

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

*(Coram: Monica K. Mugenyi, P.J; Isaac Lemuola, D.P.J; Faustin Ntezilyayo, J;  
Fakih A. Jundu, J & Audace Ngiye, J)*

REFERENCE No. 17 of 2014

HON. MARGARET ZZIWA ..... APPLICANT

VERSUS

SECRETARY GENERAL,  
EAST AFRICAN COMMUNITY .....  
RESPONDENT

3<sup>RD</sup> FEBRUARY 2017

Certified as true Copy of the Original  
  
The Registrar  
East African Court of Justice  
DATE 21/02/2017

## JUDGMENT OF THE COURT

### A. INTRODUCTION

1. This Amended Reference seeks to challenge the removal of the Applicant, Dr. Margaret N. Zziwa, from the Office of Speaker of the East Africa Legislative Assembly (hereinafter interchangeably referred to as 'EALA' or 'the Assembly') on the premise that the procedure adopted by the Assembly flouted provisions of the Treaty for the Establishment of the East African Community (hereinafter referred to as the "Treaty"), as well as rules of natural justice.
2. The Reference is *inter alia* premised on Articles 6(d), 7(2), 8(1)(c), 44, 53(3) and 56 of the Treaty, as well as Rule 24 of the East African Court of Justice Rules of Procedure.
3. It is instituted against the Secretary General of the East African Community (EAC), who is sued in a representative capacity on behalf of the EALA, as provided under Article 4(3) of the Treaty.
4. At the hearing thereof, the Applicant was represented by Messrs. Jet Tumwebaze and Justin Semuyaba, while Mr. Stephen Agaba appeared for the Respondent.

### B. FACTUAL BACKGROUND

5. In June 2012, the Applicant was elected the Speaker of EALA but a few years later the idea of her removal from that office was apparently mooted by some Members of the House. On 20<sup>th</sup> March 2014, possibly to pre-empt such a move, Mbidde Foundation Ltd filed Reference No. 3 of 2014 (Mbidde Foundation Ltd vs. The

Secretary General of the East African Community and The Attorney General of Uganda), contesting the procedure prescribed for the removal of the Speaker of EALA for allegedly violating designated Treaty provisions. The same applicant did also file an application for interim orders pending the determination of the Reference, to wit, Application No. 5 of 2014.

6. On 26<sup>th</sup> March 2014, a Notice of intention to move a Motion for the removal of the Applicant from the Office of Speaker of EALA was formally lodged with the Clerk to the Assembly, duly signed by a minimum of four (4) members from each country of the EAC as follows:

- |             |               |
|-------------|---------------|
| 1. Burundi  | All 9 members |
| 2. Kenya    | 5 members     |
| 3. Rwanda   | All 9 members |
| 4. Tanzania | 4 members     |
| 5. Uganda   | 5 members     |

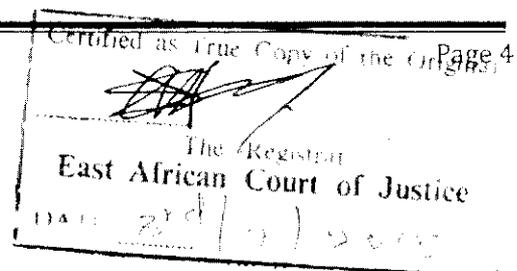
7. The Clerk forwarded the said Notice to the House on 27<sup>th</sup> March 2014. On the same day, the Clerk received a Motion detailing the grounds for the removal of the Applicant. The Motion for the Speaker's removal was subsequently placed on the Assembly's Order Paper and brought to the Applicant's attention on 31<sup>st</sup> March 2014.

8. On 1<sup>st</sup> April 2014, the Motion was presented to the Assembly Plenary but, before it could be referred to the Committee on Legal, Rules and Privileges, Hon. Mukasa Mbidde raised a point of order invoking the

Assembly's *sub judice* Rule<sup>1</sup>, given the pending determination of Reference No. 3 of 2014 by this Court. Following the ensuing debate, the Applicant ruled that the House could not proceed with the Motion and adjourned the House *sine die*.

9. She subsequently filed Reference No. 5 of 2014 (Margaret Zziwa vs. The Secretary General of the EAC) in this Court challenging her (then) intended removal for allegedly violating Treaty provisions that guarantee her right to a fair hearing. The Applicant did also file Application No. 10 of 2014, in which she sought interim orders restraining the EALA from investigating or removing her from office pending the determination of the above Reference. This Application was subsequently consolidated with an earlier Application No. 5 of 2014 and the consolidated Application was dismissed by this Court.
10. On 29<sup>th</sup> May 2014, prior to any further deliberation thereof, three (3) Members of the Assembly from the United Republic of Tanzania withdrew their signatures from the Motion for the removal of the Speaker and, on 2<sup>nd</sup> June 2014, another signature was withdrawn from the same Motion by a Member from the Republic of Kenya. Against that background, on 4<sup>th</sup> June 2014 when the matter of her censure arose in the re-called Assembly, the Applicant ruled that the Motion had lapsed given that it lacked the four requisite signatures from the United Republic of Tanzania. In the same vein, on 15<sup>th</sup> August 2014, this Court did register the withdrawal of Consolidated Reference 3 & 5 of 2014 by consent of the parties.

<sup>1</sup> Rule 43(2) of the Assembly's Rules of Procedure prohibits reference to any matter that is *sub judice*.



11. Whereas the foregoing chronology of events would seemingly have rendered closure to the Applicant's removal proceedings, fresh actions were initiated in respect thereof in November 2014. On 26<sup>th</sup> November 2014, 32 Members of EALA convened in the designated Assembly Chambers in Nairobi; summoned the Clerk to 'preside over the Assembly'; allegedly locked the Applicant in her office; elected a 'temporary' Speaker to preside over the Motion for the Speaker's removal; referred the said Motion to the Assembly's Committee on Legal, Rules and Privileges for investigation, and suspended the Applicant from the Office of Speaker of the Assembly.
12. The Applicant contested the legality of the foregoing actions through Reference No. 17 of 2014 and, vide Application No. 23 of 2014, unsuccessfully sought interim orders to forestall the reconvening of the Assembly to consider the Committee report. In the event, on 17<sup>th</sup> December 2014, the Assembly did commence censure proceedings that culminated in her removal from the Office of Speaker of EALA on 19<sup>th</sup> December 2014. It is her removal from office pursuant to a process that she deemed to have flouted Treaty provisions, as well as the Assembly's own Rules of Procedure that forms the basis of the present Amended Reference. Whereas the original Reference had sought a permanent injunction against her removal from office, the Amended Reference contests the legality of the said removal.

### C. APPLICANT'S CASE

13. It is the Applicant's case that, following the withdrawal of 3 signatures by EALA Members from the United Republic of Tanzania, the Motion for her removal was no longer tenable in so far as it

violated Rule 9(2) of the Assembly's Rules of Procedure. The said Rule requires such a Motion to be signed by at least 4 elected Members from each Partner State before it can be presented to the Assembly. The withdrawal of 3 signatures would have left the United Republic of Tanzania with only 1 signature in support of the Motion, rather than the requisite 4 signatures. The Applicant contends that no Member of the Assembly contested her ruling that the Motion had lapsed on the floor of the House.

14. The Applicant does also question the impartiality of the House Committee on Legal, Rules and Privileges, to which the Motion was forwarded for investigation arguing that the Committee's Chairperson was the originator and draftsman of the censure Motion; 12 out of the 15 Members thereof had signed the Motion and would therefore not give her a fair hearing; an investigation by the allegedly biased Members would be contrary to the rules of natural justice, and there were no known rules governing the investigative function of the Committee on a matter such as a censure Motion. The Applicant did also highlight the practical difficulty of re-constituting the Committee's membership for purposes of the said Motion given that all the EALA Members from the Republics of Burundi and Rwanda had endorsed the Motion, yet it was an established practice of the House that the Committee be comprised of 3 Members from each Partner State.

15. The Applicant further contests the validity of the grounds advanced for her removal, arguing that they did not fall within the ambit of the term 'misconduct' as envisaged under Article 53(3) of the Treaty since

they alluded to matters of a personal and/or private nature rather than her inability to perform the functions of the Office of Speaker. She does also contend that some of the grounds of censure that were investigated by the Committee were not outlined in the Motion as by law required.

16. Furthermore, the Applicant contests the legality of all the actions undertaken by some Members of the Assembly on 26<sup>th</sup> November 2014 with regard to the reinstatement of the Motion; its referral to the Committee on Legal, Rules and Privileges for investigation; her suspension from the Office of Speaker, as well as the appointment of a Temporary Speaker. It is her contention that the said actions violated Articles 53 and 56 of the Treaty, as well as Rule 9 and Annex 3 of the Assembly's Rules of Procedure.

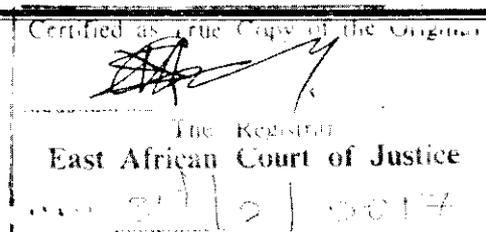
17. On that basis, it is the Applicant's contention that the Assembly conducted itself contrary to the Treaty, its own Rules of Procedure, and the dictates of natural justice; as a result of which she has suffered embarrassment, inconvenience, mental anguish and reputational injury. She accordingly seeks recompense by way of special, general, and exemplary damages; as well as compensation for lost earnings as a consequence of the allegedly unlawful interruption of her five-year term of office.

#### **D. RESPONDENT'S CASE**

18. Conversely, it is the Respondent's contention that there was no bias in the Legal, Rules and Privileges Committee's handling of the Motion; rather, it duly conducted its investigations in accordance

with Article 53(3) of the Treaty; Rules 9(2), 78(2)(b) & (6) and Annex 5B of the Assembly's Rules of Procedures, as well as established parliamentary practice which allegedly provides for peer review of legislators' conduct.

19. The Respondent contests the allegation of absence of Rules regulating the Committee's investigation function as in his view that matter had been settled in Consolidated Application 3 & 10 of 2014 (Arising from Consolidated Reference 3 & 5 of 2014), where this Court observed that the Assembly had formulated its own procedural rules pursuant to Articles 49(2)(g) and 60 of the Treaty.
20. The Respondent further contests the contention that the accusations of misconduct against the Applicant did not conform to Article 53(3), maintaining that the grounds of misconduct against her were well articulated in the Committee's report of 27<sup>th</sup> November - 16<sup>th</sup> December 2014 and confirmed by the entire Assembly on 17<sup>th</sup> December 2014.
21. It is the Respondent's case that the censure Motion could not have lapsed given that, once it had been moved, it could only be withdrawn pursuant to Rule 34(1) of the Assembly's Rules of Procedure, which was never done in this case. The Respondent thus maintains that the procedure adopted by the Assembly was well within its mandate and the confines of Article 53 of the Treaty, as well as Rule 9(6) of its Rules of Procedure.



## E. SCHEDULING CONFERENCE

22. At a Scheduling Conference held on 6<sup>th</sup> May 2015, the Parties framed the following issues for the Court's determination.

- a. Whether the Assembly's Rules of Procedure were followed by EALA in the suspension of the Applicant from the Office of the Speaker, and whether the proceedings were null and void and ought to be set aside.
- b. Whether the appointment/election of a Temporary Speaker was in conformity with the Treaty and the Assembly's Rules of Procedure.
- c. Whether the actions, proceedings and findings of the Committee on Legal, Rules and Privileges, and the eventual removal of the Applicant as Speaker by the Assembly were in conformity with the provision of Articles 53 and 56 of the Treaty; Rule 9 and Annex 3 of the Assembly's Rules of Procedure, as well as the rules of natural justice.
- d. Whether the grounds for removal of the Speaker presented before and investigated by the Committee on Legal, Rules and Privileges were the grounds envisaged under Article 53 of the Treaty.
- e. Whether the Applicant is entitled to the remedies sought.

## F. ISSUES

23. We observe with some degree of consternation that the Respondent purported to raise what he termed 'preliminary issues' that he sought

to have this Court consider prior to a determination of the issues as framed. The 2 supposedly inter-related issues are:

- a. Whether the Motion was tabled in the Assembly, and
- b. When the proceedings for the removal of the Applicant from the Office of Speaker commenced.

24. We are constrained to observe that we find the notion of 'preliminary issues' in submissions a gross misrepresentation of civil procedure as is known either at Common Law or in the EAC jurisdiction. Rule 53(1)(a) of this Court's Rules of Procedure provides for a Scheduling Conference where all matters in controversy between parties are considered and reduced into issues for determination by the Court. The Respondent was represented at the Scheduling Conference in this matter that was held on 6<sup>th</sup> May 2015 but did not deem it necessary to have the so-called preliminary issues framed as issues for determination. Neither, we might add, had the Respondent bothered to raise the said issues in his pleadings in the first event.

25. Quite clearly, the so-called preliminary issues do not conform to what are typically referred to as preliminary points of law, the gist of which was aptly surmised in EAC Secretary General vs. Hon. Margaret Zziwa EACJ Appeal No. 7 of 2015. That case essentially upheld the regional *locus classicus* of Mukisa Biscuit Manufacturing Co. Ltd vs. West End Distributor Co. Ltd (1969) EA 696, where it was held (per Law, J. A):

"So far as I am aware, a preliminary objection consists of a point of law which has been pleaded, or which arises

by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit.”

26. We take the view that it is a blatant misrepresentation of the Court's Rules of Procedure for the Respondent to purport to raise preliminary legal issues at the stage of submissions in the absence of any legal or procedural basis therefor. The sanctity and respect for procedural rules cannot be overstated. On that premise alone, we would have disregarded them in their entirety. However, we find that they have a bearing on Issues 1 and 2 as framed, and shall therefore address them under our consideration thereof. We propose to address Issues 1 and 2 together in so far as they relate to the procedure adopted by the 'whole' House.

**ISSUES 1 & 2:** *Whether the Assembly's Rules of Procedure were followed by EALA in the suspension of the Applicant from the Office of the Speaker, and whether the proceedings were null and void and ought to be set aside; AND Whether the appointment or election of a temporary Speaker was in conformity with the Treaty and the Assembly's Rules of Procedure.*

**Applicant's Submissions:**

27. The Applicant advanced four (4) reasons for her preposition that the Treaty, as well as Assembly's Rules of Procedure were flouted with regard to her suspension and the election of a Temporary Speaker by the Assembly.

28. First, it was argued that there was no legal basis for Applicant's purported suspension. It was the Applicant's contention that Rule 9(6) of the Assembly's Rules of Procedure only bars a Speaker against whom impeachment proceedings have commenced from presiding over the same, but such Speaker is mandated to continue conducting other business of the House that does not relate to the impeachment proceedings. It was opined, therefore, that the Motion in this case ought to have been forwarded to the Assembly while the Applicant was still in office. The Applicant relied upon a letter from the Clerk to the Assembly dated 26<sup>th</sup> November 2014 that informed her of her purported suspension (**Exhibit P.12**) as proof of the fact of suspension.
29. Secondly, it was the Applicant's submission that her removal from office was superintended by a 'Crisis Management Committee', a committee that is neither recognised nor created by the Assembly's Rules of Procedure.
30. It was further argued for the Applicant that the informal meeting of Members of the House that was held on 26<sup>th</sup> November 2014 at 10.00 am was illegal, irregular, null and void given that the House had been officially adjourned to 2.30 pm of the same day. It was also contended that the said meeting was not premised on a valid impeachment Motion, the original Motion having lapsed.
31. Finally, it was the Applicant's contention that the purported election of a Temporary Speaker was not provided for anywhere in EALA's legal regime but, rather, was in direct conflict with Article 48(2) of the Treaty, as well as Rule 8(1) of the Assembly's Rules of Procedure, both of which prescribe a substantive Speaker as the only person

mandated to preside over the Assembly's proceedings. Whereas, learned Counsel for the Applicant did acknowledge the provisions of Article 56(b) of the Treaty that permit the election of any Member of the Assembly to preside over it 'in the absence of the Speaker', such election to be conducted pursuant to Annex 3 to the Assembly's Rules of Procedure; it was their contention that the evidence adduced at trial was that the Applicant was present within the precincts of the Assembly's designated Chambers when recourse was erroneously made to Annex 3 of the Rules. It was further argued that a strict interpretation of Clause (1) of Annex 3 was that the Speaker would be required to be 'present but not presiding' when an election for another Member to preside over the House in his/ her absence was held and the Assembly would be presided over by the Clerk for purposes of such an election.

32. Learned Counsel opined that the omission to invite the Applicant to the said informal meeting; the absence of the procession to the Office of the Speaker as prescribed by Clause (7) of Annex 3, and the exclusion of 13 Members of the House from the said meeting eroded its legitimacy as a purported sitting of the Assembly and underscored the illegality of any decisions that emanated therefrom or, indeed, from subsequent sittings presided over by the Temporary Speaker.

**Respondent's Submissions:**

33. It was the Respondent's contention, on the other hand, that the Assembly did comply with Rule 9 of its Rules of Procedure but the Applicant contravened Rule 9(6) thereof that forbade her from presiding over proceedings for her removal. Mr. Agaba argued that

the Motion complied with Rule 9(2) of the Assembly's procedural rules in so far as it bore the prescribed number of signatures, and also adhered to sub-Rules 9(3) and (4) to the extent that it was forwarded to the Assembly within 24 hours of its receipt by the Clerk and duly tabled in the House within seven (7) days.

34. Learned Counsel questioned the legality of the Applicant presiding over the Assembly on 1<sup>st</sup> April 2014 when the Motion was first introduced, as well as on 4<sup>th</sup> June 2014 when she ruled that it had lapsed. He opined that the proceedings for the removal of the Applicant from office had commenced on 27<sup>th</sup> March 2014, when the Motion was submitted to the Clerk, and cited the following definition of parliamentary proceedings in Section 16(2) of the Parliamentary Privileges Act, 1987 (Australia) in support of this position:

- (2) For the purposes of the provisions of article 9 of the Bill of Rights, 1688 as applying in relation to the Parliament, and for the purposes of this section, *proceedings in Parliament* means all words spoken and acts done in the course of, or for purposes of or incidental to, the transacting of the business of a House or of a committee, and, without limiting the generality of the foregoing, includes:
- (a) the giving of evidence before a House or a committee, and evidence so given;
- (b) the presentation or submission of a document to a House or a committee;

- (c) the preparation of a document for purposes of or incidental to the transacting of any such business, and
- (d) the formulation, making or publication of a document, including a report, by or pursuant to an order of a House or a committee and the document so formulated, made or published.

35. In the alternative, Mr. Agaba relied upon the evidence of RW2 (Hon. Judith Pareno) to suggest that the proceedings commenced when the Motion was placed upon the House Order Paper for deliberation.

36. It was further argued for the Respondent that the withdrawal of 4 signatures from the Motion was inconsequential given that the procedure for withdrawal of Motions as prescribed under Rule 34(1) of the Assembly's Rules of Procedure had not been followed. Mr. Agaba cited the evidence of RW1 (Hon. Abdallah Mwinyi) and RW3 (Hon. Patricia Hajabakiga), who each testified that a similar attempt by an Honourable Member to withdraw his signature from written support of the Applicant during the elections for the Office of Speaker had been thwarted by the Clerk to the Assembly in their presence. We did understand him to also contend that since the Motion had not been debated to its conclusion, it had not lapsed but was governed by Rule 18(2) that provides for such Motion to be placed on the Order Paper for the next sitting of the House. In his view, Rule 18(2) thus preserved the life line of the Motion that was first presented to the House on 1<sup>st</sup> April 2014.

37. With specific regard to issue No. 1, it was the Respondent's contention that the Applicant had never been suspended from the Office of Speaker but, rather, was suspended from presiding over the Motion for her removal from that office. Mr. Agaba further argued that the Crisis Management Committee that was contested by the Applicant was set up as an *ad hoc* committee to address a crisis, which eventuality is not prohibited by any law. He similarly maintained that there was no law that barred Members of the Assembly from holding informal meetings such as the one that was held on 26<sup>th</sup> November 2014.
38. With regard to Issue No. 2, in a nutshell it was the Respondent's contention that interpreting Clause (1) of Annex 3 in such a manner as to suggest that the Speaker should be present when the House elected another Member to preside over the House in his/ her absence would be absurd. He invited this Court to consider the provision for the Speaker's presence therein as a typographical error. In the same vein, he urged the Court to interpret that clause in accordance with Article 31(1) of the Vienna Convention on the Law of Treaties, which advocates for the interpretation of Treaties 'in good faith in accordance with the ordinary meaning to be given to the terms thereof in their context and in light of its object and purpose.'
39. The Respondent cited a supposed 'precedent' that had been set by the Assembly in 2003, when a Member was elected to preside over the Assembly in the absence of the then Speaker, Rt. Hon. Kinana. He also suggested that a Speaker's procession in November 2014 would not have been feasible; contested the allegedly uncorroborated

evidence of PW2 (Hon. Mumbi Ngaru) that the election of the Temporary Speaker was done by 32 Members who locked themselves in the Assembly Chambers, and similarly contested the Applicant's allegedly contradictory evidence on her having been locked inside her office when the election took place. It was his submission that the election of Hon. Chris Opoka to preside over the Assembly when the Applicant was precluded by law from doing so was done in conformity with the Treaty and the House Rules of Procedure.

**Applicant's Submissions in Reply:**

40. In Reply, the Applicant essentially reiterated her earlier submissions on the framed issues but sought to respond to the so-called preliminary issues. On the question as to whether the Motion was properly tabled, the Applicant maintained her contention that it had not been moved in the House on 1<sup>st</sup> April 2014 owing to the interruption of its proposer (Hon. Mathuki) by Hon. Mbidde, standing on a point of procedure.

41. On the other hand, with regard to when the proceedings in the House would have commenced so as to invoke the provisions of Rule 9(6), it was argued that the term 'proceedings' in parliamentary parlance refers to the debate in respect of a Motion; only ensues after a Motion has been moved, seconded and tabled and, given that in this case debate could only ensue in the House during consideration of the Committee report, the proceedings could only be deemed to have commenced once the Motion had been forwarded to the Committee for investigation. It was opined that the Applicant could not have presided in her own cause because the Motion had not yet

become the property of the House. It was further argued that Rule 34(1) was inapplicable to the present case given that the Motion was not withdrawn but lapsed. In a nutshell, the Applicant reiterated her position that there was no live Motion before the supposedly illegal 'House' sitting of 26<sup>th</sup> November 2014.

**Court's Determination:**

42. The 2 issues under review presently literally question the Assembly's compliance with the legal regime applicable to the suspension of the Applicant from the Office of Speaker, as well as the election of a Temporary Speaker. This brings into purview the legal framework within which a Speaker of EALA may be properly removed from office.

43. Article 53(3) of the Treaty provides the legal basis for such course of action, as well as the grounds therefor. It reads:

*The Speaker of the Assembly may be removed from office by a resolution supported by not less than two thirds majority of the elected members for inability to perform the function of his or her office, whether arising from infirmity of mind or body or for misconduct.*

44. Rule 9 of the Assembly's Rules of Procedure, on the other hand, delineates the procedure to be followed in the removal of a Speaker. Whereas Rule 9(1) and (7) prescribe the legislative manner in which such removal may ensue, to wit, by a resolution passed by not less than two thirds majority of elected members of the Assembly; the actual process that underpins such a legislative decision is described

in Rule 9(2), (3) and (4). We reproduce them below for ease of reference.

Rule 9(2)

*A motion for a resolution to remove the Speaker from office shall be signed by at least four elected members from each Partner State and submitted to the Clerk.*

Rule 9(3)

*The Clerk shall within twenty-four hours of receipt of the list of names, forward the Notice to the House.*

Rule 9(4)

*The motion shall be tabled in the Assembly within seven days of its receipt by the Clerk and the House shall refer the motion to the Committee on Legal, Rules and Privileges to investigate and report its findings to the Assembly for debate.*

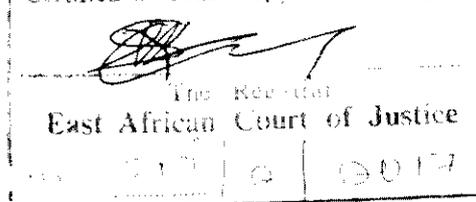
45. Rule 9(1) is couched in terms that would suggest that the 'motion' in reference therein should bear signatures of the Members of the House in support thereof. That motion is submitted to the Clerk. Rule 9(3) then postulates the action to be taken by the Clerk upon receipt of 'the list of names'. The Clerk would be required to forward that 'Notice' to the House within 24 hours. Consequently, our construction of Rule 9(2) and (3) is, first, that the 'motion for a resolution' referred to in sub-rule (2) is, in fact, synonymous with the 'Notice' highlighted in sub-rule (3). Secondly, that Motion/ Notice should depict names and signatures of at least 4 elected Members of

the House from each Partner State. It is that Motion/Notice that is then tabled in the Assembly within 7 days of its receipt by the Clerk and referred to the Committee on Legal, Rules and Privileges for investigation under sub-rule (4).

46. Accordingly, a literal interpretation of the 3 sub-rules would suggest that the process for the removal of a Speaker of EALA is initiated by a Motion/Notice signed by at least 4 elected Members from each Partner State. The said Motion/ Notice is submitted to the Clerk who, in turn, forwards it to the House within 24 hours of receiving it. Reference to 'the House' in this context refers to all members thereof, including those that may not have signed the Motion/ Notice. Thereafter, the Motion/ Notice should be formally tabled in the Assembly within 7 days from the date it was first received by the Clerk. Upon being tabled, it is immediately referred to the Committee on Legal, Rules and Privileges for investigation, the results of which would form the basis for debate and the ultimate legislative decision. That, in a nutshell, is our summation of the procedure governing the removal of the EALA Speaker so far as it relates to proceedings in the House. The question then would be whether that procedure was, in fact, adhered to by the Assembly.

47. As we commence our interrogation of that question we are mindful of the prohibition in Section 20(1) of the EALA (Powers & Privileges) Act with regard to Parties' reliance upon the proceedings of the house in evidence without special leave of the Assembly. It reads:

**Notwithstanding the provisions of any other law, no member or Officer of the Assembly and no person**



employed to take minutes or record evidence before the Assembly or any Committee shall, except as provided in this Act, give evidence elsewhere in respect of the contents of such minutes or evidence or of the contents of any documents laid before the Assembly or such Committee, as the case may be, or in respect of any proceedings or any examination held before the Assembly or such Committee, as the case may be, without the special leave of the Assembly first hand and obtained in writing.

48. It is a conceded fact in this Reference that a 'Notice of intention to move a motion' for the removal of the Applicant from office, signed by 32 Members of EALA, was submitted to the Clerk to the Assembly on 26<sup>th</sup> March 2014.<sup>2</sup> That document was adduced in evidence as Exhibit P.1A. Quite clearly there was some confusion as to the title of that document viz the specific provisions of the Assembly's Rules. Whereas Rule 9(2) makes reference to a 'motion for a resolution to remove the Speaker', the document to which signatures were appended in this case was titled differently, as has been illustrated hereinabove.

49. Nonetheless, in our judgment, such anomaly would neither discredit the import of the document nor negate its evidential value. It obviously sought to capture both the reference to a 'motion for a resolution of removal' in Rule 9(2), as well as the Notice under reference in Rule 9(3). We do find the content of that Notice to have

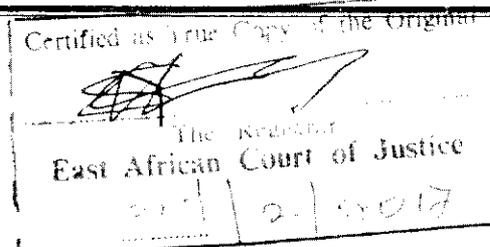
<sup>2</sup> See Clause 1.3.2 of the Joint Scheduling Conference Notes.



complied with both sub-rules in so far as it did depict the minimum number of signatures and names required. The Applicant did also confirm under cross examination that the Clerk duly forwarded the said Notice to the House on 27<sup>th</sup> March 2014 as specifically required under Rule 9(3). We are satisfied, therefore, that the Notice that was adduced in evidence as Exhibit P.1A did comply with Rule 9(2) and (3) of the Assembly's Rules of Procedure.

50. On the other hand, a Motion that outlined the grounds for the removal of the Speaker was adduced in evidence as Exhibit P.1B. The Applicant herein did testify that she was served with that document on 31<sup>st</sup> March 2014, it was well within her possession and would not be ousted by the provisions of Section 20 of the EALA (Powers and Privileges) Act. She did, in fact, respond to the grounds stipulated therein in her communication on the censure issue with the Heads of State of the Partner States. Her letter to their Excellencies, the Presidents, as well as her response to the grounds of removal that was attached to the said letter were adduced in evidence as Exhibits P.21 and P.23.

51. Therefore, in the instant case, 2 separate documents were relied upon to kickstart the removal proceedings: the Notice bearing the list of Members in support of the Speaker's removal and a Motion that detailed the grounds for the said removal. As we have found earlier herein, the Notice was duly forwarded to the House. We find no evidence, however, that the Motion bearing the grounds of removal and delineated in Exhibit. P.1B was forwarded to the House too.



52. Nonetheless, it is not in dispute that the motion for the removal of the Speaker was placed on the Order Paper on 31<sup>st</sup> March 2014 as an item for consideration by the House on 1<sup>st</sup> April 2014, and was indeed duly considered on that date. This was the Applicant's uncontroverted oral evidence.<sup>3</sup> She did also testify that on 1<sup>st</sup> April 2014, Hon. Mathuki sought to move that Motion in the House but was interrupted on a point of procedure by Hon. Mbidde. We were unable to verify this aspect of her evidence with the Hansard's recount of the day's proceedings given that neither Party herein was granted leave by the Assembly to rely upon its proceedings in evidence. The question then is can it be said that it has been established before this Court that at this stage of the process the Motion had been duly tabled in the Assembly as required by Rule 9(4) of the Assembly's Rules?

53. First and foremost, the wording in Rule 9(3) clearly states that the Notice that is submitted to the Clerk would be '*forwarded*' to the House. On the other hand, Rule 9(4) provides for the '*tabling*' of the said Motion in the Assembly. The ordinary meaning of each of those terms in their verbal (as opposed to noun) sense is sufficient to deduce the context within which they are used in the Rules. Whereas 'forward' simply means to send, pass on or relay information; 'table' means to present a subject formally for discussion.<sup>4</sup> Therefore, quite clearly, forwarding the Notice to the House, as was done in this case, cannot by any means be

<sup>3</sup> Applicant's evidence in chief, p. 67

<sup>4</sup> Oxford Advanced Learners Dictionary, Oxford University Press, 7<sup>th</sup> Edition.



2014/01/0017

synonymous with tabling the Motion in the Assembly as required by Rule 9(4).

54. We find appropriate indication of what is envisaged in the practice of legislative 'tabling' from the following definition of the term in a glossary of parliamentary terms on the UK (United Kingdom) Parliament website:

"Tabling is the act of formally putting forward a question, a motion or an amendment in the Commons or the Lords. Members of either House do this by submitting it to the procedural clerks by hand, by post or, in some circumstances, digitally. The item will then appear in the next day's business papers ..."  
*(Our emphasis)*

55. The foregoing definition postulates that tabling entails the presentation of a Motion to a Clerk by a Member of the House, and the placement of that Motion on the Order Paper in the requisite parliamentary format. Such presentation does not necessarily take place in the House but may be done physically, by post or digitally. The process culminates into the inclusion of the Motion on the Order Paper for consideration by the House. Indeed, whereas the term 'table' is literally albeit unhelpfully defined in the Assembly's Rules to mean 'the Clerk's table', it is reasonable to deduce from the UK's more elaborate definition that the submission of a Motion to the Clerk is what would correspond to placement on 'the Clerk's table', but the parliamentary act of tabling would only be complete

upon having the said Motion formally placed on the House Order Paper.

56. During re-examination, the Applicant sought to explain the process of tabling and moving a motion within EALA practice. In a nutshell, she testified that once a Motion had been moved and seconded, it was then laid on the Clerk's table as the act of tabling. On that premise, it was her evidence that the Motion in issue presently was neither moved nor tabled. With respect, we are unable to agree with this position because it is not borne out by the Assembly's Rules of Procedure. Rule 32(1) is fairly instructive on the chronology of the tabling and moving of Motions in EALA. It reads:

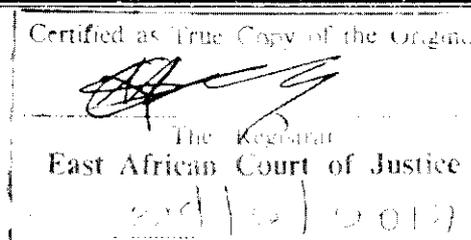
*When a motion has been moved and if necessary seconded, the Speaker shall propose the questions thereon in the same terms as the motion, and debate may then take place upon that question.*

57. Quite clearly, the moving and secondment of a motion is immediately followed by the proposal of the question by the Speaker and the commencement of debate thereon. There is no mention of the tabling of a motion *after* it has been moved and seconded, as was testified by the Applicant. On the contrary, the UK definition has the tabling of the motion being undertaken prior to the moving of the same. In the absence of a more elaborate exposition on tabling in the Assembly's procedural rules, we find no reason to disregard the definition thereof in the UK Parliamentary Glossary as stated above.

58. That, in fact, was what transpired in the present case. We find sufficient proof of this in the Applicant's oral evidence that the Motion was brought to her attention on 31<sup>st</sup> March 2014, was placed on the Order Paper and constituted the sole business of the Assembly on 1<sup>st</sup> April 2014. As we have held hereinabove, the terms Notice and Motion appear to have been used interchangeably in Rule 9(2), (3) and (4) but the Notice that was forwarded to the House by the Clerk clearly demarcated the motion in issue. It was this motion that was duly placed on the Order Paper and considered by the House on 1<sup>st</sup> April 2014. We are, therefore, satisfied that the Motion in the present case was duly tabled in the Assembly. We so hold.

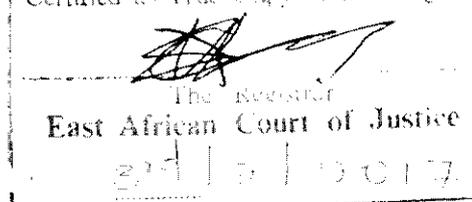
59. Be that as it may, the instructions under Rule 9(4) are two-fold: first, it prescribes the tabling of the Motion and, secondly, the referral of the tabled Motion to the Committee on Legal, Rules and Privileges. We have established that the Motion was duly tabled but cannot say the same of the legal obligation to refer the matter to the Committee.

60. It was the Applicant's uncontroverted evidence that, on 1<sup>st</sup> April 2014, she had ruled that the Motion for her removal could not be debated as the matter was *sub judice* owing to the pending determination of **Reference No. 3 of 2014** by this Court. She did also testify that between that date and 4<sup>th</sup> June 2014 when it arose in the Assembly again, 4 Members of the House had formally communicated the withdrawal of their signatures from the Motion. The withdrawal of those signatures is further established by Exhibits



P.25 and P.26, the latter being a written response from the Clerk to the Applicant, confirming the withdrawal of signatures by 3 Members from Tanzania and 1 Member from Kenya. It was also an agreed fact that on 4<sup>th</sup> June 2014, she made a ruling that the Motion had lapsed on account of lack of the requisite signatures. Rightly or wrongly, the Applicant's decision of 4<sup>th</sup> June 2014 was apparently the end of the matter at the time. Clearly, therefore, the Motion that was duly tabled in the House on 31<sup>st</sup> March 2014 and considered on 1<sup>st</sup> April and 4<sup>th</sup> June 2014 respectively was not, on either date, referred to the Committee on Legal, Rules and Privileges as required by Rule 9(4).

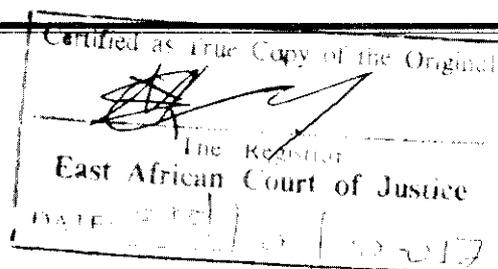
61. An attempt was subsequently made in November 2014 to re-initiate the removal proceedings, move the same Motion and forward it to the said Committee. It was in the course of the said re-initiated proceedings that the Applicant was suspended from the Office of Speaker and a Temporary Speaker was elected. The question is whether these actions were sufficiently clothed in legal propriety.
62. We have carefully considered the arguments of both Parties on this issue. Whereas, the Respondent sought to deny the incidence of the Applicant's suspension, we find the fact of the suspension to have been conclusively proved by Exhibit P.12 – a letter from the Clerk dated 26<sup>th</sup> November 2014, which *inter alia* conveyed the Applicant's suspension from the Office of Speaker until the Committee's investigations had been completed. The said letter was addressed to the Applicant and was within her possession well before it was included in the Committee's report as an annexure. We therefore



find no reason to stop the Applicant from relying on it in evidence, the provisions of section 20(1) of the EALA (Powers and Privileges) Act, notwithstanding.

63. We have also dutifully scanned the Treaty, the Assembly's Rules of Procedure and the Administration of EALA Act. We find no provision whatsoever for the suspension of a Speaker of the Assembly. In the result, in the absence of any legal provision that provides for the suspension of a Speaker of EALA by the Assembly, we find no legal basis or justification whatsoever for that course of action by the House. We would, therefore, answer Issue No. 1 in the negative.

64. In the same vein, we find no provision whatsoever in either the Treaty or the House Rules of Procedure for a Temporary Speaker or the election thereof, or indeed recourse to Annex 3 thereto by the House. Neither Article 53(3) of the Treaty nor Rule 9 of the Assembly's procedural rules, which provide the legal framework for the Speaker's removal, prescribe any recourse whatsoever to Annex 3. The prohibition in Rule 9(6) against a Speaker in respect of whom impeachment proceedings have commenced from presiding over the said proceedings does not necessarily translate into such Speaker being absent from the House during the said proceedings. S/he would only be prohibited from presiding over the House during the removal proceedings but might very well preside over other business of the House, as opined by learned Counsel for the Applicant.



65. On the other hand, Annex 3 derives its legal basis from Article 56(b) of the Treaty, which provides for the election of a Member to preside over a specific sitting of the House in the absence of the Speaker. It is not grounded in Article 53(3) that explicitly provides for the removal of a Speaker. Therefore the absence envisaged under the Annex cannot be presumed to have had anything to do with the Speaker's removal proceedings, as appears to have been the stance adopted by the Assembly. On the contrary, it seems to us that Annex 3 pertains to the election of a Member to preside over the House during the temporary 'absence' of the Speaker. Certainly a Speaker that recuses himself/ herself from presiding over proceedings for his/ her removal would not necessarily be absent from the House. Recusal and absence cannot be construed to mean one and the same thing.

66. It was testified by Hon. Mwinyi that the Applicant was deemed to be absent for purposes of the Motion for her removal hence the Members' recourse to that Annex. It was also submitted by learned Counsel for the Respondent that recourse was made to the election of a Temporary Speaker to preside over the impeachment process given the Applicant's own disregard for Rule 9(6); her decision to preside over the proceedings of 1<sup>st</sup> April and 4<sup>th</sup> June 2014 that legal provision notwithstanding, and her deliberate skewing of her Rulings on those dates to frustrate the progression of the Motion for her removal.

67. With utmost respect, we do not share learned Counsel's apparent deference to extra-legal means to resolve a legal or procedural

impasse. The proverbial 'end' cannot and should not justify the means in a civilised dispensation such as the EAC. We are unable to find any legal justification for recourse to a wrong procedure to rationalise an alleged procedural abuse by the Applicant. Quite clearly, the Members of the House that resorted to the course of action pursued on 26<sup>th</sup> November 2014 were alive to the procedural and practical hitches before them, but sought to address a supposed 'crisis'. In our considered view, the dictates of respect for the rule of law and due process would have required that the House accord due respect to the Office, if not the person, of the Speaker and explore available legal rules in pursuit of its desired result.

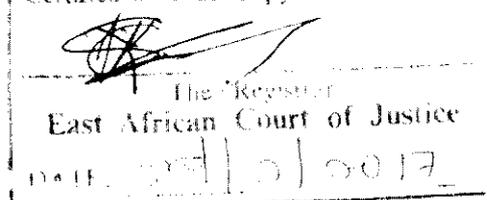
68. Article 48(1)(b)(iii) grants the Office of Counsel to the Community (CTC) ex-officio membership status in the EALA. On the other hand, Article 69(1) designates the same office as the principal legal adviser to the East African Community. The Assembly is a recognised organ of the Community under Article 9(1)(f). Consequently, faced with the procedural hitches it purported to have identified, the House was at liberty to consult the said office for legal advice on how to navigate the uncharitable procedural waters it so apparently found itself in.

69. We have seen reference to numerous incidences of guidance from the CTC in the list of annexures appended to the Committee's report of December 2014. We are, however, mindful of the Assembly's refusal to grant the Applicant leave to use its records and proceedings when she sought such leave in accordance with Section 20(1) of the EALA (Powers and Privileges) Act. Indeed, learned Counsel for the

Respondent fastidiously objected to any recourse whatsoever to such records and proceedings throughout the trial. We are not aware that the Respondent was granted leave to refer to parliamentary proceedings either. Obviously, in the absence of such leave from the House, its records and proceedings remain within the realm of privileged material under the said Act, and this Court is not at liberty to rely on the said material in the determination of this case. Consequently, the nature, scope and content of guidance advanced by the office of the CTC remain unproven.

70. In the event, the preferred course of action adopted by the House bespoke an incredible ambivalence to this Court's observation in Mbidde Foundation Ltd & Another vs. EAC Secretary General & Another EACJ Consolidated Application No. 5 & 10 of 2014, that 'the Office of the Speaker is vital to the operations of EALA and the removal of the holder thereof should never be approached casually or flippantly.' In the result, we find Annex 3 inapplicable to the process for the removal of a Speaker of EALA and the Assembly's recourse thereto was misconceived. Consequently, we are satisfied that the election of a Temporary Speaker contravened Article 56 of the Treaty and was devoid of legal basis. We would, therefore, answer Issue No. 2 in the negative.

71. Having so held, we nonetheless wish to address a matter inherent in the foregoing issues that, interestingly, was not framed as an issue for determination but was canvassed quite extensively by both Parties: the question of the Applicant's own non-compliance with Rule 9(6) of the Assembly's Rules of Procedure. The Applicant contended that



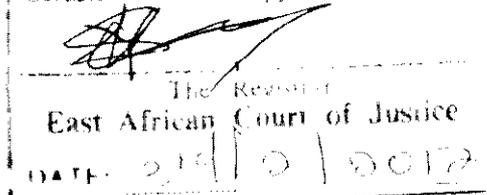
there was no legal basis for her suspension given that Rule 9(6) only bars an impugned Speaker from presiding over his or her own impeachment proceedings, but in this case the impeachment proceedings had not yet commenced. On the other hand, it was the Respondent's contention that it was the Applicant's non-compliance with Rule 9(6) that orchestrated recourse by the Assembly to the procedural actions in review presently.

72. Rule 9(6) is reproduced below for ease of reference.

**“The Speaker in respect of whom proceedings for removal have commenced shall not preside over the proceedings.”**

73. As quite rightly argued by both Parties, compliance with Rule 9(6) is indeed tied to the question as to when the removal proceedings commenced. We find difficulty with learned Respondent Counsel's apparent reliance on section 16(2)(b) of the Australian Parliamentary Privileges Act to argue that the proceedings commenced on 27<sup>th</sup> March 2014 when the Motion was submitted to the Clerk. The submission of a document to the Clerk of an Assembly cannot, in our view, be equated to its submission to the Assembly or a Committee thereof. Such presentation to the House or a Committee can only be achieved by the formal tabling of the document.

74. However, we find no reason to disregard the provisions of Section 16(2)(c) of the same Act, which tie the meaning of parliamentary proceedings to the definition of a House's business. In that legal provision, the business of a House is defined to include 'the

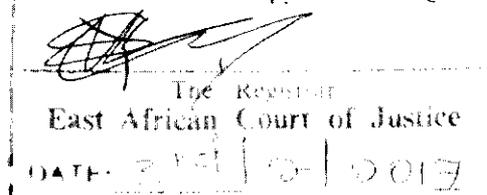


preparation of a document for purposes of or incidental to the transacting of any such business.' Thus, in our view, parliamentary proceedings would include the formulation of a Motion for the removal of a Speaker. We do not consider the term 'preparation' in its procedural sense to include preparatory activities preceding a document, but rather would interpret it to mean a completed, formulated or prepared document. Accordingly, we cannot fault the view that was advanced by Hon. Pareno that the commencement of such proceedings would ensue once the Motion was formulated and duly tabled in the Assembly, ready to be moved. It begets logic that at that point the presiding Speaker would have been sufficiently placed on notice that a Motion for impeachment has commenced.

75. We do not accept the preposition advanced by learned Counsel for the Applicant that parliamentary proceedings entail the debate in respect of a Motion, only commencing once a Motion has been moved, seconded and tabled. As we did illustrate earlier in this judgment, Motions in the Assembly are not considered in the manner described above.

76. In any event, Rule 9(6) necessitates a purposive interpretation to deduce the mischief it was intended to avert and avoid absurdity. Learned Counsel for the Applicant did refer us to a succinct summation of the rules of natural justice as aptly elucidated in Halsbury's Laws of England, Vol. 1(1), p. 218, para. 95. It reads:

Natural justice comprises two basic rules; first, that no man is to be a judge in his own cause (*nemo iudex in causa sua*),

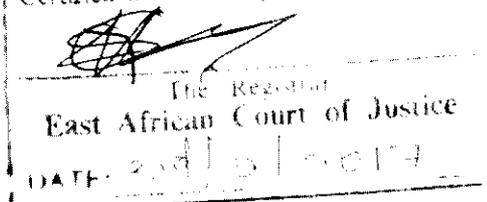


and second, that no man is to be condemned unheard (*audi alteram partem*). (Our emphasis)

77. We agree entirely with the principle stated therein. In the instant case, it would appear that on 1<sup>st</sup> April 2014 the Applicant presided over a House the sole business of which was her removal from office. It bespoke an obvious conflict of interest and clearly offended the rules of natural justice for the Applicant to have presided over and made decisions in her own cause. In our considered view, it was precisely such a mischief that Rule 9(6) sought to avert. We do, therefore, find that there was a breach of Rule 9(6) of the Assembly's Rules of Procedure by the Applicant.

**ISSUE No. 3:** *Whether the actions, proceedings and findings of the Committee on Legal, Rules and Privileges, and the eventual removal of the Applicant as Speaker by the Assembly were in conformity with the provision of Articles 53 & 56 of the Treaty, and Rule 9 & Annex 3 of the Assembly's Rules of Procedure, as well as the rules of natural justice.*

78. We must from the onset reiterate our findings in Issue No. 2 above that the House wrongly reverted to Annex 3 yet the said Annex was intended to address a different scenario from that envisaged under Article 53(3) of the Treaty and Rule 9 of the Assembly's procedural rules. We therefore underscore our earlier finding that Annex 3 was inapplicable to the process for the removal of a Speaker as prescribed in Article 53(3) of the Treaty and Rule 9 of the House Rules.

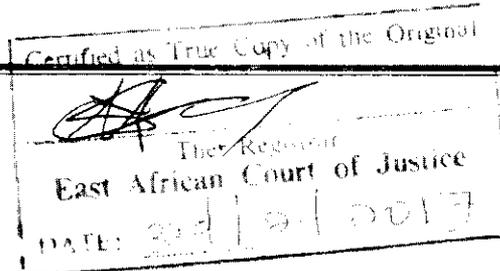


79. Furthermore, having held as we have under the same issue that the election of a Temporary Speaker was not anchored in any legal provision, could the same illegitimate Speaker have legally referred the Motion to the Committee on Legal, Rules and Privileges for investigation? We think not. We are fortified in this position by the principle advanced in the case of Benjamin Leonard MacFoy vs. United Africa Company Ltd (1962) AC 152 that actions premised on a nullity are similarly incurably bad. In that case it was held (per Lord Denning):

If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without much ado, though it is sometimes convenient to have the court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad.  
(Our emphasis)

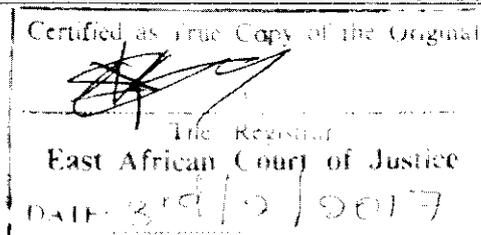
80. In the instant case, the attempt by the Temporary Speaker to preside over the House and refer the Motion to the Committee on Legal, Rules and Privileges contravened Article 56 of the Treaty; was therefore null and void, and any actions that would have cascaded from the said nullity were similarly a nullity. That would have disposed of the present issue but, this being a court of first instance, we shall pronounce ourselves briefly on the issue as framed.

81. Both Parties opted to restrict their arguments with regard to Issue No. 3 to the question of natural justice, making no reference whatsoever to the compliance of the Committee with either Article 53



of the Treaty or Rule 9 of the Assembly's Rules of Procedure. In a nutshell, it was the Applicant's contention that she did not receive justice from the Committee because its Chairperson was the architect of the impeachment motion against her, 12 out of the 15-member committee had endorsed the said Motion and therefore the Committee was demonstrably biased against her. To this end, Counsel for the Applicant cited the case of R. vs. London Rent Assessment Panel Committee, Ex. P. Metropolitan Properties Co. (FDC) Ltd (1969) 1 QB 577, where Lord Denning reduced the test of bias to whether right-minded persons would, with regard to the circumstances of a matter, perceive that there was a real likelihood of bias.

82. Conversely, the Respondent contested the allegation of bias, maintaining that the Committee proceedings were conducted in accordance with the Treaty, House Rules and rules of natural justice within the circumstances of the case. The circumstances in reference, in that regard, was the practical difficulty of re-constituting the Committee's membership for purposes of the said Motion given that all the EALA Members from Burundi and Rwanda had endorsed the Motion, yet an established practice of the House was that each House Committee would be comprised of at least 3 Members from each Partner State. Learned Counsel sought to rely on the following definition of rules of natural justice in The Concise Law Dictionary, 5<sup>th</sup> Edition, p. 217 to rebut the allegation of bias raised by the Applicant.



“The chief rules are to act fairly, in good faith, without bias, and in judicial temper; to give each party the opportunity of adequately stating his case, and correcting or contradicting any relevant statement prejudicial to his case, and not to hear one side behind the back of the other.”

83. In our judgment, the circumstances surrounding the composition of the House Committees do not necessarily negate the allegations of bias or lack of natural justice raised by the Applicant. A committee that had 12 out of its 15 members in support of the Motion cannot by any shade of persuasion be deemed to have been devoid of bias. For the same promoters of the Motion to conduct an investigation against the Applicant was indeed a mockery of the tenet of a fair and impartial hearing inherent in the principle of natural justice. To compound matters, even when asked to recuse themselves, all 12 members declined to do so.

84. Obviously a ‘hearing’ before a partial and demonstrably biased Committee cannot have been tantamount to being heard at all within the parameters of natural justice set forth in Halsbury’s Laws of England (supra) that ‘no man is to be condemned unheard’. Neither is it conceivable that a committee that was constituted in the manner the Committee on Legal, Rules and Privileges was could be perceived by any right-thinking persons to have acted fairly and in good faith. It was incumbent upon the House, having decided to remove the Applicant from office, to ensure that the process of removal was conducted as by law provided and within the tenets of rule of law as

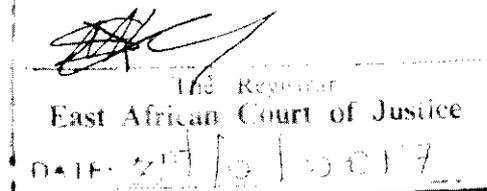
  
The Registrar  
East African Court of Justice  
DATE: 20/10/2014

underscored by the rules of natural justice. We take the view that an investigation that was reasonably fair and just was neither a far-fetched nor unachievable feat within the prevailing legal regime.

85. To begin with, we must respectfully dispel the notion that the House's hands were tied with regard to the membership of the Committee owing to the parliamentary culture of peer regulation of legislators' conduct allegedly implicit in Article 53(3) of the Treaty. We have carefully perused the Treaty, the Assembly's Rules of Procedure, as well as the Administration of EALA Act, 2011 and find nothing therein that prescribes that practice. That was simply an adopted albeit commendable practice that does not, nonetheless, appear to have been grounded in any express legal provision.

86. On the other hand, at the onset of the investigations in issue presently, the Committee was faced with an absence of procedural rules to regulate either its general mandate or specifically govern its investigative proceedings. Further, despite assertions to the contrary, we find that only 28 out of the 45-strong membership of the House had endorsed the impugned Motion at the Committee stage of the proceedings, 4 Members having since withdrawn their endorsement thereof.

87. Articles 49(2)(g) and 60 of the Treaty do mandate the House to promulgate, amend and add to procedural rules governing the House and its Committees. Indeed, it was the uncontroverted evidence of both the Applicant and Hon. Ngaru that the House subsequently enacted Rules of Procedure for the Committees on 12<sup>th</sup> January 2015, well after the event. Hon. Pareno did allude to this too in her

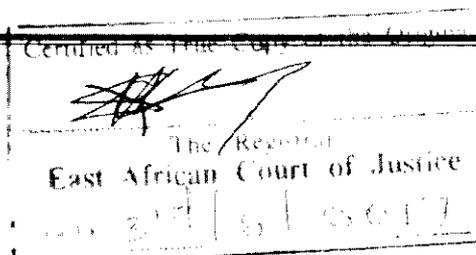


evidence. From our view point it is apparent that the House had every reason and opportunity at the time it considered the Applicant's removal to formulate rules that would guide an impartial investigative process able to stand the test of a fair hearing and due process. Certainly, given the number of Members available to either side of the divide, it did have the option of formulating such rules for the investigative process as would have enabled a balanced representation of Members for and against the Motion on the Committee. The Members of such a Committee would then have elected the Committee Chairperson.

88. As it is, the circumstances of this case are that the House fell short on its honourable duty in this regard. In the result, we find that even if the Temporary Speaker that forwarded the Motion to the Committee had been validly elected, the Committee proceedings themselves were laced with demonstrable bias and disregard for the rules of natural justice. We would therefore answer Issue No. 3 in the negative.

**ISSUE No. 4:** *Whether the grounds for removal of the Speaker presented to and investigated by the Committee on Legal, Rules and Privileges were the grounds envisaged under Article 53 of the Treaty*

89. Having carefully considered the submissions of both Parties, we deem it necessary to delineate the scope of the Court's interrogation of this issue. The jurisdiction of this Court is restricted to the express provisions of Articles 23(1) and 27(1) of the Treaty. They read:



Article 23(1)

*The Court shall be a judicial body which shall ensure the adherence to law in the interpretation and application of and compliance with this Treaty.*

Article 27(1)

*The Court shall initially have jurisdiction over the interpretation and application of the Treaty.*

90. The sum effect of the foregoing Treaty provisions is to give the Court the jurisdiction to interrogate Parties' adherence to the law in execution of their mandate in so far as it pertains to the interpretation, application of and compliance with the Treaty.
91. In the present case, what is under review is the procedure adopted by the Assembly in the enforcement or application of its prerogative to remove the Speaker of the House. Therefore, the Court would be required to interrogate whether or not the course of action adopted by the House in that regard did, in fact, adhere to the law applicable thereto or was legally tenable. This was the gist of this Court's interrogation of the preceding issues.
92. With specific regard to the present issue, this Court's mandate is restricted to a determination as to whether or not the grounds that formed the basis of the Speaker's removal were, in fact, such grounds as are envisaged in Article 53(3) of the Treaty. We do not think the judicial duty described above would extend to a detailed review of the Committee's deliberations or the process that informed its report. That, in our view, would be to stray within the ambit of judicial

review as it is known at Common Law, a domain that we are not at liberty to explore. It is therefore on that basis that we consider the present issue.

93. The evidence in this case is that the grounds that were investigated by the Committee were outlined in the Motion for her removal that was adduced in evidence as Exhibit P.1B. They include:

**1. Poor governance and leadership skills**

1.1 *Unilateral decision-making and abuse of the consensus principle required in decision making of the Commission; for example mishandling of the Assembly's established policy and practice of rotational sittings in Partner States whereby the Speaker's decision was so unpopular to the extent that it paralysed the work of the Assembly; the decision to stop the rotational sittings was announced in Kigali prior to any consultation.*

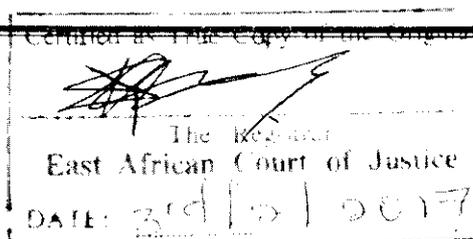
1.2 *Poor time management and laissez-faire attitude to Assembly responsibilities; this causes delays and postponement of meetings – for example, the Kigali Meeting on the Strategic Plan and the meeting for the Commission and the Committee Chairs that preceded the Capacity Building Workshop which was held in Mombasa in 2013. On these 2 occasions, the Speaker went to a different mission without notifying the Members. As a result, Members spent a whole day at the*

venue. No Member was tasked to deputise and this led to loss of resources.

- 1.3 Whereas the Speaker is paid a Housing Allowance that enables her to reside in Arusha in order to supervise the work of the Assembly, the Speaker hardly stays in Arusha.

## 2. Abuse of Office

- 2.1 Unilaterally involving family members in the services of the Assembly such as irregular hiring of staff without consulting the Commission and bringing family members to play in the Inter-parliamentary EAC netball games, where these family members were favoured by the Speaker above the EALA Members (and) staff.
- 2.2 Family interventions in the affairs of the Assembly – in particular the Speaker's husband, whose interventions were disruptive, disrespectful and posed veiled threats to Members.
- 2.3 Misallocation of resources earmarked for Assembly Plenary to other matters where she has a personal interest, for example the hosting of the meeting for Global Parliamentarians for Habitat (GPH), where she is an African Chapter Chairperson, which utilised days programmed for Assembly activities.



2.4 Attendance of most meetings that the Assembly is invited to even if it requires changing the approved EALA calendar of activities, for example, she changed the EALA calendar of activities for 2013/14 in order to accommodate her attendance of the IPU where EALA is just an observer. In such an instance, attendance of the IPU could have been delegated to any other Member.

2.5 Practicing Nepotism where the Speaker consistently favours some Members of the Assembly in, for example, the allocation of foreign missions. Haphazardly nominating Members to represent the Assembly in different for a without laid down criteria which loophole allows her to favour some Members over others.

### **3. Disrespect and intimidation of Members and Staff**

3.1 Using the media to character assassinate the Members.

3.2 Being disrespectful to Members.

3.3 Holding acrimonious staff meetings where abusive language, accusations, threats and intimidation were issued to staff.

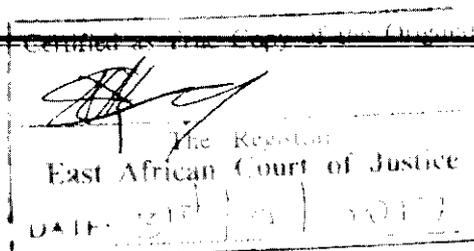
3.4 Refusal to take advice.

3.5 Dishonesty, slander and intrigue.

### **4. Loss of confidence and trust by Members**

4.1 Walk-out of Members on 2 occasions

4.2 Number of signatures appended to the Motion.



94. The question would be whether they do entail the grounds envisaged under the Treaty. Article 53(3) permits the removal of the Speaker of the House for either infirmity of mind or body, or misconduct. Neither the Treaty nor the Rules define the sort of misconduct that would kick start removal proceedings. Be that as it may, the term 'misconduct' is defined in Black's Law Dictionary, 8<sup>th</sup> Edition, p. 1019 as 'a dereliction of duty; unlawful or improper behaviour.' In the same dictionary<sup>5</sup>, misconduct in office or official misconduct is specifically defined as 'a public officer's corrupt violation of assigned duties by malfeasance, misfeasance or nonfeasance.'

95. In the case of Daugherty vs. Ellis 142W. Va 340, 357-358, the Supreme Court of West Virginia defined 'malfeasance' as follows

**Malfeasance is the doing of an act which an officer had no legal right to do at all and that when an officer, through ignorance, inattention, or malice, does that which they have no legal right to do at all, or acts without any authority whatsoever, or exceeds, ignores, or abuses their powers, they are guilty of malfeasance.**

96. Thus malfeasance in office or official misconduct would entail an act or omission done by a public official in an official capacity, which amounts to a dereliction of duty as a result of failure to perform their official obligations.

97. We do not find grounds 1.3, 2.4, 3.1, 3.2, 3.3 and 4 to constitute such misconduct by the Applicant. A Speaker's residential arrangements or

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<sup>5</sup> Ibid

his/ her non-delegation management style cannot *per se* be equated to dereliction of duty, unless they can be proven to directly impinge on the performance of his/ her official duties. Similarly, whereas we do acknowledge that the conduct described in ground 3 would amount to conduct that is unbecoming of a senior public official such as a Speaker of EALA, we do not find such unprofessional conduct to necessarily translate directly into non-performance of official obligations. In the same vein, we find that the conduct described in ground 4 cannot be attributed to the Applicant but the Members. If it was a result of the Applicant's alleged misconduct, this would amount to an effect thereof not a dereliction of duty *per se* on her part.

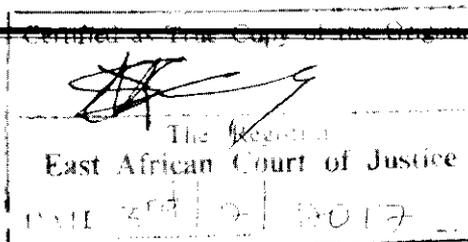
98. However, we cannot say the same of the residual grounds of the Motion. The Speaker's functions are outlined in Article 48(2) and 56(1) of the Treaty to essentially entail presiding over the Assembly. As such, s/he would be required to provide technical and administrative leadership to the House, failure of which s/he would be deemed to have fallen short on his/ her official obligations. It seems to us that the residual grounds of the Motion go to the heart of those functions. Unilateral decision-making, poor time management, misallocation of Assembly resources, dishonesty and intrigue as embodied in grounds 1.1, 1.2, 2.3, 3.4 and 3.5 (if true) do pose poignant questions on the effective administration of the House. Similarly, family engagement and nepotism as stipulated in grounds 2.1, 2.2 and 2.5 (if proven) would negate the impartiality, objectivity and prudence of the head of a vital organ of the Community.

99. In the result, we are satisfied that grounds 1.1, 1.2, 2.1, 2.2, 2.3, 2.5, 3.4 and 3.5 do correspond to the grounds of misconduct envisaged under Article 53(3) of the Treaty. Issue No. 4 does therefore succeed in part and fail in part.

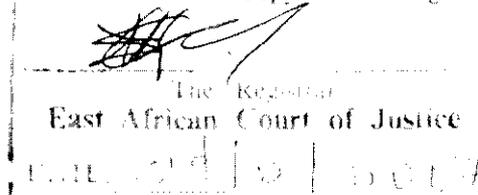
**ISSUE NO. 5:** *Whether the Applicant is entitled to the remedies sought.*

105. Having held as above, what are the remedies available to the Applicant? We note that in the Amended Reference she specifically prayed for the following declarations and orders:

- a. *A declaration that the purported sitting of the Assembly on 26<sup>th</sup> November 2014 without the elected Speaker of the Assembly violated Articles 53 and 56 of the Treaty for the Establishment of the East African Community and the Rules of Procedure of the Assembly.*
- b. *A declaration that the said sitting and any subsequent sittings not presided over by the elected Speaker and actions of some members of EALA are ultra vires, illegal, unlawful, procedurally wrong, null and void and of no legal consequence.*
- c. *A declaration that the Committee on Legal, Rules and Privileges was improperly constituted for the purpose of this particular matter as majority of its members were also accusers/petitioners/complainants and witnesses against the Applicant in this case and thus their participation in Committee constituted a breach of the rules of natural justice, specifically the rule against bias.*



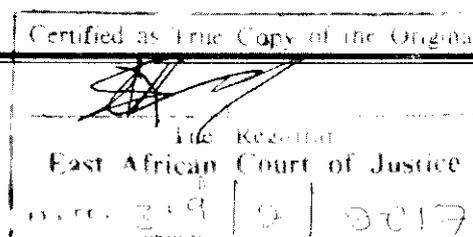
- d. A declaration that the proceedings of the Committee violated the rules of natural justice and its report is null and void.
- e. A declaration that the alleged grounds of misconduct listed in the Motion were manifestly frivolous and constitute a violation of Articles 53(3) of the Treaty.
- f. A declaration that the ruling of the Speaker of 4<sup>th</sup> June 2014 and the ruling of the Court of 15<sup>th</sup> August 2014 disposed off the impeachment motion and whoever is aggrieved should appeal to Court. An order quashing the actions of the East African Legislative Assembly in removing the Applicant from the office of the Speaker.
- g. A declaration that the removal of the Applicant from office was ultra vires the Treaty, Rules of Procedures of the Assembly and Rules of Natural Justice.
- h. An award of General Damages for the embarrassment, inconvenience, pain, mental anguish and her reputational damage.
- i. An award of aggravated and/or exemplary and punitive damages for the wanton conduct of the Members of the East African Legislative Assembly.
- j. An award of special damages in form of loss of earnings of a salary of USD 6,700 per month and Housing Allowances of USD 3,000 per month, plus other allowances and financial benefits.



- k. Interests on the sums awarded above from the date of the removal of the Applicant from the office of the Speaker until payment in full.*
- l. An Order of reinstatement of the Applicant, Rt. Hon. Margaret Nantongo Zziwa to the office of the Speaker of the East African Legislative Assembly.*
- m. A permanent injunction restraining and prohibiting the Respondent and directing the East African Legislative Assembly to refrain from considering a non-existing impeachment Motion.*
- n. Any other reliefs and/or remedies that this Honourable Court deems fit.*
- o. An Order that the Respondent shall pay all the costs of this Reference.*

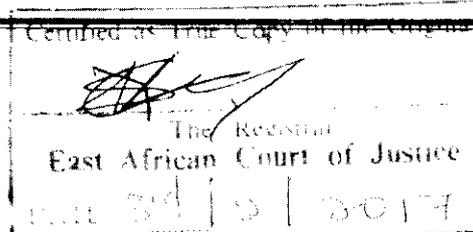
106. Regarding Prayers (a), (b), (c) and (h), we have held that the Assembly of 26<sup>th</sup> November 2014 was presided over by a Temporary Speaker, an entity and office unknown to the Treaty and the Rules of Procedure of the Assembly. The import of such an action is that the sitting was unlawful and we so declare. However, such an action was also unlawful to the extent only that Article 56 of the Treaty and the Rules were violated. We do not see any violation of Article 53 in that context and we so find.

107. Further to the above, we have also found that the Committee on Legal, Rules and Privileges, in allowing Members of the Assembly who initiated the Motion for removal of the Applicant to sit and determine whether she should in fact be removed, violated the basic rules of natural justice that an accuser cannot also be the judge in



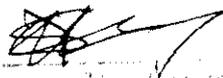
proceedings against the accused. We need not reiterate the fact that any real or perceived bias on the part of the Committee invalidated its proceedings.

108. On Prayer (d), having made a finding regarding the composition of the Committee and its proceedings, it follows that its Report, whatever the merit thereof, was rendered invalid and we so find.
109. Prayers (f) and (m) are in our considered view superfluous and have in any event been overtaken by events. They are consequently disallowed.
110. Prayers (g) and (l) seek orders quashing the actions of EALA and reinstating the Applicant to the position of Speaker. We have reflected on the import of granting such an order viz a viz the mandate of this Court under Articles 23 and 27 of the Treaty. It is the Court's mandate thereunder to interpret and apply the Treaty within the principles set out in Articles 6, 7 and 8 thereof. One of the principles in Article 6(d) is that of democracy and the rule of law, which necessarily include the principle of separation of powers. This Court should not, in the event, be seen to be directing EALA on how it should conduct its business. It may declare EALA's actions to be in violation of the Treaty upon which EALA can, within its own mandate, proceed to ensure compliance with such a decision. In the circumstances, we are unable to grant the said prayers.
111. In Prayers (i), (j), (k) and (l), special and general damages, as well as interest thereon are sought. In support thereof, the Applicant has relied on the following decisions:

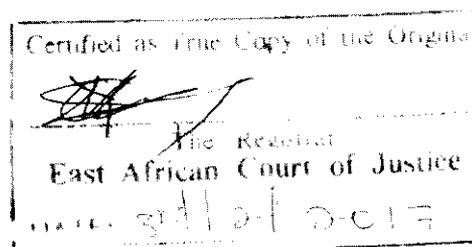


- i. Omunyokoi Akol Johnson & Anor V. Attorney General of Uganda, C.A. No. 6 of 2012;
- ii. Iyamulemye David v Attorney General of Uganda, C.A. No. 104 of 2010.

112. Both decisions related to dismissal of an employee from service and damages were awarded by the Ugandan Courts to the employees for unlawful dismissal. The said decisions are, with respect, irrelevant to the issue before us because the Applicant is and was not an employee of EALA. She was elected by peers who also have the mandate under Article 53 of the Treaty to remove her.
113. Further, it is our understanding that general damages are awarded to a party as a matter of discretion and taking into account the circumstances of each case. In the present Reference, we have found the Applicant to have contravened Rule 9(6) of the Assembly's Rules of Procedure, which action might have triggered other actions, some patently unlawful. She cannot, then, be seen to benefit from her role in the procedural impasse that dogged the Assembly.
114. Even more fundamentally, given the interpretative jurisdiction of the Court as depicted in Articles 23 and 27 of the Treaty, the issuance of declarations on Treaty compliance or the lack thereof has been deemed to be sufficient remedy to parties. Further, we find no legal provision in this Court's Rules of Procedure for the award of damages as a remedy. See James Alfred Koroso Vs. The Attorney General of the Republic of Kenya & Another EACJ Reference No. 12 of 2015.

  
The Registrar  
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2017

115. We now turn to the issue of costs. This Court is guided by the express provisions of Rule 11 of its Rules of Procedure. It reads:  
Costs in any proceedings shall follow the event unless the Court shall for good reasons otherwise order.
116. In the case of Venant Masenge vs. Attorney General of Burundi FACJ Ref. No. 9 of 2012, where the applicant therein won only one (1) of the four (4) issues framed, this Court did award 1/2 costs. The Applicant in this matter was successful in three (3) of the five (5) issues as framed. She did also partially succeed on Issues 4 and 5 hereof. On the basis of the same precedent, the Applicant herein would be entitled to 3/5 costs hereof. On the other hand, the circumstances of that case are that the applicant therein did not share the blame of the matters that were in issue in that case, the respondent having been solely responsible therefore.
117. In the instant case, as we have stated earlier herein, although not specifically framed as an issue for determination, the Applicant herein did also flout Rule 9(6) of the Assembly's Rules of Procedure by presiding over a matter in her own cause. Quite possibly this conduct on her part, as the steward of the Assembly, could have triggered the unfortunate series of events that have been the subject of this Reference. We do find that to constitute sufficient, judicious reason for this Court to depart from the principle advanced in Rule 11 that costs follow the event. We do therefore decline to grant an award of costs in this matter.



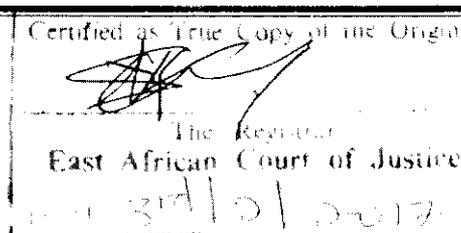
## G. CONCLUSION

118. As we take leave of this Amended Reference, we are constrained to observe that it did illuminate the vitality of respect for and submission to the rule of law in the conduct of public affairs. To that end, we deem it our duty to and do hereby propose that it is a basic expectation that all holders of public office would discharge their duties with respectful regard for designated processes; demonstrable deference to legal propriety and due diligence, and a reasonable disclaim for impunity, partiality and bad faith. The trampling roughshod over designated legal processes and basic principles of natural justice would certainly not, in our most considered view, engender an environment conducive to harmonised regional integration in the EAC.

119. The Reference has also brought to the fore the need for EALA to relook at its House and Committee procedural rules, and address lacunas that could cause confusion in its legislative function.

120. In the final result, we do allow the Amended Reference in part with the following Orders:

- a. A declaration doth issue that the purported sitting of the Assembly on 26<sup>th</sup> November 2014 without the elected Speaker of the Assembly violated Article 56 of the Treaty; was unlawful, procedurally wrong and of no legal consequence.
- b. A declaration doth issue that the Committee on Legal, Rules and Privileges was improperly constituted for purposes of the Speaker's removal and constituted a breach of the rules of

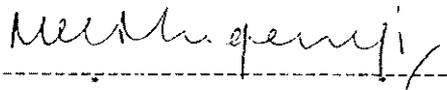


natural justice owing to demonstrable bias, and accordingly the report arising therefrom is null and void.

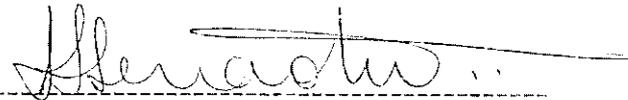
- c. A declaration doth issue that grounds 1.1, 1.2, 2.1, 2.1, 2.3, 2.5, 3.4 and 3.5 do correspond to grounds of misconduct under Article 53(3) of the Treaty.
- d. Each Party to bear shall bear its own costs.

121. It is so ordered.

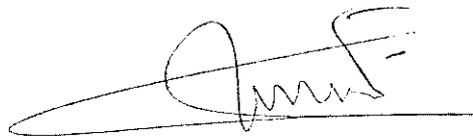
Dated, Signed and Delivered at Arusha this 3<sup>rd</sup> February 2014.



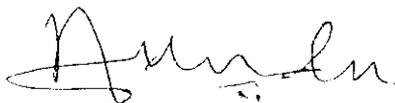
Hon. Lady Justice Monica K. Mugenyi  
PRINCIPAL JUDGE



Hon. Justice Isaac Lenaola  
DEPUTY PRINCIPAL JUDGE



Hon. Justice Faustin Ntezilyayo  
JUDGE



Hon. Justice Fakihi A. Jundu  
JUDGE



Hon. Justice Audace Ngiye  
JUDGE

