

IN THE EAST AFRICAN COURT OF JUSTICE

FIRST INSTANCE DIVISION AT ARUSHA

REFERENCE NO ..... OF 2023.

BETWEEN

SSEMAKULA ALI ABAAS.....1<sup>ST</sup> APPLICANT

NYINAWUMUNTU LEATITIA.....2<sup>ND</sup> APPLICANT

[suing on their own behalf and representing all parties interested in and being past and present MasterCard Multicurrency cardholders with I&M Bank Rwanda Plc]

AND

ATTORNEY GENERAL OF RWANDA.....RESPONDENT

I&M BANK (RWANDA).....1<sup>ST</sup> INTERVENOR

MASTER CARD (EAST AFRICA OFFICE).....2<sup>ND</sup> INTERVENOR

STATEMENT OF REFERENCE

*(Under Articles 6(d), and 7(2), 8(1)(c), 23(1), 27(1), and 30(1) of the Treaty for the Establishment of the East African Community and Rules 1, 4, and 25 of the East African Court of Justice Rules of Procedure, 2019)*

INTRODUCTION

1. This Reference questions Rwanda’s International law Responsibility for the wrongful acts by an organ of the state- Rwanda Investigation Bureau (RIB). The Reference was triggered by the on or around *January 2023* decision of the Rwanda Investigation Bureau to arrest and detain its Citizens/Residents for more than three months without trial. The Applicants contends that the Rwanda Investigation Bureau violated Rwanda’s national laws (on principles of rule of law and promotion & protection of human rights) and thus violated Rwanda’s Obligation under Article 6(d), 7(2) and 8(1)(c) of the EAC Treaty to adhere to the rule of law and universally accepted standards of human rights.

THE PARTIES

2. The **1<sup>st</sup> Applicant** is a Citizens of Uganda but were arrested in Rwanda with his sister in Rwanda. He is suing on his own behalf and representing all persons interested in and being past and present Mastercard Multicurrency cardholders with I&M Group PLC. They have been detained in Rwanda without trial for alleged banking fraud, money laundering and illicit enrichment.
3. The **2<sup>nd</sup> Applicant** is a Citizen /Resident of Rwanda and was arrested and detained in Rwanda. She is suing on her own behalf and representing all persons interested in and being past and present MasterCard Multicurrency cardholders with I&M Group PLC. They have been detained in Rwanda

without trial for alleged banking fraud, money laundering and illicit enrichment.

4. The Applicants are represented by, and their address for service is care of: -

**Mr. Joseph McDonald- Advocate**  
St. Ellis House, 1<sup>st</sup> Floor Suite 107  
P.O BOX 106353-00100  
TEL: +254 722173196  
Email: [joseph.mcdonald@mcclaw.ke](mailto:joseph.mcdonald@mcclaw.ke)

5. The Respondent is the Attorney General of The Republic of Rwanda (herein 'Rwanda') a partner state of the East Africa Community (herein 'EAC'). He is the principal legal advisor to the Government of the Republic of Rwanda and is being sued in this capacity on behalf of the Government of the Republic of Rwanda.

6. The **Respondent's** address for service is;

**Ministry of Justice/Office of The Attorney General of Rwanda**  
KG 1 Roundabout, Kigali  
P.O. BOX, 160, Kigali Rwanda  
TEL: 3936  
Email: [info@minijust.gov.rw](mailto:info@minijust.gov.rw)

7. The **Intevenors'** addresses for service are;

**HEAD OFFICES OF MASTERCARD  
INTERNATIONALLY (USA)**

Purchase  
2000, Purchase Street  
Purchase, NY 10577 USA  
TEL: 914.249.2000

**EAST AFRICA (KENYA)**

2nd Floor, Tsavo Block, Eldama Park,  
Eldama Ravine Road, Off Peponi Road  
P.O. Box 2194 00606  
Nairobi, Kenya  
Telephone: +254 719 041 000

**HEAD OFFICES OF I&M BANK  
REGIONALLY (KENYA)**

**I&M GROUP PLC**  
1 Park Avenue, Ground Floor  
(Junction of 1st Parklands and Limuru Road)

P.O. Box 30238-00100  
Nairobi, GPO  
KENYA.

**I&M RWANDA**  
I&M Bank Rwanda PLC  
KN 03 Avenue/ 9 Nyarugenge  
CBD Kigali, Rwanda

8. The Applicants' Advocate undertakes to serve this Reference and subsequent pleadings on the Respondent and the Intervenors.

### **BACKGROUND OF THE REFERENCE**

9. The dispute at hand centers around a group of Rwandan Citizens/Residents who entered into a Bank/Customer relationship with I&M Bank Rwanda PLC. The bank issued them with a Mastercard Multi-Currency card. The Card could hold up to 17 different currencies and one of the benefits as advertised in the bank's website is that a card holder could shift one currency to another within the card's sub-wallets. A comparison between the rates offered by the bank and those on the MasterCard platform revealed that the latter offered favourable rates.
10. The group would then develop the practice of shifting currencies within the card's sub-wallets i.e. from AED to EURO and back to AED, resulting in a 10% profit. This activity essentially leveraged price differences across markets, a practice known as arbitrage. As a matter of fact, I&M had run a commercial advertisement that gave customers 10% discount on the usage of their multi-currency card.
11. On or around January 2023, the Rwanda Investigation Bureau arrested Over 100 individuals on allegations of bank fraud, money laundering and illicit enrichment. The infractions committed against them are;
  - a) They have been detained for more than three months without trial;
  - b) They have been denied Bail;
  - c) Extortion/being forced to transfer money to escrow accounts;
  - d) Their properties have been confiscated;
  - e) Family members and friends of the cardholders have been detained and tortured to give information;

### **SUBJECT MATTER OF THE REFERENCE**

12. The subject-matter of this Reference is: -

*The on or around January 2023 decision of Rwanda Investigation Bureau, an investigative organ of Rwanda, to arrest and detain over 100 residents for more than three (3) months without trial, extort them, confiscate their properties, deny them bail in the 1<sup>st</sup> Respondent's state. This was a violation*

*of the Constitution of Rwanda, the laws of Rwanda, the Treaty for the Establishment of the East African Community (hereinafter 'the EAC Treaty'), the African Charter on Human and Peoples' Rights and settled principles of universal standards of Human rights and practice in the EAC, the African Union (AU) and International law.*

13. The Applicants contends that the actions and omissions of the Respondent, through its named organs, amounts to violations of: -
  - a) Articles 6(d), 7(2) and 8(1)(c) of the EAC Treaty;
  - b) Articles 2,3 and 7 of the African Human Rights Charter;

#### **JURISDICTION AND ADMISSIBILITY**

14. The Respondent is a Partner State of the EAC having signed and ratified the EAC Treaty.
15. The Intervenors action or in-action triggered the actions of the Respondent.
16. The Applicants request the interpretation of, and remedies for, violation of the rights enshrined in the EAC Treaty. Pursuant to Article 23 of the Treaty, this Honorable Court has jurisdiction to ensure adherence to rule of law in the interpretation and application of and compliance with the Treaty. Further, Article 27 of the Treaty vests this Honorable court with jurisdiction to interpret provisions of the Treaty.
17. In Accordance with Article 30(1) of the EAC Treaty, the Applicants are Residents within the territory of the Respondent, which is a partner state of the EAC.
18. Concerning the temporal limits in Article 30(2) of the EAC Treaty, this Reference is filed within the two-month time frame. The decision being challenged is a continuous violation (confiscation of travel documents; detention without bail; denial of property without justification and restriction on freedom of movement in and out of Rwanda) of the Applicant's rights by an organ of the Respondent hence admissible before this court.
19. The Applicants invokes the Court's Treaty interpretation and application jurisdiction contending that the Rwanda Investigation Bureau's decision is illegal and violates national law and the EAC Treaty.
20. The Court has Jurisdiction, the Reference is admissible and the reliefs sought are warranted.

#### **PARTICULARS OF VIOLATION OF MUNICIPAL AND TREATY LAW**

21. The Applicants argues that besides violating national laws, the Rwanda Investigation Bureau's actions procedurally and substantively obstructed the Applicant's right to access to justice by;
  - a) Right to liberty and security- *Article 24 of the Constitution of Rwanda*, guarantees the right to liberty and security of person, stipulating that no one shall be subjected to prosecution, arrest, detention, or punishment unless provided for by laws in force at the

time the offense was committed. The detention of individuals without a trial or clear legal ground contravenes this constitutional provision.

- b) Right to due Process of Law: *Article 29 of the Constitution of Rwanda*, provides for the right to due process to all its citizens. This includes the right to a fair and transparent legal process, the right to legal representation, and the right to be informed of the reasons for arrest and detention. By arresting and detaining the Applicants without due process amounted to violating the laws of Rwanda.
- c) Right to private property: *Article 34 of the Constitution of Rwanda*, enshrines the right to private property, stating that it is inviolable except in public interest and in accordance with the provisions of the law. Unlawful detention that results in the confiscation of property violates this constitutional right.
- d) Failure to offer the Applicants alternative remedy or solution is also a violation.

22. As a result of the actions of the Rwanda Investigation Bureau, an organ of the Respondent, Rwanda violated its Treaty obligations under Articles 6(d) and 7(2) of the EAC Treaty to adhere to principles of rule of law and universally accepted standards of human rights (or protection of human rights under the African Charter).

#### **POINTS OF LAW APPLICABLE TO THE REFERENCE**

23. This Reference contends that by violating national laws, the Rwanda Investigation Bureau, an organ of the Respondent Violated Articles 6(d), 7(2), 8(1)(c) on adherence to the rule of law and universally accepted standards of human rights (or protection of human rights under the African Charter).

#### **I.) TREATIES AND CONVENTIONS**

##### **A) EAC TREATY**

- 24. Under Article 6(d) of the EAC treaty, the fundamental principles that shall govern the achievement of the objectives of the community are; good governance including adherence to the rule of law and the recognition, promotion and protection of human and peoples' rights under the African Charter on Human and Peoples' Rights.
- 25. Under Article 7(1)(b) of the EAC Treaty, as an operational principle, each Partner State must provide an adequate and appropriate enabling environment for citizens to enjoy their rights and exercise their responsibilities. While Article 7(2) necessitates that partner states shall abide by the principles of adherence to the rule of law and maintenance of universally accepted human rights standards.

26. Under Article 8(1) (c), Rwanda undertakes to abstain from any measures likely to jeopardize the achievement of the objectives or implementation of the provisions of the Treaty.

### **B) AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS**

27. Article 3 of the Charter entitles every individual to equality before the law and equal protection of the law.

28. Article 4 of Chapter 4 provides that State Parties shall commit themselves to promote democracy, the principle of the rule of law and human rights."

29. Article 7(1) entitles every individual of the right to have his cause heard comprising the right to an appeal to competent national organs against acts of violating his fundamental rights as recognised and guaranteed by conventions, laws, regulations, and customs in force.

### **C) INTERNATIONAL COVENANT ON CIVIL AN POLITICAL RIGHTS**

30. Article 9 of the ICCPR provides that: -

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

31. Article 10 of the ICCPR provides that persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

32. Article 14 of the ICCPR entitles all persons to equality before the courts and tribunals.

## D) UNIVERSAL DECLARATION OF HUMAN RIGHTS

33. Under Article 10 of the UDHR, everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations.

### II.) MUNICIPAL LAW

#### A) CONSTITUTION OF RWANDA, 2015

34. Concerning Equality before the law. **Article 15** of the Constitution states: -

*“all persons are equal before the law. They are entitled to equal protection of the law.”*

35. Concerning the Right to due process of the law **Article 29** of the Constitution states;

*“everyone has the right to due process of law, which includes to appear before a competent court”*

36. Concerning the Promotion of Human Rights **Article 42** of the Constitution states: -

*“Promotion of Human Rights is a responsibility of the state. This Responsibility is particularly exercised by the National Commission for Human Rights. This Commission is independent.”*

37. Concerning the protection of Rights and Freedoms **Article 43** of the Constitution states: -

*“The Judiciary is the guardian of human rights and freedoms. This duty is exercised in accordance with this Constitution and other laws.”*

38. Consistent with **Article 6(d) and 7(2)** of the EAC treaty, **Article 49** provides that every Rwandan has the duty to respect the Constitution and other laws and Alternatively a duty to defy superior orders if they constitute a serious and obvious violation of human rights and freedoms. It states: -

*“Every Rwandan has the duty to respect the Constitution and the other laws of the country. Every Rwandan has the right to defy superior orders if they constitute a serious and obvious violation of human rights and freedoms.”*

### EVIDENCE

39. The Applicants relies on the Affidavit of **SSEMAKULA ALI ABAAS & NYINAWUMUNTU LEATITIA**, a Citizens of Uganda and Rwanda respectively but were arrested in Rwanda, filed with the Reference.

## **RELIEFS SOUGHT BY THE APPLICANT**

40. The Applicant requests the court for the following and/or any other appropriate remedies to ensure adherence to the rule of law and compliance with the EAC Treaty, against the Respondent;
- a) A Declaration that the decision of Rwanda Investigation Bureau, an organ of the Respondent, of arrest and detention of the Applicants without trial violates the Constitution of Rwanda, the laws of Rwanda, Articles 6(d) and 7(2) of the Treaty for the Establishment of the East African Community, the African Charter on Human and Peoples' Rights and settled principles of universal standards of Human rights and practice in the EAC, the African Union (AU) and International law;
  - b) A Declaration that the acts by the Respondent either by itself, their agents, servants and or personal representatives to illegally arrest, detain and torture friends and family members of the applicants contravenes Article 6(d) and 7(2) of the Treaty.
  - c) Interim orders pursuant to Article 39 of the treaty, restraining the Respondent either by itself, their agents, servants and or personal representatives from further infringement of the fundamental principles of the EAC Treaty including the immediate cessation of any action that infringe upon the rights and freedoms of the Applicants.
  - d) Interim orders pursuant to Article 39 of the treaty, restraining the Respondent either by itself, their agents, servants and or personal representatives from further infringement of the fundamental principles of the EAC Treaty including the immediate cessation of any dealing with the properties Applicants such as selling or auctioning the properties.
  - e) That the costs of this Reference be borne by the Respondent in any event.
  - f) Any other remedies or reliefs that the Court deems appropriate based on the specific circumstances of this case and in accordance with the principles of justice, fairness, and the EAC Treaty;

**DATED AT NAIROBI THIS 25<sup>th</sup> DAY OF OCTOBER 2023**



**JOSEPH MCDONALD**  
**ADVOCATE FOR THE APPLICANT**

Lodged in the Sub-Registry at Nairobi this 25<sup>th</sup> day of October 2023

**Registrar**  
**East African Court of Justice**



**DRAWN AND FILED BY**

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**TO BE SERVED UPON:**

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