



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



(Coram: Monica K. Mugenyi, PJ; Audace Ngiye & Charles Nyachae, JJ)

REFERENCE NO. 10 OF 2017

1. OLOLOSOKWAN VILLAGE COUNCIL
2. OLOIRIEN VILLAGE COUNCIL
3. KIRTALO VILLAGE COUNCIL
4. ARASH VILLAGE COUNCIL } APPLICANTS

VERSUS

**THE ATTORNEY GENERAL OF THE
UNITED REPUBLIC OF TANZANIA RESPONDENT**

30TH SEPTEMBER, 2022

JUDGMENT OF THE COURT

A. INTRODUCTION

1. The Reference was filed in this Court on 21st September, 2017. It is made under Articles 6(d) and 7(2) of the Treaty for the Establishment of the East African Community ("the Treaty"), Article 15(1) of the Protocol on the East African Community Common Market ("the Protocol"), Rules 1(2) and 4 of the East African Court of Justice Rules of Procedures, 2013 ("the Rules") and all enabling provisions of law.
2. The Applicants are legal entities established by law in the United Republic of Tanzania, bodies corporate that are contained within the Ngorongoro District, Arusha Region, United Republic of Tanzania and their address for service is care of: -

**Donald Omondi Deya, Advocate;
Nicholas Opiyo, Advocate
Pan African Lawyers Union (PALU)
No. 3 Jandu Road, Corridor Area
P.O. Box 6065
Arusha, United Republic of Tanzania
Email: legal@lawyersofsarica.org**

3. The Respondent is the Attorney General of the United Republic of Tanzania, the Chief Legal Adviser of the Government of the United Republic of Tanzania and the address for service is care of: -

**Attorney General's Chambers
Kivukoni Front
P.O. Box 9050
Dar-es Salaam, Tanzania**

B. REPRESENTATION

4. The Applicants were represented by Mr. Donald Deya, Advocate and Mr. Nelson Ndeki, Advocate. The Respondent was represented by Mr. Gabriel Pascal Malata, Solicitor General, Mr. Abubakar Mrisha Principal State Attorney and Ms. Pauline Mdendemi, State Attorney.

C. BACKGROUND

5. It is common ground between the Parties hereto that the Applicants are registered villages, established by law in the Respondent State. That they are bodies corporate contained within Ngorongoro District in Arusha Region of the Respondent State. On incorporation, certificates of incorporation were issued to the said villages, in accordance with the Laws of the said State. In addition, the Respondent State granted land with ownership titles to the Applicants respectively, such land adjoining the Serengeti National Park.
6. From sometime in 2012, there arose a series of disputes between the respective Applicants on the one hand and the Respondent Government and the management of the Serengeti National Park on the other. The disputes were on the exact location of the border between the National Park and the Applicant's land.
7. Following the said series of disputes, ultimately, in August of 2017, the Respondent State required the Applicants to move, ostensibly as they were within the confines of the National Park, a position that the Applicants denied, maintaining that their villages where they farmed and carried out their pastoralist activities were within their legitimate

community land, and outside the boundaries of the Serengeti National Park.

8. Upon the Applicants declining to move as demanded by the Respondent State's Agents, the latter gave written notice and proceeded to carry out evictions of the Applicants from the said area, subject of the dispute.
9. Save for insisting that the evictions were done with dignity and were not in any way brutal, the Respondent State does not deny that it evicted the Applicants. It is the Respondent's contention that the evictions were from areas within the Serengeti National Park. The Applicants on the other hand contend that the land in question is their legitimate community land in which they have resided and carried out other activities for many years; that the land was outside the National Park and that the evictions were effected in a callous and brutal manner and in violation of the Laws of the Respondent State and applicable International Laws.

D. THE APPLICANTS CASE

10. The Applicants' case is set out in the Statement of Reference, various Affidavits of witnesses, oral testimony of witnesses as well as in the written submissions and Rejoinder to the Respondent's Response to the said Submissions.
11. It is the Applicants' case that the land subject of the dispute is community land lawfully held by the Applicants, and that all the said land is outside the Serengeti National Park. The Applicants relied on the documents of ownership annexed to the Reference, the

supporting Affidavits, and oral testimonies of the several witnesses from the villages. In particular, the Applicants gave great reliance to the report and testimony of the expert witness, Cesare Mbaria.

12. The following witnesses gave oral testimony in addition to their Affidavits, and were subjected to cross-examination by the Respondent's Counsel.

a) Kerry Osesiay Dukuny (PW1)

He testified that on 13th August 2017, he witnessed guards that he believed to be from the District Council, conducting an operation whereby they burnt homesteads within 5 kilometers from the beacons that mark the boundary of Serengeti National Park. He stated that the guards had a letter from the District Commissioner dated 5th August 2017 and delivered to his village on 12th August, 2017. According to the witness, the letter was a notice to the villagers to move from within the Serengeti National Park. He testified that he specifically witnessed the burning of the homesteads, but as regards the beating up of villagers by the guards, he was informed by third parties.

He subsequently on 18th August 2017, attended a meeting of the village Council, whereat a decision was taken to file a Reference in this Court.

b) Sangeny Rotiken (PW 2)

This witness testified that he witnessed the operation that culminated into burning of homesteads on 13th August 2017. In his evidence he stated that he saw those carrying out the operation

come in two Land Cruisers from the location of the Ortello Business Cooperation (OBC) which vehicles carried uniformed personnel whom, from previous interactions, he believed to be officials from OBC.

PW2 testified that he lost property in the exercise, being Tshs.250,000, 6 calves, unspecified number of lambs, 12 goats and 96 cows. He also witnessed the beatings of his fellow villagers, whom he named.

c) Letiveti Soit (PW3)

This witness testified that on 19th August 2017, whilst he had a function at his home, he was assaulted by OBC officers accompanied by game rangers from Tanzania National Parks. These officers beat up people indiscriminately and in the process the witness lost 143 sheep and goats combined, though he later recovered 74 of them. His neighbors' homesteads were destroyed.

d) Nalotwisha Sambeke (PW4)

The testimony of this witness was that on some unspecified date in August 2017, his son was beaten by game rangers and as a result, he could not walk without assistance as at the date of the hearing.

e) Namuyuko Ole Ngololo (PW5)

This witness who was the acting Chairperson of Kilolo Village testified that on 12th August 2017 he witnessed 7 cars carrying game rangers as well as Tanzania Police Officers, who proceeded to pour petrol all over his homestead and lit them, so his three houses were destroyed. Additionally, he lost 4 calves and 12 goats. He

witnessed his neighbours' households being destroyed in a similar manner. He was informed by his brother that homesteads in Olototokum village, had suffered the same fate.

f) Tate Mbootany (PW6)

This witness was the acting Chairperson of Oloirien Village. He stated that he was aware of the position of the beacons marking the boundaries of Serengeti National Park and that the villagers did not go beyond the beacons. On the events of destruction of the village, he did not personally witness the same, but was informed by other villagers.

g) Cesare Ngigii Mbaria (PW7)

This witness was brought by the Applicants as an expert. He tendered an Affidavit and Report, on which he was cross-examined. His evidence was that he was a qualified surveyor licensed to practice as such in Kenya and that he was engaged by PALU for the Applicants, to survey the subject villages, to firstly establish their location relative to the boundaries of the Serengeti National Park and also to confirm the burning down of the villages.

He testified that he did travel to Tanzania, got a visa that allowed him to work, visited the villages and carried out the survey. In doing so, he used topographical maps and topo sheets published by the survey and mapping Department of Tanzania. He used NBR satellite images to confirm that the subject villages were burnt down and that they were outside and beyond the beacons of the Serengeti National Park.

13. The Applicants, thus, submitted that in effecting the evictions and moving the Applicants from the land they were occupying, the Respondent had acted in violation of its own laws and, in so doing had contravened specific provisions of the Treaty, in particular Articles 6(c), 6 (d) and 7 (2) thereof; and that the Respondent had also contravened Article 15 (1) of the Protocol.

14. The Applicants, thus, sought for orders as follows: -

- a) A declaration that the Respondent has violated the Treaty for the Establishment of the East African Community and the Protocol on the Establishment of the East African Community Common Market;**
- b) An Order to the Respondent State to stop the evictions, the arrest, detention or prosecution of the Applicants' members and residents; the damage to their homes, homesteads, livestock and other property;**
- c) An Order for restitution and reinstatement of the Applicants, their members and residents to their lawful property;**
- d) The Respondent be ordered to make full reparations and further pay general damages of Tanzanian Shillings, (TSH) 1,000,000,000;**
- e) The Respondent to be ordered to pay costs-; and**
- f) Any other relief deemed just and equitable.**

E. RESPONDENTS CASE

15. The Respondent's case is set out, firstly in the Response to Reference and in the Affidavits and oral testimonies of its witnesses, and in the Response to the written submissions of the Applicants.

16. In the response to the Reference, the Respondent gave Notice of Preliminary Objection allegedly on points of law as follows:

- a) That the Court is devoid of jurisdiction to entertain this Reference;**
- b) That the Reference is bad in law for failure to exhaust available local remedies;**
- c) That the Applicants do not have the requisite authority to institute proceedings in this Court;**
- d) That the Reference offends the principles of the National Land Policy which are the objectives of the Village Land Act under Section 3(1) of the Village Land Act No.5 of 1999; and**
- e) That the Reference offends the Constitution of the United Republic of Tanzania, 1977.**

17. The Respondent further contends that the evictions which were carried out by agents of the Respondent were lawful, that the villagers had been designated areas for relocation and the exercise was performed in compliance with the laws of the Respondent.

18. The Respondent thus denied in toto, the prayers sought by the Applicant in the Reference.

19. It is the essence of the Respondent's case that the evictions of the villagers was from the Serengeti National Park and not from the villages. The Respondent further submitted that the eviction exercise was done in accordance with the applicable laws of Tanzania and that all the persons were at all times treated with respect and dignity and that no property was destroyed within the respective villages.
20. By way of evidence, the Respondent filed Affidavits from the following witnesses who also gave oral testimony and were cross-examined.

a) Rashid M. Taka (RW1)

This Witness was the District Commissioner of Ngorongoro District and Chairman of the District Security Committee. He testified that in July 2017 he was informed by the Serengeti National Park Authorities that pastoralists from the villages bordering the Park had trespassed to the Park and built homesteads inside the Park and were grazing their livestock within the Park.

He then convened a District Security Committee Meeting which resolved to evict the trespassers following which decision, he issued a notice to all trespassers to leave the Park voluntarily or be evicted. That upon the villagers refusing to heed the notice, the Respondent State embarked on the eviction exercise in August, 2017.

In his oral testimony, the witness reiterated that the eviction exercise was carried out within the Serengeti National Park and

that all affected persons were treated with respect and dignity and that no property was destroyed.

b) Julius Francis Musei (RW2)

This witness was the Park Warden at the Serengeti National Park. He testified that the residents of villages bordering the park had repeatedly trespassed into the park and conducted activities therein which had a devastating impact on the flora and fauna within the park, that certain of the pastoralists built homesteads as far as 20 kilometres into the park.

That on 5th August 2017, the District Commissioner of Ngorongoro gave notice to all trespassers within the park to move out or face eviction. Upon the villagers not complying with the said notice in September 2017, the operation was launched, to ostensibly remove the villagers from within the park.

c) Ally Kasim Shakha (RW3)

This witness stated that he is employed by the Serengeti National Park as the Geological Information System Officer. He too stated that residents of the villages bordering the Park had been progressively encroaching, with their pastoralist activities into the park, and thereby adversely affecting the flora and fauna. That on 5th August, 2017, the District Commissioner of Ngorongoro issued a notice to the said villagers within the park to leave or be forcefully evicted. Following a failure by the villagers to move, an operation to evict them was launched.

The witness stated that he participated in the eviction exercise for purposes of compiling the requisite geographical information.

He stated further that he marked the area from which *inter alia* the Applicants in particular were evicted and recorded the GPS coordinates. He was emphatic that during the exercise of the evictions he did not witness any sort of abuse.

F. ISSUES FOR DETERMINATION

21. At the Scheduling Conference held on 20th November, 2018, the Parties agreed the following as the issues for determination by the Court:

- a) Whether the East African Court of Justice has Jurisdiction to hear and determine the Reference;**
- b) Whether or not the Reference offends the principles of the National Land Policy which are the Objectives of the Village Land Act, Section 3(1) of the Village Land Act No.5 of 1999;**
- c) Whether or not the Applicants were evicted from the Serengeti National Park or from their respective villages;**
- d) Whether the acts, omissions and conducts of the Respondent violate Article 6(c) 6(d) and 7(2) of the Treaty and Article 15(1) of the Protocol on the Establishment of the East African Common Market; and**
- e) What Remedies are the Parties entitled to?**

G. COURTS DETERMINATION

ISSUE NO.1: Whether the East African Court of Justice has Jurisdiction to hear and determine the Reference:

22. The jurisdiction of the Court is derived from Article 27(1) of the Treaty, which provides as follows:

“The Court shall initially have jurisdiction over the interpretation and application of this Treaty:

Provided that the Court’s jurisdiction to interpret under this paragraph shall not include the application of any such interpretation to jurisdiction conferred by the Treaty on organs of Partner States.”

23. As regards *locus standi* before the Court by Parties other than Partner States and the Secretary General of the Community, Article 30 of the Treaty provides:

“1. 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 or an institution of the Community on the grounds that such Act, regulation, directive, decision or action is unlawful or is an infringement of the provisions of this Treaty.

2. The proceedings provided for in this Article shall be instituted within two months of the enactment, publication,

directive, decision or action complained of, or in the absence thereof, of the day in which it came to the knowledge of the complainant, as the case may be; and

3. The Court shall have no jurisdiction under this Article where an Act, regulation, directive, decision or action has been reserved under this Treaty to an institution of a Partner State.”

24. In submissions, it was argued on behalf of the Respondent that upon domestication by the Respondent State of the Treaty, by the East African Community Act, Cap 411, the domestic Courts of the Respondent State were empowered with the mandate to handle matters pertaining to land, to the exclusion of this Court.

25. In any event, argued the Respondent, **“the subject matter of this case does not fall within the jurisdiction of this Court.”**

26. On its part and in response on the question of jurisdiction, the Applicant submitted that the Court has jurisdiction by reason of Article 27, as the matter before Court, alleging as it does the violation of provisions of the Treaty, calls for interpretation and application thereof. That the Reference asks for the interpretation and application of Articles 6(d) and 7(2) of the Treaty, which in turn refers to the African Charter on Human and Peoples Rights, as well as for the interpretation and application of Article 15(1) of the Protocol, which is an integral part of the Treaty.

27. The Court is persuaded by the latter submissions of the Applicants. In **Martha Wangari Karua v The Attorney General of the Republic of**

Kenya & 2 Others, EACJ Reference No. 20 of 2019, this Court stated:

“A cause of action has been severally held to exist where the Reference raises a legitimate question under the Court’s legal regime as spelt out in Article 30 (1) more specifically where the matter complained of is alleged to violate national law of a Partner State or infringe any provision of the Treaty.”

28. We are further ably guided and bound by the decision of the Appellate Division of this Court in **Henry Kyarimpa v The Attorney General of the Republic of Uganda, EACJ Appeal No. 6 of 2014** where the Court stated:

“Where the complaint is that the action was inconsistent with international law and on that basis, a breach of a Partner State’s obligation under the Treaty to observe the principle of the Rule of Law, it is this Court’s inescapable duty to consider the internal laws of such a Partner State in determining whether the conduct complained of amounts to a violation or contravention of the Treaty.”

29. We entertain no doubt that the subject matter of the instant Reference is one over which the Court has jurisdiction in terms of Article 27 of the Treaty.

30. In **Application No. 15 of 2017** arising from the Instant Reference, the Court held that the Applicants had the legal capacity pursuant to

Article 30 of the Treaty, as legal persons resident within the East African Community, to bring this Reference.

31. No issue was raised by the Respondent as regards the compliance with the provisions of Article 30(2); namely to institute the proceedings within two months of the action complained of.
32. In the premise, we find that this Court has jurisdiction to hear and determine the Reference, and we answer **Issue No. 1** in the affirmative.

ISSUE NO.2: Whether or not the Reference offends the Principles of the National Land Policy which are the Objectives of the Village Land Act Section. 3 of the Villages Act:

33. In its submissions, the Respondent referred the Court to the express provisions of the Village Land Act of the Respondent State. Section 3(1) thereof provides for the fundamental principles of the National Land Policy which include *inter alia*:

“(a) to make sure that there is established an independent, expeditious and just system for adjudication of land disputes which will hear and determine land disputes without undue delay;

(b) ...

(c) ...

(n) to establish an independent, expeditious and just system for the adjudication of land disputes which will hear and determine cases without undue delay.”

34. The Respondent further made reference to the Land Disputes Act, Cap 216 which provides at Section 3(1) thereof as follows:

“Subject to Section 167 of the Land Act and Section 62 of the Village Land Act, every dispute or complaint concerning land shall be instituted in the Court having jurisdiction to determine land disputes in a given area.”

35. However, from these provisions in the submitted views of the Respondent, the subject matter of the dispute in the instant Reference could only be adjudicated upon by such court as is contemplated in the said Land Dispute Courts Act, and not by this Court.

36. On their part, the Applicants submitted that the Treaty has no requirement for the exhaustion of local remedies as a precondition to approaching this Court. Hence, the Applicants did not need to first bring the dispute before any land dispute court, in the Respondent State.

37. We respectfully agree with the submissions of the Applicants in this regard. It is now established East African Community Law, that exhaustion of local remedies is not required prior to filing a dispute before this Court. Most recently, in **Abba Ltd vs the Attorney General of the Republic of Rwanda, EACJ, Reference No. 18 of 2018**, the Court stated:

“With utmost respect, the second limb of the Applicant’s submission, which suggests that this Court’s jurisdiction is founded on exhaustion of local remedies by a party, is

misconceived in the context of the Treaty and the Rules of this Court and ought to be corrected upfront.

Whereas the obligation to exhaust local remedies is a tenet of customary international law, it is not a prerequisite for filing any matter or seeking remedies in this Court under the Treaty. (See Attorney General of the Republic of Rwanda vs Plaxeda Rugumba, Appeal No. 1 of 2012). The Treaty provides no requirement for exhaustion of local remedies as a precondition for accessing it. The fact that a matter has been filed in this Court after a party has exhausted local remedies does not per se warrant audience to such a party nor accord jurisdiction to this Court over such a matter.”

38. The very foundation of the Respondent’s argument as regards **Issue No.2** therefore collapses. The Applicants allege a violation of specific provisions of the Treaty, by the Respondent. These allegations are within the legitimate powers of this Court’s jurisdiction, notwithstanding that the subject matter touches on what may be described as a land dispute, and which possibly the Applicants had the option to take before the tribunals envisaged in the domestic law referred to above.
39. We have no hesitation therefore in deciding that the Reference does not offend the principles of the National Land Policy which are the objectives of the Villages Land Act Section 3(1). We thus answer **Issue No.2** in the negative.

ISSUE NO. 3: Whether or not the Applicants were Evicted from the Serengeti National Park or from their respective Villages:

40. The gravamen of the Applicants case is that, the Respondent State forcefully and brutally evicted them from their villages, and destroyed their homesteads, which were outside the boundaries of the Serengeti National Park.
41. The Respondent on the other hand maintains that whilst it did undertake the eviction exercise after giving notice to the villages, and which notice was not heeded, the evictions were done in a humane manner and in accordance with law, and secondly in any event, the area from which the villagers were evicted was within the boundaries of the park.
42. In considering this issue, we are guided by the law and practice that the party that makes the claim or allegation bears the burden of proof of what they claim. In the instant case, therefore, it was incumbent upon the Applicant to prove, on a balance of probability, that indeed the evictions were done in villages outside the parameters of the Serengeti National Park.
43. In **Niongabo Theodore and 2 Others vs The Attorney General of the Republic of Burundi, EACJ, Reference No.4 of 2011**, this Court stated, “The burden of proof lies with the Applicant to establish its case and the party that asserts a fact bears the duty to establish it.” The Court went further to refer to its own decision in **Henry Kyarimpa vs The Attorney General of Uganda** (supra) wherein it stated: “generally, in application of *actori incumbit*

probation, the Court will require the party putting forward a claim or a particular contribution to establish the elements of fact and law on which the decision in its favour might be given.”

44. The Court in **Niyongabo Theodore** (supra) quoted with approval, the following statement from Halsbury’s Laws of England:

“The legal burden (or the burden of persuasion) rests upon the Party desiring the Court to take action; thus, a claimant must satisfy a court or tribunal that the conditions which entitled him to an award have been satisfied. In respect of a particular allegation, the burden lies upon that Party for whom the substantiation of that particular allegation is an essential of his case.”

45. This Court has carefully considered the Affidavits of the witnesses presented by both parties, the oral testimony and submissions, with particular reference to the issue of where the evictions took place.

46. On that question, the Applicants witnesses PW1, PW2, PW3, PW4, PW5 and PW6 simply stated that the villages were outside the boundaries of the Serengeti National Park, that the villagers were aware of the position of their boundaries, at no point did they trespass into the Park, and that the eviction exercise was conducted in their villages outside the Park.

47. Contrary to the submissions of the Applicants Counsel, in the Affidavit and oral testimony of the witnesses referred to in the previous paragraph, beyond bare assertions there was a lack of specificity on

the location of the beacons marking the boundary of the Serengeti National Park.

48. We shall revert to PW7 below. PW1 to PW6 inclusive simply stated that the villages were not inside the Park.
49. On behalf of the Respondent, all witnesses, by Affidavit and oral evidence, were consistent that the area where the eviction exercise was conducted, was within the boundaries of the National Park.
50. PW1 and PW3 were specifically cross examined by Counsel for the Respondent on the issue of the National Park boundaries, and where the eviction exercise took place. In his Affidavit, PW1 deponed that the notice issued by the District Commissioner and delivered to the villages required the villagers to move out of the National Park. During oral testimony on cross examination, he stated that the villagers were required to move from “**the controlled area.**” The witness was not able to explain this evidently fundamental discrepancy in the evidence.
51. The evidence of PW3 was even more confounding. In his Affidavit, he deponed that a letter from the District Commissioner required the villagers to vacate the area within five (5) kilometres of the National Park boundary. The letter was not exhibited. In cross examination, the witness stated that the notice was for the villagers to move outside one thousand five hundred (1500) kilometres from the National Park boundary. Clearly this evidence was not helpful in helping the Applicants discharge their burden of proof.

52. Witness PW7 presented by the Applicants as an expert witness filed an affidavit and report and was cross-examined by the Respondent's Counsel. In the said cross examination, the witness was not able to demonstrate that he carried out his work within the specific requirements of the Laws of Tanzania. Indeed, in answer to questions from Court, the witness stated that he was unaware of the Statutory requirements for him to be able to carry out work as a surveyor in Tanzania, as a non-citizen. The witness could not prove when asked in cross examination, that he came into Tanzania for purposes of carrying out the survey work.
53. Where the witness was not able to demonstrate that he visited the site for purpose of carrying out the survey, it is our view that this fundamentally undermines the efficacy of the evidence in his report and the Affidavit, as well as his oral evidence.
54. Whereas the report of PW7 is categorical that the Applicant villages which were the subject of the eviction; were outside the Serengeti National Park, the report in our view still begs the question, where exactly were the boundaries of the park?
55. This Court takes **Judicial Notice of Government Notice No.235 published on 21st June, 1968**. In that Notice, by a proclamation pursuant to Section 4 of the National Parks Ordinance, Cap 412, the President of the Respondent State altered the boundaries of the Serengeti National Park. The boundaries are then set out in the schedule to the proclamation.
56. In cross-examination, PW7 conceded that he did not in any way in carrying out his survey consider the said Notice. This we consider to

be fundamentally fatal to his report, at least in so far as it states that the villages were outside the boundaries of the National Park.

57. Considering the evidence presented by both parties and the submissions by learned Counsel, we are not persuaded that the Applicants have discharged the burden of proving what they allege, that the subject villages were outside the boundaries of the Serengeti National Park.

58. Accordingly, we answer **Issue No.3** against the Applicants, as the party that makes the claim.

ISSUE NO.4: Whether the acts, omissions and conducts of the Respondent violate Articles 6(c) 6(d) and 7(2) of the Treaty and Article 15(1) of the Protocol on the Establishment of the East African Common Market:

59. It is the view of this Court that the determination of Issue No. 4 is directly hinged to our findings in respect of **Issues Nos. 2 and 3** concluded above. In particular, we have found, as regards Issue No.3 that the Applicants have not proved that the evictions were carried out, outside the Serengeti National Park.

60. It is common ground that the Respondent State carried out an eviction exercise that affected the Applicants after giving notice for them to vacate the subject area. Two things however are in contention; firstly, was the entire exercise carried out within or outside the Serengeti National Park? Secondly, was the exercise in any event carried out in accordance with the law?

61. In the consideration of Issue No. 3 above, we found that the Applicants have not proved that the eviction exercise was done in respect of their villages, outside the National Park.
62. As regards the manner in which the eviction exercise was carried out, the Applicants alleged violence and brutality. As stated earlier in this judgment, much of the evidence presented was hearsay and in some cases was inconsistent. By way of rebuttal, the Respondent's witnesses maintained that the exercise was carried out in compliance with the law and with dignity to the affected Parties.
63. In no case did any witness give evidence that proved either injury or actual loss during the exercise. Here again therefore, the Applicant falls short on the burden of proof.
64. In the circumstances, the Applicants have not demonstrated that any acts, omissions or conduct of the Respondent violate Articles 6 (c), (d) and 7(2) of the Treaty and Article 15(1) of the Protocol on the Establishment of the East African Common Market.
65. We are bound therefore, which we hereby do, to answer **Issue No.4** in the negative.

ISSUE NO.5: What Remedies are the Parties entitled to?

66. The Applicant sought the orders set out in paragraph 14 above of this Judgment. In view of our findings set out above in this Judgment and the reasons stated herein, we are unable to grant the said orders and we dismiss the Reference.

H. CONCLUSION

67. From what we have stated above, this Court DECLARES and ORDERS as follows:

- a) This Court has jurisdiction to hear and determine this Reference;
- b) The Reference is hereby dismissed for lack of merits; and
- c) In exercise of the Court's discretion, we order that each Party bear its own costs.

Dated, signed and delivered at Arusha this 30th Day of September, 2022.

.....
*Hon. Lady Justice Monica K. Mugenyi
PRINCIPAL JUDGE

*Hon. Justice Audace Ngiye
JUDGE

Hon. Justice Charles Nyachae
JUDGE

*[Hon. Lady Justice Monica Mugenyi and Hon. Justice Audace Ngiye whose terms of office at the EACJ came to an end on 30th November, 2020 and 30th June, 2022 respectively participated in the hearing and deliberations leading to the above Judgment. They signed this Judgment in terms of Article 25(3) of the Treaty].