isaac Lenaola, DPJ; & Fakihi A. Jundu, J)*

**REFERENCE NO.4 OF 2014**

**BETWEEN**

**GEORGES RUHARA..... APPLICANT**

**VERSUS**

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

**7<sup>TH</sup> AUGUST, 2015**

## JUDGMENT OF THE COURT

### A. INTRODUCTION

1. This Reference was lodged in this Court on 24<sup>th</sup> March, 2014. However, before it could be heard, the Applicant filed an Amended Reference (“The Reference”) on 17<sup>th</sup> July, 2014.
2. The Reference has been filed under Articles 3(3)(b), 6(d), 7(2), 8(4), 27(1), 30(1) and (2) of the Treaty for the Establishment of the East African Community (“the Treaty”) and Rules 24, 30(2), 48 and 49 of this Court ‘s Rules of Procedure (“the Rules”).
3. The Applicant is a natural person and resident of Bujumbura in the Republic of Burundi, a Partner State of the East African Community. His address for service for the purpose of this Reference is care of Mr. Horace **Ncutiyumuheto**, a member of the Burundi Bar Association and an Advocate before the Courts and Tribunals in the Republic of Burundi. His Address is Avenue Boulevard, Patrice Lumumba Immeuble “Kwa Ngoma”, and P.O. Box 1374, Bujumbura, Burundi.
4. The Respondent is the Attorney General of the Republic of Burundi and he is sued in his capacity as the Principal Legal Advisor of the Government of the Republic of Burundi. His address for service for the purpose of this Reference is care of the Ministry of Justice, the Republic of Burundi, P.O. Box 1870, Bujumbura, Burundi.
5. Initially, the Secretary General of the East African Community was joined as the 2<sup>nd</sup> Respondent by the Applicant. However, he later on withdrew or discontinued the Reference against the said Respondent as reflected in the proceedings of this Court dated 14<sup>th</sup> November, 2014.

## **B. REPRESENTATION**

6. Mr. Horace Ncutiyumuheto, Learned Counsel represented the Applicant. On the other hand, Mr. Nestor Kayobera, Learned Director of Judicial Organization in the Ministry of Justice, Burundi represented the Respondent.

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

7. In his statement of Reference and supporting Affidavit, the Applicant claims to be the owner of a house and its outbuildings situated at Musaga, in the Mayorship of Bujumbura, Burundi. He contends that since July, 2003, the said house and outbuildings have been forcefully occupied by the military troops of the Government of Burundi without paying rent, concluding a rental paying agreement or restoring and returning the said house to him. The house was formerly fully equipped but during the period of occupation by the said military troops it has been destroyed tremendously including the living room furniture, equipment and other movables.

8. The Applicant further contends that the military troops have been in occupation of the house for 128 months from July, 2003 to March, 2014 when he instituted this Reference and are still in occupation of the same. The Applicant therefore claims for:-

- i) BIF 384,000,000 being total rent payments for 128 months at the rate of BIF 3,000,000 per month;**
- ii) BIF 317,700,000 being the total evaluated costs for the destroyed furniture, housing equipment and other movables;**

**iii) BIF 100,000,000 being damages for psychological frustrations and social discredit; and**

**iv) BIF 129,581,069 for restoration of the house, the asphalt and the car park.**

9. The Applicant further contends that on 23<sup>rd</sup> October, 2013, he wrote a letter to the Minister for Defence requesting for the return of the house. The said letter was received on 29<sup>th</sup> October, 2013 but no response was made to the Applicant and under Article 373 of the Burundi Civil Procedure Act No.1/010 of 13/5/2004 keeping silent for more than three months by the Administrative Authority is *“equivalent to a decision of setting aside of a graceful or hierarchical recourse.”*

10. Based on the aforesaid, the Applicant prays for the following declarations and orders from this Court:-

**a) A declaration that the occupation by force by the Respondent of the house and outbuildings of Georges Ruhara as mentioned above is an infringement of Articles 6(d) and 7(2) of the Treaty for the Establishment of the East African Community;**

**b) A declaration that the Applicant has a full right to enjoy immediately the property of his house and outbuildings;**

**c) An order that the Respondent returns to the Applicant his house and outbuildings;**

**d) An order that Georges Ruhara be immediately paid the total amount of BIF 930,581,069.00 by the Respondent, without**

**prejudice to all ulterior rental owed from March, 2014 up to full settlement; (sic)**

**e) Direct that the Respondent shall pay all costs of this Reference.**

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

11. In his Reply and supporting Affidavit, the Respondent contends that the occupation of the Applicant's house and its outbuildings by the military troops was done for security reasons. That there was civil war and ethnic hatred in the Republic of Burundi since independence and especially after the year, 1993 following the assassination of the first democratically elected President. Many rebel movements arose, some of which bombarded Bujumbura from the mountains surrounding it including Musaga, the area where the house of the Applicant is located and the Government military Forces had to deal with the said rebel movements from the said area.

12. The Respondent further contends that the Applicant wrote to the Minister of Defence and former Combatants demanding to be paid huge sums of rental amounts for a period of 128 months without there being a rental agreement. In response, the said Minister on 12<sup>th</sup> February, 2013 wrote to the Applicant explaining that the occupation of the house and its outbuildings by the military troops was for security reasons and that the issue ought to be dealt with in terms of the Arusha Peace and Reconciliation Agreement and the matter should have been referred to the Administrative Court of Burundi or to the Burundi National Commission on Lands and Other Properties. In case the Applicant became aggrieved by the decisions, of these entities, he could still refer the matter to the Special Court on Land and Other Assets.

13. The Respondent contends further that the Reference is time-barred because the Applicant had filed the same eleven (11) years after the occupation of the house by the military troops. This is contrary to Article 30(2) of the Treaty and the Respondent also contends that this Court has no jurisdiction to entertain the Reference in terms of Articles 27(2) and 30(3) of the Treaty.

14. Based on the aforesaid, the Respondent prays for dismissal of the Reference with costs.

#### **E. SCHEDULING CONFERENCE**

15. Pursuant to Rule 53 of the Rules, a Scheduling Conference was held on 14<sup>th</sup> day of November, 2014 whereby all the Parties were present, and agreed that:-

***“There are triable issues based on the provisions of Articles 6(d), 7(2), 27(2), 30(2) and 30(3) of the Treaty”***

16. On the other hand, the following points were framed as points of disagreements or issues for determination by this Court:-

- 1. Whether or not this Court has jurisdiction to entertain and determine the Reference;**
- 2. Whether the Reference is time barred;**
- 3. Whether the acts complained of by the Applicant contravene Articles 6(d) and 7(2) of the Treaty ; and**
- 4. Whether the Applicant is entitled to remedies sought.**

**F. CONSIDERATION OF ISSUE NO.1: WHETHER OR NOT THIS COURT HAS JURISDICTION TO ENTERTAIN AND DETERMINE THE REFERENCE**

17. The Applicant and the Respondent have each submitted on the aforesaid issue as reflected below.

**THE APPLICANT'S SUBMISSION**

18. The Applicant contends that this Court has jurisdiction to entertain and determine this Reference.

19. Citing Article 27(1) of the Treaty on the jurisdiction of this Court to interpret and apply provisions of the Treaty as well as Article 30(1) which authorizes legal and natural persons resident in a Partner State to make a reference to the Court for determination whether any Act, resolution, directive, decision or action of a Partner State or an institution of the Community is unlawful or an infringement of the Treaty, the Applicant contends that the Court is clothed with jurisdiction to entertain and determine this Reference.

20. In light of the said cited provisions, the Applicant further contends that he is only required to plead facts that show that Burundi, as a Partner State has undertaken an action or taken a decision which is unlawful and constitutes an infringement of the provisions of the Treaty. To this end, the Applicant contends that the Government of Burundi illegally and unlawfully occupied his house and its outbuildings without any rental contract nor did it pay rent to him or return the said house to him and these actions have caused him huge financial damages/loss.

21. The Applicant cites Articles 6(d) and 7(2) of the Treaty to the effect that the Government of Burundi is required to adhere to the principles of good

governance and the rule of law and that under Article 23(1) of the Treaty, the Court, as a judicial body, is required to ensure adherence to law in its role of interpretation and application of the Treaty. He contends that in the case at hand, the Government of Burundi has not adhered to Articles 6(d) and 7(2) of the Treaty, hence, this Court has jurisdiction under Article 23(1) of the Treaty to entertain and determine this Reference.

### **THE RESPONDENT'S SUBMISSION**

22. The Respondent contends that this Court does not have jurisdiction to entertain and determine this Reference except on matters relating to interpretation and application of the provisions of the Treaty under Articles 27(2) and 30(3).
23. He further contends that this Court in various past decisions has extensively elaborated on the fact that it is clothed with jurisdiction to interpret and apply the provisions of the Treaty including Articles 6(d) and 7(2) of the same (citing **Attorney General of the Republic of Rwanda vs. Plaxeda Rugumba, EACJ Appeal No. 1 of 2012 and James Katabazi & 21 Others vs. The Secretary General of the EAC & The Attorney General of the Republic of Uganda, EACJ Ref. No. 1 of 2007**).
24. Based on the aforesaid, the Respondent further contends that this Court is clothed with jurisdiction to entertain and determine prayers (a) and (e) only in the Reference but does not have jurisdiction to entertain prayers (b), (c ) and (d) therein as provided for under Articles 23 and 27 read together with Article 30 of the Treaty(citing: **Hilaire Ndayizamba vs. The Attorney General of Burundi and the Secretary General of the East African Community, EACJ Ref. No.3 of 2012; and Professor Nyamoya**



**Francois vs. the Attorney General of Burundi and the Secretary General of the East African Community, EACJ Ref. No. 8 of 2011).**

**DECISION OF THE COURT ON ISSUE NO.1**

25. We have carefully considered the rival arguments of both Parties on Issue No.1 above and we determine it as hereunder:

26. First, the issue of jurisdiction in this Reference, as argued by the Applicant and not disputed by the Respondent, in our own considered view, starts with an appreciation of Article 30(1) of the Treaty. It is the one that has mandated the Applicant as a natural person and resident of Bujumbura in Burundi, a Partner State of the East African Community, to access to this Court. The said provision of the Treaty provides 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 the Treaty.”**

27. Secondly, the Applicant has asserted and the Responded has conceded, that, this Court under Articles 23(1) and 27(1) of the Treaty is vested with jurisdiction on interpretation and application of the provisions of the Treaty as well as compliance with the same. We subscribe to the said view and since the Applicant asserts that there *“is an infringement of Articles 6(d) and 7(2) of the Treaty ... ”* we hold that this Court has jurisdiction under Articles 23(1) and 27(1) read together with Article 30(1)

to interpret and apply the said provisions. This Court in various past decisions has already asserted itself as regards its jurisdiction, mandate and interpretation of the provisions of the Treaty (See: **Hon. Sitenda Sebalu vs. Secretary General of the EAC & 3 Others** EACJ Ref. No.1 of 2010; and **Samuel Mukira Mohochi vs. AG of Uganda**, EACJ Ref. No.5 of 2011)

28. Thirdly, the Respondent, however, contends that the jurisdiction of this Court under the aforesaid provisions of the Treaty in this Reference is only applicable to prayers (a) and (e) but not prayers (b), (c) and (d) thereof. The argument of the Respondent in that regard is that prayers (b), (c) and (d) in the Reference fall outside this Court's jurisdiction as provided for under Articles 23 and 27 read together with Article 30 of the Treaty. He has cited the decisions of this Court in **Prof. Nyamoya Francois** (*supra*) and **Hilaire Ndayizamba** (*supra*) in support of his assertion. As regards prayers (a) and (e), the Respondent maintains that although the Court has jurisdiction over them he prayed that the same be dismissed as being time-barred. The Applicant did not respond to the aforesaid contentions of the Respondent.

29. In our considered view, we need to glance at and reproduce the prayers in the Reference to consider the Respondent's argument as advanced above. The prayers read as follows:-

- a) A declaration that the occupation by force by the Respondent of the house and outbuildings of Georges Ruhara as mentioned above is an infringement of Articles 6(d) and 7(2) of the Treaty for the Establishment of the East African Community;**

- b) A declaration that the Applicant has a full right to enjoy immediately the property of his house and outbuildings;
- c) An order that the Respondent returns to the Applicant his house and outbuildings,
- d) An order that Georges Ruhara be immediately paid the total amount of BIF 930,581,069.00 by the Respondent, without prejudice to all ulterior rental owed from March, 2014 up to full settlement; and
- e) Direct that the Respondent shall pay all costs of this Reference.

30. In addressing the Respondent's contentions in the context of the above prayers, it is not the first time that this Court is faced with a contention from a respondent that the Court has jurisdiction in some of the prayers listed in a reference and that it does not have jurisdiction in others listed therein. In Hilaire Ndayizamba (*supra*), for example, this Court considered such a contention and held thus:-

**"... We are of the decided opinion and in agreement with the Respondents, that this Court has jurisdiction to entertain prayers (c) (b) and (e) of the Reference and that it is not clothed with the jurisdiction to grant prayers (c) and (d) since the latter clearly falls outside the Court's jurisdiction as provided for by Articles 23, 27 as read together with Article 30 of the Treaty."**

31. In Prof. Nyamoya Francois (*supra*), this Court considered a similar contention and held as follows:-

**“Without belabouring the point we hold that this Court has jurisdiction to entertain the Reference in so far as prayers (a), (b) and (e) of the Reference are concerned. As regards to prayers (c) and (d), we have no jurisdiction to make such orders and we decline the invitation to perform the duties properly conferred on the National Courts of Burundi.”**

32. In the present Reference, we have carefully considered the contention of the Respondent and carefully examined the provisions of Articles 23(1), 27(1) read together with Article 30(1) of the Treaty and we are in full agreement with the submission of the Respondent that this Court has jurisdiction to entertain and determine prayers (a) and (e) in the Reference but does not have jurisdiction to entertain prayers (b), (c) and (d) above because the same fall outside Articles 23, 27 and 30 of the Treaty. We so hold.

33. Fourthly, as regards the further contention of the Respondent that the Court should dismiss prayers (a) and (e) as being time-barred, we shall consider the same when considering Issue No.2 below.

**G. CONSIDERATION OF ISSUE NO. 2: WHETHER THE REFERENCE IS TIME BARRED**

34. The Applicant and the Respondent each submitted on the aforesaid issue as below reflected.

**THE APPLICANT’S SUBMISSION**

35. The Applicant contends that he was barred, prohibited and prevented by the military troops of Burundi from visiting his house and its outbuildings or going inside therein since the same were occupied by the said military

troops and so he did not know the actual status of the said property and could not therefore place any complaint before this Court earlier. Further, that having been authorized to visit and inspect the said house, he wrote a claim letter to the Minister for Defence which was not responded to.

36. The Applicant contends further that under Article 373 of the Civil Procedure Act No.1/010 of 13/5/2004 of Burundi, once a period of more than three (3) months elapses without a response from an Administrative Authority, it is presumed to be a decision of refusal or setting aside hence the silence of the Minister for Defence is so presumed. The Applicant further contends that the Respondent did not prove at which time the Applicant was authorized to visit the house and to inspect the status of the same.

37. The Applicant also contends that given the circumstances of this matter, as has been explained above, he should not be penalized for delay to file this Reference before this Court and that in the case of **The Attorney General of the Republic of Rwanda vs. Plaxeda Rugumba**, EACJ Appeal No. of 2012, the Appellate Division of this Court rejected an objection on time limit because the respondent therein had failed to discharge the burden of proving existence of knowledge of the critical date on the part of the applicant in that case.

38. The Applicant, based on the aforesaid, contends that the Reference is therefore not time-barred.

#### **THE RESPONDENT'S SUBMISSION**

39. The Respondent contends that the Reference is time-barred in terms of Article 30 (2) of the Treaty, because it has been instituted before this

Court 11 years after occupation of the Applicant's house and outbuildings by the military troops since July, 2003 which is a period of more than the two months required under the said provision of the Treaty. The Respondent avers that this is evident from the statement of the Applicant in the Reference as well as his Affidavit in support of the same.

40. The Respondent further avers that from the Applicant's statement and his supporting Affidavit, he complained that the military troops have occupied his house since July, 2003 and they have been there for 128 months upto 24<sup>th</sup> March, 2014, the date he filed this Reference and that for such occupation of the house, the Applicant is claiming a rental amount of BIF 384,000,000. The Respondent in addition contends that considering the facts stated and deponed by the Applicant himself in his pleading and Affidavit filed, it is obvious that the Reference was filed 11 years after the occupation of the house by the military troops hence, the same is time-barred without any possibility of time extension under Article 30(2) of the Treaty (citing: **Attorney General of the Republic of Uganda, the Attorney General of the Republic of Kenya vs. Omar Awadh and 6 Others, EACJ Appeal No.2 of 2012; Independent Medical Legal Unit vs. Attorney General of the Republic of Kenya EACJ Ref. No. 3 of 2010; Hilaire Ndayizamba (suprar) and Professor Nyamoya Francois (supra)**).

41. The Respondent further contends that in **Prof. Nyamoya Francois'** case (*supra*), the Court having dismissed the Reference because of being time-barred, it also ruled that:-

**"In light of the same above, we refrain from entertaining the remaining issues for the one obvious and simple reason that the**

**Reference is no longer alive and any attempt at determining those issues will be a mere academic exercise.”**

42. He therefore, urged the Court to hold that the Reference is time-barred and thereafter to refrain from entertaining the remaining issues as the Reference would no longer be alive.

**DECISION ON ISSUE NO.2 ABOVE**

43. We have carefully considered the rival submissions or arguments of both Parties. We have given due consideration to the Applicant’s contention that his delay to file this Reference was on the ground that he was barred, prevented and prohibited from visiting and getting inside the house and its outbuildings by the military troops which had occupied the same since July, 2003. Alternatively, we have also considered the Applicant’s arguments on the alleged silence of the Minister for Defence following the Applicant’s letter dated 23<sup>rd</sup> October, 2013, which allegedly in terms of Article 373 of the Civil Procedure Act No.1/010 of 13/5/2004 of Burundi is taken as a refusal or setting aside of the action taken.

44. In our considered view, the Applicant’s arguments are devoid of merits in face of the Respondent’s arguments which we agree with, We say so because in terms of Article 30(2) of the Treaty, the Reference is time-barred having been filed beyond the period of two months provided therein. As argued and demonstrated by Mr Kayobera, Learned Counsel for the Respondent, it is clear from the statement of the Reference and the Affidavit of the Applicant that the occupation of the house and outbuildings by the military troops commenced in July, 2003 and the

Reference was filed on 24<sup>th</sup> March, 2014, a period of 11 years after the said occupation.

45. In our considered view, a period of 11 years as argued by the Respondent is beyond and way above the two months period provided for under Article 30(2) of the Treaty to institute a reference before this Court from the time the matter complained of commenced, that is the occupation of the Applicant's house and its outbuildings. On the said premise, the Applicant's contention that he was prohibited, prevented and barred by the military troops to visit and inspect the said house and that he could not therefore have filed a complaint before this Court, has no merit as it does not circumvent the issue of time limit under Article 30(2) of the Treaty. It is also his argument that the issue in contention is the failure or refusal of the Minister of Defence to return the house to the Applicant as per Article 373 of the Civil Procedure Act 01/010 of 13/5/2004 of Burundi. That argument cannot be sustained because the law that governs the issue of time limit in this matter is the Treaty and not the Civil Procedure Act No. 1/010 of 13/5/2004 of Burundi, hence it is still Article 30(2) of the Treaty which is applicable to a determination of the issue of time limit under the Treaty.

46. In conclusion, on Issue no.2, we uphold the Respondent's contention that the Reference is time-barred because it did not comply with the strict provisions of Article 30(2) of the Treaty. This finding takes care of the Respondent's prayer to this Court to dismiss the Applicant's prayers (a) and (e) in the Reference. Having said so, and as held by this Court in **Prof. Nyamoya Francois** (supra) , we refrain from entertaining the remaining issues for one obvious and simple reason that the Reference is no longer



alive and any attempt at determining those remaining issues will be a mere academic exercise.

## **H. DISPOSITION**

47. Having found that the Reference is time-barred and having declined the invitation to address its merits or otherwise, it follows that the final orders to be made are that the Reference herein is hereby struck out.

48. We now come to the issue of costs. Costs are usually at the discretion of the Court. We have taken note of the circumstances in which the Applicant has been subjected to in respect of his house and its outbuildings such that it may not be fair and just to subject him to costs in this Reference. In exercise of our discretion, we order and direct that each Party should bear his or its own costs.

49. It is so ordered.

**Delivered, Dated and Signed this 7<sup>th</sup> Day August, 2015 at Arusha.**

.....  
**MONICA K. MUGENYI**  
**PRINCIPAL JUDGE**

.....  
**ISAAC LENAOLA**  
**DEPUTY PRINCIPAL JUDGE**

.....  
**FAKIHI A. JUNDU**  
**JUDGE**