



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



(Coram: Monica Mugenyi, PJ; Isaac Lenaola, DPJ & Faustin Ntezilyayo, J)

REFERENCE No.13 of 2014

- 1. MR. BONAVENTURE GASUTWA1ST APPLICANT**
- 2. MR. TATIEN SIBOMANA.....2ND APPLICANT**
- 3. MR. JEAN BAPTISTE MANWANGARI.....3RD APPLICANT**

VERSUS

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

26th NOVEMBER 2015

JUDGMENT OF THE COURT

A. INTRODUCTION

1. This is a Reference filed on 29th August 2014 by **Mr. Bonaventure Gasutwa, Mr. Tatién Sibomana and Mr. Jean Baptiste Manwangari**, residents of the Republic of Burundi (hereinafter referred to as **“the Applicants”**). Their address for the purpose of this Reference is indicated as C/O Mr. Horace Ncutiyumuheto, Advocate, Boulevard Patrice Lumumba, P.O. Box 1374 Bujumbura, Burundi.
2. The Reference was made under Articles 6(d), 7(2), 23(1) (3), 27 and 30 of the Treaty Establishing the East African Community (hereinafter referred to as **“the Treaty”**) and Rules 1(2) and 24 (1) (2) (3) of the East African Court of Justice Rules of Procedure (hereinafter referred to as **“the Rules”**). The Respondent is the Attorney General of the Republic of Burundi, who is the Principal Legal Adviser of the Republic of Burundi, and is being sued on behalf of the Government of Burundi.

B. REPRESENTATION

3. The Applicants were represented by Mr. Horace Ncutiyumuheto while Mr. Nestor Kayobera appeared for the Respondent.

C. BACKGROUND

The background of the case can be summarized as follows:

4. The Applicants are members of the Central Committee of UPRONA Party elected in the Party's 2009 Congress, during which Mr. Bonaventure Niyoyankana was elected President and Legal

Representative, whereas Ms. Concilie Nibigira was elected Vice-President and Deputy-Legal Representative of UPRONA.

5. During his mandate, Mr. Niyoyankana had political disagreements with some members of the Central Committee of UPRONA, who then resolved to suspend them.
6. The suspended members then filed a matter with the Supreme Court of Burundi against Mr. Niyoyankana, and the Supreme Court, on 11th September 2012, by its judgments in **RAP 34**, **RAP 35**, and **RAP 36**, ruled that the expelled members of the Central Committee should be reinstated and that the General Conference of UPRONA at the Provincial Level organized in February 2012 was null and void.
7. On 6th January 2014, the leadership of UPRONA suffered a blow when Mr. Niyoyankana resigned from the presidency of UPRONA. Since then, a protracted conflict has been ongoing between the interim President of the Party and certain members of the Central Committee who allegedly have never been granted the permission to organize meetings and who, instead, have allegedly been harassed and chased by the police force every time they tried to meet.
8. Before the Reference was fixed for hearing, the Applicants filed a Notice of Motion, on 5th September 2014, seeking to obtain interim *ex-parte* orders.
9. The Application was heard on 19th September 2014 and the Court, after due consideration of the Applicants' arguments, declined to hear the Application *ex-parte*. Instead, the Court ordered that the Application be heard *inter-partes* in November 2014. In this regard, an interim order was issued on 13th November 2014 to the extent that pending hearing and determination of the Reference, the

UPRONA Central Committee elected in 2009 could convene meeting in accordance with the Laws of the Republic of Burundi and as resolved by the Supreme Court of Burundi in 2012.

10. The Reference was thereafter heard on 21st July 2015 on its merits or otherwise hence this judgment.

D. THE APPLICANTS' CASE

11. The Applicants' case is contained in the Reference dated 29th August 2014, their respective Affidavits sworn on 26th August 2014 and their written submissions filed on 30th March 2015.
12. They stated that they were members of the Central Committee of UPRONA Party elected in the 2009 Congress, which also elected Mr. Bonaventure Niyoyankana as the President and Legal Representative, and Ms. Concilie Nibigira as Vice-President and Deputy-Legal representative of UPRONA.
13. They alleged that during his tenure, Mr. Niyoyankana came to be in political conflict with some members of the Central Committee of UPRONA and resolved to suspend them from the membership of the Central Committee while illegally appointing some others to replace them.
14. The Applicants submitted that, as stated elsewhere above, the suspended members filed a matter in the Supreme Court of Burundi against Mr. Niyoyankana, in cases **RAP.34, RAP 35** and **RAP 36**, and that that Court decided that the suspended members of the Central Committee had to be reinstated. They further asserted that the Court also nullified all decisions of suspension that had been imposed on some members of leading organs of the

Party as well as on Presidents of Committees, in violation of Articles 46, 47 and 48 of UPRONA Statutes.

- 15.** Moreover, the Applicants stated that the aforesaid decision of the Supreme Court recognized as lawful the organs and members of the Central Committee elected by the UPRONA Congress of 2009 and that it confirmed Mr. Niyoyankana and Ms. Nibigira as President and Vice-President of the UPRONA Party, respectively.
- 16.** The Applicants also pointed out that following Mr. Niyoyankana's resignation, Ms. Nibigira wrote to the Minister for Home Affairs requesting him to declare that she should be recognized as the Legal Representative of UPRONA Party.
- 17.** The Applicants alleged that, on 9th June 2014, some members of the Executive Committee requested Ms. Nibigira to convene a meeting of the Central Committee as provided for by Article 11 of UPRONA Rules, and that following her refusal to do so, they resolved to convene a meeting of the Central Committee to be held on 13th July 2014 at the Headquarters of UPRONA Party. They also averred that Ms. Nibigira, on her part, convened a meeting on 27th July 2014, which had received the authorization of the Minister for Home Affairs.
- 18.** It was the Applicants' further contention that although the 13th July 2014's Central Committee meeting was legally convened in accordance with UPRONA Statutes and Rules, the said meeting never took place due to massive police intervention. It is thus contended that the instruction given by the Minister for Home Affairs to stop, by Police force, the meeting convened by the Executive Committee, was unlawful and constituted an interference

of the Executive in internal matters of a political party, in violation of Article 80 of the Constitution of the Republic of Burundi.

19. The Applicants also urged the Court ***“to declare that the decision of the Minister for Home Affairs to bar the legal Central Committee of UPRONA from holding its meeting, the recognition of Ms. Concilie Nibigira as the President and Legal Representative of UPRONA by the Minister for Home Affairs as well as the authorization given by the latter to hold the States general of UPRONA, are unlawful and constitute an infringement of Articles 6(d) and 7(2) of the Treaty for the Establishment of the East African Community.”***

20. The Applicants thus pleaded for the following prayers and orders, against the Respondent:

(1) A declaration that the decision of the Minister for Home Affairs to stop the legal Committee of UPRONA from holding its meeting is unlawful and is an infringement of Article 6(d) and 7(2) of the Treaty for the Establishment of the East African Community;

(2) A declaration that the recognition of Ms. Concilie Nibigira as the President and Legal Representative of UPRONA by the Minister for Home Affairs is unlawful and constitutes an infringement of Article 6(d) and 7(2) of the Treaty for the Establishment of the East African Community;

(3) A declaration that the authorisation given by the Minister for Home Affairs to Ms. Concilie Nibigira to hold the States general of UPRONA is unlawful and constitutes an infringement of Articles 6(d) and 7(2) of

the Treaty for the Establishment of the East African Community;

(4) An order that the decision of the Minister for Home Affairs to stop the Central Committee of UPRONA from holding its meeting is nullified;

(5) An order that the recognition of Ms. Concilie Nibigira as the President and Legal Representative of UPRONA by the Minister for Home Affairs is nullified; and the Central Committee of UPRONA is allowed to hold its meetings and to proceed to the election of the new President and Legal Representative of UPRONA;

(6) An order that the authorisation given by the Minister for Home Affairs to Ms. Concilie Nibigira to hold the States general of UPRONA is nullified and all the decisions and resolutions taken by the States general as well;

(7) An order that the costs and incidental to this Reference be met by the Respondent;

(8) That this Honorable Court be pleased to make such further or other orders as may be necessary in the circumstances.

21. We wish to point out that the terms “*States general*” used in the parties’ pleadings and submissions herein are a loose translation of the French terms “*États généraux*”. [In France under the Old Regime, the *Estates General* or *States General* (French: *états généraux*) was a legislative and consultative assembly of the different classes (or estates) of French subjects].

E. THE RESPONDENT'S CASE

22. The Respondent filed a response to the Reference on 23rd October 2014 together with an Affidavit in support sworn by Mr. Sylvestre Nyandwi, as well as written Submissions on 29th May 2015.

23. The Respondent's case is:-

Firstly, that Mr. Bonaventure Niyoyankana and Ms. Concilie Nibigira were respectively elected President and Legal Representative and Vice-President and Deputy Representative of UPRONA Party by the Congress held in November 2009;

Secondly, that on 11th September 2012, the Supreme Court of Burundi ruled, in a matter of suspension of some members of the Central Committee of UPRONA, that the leadership of UPRONA elected by the 2009 Congress was the legitimate one and that those who had been suspended from the Central Committee, including the Applicants, were to be reinstated to their positions;

Thirdly, that the aforesaid decision of the Supreme Court confirmed that the President and Legal Representative of UPRONA was Mr. Niyoyankana, and the Vice-President and Deputy Legal Representative was Ms. Nibigira as per the decision of the Party's 2009 Congress;

Fourthly, that Mr. Niyoyankana resigned from office on 6th January 2014 and following that resignation, Ms. Nibigira wrote to the Minister for Home Affairs, who is in charge of political parties, on 10th February 2014, informing him that, as provided by Articles 33 and 39 of UPRONA Statutes, she

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had assumed the Presidency and the legal representation of UPRONA;

Fifthly, that on 11th February 2014, the Minister for Home Affairs responded to Ms. Nibigira's letter and recognized her as the President and Legal Representative of UPRONA in accordance with UPRONA Statutes and with the decisions of the Supreme Court rendered on 11 September 2012 which recognized UPRONA's organs as elected in 2009;

Sixthly, that since meetings of the Central Committee were convened and chaired by the President and in his absence, by the Vice-President, as provided by Articles 33 and 39 of UPRONA Statutes and Rules 7 and 8 of the Internal Rules of the Central Committee of 06th September 2009, the meetings of the Central Committee that some reinstated Members of the Central Committee attempted to convene without consulting the President and the Legal Representative of UPRONA and without complying with Articles 11 and 13 of that Party's Internal Regulations, were illegal and had to be dealt with in accordance with the law, especially for security purpose and reasons;

Seventhly, that on 27th July 2014 and as provided by Article 56 of the 2014 Statutes, UPRONA Party organized a State General Meeting, which was convened by the President and Legal Representative of UPRONA, and a Directorate comprising of 4 Members from the Central Committee was put in place to prepare and organize, among others, the General Elections of 2015;

Eighthly, that the Minister for Home Affairs has never stopped any legal meeting of the Central Committee of UPRONA as long as the meeting was convened and chaired by the Legal Representative of UPRONA and not by anyone else. In this regard, it is the Respondent's contention that the Minister for Home Affairs' authorization to hold the State General Meeting convened by Ms. Nibigira as the Legal Representative of UPRONA did not violate any provision of the Treaty;

Ninthly, that the recognition of Ms. Nibigira by the Minister for Home Affairs did not violate any provision of the Treaty, since it was done in accordance with Articles 33 and 39 of UPRONA Statutes. It is the Respondent's further contention, in this regard, that the Applicants' prayer to nullify Ms. Nibigira's recognition was time-barred as it contravened Article 30(2) of the Treaty;

Tenthly, that this Court did not have jurisdiction to order elections of a new President and Legal Representative of UPRONA as this would contravene the jurisdiction conferred upon it as provided by Articles 27(2) and 30(3) of the Treaty; Lastly, that this Court did not have jurisdiction to nullify the decisions and resolutions taken by the meetings of UPRONA convened by the Legal Representative of UPRONA in accordance with the National laws and Statutes governing UPRONA.

For the above reasons, the Respondent submitted that the Reference should be dismissed with costs.

F. SCHEDULING CONFERENCE

24. On 13th February 2015, a Scheduling Conference pursuant to Rule 53 of the Court's Rules was held and Parties agreed upon that the following issues fall for determination:

- (i) Whether the Court has jurisdiction to entertain the Reference;*
- (ii) Whether the Reference is time-barred;*
- (iii) Whether the recognition by the Minister for Home Affairs of Ms.*

Concilie Nibigira as the President and Legal Representative of UPRONA is unlawful or inconsistent with Articles 6(d) and 7(2) of the Treaty;

- (iv) Whether the refusal by the Minister for Home Affairs to let the members of the Central Committee elected in 2009 convene a meeting is unlawful and/or inconsistent with Articles 6(d) and 7(2) of the Treaty;*

- (v) Whether the Applicants are entitled to the remedies sought.*

G. DETERMINATION OF THE ISSUES BY THE COURT

Issue No.1: Whether the Court has jurisdiction to entertain the Reference

Submissions

25. Counsel for the Respondent submitted that some prayers and orders sought by the Applicants fell outside the jurisdiction of this Court as set out in Article 27 of the Treaty. He thus pointed out that, while the remedies sought under prayers (a), (b), (c) and (g) may be granted by this Court if proved by the Applicants, prayers (d), (e) and (f) did not fall within the scope of the Court's jurisdiction.

26. In support of his submission, learned Counsel referred the Court to a number of case law, to wit, **Attorney General of the Republic of Rwanda vs. Plaxeda Rugumba, EACJ Appeal No. 1 of 2012; James Katabazi & 21 Others vs. The Secretary General of the East African Community & the Attorney General of the Republic of Uganda, EACJ Ref. No. 1 of 2007, and Prof. Francois Nyamoya vs. The Attorney General of the Republic of Burundi & the Secretary General of the East African Community, EACJ Ref. No. 8 of 2011.**

27. In reply, Counsel for the Applicants started his submissions by recalling how the protracted conflict over the UPRONA leadership had unfolded. He averred, in this regard, that on 9th June 2014, some elected members of UPRONA's Executive Committee wrote to Ms. Nibigira asking her to convene a meeting of the Central Committee in order to solve some problems of leadership prevailing within their Party, especially to elect its new President following the resignation of the former one. That when Ms. Nibigira refused to accede to their request, they resolved to convene a meeting of the Central Committee to be held on 13th July 2014 at UPRONA's Headquarters.

28. It was Counsel's further submission that Ms. Nibigira, with the approval of the Minister for Home Affairs dated 27th July 2014, convened a meeting of the States General of UPRONA, an organ allegedly unknown in UPRONA's Statutes and Rules. With regard to that meeting, Counsel contended that, by his decision to authorize Ms. Nibigira to hold an illegal meeting of an unknown organ of UPRONA, by his subsequent request to the Minister for Security to prevent the meeting convened by one third of UPRONA' Executive Committee's members, and by deploying police force all around and

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inside the venue of the convened meeting, the Minister for Home Affairs interfered in UPRONA's affairs and caused a huge prejudice to that Party. He hastened to add that that interference constituted an infringement, not only of the provisions of Article 80 of the Constitution of the Republic of Burundi which states: ***"The law provides for the Government non-interference in the internal functioning of political parties, except for the restrictions necessary for the prevention of ethnic, political, religious, regional or gender - based hatred and the maintenance of public law and order"***, but also violated the decision of the Supreme Court of Burundi rendered on 11th September 2012 in **RAP 34, RAP 35** and **RAP 36**. To buttress that submission, reliance was placed on the decisions of this Court in the **Katabazi case** (supra); **Samuel Mukhira Mohochi vs. The Attorney General of the Republic of Uganda, EACJ Ref. No. 05 of 2011**; and the **Plaxeda Rugumba Case** (supra).

Determination of Issue No. 1

29. From the outset, it is worth recalling that the jurisdiction of the Court is provided by Articles 23 and 27 of the Treaty.

Article 23(1) reads: ***"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."***

And Article 27(1) provides that: ***"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.”

- 30.** Considering then the acts complained of, does the Court have the requisite jurisdiction to determine the Applicants’ allegations against the Respondent?
- 31.** As the Applicants’ case stands, the bone of contention stands on three legs: the alleged unlawful recognition of Ms. Nibigira as the President and Legal Representative of UPRONA; alleged unlawful authorization by the Minister for Home Affairs to Ms. Nibigira to organize a meeting of an alleged unknown Party’s organ called “States General of UPRONA” and the alleged unlawful decision taken by the same Minister in collaboration with the Minister for Security stopping some elected members of UPRONA’s Central Committee from holding a meeting.
- 32.** In the instant Reference, the Applicants seek to invoke the Court’s interpretative jurisdiction to determine whether the Respondent through the Minister for Home Affairs, by taking the aforesaid decisions complained of, has breached the fundamental and operational principles of the Community set out in Articles 6(d) and 7(2) of the Treaty.
- 33.** For ease of reference, Article 6(d) states that one of the fundamental principles that shall govern the achievement of the objectives of the Community by the Partner States is ***“good governance including adherence to the principles of democracy, the rule of law, accountability, transparency, social justice, equal opportunity, gender equality, as well as the recognition, promotion and protection of human and peoples’ rights in accordance with the provisions of the***

African Charter of Human and Peoples' Rights." And Article 7(2) reads: ***"The Partner States undertake to abide by the principles of good governance, including adherence to the principles of democracy, the rule of law, social justice and the maintenance of universally accepted standards of human rights."***

34. In his submissions, Counsel for the Respondent conceded that this Court has jurisdiction to entertain some prayers of the Reference, namely, prayers (a), (b) and (c), all related to whether the acts complained of are unlawful and prayer (g) on costs. Learned Counsel, however, maintained that the Court lacks jurisdiction to determine other prayers i.e. prayers (d), (e) and (f) reproduced hereinabove, all urging this Court to nullify decisions taken by the Burund's Minister for Home Affairs while addressing the leadership problem within UPRONA Party.

35. In similar cases, which were all brought against the Attorney General of the Republic of Burundi, the Court had the opportunity to state clearly that issues that fell into the interpretative jurisdiction conferred upon it by Article 27(1) had to be entertained, but that those only aimed at nullifying the decisions and actions of the Respondent which did not have any relation with its aforesaid jurisdiction had not to be entertained since they fell within the competence of the National Courts of Burundi (see **Venant Masenge vs. The Attorney General of the Republic of Burundi, EACJ Ref. 9 of 2012; Benoit Ndorimana vs. The Attorney General of the Republic of Burundi , Prof. Nyamoya Francois vs the Attorney general of the Republic of Burundi, EACJ No. 11 of 2011**). Likewise, we are of the decided opinion that this Court has jurisdiction to determine issues pertaining to whether the

Minister for Home Affairs' decisions were unlawful and an infringement of the provisions of Article 6(2) and 7(2) of the Treaty (see supra prayers (a), (b) and (c)) because they fit well into the interpretative authority conferred upon it by Article 27(1) of the Treaty. We, however, in light of the aforementioned case law, decline the Applicants' invitation to entertain prayers (d), (e) and (f) whereby this Court is asked to nullify the decisions taken by Burundian authorities in the UPRONA leadership problem, since they are reserved to the National Courts of Burundi.

36. We therefore answer issue No. 1 partly in the affirmative.

Issue No. 2: Whether the Reference is time-barred

37. The Respondent contended that this Court cannot entertain the Reference because it was time-barred in terms of Article 30(2) of the Treaty which prescribes the time limit within which references are instituted in the Court. He stated that Article 30(2) provides that: ***“The proceedings provided for in this Article shall be instituted within two months of the enactment, publication, directive, decision or action complained of, or in the absence thereof, of the day in which it came to the knowledge of the complainant, as the case may be.”***

38. Counsel for the Respondent further averred that this Reference, which is mainly challenging the recognition of Ms. Nibigira as the President and Legal Representative of UPRONA, was filed on 29th August 2014; six months and nineteen days after that recognition.

39. It was Counsel's submission that the Applicants were aware of such recognition as from 11th February 2014, but waited until 29th August 2014 to file the case before this Court, out of the two-month time-limit provided for under Article 30(2) of the Treaty.

40. In support of his contention that the Reference was time-barred, learned Counsel referred the Court to a number of decisions where the Court had addressed various aspects of the question of time-bar, such as (i) the manner of computing time for that purpose (see **Attorney General of the Republic of Uganda & Another vs. Omar Awadh & 6**); (ii) obligation to comply strictly with the time limit given the imperative of ensuring legal certainty in the Court's proceedings (see **Hilaire Ndayizamba vs. The Attorney General of the Republic of Burundi** and **Prof Francois Nyamoya vs. The Attorney General of the Republic of Burundi & the Secretary General of the East African Community**); (iii) no possibility for the Court to extend the time limit outside the two-month time limit (see **Independent Medical Legal Unit vs. Attorney General of the Republic of Kenya, EACJ Ref. No. 3 of 2010**).

41. In response, Counsel for the Applicants contended that the Reference was not time-barred since the decisions and acts challenged by the Applicants for being unlawful were those of the Minister for Home Affairs made on 11th July 2014 and 13th July 2014.

42. In this regard, he asserted that the first action complained of was the Minister for Home Affairs' authorization given to Ms. Nibigira, ***“unlawfully addressed to as the President of UPRONA, to hold a meeting of the illegal States general meeting of UPRONA Party, through his letter dated 11th July 2014.”*** He further averred that on the same day, the aforesaid Minister wrote to the Minister for Security asking him to take all necessary measures to prevent a legal meeting of UPRONA and its organisation, and that, subsequently, the police force was deployed around and inside the venue for the meeting of the Central Committee convened by one

third of UPRONA's Executive Committee's members according to the provisions of Article 11 of UPRONA Rules, and that the meeting was stopped from taking place.

43. In light of the foregoing arguments, it was Counsel's submission that the Reference was filed within the required time.

44. We understand the Applicants' contention to be revolving around not only the recognition of Ms. Nibigira as the President and Legal Representative of UPRONA, but also that in that capacity, she was authorized by the Minister for Home Affairs to organize a meeting of an allegedly unknown organ of the Party and the prohibition by the Minister for Home Affairs from holding a meeting convened by one third of UPRONA's Central Committee's members.

45. It is an undisputed fact that the recognition of Ms. Nibigira as the President and Legal Representative of UPRONA was made by the Minister for Home Affairs on 11th February 2014 and as such, its challenge made on 29th August 2014 when the Reference was filed is barred by the two-month time limit to institute a case. But as mentioned above, the Applicants' case stands on another leg, namely, the Minister for Home Affairs' impugned actions and interventions in the affairs of UPRONA, on 11th July 2014 and 13th July 2014, respectively. The latter are evidently not barred by time limit in terms of the provisions of Article 30(2) of the Treaty given that, as stated above, the Reference was filed on 29th August 2014.

46. For all the above reasons, issue No.2 is partially answered in the affirmative

Issue No. 3: Whether the recognition by the Minister for Home Affairs of Ms. Concilie Nibigira as the President and Legal Representative of UPRONA is unlawful or inconsistent with Articles 6(d) and 7(2) of the Treaty

47. Given our finding hereinabove with respect to the contention that Ms. Nibigira's recognition as President and Legal Representative of UPRONA was time-barred in terms of the provisions of Article 30(2) of the Treaty, it would be a futile exercise to entertain issue No. 3 since it is improperly before the Court.

Issue No. 4: Whether the refusal by the Minister for Home Affairs to let the members of the Central Committee elected in 2009 convene a meeting is unlawful and/or inconsistent with Article 6(d) and 7(2) of the Treaty

48. The Applicants' submission with respect to this issue was that the refusal by the Minister for Home Affairs to let some members of the Central Committee of UPRONA elected in 2009 convene their meeting as permitted by UPRONA Statutes and Rules violated the pre-cited Article 80 of the Constitution of Burundi, Article 4 and 11 of Act No. 1/006 of June 2003 relating to the organisation and functioning of political parties in Burundi, and ran afoul of the 2012 decision of the Supreme Court of Burundi which had held that the Central Committee elected by the 2009 Congress of UPRONA was the only legal organ competent to manage and organize the activities of that Party.

49. Then, referring to this Court's decision in **James Katabazi case** (supra) where it was held that: ***"... the intervention by the armed security agents of Uganda to prevent the execution of a lawful Court order violated the principle of the rule of law and***

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consequently the Treaty. Abiding by the Court decision is the cornerstone of the independence of the judiciary which is one of the principles of the observation of the rule of law”, the Applicants’ Counsel contended that the refusal to authorize that meeting was unlawful and inconsistent with Article 6(d) and 7(2) of Treaty, reproduced elsewhere above.

50. In reply, Counsel for the Respondent submitted that any meeting of the Central Committee had to be convened and chaired by the Legal Representative of UPRONA as stipulated in that Party’s Statutes and the Internal Rules of the Central Committee and that in that regard, the Minister for Home Affairs had never refused such a meeting to take place as long as it was held in conformity with the Laws of Burundi. In support of that submission, learned Counsel also referred the Court to its Ruling in **Bonaventure Gasutwa and 2 Others vs. The Attorney General of Burundi, Application No. 18 Of 2014**, which had arisen from the instant Reference. He also alluded to the **Ndorimana Case** (supra) where it was stated that *“the Applicants cannot disclose any cause of action against the Respondent to give rise to violation of Articles 6(d) and 7(2) of the Treaty.”*

51. Considering the Applicants’ pleadings and submissions on the issue at hand, the first argument in support of their case is that the refusal by the Minister for Home Affairs to authorize a meeting convened by a faction of UPRONA representing one third of the Central Committee’s members violated the provisions of Article 80 of the Constitution of Burundi as well as Articles 4 and 11 of Act No. 1/006 of June 2003 on the organisation and functioning of political parties.

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52. Article 80 of the Constitution of Burundi was reproduced elsewhere above. As for Article 4 of Act No. 1/006 of June 2003, it reads: ***“Political parties are created, organized and exercise their activities freely, subject to the provisions of Article 21 of the present Act.”*** Regarding Article 11 of the said Act, it provides that: ***“Political parties can hold meetings, organize events and make propaganda under the conditions prescribed by law.”***
53. From the Applicants’ case as indicated hereinabove, considered in line with the aforementioned provisions of the Constitution and the Law on political parties, it can be gleaned that the Applicants faulted the decision of the Minister for Home Affairs for being interference in the internal functioning of their political party. However, the principle of non-interference enshrined in Article 80 of the Constitution is not absolute; an exception to this principle is permitted when ***“the restrictions are necessary for the prevention of ethnic, political, religious or gender-based hatred and the maintenance of public order.”***
54. On this point, Counsel for the Respondent did not clearly indicate the reason why the meeting was not authorized by the Minister for Home Affairs, but only stated that the said Minister has never refused that a meeting of the Central Committee of UPRONA elected in 2009 could be held in accordance with the National Laws of Burundi. In this regard and echoing the provisions of Article 11 of the Act on political parties, learned Counsel reiterated his position that all political parties’ meetings had to be convened as prescribed by the National Laws of Burundi. On this matter, although learned Counsel did not explicitly refer to the restrictions embodied in Article 80 of the Constitution, he nevertheless alluded to the issue of maintenance of public order as a justification of the decision to

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stop the meeting of the faction of UPRONA's Central Committee. But here again, a question that may have arisen, probably coming from the Applicants who challenged the decision taken would have been whether that decision was reasonably necessary for the sake of preserving public order.

- 55.** The Applicants, on their part, were silent on the aforesaid *proviso* of Article 80 of the Constitution. There was no hint on whether the Minister for Home Affairs' decision allegedly amounting to interference in UPRONA's internal functioning was faulted for not being "*necessary*" in terms of the provisions of the said Article.
- 56.** The Applicants did not also provide any authority or make credible and persuasive submissions in support of their allegations, and more importantly, they failed to make a connection between the principles embodied in Articles 6(d) and 7(2) of the Treaty and the issues they have raised, i.e. the refusal to authorize the meeting of one faction of the UPRONA's Central Committee allegedly amounting to the Government's interference in the internal functioning of their political party.
- 57.** In the result, we are unable to make any conclusive finding on whether the Minister for Home Affairs' refusal to authorize the meeting of one faction of UPRONA's Central Committee was unlawful and/or inconsistent with Article 6(2) and 7(2) of the Treaty.
- 58.** We now turn to the second argument presented by the Applicants in support of their allegations that the impugned refusal to authorize a meeting convened by some members of the UPRONA's Central Committee contravened a decision of the Supreme Court of Burundi rendered in 2012. We understand that argument built

around the **Katabazi Case** (supra) to be that, since the meeting of a faction of UPRONA's Central Committee was convened in the framework of the implementation of the aforesaid decision of the Supreme Court, the refusal by the Minister for Home Affairs to let those members hold that meeting ran afoul of the principles of rule of law and good governance enshrined in the Treaty.

59. Although the similarity between the two cases was not shown nor proved by the Applicants, we are of the view that assessing the validity of the Applicants' allegations will ultimately lead to assessing whether or not the decision complained of was taken in conformity with the Laws of Burundi. As stated above, we were unable to make a final finding on this matter due to lack of sufficient supporting evidence. It is incumbent upon the Applicants, therefore, to bear the risk of failure of proof.

60. Given the above reasons, we would answer issue No. 4 in the negative.

Issue No. 5: Whether the Applicants are entitled to the remedies sought

61. The Applicants urged the Court to grant the prayers and orders as reproduced elsewhere above in this judgment.

62. Conversely, the Respondent submitted that since there was no violation of the Treaty on his side and that the Reference was time-barred, the Applicants were not entitled to any remedy and pleaded that the Reference be dismissed with costs to the Respondent.

63. As found above, the Applicants did not adduce evidence that there has been a Treaty violation imputable to the Respondent. Therefore, prayers (a), (b), (c), are disallowed. Prayers (d), (e), and (f) cannot be

the Treaty.

As for costs, considering that the Applicants were not pursuing any personal interest in this matter, we deem it just that each party bears its own costs.

H. CONCLUSION

64. In light of our findings and conclusions on issues herein, we make the following declarations and orders:


- i) Prayers (a), (b) and (c) are disallowed.
- ii) Prayers (d), (e) and (f) are not tenable because we have no jurisdiction to grant them.
- iii) Each party shall bear its own costs.

65. It is so ordered.

Dated and delivered at Arusha this 26th day of November 2015.



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MONICA MUGENYI
PRINCIPAL JUDGE



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ISAAC LENAOLA
DEPUTY PRINCIPAL JUDGE



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FUSTIN NTEZILYAYO
JUDGE