

TANZANIA / JUDGMENT

ngaruko v attorney general of the republic of burundi reference 9 of 2019 2022 eacj 24 30 september 2022

COURT
EACJDECIDED
30 September 2022

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,, 0 IN THE EAST AFRICAN COURT OF JUSTICE AT ARUSHA FIRST INSTANCE DIVISION ~ /II \ y /1
\\ ~ ~ (Coram: Yohane B. Masara, PJ; Charles O. Nyawello; Charles A. Nyachae; ~ ~ Richard
Muhumuza & Richard Wabwire Wejuli, JJ) REFERENCE NO. 9 OF 2019 FRANCIS
NGARUKO APPLICANT VERSUS THE ATTORNEY GENERAL OF
THE REPUBLIC OF BURUNDI RESPONDENT 30th SEPTEMBER 2022
Reference No.9 of 2019 Page 1 JUDGEMENT OF THE COURT A. INTRODUCTION

1. This Reference was preferred under Articles 6(d), 7(2), 8(1)(a) & (c), 23(1), 27(1) and 30(1) & (2) of the Treaty for the Establishment of the East African Community ('the Treaty') on 3P1 of March 2019. It challenges the process which culminated in the finding that both the Applicant and the Estate of his late father, Evariste Sebatutsi, had fraudulent possession of the property (land) Registration File No. E.XXXVI folio 129 of 28/8/1972 ("the Property"). The Reference is supported by the Affidavit of Francis Ngaruko ("the Applicant"). The Applicant also provided a further Affidavit deponed in Bujumbura on th 13 November 2020 and a Supplementary Affidavit deponed on 5th February 2021.
2. The Applicant presented himself as a natural person and the son of the late Evariste Sebatutsi. He is a resident of Bujumbura, in the Republic of Burundi. He preferred the Reference on his own behalf and as an heir to the estate of his late father which forms part of the land in dispute. In addition, he made a claim based on purchase of part of the land in dispute.
3. The Respondent is the Attorney General of the Republic of Burundi. He was sued on behalf of the Government of the Republic of Burundi in the capacity of the Principal Legal Advisor of the Government. B. REPRESENTATION
4. At the trial, the Applicant was represented by Mr Hannington Amol, learned Advocate. The Respondent was represented by Mr Diomede Vyizigiro and Mr Pacifique Barankitse, learned Director and State Reference No.9 of 2019 Page 2 Attorney, respectively, from State Attorneys' Office, Republic of Burundi. C.BACKGROUND

5. The dispute culminating into this Reference involves a piece of land which the Applicant claims to be his and his late father's. The facts gleaned from the pleadings and evidence reveal a succession of possession as the property in dispute passed from one possessor to another. In 1938, a Belgian named THEYS Pierre acquired the disputed piece of agricultural land which is located in Kizingwe suburbs of Bujumbura from the previous owner (Van Hemi). Following the end of the colonial era over Burundi in 1963, the said THEYS Pierre returned to Belgium, but continued to be recognised as the owner of that piece of land. In the period from 1961 to 1972, while residing in Belgium, THEYS Pierre made several attempts to sell the property, with the aid of land authorities in Burundi. On July 28, 1972, that piece of land went into possession of Evariste Sebatutsi.
6. According to the affidavit in support of the Reference, Evariste Sebatutsi was a Burundi national who resided in Bujumbura, Burundi until when civil war made him to flee to Belgium. During the purchase of the suit property, THEYS Pierre was represented by a duly appointed attorney who held a registered power of attorney. A certificate of Land Registration for the property was handed over to the said Evariste Sebatutsi by the Registrar of Lands in July 1972.
7. It is on record that during the civil war, the family of Sebatutsi fled and left the land. On return from exile, the family went back to the property and started developing it. The Applicant also acquired 10 more Reference No.9 of 2019 Page 3 hectares of land adjacent to the property acquired by his father. When Evariste Sebatutsi died, his piece of land was shared among his successors, including the Applicant who received 19 hectares, in addition to the 10 he had procured. The Applicant developed his piece of land and incorporated two companies; namely, Bujumbura Signature and Ma Campagne, in order to carry out various commercial activities on the property, including country restaurant, real estate and agricultural trade fairs.
8. In 2014, a group of residents filed a complaint with the National Commission of Land and other Property ("the Land Commission"). On 11 th December 2014, the Land Commission dismissed the claims of those residents. It, however, decided that the Applicant and his late father were not entitled to the property either. The Land Commission declared the land to be State property. The reasons for the decision were that- "Article 196 of the law No 1/13 of August 9, 2011 revising the Land Code of Burundi which stipulates: "the natural or artificial public domain of the State is inalienable, imprescriptible and unseizable. The lands forming part of it cannot be the subject of any act of disposition, nor be charged with any real charge, with the exception of easements. Neither can they be the subject of a useful possession capable of acquiring land rights to the possessor, nor of any possessory action of private individuals."
9. The Land Commission went on to state as follows: Reference No.9 of 2019 Page4 " ... Having regard to Article 13 of the same law stipulating in its last paragraph that "Agricultural or livestock land may not be transferred in full ownership to foreign natural or legal persons." Whereas NGARUKO Francis, representing the Succession SEBATUTSI, declares that the

homestead was acquired from the white settler owner when he was not entitled to dispose of agricultural property in Burundi because he was a foreigner. Whereas NGARUKO Francis never gave any document justifying the purchase by his father of this property ... the property of 105 ha 88 ares in the hands of the Succession SEBATUTSI Evariste is put back in the state's land of the State of Burundi. .. "

10. The Applicant appealed the decision to the national level Commission of Land and other Property ("the Commission") challenging the declaration made by the Land Commission. The Commission summarily rejected the appeal without a hearing on the ground that, as the property had been declared to belong to the State, the Commission had no jurisdiction. The Applicant was directed to contact the Ministry of Water, Spatial Planning and Town Planning in case of doubts on his part. 11 . The Applicant made a further appeal to the Special Court of Land and Other Property, first degree ("the Special Court"). The Special Court affirmed the previous decision and declared the property to be "a property without master for the State's benefit". The main ground for this decision was that the Applicant could not produce an authentic sales agreement and that in any case the seller (THEYS) could not Reference No.9 of 2019 Page 5 sell the land as he had left Burundi as of 1963. Specifically, the Court said as follows: "Whereas this Court confirms that the Belgian Colon named THEYS rejoins his home country like most Belgian settlers after independence from BURUNDI, he is no longer returning to BURUNDI and his property is not transferred to another person; Therefore, declare the property located at KIZINGWE a property without a master at defendant's benefit; ... "
12. The Court confirmed the size of the land to be 107 Ha 76 to 68 Ca. After declaring the same to be the property of the State of Burundi, it went ahead and cancelled the Applicant's title to the land registered in the name of SEBATUTSI Evariste. The Court also condemned the SEBATUTSI succession to pay the State of Burundi costs of servicing of one hectare in which his dwelling house is located, 93,387,000 Fbu plus costs. The Court also allowed APK who had bought some pieces of land from the Applicant to hold into the same after payment of the balance of purchase price.
13. Undaunted, the Applicant made yet a further appeal to the Special Court, second degree. His appeal was based on errors apparent in the decision of the Special Court, first degree. He also claimed for compensation for loss incurred due to the decision of the Land Commission. At this level, the Applicant, in addition to appealing as a representative of the Succession SEBATUTSI, he also appeared as an intervener claiming for a piece of land he had acquired, different from the Succession SEBATUTSI property. He also stated that the property in question was the subject of another dispute pending at the Court of Appeal of Burundi, thus barred by the principle of /is Reference No.9 of 2019 Page 6 pendens. In addition, the Applicant submitted a Deed of Sale of the property which they had not filed earlier. st

14. On 1 February 2019, the Special Court, second degree, dismissed the appeal and handed over the property to the Respondent. In the process of reaching the decision, the Court rejected the Deed of Sale tendered as being fictitious. The Court further directed that the 1 hectare allocated to the Applicant be divided to compensate some of the purchasers. That decision was availed to the Applicant on 4th April
2019. Aggrieved by the decision made by the authorities of the Respondent, the Applicant decided to file this Reference on 31 st May 2019.
15. In addition to filing of the Reference, the Applicant also filed Application No. 3 of 2019 {Francis Ngaruko vs the Attorney General of the Republic of Burundi) craving for interim conservatory orders. On 5th February 2020, this Court allowed the Application and temporarily restrained the Respondent from proceeding with the execution of the orders made by the Special Court. D. THE APPLICANT'S CASE
16. The Applicant's case is set out in the Statement of Reference, in the Affidavit in support of the Reference dated 31 st May 2019, in the Further Affidavit of the Applicant made in Bujumbura on 23rd November 2020 and in the Supplementary Affidavit by the Applicant attested in Bujumbura on 6th February 2021. It is the Applicant's case that his late father bought the property in dispute from THEYS Pierre on 28th July 1972. In addition , that the Applicant also independently purchased 10 more hectares of land adjacent to his father's property. Reference No.9 of 2019 Page 7
17. It is also the Applicant's case that the Respondent State institutions; namely, the Land Commissions and the Special Courts, unlawfully dealt with the claims brought before them. That he was disentitled of his lawfully acquired property in a manner that is inconsistent with the laws of the Republic of Burundi. That the compulsory acquisition of the suit property by the Respondent State without following due process of law and without compensation, constitutes violation of Articles 6(d), 7(2) and 8(1)(a) & (c) of the Treaty.
18. Further, that the Respondent disregarded the relevant law at the time of acquisition of the property and disregarded official records and land register records that clearly established that the property lawfully belongs to the Applicant, having lawfully acquired the same from THEYS Pierre who was in constant communication with the Respondent through its land registry.
19. That the Respondent's conduct regarding the land up to the time of sale and subsequently thereafter was inconsistent with the assertion that the property was one without a master. That the Government continued collecting taxes from the property whereby in 1972 the legal mortgage entered in favour of the Respondent was discharged after all taxes were paid. Further, that as the Applicant had a certificate of title to the land, and as the land registry confirmed by letter that the land in dispute belonged to the Applicant and that even the President of the Republic had confirmed the same, it was not in order for the Special Court, second degree, to disentitle him of the land.

20. On the basis of the foregoing , the Applicant seeks the following orders against the Respondent State: Reference No.9 of 2019 Page 8
- a) A declaration that the decision of the Respondent to cancel the Applicant's title and that of his late father, Evariste Sebatutsi, to the property contravened Article 6(d) of the Treaty;
 - b) A declaration that the Respondent violated Article 6(d) of the Treaty by acquiring the property of the Applicant without due compensation;
 - c) A declaration that the delay to expeditiously conclude the dispute by the Respondent violated Article 6(d) of the Treaty, and constitutes unfairness to the Applicant;
 - d) An order directed at the Respondent to restore the Applicant into possession of the property and guarantee peaceful enjoyment;
 - e) Alternative to prayer (d), an order for compensation to the Applicant by the Respondent, for the sum of USO \$4,000,000, together with interest calculated at court rate, until payment in full;
 - f) costs; and
 - g) Any other order that the Honourable Court considers expedient in the circumstances.
- D. THE RESPONDENT'S CASE 21 . Similarly, the Respondent's case is set out in the Response to the Statement of Reference and in the Affidavit of one Devote NZEYIMANA dated 15th July 2019. The Respondent denied the allegations and claims of the Applicant on three grounds that:
- a) Article 3 of what purports to be the contract between Evariste Sebatutsi and THEYS Pierre stipulates that Reference No.9 of 2019 Page 9 SEBATUTSI will have right over the land in dispute after the signature of an authenticated contract;
 - b) The Applicant had failed to produce the said authenticated contract before the Special Court of Land and Other Assets; and
 - c) Judgement RSTBA 0263 delivered by the Special Court on Lands and Other Assets on 1st February 2019 does not violate Article 6(d) of the Treaty.
22. It is the Respondent's further contention that failure to produce the authenticated contract is indicative that the land in dispute had not become the property of the Applicant's father in his life-time and, upon his death, has not become part of his estate. On the basis of that denial, grounds and contention, the Respondent urges the Court to dismiss the Reference with costs. E. ISSUES FOR DETERMINATION
23. At the Scheduling Conference held on 9th November 2020, the following issues for determination were agreed upon ; namely:

- a) Whether the decision of the Respondent, contained in Judgement RSTBA, to cancel the Applicant's title and that of his late father, Evariste Sebatutsi, to the property contravened Articles 6(d), 7(2) and 8(1)(a) &
 - (c) of the Treaty;
 - b) Whether the said decision by the Respondent violated Article 6(d), 7(2), 8(1)(a) & (c) of the Treaty by declaring the Applicant's property an asset of the State, without due process and compensation; and Reference No.9 of 2019 Page 10
 - c) Whether the parties are entitled to the remedies sought. F. COURT'S DETERMINATION OF THE ISSUES
24. In determining the issues, we deem it appropriate to combine Issues No. 1 and 2 as they are, in our view, similar. The two issues allege violation of Articles 6(d), 7(2) and 8(1)(a) & (c) of the Treaty by the Respondent. We do so also on the basis of what we deduce to be common from the submission by Counsel for both parties. ISSUE NO. 1: Whether the decision of the Respondent, contained in Judgement RSTBA, to cancel the Applicant's title and that of his late father, Evariste Sebatutsi, to the property contravened Articles 6(d), 7(2) and 8(1)(a) & (c) of the Treaty; and ISSUE NO. 2: Whether the said decision by the Respondent violated Article 6(d), 7(2), 8(1)(a) & (c) of the Treaty by declaring the Applicant's property an asset of the State without due process and compensation
25. Counsel for the Applicant submitted at length why, in the Applicant's view, the impugned decision of the Courts of Burundi should not be left to stand. In his view, the decision to cancel the certificate of title E.XXXVI folio 129 of 28/8/1972 has no legal basis and is an abrogation of the rule of law enshrined in the Treaty and constitutes a breach of the right to property protected by the Constitution of Burundi and the Land Act.
26. Counsel for the Applicant stated that the Government of Burundi, through the Registrar for Lands, duly registered Evariste Sebatutsi as Reference No.9 of 2019 Page 11 the legal owner of the land following purchase of the same from the former owner Pierre THEYS. That previous to the purchase, there was no indication that there was anything wrong with the right of the owner. That this is augmented by the fact that from 1961 up to 1972, the Government was in constant communication with Mr THEYS and helped him in averting encroachers in his land. In addition, when the land fees were due, the Government registered a mortgage on the land in 1969, which mortgage was discharged in 1972 after payment of the fees was made.
27. Counsel further submitted that when the Applicant acquired property in 1972, the rightful owner recognised by the Government of Burundi was THEYS Pierre. That the said THEYS has never made any claims challenging the acquisition by Evariste Sebatutsi, thus there is no sound basis to claim that the property was not properly acquired. That by cancelling the title issued to the Applicant in 1972, the Respondent acted unlawfully by failing to recognise the lawful land registration system put in place by the State of Burundi, which constitutes not

only a violation of its domestic laws but also Article 6 of the Treaty.

28. Learned Counsel further amplified that the land registration system is aimed at ensuring certainty of ownership of rights and interests in land. It is a means to protect registered owners as well as those dealing with them in good faith. That by its conduct, the Government of Burundi represented to the Applicant that the land belonged to THEYS, whereby he proceeded to buy the same for value and was registered. It is therefore incumbent upon the Government to compensate him should the same Government claim that the property did not belong to the seller since 1963 when he left Burundi. Reference No.9 of 2019 Page 12
29. Learned Counsel referred to a number of authorities to back up his assertions. He made reference to Articles 313, 314 and 317 of the Land Code which define the right to land ownership by registration. He stipulated that the Respondent has never alleged or proved that the registration of the land rights in favour of the late Sebatutsi, as well as issuance of title to him failed to comply with the law. That, in any case, having enjoyed occupation of the property for over 30 years, the Applicant cannot be deprived of the same without compensation, as such long occupation amounts to adverse possession on the basis of Article 22 of the Land Code of Burundi.
30. Learned Counsel also stated that it was wrong for the Courts to ignore the law which existed at the time of acquisition of the property and base its decision on the Land Code which came into force in 2011 . For him, that law could not legitimately seek to act retrospectively on land ownership rights established in 1963 or 1972. 31 . Counsel for the Applicant summed his submission by urging the Court to declare the decision of the Respondent which cancelled the Applicants rights over the property and declared the property as one without a master, a violation of the Treaty.
32. The Respondent's Counsel on the other hand, submitted that neither the Applicant nor his father acquired rights over the disputed land. Counsel contended that the Appellate Division of the Special Court was right to cancel the title as the Applicant failed to provide an authentic deed of sale as indicated in Article 3 of the purported sales agreement. That whereas the Deed of Sale was certified as true copy in 2018, the Applicant failed to produce an original copy when asked to. Reference No.9 of 2019 Page 13
33. Counsel for the Respondent also contested the Deed of Sale because it lacked the signature of the seller and that the person who was said to be representing him, KASH IRAHAMWE Pascal, did not have a document to so do nor did he sign the agreement. Further that the Applicant cannot benefit from the adverse possession principle as he did not acquire the land in good faith .

34. Regarding communications by the Government and the former owner, Counsel for the Respondent was of the view that such communications are irrelevant as long as there was no authentic Deed of Sale from the said THEYS to SEBATUTSI. Further, that the Special Court did not rely on the 2011 Land Code to arrive at its decision.
35. Counsel for the Respondent therefore urged the Court to confirm the decision of the Special Court (RSTBA 0263) as it is in conformity with the laws of Burundi and the Treaty and dismiss the Reference with costs.
36. We have carefully considered the submissions and the pleadings by the respective parties. It is incumbent to note that the dispute that led to the cancellation of the Applicant's certificate of title did not involve the Respondent. While dealing with the claims of the 9 families who alleged that the Applicant had exceeded his boundary by about 16 acres, the Land Commission suo moto declared that whereas the boundary of the land occupied by the Applicant was not exceeded as claimed, the Applicant had no right to the land. Reasons given are stated in Paragraphs 8 and 9 above.
37. The Respondent surfaces when the matter was litigated at the Special Courts. We can therefore rightly say that the Respondent had Reference No.9 of 2019 Page 14 no issue with the legality of the Applicant's ownership of the suit property until when the land was graciously handed over to him by the Land Commission. We do agree with the Applicant's contention that the Respondent harboured no doubts that the land was properly acquired and used by the Applicant and the estate he represented.
38. It is the submission of Counsel for the Applicant that the conclusions by the Special Court should not have been arrived at as the Applicant had in possession a registration certificate issued to his father, SEBATUTSI Evariste. Counsel, therefore, maintained that the sanctity of the land register has been violated, which constitutes violation of not only Burundi Land Law but also violation of the Treaty.
39. Counsel referred the Court to Article 313 of the Land Code, which provides that title of land is established through registration. The translated text of Article 313 is as follows: "The right of land ownership can be established:
 - or by a land title established by the Registrar of Land Titles.
 - or by a land certificate established by the municipal land service recognizing a regular appropriation of the land resulting in a personal or collective, permanent, and lasting influence, according to the uses of the moment and the place and according to the vocation of the land."
40. We understand the preceding translation to stipulate that under the laws of Burundi, the right to land ownership is established by either the Registrar of Land Titles or the municipal land service recognising a regular appropriation. The learned Counsel for the Applicant invokes the Article to establish his contention that his client is the Reference No.9 of 2019 Page 15 undisputed owner of the property in dispute by virtue of the registration certificate

File E.XXXVJ folio 129 of 28/8/1972, which should serve as the conclusive evidence of the ownership established by the Registrar of Land Titles. 41 . Furthermore, Mr Amol invited the Court to have regard to Article 314, which sets out the requirement of registration and places the onus on the State to satisfy itself that the legal rights to the land have been established before registration. Article 314 states (as translated): "(a) The Registrar of Land Titles registers land rights when this formality is made compulsory by law or when it is requested by a natural or legal person who thus wishes to benefit from the legal protections attached to it;

- (b) The Registrar only proceeds with the registration after having previously verified the legal basis and the scope of the right whose registration is required. The area is delimited by the boundaries of the building."
- 42. From the preceding translation of the Article, it is evident to us that verification of the legal basis and scope of the right shall precede its registration. Hence, the purpose of the Article is to ensure the registration of only lawful rights over a piece of property. On that basis, the learned Counsel for the Applicant resorts to the Article to substantiate his position that the completion of the registration is proof of the verification of the legal basis and scope of his client's right over the land in dispute. Reference No. 9 of 2019 Page 16
- 43. Finally, the learned Counsel for the Applicant drew our attention to Article 317 of the same law, which stipulates that land title is sufficient proof of ownership. He avails neither the exact text of the Article nor its English translation. In spite of that omission , it is clear from the paraphrase that the production of a certificate of registration of a property rules out further questioning in relation to the ownership of that property. In that understanding, the learned Counsel for the Applicant relies on Article 317 to support his argument that the registration certificate File E.XXXVI folio 129 of 28/8/1972 is conclusive evidence establishing the lawful status of his client's property and, on that ground, the relevant Courts were bound to abide by conclusive evidence of the registration certificate. Thus, He invokes the Article to lend support to his contention that the case of his client's property constitutes an unjustified deviation from the line prescribed by the Article.
- 44. On his part, as above stated, Counsel for the Respondent disputed all the allegations and claims made by the Applicant in the Reference.
- 45. We have carefully considered the competing arguments of the parties. In addition, we have carefully analysed both Judgment RSTBA 0263 and the provisions of the land laws of Burundi referred to by the learned Counsel for the parties. We commence our determination with the consideration of the pertinent provisions of the land law before we examine Judgment RSTBA 0263, the focus of the Reference.
- 46. From the Land Law of the Republic of Burundi, three provisions have been brought to bear on the subject-matter of this Reference. The first provision is Article 213 of the Burundi Land Code of 1986, which declares that all abandoned pieces of land are properties of the Reference No.9 of 2019 Page 17 State. The second provision is Article 22 of Law No. 1/13 of 9

August 2011 , which stipulates that where a person takes possession of land and enjoys it for an uninterrupted long period then that person acquires the right of ownership. The third provision is Article 313 of Law No. 1/13 of 9 August 2011 , which provides that title of land is established through registration, which can be effected after the Registrar of Land Titles has established the legal basis and scope of the right.

47. We are unable to agree with the Respondent that failure by the Applicant to submit an authenticated Deed of Sale or a "Power of Attorney" concluded in 1972 was sufficient ground to conclude that the Applicant's father did not acquire the land. We have examined the records and are satisfied that the Applicant presented documents which proved that he had legally acquired the land from the previous owner. That is the basis upon which the Registrar cancelled the original certificate of title and registered the same land in the names of SEBATUTSI Evariste.
48. The Respondent's Courts were availed with records of the communications between the Government and the previous owner. None of those communications was doubted by those Courts. Thus, the lower tribunal's findings that THEYS, being a former colonist, was unable to transfer the property in Burundi, were without empirical or legal basis. It was equally wrong for the Special Court, Second Grade, to uphold the Special Court, first grade's decision that the suit property was one without a master merely because of errors observed in the Deed of Sale.
49. We are mindful of the fact that a person may be deprived of a property if it is proved that the said property was fraudulently Reference No.9 of 2019 Page 18 obtained. We are also mindful of the fact that the right to own property is inalienable and is protected by the Constitution and the Laws of the Respondent State. Depriving the Applicant of a property he acquired for value and whose previous owner never complained about cannot be considered to be consonant with the Treaty.
50. It was incumbent upon the legal machinery of the Republic of Burundi to subject the matter relating to the Deed of Sale to a forensic investigation before deciding to cancel the Applicant's title. The investigation could have entailed summoning of persons who are said to have dealt with the conclusion of the agreements and registration of title, if need be. 51 . We are unable to fathom the motivation behind the decisions made against the Applicant. We note that the Applicant and the other beneficiaries of the SEBATUTSI estate were developing the land in dispute. That the Government had in fact allowed the estate to sell part of the land to other occupants, including investors. We are perplexed to note that whereas the Special Courts allowed some of the purchasers to hold onto the lands they had acquired from the Applicant, the Applicant was allowed to remain with one hectare subject to payment of millions of francs and also divide the said one hectare to two other persons.
52. It would have been understood had it been that the Government of Burundi was a party to the original dispute contending that the Applicant had acquired the property through fraud. It is not the duty of a Court of law to fetch pieces of land and give them to whomever they

desire. Courts of law are established to determine matters brought to them by parties. This case presents a unique situation where Courts of the Respondent constituted themselves as parties to Reference No.9 of 2019 Page 19 the dispute and not umpires of the matter brought to them by parties. That, on the records before us, constituted a breach of the laws of Burundi relating to right to property and consequently an abrogation of the Treaty as submitted by the Applicant's Counsel.

53. On the premises, we are satisfied that the decision of the Special Court was not in line with the principles of good governance, including the rule of law as prescribed by Articles 6(d) and 7(2) of the Treaty. Accordingly, we answer Issue No.1 and Issue No. 2 in the affirmative. ISSUE NO. 3: Whether Parties are Entitled to the Remedies Sought
54. The Applicant sought for a number of reliefs in the Statement of Reference. Counsel for the Applicant submitted that as the decision to declare his property one without a master was contrary to the Treaty, the property could not be taken away without compensation. He submitted further that the Applicant, prior to the decisions of the Respondent had set out to develop and put to good use the property, and that despite the interlocutory orders of this Court he was denied use of the property, he has suffered losses worth to be remedied.
55. On the other hand, Counsel for the Respondent contested all the claims and urged the Court to dismiss the Reference with costs.
56. Having determined that the decision made by the Respondent breached the Treaty provisions, it is incumbent upon the Court to grant reliefs as appropriate. Other than the declaratory orders sought by the Applicant, he urged the Court to direct the Respondent to restore the Applicant into possession of the property and guarantee peaceful enjoyment. Reference No. 9 of 2019 Page 20
57. In our view, as the Applicant has proved to the satisfaction of this Court that the property in question legally belonged to him, the prayer to restore the Applicant's title is well founded . We, therefore, direct that the Applicant be restored back to the property taken from him and given to the Respondent or, in the alternative, be adequately compensated for the value of the property.
58. Regarding the prayer of compensation to the tune of US \$4,000,000 plus interest, we are guided by the decision of the Appellate Division in the case of Attorney General of Rwanda vs Union Trade Centre Ltd (UTC) & 3 Others, EACJ Appeal No.10 of 2020, that in absence of proof, the exact amount of compensation cannot be given .
59. On the question of costs, Rule 127(1) of the Rules provides that costs shall follow the event unless the Court, for good reason, decides otherwise. This rule was emphatically reinforced in the Case of The Attorney General of the Republic of Burundi vs The Secretary General of the East African Community & Another, EACJ Appeal No. 2 of 2019.

60. In the instant Reference, the Applicant has proved his case on the balance of probabilities. We see no good reasons to depart from this general rule. G. CONCLUSION 61 . For all the foregoing reasons, the Court allows the Reference. We accordingly DECLARE and ORDER as follows:

- a) The decision of the Respondent, through the Special Court, to cancel the Applicant's Title File No. E.XXXVI folio Reference No.9 of 2019 Page 21 129 and declare his property one without a master, contravened Article 6(d) of the Treaty;
- b) The Respondent should restore the property to the Applicant forthwith or pay him adequate compensation for the property based on the current market value; and
- c) The Respondent shall pay to the Applicant costs for this Reference. Dated, signed and delivered at Arusha this 30th day of September 2022. ' ~ ~--- Hon. Justice Yohane B. Masara
PRINCIPAL JUDGE -----~ ----- Hon. Justice Dr Charles O. Nyawello DEPUTY
PRINCIPAL JUDGE A1 ~) Z~ -----~ ---0_--~:---.1 -~---- Hon. Justice Charles A Nyachae UDGE

Js -P-z.t

Hon. Justice Richard Muhumuza JU GE Hon. J d Wabwire Wejuli GE Reference No.9 of 2019 Page 22

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