

UGANDA / JUDGMENT

Kiwanuka v Attorney General of the Republic of Uganda (Reference No.8 of 2020) [2025] EACJ 3 (7 March 2025) (First Instance Division) [2025] EACJ 3

COURT

East African Court of Justice

BEFORE

Kasanda J, Masara PJ, Muhumuza J, Wejuli DPJ

CASE / FILE NUMBER

Reference No.8 of 2020

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IN THE EAST AFRICAN COURT OF JUSTICE AT KIGALI FIRST INSTANCE DIVISION

(Coram: Yohane B. Masara, PJ; Richard W. Wejuli, DPJ; Richard Muhumuza; Leonard Gacuko & Kayembe Ignace Rene Kasanda, JJ)

REFERENCE NO. 8 OF 2020

MALE H. MABIRIZI K. KIWANUKA

VERSUS

THE ATTORNEY GENERAL OF THE REPUBLIC OF UGANDA

7TH MARCH 2025

JUDGMENT OF THE COURT

A. INTRODUCTION

- 1. This Reference, filed on 2020 by Mr Male H. Mabirizi K. Kiwanuka "the Applicant", challenges the actions of the (hereinafter. Government Republic of Uganda of the (hereinafter "the Respondent") taken in March 2020 to combat the COVID-19 pandemic. The Applicant alleges that these actions violated The Treaty for the Establishment of the East African Community ("the Treaty"), the Protocol on the Establishment of the East African

Community Common Market ("the Common Market Protocol") and the Constitution of the Republic of Uganda, 1995 ("the Constitution") and other Ugandan domestic law.

- 2. Article 6(d) of the Treaty obliges Partner States to uphold good governance, democracy, the rule of law, and human rights, while Article 7(2) requires consistency with these principles in Treaty implementation.
- 3. He seeks declarations of illegality and damages.
- 4. The Applicant is a citizen of Uganda and a lawyer, businessman and "civically active Ugandan" residing in Kampala, Uganda. His address of service for purposes of this Reference is C/O Plot 35, Kampala Road, Post Office Building, 5th Floor, Room 501A.
- 5. The Respondent is the Attorney General of the Republic of Uganda, sued in the Reference in his capacity as the Principal Legal Advisor to the Government of Uganda. His address of service is; The Republic of Uganda, Ministry of Justice and Constitutional Affairs, Directorate of Civil Litigation, Bowman House, Parliament Avenue, Kampala.

B. REPRESENTATION

- 6. The Applicant appeared in person, representing himself as a litigant.
- 7. The Respondent, the Attorney General of Uganda, was represented by Mr George Kalemera – Commissioner in the Attorney General's Chambers, Ms Jackeline Amusugut and Ms Adong Imelda both of whom are Senior State Attorneys, defending the government of Uganda.

C. BACKGROUND

- 8. In March 2020, the emergence of the COVID-19 pandemic prompted the President of Uganda to issue directives via televised addresses, imposing measures such as border closures, movement restrictions, and Court operational changes to curb the virus's spread.
- 9. The Applicant filed this Reference in 2020, alleging that:
 - i. the Presidential Directives were illegal;
 - ii. enforcement by the Uganda People's Defence Forces (UPDF), Uganda Police Force, and Local Defence Unit (LDU) was unconstitutional;
 - iii. judiciary actions denied access to justice; and
 - iv. appointments of certain government officials breached democratic and legal norms.
- 10. The Respondent countered that all actions were lawful, necessary, and compliant with the Treaty.

D. THE APPLICANT'S CASE

- 11. The Applicant's case is stated in the Statement of Reference filed on 3rd April 2020 and the Affidavit in support of the Reference deposed by the Applicant filed on the same date and in his Affidavit in Rejoinder.
- 12. The Applicant challenges the legality of actions taken by the Government of Uganda in response to the COVID-19 pandemic, focusing on Presidential directives issued between March 18 and March 30, 2020, and their enforcement by the Uganda People's Defence Forces (UPDF), Uganda Police Force (UPF), and Local Defence Units (LDU).
- 13. These directives, announced in speeches by President Yoweri Kaguta Museveni, included closure of educational institutions, bans on gatherings, travel restrictions, suspension of public transport, curfews, and restrictions on judicial and parliamentary functions.
- 14. The Applicant contends that these measures, alongside related actions by the Chief Justice, security forces, and other officials including violent enforcement, Court closures, and irregular appointments—were illegal, procedurally improper, and exceeded the constitutional powers of the Cabinet and President.
- 15. He asserts that these actions contravened Uganda's laws, notably the Constitution of the Republic of Uganda 1995 and the fundamental principles of the Treaty, specifically Articles 6(d) & 7(2).
- 16. He further alleges breaches of the Common Market Protocol, arguing that the measures were not justifiable in a free and democratic society.
- 17. According to the Applicant, his legal challenges began with the filing of High Court Misc. Cause No. 70 of 2020 and related applications (Misc. Application Nos. 159, 160, and 169 of 2020), seeking declarations that the directives and subsequent actions were unlawful, as well as injunctions to halt their enforcement.
- 18. However, he faced significant obstructions: that his cases were deregistered by a handwritten order from the Administrative Head of the High Court Civil Division on March 30, 2020, and that on April 2, 2020, he was physically assaulted by security agents while attempting to lodge complaints against Presidential appointees at Parliament as stated in paragraph 68 of his affidavit. These incidents, he argues, exemplify the broader illegality and violence underpinning the government's response, violating both domestic and the EAC legal frameworks.
- 19. Central to his case is the enforcement of the directives by UPDF, UPF and LDU, which he contends was unlawful and directly infringed the Treaty. Citing Article 209 of the Constitution, he asserts that the UPDF lacked a mandate to enforce public health restrictions.

- 20. He argues that public health enforcement falls outside the functions stipulated in Article 209 and therefore required a formal state of emergency declaration under Article 110 of the Constitution.
- 21. That this was never proclaimed and that the absence of such a declaration renders UPDF's violent actions characterized by beatings and floggings, legally baseless and a breach of the rule of law under Article 6(d) of the Treaty.
- 22. Similarly, he challenges the LDU's role, describing it as an armed militia not authorized by the Constitution. He contends that Article 208(4) of the Constitution which states that: "No person shall raise an armed force except in accordance with this Constitution" limits armed forces to UPDF, UPF, and Uganda Prisons, excluding LDU.
- 23. That the violence inflicted by these forces, including an alleged assault on April 2, 2020, where he was "clobbered in several parts of the body by a group of about 15 armed UPDF, UPF, and LDU personnel at Wandegeya trading centre" for allegedly breaching curfew constitutes torture, cruel, inhuman, and degrading treatment. This, he argues, violates Article 24 of the Constitution, which provides that: "No person shall be subjected to any form of torture or cruel, inhuman or degrading treatment or punishment" and Article 44(a) thereof, which provides that: "Notwithstanding anything in this Constitution, there shall be no derogation from the enjoyment of the following rights and freedoms— (a) freedom from torture and cruel, inhuman or degrading treatment **or punishment**," as well as Article 6(d) of the Treaty's human rights protections.
- 24. In paragraphs 69-70 of his Affidavit, he cites alleged widespread abuses including arrests, vehicle confiscations and beatings as further evidence of systemic rights violations.

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- 25. The Applicant submits that the Directives lacked legal force. He contends that this was contrary to Section 14 of the Interpretation Act, Cap 3 of the Laws of Uganda, which required gazetted instruments, which were absent initially, with policing based solely on broadcasts.
- 26. He also alleges violations of Articles 7(5) and 7(6) of the Common Market Protocol, which permit movement restrictions for public health but mandate prior notification to other Partner States. That the oral border closures announced on March 22, 2020, lacked such notification, thus flouting regional cooperation.
- 27. Beyond enforcement, the Applicant challenges judicial actions, arguing that the Chief Justice's Circular CJ. C7 of March 19, 2020, suspending Court hearings, lacked gazetted authority and exceeded Article 133 of the Constitution which designates the Chief Justice as the head of the judiciary with responsibility for the administration and supervision of all Courts.

- 28. He contends that the de-registration of his cases denied him justice, thus breaching Article 6(d) on the rule-of-law principle.
- 29. He further contests Presidential appointments during this period, claiming public exclusion from parliamentary approvals on April 1, 2020 violated Article 79 of the Constitution, while the Director of Public Prosecutions' appointment breached judicial independence under Chapter 8 of the Constitution.
- 30. He also contends that the dismissal of the then Uganda Revenue Authority Commissioner General flouted section 9 of the Uganda Revenue Authority Act ("URA Act"), requiring due process, further contravening Article 56(d) of the Treaty.
- 31. On the basis of the foregoing, the Applicant prays that Court:
 - a) Makes declarations that the actions elaborated in paragraphs 3(1) - 3(11) of the Statement of Reference are unlawful and infringements on the fundamental and operational principles of the community, which include good governance including adherence to the principles of democracy, the rule of law, accountability, transparency and the maintenance of universally accepted standards of human rights hence null and void;
 - b) Makes a declaration that the actions and decisions elaborated in paragraph 3(12) of the Statement of Reference were in contravention of the principle of free movement of persons enshrined in The Protocol on The Establishment of East African Community Common Market.;
 - c) Issues an order annulling The Appointment and/or approval of the persons named in paragraphs 3(7) , 3(8) , 3(9) , 3(10) and 3(11) of the Statement of Reference and accordingly declare their respective positions vacant save for that in paragraph 3(8) ;
 - d) Issues an order nullifying all actions done by the persons appointed pursuant to the actions in paragraphs 3(7) , 3(8) , 3(9) , 3(10) and 3(11) of this Statement of Reference:
 - e) Issues an order that Ms. Doris Akol is the substantive holder of the office of Commissioner General, Uganda **Revenue Authority**;
 - f) Issues an order disbanding the militia dubbed Local **Defence Unit**;
 - g) Issues an order nullifying all steps, actions and decisions made by Uganda Government as a result of the actions and decisions elaborated in paragraph 3 of the Statement of **Reference**;
 - h) Issues an order nullifying all the proceedings, processes. decisions and actions taken by Uganda Parliament when the Public was denied access to Parliament pursuant to the steps taken in paragraph 3(13) of the Statement of **Reference**:

- i) Issues an order nullifying arrests, criminal charges and prosecutions arising from the actions complained against in the Reference:
- j) Issues an order for an unconditional release of all persons arrested, charged and arraigned before the Courts throughout Uganda on account of alleged disobedience of the speech-orders complained against in the Reference:
- k) Issues an order for unconditional release of motor vehicles motor cycles of people throughout and **Uganda** confiscated/impounded by Uganda Police, military and the militia dubbed Local Defence Unit for allegedly disobeying the speech-orders complained against in the Reference:
- l) Awards general damages to the Applicant due to disturbance and anguish caused to the Applicant arising

out of the actions, decisions and directives complained against in the Reference:

- m) Awards damages to each Ugandan flogged, arrested, charged, prosecuted and/or convicted out of the actions, decisions and directives complained against in the **Reference**:
- n) Awards costs of the Reference to the Applicant;
- o) Awards an interest of 6% per annum on the general damages and costs awarded to the Applicant from the time of filing the Reference till payment in full; and
- p) Awards an interest of 6% per annum on the damages awarded to each Ugandan flogged, arrested, charged, prosecuted and/or convicted out of the actions, decisions and directives complained against in this Reference.

E. THE RESPONDENT'S CASE

32. The Respondent's case is contained in his Response to the Reference, filed on 21st May 2020, and in the Respondent's Affidavit in Reply deponed by Dr Henry G. Mwebesa filed on 5th April 2023. Affidavit in Support of the Reply deponed by Hon. Adolf Mwesigye, filed on 20th April 2023, Respondent's Additional Affidavit in Reply, deponed by Ayebare Tumwebaze, filed on 19th June 2023. Respondent's Additional Affidavit in support of the Reference, deponed by Frank Musingwiire, filed on 25th September 2024 and Respondent's Additional Affidavit in Reply deponed by Catherine Donovan Kyokunda, filed on 25th September 2024.
- 33. The Respondent defends the legality of actions taken by the President, Parliament, Chief Justice, security forces, and other government entities between March 18 and April 2020 to prevent the spread of COVID-19.

- 34. He argues that these measures, encompassing travel bans, suspension of public activities, Court operations, and transport, as well as the appointment of government officials, were lawful, within the scope of governmental authority, and necessary to safeguard Ugandan lives.
- 35. The Respondent contends that the Presidential directives issued on March 18, 22, 25, and 30, 2020, along with their enforcement by the Uganda People's Defence Forces (UPDF), Uganda Police Force (UPF), and Local Defence Unit (LDU), adhered to Uganda's constitutional framework, notably Article 99 of the Constitution which vests executive authority of Uganda in the President, and the Public Health Act, Cap. 281.
- 36. That while aligning with the World Health Organization's International Health Regulations (WHO IHR), far from infringing the Treaty or the Common Market Protocol, these actions were proportionate responses to an emergency declared by WHO on January 30, 2020, and did not breach principles of good governance, democracy, rule of law, accountability, transparency, or human rights.
- 37. The Respondent seeks dismissal of the Applicant's Reference with costs, asserting that the measures upheld public interest without violating regional or national legal frameworks.

F. ISSUES FOR DETERMINATION

- 38. The following issues were formulated for determination by Court and signed off in the Joint Scheduling Conference Notes filed on 5th April. \$2023.\$
- Whether the actions of the President of the Republic of i. Uganda in issuing the March 2020 directives to combat and prevent the COVID-19 pandemic were unlawful and infringed on the Treaty for the Establishment of the East African Community and the Protocol on the **Establishment of the East African Common Market:**
- ii. Whether the actions of Uganda Peoples Defence Forces, Uganda Police Force and Local Defence Unit in enforcing the March 2020 COVID-19 pandemic directives were unlawful and infringed on the Treaty for the Establishment of the East African Community and the Protocol on the Establishment of the East African **Common Market:**
- iii. Whether the actions and directives of the Judiciary of the Republic of Uganda in taking the March 2020 measures to combat and prevent the spread of the COVID-19 pandemic were unlawful and infringed on the Treaty for the Establishment of the East African Community and the Protocol on the Establishment of the **East African Common Market;**
- Whether the actions of the President of the Republic of iv. Uganda and the Parliament of the Republic of Uganda in

appointing and approving the several Government Officials in the period March 2020 were unlawful and infringed on the Treaty for the Establishment of the East African Community and the Protocol on the Establishment of the **East African Common Market; and**

- v. What remedies are available to the parties?

G. COURT'S DETERMINATION

Whether the actions of the President of the Republic ISSUE 1: of Uganda in issuing the March 2020 directives to combat and prevent the Covid-19 pandemic were Unlawful and Infringed on the Treaty for the **Establishment of the East African Community and the Protocol on the Establishment of the East African Common Market**

(1) The Applicant's Submissions and Evidence

- 39. Mr Mabirizi argues that the Presidential Directives issued in March 2020, which imposed restrictions under the guise of COVID-19 measures, were illegal because they violated the Common Market Protocol and Uganda's constitutional and statutory laws. He contends that these directives lacked proper legal grounding, effectively creating an unlawful *de facto* state of emergency.
- 40. Regarding violation of the Common Market Protocol, citing Articles 5(5) and 5(6) of the Protocol, which allow restrictions on free movement of persons for public policy, security, or health, but only with prior notification to other Partner States, he asserts that Uganda closed its borders orally via the President's broadcast, with no evidence—timely or otherwise—of prior notification to the other East African Community (EAC) Partner States. This, he argues, constituted violation of the Protocol, as Uganda provided no explanation for this failure.
- 41. The Applicant argues that the President bypassed the process by which he should have lawfully proclaimed a state of emergency when he announced immediate restrictions via television broadcast without proclamation or parliamentary oversight. That in doing so, he breached Articles 46-49 of the Constitution of the Republic of Uganda which provide for protection of citizen rights during emergencies, and Article 110 thereof, which mandates that a state of emergency be formally proclaimed and regulated by Parliament.
- 42. He contends that this created an unlawful de facto state of emergency and in paragraph 6 of his first affidavit, he claims the directives imposed unreasonable restrictions, including night curfews, court closures, and a national standstill exceeding even a lawful emergency's scope, thus violating constitutional safeguards.
- 43. The Applicant submitted that while the Constitution vests executive authority in the President, Article 99(1-3) thereof subjects that power to the Constitution and Uganda's laws and Article 110 thereof mandates that a state of emergency be formally proclaimed and regulated by Parliament. He argues that the President's unilateral actions ignored these provisions of the law, thus rendering them unconstitutional.

- 44. He seeks to rely on the Uganda Court of Appeal decision of **Nakasero Market Sitting Tenants Ltd vs Nakasero Market Sitting Vendors & Traders Ltd**, UCACA No. 90 of 2016, in which the

Justices of Appeal held that presidential directives or policies without legislative backing lack legal force. This, he argues, applies directly to the March 2020 directives.

- 45. The Applicant asserts that while the Public Health Act requires health-related regulations to be notified and published in the Gazette, no such instruments existed at the directives' outset; policing occurred based on the broadcast alone and that instead of localizing restrictions to areas believed to be affected by the pandemic alone, the restrictions covered the entire country.
- 46. He rejects the Respondent's response that later, instruments were made, arguing that their retrospective application violates the law prohibiting retrospective legislation.
- 47. The Applicant sought to rely on Sections 14, 16, 17(1&3) and 18(4) Interpretation Act, Cap. 3, of the Laws of Uganda which require legal force to stem from a gazetted instrument which, he contends, was initially absent, further invalidating the directives.
- 48. Mr Mabirizi submitted that the Presidential Directives flouted both the Common Market Protocol by restricting free movement without notification and Uganda's legal framework by bypassing constitutional emergency procedures and the Public Health Act. That these actions amounted to an illegal overreach in contravention of the Treaty and the Common Market protocol.

(2) The Respondent's submissions and evidence.

- 49. In response, citing the case of **Kyarimpa Henry vs Attorney General**, EACJ Appeal No. 6 of 2014, Mr Kalempera, for the Respondent, emphasized that the burden of proof in EACJ References lies strictly with the Applicant. He argues that the Applicant provided no evidence to substantiate his claims, rendering them speculative and insufficient to prove a Treaty breach.
- 50. Mr Kalempera, contends that Mr Mabirizi's assertion that the President's directives were mere "speech orders" lacks evidentiary backing, as the televised addresses were part of a lawful process culminating in statutory instruments.
- 51. The Respondent cites Article 99(1) of the Constitution, which vests executive authority in the President, and Article 99(5) thereof, which allows the President or an authorized Minister to issue statutory instruments and contends that these empowered the President to act decisively against COVID-19.

- 52. He further submits that statutory instruments No. 45, 46 and 52-65 of 2020, (detailed at page 9 of his submissions), were issued under Section 28 of the Public Health Act which grants the Minister of Health authority to make rules to curb infectious diseases, thus legally validating the President's initial directives.
- 53. Regarding the retroactivity of the Regulations, the respondent submitted that Section 17(2) of the Interpretation Act (supra) permits retrospective application of statutory instruments, provided they align with the parent Act, which in this case is the Public Health Act (supra). Mr Kalemera argues that this reflects the framers' intent to

allow urgent measures followed by legal validation, as necessitated by the COVID-19 crisis.

- 54. In Paragraph 7 of the affidavit by Dr Henry Mwebesa, the deponent outlines the discovery of COVID-19 in Uganda, justifying the President's immediate action via statements in print and media to combat a deadly global pandemic. That these were later formalized into law, aligning with the need to protect Ugandans and residents.
- 55. The Respondent argues that the unprecedented nature of COVID-19 required swift action, which the Constitution and laws accommodated, ensuring public safety within Uganda's territorial boundaries.
- 56. Mr Kalemera asserts that the directives and statutory instruments were lawful under Ugandan law and thus consistent with the Treaty and the Common Market Protocol arguing that no evidence shows illegality or deviation from established procedures.
- 57. The Respondent cites prior Uganda High Court cases, *Male H. Mabirizi K. Kiwanuka vs Attorney General of Uganda*, Misc Cause No. 193 of 2021 and Misc Cause No. 194 of 2021 where Mabirizi challenged the President's authority and judicial actions during COVID-19 and the Court ruled that they were lawful. Premised on this, Mr Kalemera argues that this Reference is a disguised appeal.
- 58. The Respondent also contends that the matter in issue in the instant Reference was in fact directly and substantially in issue in *Male H. Mabirizi K. Kiwanuka vs Attorney General of Uganda* (supra). He urges the Court to find that the parties being the same and the issues substantially the same, and having been already adjudicated upon.

the matter was conclusively determined and this Court should not entertain the Applicant's attempt for a "second bite at the cherry." That the matter is *res judicata*.

- 59. The Respondent asserts that the President's directives were a lawful exercise of executive authority under Article 99, authenticated by statutory instruments under the Public Health Act and Interpretation Act, including permissible retrospective effect.
- 60. He further asserts that Mabirizi's claims lack evidence, the actions were necessary to combat COVID-19, and prior Ugandan Court rulings affirm their legality, precluding further challenge before this Court.

(3) Determination

a) Preliminary: Res Judicata

- 61. The Respondent submits that this matter is barred by the doctrine of res judicata, citing prior adjudication in *Male H. Mbirizi K. Kiwanuka vs Attorney General of Uganda* (*supra*) before the High Court of Uganda. We shall resolve this question upfront.
- 62. For *res judicata* to apply, three conditions must be met:
 - the matter is directly and substantially in issue in both i. suits;
 - ii. the parties are the same or litigating under the same title; and
 - the matter was finally decided by a competent Court iii. (-see *James Katabazi and 21 Others vs Secretary General of the EAC*, EACJ Reference No. 1 of 2007).
- 63. While the Respondent asserts that these conditions are satisfied, the Applicant's case before this Court specifically invokes violations of the Treaty and the Common Market Protocol, which fall within the exclusive jurisdiction of the Court under Article 27 of the Treaty.
- 64. The prior national Court proceedings focused on domestic constitutional and statutory breaches, not the Treaty or the Common Market Protocol. Thus, the subject matter is not identical, and *res judicata* does not apply.
- 65. This Court will therefore proceed to the merits to determine whether the actions of the President of Uganda, in issuing the March 2020 Directives, were unlawful and infringed the Treaty and Common Market Protocol.

b) Substantive issue

66. Article 6(d) of the Treaty requires adherence to good governance, democracy, rule of law, and human rights. Article 7(2) mandates that Partner States abide by these principles. Articles 7(5) and 7(6) of the Common Market Protocol permit restrictions on free movement for public health but require prior notification to Partner States unless immediate action is justified. They state as follows:

"Article 7(5). The free movement of persons shall be subject to limitations imposed by the host partner state on grounds of public policy, public security or public health.

Article 7(6). A Partner State imposing a limitation under paragraph 5 shall notify the other Partner States accordingly."

- 67. The Respondent provided no evidence of such notification before the March 2020 border closures.

- 68. While the COVID-19 pandemic warranted urgent action, the lack of subsequent notification or explanation to the EAC Secretary-General or Partner States constitutes a procedural breach of Article 7(6). The failure to notify Partner States offended Article 7(6) of the Common Market Protocol and consequently, the Presidential directives of March 2020 although not unlawful, contained procedural irregularities. In ordinary circumstances, this may have had the effect of undermining the cooperative framework of the Common Market Protocol, however, the health emergency context obviates the requirement for prior notification.
- 69. The Applicant argues that the President bypassed the process by which he should have lawfully proclaimed a state of emergency when he announced immediate restrictions via television broadcast without proclamation or parliamentary oversight. That in doing so, he breached Articles 46-49 of the Constitution of the Republic of Uganda.
- 70. Article 110 requires a formal state of emergency proclamation and parliamentary oversight for measures restricting rights. The directives, imposing nationwide lockdowns and curfews, effectively created an emergency and indeed no evidence was adduced by the Respondent to prove that the procedural requirement stipulated under the constitution was complied with.
- 71. However, we have looked at Sections 10, 11, and 28 of the **Public Health Act, Cap. 281** relied upon by the Respondent and do agree that these provide reprieve for the Respondent.

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- 72. The Act empowers the Minister to make rules for infectious diseases and by din of Section 17(2) of the Interpretation Act which allows retrospective operation and Section 17(3) which prohibits penalties for acts done pre-gazetting, the initial directives which had been enforced via broadcast from March 18, were retroactively validated.
- 73. The section provides as follows:

"Section 17(2): A statutory instrument may be made to $\frac{1}{2}$ operate retrospectively to any date which is not earlier than the commencement of the Act under which the instrument is made.

Section 17(3): Nothing in this section shall be deemed to empower the making of a statutory instrument so as to make a person liable to any penalty in respect of any act committed before the date on which the instrument was published in the Gazette."

- 74. The WHO IHR 2005, to which Uganda is bound by virtue of its membership to the World Health Organization, permits temporary measures like movement restrictions during a public health emergency, provided they are proportionate and respect human rights. The WHO declared COVID-19 a pandemic on March 11, 2020. before Uganda's first case on March 21, thus, justifying preventive action.

- 75. The presidential directives are therefore aligned with WHO recommendations.
- 76. Resultantly, we find that the actions of the President of the Republic of Uganda in issuing the March 2020 directives to combat and

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prevent the COVID-19 pandemic were lawful in intent under his executive authority and the Public Health Act, supported by the WHO IHR 2005 and did not contravene the Treaty.

77. Thus, Issue 1 is answered in the negative.

ISSUE 2: Whether the actions of Uganda Peoples Defence Forces, Uganda Police Force and Local Defence Unit in Enforcing the March 2020 Covid-19 Pandemic Directives were Unlawful and Infringed on The Treaty for the Establishment of The East African Community and the Protocol on The Establishment of The East African Common Market

1) The Applicant's submissions and evidence.

- 78. The Applicant submits that the enforcement actions by the Uganda People's Defence Forces (UPDF), Uganda Police Force (UPF), and Local Defence Unit (LDU) in implementing the Presidential directives of March 2020 were unlawful and contravened Articles \$6(d)\$ and \$7(2)\$ of the Treaty.
- 79. The Applicant asserts that enforcing public health restrictions, as evidenced by paragraphs 64-69 of his affidavit, detailing allegations of UPDF's violent enforcement actions, exceeds UPDF's mandate as stipulated in Article 209 of the Constitution of the Republic of Uganda 1995, which states that:

"The functions of the Uganda Peoples' Defence Forces are— (a) to preserve and defend the sovereignty and territorial integrity of Uganda; (b) to cooperate with the civilian authority in emergency situations and in cases of natural disasters; (c) to foster harmony and understanding between the defence forces and civilians; and (d) to engage in productive activities for the development of Uganda."

- 80. Regarding the LDUs, the Applicant argues that the LDU, described as an armed militia in paragraphs 62-63 of his affidavit, lacks constitutional authorization, rendering its actions void. He seeks to rely on Article 208(4) of the constitution which bars any person from raising an armed force except in accordance with the Constitution.
- 81. In Paragraphs 68-70 of his affidavit, he recounts an alleged assault on April 2, 2020 in which he affirms that he encountered a group of about 15 armed men in Uganda People's Defence Forces, Uganda Police and Local Defence Unit uniforms who "clobbered him in several parts of the body" accusing him of disobeying the President's Directives on curfew and that he was only saved by running away at a very high speed.

- 82. He alleges similar widespread abuses, breaching Articles 24 and 44(a) of the Constitution, which prohibits the subjection of any person to any form of torture or cruel, inhuman or degrading treatment or punishment and Article 44(a) which provides that there shall be no derogation from the enjoyment of the rights and freedoms from torture and cruel, inhuman or degrading treatment or punishment.
- 83. He contends that in their impugned actions, the Respondent's agents undermined the rule of law and human rights under the Treaty.
- 84. Mr Mabirizi argues that the deployment of military and "illegal forces", here meaning the LDUs, coupled with violence, contravenes

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democratic governance and human rights enshrined in Article \$6(d)\$ and \$7(2)\$ of the Treaty.

2) The Respondent's submissions and evidence

- 85. In reply, the Respondent defends the enforcement actions as lawful and consistent with the Treaty and the Common Market Protocol.
- 86. The Respondent posits that COVID-19, with 81,034 cases and 1,061 deaths by June 2021 as averred in paragraphs 9-11 of Dr. Mwebesa's affidavit, was an emergency justifying UPDF's role. He cites Article 209(b) of the Constitution and argues that it permits cooperation with civilian authorities in emergencies.
- 87. Regarding the UPF's role, the Respondent argues that the force is authorized by Article 212 of the Constitution which stipulates its functions to include preservation of law and order; cooperation with the civilian authority and other security organs established under the Constitution and with the population generally. That the UPF acted in enforcement of lawful directives
- 88. The Respondent relies on Section 5(1) (c) of the UPDF Act, Cap. 330 to contend that the LDU is a legitimate reserve force constituted from auxiliary units and citizens trained under Article 17(2) which provides that it is the duty of all able-bodied citizens to undergo military training for the defence of this Constitution and the protection of the territorial integrity of Uganda whenever called upon to do so. The Respondent also cites Male H. Mabirizi vs Attorney General (Misc. Cause No. 238 of 2019) to assert LDU's legality.
- 89. He contends that the measures were aligned with WHO recommendations and served the broader public interest within the

permissible constitutional provisions, to wit, Article 23(1)(d) which provide that:

"No person shall be deprived of personal liberty except as may be authorised by law in any of the following cases—... (d) for the purpose of preventing the spread of an infectious or contagious disease."

- 90. He further contended that the Applicant's claims of torture lack corroborative evidence such as medical examination reports and that domestic remedies under the Human Rights Enforcement Act 2019 were not pursued.
- 91. That the actions by the armed forces were necessary, lawful, and proportionate to protect public health.

3) Determination

- 92. We have very carefully and extensively reviewed the constitutional provisions cited and sought to be relied upon by both the Applicant and the Respondent and addressed ourselves to them in the context of the contest before this Court. We have also adopted and taken into consideration the respective submissions by the parties.
- 93. The Respondent impliedly raises an issue of Jurisdiction at the tail end of his submissions when he contends that domestic remedies under the Human Rights Enforcement Act 2019 were not. This being a question of jurisdiction, we shall resolve it upfront before delving into the merits.
- 94. Article 30(1) of the Treaty states:

"Subject to the provisions 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 ... on the grounds that such ... is unlawful or is an infringement of the provisions of this Treaty."

- 95. Unlike other regional Courts such as ECOWAS, the EACJ imposes no exhaustion of local remedies requirement, as confirmed in **James Katabazi vs Secretary General of the EAC**, EACJ Reference No. 1 of 2007.
- 96. The Respondent's suggestion that domestic remedies under the Human Rights Enforcement Act 2019 ought to have been exhausted therefore lacks legal basis.
- 97. On the merits, we find as follows:
- 98. As rightly submitted by the Respondent, Article 209(b) of the Constitution allows for emergency cooperation, while Article 98(1) provides that the President of Uganda shall be the Head of State, Head of Government and Commander-in-Chief of the Uganda Peoples' Defence Forces.
- 99. These two Articles, when read together with Article 99(4) of the Constitution, which provides that subject to the provisions of this Constitution, the functions conferred on the President may be exercised by the President either directly or through officers subordinate to the President, lead us to safely conclude that the UPDF could act under Presidential directive.

100. Article 212(c) and (d) of the Constitution unequivocally authorizes enforcement, reinforced by Article 213(4) thereof which provides that:

"In the performance of the functions under clause (3), the Inspector General of Police shall be subject to and act in accordance with the laws of Uganda; except that on matters of policy, the President may give directions to the Inspector General"

101. Article 212(c) and (d) of the Constitution authorize the UPF to preserve law and order and cooperate with civilian authorities, reinforced by Article 213(4) thereof, which provides that:

"In the performance of the functions under clause (3), the Inspector General of Police shall be subject to and act in accordance with the laws of Uganda; except that on matters of policy, the President may give directions to the Inspector General."

102. The UPF's enforcement of the March 2020 directives was thus lawful

Local Defence Unit (LDU)

- 103. The Applicant asserts in paragraphs 62-63 of his affidavit that the Local Defence Unit (LDU) constitutes an armed militia. He contends that the LDU's armed status and alleged violent actions—such as "clobbering" him on April 2, 2020 also render its operations void for lack of constitutional grounding.
- 104. In contrast, the Respondent defends the LDU's legality, relying on Article 17(2) of the Constitution, which mandates military training for

able-bodied citizens to defend the Constitution and territorial integrity when called upon, and Section 5(1)(c) of the UPDF Act. Cap. 330 which recognizes auxiliary units as part of the Uganda Peoples' Defence Forces' reserve structure. To reinforce the LDU's legal foundation, the Respondent further cites *Male H. Mbirizi vs Attorney General* (Misc. Cause No. 238 of 2019), where the High Court upheld the legitimacy of auxiliary forces operating under statutory authority.

- 105. We evaluate these competing perspectives within Uganda's legal framework.
- 106. Article 208(4) of the Constitution indeed restricts the creation of armed forces to those explicitly sanctioned, aiming to prevent rogue militias and preserve state control over military power.
- 107. However, Article 17(2) of the Constitution and Section 5(1)(c) provide a clear basis for citizen reserves, including auxiliary units like the LDU, to support national defense or emergencies under UPDF oversight. The *Male H. Mbirizi* decision (*supra*) aligns with this, affirming that such units, when constituted in accordance with the law, fall within the constitutional mandate.

- 108. Beyond his descriptive label of "armed militia", the Applicant offers no concrete evidence, such as lack of UPDF supervision, to demonstrate that the LDU's establishment deviates from these provisions.
- 109. We agree with the Respondent that the LDU's existence as a reserve force is contemplated and permitted under Ugandan law. Its legal status is not negated by its armed nature, as reserves may bear

arms when mobilized for lawful purposes, such as the COVID-19 lockdown enforcement directed by Presidential authority.

- 110. The Applicant's allegations of violent enforcement, exceeding its mandate, do not inherently invalidate its lawful establishment. While such conduct, if substantiated, could raise questions of proportionality or rights violations, it pertains to execution rather than the LDU's constitutional legitimacy.
- 111. Thus, notwithstanding the Applicant's assertions of improper conduct, we find the LDU's role as a reserve force legally grounded and consistent with the framework governing Uganda's security apparatus. Moreover, the issue of conduct is separately addressed in this judgment.
- 112. In paragraphs 68–70 of his affidavit, the Applicant alleges that on April 2, 2020, 15 armed UPDF, UPF, and LDU personnel "clobbered" him for breaching curfew, yet he escaped "at a very high speed."
- 113. The Respondent challenges this claim, pointing to the absence of corroborative evidence such as medical reports. The Applicant implicitly relies on *Kizza Besigye vs Attorney General* (Const. Pet. No. 7 of 2007), a persuasive but non-binding precedent from Uganda's Constitutional Court, which held that credible testimony alone can establish torture without medical corroboration. We distinguish the instant case from *Besigye* (supra), on several grounds:
- 114. In *Besigye*, the petitioners provided consistent, detailed accounts of torture within a well-documented context of political persecution, where state agents targeted opposition figures, lending inherent

plausibility to their claims. Multiple affidavits and a pattern of abuse reinforced their credibility, aligning with a broader narrative of systemic rights violations.

- 115. In the instant case, the Applicant's allegations arise during a public health emergency enforcement, a generalized operation aimed at curfew compliance rather than targeted persecution. His solitary account lacks the contextual reinforcement that *Besigye* (supra) had. Additionally, the implausible detail of escaping from 15 armed men further undermines the Applicant's reliability. Most remarkable, *Besigye* involved a judicial finding of torture supported by the gravity of the political stakes, whereas this case hinges on a single, uncorroborated incident without evidence of systemic intent.

- 116. Be that as it may, this court can only adopt the Besigye principle that un rebutted affidavit evidence may suffice to establish claims of torture, cautiously and on a case-by-case basis for several reasons:
- 117. First, while persuasive, it originates from a domestic court and does not bind this regional Court, which must balance national precedents against the Treaty's unique framework. As a decision from Uganda's Constitutional Court, Besigye is persuasive but not authoritatively binding on the East African Court of Justice, which interprets the Treaty independently.
- 118. Second, the **Besigye** ruling suited its specific facts where testimony alone carried weight due to corroborative circumstances; applying it broadly risks lowering the evidentiary threshold in dissimilar contexts, such as public health enforcement, where chaos may obscure truth.
- 119. Third, judicial prudence demands a higher standard when allegations implicate state forces. Un corroborated claims could unjustly impugn lawful measures. Allegations of torture against state forces in an emergency demand careful scrutiny to avoid either unjustly condemning lawful actions or overlooking real abuses. A lower threshold risks crediting exaggerated claims, while a higher one ensures fairness. In the instant case, the Applicant's broad, unsubstantiated case warrants caution.
- 120. The Applicant's expansive Reference justifies stricter scrutiny. His specific claims of torture and distress, though detailed, lack support from witness statements, medical records, or contemporaneous reports.
- 121. We find that such grave allegations, particularly in a non-political enforcement setting, ought to be corroborated to ensure credibility and fairness. The absence of such evidence, coupled with the implausible escape narrative, renders his testimony self-serving and insufficiently compelling to prove torture.
- 122. The Applicant's failure to substantiate torture or systemic abuse means no violation is established.
- 123. Consequently, we conclude that the enforcement actions by UPDF, UPF, and LDU, while possibly flawed in some aspects of execution, do not constitute a breach of Articles \$6(d)\$ or \$7(2)\$ of the Treaty.
- 124. Issue No. 2 is answered in the negative.
- **ISSUE 3:** whether the actions and directives of the Judiciary of the Republic of Uganda in taking the March 2020 measures to combat the Covid-19 pandemic were

Unlawful and Infringed on the Treaty and the Common **Market Protocol**

1) Parties' submissions

- 125. The Applicant submits that on March 19, 2020, relying on the President's directives of March 18, 2020, the Chief Justice, Hon. Bart Katureebe, issued Circular CJ/C.7, suspending Court hearings, production of prisoners, and execution of Court decisions. He contends that this Circular lacked legal grounding and infringed his non-derogable rights to fair hearing and habeas corpus under Article 44 of the Constitution
- 126. He further alleges that his cases, High Court Misc. Cause No. 70 of 2020, Misc. Application No. 159 of 2020, and Misc. Application No. 160 of 2020, were de-registered without a hearing, thereby violating his right to access justice under Article 6(d) of the Treaty, Article 5(1) of the Common Market Protocol, and international human rights instruments such as the International Covenant on Civil and Political Rights.
- 127. The Applicant argues that the Chief Justice exceeded his administrative powers under Article 133 of the Constitution, asserting that such powers do not extend to closing Courts or restricting judicial functions. He claims that this undermined judicial independence under Article 128 of the Constitution and contravened the rule of law principles enshrined in the Treaty and the Bangalore Principles of **Judicial Conduct**
- 128. In response, the Respondent counters that the Chief Justice acted lawfully under Article 133(1) (b) of the Constitution, which empowers

him to issue orders and directions necessary for the proper and efficient administration of justice.

- 129. Through the affidavit of Ayebare Tumwebaze, a Deputy Registrar of the Judiciary, the Respondent asserts that Circular CJ/C.7, issued on March 19, 2020, titled "Administrative and Contingency Measures to Prevent and Mitigate the Spread of Corona Virus (COVID-19) by the Judiciary," was a legitimate response to the escalating COVID-19 crisis, aimed at protecting public health and ensuring the judiciary's operational continuity.
- 130. The Respondent emphasizes that the measures aligned with the national interest under Article 8A of the Constitution and supported the executive's lockdown directives, which were later formalized through statutory instruments. He denies the de-registration of the Applicant's cases, arguing that no concrete evidence supports this claim
- 131. The Respondent further contends that the Applicant's grievances are constitutional matters for Uganda's Constitutional Court, not this Court, and that the measures did not infringe the Treaty or the Common Market Protocol.

2) Determination

- 132. Domestically, Article 133 of the Constitution delineates the Chief Justice's administrative functions, while Article 128 thereof ensures judicial independence, and Article 44 protects non-derogable rights to fair hearing and *habeas corpus*.

- 133. International obligations under Article 26 of the African Charter which obligates state parties to guarantee independence of Courts

and Article 2(3) (b) of International Covenant on Civil and Political Rights reinforce these principles: Article 6(d) of the Treaty obliges Partner States to uphold good governance, democracy, the rule of law, and human rights, while Article 7(2) requires consistency with these principles in Treaty implementation. While Article 5(1) of the Common Market Protocol guarantees access to judicial remedies as part of the common market's freedoms.

- 134. The Respondent's contention that the Applicant's grievances are constitutional matters for Uganda's Constitutional Court raises undertones of jurisdiction which we must resolve upfront.
- 135. Article 23(1) of the Treaty empowers the Court to adjudicate disputes alleging violations of the Treaty and its Protocols by Partner States. The Applicant's claim therefore falls within this mandate, though the Court must also respect the domestic jurisdiction of Ugandan Courts over constitutional interpretation, where applicable.
- 136. We now turn to the merits.

a) Circular CJ/C.7 issued by the Chief Justice of Uganda

- 137. Circular CJ/C.7, issued on March 19, 2020, by the Chief Justice of Uganda, Hon. Bart Katureebe, as he then was, suspended most Court operations, including routine hearings, production of prisoners, and execution of Court decisions, while explicitly preserving access to the Courts for applications for certificates of urgency.
- 138. The Respondent anchors the legality of this directive in Article 133(1) (b) of the Constitution of the Republic of Uganda 1995, which provides that the Chief Justice, as head of the judiciary, "may issue

orders and directions to the Courts, necessary for the proper and efficient administration of justice."

- 139. This provision vests the Chief Justice with broad administrative and supervisory authority over all Courts in Uganda, empowering him to adapt judicial operations to emergent challenges that threaten their effective functioning.
- 140. In our opinion, the phrase "proper and efficient administration of justice" is not narrowly confined to routine operational management but encompasses proactive measures to protect the judiciary's integrity and capacity to serve the public good. In the context of a deadly pandemic, where judicial staff faced immediate risks, as evidenced by the Respondent's affidavit noting staff deaths and hospitalizations, the Chief Justice's directive was not only necessary but essential to prevent the collapse of the judicial system, a scenario that would have far graver implications for access to justice than temporary operational adjustments.

- 141. The Ugandan Supreme Court's decision in *Tusingwire Davis Wesley vs Attorney General* (SCCA No. 4 of 2016) provides authoritative precedent for this interpretation, affirming the Chief Justice's power under Article 133(1) (b) of the Constitution, to issue practice directions as a legitimate exercise of his administrative and supervisory functions.
- 142. In *Tusingwire* (supra), the Court upheld the validity of Practice Directions for the High Court Anti-Corruption Division, which established specialized procedures to expedite corruption-related cases. The Supreme Court reasoned that such directions, issued to enhance the "orderly, expeditious, efficient and cost-effective"

adjudication of disputes, fell squarely within the Chief Justice's constitutional mandate to ensure justice delivery aligns with the national interest and common good under Article 8A. The Court rejected arguments that these directives encroached on judicial independence or substantive law-making powers, emphasizing instead their role in facilitating the judiciary's operational efficacy.

- 143. Applying this reasoning to the instant case, Circular CJ/C.7 mirrors the ratio decidendi in *Tusingwire* (supra) in purpose and effect. It was an administrative measure designed to address a pressing systemic challenge, - the COVID-19 pandemic, while preserving the judiciary's ability to function efficiently.
- 144. Whether the Judiciary's March 2020 measures were unlawful and infringed the Treaty and Common Market Protocol, the parallels are striking with ***Tusingwire*** (supra). Just as the Anti-Corruption Division Practice Directions responded to the systemic issue of corruption by streamlining judicial processes, Circular CJ/C.7 addressed the systemic threat of a public health crisis by temporarily reconfiguring Court operations to prioritize safety and urgent justice needs.
- 145. In both instances, the Chief Justice exercised his Article 133(1)(b) authority to adapt the judiciary to prevailing circumstances, ensuring that justice administration remained "proper and efficient" despite external pressures. Such flexibility rebuts the Applicant's claim that the Chief Justice overstepped his powers or undermined judicial independence under Article 128.
- 146. Rather, the Circular reinforced the judiciary's resilience, aligning with the rule of law principles in Article 6(d) of the Treaty by maintaining a functional justice system amid a crisis.
- 147. Furthermore, the Circular's provision for certificates of urgency ensured that critical rights, such as the non-derogable right to fair hearing and habeas corpus under Article 44 of the Constitution, remained enforceable. Again, balancing efficiency with access to justice, as it allowed litigants like the Applicant to seek redress for time-sensitive matters such as his challenges to the executive's COVID-19 resolutions, had he pursued urgency certification.

- 148. The Chief Justice's directive, thus, did not close the Courts entirely but adapted their operations to the exigencies of the moment, a response consistent with the Common Market Protocol's Article 5(1) guarantee of judicial access, which must be interpreted practically in light of emergency conditions.

\$(ii)\$ De-registration of Cases

- 149. The Applicant claims that his cases were de-registered on March 30, 2020, by the Administrative Head of the High Court Civil Division, citing national security and public health.
- 150. Under Rule 41(1) of the Rules, any allegation of fact made by a party in a pleading is deemed admitted by the opposing party unless it is specifically denied or rebutted with contrary evidence in the pleadings. This procedural principle ensures clarity and fairness in litigation by compelling parties to actively contest factual assertions they dispute, thereby narrowing the issues for judicial determination.
- 151. In the instant case, the Applicant avers in his affidavit that his cases—High Court Misc. Cause No. 70 of 2020, Misc. Application No. 159 of 2020, and Misc. Application No. 160 of 2020 were deregistered by the Administrative Head of the High Court Civil Division

on March 30, 2020, citing national security and public health concerns, without a hearing or judicial process.

- 152. The Respondent, through the affidavit of Ayebare Tumwebaze, denies this claim but offers only a general assertion that "no evidence has been led to prove that the said applications were deregistered," without providing specific counter-evidence, such as Court records or correspondence to refute the Applicant's account. This response falls short of the specificity required under Rule 41(1) of the Rules, to effectively challenge the Applicant's factual assertion.
- 153. The Supreme Court of Uganda's decision in *Amama Mbabazi vs Museveni* (Presidential Petition No. 1 of 2016) provides authoritative guidance on the consequences of failing to rebut specific allegations. In that case, the petitioner alleged irregularities in the 2016 presidential election, including, that presiding officers denied his Agents access to Declaration of Results Forms. The Electoral Commission responded with general explanations of electoral procedures but did not specifically deny or provide evidence contradicting the petitioner's affidavits. The Supreme Court held that, in the absence of targeted rebuttal, such allegations "must stand," as the failure to contest them with precision amounted to an admission under Uganda's procedural rules (mirrored by this Court's Rule 41(1)).
- 154. The Mbabazi precedent (*supra*) underscores the importance of evidentiary diligence, particularly in disputes implicating fundamental rights, such as the Applicant's claimed right to access justice.

- 155. Applying this principle to the instant case, the Applicant's un rebutted evidence of de-registration could, in a strict sense, be

taken as established fact, given the Respondent's vague and unsubstantiated denial

- 156. However, this Court finds that even accepting the Applicant's allegation of de-registration as true, it does not render the Chief Justice's broader measures embodied in Circular CJ/C.7 of March 19, 2020 unlawful or inconsistent with the Treaty and Common Market Protocol, as proposed by the Applicant.
- 157. The **Mbabazi** case (supra), while instructive on procedural admissions, involved substantive electoral irregularities that directly undermined constitutional rights and the integrity of a national election. Here, the alleged de-registration must be viewed within the extraordinary circumstances of March 2020, when Uganda, like the rest of the world, faced an escalating public health crisis requiring immediate and decisive action
- 158. Circular CJ/C.7 was a systemic response to this crisis, suspending non-urgent operations while preserving access to urgent remedies, as expressly permitted through certificates of urgency. If de-registration occurred, it possibly reflected an administrative prioritization of cases under this framework, not a wholesale denial of justice or an unlawful act attributable to the Chief Justice's directive.
- 159. The Applicant's cases challenged the executive's COVID-19 resolutions, a matter of public significance but not necessarily of immediate urgency requiring adjudication amidst a lockdown.
- 160. The substantive impact of de-registration, if it occurred, did not preclude the Applicant's ultimate access to justice, but only delayed it pending normalization of Court operations. It reflects administrative

prioritization within the Chief Justice's discretion, not a denial of justice.

- 161. We conclude that: the Chief Justice's Circular CJ/C.7 of March 19, 2020, was a lawful exercise of his administrative authority under Article 133(1) (b) of the Constitution. The measures were necessary and proportionate to protect public health during the COVID-19 pandemic while preserving the judiciary's capacity to administer justice efficiently. They did not violate judicial independence under Article 128 of the Constitution or the non-derogable rights under Article 44 thereof, as urgent remedies remained available.
- 162. The alleged de-registration of the Applicant's cases, even if true, does not negate the legality of the broader measures. The Chief Justice's measures, including any resultant administrative actions like the alleged de-registration, were grounded in his constitutional mandate

- 163. These actions were consistent with Uganda's obligations under Articles \$6(d)\$ and \$7(2)\$ of the Treaty and Article \$5(1)\$ of the Common Market Protocol, balancing individual rights with collective welfare.
 - 164. The actions and directives of the Judiciary of the Republic of Uganda in taking the March 2020 measures to combat the COVID-19 pandemic were lawful and did not infringe the Treaty or the Common Market Protocol
165. Accordingly, Issue 3 is answered in the negative.

ISSUE 4: Whether the Actions of the President of the Republic of Uganda and the Parliament of the Republic of Uganda in Appointing and Approving the Several Government

Officials in the Period March 2020 were Unlawful and Infringed on The Treaty for the Establishment of the East African Community and the Protocol on the Establishment of the East African Common Market Protocol

1) Parties Submissions

- 166. The Applicant alleges that the President's appointment of Mr. John Musinguzi Rujoki as Commissioner General of the Uganda Revenue Authority (URA) on March 29, 2020, and the removal of Ms. Doris Akol were unlawful under Section 9 of the Uganda Revenue Authority Act. which requires the Minister of Finance to act on the Board's recommendation for appointments and consult the Board for terminations.
- 167. He submits that no such recommendation or consultation occurred, as evidenced by his un rebutted affidavit. He further argues that appointing a tax authority head during a lockdown undermined good governance, as citizens lacked means to object.
- 168. Regarding the appointment of Judge Jane Frances Abodo as Director of Public Prosecutions (DPP), the Applicant asserts in paragraphs 73-75 of his affidavit that the process flouted Article 120(1) of the Constitution, requiring Public Service Commission (PSC) recommendation, and that a sitting judge cannot lawfully serve as DPP, citing *Kasango vs Attorney General* (Constitutional Petition No. 16 of 2016). He claims this compromised judicial independence and fair hearing rights.
- 169. The Applicant challenges Parliament's approval process, alleging in paragraphs 28-29 and 66 of his affidavits that the Appointments

Committee met in camera, excluded public participation, and failed to present a report to the plenary for debate, violating Articles 38, 89, and \$257(1)(u)\$ of the Constitution, the Rules of Procedure of Parliament, and the Code of Conduct for MPs. He argues that these actions breached the Treaty's principles of democracy and accountability (Articles \$6(d)\$ & \$7(2)\$) and the Common Market Protocol's provisions on access to justice (Article \$5(1)\$).

- 170. The Respondent defends the appointments as lawful under the Constitution and relevant statutes.
- 171. For the URA Commissioner General, it clarifies that the Minister of Finance, not the President, appointed Mr. Musinguzi and terminated Ms. Akol, per Section 9 of the URA Act, supported by the affidavit of Catherine Donovan Kyokunda. It denies the President's direct involvement and asserts compliance with statutory processes.
- 172. For Judge Abodo's appointment as DPP, the Respondent cites affidavits from Frank Musingwiire and Hon. Adolf Mwesigye, evidencing PSC recommendation and parliamentary approval under Articles 120 and 172(1)(a) of the Constitution. It notes that the Kasango ruling is under appeal and that The Administration of Judiciary Act 2020 (Section 20) permits judicial officers to take leave for other roles, thus legitimizing her appointment.
- 173. On parliamentary approvals, the Respondent relies on Articles 90 and 94, and Rules 165-171 of the Rules of Procedure, asserting that the Appointments Committee lawfully vetted nominees in closed sessions and reported to the House without debate, as permitted. It denies Treaty or Protocol violations, arguing that the processes adhered to good governance and the rule of law.

2) Determination

- 174. The Applicant asserts that the President's appointments and Parliament's approvals during the COVID-19 lockdown breached these standards by flouting domestic laws and excluding public participation, thus impairing regional integration.
- 175. This Court's role is not to usurp the mandate of Uganda's domestic Courts in interpreting its Constitution, such as determining the final legality of Judge Jane Abodo's DPP role pending the Uganda Supreme Court appeal, but to assess whether these actions, as executed, contravened Treaty obligations.
- 176. Domestically, the Constitution of the Republic of Uganda 1995 serves as the bedrock for the governance of public appointments and parliamentary oversight, delineating clear roles for the President, relevant commissions, and Parliament in the appointment processes contested in this Reference.
- 177. Specifically, Article 120(1) of the Constitution mandates that the Director of Public Prosecutions (DPP) be appointed by the President on the recommendation of the Public Service Commission (PSC) and with parliamentary approval, establishing a tripartite procedure to ensure checks and balances in appointing.
- 178. Article 161(2) of the Constitution vests the President with the authority to appoint the Deputy Governor of the Bank of Uganda, subject to parliamentary approval.

- 179. Article \$172(1)(a)\$ of the Constitution further empowers the President, acting on PSC advice, to appoint heads of departments, while Article \$216(2)\$ thereof governs the appointment of the

Commissioner General and Deputy Commissioner General of Prisons, requiring presidential nomination and parliamentary consent.

- 180. Beyond the Constitution, statutes such as the Uganda Revenue Authority Act – Section 9 thereof, assigns the Minister of Finance the power to appoint the Commissioner General on the Board's recommendation and terminate after consultation, while Section 19A of the Leadership Code (Amendment) Act 2017 allows the President to appoint Leadership Code Tribunal members with Judicial Service Commission advice and parliamentary approval.
- 181. These provisions collectively establish a legal framework designed ensure procedural integrity and accountability in to public appointments, directly applicable to the March 2020 actions challenged by the Applicant.
- 182. Complementing these appointment powers, the Ugandan Constitution regulates parliamentary processes to safeguard democratic oversight. Article 38 guarantees every Ugandan citizen the right to participate in governance, either individually or through representatives, a principle the Applicant invokes to challenge the exclusion of public input during the lockdown approvals.
- 183. Article 89 stipulates those parliamentary decisions, including approvals, are determined by a majority vote of members present. suggesting a plenary role, though tempered by Article 90, which authorizes Parliament to delegate functions to committees, such as the Appointments Committee, for efficient discharge of its duties.
- 184. This delegation of functions is critical to determination of this Issue 4, as the Applicant alleges that the Committee's in-camera vetting of

nominees like Judge Jane Abodo and others bypassed full parliamentary debate, while the Respondent defends it as lawful under the Rules of Procedure.

- 185. These constitutional provisions, interpreted alongside statutes and the Rules of Procedure of Parliament, form the domestic legal matrix that governs the appointments and approvals at issue.
- 186. The Applicant's contention, that these processes violated good governance and democracy under the Treaty, hinges on their alleged non-compliance with this framework, necessitating the instant inquiry to determine whether procedural irregularities, if any, rise to the level of Treaty infringement.

(i) Appointment of the URA Commissioner General

- 187. The Applicant's unrebutted affidavit, detailed in paragraphs 40-46, alleges that on March 29, 2020, the President of Uganda, via a tweet from his official handle, @KagutaMuseveni, announced the appointment of Mr John Musinguzi Rujoki as Commissioner General of the Uganda Revenue Authority (URA) and the simultaneous removal of Ms Doris Akol, without the requisite involvement of the URA Board of Directors.
- 188. This, he contends, contravenes Section 9(1) of the Uganda Revenue Authority Act, which mandates that "The Minister shall appoint a Commissioner General of the authority on the **recommendation of the board**," and Section 9(4), which states that "The Minister may, after consultation with the board, terminate the appointment of the Commissioner General" for specified reasons such as misbehaviour or inability to perform duties. The

Applicant asserts that no Board recommendation supported Mr. Musinguzi's appointment, nor was there consultation for Ms Akol's termination, rendering both actions unlawful.

- 189. Under Rule 41(1) of the Rules, unchallenged allegations in pleadings are deemed admitted unless specifically rebutted with contrary evidence, a principle affirmed in **Amama Mbabazi vs Museveni** (*supra*) as already stated elsewhere in this judgment.
- 190. Applying this precedent to the instant issue, the Applicant's affidavit evidence carries initial weight, as the Respondent does not directly dispute the tweet's existence or content but instead offers a counternarrative through the affidavit of Catherine Donovan Kyokunda, Commissioner of Legal Services at URA.
- 191. Ms Kyokunda avers that the Minister of Finance, not the President, executed both the appointment of Mr Musinguzi and the termination of Ms Akol, and that these actions complied with Section 9's requirements, including Board involvement.
- 192. This sworn testimony introduces a critical distinction in that, the President's tweet, while a public announcement, does not constitute the legal act of appointment or termination, which resides with the Minister under the URA Act.
- 193. The Respondent's evidence suggests that the Board recommended Mr Musinguzi and was consulted on Ms Akol's exit, though specific evidence is not annexed. In contrast, the Applicant's sole reliance on the tweet, a social media statement lacking formal legal effect, does not substantiate the absence of Board processes, especially when

weighed against Ms Kyokunda's affidavit, which carries the authority of an official with direct knowledge of URA operations.

- 194. Here, the Applicant's claim hinges on an inference from a tweet, not a concrete act of appointment or termination, and lacks the specificity or supporting evidence needed to challenge the Respondent's account.

- 195. The legal authority under Section 9 rests unequivocally with the Minister of Finance, not the President, and Ms Kyokunda's affidavit provides a plausible narrative of compliance, to wit, recommendation for appointment and consultation for termination, shifting the evidentiary burden back to the Applicant.
- 196. Under common law principles, he who alleges must prove (*ei incumbit probatio qui dicit*, - "the burden of proof lies with one who asserts"), and the Applicant has not discharged this burden beyond the tweet, which this Court views as a communication of a decision, not the decision itself.
- 197. Turning to the lockdown context, the Applicant argues that appointing a tax authority head in March 2020, when Uganda was under COVID-19 restrictions, undermined good governance by denying citizens the means to raise complaints.
- 198. This claim lacks legal grounding, as neither the URA Act nor the Ugandan Constitution prohibits appointments during emergencies. The Applicant cites no statute or precedent imposing a moratorium on appointments during lockdowns, nor does he demonstrate how this timing substantively prejudiced his rights beyond a general assertion of limited public engagement.
- 199. In *Baranzira Raphael & Another vs Attorney General of the Republic of Burundi*, EACJ Reference No. 15 of 2014, this Court defined good governance as requiring "effective mechanisms. processes and institutions" for citizens to articulate interests, but it did not extend this to a public veto over executive appointments in the absence of any legal provision, a distinction the Respondent rightly notes.
- 200. In our reading and comprehension of the Treaty, this Court finds that Article 6(d) of the Treaty does not impose a specific procedural template beyond what domestic law requires, nor does it mandate public hearings for executive appointments.
- 201. The Respondent's evidence of ministerial compliance with Section 9 satisfies accountability within Uganda's legal framework, and the lockdown context justifies expedited processes without infringing Treaty obligations.
- 202. The **Mbabazi precedent**, (*supra*) upon which the Applicant sought to rely, while upholding the Applicant's procedural point on un rebutted evidence, does not compel a finding of unlawfulness here, as the substantive act aligns with statutory authority and not arbitrary governance.

\$(ii)\$ Appointment of Judge Jane Frances Abodo as DPP:

- 203. The Applicant alleges in paragraphs 73-75 of his first affidavit that no recommendation from the Public Service Commission (PSC) preceded the appointment of Judge Jane Frances Abodo as Director of Public Prosecutions (DPP), a prerequisite under Article 120(1) of the Constitution, which mandates that the DPP be "appointed by the

President on the recommendation of the Public Service Commission and with the approval of Parliament."

- 204. He further contends that a sitting judge cannot lawfully serve as DPP, arguing that such dual roles undermine the accused's right to a fair hearing and judicial independence, citing **Kasango vs Attorney General (Constitutional Petition No. 16 of 2016)**.
- 205. The Respondent counters these claims with specific evidence through the affidavits of Frank Musingwiire, a PSC official, and Hon. Adolf Mwesigye, the clerk to Parliament, affirming that the PSC duly recommended Judge Abodo to the President, who then forwarded her nomination to Parliament, which approved it in accordance with constitutional procedure. This sworn testimony directly rebuts the Applicant's assertion of procedural irregularity, contrasting with his unrebutted but unsubstantiated claim that no recommendation occurred.
- 206. In **Karuhanga vs Attorney General (Constitutional Petition No. 39 of 2013)**, the Ugandan Constitutional Court, per Prof. Ekirikubinza JSC, held that presidential initiation of judicial appointments without Judicial Service Commission input violates the commission's independence under Article 142, a principle extensible to the PSC under Article 166(2). However, unlike in **Karuhanga**, (*supra*) where no commission role was evidenced, the Respondent's affidavits here establish PSC involvement, distinguishing this case and affirming compliance with Article 120(1)'s tripartite process.
- 207. On the contention that a sitting judge cannot serve as DPP, the Applicant relies on **Kasango vs Attorney General** (*supra*), where the Constitutional Court declared Justice Mike Chibita's appointment as

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DPP void because he had not resigned his judicial position, interpreting this as a breach of judicial independence and separation of powers under Article 128. The Applicant argues that Judge Abodo's appointment on March 31, 2020, as a sitting High Court judge, suffers the same flaw, compromising fairness by aligning the prosecution with the judiciary.

- 208. However, the **Kasango** ruling's finality is in doubt, as it remains under appeal before the Supreme Court of Uganda, a fact this Court noted in **Hassan Basajjabalaba & Another vs Attorney General of the Republic of Uganda**, EACJ Reference No. 8 of 2018.
- 209. In **Basajjabalaba**, this Court declined to adjudicate a Treaty violation pending a domestic Supreme Court decision, reasoning that premature intervention risks judicial inefficiency and respects Partner State sovereignty over constitutional interpretation.
- 210. The Respondent bolsters his position with the Administration of Judiciary Act 2020 (Section 20), effective June 19, 2020, which provides that

"A judicial officer may, with the approval of the Judicial Service Commission, be granted leave of absence to serve in another office in the public service."

- 211. Though enacted post-March 2020, this statute clarifies legislative intent and retroactively legitimizes Judge Abodo's transition, as she could have sought leave post-appointment to align with emerging law—a practical resolution unavailable at the time of Kasango.
- 212. Moreover, Article 120(2) stipulates that the DPP must be "qualified to be appointed a judge of the High Court," a criterion Judge Abodo

indisputably meets as a sitting judge, and nowhere does it explicitly exclude active judicial officers. This interpretation aligns with the Respondent's argument that eligibility, not resignation, is the constitutional threshold, distinguishing her case from Kasango's stricter reading.

- 213. The Applicant's fair hearing concern, that a judge-DPP blurs prosecutorial and judicial roles, lacks evidence of actual bias or procedural prejudice in March 2020, resting instead on a theoretical conflict untested in practice during her tenure. The Applicant argues that bypassing PSC recommendation and appointing a judge as DPP erodes these standards, potentially undermining public trust and regional judicial harmonization.
- 214. However, the Respondent's evidence of PSC and parliamentary involvement satisfies Article 120's accountability mechanisms, while The Administration of Judiciary Act addresses the judge-DPP issue within Uganda's legal evolution.
- 215. In *Baranzira Raphael vs Attorney General of Burundi* (supra), this Court equated good governance with the rule of law, defined as accountability to transparent, equally enforced laws, a standard met here by constitutional compliance.
- 216. In the absence of proof that Judge Abodo's DPP role influenced judicial decisions or prejudiced litigants, a speculative leap which the Applicant does not substantiate beyond citing Kasango (supra), judicial independence under Article 56(d) is not demonstrably compromised.

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- 217. In determining the legitimacy of Judge Jane Frances Abodo's appointment as Director of Public Prosecutions in March 2020, this Court notes that our decision is not hindered by the **Kasango v. Attorney General** (supra) ruling, despite its finding that a sitting judge's appointment to an executive role without resignation contravenes judicial independence.
- 218. We are cognizant of the reality that the decision in Kasango remains under appeal in the Supreme Court of Uganda and, in that way, lacks finality.
- 219. Be that as it may, this Court's mandate to assess Judge Abodo's appointment against current law and evidence before it is not hampered by the pendency in the Supreme Court.

- 220. Furthermore, the subsequent enactment of the **Administration of Judiciary Act 2020** (Section 20), allowing judicial officers to take leave for other roles, provides a legal framework that distinguishes Judge Jane Abodo's case and supports its compliance with constitutional processes, irrespective of the pending appeal's outcome.
- 221. Thus, in our opinion, Judge Jane Abodo's appointment aligns with domestic law in force and Treaty obligations, negating the Applicant's claim of unlawfulness or Treaty infringement.

\$(iii)\$ Parliamentary Approval Process

222. The Applicant asserts that in-camera committee approvals without plenary debate or public input violated Articles 38, 89, and 41 of the Constitution, and the Code of Conduct for MPs. However, the Respondent counters this by reliance on Articles 90 and 94 of the

Constitution, and Rules 165-171, which empower the Appointments Committee to approve nominations in closed sessions, reporting to the House without debate

- 223. The Applicant draws on *Doctors for Life International vs Speaker of the National Assembly* (South Africa, CCT 12/05), where the South African Constitutional Court emphasized public participation as essential to democratic legitimacy.
- 224. In *Doctors for Life International*, the Constitutional Court addressed whether the South African Parliament's failure to facilitate public involvement in enacting four health-related bills, concerning traditional dental technicians, and healing. abortion. health professions, violated Section 72(1) (a) of the South African Constitution, which requires the National Council of Provinces to "facilitate public involvement in the legislative and other processes of the Council and its committees." Justice Ngcobo, writing for the majority, held that "public participation in the lawmaking process is an integral part of the democratic process", rooted in the constitutional value of participatory democracy. The Court found that the National Council of Provinces' rushed timeline and inadequate hearings excluded meaningful public input, rendering the legislative process partly defective.
- 225. However, a closer examination of that case reveals its limited applicability to Uganda's executive appointment process, justifying the distinction that, appointments are executive acts subject to parliamentary oversight, not public referenda.
- 226. The South African case concerned legislative processes, which is the creation of laws binding all citizens, where public input directly

shapes policy outcomes, necessitating broad consultation to reflect diverse interests

- 227. In contrast, the Ugandan appointments at issue are executive acts, initiated by the President or Minister under constitutional and statutory authority, in this case, the URA Act and the Leadership Code Act), with Parliament's role limited to oversight and approval.

- 228. This distinction is critical, because while legislation establishes general norms, appointments fill specific offices to execute existing laws, a function less suited to public referenda.
- 229. The *Doctors for Life* (supra) requirement of participation applies where the public's sovereign authority is exercised through lawmaking, not where executive discretion is checked by a representative body like Parliament.
- 230. Uganda's constitutional framework supports this differentiation. Article 90(1) of the Constitution empowers Parliament to "appoint standing committees and other committees necessary for the efficient discharge of its functions," while Article 94(1) allows it to "make rules to regulate its own procedure, including the procedure of its committees."
- 231. Rule 165 of the Rules of Procedure designates the Appointments Committee to approve presidential nominees on Parliament's behalf, and Rule 165(2) explicitly states that "the proceedings of the Committees on Appointments shall be closed," with Rule 170 mandating a report to the House not subject to debate.
- 232. This structure delegates vetting to a specialized committee. Unlike *Doctors for Life*, where the National Council of Provinces' failure to

consult undermined legislative legitimacy, Uganda's process aligns with its constitutional design, where public participation under Article 38, "in accordance with law", is mediated through elected representatives, not direct involvement in every decision.

233. The Applicant offers no evidence that plenary debate was constitutionally required beyond asserting Article 89's voting provision, which Rule 165 lawfully modifies.

\$(iv)\$ Other Appointments (Prisons, Bank of Uganda. Leadership Code Tribunal)

- 234. The Applicant extends his challenge beyond the URA Commissioner General and DPP to other appointments made in March 2020, specifically targeting the President's nomination of Can. Dr. Johnson O. R. Byabashaija as Commissioner General of Prisons. Mr. James Mwanje as Deputy Commissioner General of Prisons, Dr. Michael Atingi-Ego as Deputy Governor of the Bank of Uganda, and members of the Leadership Code Tribunal namely; Ms. Karugonjo Segawa Irene, Mr. Kiyangi Asuman, Ms. Okelowange Jane, Mr. Bakunzi Didas Mufasha, and Ms. Joyce Nalunga Birimumaaso.
- 235. His objections rest on two primary grounds, namely: the timing of these appointments during the COVID-19 lockdown, which he claims prevented public scrutiny, and secondly, the exclusion of citizens from the parliamentary approval process, which he alleges undermined democratic participation.
- 236. He contends that these factors contravene the principles of good governance, democracy, and accountability enshrined in Articles 6(d) and \$7(2)\$ of the Treaty, as well as the access to justice guarantees in

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Article 5(1) of the Common Market Protocol, by rendering the process opaque and unchallengeable during a national emergency.

- 237. The legal framework governing these appointments is well established under Ugandan law, vesting clear authority in the President with parliamentary oversight, as the Respondent demonstrates.
- 238. Article 216(1) of the Constitution provides that "The President shall, with the approval of Parliament, appoint a Commissioner of Prisons and a Deputy Commissioner of Prisons," directly authorizing the appointments of Can. Dr Byabashaija and Mr Mwanje.
- 239. Similarly, Article 161(3) of the Constitution empowers the President to appoint the Deputy Governor of the Bank of Uganda, subject to parliamentary approval, as executed for Dr Atingi-Ego.
- 240. Section 19A of the Leadership Code (Amendment) Act 2017 mandates that the President, acting on the advice of the Judicial Service Commission (JSC) and with parliamentary approval, to appoint the Chairperson, Deputy Chairperson, and members of the Leadership Code Tribunal, covering the five named individuals.
- 241. The Respondent, through affidavits from parliamentary and executive officials, evidences that these appointments followed due process: the President nominated candidates, and the Appointments Committee, pursuant to Article 90 and Rules 165-171 of the Rules of Procedure, vetted and approved them in closed sessions, reporting to the House without debate.
- 242. This structured process, constitutionally and statutorily sanctioned, refutes any claim of procedural irregularity.

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- 243. The Applicant's emphasis on lockdown timing, March 2020, when Uganda implemented stringent COVID-19 measures, including restricted public access, does not establish illegality.
- 244. No provision in the Ugandan Constitution, the cited statutes, or common law imposes a moratorium on executive or parliamentary functions during emergencies. On the contrary, the continuity of governance, including the appointment of key officials, becomes critical during crises to ensure institutional stability, prisons management, monetary policy, and anti-corruption enforcement being essential to public order and economic resilience.

- 245. The Applicant's assertion that lockdown prevented citizen challenges lacks statutory grounding; neither the Constitution nor the Leadership Code Act grants citizens a direct right to contest presidential nominees, a prerogative reserved for Parliament as the public's representative under Article 79. His claim thus rests on a normative expectation of public involvement, not a legal requirement, weakening its relevance to Issue No. 4's inquiry into unlawfulness.
- 246. The Common Market Protocol's Article 5(1), guaranteeing access to justice, is not implicated, as these appointments did not restrict judicial remedies but sustained institutional functions supporting justice administration. Far from infringing Treaty standards, these actions ensured institutional continuity during a crisis, a pragmatic expression of governance resilience that bolstered, rather than undermined, regional integration objectives.
- 247. The process of appointing and approving government officials by the President and Parliament of Uganda in March 2020 was lawful

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under the Ugandan Constitution, it adhered to constitutionally mandated procedures.

- 248. The impugned actions align seamlessly with Article 6(d) of the Treaty, which requires good governance including adherence to the principles of democracy, the rule of law, accountability, transparency, social justice, equal opportunities, and human rights.
- 249. No substantive evidence links these actions to breaches of Articles 6(d) or 7(2) of the Treaty or Article 5(1) of the Common Market Protocol
- 250. In conclusion, we find that:
 - The appointment of the URA Commissioner General by \$i.\$ the Minister of Finance, not the President, complied with Section 9 of the URA Act, as evidenced by the Respondent, and did not breach Treaty principles;
 - ii. Judge Abodo's appointment as **DPP** followed constitutional processes (Article 120), was legitimized by subsequent law, and does not infringe judicial independence or Treaty obligations;
 - iii. **Parliamentary** approvals via the **Appointments** Committee adhered to Articles 90 and 94, and Rules 165-171, constituting lawful delegation, not a violation of democracy or public participation rights under the **Constitution or Treaty**;
 - iv. The broader appointments during March 2020 were lawful exercises of executive and legislative authority,

unaffected by lockdown conditions absent specific legal prohibition; and

- \$V.\$ The Applicant's challenge, lacking a statutory basis for public veto or emergency prohibitions. fails \$f_0\$ demonstrate unlawfulness, reinforcing the Respondent's position that the process was both lawful and necessary.
- 251. Accordingly, Issue No. 4 is answered in the negative.

ISSUE 5: What Remedies are Available to the Parties?

- 252. Having determined Issues 1, 2, 3, and 4, we proceed to now determine what remedies are available to the parties.
- 253. The Applicant asserts this Court's broad remedial powers under the Treaty, citing Hon. Dr. Margaret Zziwa vs Secretary General of the EAC, EACJ Appeal No. 2 of 2017 and Grands Lacs Supplier S. A. R. L. vs Attorney General of Burundi, EACJ Reference No. 6 of 2016 to justify declarations, annulments, damages, costs, and interest.
- 254. On his part, the Respondent counters these reliefs for lack of proven liability. The Respondent urges us to dismiss the Reference with costs under Rule 127(1) of the Rules.

Determination

255. Having resolved Issues 1, 2, 3, and 4 in the negative, we deny all remedies sought by the Applicant under prayers 1–16. No declarations, annulments, releases, disbandment, damages, costs, or

interest are awarded, as no unlawfulness or Treaty infringement is established

- 256. The Applicant ought to have exercised more care in deciding whether to raise such expansive challenges, many of which lacked sufficient evidentiary grounding or legal merit to prevail. The subsequent failure on these issues imposed an unnecessary resource burden on the Respondent and the Court.
- 257. The Applicant's pursuit of multiple, ambitious claims, some of which appeared speculative or inadequately substantiated, suggests a lack of restraint that Rule 127(1)'s discretion allows the Court to address.
- 258. In light of this, the nature of the issues raised and their subsequent failure support the award of costs. Accordingly, we order that the Applicant bear a portion of the costs.
- 259. This award holds the Applicant accountable for insufficient diligence in advancing unsupported challenges, and ensures fairness in the allocation of litigation expenses.
- 260. The Reference is dismissed with partial costs to reflect accountability for an unsubstantiated challenge, while mitigating punitive impact.
- 261. The Respondent is awarded 70% of the costs of the Reference.

I. CONCLUSION

262. In conclusion, this Court finds that:

- a) The Presidential directives, enforcement actions by UPDF, UPF, and LDU, judicial measures, and government appointments in March 2020 were lawful under Uganda's

Constitution and domestic laws, and did not infringe Articles 6(d) or 7(2) of the Treaty or the Common Market Protocol:

- b) The Reference is dismissed with costs.

Dated, signed and delivered at Kigali this 7th day of March 2025.

\$2n\$ Hon. Justice Yohane B. Masara PRINCIPAL JUDGE Hon. Richard Wabwire Wejuli DEPUTY PRINCIPAL JUDGE Hon. Justice Richard Muhumuza JUDGE Hon. Justice Leonard Gacuko JUDGE Hon. Kayembe Ignace Rene Kasanda JUDGE

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