



EAST AFRICAN COMMUNITY

IN THE EAST AFRICAN LEGISLATIVE ASSEMBLY (EALA)

Official Report of the Proceedings of the East African Legislative Assembly

58TH SITTING - THIRD ASSEMBLY – SIXTH MEETING – SECOND SESSION

Thursday, 29 March 2014

The East African Legislative Assembly met at 2.30 p.m. in the Chamber of the East African Legislative Assembly, Arusha.

PRAYER

(The Speaker, (Dr) Margaret Nantongo Zziwa, in the Chair.)

The Assembly was called to order.

Mr Peter Mathuki (Kenya): Thank you very much. Let me start where we left when it was brought to our attention that the matter was before court. And of course the matter that was before court was dealing with a number of issues; one, to determine whether indeed we had Rules as a House, and, two, other issues that were before courts and the ruling came out this morning.

Therefore given the circumstances that we are in, and given, of course, the weight of the matter before this House, it becomes very important that now we proceed using the rules that we have, look at the rules all of them - You look at Rule 1 on the issue of the matter of great public importance and also evoking 18(2) that says, “*Any item of business standing on the Order Paper on any particular day, which has not been completed or reached on the interruption of the business under the relevant provisions of these rules shall be paced on the Order Paper for the next sitting in such an order.*”

So I think it is only fair, since we had agreed that we leave this matter to be determined by the courts and the court has come out clearly then we decide as a House on how we should proceed. My suggestion was that we receive proceedings of the motion on the removal of the Speaker. So

I think this is something that is of great importance, possibly so that we move to the next items of the business of the day.

I had written officially to the Office of the Clerk to that effect and to my surprise, in the Order Paper the matter does not seem to be coming in or put on the Order Paper as we had requested. So I feel and I am appealing to the House that indeed we dispose of that matter so that then we can proceed because we are psychologically putting so many citizens and East Africans in sort of psychological thing because we must set out and agree on the way you would want us to proceed as a House and I think this is important. This matter was before this House, Members had already started- It was agreed, we requested the court, the court has come out to tell us as a House that indeed it is our matter and we are the ones to determine the way we would want us to proceed.

In this particular case, I may seek then to seek interpretation if at all it is necessary although it is clear of the Counsel to the Community on how we should proceed on this. To me it is very important. I submit.

The Speaker: Thank you very much, hon. Mathuki. I can say that I would congratulate the House because the court has maintained that we have rules and I want to thank you because you are quoting the rules. I would say that yes, when we adjourned, this House had an item which was adjourned because there was an item in court in the Speaker's opinion that reference three and reference five were in court so that is how we adjourned.

This morning Rule 3 or reference 3 and another Reference 6 has been disposed of and they have said that on 20th we go back for Reference 5 and Reference 10. So I think we are now able to quote our rules and to proceed as we have been proceeding regularly using all the rules including 6, 9, 12- all other rules. So, I suggest that we proceed in that manner. Chair, Council – *(Interruption)* -

Mr Ogle: With a lot of respect, I am not sure whether you have accordingly responded to the submission of my honourable colleague, hon. Mathuki. The point is that before the adjournment of this House, there was an Order Paper, there was an order on the paper which order was for the removal of the Speaker. I think it is only fair that we resume that business. Much as I appreciate that you have the authority under Rule 16(1) to list the order on the paper, it is only fair that we go back to where we had stopped.

Madam Speaker, let me say with respect. You have a tremendous capacity unfortunately not in the positive side of things but your ability to flaunt all democratic and natural justice- there are rules here and you are the one who took this Assembly to court to contest that there were no Rules. Now that the court has given us the go-ahead and confirmed that we have rules, it is only fair that we be seen as a House to prove those procedures and that rule provides that we go where we had stopped the last time. Thank you.

The Speaker: Honourable Counsel to the Community, I want to say that when reference 3 was put in court, it was put in court by hon. Mbidde under Mbidde Foundation. The Rt. hon. Speaker, Margaret Zziwa filed case number 6 and my prayers are different from hon. Mbidde but the Counsel to the Community can let us know.

The Counsel to the Community (Mr Wilbert Kaahwa) (Ex-Officio): Madam Speaker, thank you very much for giving me this opportunity to explain a few things, I was yearning to have the opportunity so that I put things, which are in court in very clear perspective.

Madam Speaker, Mbidde Foundation Limited filed reference number 3 of 2014 against the Secretary General and the Attorney General of the Republic of Uganda. Subsequently, Rt. hon. Margaret Zziwa filed reference number 5 of 2014. The subject matter of the two references is on the motion for the removal of the Speaker from office pursuant to Article 53 of the Treaty.

Pending the conclusion of pleadings and the hearing of the two references, applicants, Mbidde Foundation Limited and Rt. hon. Margaret Zziwa filed interlocutory applications seeking to restrain this august House from proceeding with a motion for the removal of the Speaker pending the determination of the references.

There is a difference between the references, which are the main cause, and the interlocutory applications. The intention of the two applicants in the interlocutory applications was still proceeding. In other words to restrain the House from moving with a motion according to Rule 9 of the Rules of Procedure until the matter had been concluded.

These applications were heard on the 9th May 2014 and this morning, the court delivered a ruling on the two applications. The gist of the court's ruling is that the consolidated applications lacked merit as- (*Applause*) – I do not deserve the applause, I am just reporting what the court decided.

The Speaker: You can pass it on to the court.

Mr Kaahwa: The court ruled that the consolidated applications lacked merit as, (a) no prima facie case with a likelihood of success was established by the applicants to warrant the granting of temporary relief. The applicant's pleadings that this august House has no Rules of Procedure in place, that the Secretary General and the Attorney General did not seek an advisory opinion of the court on the motion and that once proceedings begin there is a likelihood of bias were in the view of the court, not proven by the applicants on whom the burden of proof squarely lay.

Secondly, the court found that the applications lacked merit on the basis that even if the proceedings were conducted in such a manner that Rt. hon. Dr Zziwa is removed from office and suffers damage, she can always be compensated by way of damages.

Thirdly, that taking into consideration all circumstances, the balance of convenience as far as the granting or not granting interim relief is concerned lay on the respondent's side. The court therefore dismissed the consolidated applications.

Madam Speaker, let me indicate that I have circulated copies of the ruling to all hon. Members of this House. I have also communicated formerly to the Secretary General, the Rt. hon. Speaker and the Clerk indicating the way forward. In short, the way forward I advised was that EALA proceeds with its business based on its Rules of procedure unrestrained including the handling of the motion for the removal of Rt. hon. Dr Zziwa from office. I put this formerly in writing.

Madam Speaker, at this point in time, and judging from the submissions and the address made by hon. Peter Mathuki and hon. Ambassador Ogle, the bone of contention is the Order Paper. Under

Rule 16 of the Rules of Procedure, it is the Speaker who determines the order of business of the House but the Members are indicating to you, Madam Speaker that there is pending business on which a cloud hang because of the action in court which has since been resolved and this business needs to be handled expeditiously in order to proceed.

Madam Speaker, there is no doubt that you determine the order of business of the House and you have determined the order of business for today under Rule 16 but in my humble opinion, following the advice I gave you and following the ruling of the court, you would have considered putting the motion on the Order Paper.

Madam Speaker, having said that much, I advise you now to make a ruling taking into account the ruling which you have got and the nature of the business and the importance of the pending proceedings. I thank you.

Mr Abubakar Zein Abubakar (Kenya): Madam Speaker, in the last one month, I had prayed that I will not be called to speak in this House and it seems that my prayers have not been answered so I am called to speak before this House.

I invoke Sir Thomas Hungerford under whom the speakership is named and who was enthroned in 1377. I also invoke Speaker Lenthall, who at the risk of losing his head in 1640, when King Charles the First forcefully made his way into the Chamber and demanded that five members of the House of Commons be handed to him so that he could go and prosecute them for the crime of treason. If you will allow me, Madam Speaker, to repeat the famous the famous words which have been repeated in other august Houses of Parliament to remind us of our solemn duty as Members of Parliament.

He gave the following reply. He said, "*May it please Your Majesty, I have neither ears to see nor tongue to speak in this place but as the House's plea to direct me, whose servant I am and I humbly beg Your Majesty's pardon that I cannot give any other answer that this is to what Your Majesty pleases to demand of me.*" Speaker Lenthall was referring to the solemn duty of a speaker to be the will or to reflect the will of the Assembly. *(Applause)*

I have listened keenly to hon. Kaahwa, and I have read the *Hansard* a number of times of what transpired here last in reference to that motion. We are in an impossible position and this impossible position is in total disregard of the Rules that this House has, of its own volition adopted for itself. In fact, I invoke Rule 44, which says that, "*A member who wishes to speak on any matter in which he or she has a personal interest shall first declare that interest.*"

Let me be the first one to say that I do not have a personal interest in this matter, but I was absolutely gutted to know that a member who has a personal interest on this matter stood up, made presentations, and on behalf of those presentations, the House broke *sine die*. *(Interjections)* I beg the protection of the Speaker. *(Interruption)*

The Speaker: Hon. Ogle, you were heard in silence, kindly hear hon. Zein.

Mr Zein: Thank you, Madam Speaker...and this rule was fraudulently, flagrantly, persistently, and continuously violated. The reason why we have this rule is so that we can know what interest a person brings to this House.

Madam Speaker, I do not envy you because you are now in the Chair and you have to look at Rule 44 carefully. I will call to you to honour this House and to honour the dignity of Parliaments before us, which have more than 100 years history, that you should not be made to make a judgement or make a decision that you yourself have a personal interest in. (*Applause*)

If this rule is fraudulently, contentiously, and persistently dragged through the mud and not respected by this House, this House will not have any leg to stand on; it will not have any framework of integrity to refer to.

Madam Speaker, lest that your attention is not drawn to - and I know that attention was not drawn to you- but in the parliamentary traditions of the Commonwealth, every speaker who has sat where there was even a whiff, let alone an allegation, that they had an interest in the outcome of a matter, they would normally recuse themselves for the transaction of that business so that their integrity is protected and the integrity of the House is protected and the integrity of Parliament is protected lest it be said that by not doing the right thing, another rule will be broken. (*Applause*) This is Rule 42 which in (1) it says, "*The Speaker shall not take part in any debates before the House.*" It also provides a provision in (2), which says that "*should he wish - and I am sure this gender insensitive language was being justified in the past as that "he" and "she" is represented by "he", so I am just reading as the rules have been constructed - to take part in a debate, he shall vacate the Chair and shall not be occupied until the debate is over.*"

I spent the last one month looking at the record of the Commonwealth to find out if there is any precedent of a speaker who sat on a matter of which they will directly benefit from the outcome or the decision or such a perception being created and I only found one. This one was beheaded by Parliament in the 15th century. So I pray that we do not go there, neither am I suggesting that we can go back to the 15th century. I am just putting things in context.

The last two points, Madam Speaker, and I will not belabour the points and sit down. One, I have also looked at the traditions of parliaments in the last 1000 years in the Commonwealth to see a parliament that had the audacity to interpret the *sub judice* rule to mean blanket exclusion on any matter that has a word 'it is before court' and I have not found it. EALA seems to be on the slippery slope of going to be made the first parliament in the history of parliamentarians to interpret such a law.

Madam Speaker, briefly I will speak to the relationship between Parliament and court. The relationship between Parliament and court is guided by the principle of committee and difference. Committee meaning that both institutions enjoy certain privileges in the ordinary transaction of their mandate as given by law, constitution or in our case, treaty. They try to relate with each other with circumspection, respect and a bit of distance but it does not mean that they never get into each other's territory. But when they do, they do it judiciously, deliberately and carefully.

So when you talk about *sub judice*, the traditions in Parliaments have been for example to say that *sub judice* does not extend to making law; Bills. Unfortunately, EALA said it does. Some parliaments draw a distinction between criminal matters and civil matters. EALA says all of them are the same unfortunately. Parliaments draw a distinction between a matter before a judge or a panel of judges and a jury. The reason being they say where there are ordinary mortals who

are asked to ask as peers, they might be easily influenced but where you have a judge trained in law with immunities and privilege, such a chance is much more remote so they treat them differently. EALA says you must treat them the same. I can go on and on and on.

I pray and this is the last thing that I want to say. I pray like the prayers that I was making so that I may not be forced to speak, that sanity shall prevail in this honourable chamber, in this hallowed place. Like the prayer that you led us, to submit to and placate God on, that we shall do our duty with justice, judiciously, with fairness. That Madam Speaker, I beg you. Let us not go through that slippery path. Let us not make you be in an impossible position to make a ruling that you are automatically the beneficiary of. I beg you.

Ms Susan Nakawuki (Uganda): Thank you very much, Madam Speaker. With all the due respect to my honourable colleague, hon. Zein and the Counsel To The Community, I would like to first of all appreciate the East African Court of justice for ruling that we actually have Rules of Procedure for this House.

I personally thought we did not have rules because I know we are using Rules of Procedure of the First Assembly and this is a Third Assembly but I am glad- Madam Speaker, I beg for your protection.

The Speaker: Let us give chance to hon. Nakawuki to submit. We listen to each other in silence so that we proceed.

Ms Nakawuki: Madam Speaker, I am going to use these very Rules of Procedure of the House that we are talking about. All the previous speakers have been talking about the rules of natural justice and I will also talk about the same. When I look at Rule 43 of this very House, (1) says, *“Reference shall not be said to any matter of which judicial decision is pending in such a way as may, in the opinion of the Speaker, prejudice the interests of any party to the action.”*

Madam Speaker, we are all aware there is a case pending before the East African Court of Justice on this very matter. It has been fixed for hearing for the 20th; it has not yet been disposed of. What has been disposed of today was an interlocutory application but this application was not the main suit which is pending before court. So, Madam Speaker, I feel in the interest of justice, we cannot start debating a matter that is still pending before court when court has not pronounced itself on this very important matter.

We are all East Africans, I am one of the East Africans from Uganda, there are so many Ugandans out there who are equally concerned, and people should not take this House for granted because they have vested interests.

Madam Speaker, I think we should all sober up. We are here representing 130 million East Africans. We have a budget before us right now that we should give priority to other than satisfying our personal ego.

Madam Speaker, allow me also to refer to Rule 16 of the Rules of Procedure of this august House. The Counsel to the Community has referred to this very rule and he read it in part but I will refer to 16(1) and (2). 16(1) *“The Speaker shall determine the order of business of the*

House and (2) The Speaker shall, in determining the order of business, give priority to the Council business.”

Madam Speaker, we have our Order Paper for the day that you have already decided upon as per the Rules of Procedure and the business on this Order Paper is Council business because we are dealing with the budget of the East African Community.

Madam Speaker, I know you have powers under our Rules of Procedure to make a ruling on any matter where there are conflicting opinions by different members so I beg your indulgence, Madam Speaker. I want to use your wise counsel to advise this House on how we should proceed but I feel it is very important that we go on and pass the budget because it is what is urgent for the people of East Africa. I thank you.

Ms Dora Byamukama (Uganda): Thank you very much, Madam Speaker. I would also like to contribute on this important debate because I believe it will set a precedent for the future and it will reflect on our own personalities and professionalism. Following on to what hon. Zein said and as a lawyer, I find that my hands are tied because at this point in time when the Counsel to the Community has given advice, we have no other choice but to follow that advice. If we do not agree to that advice, the recourse is to go to court.

Madam Speaker and hon. Members, we have been very subservient, we have been very organised, the honourable Counsel to the Community gave advice in the first instance, it was ignored, he gave advice subsequently about the issue of injunction, this House adhered to that particular advice and therefore we should remain consistent.

I remember very clearly on the issue of *sub judice* he said that this does not lead to an automatic stopping of the procedure of the House and the court has come out very clearly to talk about separation of powers. Therefore, we cannot continue to say that there is a case before the court and therefore we cannot handle certain matters. We should be consistent, it is very important.

Madam Speaker, when you look at the Treaty Article 69 says, “*There shall be a Counsel to the Community who shall be the principle legal adviser of the Community.*” When you go further, you will find that under Article 9 of the Treaty, one of the Organs of the Community is the East African Legislative Assembly. Therefore, any business, which will not adhere to the advice of the principal legal advisor, is subject to question in court and hereafter. We are not saying we should not debate the budget, we are all interested, and actually, we have a conflict of interest because it will also facilitate our well-being. The point is, on the Order Paper, before we adjourned, there was a business and this business is not appearing on this Order Paper nor is it appearing on notice of business to follow. This is of grave concern and I believe that you will find it within your wisdom to ensure that what the honourable Counsel to the Community has advised is adhered to.

On another note, we members of this Assembly took oath of office before we took on our seats and this oath of office stated that we should uphold the principles of the Treaty. Madam Speaker, the principles of the Treaty are very clear and therefore personally, as a person who chairs the Legal, Rules and Privileges Committee, and the custodian of these rules, I find it very difficult to proceed if we choose to ignore what the honourable Counsel to the Community has said.

Madam Speaker, I would like now to turn to the issue of the court decision and like was said before, I want to congratulate the court on delivering justice. In particular, let me refer you to this particular aspect, which was stated very succinctly, and it states under 22 that first and foremost and I quote, “we are unable to agree with the applicants that the presentation of the petition to the Assembly in itself constituted an infringement of the Treaty. This procedure is prescribed under Rule 9(4) of the Assembly’s Rules of Procedure as explicitly stated in the long title there to, those Rules of Procedure were promulgated under Articles 49(2) and 60 of the Treaty. No material was availed to this court as would suggest that the Rules per se infringe Treaty provisions. We understood both applicants case to be that the implementation of the said rules would violate the doctrine of natural justice and therefore Article 6(d) of the Treaty hence this consolidated application to restrain further implementation there of beyond the presentation of the petition to the House. Subject to more detailed scrutiny of this contention during the hearing of the consolidated reference at this stage, we find that the presentation of the petition to the House was in compliance with rules duly promulgated under the EAC Treaty and therefore in compliance with the Treaty.”

That said, and since this House was in compliance, it would be very difficult for us not to adhere to and recognise this particular ruling.

Madam Speaker, on the issue of existence of Rules of Procedure, this is very fundamental. It defeats any reason as to how a member of this House can go before a court to contest the very rules, which have enabled him to serve. In essence, Madam Speaker this hon. Member is also contesting your seat as a Speaker. It becomes even more complicated when the two applications are consolidated, because it actually means that you are maybe in the same flaw.

I would like to say specifically on the issue of the Committee of Legal, Rules, and Privilege, which I chair, that the court made the following statement. *“On the question of bias, there is no material before us that indicates that the issue has been duly raised before the Assembly and the said body has declined or omitted to address it by recourse from the Committee of Legal, Rules and Privileges of members perceived to be biased. Amendment of the Rules of Procedure to address the perceived bias or by the Assembly otherwise effecting necessary measures to address the said complaint. In the premises, we find that the incidence of bias has not crystallised so as to give rise to a cause of action under Article 30(1) of the Treaty or invoke the jurisdiction of this court under the same provision. We do agree with Mr Kaahwa that provision for the respective mandates of each organ of the Community is reflective of the renowned doctrine of separation of powers that this court is enjoined to observe and uphold.”*

Madam Speaker, this is another area which really perturbs me. The Committee of Legal, Rules, and Privileges is composed of esteemed members of this House. This committee has professionals. In accusing this committee, this particular member or in your own right, you are also accusing the very House because we actually conduct business on behalf of the House. It is painful especially for us who are professionals to be before court in this manner. It is an issue, which I hope at some point, will be able to have an apology on because I think it was very unfair but I am glad that the court in its wisdom has vindicated us.

Finally Madam Speaker, I would like to repeat that we are ready to pass the budget, hear the budget and do our work as members of EALA but we are not ready- I personally I have a

problem. I will not be ready if we are not willing to comply to the advice of the Counsel to the Community because I will be breaching the oath, which I took, and it will not be in tandem with the Treaty. I thank you. *(Applause)*

Mr Fred Mukasa Mbidde (Uganda): Thank you very much, Rt. hon. Speaker. Hon. Members, allow me to congratulate the respondents in applications number 5 and 10 for the success they have obtained before the East African Court of Justice.

The Speaker: Speak to the microphone so that-

Mr Mukasa Mbidde: Madam Speaker, I have heard my colleagues and in the same vein, I am going to be heard, I imagine. The court has given a decision on applications seeking to restrain the House from undertaking processes for removal of the Speaker and that is very critical. It is important for everyone to notice that the court has not issued orders that the House should involuntarily proceed to censure or remove the Speaker. There was no case before court to that effect.

Madam Speaker, they say that a bird that flies along the sky sometimes thinks that those on the ground cannot be able to see its belly. I beg for protection, Madam Speaker, from hon. Ogle. *(Interjection)*

The Speaker: There is a Point of Order from hon. Hajabakiga.

Ms Hajabakiga: Rt. hon. Speaker, I want to invoke Annex 4 of the Rules of Procedure of the dress code and I want to call upon Rt. hon. Speaker that hon. Mbidde is not in order in the way he is dressed in this House. Under the same annex 4, under the “Gentleman” that is (1) it says, “*A gentleman Member of Parliament should be decently smartly dressed, coat, blazer, shirt, tie, long trouser, socks and shoes.*” I do not see any tie with the hon. Member who is now speaking in the House so he should actually go and dress up and come back. Thank you, Rt hon. Speaker.

Mr Mukasa Mbidde: Madam Speaker – *(Interruption)* -

The Speaker: Hon. Mbidde that was an order!

Mr Mukasa Mbidde: Madam Speaker, I would like the House – *(Interruption)* -

The Speaker: Hon. Mbidde, that was an order, and an order, if given, the Speaker gives the ruling. I just wanted to appreciate that you are decently dressed and I think you are smartly dressed. The neck tie- I do not know whether what you are putting on is a scarf. If it is a scarf then you are in order to stay. If you know it is a scarf then you go and get a necktie. I wanted you to- Okay, you can rise and explain your dressing.

Mr Mukasa Mbidde: Madam Speaker, my dressing is under (c) which is a scarf. Madam Speaker – *(Interruption)* -

The Speaker: If it is a scarf, you can proceed.

Mr Mukasa Mbidde: Thank you very much for the wise ruling, Madam Speaker. The functions that – *(Interruption)* -

Mr Zein: Madam Speaker, I had spoken passionately about Rule 44. It says that a member who wishes to speak on any matter in which he or she has a personal interest shall first declare that interest. The word here is 'shall'. The court record will show that hon. Mbidde is a litigant on this matter so I have not- I have looked at the *Hansard* carefully in the last time the matter was being transacted and prosecuted and deliberated upon, and even I have given him a chance to start by declaring his interest, which I feel he has not managed to do. So I call upon you, Madam Speaker to rule. Is it in order for hon. Mbidde esquire to proceed without complying with Rule 44?

The Speaker: Hon. Mbidde, Rule 44- Not an order on order. Let me first dispose of one and then you give me the others. Rule 44 requires you or any member who may have an interest to declare his interest and if you, in your judgement you think that you have an interest on the issue before the House, and the issue before the House is where we stopped when we adjourned. So if you think you have an interest, better declare it as per our rules.

Mr Mukasa Mbidde: Madam Speaker, first I thank hon. Zein for raising Rule 44. In the interim let me also tell this august House that I am not a litigant before court. Before court, Mbidde Foundation Limited and of course lawyers can assist is a corporation and of course regarding the case of Solomon versus Solomon, it is a corporation sole different from all its directors. It is a person of its own and a legal person before court under Article 30.

Number two, I am equally with instructions to represent clients before court. If that is the personal interest, hon. Zein that you would like me to declare, I hereby declare before the House that I am one of the lawyers instructed by the applicants in the references before court and the applications. I so declare.

Ms Hajabakiga: Rt. hon. Speaker, further to my earlier point of order, I decline that the hon. Member Mbidde- Under the dress code for hon. Members, there is nowhere where he is allowed to put on a scarf. The only place where there is a scarf is under the Speaker and not hon. Members. So you can look at that area. Rt. hon. Speaker, you have got the rules on page 39 under where it is written for gentlemen I do not see where the scarf is allowed in the House with a gentleman.

The Speaker: Hon. Mbidde - (*Interruption*) -

Mr Mukasa Mbidde: Madam Speaker, I must admit I am shabbily dressed, but I am dressed to the Rules of this House.

The Speaker: Hon. Mbidde, resume your seat. When an order is raised, the order is raised so that the Speaker can make a ruling. And in the guidance and rules which hon. Patricia Hajabakiga is ably quoting, it is saying that gentlemen should be decently and smartly dressed and in order to qualify the "decently and smartly", they go ahead to talk about the "...coat...maybe you could stand for the House to see whether you have a coat or a blazer or both - I do not know what happens here - *a shirt, a tie, long trousers, socks, and shoes.*"

So from the Speaker's chair, I can see you have a neck tie, a shirt, a jacket- I do not know the rest, I cannot see them. So I think you are decently dressed, proceed.

Mr Mukasa Mbidde: Much obliged, Madam Speaker. (*Interjection*)

The Speaker: There is another order. Hon. Zein actually had an order, which we had not yet disposed of.

Mr Zein Abubakar: Yes. Is it in order for the hon. member to change clothes in the House?

The Speaker: Hon. Mbidde, I do not know whether the rule allows you to change clothes in the House but I also do not see any rule which says do not change clothes in the House. So hon. Mbidde, can you please wind up so that other people take an opportunity to talk on this matter because I think we need to dispose of it.

Mr Mukasa Mbidde: Much obliged, Madam Speaker. As I said, all the matters raised by the hon. Members here, there is no decision yet on those matters. The decisions are going to be given by the Right honourable court in a matter that has been fixed for scheduling on the 20th June this year. What has been disposed of was the intent by the applicants to restrain the Assembly from moving ahead with the motion for removal. As to whether questions of Rules of Procedure and all those ones- What court has only alluded to is whether there is a likelihood of success in those matters. The matter have not been pleaded and we would like this august House to give court its due time to determine the matters.

Madam Speaker, matters usually go to court when litigants would seek to have wrongs corrected. Matters are before the House, the East African Community was coached in Organ terms and each Organ was given a head of an Organ. I have heard the hon. members talking about Rule 43 (1). Now when you look at that rule, it has three ingredients. The first ingredient is a matter pending before court. The second ingredient, Rule 43 and I would like hon. members to look critically. The second ingredient is the opinion of the Speaker who is the head of this Organ of East Africa. The third ingredient is prejudice and I would like you to all look- You know among amongst the litigants before court in these matters is the Speaker is an applicant and when you are interpreting prejudice, prejudice must be interpreted giving its literal meaning. That where the matter before court is a matter for which you have an interest, prejudice must be determined in such a way that any activity that takes place does not prejudice the decision of the case before court.

So hon. Members, EALA is an Organ of democracy. It is an Organ of integration. An Organ follows the law. We cannot, by any means practicable, proceed *in pari delicto*. We must be able to proceed in accordance - (*Interruption*)

The Speaker: Are you willing to take the clarification?

Mr Mukasa Mbidde: I am not willing, Madam Speaker. They say an old woman is always uneasy when a bone is mentioned.

The Speaker: Hon. Mbidde, is that parliamentary in the context?

Mr Mukasa Mbidde: No, I am not actually referring to anybody. This is just a saying.

The Speaker: Hon. Mbidde, when the Speaker is on the floor, you resume your seat. Hon. Mbidde, the reference to an old woman is a sexist terminology and I think you withdraw it.

Mr Mukasa Mbidde: I withdraw it, Madam Speaker. I only made it as an idiomatic expression but what was the intent is what I wanted to lay before the House. But I withdraw it with due respect.

Madam Speaker, they say one man with courage is a majority and since I am a man, I am not really- I said one man and actually I am that one man, Madam Speaker.

The Speaker: Try to wind up.

Mr Mukasa Mbidde: Madam Speaker, considering the three ingredients of that rule, a close look at the *Hansard* as to why you rightfully made a ruling that matters for consideration of this nature must be left pending a decision of court, what I had raised was reference number three. I never raised before this august House applications number 5, 10 because those were just applications. The references to what raises material matters that require substantive adjudication by the East African Court of Justice, these are very serious matters for which redress may not be obtained, Madam Speaker.

I still insist and before I sit down, Madam Speaker, there was a matter raised by the hon. Dora that probably one person went before the court, made allegations as to the non-existence of the Rules of procedure. Now going to court was under Article 30 clause 1. I do not know any member on the Legal, Rules and Privileges Committee that went to court, I am yet to be told. The only member that did from that legal, Rule and privileges Committee went there as an advocate duly instructed by clients who are residents of the Community, duly mandated to take suits and to take matters before court under Article 30 clause 1 of the Treaty for the establishment of the East African Community.

Personally I am guided by the immunities and privileges established under the Advocates Act and there was no problem at all. Reference can be made, Madam Speaker. I would like to-
(*Interruption*)

The Speaker: Hon. Mbidde, there is clarification from hon. Dora.

Ms Byamukama: Madam Speaker, I have tried to restrain myself and I was very clear. I think it is without doubt that the issue of Rules of Procedure was before court. That is for starters. Secondly, I said a member of this House and a member of the committee. Much as hon. Mbidde is saying he is separate from Mbidde Foundation, which is correct, he knows very well that it is Trite law in certain circumstances where the veil is lifted then you will find a face behind that veil. Right now, he has also conceded that he was instructed by the very foundation, which really enjoins him to the case because if he does not believe in this particular allegation then he would have declined from being an officer of the court in this particular instance.

Mr Kaahwa: Thank you, Madam Speaker. I wish to inform my honourable friend Dora Byamukama that a reference to the court proceedings with regard to the hearing of the application will indicate a question, which was raised by the court to counsel for Mbidde Foundation, hon. Mbidde as to the difference between him and Mbidde Foundation. Hon. Mbidde indicated to the court that he is a director so when you say a veil can be lifted and you see Mbidde behind Mbidde Foundation, you will succeed. I thank you.

The Speaker: She had not completed her clarification. Hon. Dora.

Ms Byamukama: The honourable Counsel to the Community has actually answered to my clarification, but allow me to say one small thing, Madam Speaker. There is life after EALA, and we are professionals. Some of us have been practising law for more than 20 years. I do not have one degree in law, I have two degrees in law, and a Postgraduate Diploma in Legal Practice, not contested, and I practice!

I would like to say very clearly that kindly help us and guide us in maintaining respect and decorum of this House and of the members present. Before any reference is done, I think it is better that this is crosschecked. I thank you.

The Speaker: Thank you. I think it is also very important that we listen to each other. When we listen to each other, we are able to get a way forward finally. That is why we patiently listen to each other and I have tried to make sure that we listen to each other. Hon. Mbidde, wind up.

Mr Mukasa Mbidde: Madam Speaker, it is just unfair that probably I have not been given an opportunity to flow as I have always given my other colleagues the opportunity to do so. I could as well have as many points of order and clarification and as several as provided for in the rules but I kept the decorum going because we wanted to listen to each other, which I have not been accorded properly.

Madam Speaker, I continue to be answering what has been raised against me but lifting the veil of incorporation is a substantive application, which has not been done, and court has not addressed itself on the lifting of the substantive veil to discover who actually is under the veil of incorporation. When a question was raised, Madam Speaker, and that is why in the ruling there is nothing of the sort as to whether or not one was still qualified to represent the applicant- it has not been adumbrated upon by their lordships. So the meaning is that it is not a contentious matter either before court and we need not allow it to be contentious even before Parliament. I am rightfully here as an elected member of the East African Legislative Assembly, I am on the committee as a member designated to be as such and I am not going to be intimidated against that because Madam Speaker, rally I am born of a material that becomes harder the more you hit it.

Madam Speaker, as I finalise – (*Interruption*) -

The Speaker: I hope you are also not equally intimidating.

Mr Mukasa Mbidde: Madam Speaker, I did not intend to intimidate anyone. As I finalise - (*Interruption*)

The Speaker: There is order!

Ms Byamukama: Madam Speaker, I have a challenge and I really did not want to rise on this point of order but when some allegations and insinuations are made as to the issue of intimidation, I really have to clear my name and that of the committee because I have just talked. I would like to say very clearly that I was stating a fact, which fact was confirmed by the honourable Counsel to the Community and as lawyers we should take these facts as is because

that is what it is. So is it in order for the hon. member to allege that no one will intimidate him when there is no nuance, when there is no indication that this will be the case? Is he in order?

The Speaker: He is not in order. Hon. Mbidde, proceed.

Mr Mukasa Mbidde: Finally Madam Speaker, sanctity of the House is embedded in powers absolutely given to the House. This is a legislature, and it should be treated as such, with powers that are given to the hon. members and immunities, their privileges, and the power transferred by them to a head, to one of their own who ultimately then becomes the head of the substantive assembly.

This Assembly is not perishable neither is the motion for removal of the Speaker. Madam Speaker, we have very serious matters before this Assembly including that motion for removal but they need to be considered in order of urgency. Next week the East Africans are considering their own budgets in Partner States. This week we must pass the budget of the East African Community. In the interim, Madam Speaker, I invite and I will continue to invite and I sit down having invited- I do not want to be counted among those that never invited their colleagues to act in order that would preserve and embalm the sanctity and progress of this House and the East African Community.

I sit down by saying that since the matters to do with determination of what happens and appears on the Order Paper are the privilege of the Speaker, whose powers still are borne by you until otherwise, and since those powers have been exercised, the House, then, with your ruling, Madam Speaker, continues to go ahead with business, and we continue to look ahead for better and further options. I thank you.

The Speaker: I can see hon. Christophe followed by hon. Kiangoi and honourable Counsel to the Community. I was thinking that you had already talked on the motion that is why I had - It is clarification, okay.

Mr Christophe Bazivamo (Rwanda): Thank you, honourable Speaker. I have been participating in a meeting and in that meeting, we were advised and it is so according to the Treaty to have as a House no other advisor when it comes to legal matters other than the Counsel To The Community which is seen as an Attorney General of the Community.

In that meeting, hon. Speaker, this advice was addressed to you and to other participants. I have heard and followed the discussions here and I wish as lawmakers, we should not be far from the Treaty and from our Rules of Procedures and for that purpose, I would wish as hon. Members, to respect and to abide by the advice given by our Counsel to the Community.

(Hon. Nakawuki rose in her place)

The Speaker: He has sat down; are you seeking clarification from the Speaker? No, he has sat down.

Mr Joseph Kiangoi Ombasa (Kenya): Madam Speaker, I initially was not intending to contribute on today's motion on this matter but considering that this House should be

understood that this House should enjoy the dignity that is bestowed upon all parliaments of the world, I find it necessary to make a few remarks.

Madam Speaker, matters that were before court whose ruling was given today have been referred to. I have the ruling of the court because it has been circulated and I want to say that the applications were premised in the references. They were made in the references, the cases now that are being referred to which will be heard in the future. They were interlocutory applications in the sense that they come before the main suit is heard and determined and they come as relief applications. What was the relief? The relief was that Parliament or this Assembly be restrained from proceedings with the motion of removal of the Speaker because doing so would prejudice our position, our integrity, would cause damage that would not be compensated by an award in damages but the court has pronounced itself on that issue.

What has the court said? The court has said that there is no prejudice that can be occasioned on the Speaker so much as that it would warrant the injunction being given. That is explained in this ruling.

Madam Speaker, what does that mean? The court did not say that yes, now proceed with the removal of the Speaker but what does it mean when the court says also that we were proceeding- the petition was properly before this Assembly and the Assembly was proceeding in accordance with its rules which are in force? It means that it leaves us free to proceed and how do we proceed if we are left free to proceed? We have written to the Clerk to put this motion, the motion that was pending, in the Order Paper. The rules say it should be in the Order Paper but it is not in the Order Paper.

It would have been different if it as on the Order Paper, that it was number three but it is not even there completely. So that being the case, it means that we are trying to hide under the issue of *sub judice*. In the first place, why did the applicants go to court? And, for your information, which information is available in this ruling, the cases were consolidated. The references were consolidated. The applications were consolidated and there was one ruling so you cannot stand in this Assembly and say that what we dealt with is the applications and therefore the references are different. (*Hon. Nakawuki rose in her place*) - I do not need that information.

So that being the case, you cannot separate because as I have said the premise in the - (*Hon. Nakawuki rose in her place*) - I do not need the clarification, I am clear now. So Madam Speaker, can I proceed? I hope so.

Madam Speaker, you cannot stand up in this court and say that the applications are different; that the references are different. Why in the first place did anybody think that they must go to court and seek an injunction? It is because they knew the principle of *sub judice* is known but they knew that it was important to get a court order to restrain this Assembly. The court has said it cannot restrain the Assembly. For purposes of good order, for purposes of the integrity of this House which integrity, Madam Speaker as Speaker sitting there now is bestowed upon you, I want to implore you so that you know we set a good precedent, so that we are not seen to have gone under cover of interpretations, which are improper. These interpretations are improper. The court has pronounced itself, you cannot go beyond the court's ruling until you appeal. It is only an appeal court that can set aside or interpret these findings differently. So I implore you, Madam

Speaker that we proceed with the motion that was pending, that was stayed and we respected the court order and we proceeded as normal so that you know that the matter is referred to the Legal Committee, the very Legal Committee that is in place and then the Legal Committee will address itself on the matter.

Madam Speaker, that is my request to you, that is what I think should- So that we are not seen by future generations that we tried to hide under frivolous explanations.

The Speaker: Thank you, hon. Kiangoi. I will take hon. Hajabakiga.

Ms Patricia Hajabakiga (Rwanda): Thank you, hon. Speaker, I did not expect to speak but let me say that because I followed very keenly the debate by hon. Zein - unfortunately he is not in the House - and I also did follow the submission of the Counsel To The Community and other members. I am not a lawyer, but I want to invoke three rules. If we have agreed and the court has ruled that these rules are in order, I want to invoke Rule 9, Rule 43 and Rule 44.

Rt. hon. Speaker, under Rule 9 on the removal of the Speaker, that is where we had the stay of the motion which was on the Order Paper which was- I do not know how it was adjourned but it was adjourned based on Rule 44 on the issue of matters which are in court.

At the same time following hon. Zein's submission on Rule 43 where the aspect of personal interest becomes an issue when deliberating on the matter where somebody is concerned was clearly solved in Rule 9 under the removal of the Speaker that the process of the removal of the Speaker under Rule 9 says, the Speaker in respect of whom proceedings for removal have commenced shall not preside over the proceedings.

Rt. hon. Speaker, in the first place even at that time, you should not have been presiding over that particular session especially because it was taking into account what is said in Rule 43 under the aspect of personal interest exactly because of that we are in a situation in which we are in where we cannot even respect the legal advice of the Counsel to the Community and taking the advice of other people and that is what I wanted the clarification on, as to whether this House and the Speaker will rule that from now onwards, this Assembly takes advice from other people other than the Counsel to the Community so that we set a precedent. Those are the issues I wanted to raise, Rt. hon. Speaker.

Finally, let me- (*Interruption*)

The Speaker: Do you take procedure from hon. Nakawuki?

Ms Hajabakiga: No, I do not want, Rt hon. Speaker, I want to finalise to thank you, Rt hon. Speaker for protecting me under hon. Mbidde who referred to me as an old woman. Initially, Rt hon. Mbidde called me an ant, that I think in the House I am an Hon. Member and that is what should have been said but I thank you for your protection.

Mr Mukasa Mbidde: Madam Speaker, the matter to do with what happened, the insinuation to an old woman was ruled on and it was withdrawn. Is the hon. Member still in order to maintain it as if it is still a recurrent matter on the floor?

Ms Hajabakiga: Rt. hon. Speaker, I was thanking the Speaker on that issue-

The Speaker: Hon. Hajabakiga, let me rule and say that yes, you withdrew but that since it had been talked about, the Member felt that it referred to her. I think she is right in this respect but we can proceed by saying it was withdrawn, it is not referring to her. She is a hon. Member here. Conclude, you have concluded. Hon. Kaahwa.

The Counsel to the Community (Mr Wilbert Kaahwa) (Ex-Officio): Madam Speaker, I did not intend to come back, but I must do for purposes of clarifying a few issues and I want to assure you and the august House that I will not take much of your time because I am thankful to my learned friend hon. Kiangoi Ombasa who has covered much of what I intended to cover by way of clarification.

Madam Speaker, this House needs to understand that in our jurisprudence and as is reflected in sections 6, and 7 of the Rules of Procedure of the East African Court of Justice, there can always be two stages in litigation. A stage where you file a reference for an application or a case to put it in layman's language and a stage where you seek interim orders, conservatory orders to conserve the situation until the main suit is determined; this is what happened in this case. There were references, one filed by Rt. hon. Margaret Zziwa reference 5 of 2014, and another one earlier filed by Mbidde Foundation Limited reference 3 of 2014.

The subject matters indicated earlier as with regard to what is before the House that is the motion for the removal of Rt. hon. Zziwa from the office of the Speaker. Now at that time, the motion was brought to the House. The motion was introduced in the House but the applicants felt it wise to seek interim orders to conserve the situation pending the determination of the main suit itself. To put it in clearer terms, if after hearing of these consolidated applications, the court had ruled in favour of the applicants; Mbidde Foundation Limited and Rt. hon. Zziwa, this debate would not be proceedings. The court would have restrained the Assembly from debating the motion but as I said earlier, and for the reasons I indicated, the court saw no merit meaning the motion can proceed and in the unlikely event that there is any harm then there can always be recourse to compensation by way of damages.

We should not misunderstand the rule of *sub judice*. The rule of *sub judice* is not automatic that once the matter is in court, then you cannot talk about it. Once the matter is in court, you can only be prevented from talking about it by way of a court order which court order was not secured in the consolidated applications and this is very clear, Madam Speaker in the decision of the court in application number 5 of 2012 Timothy Alvin Kahoho versus Secretary General of the East African Community.

The court had time to consider the *sub judice* rule, the application of interim orders, the need for interim orders and the enforcement of such orders and the court in its wisdom, ruled that every case should be determined on its own facts since the grant of an injunction is a function of the court. It is not automatic that once a matter is in court then it is automatic you cannot discuss it. You may not discuss it if there is an interim order and that will be the situation if Rt. hon. Zziwa and Mbidde Foundation had succeeded in the two applications. Fortunately, they did not succeed. I am saying fortunately because I also had my own clients. I had the Secretary General and the Community.

Madam Speaker, let me just say two more things. I am very happy that this litigation came out in the way it did and we went to court and argued the cases on the basis of the law and facts. I am saying I am very happy because in the course of hearing, it came to light that there were doubts as to whether this House has Rules of Procedure. There were doubts as to whether this House actually exists. You will find in the record of proceedings, all these facts, and evidence whereby even there are East Africans who believe that this House is an ad hoc House contrary to the provisions of the Treaty that this House is an ad hoc House.

I felt inconsolably sorry during the hearing when this evidence came out but fortunately, the court has ruled against those sentiments.

Madam Speaker, having heard all that has come out which unfortunately should not have come out bearing in mind the advice I gave, I request, I advise the hon. Speaker to respectfully, elegantly and bearing in mind the decorum of this House, and with a lot of candour, include the motion on the Order Paper. Thank you.

The Speaker: Thank you very much, hon. Members. You have had quality time to look at this very important issue. I want to request that I suspend the House for some ten minutes so that we are able to consult finally within the arrangements of the proceedings so that we are able to see how we conclude. House is suspended.

(The House was suspended at 4.10 p.m. and resumed at 5.32 p.m.)

(On Resumption, the Speaker, Ms Margaret Nantongo Zziwa, presiding_)

The Speaker: Hon Members, I suspended the House to give me a chance to consult and to internalise the many views, which you had submitted. I want to say that out of the consultation, I will proceed to adjourn the House to Tuesday, 10.00 in the morning, and the Motion on the Budget will be the subject of the issue on the agenda.

The House stands adjourned – *(Loud consultations)*.

(The House rose at 5.35 p.m. and adjourned to Tuesday, 3 June at 10.00 a.m.)