



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



(Coram: Monica Mugenyi, PJ; Isaac Lenaola, DPJ; Faustin Ntezilyayo, J;
Fakihi A. Jundu, J & Audace Ngiye, J))

REFERENCE No.10 OF 2014

CHRISTOPHE MPOZAYO APPLICANT

VERSUS

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

28TH SEPTEMBER 2016

RULING OF THE COURT

Introduction

1. Dr. Christophe Mpozayo, a Rwandan citizen and then employee of the East African Community (hereinafter referred to as 'the Applicant'), was between 8th November 2013 and 2nd April 2014 arrested and detained in Gikondo, Rwanda on account of his allegedly illegal possession of ammunition (a grenade), defamation and conspiracy against the Government of the Republic of Rwanda. Vide a preliminary Decision No. 394/13/TB/KCY, the Applicant was subsequently discharged of the latter offence by the Primary Court of Kacyiru but the charges of illegal possession of a grenade and criminal defamation were sustained, and orders were made for his provisional detention. In December 2013, vide RP 1185/13/TB/KCY, the Applicant unsuccessfully sued the Government of the Republic of Rwanda (hereinafter referred to as 'the Respondent') for wrongful detention. An Appeal from that decision that was lodged in January 2014 was similarly unsuccessful.

2. On 31st March 2014, the Kacyiru Court acquitted the Applicant of the charges of illegal possession of a grenade and criminal defamation, quashed the decision for his provisional detention and ordered his immediate release. He was released on 2nd April 2014 but promptly re-arrested and detained at Remera Police Station for a new offence of inciting insurrection amongst the population, which offence was allegedly premised on the same material that had sought to be used as evidence for the criminal defamation charge. On 16th April 2014, the Intermediate Court of Nyarugenge ordered for the Applicant's provisional detention at the Central Prison of Nyarugenge. His Appeal against the said order was unsuccessful whereupon the

Applicant lodged the present Reference on 7th July 2014, citing the violation of Articles 6(d) and 27(1) of the Treaty for the Establishment of the East African Community (EAC).

3. In this Reference the Applicant specifically takes issue with his provisional detention after his re-arrest of 2nd April 2014, and contends that the last decision upholding the said detention was taken on 6th May 2014. He does also take issue with his allegedly unjust imprisonment for the period 8th November 2013 to 2nd April 2014. Having been acquitted of the charges against him on 31st March 2014, it is the Applicant's contention that the last decision in that matter was a document dated 6th June 2014 that certified his acquittal as a final decision given the absence of an Appeal by the Prosecution.

4. On 1st September 2014, the Respondent filed a Notice of Preliminary Objection in this Court and raised preliminary points of law, contending that the Reference was time barred and disclosed no cause of action. On 22nd October 2014, the Applicant filed a Response to the Preliminary Objections. On 1st March 2016, both parties were given directions by the Court on the filing of submissions in respect of the Preliminary Objections raised by the Respondent. Whereas the Respondent did on 30th March 2016 file written submissions in the matter albeit filing the supporting authorities on 25th May 2016, the Applicant filed what he termed 'Applicant Response to the Respondent Reply to the Reference' on 3rd May 2016. The Applicant did also, vide a letter dated 10th May 2016, communicate to the Court his inability to attend the hearing of the Preliminary Objections at the Court's premises in Arusha and requested that they be heard in Kigali, Rwanda or be determined on the basis of his Submissions.

The Court declined that request for reasons that were duly transmitted to the Parties, but agreed to take into account the Applicant's Submissions in the Preliminary Objections.

5. At the hearing of this Reference, the Respondent was represented by Mssrs. Nicholas Ntarugira and George Karemera, while the Applicant was not represented and neither was he present for the reasons stated above.

Respondent's Submissions

6. On the question of limitation of time and with regard to the issue of unjust imprisonment, it was the Respondent's contention that the cause of action arose on 8th November 2013 when the Applicant was arrested and detained, therefore the Reference having been filed on 7th July 2014 was filed beyond the two (2) months 'limitation period prescribed by Article 30(2) of the Treaty. In the same vein, the Respondent argued that the provisional detention complained of commenced on 2nd April 2014 when the Applicant was re-arrested therefore any Reference in respect thereof should have been filed by 2nd June 2014.
7. The Respondent relied upon the Appellate Division decision in **Republic of Kenya vs. Independent Medical Legal Unit EACJ Appeal No. 1 of 2011** to disprove the Applicant's reliance on latter judicial decisions as a basis for his cause of action. In that case, it was held:

"It is clear that the Treaty limits Reference over such matters like these to two months after the action or decision was first taken or made or when the Claimant first

became aware of it. In our view, the Treaty does not grant this court any express or implied jurisdiction to extend time set in the article mentioned above. Equally so, the Court could not rule otherwise on the fact of explicit limitation in article 9(4) to the effect that the Court must act within its powers.”

8. With regard to the question of non-disclosure of a cause of action, in a nutshell it was argued for the Respondent that the fact that the Applicant had been tried and acquitted by a competent court of the charge of illegal possession of ammunition, and later charged and convicted of the offence of inciting insurrection amongst the population was indicative of compliance and not violation of the principles of good governance and the rule of law. The Respondent cited the case of **Alcon International vs. Standard Chartered Bank of Uganda & 2 Others EACJ Ref. No. 6 of 2010** in support of this position.

Applicant's Submissions

9. In a nutshell, it was the Applicant's contention that where a cause of action under Article 30 of the Treaty arose from a chain of events, an Applicant could premise his/ her Reference on the latest event. He argued that the Treaty was silent on the first event being the date of accrual of a cause of action. On the contrary, in his view, Article 30(2) explicitly provided for 'any' of the stipulated events giving rise to a cause of action. He distinguished **Republic of Kenya vs. Independent Medical Legal Unit** (supra), where the violations had stopped at the time of filing of the Reference, from the present matter in which as at the date of filing he was still in what he considered to

be wrongful detention. In support of his argument, the Applicant cited the case of **Omar Awadh & 6 Others vs the Republic of Kenya & 2 Others EACJ Ref. No. 4 of 2011**, which recognised detention as a continuing violation in respect of which time could not be mathematically computed.

10. With specific regard to his claim for compensation, we understood the Applicant to argue that the certification of no appeal dated 6th June 2014 put finality to his acquittal and is, therefore, the event that gave rise to his claim for compensation for arbitrary arrest and detention. On the other hand, in respect of his re-arrest, it was his contention that until the judgment RPA 0305/14/HC/KIG of 6th May 2014, he had hoped that he would be subjected to a fair trial. In his view, pursuant to that judgment he was deprived of a remedy to the provisional detention in issue therefore it was from the date of the judgment that the cause of action in absence of rule of law accrued.
11. The Applicant did further argue that as a detainee under Rwandan law, he had been constrained in terms of access to information and could only file a matter upon receipt of formal communication on the position of his cases from the court. He cited the case of **Republic of Rwanda vs. Plaxeda Rugumba EACJ Appeal No. 1 of 2012** where the EACJ Appellate Division inter alia held that the Respondent could not file any Reference 'unless and until she had knowledge of the detention.' Indeed, according to him his restrained liberties as a detainee affected his ability to file the Reference although he had signed it on 2nd June 2014. For the same reason, he was also unable to comply with Rules 8(1) and 21(5) of EACJ Rules due to detention.

12. On the objection in respect of a cause of action, the Applicant clarified that, having been acquitted of the charges of wrongful possession of ammunition and criminal defamation, his cause of action in the present Reference accrued from his claim for compensation for what he perceived as arbitrary arrest and detention. In his view, the said arrest and detention violated the principles of social justice and accountability enshrined in Article 6(d) of the Treaty. He further argued that the Reference was premised on the Respondent's violation of Rwandan national law, as well as the principles of democracy and Human Rights as recognised by the Treaty. The Applicant did also fault the Respondent for not filing a Response to the Reference and thus (according to him) conceding the merits thereof.

Court's determination

13. Before we delve into the merits of the Objections raised, we deem it necessary to address the procedural aspects of this matter. We observe with dismay that both Parties filed their Submissions without the authorities and/ or supporting documentation in reference therein. Indeed the Applicant herein did raise the issue of incomplete submissions at page 2 of his Submissions of 3rd May 2016, outlining his predicament in responding thereto. The Respondent subsequently filed the unattached documentation referred to 3 weeks after the stipulated time. In similar vein, it was only after the prompting of the Court that the Applicant availed some authorities cited but not attached to his Submissions. We are constrained to remind both Parties that incomplete submissions devoid of cited authorities offend basic principles of professional decorum and litigation etiquette. It certainly offends the tenets of fair trial and due process for a party to

omit to present its case in entirety at the stage of submissions so as to enable the opposite party to conclusively respond to the allegations against it.

14. Be that as it may, we note that the documents that were not availed in time by the Respondent are court judgments, which are public documents. It would be a succinct miscarriage of justice for this Court to ignore the said judgments given their vital importance to the determination of a matter premised on good governance and rule of law, as is the case presently. It seems to us, therefore, that the justice of this matter dictates that the Court ought to consider the totality of the submissions before it, including the judgments that were submitted out of time. In that regard, we shall consider both the Applicant's Response to the Preliminary Objections that was filed before Submissions, as well as his *Response to the Respondent Reply to the Reference* that was filed in response to the Respondent's Submissions.

15. Rule 41 of this Court's Rules of Procedure mandates parties to raise preliminary objections by pleading, specifically a Notice of Preliminary Objection. It reads:

- "(1) A party may by pleading raise any preliminary objection;**
- (2) Where a respondent intends to raise a preliminary objection s/he shall, before the scheduling conference under Rule 53 of these Rules, give not less than seven (7) days' written notice of preliminary objection to the Court and to the other parties of the grounds of that objection."**

16. This Court has since pronounced itself on what constitutes a proper preliminary objection. In **Republic of Kenya vs. Independent Medical Legal Unit** (supra), the following dictum from the celebrated case of **Mukisa Biscuits Manufacturing Co. Ltd vs. West End Distributors Ltd (1969) EA 696** was cited with approval:

“A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if a fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of preliminary objections does nothing but unnecessarily increase costs and, on occasion, confuses the issues. The Court considers that this improper practice should stop.”(Our emphasis)

17. In the latter case of **Attorney General of the Republic of Tanzania vs. Africa Network for Animal Welfare (ANAW) EACJ Appeal No. 3 of 2011**, preliminary points of law were defined to exclude matters that entailed ‘the clash of facts, production of evidence and assesment of testimony’.

18. We have carefully considered the preliminary objections raised in this matter, as well as the rival submissions of both Parties. The Applicant raises the issue of continuing violations, as well as the defence of disability to wit having been unable to file his Reference within the stipulated time owing to his circumstances. Both of these issues would most certainly be questions of fact to be ascertained by evidence. However, quite clearly they also constitute defences to the

preliminary points of law raised by the Respondent and are not preliminary objections themselves. It is apparent, therefore, that the preliminary objections herein do on the face of the pleadings raise pure points of law as to when (if at all) any causes of action accrued and whether or not the said causes of action are within the time limit prescribed in Article 30(2) of the Treaty. We are, therefore, satisfied that the preliminary objections under consideration herein are properly before this Court.

19. It is to the merits thereof that we now turn. We propose to consider the question of cause of action (or lack of it) prior to a determination of the limitation of time. Obviously should the Reference be devoid of a cause of action, then the question of time limitation would be superfluous.

20. The ingredients of a cause of action within this Court's jurisdiction are explicitly spelt out in Article 30(1) of the Treaty to include **'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 an infringement of the provisions of the this Treaty.'** Stated differently, the incidence of any of the events outlined in Article 30 that violates any Treaty provision or is otherwise an illegality, would give rise to a cause of action in this Court's jurisdiction.

21. This Court has had occasion to address the question as to when a Reference is deemed to disclose a cause of action in numerous cases. In the case of **Sitenda Sebalu vs. The Secretary General of the East African Community & Others EACJ Ref. No. 1 of 2010**, the Court cited with approval its earlier position in **Prof. Peter**

Anyang' Nyong'o & Others vs. Attorney General of Kenya & Others EACJ Ref. No. 1 of 2006 and held:-

"We have no hesitation in reiterating what this Court said in Anyang' Nyong'o (supra) about the import of Article 30(1) of the Treaty, namely, that a claimant is not required to show a right or interest that was infringed and/ or damage that was suffered as a consequence of the matter complained of in the Reference in question. It is enough if it is alleged that the matter complained of infringes a provision of the Treaty in a relevant manner." (Our emphasis)

22. This Court has also pronounced itself categorically on violations of the domestic laws of Partner States amounting to a Treaty violation that is justiciable by it. See **Muchohi vs. Attorney General of Uganda EACJ Ref. No. 5 of 2011** and **Rugumba vs Attorney General of Rwanda EACJ Ref. No. 8 of 2010**. We respectfully abide by the foregoing positions of the law.
23. In the matter before us, the Applicant *inter alia* seeks compensation for what he considers as acts of unjust and arbitrary arrest and detention between 8th November 2013 – 2nd April 2014 and takes issue with his provisional detention pursuant to the judgment in RPA 0305/14/HC/KIG of 6th May 2014. It is the Applicant's contention that both events violated Rwandan national law, as well as the principles of good governance, social justice, accountability, democracy and human rights as enshrined in Articles 6(d) and 7(2) of the Treaty. Article 27(1) quite succinctly grants the Court jurisdiction over the interpretation of the Treaty. It would be the duty of this Court under that provision to interrogate a claimant's assertions in respect of the

parameters or events outlined in Article 30(1), and make a determination as to whether or not they do in fact establish a Treaty violation or other illegality. That, in our most considered view, is the import of Article 27(1) read together with Article 30(1) of the Treaty.

24. Consequently, whereas we do appreciate the Respondent's argument that, having subjected the Applicant to due process, it discharged itself satisfactorily with regard to the principle of rule of law; we do recognise that the residual principles invoked by the Applicant hereinabove do also raise matters for judicial interpretation by this Court within the precincts of Articles 6(d) and 7(2) of the Treaty. We are, therefore, satisfied that the Reference does disclose a cause of action. We so hold.

25. We revert to the issue of limitation. The law on limitation of time is clearly stated in Article 30(2) of the Treaty as follows:-

"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."

26. With respect to the counter-arguments of the Parties as to whether a cause of action would accrue on the first or latter incidence of the alleged breach, we find nothing in the Treaty that prescribes either eventuality. The Court's decision in **Republic of Kenya vs. Independent Medical Legal Unit** (supra) that we were referred to by learned Counsel for the Respondent would appear to address scenarios of a singular continuing breach either by way of an action or decision. It does not address the present scenario where a series

of actions have been impugned by the Applicant. For ease of reference, the pertinent part of the decision reads:

"It is clear that the Treaty limits Reference over such matters like these to two months after the action or decision was first taken or made or when the Claimant first became aware of it."

(our emphasis)

27. We do agree with that position. Quite clearly, the use of the terms 'enactment' and 'publication' in Article 30(2) would lend credence to the suggestion that a cause of action in respect of the 'Act', 'regulation', 'directive' or 'decision' in reference under Article 30(1) would accrue on the commencement date thereof or date of publication. However, the same cannot be said of distinct and separate 'actions', as are in issue presently. Article 30(1) does provide for '**any Act, regulation, directive, decision or action**' giving rise to a cause of action. Thus, in principle, faced with a series of actions that breach the Treaty, any one of them would give rise to a cause of action in itself and not necessarily the first of such actions only. That would be the literal interpretation of that legal provision. In that regard, we cannot fault the Applicant's contention that any action that contravenes the provisions of the Treaty or is otherwise illegal would give rise to a cause of action under Article 30(1).

28. For present purposes, as we have found earlier in this Ruling, it seems quite clear to us that the Reference is premised on 2 distinct causes of action. The first cause of action is grounded in the Applicant's claim for compensation for unjust or arbitrary arrest and detention, following confirmation of his acquittal vide the certification document of 6th June 2014. Whereas the acquittal decision was

delivered on 31st March 2014, it is upon the finality occasioned by the certification of no Appeal that the Applicant seeks to premise his claim for compensation. Quite obviously, an Appeal from his acquittal would negate the Applicant's right of claim thereunder. Therefore, the claim that is premised on the certified finality of his acquittal is well within the time prescribed by Article 30(2), having been instituted one (1) month after the event.

29. Before we take leave of this issue, we deem it necessary to canvass the issue of disability that was raised by the Applicant. Article 30(2) does recognise the possibility of a prospective claimant not having knowledge of a Treaty breach within time to comply with the 2 month limitation period, and duly makes provision for filing of matters within 2 months of such breach coming to the knowledge of the complainant. The Applicant herein did allude to the fact that, given his detention, he would not have been able to know whether or not an Appeal had been lodged against his acquittal, hence his reliance on the certification document of 6th June 2014. Proof of the alleged disability would be a question of evidence therefore, in any event, this is not a matter that would be conclusively determined as a preliminary point of law. See Attorney General of the Republic of Tanzania vs. Africa Network for Animal Welfare (supra).

30. The second cause action herein is premised on an appellate court's confirmation of the Applicant's provisional detention vide a judgment RPA 0305/14/HC/KIG of 6th May 2014. Article 30(1) of the Treaty mandates a complainant to file a Reference in respect of 'any' decision that contravenes a Treaty provision or is otherwise illegal. The Applicant faulted the above decision for being illegal in so far as it contravened Rwandan laws and the Treaty. The complaint in

respect thereof should have been filed by or on 6th July 2014 but, that date having fallen on a Sunday, the present Reference was due to be filed on Monday 7th July 2014. It was duly filed on that date. That scenario is provided for in Rule 3(1)(d) of the Court's Rules of Procedure. We do reproduce the said Rule below for ease of reference:-

Rule 3(1)(d)

“3. (1) Any period of time fixed by these Rules or by any order of the Court for doing any act shall be reckoned as follows:

(a).....

(b).....

(c).....

(d)if a period would otherwise end on a Saturday, Sunday or an official holiday, it shall be extended until the end of the first following working day. ”

31. Consequently, we are satisfied that the Reference was filed within the stipulated time. We so hold.

Conclusion

32. In the result, having held as we have above, we do hereby over-rule the preliminary objections raised and order each Party to bear its own costs. It is so ordered.

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Dated, Delivered and Signed at Arusha this 28th Day of September, 2016.



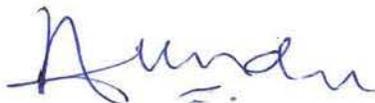
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MONICA MUGENYI
PRINCIPAL JUDGE



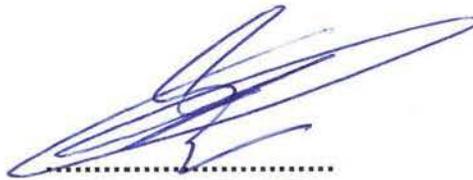
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