

TANZANIA / JUDGMENT

dabule and others v attorney general of the republic of uganda reference 5 of 2016 2022 eacj 14 21 june 2022

COURT
EACJDECIDED
21 June 2022

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DMSION ~ t,Z\ {; (Coram: Yohane B. Masara, PJ; Audace Ngiye, DPJ; Charles O . Nyawello; --,
Charles Nyachae & Richard W Wejuli, JJ) REFERENCE NO. 5 OF 2016 ISMAIL DABULE & 1004
OTHERS APPLICANT VERSUS THE ATTORNEY GENERAL OF THE REPUBLIC
UGANDA RESPONDENT 21 stJUNE 2022 1 JUDGEMENT OF THE COURT A.
INTRODUCTION

1. This Reference was filed by Ismail Dabule and 1004 Others (hereinafter referred to as "the Applicants") against the Attorney General of the Republic of Uganda on 6th September 201, and amended on 27 th October 2016. It is made under Articles 30(1) & (2), 27, 6(d) and 7(2) of the Treaty for the Establishment of the East African Community (hereinafter referred to as "the Treaty") and Rule 24(1), (2) & (3) of East African Court of Justice Rules of Procedure, 2013 ("the 2013 Rules").
2. The Applicants are ordinarily resident in Uganda, and their address for the purposes of this Reference is C/O Omongole & Co. Advocates, Plot 30 Kampala Road, 2nd Floor Greenland Towers, P.O. Box 28511, Kampala. E-mail: omongole@yahoo.com .
3. The Respondent is the Attorney General of the Republic of Uganda, sued in the capacity of Principal Legal Advisor of the Government of Uganda, pursuant to Article 119(4) of the Constitution of the Republic of Uganda. B. BACKGROUND
4. Following the overthrow of the former President of the Republic of Uganda, Idi Amin, in 1979 by the Uganda National Liberation Front (UNLF), the National Consultative Council enacted the Banking Act (Amendment) Statute 18 of 1980 which amended the Banking Act 1969 to include sections 26A and 268. That amendment gave the Minister of Finance power to make legal notice under which a private bank account could be frozen. Accordingly, the Minister issued Legal Notice No. 2 of 1982 and Legal Notice Nos. 2 and 3 2 of 1984 freezing personal and business accounts belonging to the Applicants in the various banks within Uganda.

5. Subsequently, the Minister instructed the Bank of Uganda to take over the Applicants' Accounts in the named commercial banks. That instruction was implemented and the Bank of Uganda had all the funds transferred to itself.
 6. On 3rd February 1995, the Minister of Finance wrote to the concerned banks directing them to defreeze the said accounts. On the basis of that directive, the advocate of the Applicants wrote a letter to the Bank of Uganda on 21st March 2003, asking the Bank to implement the letter of the Minister.
 7. In April 2004, on account of that failure, the advocate filed constitutional Petition No.2 of 2004 (Ismail Dabule and 2 Other vs Attorney General and Bank of Uganda), seeking a defreezing order, compensation for continued freezing of the accounts in question, and payment of the Principal and Interest. The Court dismissed the petition by its ruling delivered on 14th September 2007.
 8. Unsatisfied with that ruling, the Applicants lodged Constitutional Appeal No.3 of 2007 before the Supreme Court of Uganda. By its judgement dated 30th October 2015, the Supreme Court dismissed the Appeal, relying on the authority of both Ismail Serogo vs Kampala City Council and Attorney General (Constitutional Appeal No.2 of 1998) and Attorney General vs Major General D. Tinyefuza (Constitutional Appeal No.1 of 1997).
 9. The thrust of the Applicants' case is that after the clarification by the national court on the matter of the accounts in question, the continued refusal of the Government of Uganda to release those 3 funds constitutes violation of Articles 6(d) and 7(2) of the Treaty. For that reason, they brought this Reference.
 10. The Reference was heard to its logical conclusion on 11th November 2018. In the result, this Court dismissed the Reference with costs by its Judgement entered on 28th November 2018.
 11. Dissatisfied with that Judgement, the Applicant lodged Appeal No. 1 of 2018 in the Appellate Division of this Court. On 25th February 2020, the Appellate Division entered its Judgement, allowing the Appeal with costs and remitting the Reference for rehearing on the same issues. The ground for which the matter was remitted is that the Judgement was based on a point of law which had neither been agreed by the parties nor had they been invited to submit on it.
 12. On 11th March 2022, this Court reheard of the Reference on the issues previously framed, in compliance with the order of the Appellate Division of this Court. This Judgement emanates from the ordered retrial.
- C. REPRESENTATION
13. During the hearing, the Applicants were represented by Mr Richard Omongole, learned Advocate . On the other hand , Ms Christine Kaahwa, Commissioner Civil Ligation; Ms Imelda Adongo, Senior State Attorney and Mr Richard Ojiambo, State Attorney, appeared for the Respondent.
- D. APPLICANTS' CASE

14. The Applicants' case is set out in the Amended Statement of Reference filed on 26 th October 2016 and in the Affidavit deponed by Ismail Dabule on 18th October 2016. 4
15. It is the Applicants' Case that, after the decisions of the National Courts clarifying the unfreezing of the accounts in question, the persistent refusal of the Government of Uganda to release the funds constitutes a violation of the Constitution of Uganda, particularly Article 21 thereof, which pertains to equality before the law; Article 24, which covers such elements of human rights as torture, cruel and inhuman treatment and degrading punishment; and Article 26, which deals with the right to property. It is the contention of the learned Counsel for the Applicants that by the said refusal, the Government of Uganda contravened Articles 6(d) and 7(2) of the Treaty.
16. Consequently, the Applicants pray the Court for the following (reproduced verbatim):
 - (a) That the refusal by the Government of Uganda to release to the Applicants the money that was wrongfully frozen on their Accounts and unfrozen as declared by Courts of Uganda is a breach of Treaty establishing the East African Community in Articles 6(d) and 7(2) that enjoins all Partner States to govern while adhering to the rule of law;
 - (b) A declaration that in violation of the Applicants' fundamental rights and freedom against discrimination, right to fair and just administrative decision, right to property and livelihood, the Government of Uganda by continued refusal to pay or give back the Applicants their money equivalent to date is acting is illegal, unlawful and is in violation of Uganda's obligations under Articles 6(d) and 7(2) of the Treaty;
 - (c) A declaration that the continued holding on to the Applicants' money by the Government of Uganda without any justification, without a due process of law or any form of administrative process before the refusal to release the said money is illegal, unlawful and in violation of the Applicant's right to property, right to fair hearing, freedom from discrimination, right to fair administrative action and contrary to the provisions of Articles 6(d) and 7(2) of the Treaty;
 - (d) A declaration that the continued holding onto the Applicants' Bank documents and Account balances details relating to Frozen Accounts after the Courts pronounced the Accounts unfrozen is an infringement of the Treaty;
 - (e) An order that costs of and incidental to this reference be met by the Respondent; and
 - (f) That this Court be pleased to make such further or other Orders as may be fit and just in the circumstances of the Reference.
17. The Respondent's case is as stated in the Response to the Amended Reference filed on 28 th February 2017 and in the Affidavit of Geoffrey Madete sworn on 24 th February 2017.

18. In the Response to the Reference, the Respondent denies the claims of the Applicants in toto; principally, on the grounds that: (a)The Respondent has never refused and or been directed by any national court to pay the Applicants as being alleged. On the contrary, there is no national court decision which has ever determined that the Applicants are entitled to payment; 6
- (b) The Respondent has at all material times respected the Applicants' right to own property and is not in custody of any of their frozen accounts, as being alleged or at all; (c)The Applicants have at all material times been treated fairly and have never been discriminated against; (d)The Applicants have never at any time been subjected to any form of torture or cruel, inhuman and degrading punishment, as alleged; (e)The Respondent has not by any act or omission violated or infringed any provision of the Treaty Establishing the East African Community (as amended);
- (f) The Reference is time barred and reveals no cause of action as against the Respondent; and (g)The Applicants are not entitled to any of the remedies sought in the Reference.
19. On the basis of the above, the learned Counsel for the Respondent urges the Court to invoke its power under Rule 4 of the Rules to stamp out what he sees as a glaring abuse of the Court process; and prays that the Reference be dismissed with costs. F. ISSUES
20. At the Scheduling Conference held on 11 th September 2017, the following were agreed as issues for determination by the Court: (a)Whether the Applicants' Reference is time-barred; (b)Whether the Applicants have locus standi; 7 (c)Whether the Government's alleged continued refusal to allow the Applicants access to their frozen funds or its equivalent, to date, is a violation of Articles 6(d) and 7(2) of the Treaty Establishing the East African Community (as amended); (d)Whether the Government's alleged refusal to release the Applicants documentation and account balances relating to their frozen funds is a violation of Articles 6(d) and 7(2) of the Treaty (as amended); (e)Whether the alleged violations by the Government of Uganda of the Applicants' rights to a fair hearing, right to property and freedom from discrimination are a violation of Uganda's obligations under Articles 6(d) and 7(2) of the Treaty Establishing the East African Community (as amended); and
- (f) Whether the Applicants are entitled to the remedies sought.
21. These issues were reaffirmed at the scheduling conference held for the purposes of re-hearing. G. COURT'S DETERMINATION OF THE ISSUES ISSUE NO.1 Whether the Reference is time barred
22. On this issue, Counsel for the Respondent submits that this Reference is time-barred, as it was filed outside the time-limit of two-months provided for under Article 30(2) of the Treaty. In support of his position , Ms Kaahwa invokes the case of Attorney General of the Republic of Kenya vs Independent Medical 8 Legal Unit, EACJ Appeal No. 1 of 2011, where the Appellate Division of this Court held that: "Again, no such intentioncan be ascertained from the ordinary and plain meaning of the said Article (30(2)) or any other provision of the

Treaty. The reason for this short time limit is critical. It is to ensure legal certainty among the diverse membership of the Community."

23. Further, Counsel for the Respondent refers to the case of Attorney General of the Republic of Uganda & Another vs Omar Awadh & Others, EACJ Appeal No. 2 of 2012, where the Appellate Division of this Court confirmed the position of legal certainty captured by its ruling in that Judgement, as per the following quotation: "The Court is of the same view that the object of Article 30(2) is legal certainty. It still notes that the purpose of this provision of the Treaty was to secure and uphold the principle of legal certainty; which requires a complainant to lodge a reference in East African Court of Justice within the relatively brief time of only two months. Nowhere does the Treaty provide for any exception to the two-month period."
24. Counsel, therefore, asked the Court to dismiss the Reference for being time barred.
25. Conversely, learned Counsel for the Applicants argues that the Applicants filed the Reference in strict compliance with Article 30(2) of the Treaty. In his submission Mr Omongole states: "After the decisions of the National Courts clarifying the unfreezing of the Applicants' Accounts, the Applicants' 9 lawyer wrote to the Minister of Finance demanding for the release of the Applicants' money on 5th August 2016 but the Minister of Finance ignored that letter and refused to respond to it in any way. It is upon that refusal that the Applicants realised that the government had refused to release their money. The Applicant then filled the present Reference on 6th September 2016, one month after the final demand to the government."
26. To buttress his position, he relies on the decision of this Court in Audace Ngendakumana vs the Attorney General of Burundi, EACJ Reference No. 11 of 2014, where we stated that "Article 30(2) of the Treaty demands strict application of the time limit stated therein." In his view, the cause of action was the letter prescribing an ultimatum sent to the Minister of Finance. For that reason, from his perspective, the Reference was lodged in strict compliance with Article 30(2) of the Treaty.
27. We have considered carefully the opposing pleadings and submissions of the parties, together with the supporting legal authorities cited by them. Our determination of the issue at hand is as provided below.
28. The relevant provision of the Treaty regarding limitation is Article 30(2) of the Treaty, which reads: "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." 10
29. In our view, a decision on the limitation period in this case entails the ascertaining of the point in time when the period begins to run in each case. In this regard, the records of the case reveal the following chronology:

- (a) In the period from 1982 to 1984, the Government of Uganda froze the accounts of the Applicants by legal Notice No. 2 of 1982 and No. 2 and No. 3 of 1984;
 - (b) On 3rd February 1995, the Minister of Finance wrote to the banks to defreeze those accounts;
 - (c) On 21 st March 2003, the advocate of the Applicants wrote to the Bank of Uganda, requesting the implementation of the letter of the Minister of Finance;
 - (d) In April 2004, the Applicants, through their advocate, filed Constitutional Petition No. 2 of 2004 (Ismail Dabule and 2 Others vs Attorney General and Bank of Uganda), which was dismissed in the judgement entered on 14th September 2007. That decision was appealed through Constitutional Appeal No. 3 of 2007 before the Supreme Court of Uganda, which was also dismissed on 30 th October 2015;
 - (e) On 5th and 8th August 2016, the Applicants' lawyers wrote to the Minister of Finance a final demand, demanding payment of the said money;
 - (f) On 6th September 2016, the Applicants filed this Reference to the East African Court of Justice.
30. From the chronology, the Applicants were aware of the "decision or action complained of" since April 2004, the date of filing 11 Constitutional Petition No. 2 of 2004. If we take the pertinent day in April 2004 as the point in time when the Applicants became aware of the "decision or action complained of", the period from that day (in April 2004) to 6th September 2016, when this Reference was filed, is 12 years. Evidently, it is far more than the two-months period stipulated by Article 30(2) of the Treaty.
31. Under Article 30(2) of the Treaty, the cause of action is plainly "the enactment, publication, directive, decision or action complained of", which shall be brought to the attention of the Court within two months from the date of its occurrence or from the date the Applicant learns of it. The cause of action in this case was not the refusal of the Minister to engage in correspondence with the Applicants' advocate after the Applicants had opted for judicial redress; it was the refusal of the banks to let the Applicants resume access to their accounts after the defreezing letter of the Minister of Finance. We believe that the Applicants were aware of the order and that the cause of action arose in April 2003, when they authorised their advocate to institute the Constitutional Petition in Uganda.
32. It is therefore our finding that this Reference is time barred as it was filed far beyond the two-month period stipulated by Article 30(2) of the Treaty. ISSUES 2 TO 6:
33. Having determined that the Reference was filed beyond the prescribed time, we find ourselves devoid of jurisdiction to deal with the remaining issues. Time limitation is a legal point and a point of law disposes of the matter. The finding we have made invariably disposes of this Reference in favour of the Respondent. 12

34. Regarding costs, Rule 127 of the Rules of the Court provides that: "Costs in any proceedings shall follow the event unless the Court shall for good reasons otherwise order."
35. In the exercise our discretion under the Rules, we decline to grant costs considering that the matter has not been decided on merits. Further, it is not disputed that the Applicants' accounts were frozen by the Respondent and despite of the defreezing order, they have not been able to access those accounts. It will be a traverse of justice if this Court was to condemn the Applicants to pay costs. H. CONCLUSION
36. For the reasons set out above in this Judgement, we find that this Reference was filed out of time in terms of Article 30(2) of the Treaty. Therefore, this Court lacks Jurisdiction to entertain the Reference.
37. The Reference is hereby dismissed for being time barred with no order as to costs. 13 Dated, signed and delivered in Arusha this 21 st day of June, 2022 ~O . , , √/- - . .~':-:.~.~ 0 : - < ~ Hon. Justice Yohane B. Masara PRINCIPAL JUDGE Hon. Justice Audace Ngiye DEPUTY PRINCIPAL JUDGE Hon. Justice Dr Charles O. Nyawello JUDGE Hon. Justice Charles Nyachae JUDGE } hard W. Wejuli GE 14

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