



**IN THE EAST AFRICAN COURT OF JUSTICE AT  
ARUSHA**

**FIRST INSTANCE DIVISION**

*(Coram: Monica K. Mugenyi, PJ; Audace Ngiye & Charles Nyachae, JJ)*



**REFERENCE NO. 16 OF 2014**

**RONALD SSEMBUUSI ..... APPLICANT**

**VERSUS**

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

**23<sup>rd</sup> NOVEMBER 2020**



## JUDGMENT OF THE COURT

### A. INTRODUCTION

1. This Reference was brought under Articles 6(d), 7(2), 8(1)(a) and (c), 27(1) and 30(1) of the Treaty for the Establishment of the East African Community ('the Treaty'), and Rules 24(1), (2), (3), (4), (5) of the East African Court of Justice Rules of Procedure, 2013 (the Rules). It sought to challenge sections 179 and 180 of the Penal Code Act, Cap. 120, Laws of Uganda (Penal Code Act) which provide for the offence of criminal defamation, on the premise that the challenged provisions place unjustifiable restrictions on the right to freedom of expression, freedom of the press and the right to access to information contrary to Articles 6(d) and 7(2) of the Treaty.
2. The Reference was supported by an affidavit deposed by Mr. Ronald Ssemuusi ('the Applicant') dated 1<sup>st</sup> December 2014, as well as three supplementary affidavits deposed by the Applicant and Messrs. Edward Bindhe and Robert Ssempala, both of which are dated 17<sup>th</sup> and 18<sup>th</sup> December 2014 respectfully. The Applicant is a citizen of the Republic of Uganda, and a resident of Kalangala Town Council, Kalangala District, Uganda who seeks to enforce his rights against the impugned law of the Respondent State.
3. On the other hand, the Respondent is the Attorney General of the Republic of Uganda ('the Respondent'), a self-defining office that was sued in its representative capacity as the Principal Legal Advisor to the Government of the Republic of Uganda. The Respondent State opposed the Reference and filed a Response to the Reference that denies any breach of the Treaty in the terms proposed by the Applicant and questions the justiciability of the matter before this Court. The Response to the Reference was supported by the affidavit of Mr. Wanyama Kodoli dated 21<sup>st</sup> February 2015.
4. By order of this Court issued on 20<sup>th</sup> September 2017 in **EACJ Application No.4 of 2015**, Media Legal Defence Initiative and 19 Others (non-governmental





organisations) were joined as *Amici curiae*. Their role in the proceedings was limited to the filing of submissions.

5. At the hearing the Applicants were represented by Mr. Nicholas Opiyo and Ms. Catherine Anite, while Mr. Jeffrey Atwine and Ms. Charity Nabaasa appeared for the Respondent. Mr. Nelson Ndeki and Ms. Esther Muigai Mnaro appeared on behalf of the *Amici curiae*.

## **B. FACTUAL BACKGROUND**

6. Mr. Ronald Ssemuusi worked as a journalist with the Central Broadcasting Service Ltd (CBS) in Uganda. On 3<sup>rd</sup> October 2014 he was convicted of criminal defamation and, on 17<sup>th</sup> October 2014 was sentenced to a fine of Ushs. 500,000 (Five hundred thousand Uganda shillings) or serve a prison sentence of one year. He was also ordered to pay compensation of Ushs. 500,000 (Five hundred thousand Uganda shillings) to the complainant for the injury or loss caused.
7. His conviction and sentence were allegedly premised on a story he had filed on CBS FM on 17<sup>th</sup> November 2011, arising from a criminal investigation by police in Kalangala district against certain individuals (including the former LC5 Chairperson, Daniel Kikoola) who were allegedly involved in the theft of solar panels meant to pump clean water to Kalanga Town Council.
8. On 18<sup>th</sup> November 2011, the Applicant filed a complaint of threatening violence against the former LC5 Chairperson but was instead charged with criminal defamation. In addition, the Kalangala district leadership barred him from reporting the proceedings of the District Council and hence denied the public a chance to know what their district leaders were discussing on their behalf.
9. Sometime in November 2011, his news Editor asked him to cease further reporting on the theft of solar panels in Kalangala District, after the former LC5 Chairperson allegedly stormed the studios and threatened the management of CBS radio.





10. Aggrieved by the manner in which the Uganda Judiciary handled the matter, the Applicant filed the instant Reference premised on the alleged violation by the Respondent State of the principles of the rule of law and human rights.

### **C. APPLICANTS' CASE**

11. It is the Applicants' contention that his conviction, sentence and the continued application of criminal defamation provisions under Sections 179 and 180 of the Penal Code Act, Cap. 120 of the Laws of Uganda is a violation of Articles 6(d), 7(2) and 8(1) (a) & (c) of the Treaty. The Applicant alleges that the laws of Uganda that provide for the offence of criminal defamation have a chilling effect on the right to freedom of expression, freedom of speech, access to information and media freedom, which is a breach of Articles 6(d) and 7(2) of the Treaty that enjoin Partner States to adhere to the principles of good governance, accountability, democracy, rule of law and transparency.

12. In the Applicant's view, Sections 179 and 180 place unjustifiable restrictions and violate freedom of expression and access to information, including media freedoms protected under Article 6(d) of the Treaty.

13. The Applicant sought the following Declarations and Orders (reproduced verbatim):

- a. **A declaration that the continued enforcement of criminal defamation laws in sections 179 and 180 of the Penal Code Act Cap. 120 Laws of Uganda is a violation of the freedom of expression and access to information, including media freedoms protected under Article 6(d) of the Treaty for the Establishment of the East African Community that enjoins Partner States to govern accordance with the principles of good governance including adherence to the principles of democracy, rule of law, accountability, transparency, social justice, equal opportunities, gender equality, as well as the recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights;**





- b. A declaration that the continued enforcement of criminal defamation laws in sections 179 and 180 of the Penal Code Act Cap. 120 Laws of Uganda is a violation of the freedom of expression and access to information, including media freedoms protected under Article 7(2) of the Treaty for the Establishment of the East African Community that enjoins Partner States to undertake to abide by the principles of good governance including adherence to the principles of democracy, rule of law, social justice and the maintenance of universally accepted standards of human rights;
- c. A declaration that the conviction and sentence of the Applicant by the Respondent under Sections 179 and 180 of the Penal Code Act Cap. 120 Laws of Uganda for criminal defamation on October 3, 2014 is a violation of the general undertaking of the Respondent to create conditions favorable for the implementation and to abstinence from measures likely to jeopardize the implementation of the provisions of the Treaty for the Establishment of the East African Community as provided for under Article 8(1) (a) & (c);
- d. A declaration that the effect of Sections 179 and 180 of the Penal Code Act Cap. 120 Laws of Uganda which provides for the offence of criminal defamation has a chilling effect on the right to freedom of expression, speech, access to information and media freedom which is a breach of Articles 6(d) and 7(2) of the Treaty that enjoins Partner States to adhere to principles of good governance, accountability, democracy, rule of law and transparency.
- e. An order directing the Respondent to cease the enforcement of criminal defamation laws and harmonize its penal law to bring it into conformity with the fundamental and operating principles of the East African Community provided in Articles 6(d) and 7(2) of the Treaty for the Establishment of the east African Community;
- f. An order directing the Respondent to take all measures permissible under its municipal law to comply with the general undertaking to create conditions favorable for the implementation and to abstain



from measures likely to jeopardize the implementation of the provisions of the Treaty for the Establishment of the East African Community as provided for under Article 8(1) (a) & (c)) of the Treaty for the Establishment of the East African Community;

- g. An order directing the Respondent to take measures to comply with the orders of the court and reports to the Honorable Court in a year on its implementation;
- h. An order that the costs of the Reference be met by the Respondent;
- i. An order that this Honorable Court be pleased to make other reliefs as may deem fit.

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

- 14. In its Response to the Reference and supporting affidavit, the Respondent contends that the matters raised in the Reference do not raise any question for interpretation or infringement of the Treaty, but are matters of interpretation of Acts of Parliament of the Republic of Uganda, which are a preserve of national courts.
- 15. In the Respondent's view, the provisions of sections 179 and 180 of the Penal Code Act do not place unjustifiable restrictions on freedom of expression, access to information and media freedoms, neither do they violate Article 6(d), 7(2) and 8(1)(a) and (c) of the Treaty.
- 16. The Respondent further contends that the right to freedom of expression and access to information should be enjoyed within lawful parameters and in consideration of other rights and freedoms provided for under the law.
- 17. It is the Respondent's contention that the Applicant has not exhausted local remedies. It thus concludes that the Reference is premature, speculative, misconceived and ought to be dismissed with costs.

#### **E. ISSUES FOR DETERMINATION**

- 18. Pursuant to a Scheduling Conference held on 17<sup>th</sup> June 2019, the following issues were framed for determination:





- a. *Whether the Court has jurisdiction to determine this Reference without exhaustion of remedies available in the municipal courts.*
- b. *Whether the continued enforcement of criminal defamation laws in sections 179 and 180 of the Penal Code Act Cap 120 laws of Uganda is a violation of Articles 6(d), 7(2) and 8(1)(a) and (c) of the Treaty.*
- c. *Whether the restrictions on freedom of expression under section 179 and 180 of the Penal Code Act Cap 120 laws of Uganda (if any) are acceptable and demonstrably justifiable in a free and democratic society.*
- d. *Whether the conviction and the sentence of the Applicant by the Respondent under sections 179 and 180 of the Penal Code Act Cap 120 laws of Uganda is a violation of Articles 8(1)(a) and (c) of the Treaty.*
- e. *Whether the parties are entitled to the remedies sought.*

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

19. We are constrained to clarify from the onset that although the present Reference was filed under the East African Court of Justice Rules of Procedure of 2013, the said rules have since been revised, the applicable Rules presently being the East African Court of Justice Rules of 2019 ('the Rules'). The Rules shall therefore be applied without prejudice to the validity of anything previously done under the 2013 Rules and provided, as enjoined by Rule 136, that if and so far as it is impracticable to apply the 2019 Rules 'the practice and procedure heretofore shall be allowed.'

#### **Issue No. 1: Whether the Court has jurisdiction to determine this Reference without exhaustion of remedies available in the municipal courts.**

20. A point of law was raised by the Respondent as to whether this Court has jurisdiction to determine this Reference without exhaustion of local remedies. In submissions, it was argued for the Respondent that the matters raised in the Reference do not raise any question for Treaty interpretation or infringement, but presents matters of interpretation of Acts of Parliament of the Republic of Uganda, which are a preserve of national courts. It was further argued that the



Applicant had not exhausted local remedies therefore this Reference is premature, speculative, misconceived and ought to be dismissed with costs.

21. It was asserted that although exhaustion of local remedies was not a prerequisite under the Treaty, given the Court's role, the issue of exhaustion of local remedies should be evaluated on a case by case basis as was stated in the case of **The Attorney General of the Republic of Rwanda vs. Plaxeda Rugumba, EACJ Appeal No.1 of 2012**. In that case it was held:

**The EAC Treaty does not have any provision requiring exhaustion of local remedies. In our view though the court could be flexible and purposeful in the interpretation of the principle of the local remedies rule, it must be careful not to distort the express intent of the EAC Treaty.**

22. The Respondent did also challenge the jurisdiction of this Court on the ground that in the instant case the Applicant is essentially asking the Court to act as an appellate court. In support of this position, the Respondent referred us to **The East African Civil Society Organisations' Forum (EACSO) vs. The Attorney General of the Republic of Burundi & Others, EACJ Reference No. 2 of 2015** where the Respondent had raised a similar objection and this Court stated that it has primacy in the interpretation of the Treaty but this mandate does not extend to the interrogation of decisions of other courts in a judicial manner such as was being asked of it.
23. Conversely, we understood it to be the Applicant's contention that when Partner State's laws, decisions or actions fail to adhere to the fundamental and operational principles under Articles 6(d) and 7(2) of the Treaty, including adherence to press freedom, this Court has jurisdiction to find that a Partner State has infringed the Treaty by enacting such laws.
24. It was also the Applicant's contention that the Respondent's use of criminal defamation laws as expounded in the Reference is a violation of Articles 6(d) and 7(2) of the Treaty. Learned Counsel for the Applicant further submitted that once a party has invoked relevant provisions of the Treaty and alleges infringement thereof, it is incumbent upon the Court to seize the matter and within its

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jurisdiction under Articles 23, 27 and 30 to determine whether the claim has merit or not. The Applicant referred us to the case of **Democratic Party vs. The Secretary General of the East African Community and Others, EACJ Reference No.2 of 2012**

25. In addition, the Applicant argued that domestic litigation does not prevent a claim from being heard before this Court and no requirements for the exhaustion of local remedies are enshrined in the Treaty. It was further suggested that this Court has since clarified that its exclusive mandate meant that litigants were not required to exhaust local remedies before bringing a reference under the Treaty because no such local remedy exists. In support of his position, the Applicant referred us to **Plaxeda Rugumba vs. The Secretary General of the East African Community & The Attorney General of the Republic of Rwanda** (supra), where it was held that there is no express provision in the Treaty barring this Court from determining any matter that is otherwise properly before it, merely because the Applicant has not exhausted local remedies.

26. We carefully listened to the Parties' rival arguments on this issue. As quite rightly acknowledged by the Applicant, the jurisdiction of this Court is encapsulated in Articles 23, 27 and 30 of the Treaty. We reproduce the relevant provisions of these articles for ease of reference.

Article 23(1):

**The Court shall be a judicial body which shall ensure the adherence to law in the interpretation and application of and compliance with this Treaty.**

Article 27(1):

**The Court shall initially have jurisdiction over the interpretation and application of this Treaty:**

**Provided that the Court's jurisdiction to interpret under this paragraph shall not include the application of any such**





interpretation to jurisdiction conferred by the Treaty on organs of Partner States.

Article 30:

- (1) Subject to the provision 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.
- (2) .....
- (3) The Court shall have no jurisdiction under this Article where an Act, regulation, directive, decision or action has been reserved under this Treaty to an institution of a partner State.

27. It is clear from the above provisions of the Treaty that Articles 23(1) and 27(1) grant this Court the exclusive mandate to apply and interpret the Treaty, except in terms of the proviso to Article 27(2). Article 30(1), on its part, provides the context within which such jurisdiction would be exercised. Furthermore, this Court has had occasion to extensively address the question of its jurisdiction in numerous decided cases. It has consistently found its jurisdiction to have been sufficiently established where it was averred on the face of the pleadings that the matter complained of constitutes an infringement of the Treaty. See Hon. Sitenda Sebalu vs. The Secretary General of the East African Community & Others, EACJ Reference No. 1 of 2010; Prof. Peter Anyang' Nyong'o & 10 Others vs. The Attorney General of the Republic of Kenya & 2 Others, EACJ Reference No1 of 2006; Burundi Journalist's Union vs. The Attorney General of the Republic of Burundi, EACJ Reference No. 7 of 2013 and M/S Quick Telecommunications Ltd vs. The Attorney General of the United Republic of Tanzania, EACJ Reference No.10 of 2016.

28. In the instant case, the Applicant contests the legality of a decision of the Chief Magistrates Court of Masaka, holden at Kalangala in the Respondent State, a course of action that the Respondent faults for being a disguised appeal. A



similar issue was quite conclusively settled in **The East African Civil Society Organisations' Forum (EACSOFF) vs. The Attorney General of Burundi & Others, EACJ Appeal No. 4 of 2016**. It was held:

The reference before the trial Court was not a further appeal from the decision of the Constitutional Court of Burundi. It was a reference on the Republic of Burundi's international responsibility under international law and the EAC Treaty attributable to it by reason of an action of one of its organs namely the Constitutional Court of Burundi. The trial Court had a duty to determine this international responsibility and in so doing, it had a further duty to consider the internal laws of the Partner State and apply its own appreciation thereof to the provisions of the Treaty.

29. Similarly, recourse to this Court with regard to the Chief Magistrate Court's decision would not amount to the invocation of an unavailable appellate jurisdiction but, rather, the application of the jurisdiction conferred upon the Court under Article 27(1) of the Treaty. Indeed, we find that the case of **Henry Kyarimpa vs. The Attorney General of Uganda, EACJ Appeal No. 6 of 2014** had conclusively distinguished this Court's jurisdiction to interrogate impugned actions against Treaty provisions, as opposed to domestic courts that would interrogate the same actions against domestic laws.

30. With regard to the question of exhaustion of local remedies, we observe that the Respondent did concede that it was not provided for under the Treaty but simply sought to persuade us to lavish an unduly creative construction to the absence of such a rule, an invitation that we respectfully decline. The Respondent's concession thus renders the exhaustion of local remedies a moot issue before us. Consequently, the Court hereby over-rules the Respondent's objection and finds that it has jurisdiction *ratione materiae* to hear the matter.





**Issue No. 2: Whether the continued enforcement of criminal defamation laws in sections 179 and 180 of the Penal Code Act Cap 120 laws of Uganda is a violation of Articles 6(d), 7(2) and 8(1)(a) and (c) of the Treaty.**

**AND**

**Issue No. 3: Whether the restrictions on freedom of expression under sections 179 and 180 of the Penal Code Act Cap 120 Laws of Uganda (if any) are acceptable and demonstrably justifiable in a free and democratic society.**

31. We propose to address the above issues together given that both issues pertain to the question of criminal defamation laws and freedom of expression. The continued enforcement of criminal defamation laws under sections 179 and 180 of the Penal Code Act and the restrictions on freedom of expression under the same sections, having been pleaded, framed and argued (for the main part) as a distinct cause of action; we are duty bound, therefore, to interrogate their time limitation credentials.

32. It is not disputed by either Party herein that the specific act or decision in issue before us is not the decision of the Chief Magistrate Court of Masaka, but sections 179 and 180 of the Penal Code Act which provides for criminal defamation. Further, the Applicant himself submitted that the said Penal Code is a colonial legislation which has been in force since 15<sup>th</sup> June 1950. The Reference, on the other hand, was filed on 2<sup>nd</sup> December 2014.

33. Article 30(2) of the Treaty provides as follows on time limitation:

**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.**

34. For purposes of computation of time, this Court has severally held that the time would start to run **'two months after the action or decision was first taken or**



made.’ See The Attorney General of the Republic of Kenya vs. Independent Medical Legal Unit, EACJ Appeal No.1 of 2011.

35. This position was affirmed in The Attorney General of the Republic of Uganda & The Attorney General of Kenya vs. Omar Awadh & 6 Others, EACJ Appeal N.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.’

36. On the issue of the continued application and use of the criminal defamation laws under sections 179 and 180 of the Penal Code Act, the Appellate Division of this Court has rejected the concept of continuing violations and adopted a strict interpretation of Article 30(2) of the Treaty in order to entrench the principle of legal certainty. Thus in The Attorney General of the Republic of Kenya vs. Independent Medical Legal Unit (supra) it was held:

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 recognise 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.

37. This position was reiterated in The Attorney General of the Republic of Uganda & The Attorney General of Kenya vs. Omar Awadh & 6 Others (supra), where it was observed:

Moreover, the principal of legal certainty requires strict application of the time limit in Article 30(2) of the Treaty. Furthermore, nowhere does the Treaty provide for any power to the Court to extend, to condone, to waive or to modify the prescribed time limit for any reason, including for continued violation.

38. It is also clear that the impugned provisions were all along well within the knowledge of the Applicant. In fact, in his Affidavit in support of the Reference



(paragraph 9), he stated that he was ‘**under the impression that criminal defamation had been declared unconstitutional by the Constitutional Court in Uganda ...**’ On his part, one Robert Ssempala, in his Supplementary Affidavit in support of the Reference (paragraph 3), stated that ‘**since 2008, Human Rights Network for Journalists has documented 6 cases where 11 journalists have been charged and prosecuted under sections 179 and 180 of the Penal Code Act Cap 120 laws of Uganda ...**’

39. Given that the Reference was filed in this Court on 2<sup>nd</sup> December 2014, *Issues 2 and 3* clearly fall outside the ambit of the two-months limitation period contemplated in Article 30(2) of the Treaty. Consequently, the matters raised in those *Issues* are time-barred and improperly before this Court.

**Issue No. 4: Whether the conviction and sentence of the Applicant by the Respondent under Sections 179 and 180 of the Penal Code Act, Cap. 120 Laws of Uganda is a violation of Articles 8(1)(a) and (c) of the Treaty.**

40. It is not in dispute that the Applicant filed the Reference within two months of the Chief Magistrate Court’s decision that is in contention under this issue. Therefore, the issue is properly before the Court and shall be determined on its merits.

41. It is the Applicant’s submission that the conviction and sentence of the Applicant for criminal defamation under sections 179 and 180 of the Penal Code Act is a violation of the general undertaking of the Respondent to create conditions favorable for the implementation of the Treaty, and abstain from measures likely to jeopardize such implementation. This is the import of Articles 8(1)(a) & (c) of the Treaty. We reproduce the cited provisions for clarity:

Article 8(1):

**The Partner States shall:**

**(a) plan and direct their policies and resources with a view to creating conditions favourable for the development and achievement of the objectives of the Community and the implementation of the provisions of this Treaty;**





(b) .....

**(c) abstain from any measures likely to jeopardize the achievement of those objectives or the implementation of the provisions of this Treaty.**

42. We did carefully consider the provision in reference above, the Applicant's pleadings, as well as the impugned Chief Magistrate Court's decision. It seems to us that the above issue is substantially premised on the supposition that the challenged decision is likely to jeopardize the development and achievement of the objectives of the Community and the implementation of the Treaty by the Respondent State.

43. However, we find no evidence of that on record. We do not find evidence of what, if any, injustice the Applicant suffered as a result of the said decision, or that his right to a fair hearing had been curtailed in any way on account of the impugned decision. Indeed, no evidence was adduced by the Applicant as would suggest that the Applicant's conviction and sentence was procured without regard for due process, or that his right to be heard under a fair trial was curtailed. It is not readily apparent, therefore, how the Respondent State has infringed the right to a fair trial inherent in the rule of law principle outlined in the Treaty. Curiously, in his pleadings and at the hearing, the Applicant dwelt extensively on the importance of the right to freedom of expression and media freedom, and seemed to take issue more with the applicable laws than the challenged decision itself.

44. Be that as it may, the Applicant lodged 4 affidavits in support of his case – 2 affidavits deposed by the Applicant and 2 supplementary affidavits deposed by Messrs. Edward Bindhe and Robert Ssempala. In the said affidavits, the deponents sought at length to demonstrate that the continued enforcement of criminal defamation laws provided in sections 179 and 180 of the Penal Code Act is a violation of freedom of expression and access to information, including media freedoms protected under the Treaty. Furthermore, in his written submissions, the Applicant opined that this Reference **'challenges Uganda's continued application and use of criminal defamation laws under sections 179 and 180 of the Penal Code Act ...'**



45. In like vein, with respect, the *Amici curiae* dwelt at length on the violation of the right to freedom of expression under international human rights law by the continued application of criminal defamation laws. They, however, refrained from addressing the Court on the legality of the impugned Chief Magistrate Court decision.

46. In the result, we find that the Applicant has not satisfactorily discharged the onus on him to adduce before this Court evidence that sufficiently demonstrates that the impugned decision of the Chief Magistrate Court of Masaka occasioned an illegality, or that the conviction and sentencing of the Applicant contravened any provision of the Treaty. The applicable standard of proof would be proof by balance of probabilities.

47. We are fortified in this approach by the decision in the case of **East African Law Society vs. The Attorney General of the Republic of Uganda & The Secretary General of the East African Community, EACJ Reference No. 2 of 2011**, where it was *inter alia* held:

**It is not enough to allege a fact, however notorious one may consider it to be, and fail to bring forth credible, authentic, reliable and admissible evidence to support such an allegation.**

48. It seems to us that the Applicant, having been heard by a competent court and with the benefit of legal representation, we cannot impute unequal treatment on the part of the domestic court with regard to the right to a fair hearing. It cannot be suggested either that the right to a fair trial was curtailed, or that he was sentenced and convicted in contravention of any national law or Treaty provision. Having carefully considered the material on record, we indeed find no averment or evidence of any irregularities in the hearing, conviction and sentencing of the Applicant.

49. In the same vein, a perusal of the judgment that was availed to us would negate the assertion that it violates Article 8(1)(a) & (c) of the Treaty for being devoid of any justifiable basis. In our considered view, the judgment does explain with sufficient clarity the reasons for the conclusion arrived at, and the magistrate invoked the right laws as were applicable to that case. Sections 179 and 180 of



the Penal Code Act still being applicable law in the Respondent State, the Applicant's conviction and sentence thereunder cannot be impeached for illegality until such a time as the said legal provisions are repealed or struck down by competent court. We would therefore disallow this claim.

**Issue No. 6: What reliefs are available to the Parties?**

50. The remedies sought by the Applicant in this matter are delineated verbatim in paragraph 14 hereof. We do not deem it necessary to reproduce them here. On the other hand, the Respondent sought the dismissal of the Reference with costs.

51. Having decided as we have on all the issues as framed, we find that all the reliefs sought by the Applicants are not tenable.

52. Rule 127(1) of the Court's Rules of Procedure provides that costs shall follow the event unless the Court for good reason decides otherwise. In this case, where the Applicant has since passed on, we deem it unjust to penalize the deceased's Estate in costs. We deem it just for each Party to bear its own costs.

**G. CONCLUSION**

53. The upshot of the foregoing discourse is that we do hereby dismiss this Reference, and order each Party to bear its own costs.

It is so ordered.

**Dated and delivered by Video Conference this 23<sup>rd</sup> Day of November, 2020.**





*M. Mugenyi*

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**Hon. Lady Justice Monica K. Mugenyi**  
**PRINCIPAL JUDGE**

*[Signature]*

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**Hon. Justice Audace Ngiye**  
**JUDGE**

*[Signature]*

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

