



EAST AFRICAN COMMUNITY

EAST AFRICAN LEGISLATIVE ASSEMBLY

Official Report of the Proceedings of the East African Legislative Assembly 15TH SITTING – SECOND ASSEMBLY: FOURTH MEETING - FIRST SESSION:

Wednesday 5 December 2007

The East African Legislative Assembly met at 2.30 p.m. at the Zanzibar House of Representatives, Zanzibar

(The Speaker, Hon. Abdirahin Haither Abdi, in the Chair)

PRAYER

(The Assembly was called to Order)

COMMUNICATION FROM THE CHAIR

Appointment of Officers of the Assembly

The Speaker: Honourable Members, I rise to notify you about the appointment of staff of the Assembly. You may recall that in June this year, the then Hansard Reporter of the Assembly sadly passed away. Secondly, due to the restructuring of the East African Community organizational structure that became effective in January, 2007, the posts of Clerk Assistant and Assistant Sergeant-at-Arms were upgraded to the professional scale of P1. In accordance with the East African Community Staff Rules and Regulations, these positions had to be advertised.

In accordance with the provisions of Article 49(2)(f) of the Treaty, the Secretary-General submitted the results of the interviewing panel to the Assembly for consideration and recommendation. I am pleased to inform you that the House Business Committee considered the results of the interviewing panel and other supporting information regarding the candidates, and has recommended to the Council of Ministers the appointment of the following:

1. Mr. William Kamket - *Hansard* Reporter
2. Mr. Ezekiel Migosi - Assistant Sergeant-At-Arms
3. Mr. Paul Masami - Clerk Assistant.

I take this opportunity to congratulate all the successful candidates - (*Applause*).

MOTION

For a Resolution of the East African Legislative Assembly for the Ratification of Amendments to the Treaty for the Establishment of the East African Community

Chairperson, Committee on Legal, Rules, and Privileges (Mr. Abdullah Mwinyi (Tanzania): Mr. Speaker, I beg to move_

THAT this Assembly do resolve to urge the Partners States to ratify the amendments to the Treaty to enable the Republics of Rwanda and Burundi to elect their Members of the East African Legislative Assembly.

Ms Dora Kanabahita Byamukama: Seconded

Mr Mwinyi: Mr. Speaker_

WHEREAS Article 3 of the Treaty affords countries other than the United Republic of Tanzania, the Republic of Kenya and the Republic of Uganda the opportunity of becoming members of the East African Community;

AND WHEREAS at the 8th Summit of the East African Community Heads of State held on 30th November 2006 in Arusha, Tanzania, the Summit decided to admit the Republic of Rwanda and the Republic of Burundi as full members of the

East African Community effective from 1st July 2007;

AND WHEREAS the membership of the Republic of Rwanda and Republic of Burundi into the East African Community entails the conclusion of a Treaty;

WHEREAS on the 18th day of June 2007 in Kampala in Uganda, the Republic of Rwanda and the Republic of Burundi established by common agreement the condition of accession and concluded the Treaties of accession;

WHEREAS the Republic of Rwanda and the Republic of Burundi have finalised the accession process by each depositing the instruments of ratification of the Accession Treaties with the Secretary General;

AND WHEREAS the Council of Ministers noting the need to amend some provisions of the Treaty establishing the East African Community with a view to facilitating the effective participation of the two new Partner States in East African Community organs and institutions approved the amendment of the Treaty;

AND WHEREAS according to Article 150 and 152 of the Treaty these amendments come into force when ratified by all other Partner States;

Now, This Assembly:

NOTING that up to now all the five Partner States have neither ratified the amendments nor deposited the instruments of ratification with the Secretary General,

RECOGNISING the need for the Partner States to unite in their desire to pursue the attainment of the objectives of the Treaty for the Establishment of the East African Community:

APPRECIATING the spirit of the Treaty to strengthen the economic, social, cultural, political, technological and other ties for the accelerated, balance and sustainable development of the Partner states through the establishment of an East African Customs Union and a Common Market as transitional stages to and integral parts thereof, subsequently a Monetary Union and Ultimately a Political Federation;

APPRECIATING FURTHER the urgency for the ratification of the amendments to the Treaty to enable the Republic of Rwanda and the Republic of Burundi elect representatives to the East African Legislative Assembly as soon as possible;

DO NOW RESOLVE to urge all the Partner States through the Council of Ministers to speed up the process of ratification of the amendments and deposit their respective instruments of

ratification with the Secretary General.

Mr Speaker, I beg to move.

(Question proposed)

The Secretary-General (Ambassador Juma Volter Mwapachu): Hon. Speaker, sir, I wish to report to this august House that in August and October - October in terms of a reminder - the Secretary-General did communicate to the Partner States the urgency to ratify the amendments to the Treaty so that they could come into force as required by Article 150(b) of the Treaty. And as I mentioned yesterday in my maiden speech, progress has been made in this direction. Tanzania has already ratified the amendments, I believe two and half weeks ago – *(Applause)*. I know also, and it has been reported to the office of the Secretary-General, that Rwanda, Uganda and Burundi have had the amendments already passed by their respective Cabinets, and I believe that they will shortly be tabled before the National Assemblies of those respective countries in order to be ratified. In the context of the Republic of Kenya, I believe that immediately following the on-going electoral process, we should also have this sister republic ratifying the amendments. And going by the constitution of Kenya, the ratification will be only through the Cabinet.

Ms. Dora Kanabahita Byamukama (Uganda): Mr. Speaker, sir, in seconding the Motion, I would like to make some few remarks.

Mr. Speaker, as you note this Motion in essence is urging the East African Community Partner States to implement

what they had committed to. It is not the first time that Partner States have to be reminded to implement what they have agreed to. I would like to recall and put on record the fact that we have been struggling to ensure that the Partner States negotiate as a block. Therefore, beyond this particular Motion, I think we need to look further and take into account Article 143 of the Treaty for the Establishment of the East African Community. This particular Article provides for sanctions and it states:

“A Partner State which defaults in meeting its financial and other obligations under this Treaty shall be subject to such action as the Summit may, on the recommendation of the Council, determine.”

This particular Article has a major shortcoming in that when you consider the different Council meetings there will hardly be a possibility where the Council would, for example, make this kind of recommendation. Therefore, it becomes very difficult for us as an Assembly to use it when it comes to ensuring that what the Partner States have committed to do is implemented.

Mr Speaker secondly is the issue of time frame. In most instances when Partner States commit themselves to certain resolutions, we find that no time frame is put and, therefore, for example, the issue of Rwanda and Burundi joining us may take another two years and we have no recourse.

So, Mr. Speaker, in light of this and the advice of the Counsel to the Community, I think what the Committee on Legal, Rules and Privileges has proposed that

we look at this Article more succinctly when it comes to amending the Treaty remains valid.

Mr. Speaker, the other thing that may remain valid may be a need for a peer-review mechanism, because the East African Community Partner States do not have this kind of mechanism. We may have the good will but we may need to look into the issue of a peer-review mechanism so that where a Partner State has defaulted, there is an established mechanism to ensure that all the Partner States oblige. In the alternative, Mr Speaker, sir, although we as an Assembly have the duty to move and pass resolutions, I think it is high time we got an independent body; maybe a tribunal or any other independent body established by law, which would be able to ensure that Article 143 of the Treaty is enforced. Otherwise, as I pointed out, the Council of Ministers may be constrained in ensuring that a Partner State that has defaulted in meeting its financial and other obligations is subjected to such sanctions.

Mr. Speaker, sir, finally, Article 143 also, to some extent, inhibits us from making laws which have teeth. For example, even as we start to deliberate on the issue of a joint mechanism for us to negotiate as a block, you find that after putting such a law into place, if it does not have sanctions; if it does not have a mechanism for ensuring that whoever does not adhere to it is penalised in any manner, it remains hanging; it remains toothless.

Therefore, Mr. Speaker, sir, I would like to urge my colleagues to look at this particular Motion critically, and also to think beyond what we as an Assembly

will be able to do, especially in light of what I have highlighted in respect to the shortcomings of Article 143. I support the motion, and I thank you, Mr Speaker.

The Speaker: Honourable Members, before I allow any one else to speak, I would like to acknowledge the presence of the hon. Parmukh Singh Hoogan, who is a Member of the Parliament of the United Republic of Tanzania representing Kikwajuni Constituency. This Chamber of the Zanzibar House of Representatives is situated in his constituency. *Karibu sana - (Applause).*

Dr. Aman Kabourou (Tanzania): Thank you, honourable Speaker for giving me this opportunity to say a word or two about the Motion. Let me say from the outset that I am in agreement with the Motion, and I would urge my colleagues to support it, although etiquette would require that if I had any objections to any of the aspects in this Motion, I should have risen during the sittings of the Committee. But, I support this Motion with some reservations in that it does not really have teeth. And what do I mean by not having teeth? I mean, so what: we pass it here and after that? And why did we want to even bring this Motion?

I think the reason is that it would appear that the East African Legislative Assembly is treated as an under-dog in the relationships of the East African Community's main organs. Now that we have Rwanda and Burundi as members of the East African Community, and we know very well that these countries participate in all the other organs of the Community; they attend the Summit, they go to the Council, they participate in the financial and other bodies that

deal with the resources of the Community, but they cannot attend the meetings of the East African Legislative Assembly. I think it is the only organ that they are not allowed to participate in. I think this is the purpose behind the Motion.

We want to make sure that these countries are allowed to come into the East African Legislative Assembly because they are members of this Community and therefore of this Assembly and we want them to make a contribution towards the betterment of the Community. And yet, because of somebody's lacklustre performance, perhaps, they are not allowed. I think this is illegal. We have to have teeth. We have to tell the other organs that if they do not do this by a certain date, then we will allow these people to come into the East African Legislative Assembly, and if anybody has any qualms about that, we can go to court. We have our Court – *(Interjection).*

Honourable Speaker, I just wanted to say that and make sure that we have reasons for bringing this Motion; that it did not just come out of thin air. I thank you very much.

Dr. Mwapachu: On a point of information, Mr. Speaker, I do hear the honourable Members as far as the interpretation of Article 143 of the Treaty for the Establishment of the East African Community, is concerned. The issue about “teeth” underlies the interpretation of Article 143. However, Article 143 has to be read together with Article 146, which refers to suspension of a Partner State. The “teeth” are provided under Article 146, including the time-frame, which also seems to

underlie the views that have been put in this House by the two previous honourable speakers. So I would like to submit that the issue really revolves around how the Secretary to the Summit, namely the Secretary-General, is able to bring before the Summit information that a particular member, pursuant to Articles 143 and 146 has not fulfilled the conditions of membership.

The Speaker: I think the honourable Member was referring to the recommendation of Council; which minister or who would recommend to the Summit that a Partner State be suspended...I do not know whether the Secretary General being the Secretary to the Council would be in a position to recommend such things, but I think that is what the honourable Member was trying to bring out; who is going to recommend suspension?

Ms Margaret Zziwa (Uganda): Thank you very much Mr. Speaker for the opportunity. I want to thank the Committee for bringing this Motion, and perhaps I should also thank the Secretary-General for the information he gave to this House about the progress. Otherwise, I was really very perturbed over the commitment of the Summit to the expanded East African Community.

Mr. Speaker, as you are very well aware, it is almost seven months down the road, and yet what we witnessed in Kampala was a lot of glamour, pomp and excitement to welcome Rwanda and Burundi into the Community. If up to today we cannot have the infrastructural arrangement to bring on board our colleagues to the Assembly, are walking the talk? What is going to happen if we are asked to account for Rwanda and

Burundi in these last seven months? I think seven months is a lot of time in terms of representation. We cannot just downplay it by saying the various countries had not ratified the amendments to the Treaty – *(Interjection)*.

Ms. Dora Byamukama (Uganda): On a point of information, Mr. Speaker, sir, I would like to inform my colleague, the hon. Zziwa that her point is very valid. More importantly, these Partner States are already contributing financially to the East African Community, and, therefore, if we do not urge them to get new Partner States' Members brought into the East African Legislative Assembly, it means that we are depriving them of resources and opportunities.

Ms Zziwa: I thank the hon. Byamukama for the information. Mr Speaker, I think you can see the enormity of the issue, particularly, for instance, if those respective countries will have to present their accounts to their National Assemblies. Within their public accounts, they will reflect that monies have been put to the East African Community, when in fact they are not reaping the benefits of the Community, as it were.

Mr Speaker, after the information given by the Secretary-General, I would, perhaps, feel like exonerating those Partner States that have moved. I want to congratulate Tanzania and appreciate that perhaps time was on their side, and that perhaps they did not have pressing priorities. I want to look at the situation of Kenya and appreciate that when elections are ongoing perhaps many other issues tend to be suspended.

Likewise, Uganda could have had a lot of energy directed towards the CHOGM (the Commonwealth Heads of Government Meeting). But still, whereas you would appreciate the urgency of a visitor coming into your house, you never fail to attend to particular basic aspects in the household. And I regard this issue as particular aspect; a principle aspect in the East African Community household.

So I want to support the Motion and acknowledge that although it may not have a specific sanction, but in effect it is saying to the Summit, please wake up to what you have made a commitment to. In effect that is what this Motion is doing: It is adding to the letters which the Secretary-General has written to the Summit, and also maybe urging the Summit, and I think at an appropriate time we could also look into the aspect of time frame. I do not want to refute the information from the Secretary-General about the time aspect, but I think it should come out to be specific that within this time frame we expect such an action. And I think this is the way it should be phrased so that we are able to know.

For instance, Mr Speaker, when we now talk about EPAs (the Economic Partnership Agreements) coming into effect, it is all because there was a time frame that in ten years the Cotonou Agreement would expire and we must sign a new frame work. That is why there this kind of phrase. But now since there is apparently no urge about when Rwanda and Burundi should participate in the activities of all organs of the Community, and that is why you see this kind of laxity. It would have been an honour and privilege for Rwanda and

Burundi to be in this great hall of this great Assembly, but they have missed the opportunity. Mr Speaker, I do not want to elaborate on other issues, because we know very well that their joining us would bring along a wealth of experience, which we do not want to miss!

Mr. Speaker, you will recall that yesterday we engaged in a very important exercise of amending our rules of procedure. It is obvious that we had to amend the rules, but if the ratification of the Treaty had already been done by the original Partner States, perhaps by today Rwanda and Burundi would be in the process of electing their Members to the East African Legislative Assembly, and perhaps we would not have gone ahead to amend our Rules before the two countries come on board. But now, there is yet another hurdle.

So, it is for that reason that I want to support the Motion. It is very unfortunate that the representative of the Council is not here, because in this House he is the voice of the Summit. I think Dr. Machage had to leave this morning, which is unfortunate, but you can see now that many of our frustrations can only be captured by the *Hansard*, which may not be able to capture the mood of the House!

Mr. Speaker, I want to support the Motion but reiterate the fact that the Summit should walk the talk. I thank you very much – (*Applause*).

Dr. Mwapachu: Honourable Speaker, in the interest of the House, I should have reported earlier on that the hon. Dr. Machage had to leave to go back to his constituency where, as those who have

come from a political life would understand, he has to fight for his political life. The hon. Machage has actually gone back to do precisely that.

Secondly, I had a telephone call the day before yesterday, of which I shared with you, hon. Speaker, that the hon. Eriya Kategaya, the First Deputy Prime Minister and Minister for East African Community Affairs from the Republic of Uganda was suddenly called upon by His Excellency the President of Uganda to be in the Uganda delegation to the EU-Africa Summit in Lisbon, which is starting in the next two days.

Thirdly, honourable Speaker, the Tanzanian Minister for East African Co-operation, the hon. Dr. Ibrahim Msabaha was also suddenly called to appear before a Parliamentary Committee which is investigating the so-called Richmond Genset Contract. And having been the Minister responsible for Energy at the time when this particular case emerged, he had to necessarily appear before that Parliamentary Committee. But the hon. Dr. Msabaha will join this House tomorrow.

Mr Speaker, I beg to report.

Mr. Gervase Akhaabi (Kenya): Thank you, Mr. Speaker. I did not have the mind to make a contribution on this otherwise very plain Motion which should be supported by everybody, but I am a little concerned that seven months after the Republic of Rwanda and the Republic of Burundi signed the articles of accession to the East African Community with - as the hon. Zziwa has said - great pomp in Kampala, this matter has not been concluded. It is something that we see in the directive of

the Summit in Kampala on the 11th of April, 2002 regarding joint negotiations, which up to now has never been implemented, and I am persuaded to agree with the hon. Byamukama that there is something fundamentally wrong with the structure of the Treaty as it does not seem to have effective mechanisms for enforcement or implementation of the decisions of the Community.

As an Assembly, we have a responsibility to put in place mechanisms for effective implementation and enforcement of the decisions of the Community by any organ - (*Applause*). Consequently, I am of the very considered view that this should be taken extremely urgently by this Assembly. We must move with speed to put in place this mechanism. Mr Speaker, if we do not do this - you see Kenya is having a general election this year, and for that reason, for eight or so months we shall not be able to have decisions of the Community implemented. In the year 2010, Tanzania will be having a general election, and, therefore, it will have the benefit of six months to do nothing about the decisions and operations of the Community. The following year, 2011, Uganda will be going into another general election, and it will also have the right to do the same for eight months or whatever period. Then, Kenya follows in the year 2012 again and then Rwanda...Mr. Speaker, what we may be proposing is that the Community's operations should be halted altogether, and that is not what the people of East Africa want! We want operations of the Community to continue, whether or not there are elections in the Partner States.

I beg to support this Motion - *(Applause)*.

Dr. F. Lwanyantika Masha (Tanzania): Mr. Speaker, I will be very brief. I stand to support the Motion, but I think in light of what we have been informed by the Secretary-General, the motion should include a clause or something should be in the records of this House to take note of the information we have received with regard to Tanzania, which has completed the process of ratification, and urge those who have already started the process to continue with it expeditiously. I think it would be unfair to Tanzania to be lumped together with all the others who have not even started the process - *(Laughter)*

With those few remarks, Mr Speaker, I support the Motion – *(Laughter)*.

Mr. Bernard Mulengani (Uganda): I thank you very much, Mr. Speaker, and I just want to initially be theoretical and then move to the Motion. But from the outset, I want to say that I support the Motion.

Mr. Speaker, I want to put it on record that a Treaty should be understood as an agreement under International Law entered into by actors, namely, states and international organizations, where applicable. It may also be known as an international agreement, a protocol, a covenant, a convention and so on.

Mr. Speaker, treaties may be compared to contracts: Both are means of willing parties assuming obligations among themselves and a party to either that fails to live up to their obligations can be held

liable under International Law for that breach.

Mr. Speaker, as the learned friends will tell you, the central principle of Treaty Law is expressed in the maxim, *pacta sunt servanda*, meaning that facts must be respected. Treaties may be seen as self-executing in that merely becoming a party puts the treaty and all of its obligations in action. Other treaties may be none self-executing and, therefore, require implementing legislations, a change in the domestic law of a State, which will enable it to fulfil the treaty obligations. The division between the two is often not clear, and this is often politicized in disagreements within a government. Therefore, a treaty that is not self-executing cannot be acted upon without the proper changes in the domestic laws.

Mr Speaker, if a treaty requires implementing legislation, a state may be in default of its obligations by the failure of its legislature to pass the necessary domestic laws. Therefore, as per the Motion, ratification is very important; ratification being an act of giving official sanction to a formal document such as a treaty. Ratification includes the adoption of an international treaty by the legislature or other methods that may be workable for particular countries. As we have heard, Kenya uses the Cabinet, Uganda has to go to the legislature to vote, and federation governments usually require the support of both the federal government and a certain percentage by the subsidiaries.

Mr. Speaker, coming to the motion, the effect of delayed ratification is enormous to the Community. One of them, particularly for Rwanda and Burundi,

would be the lack of involvement of the Partner States in the process of integration. I will give an example.

The hon. Akhaabi has referred to the Joint Negotiations Bill that was sanctioned by the Summit far back in 2002, the Bill to date is nowhere. We are now five countries in the Community, and the Bill is yet to come to the Floor. I do not know it is being handled to cater for the other two countries, but indeed we shall need the involvement of the two new Partner States, because joint negotiations is not as simple as looking at the rules of procedure. I am sorry to say this.

The reason we deferred to open our Rules of Procedure in totality was because we wanted Burundi and Rwanda to be present when we do that. Today, we are talking about the Joint Negotiations Bill, which is yet to come to the Floor of this House, without the involvement of Rwanda and Burundi. We are demonstrating some inconsistency in the way we are deliberating on some of these issues, but it is because of the delayed ratification that all these issues are coming up. We are looking at opening up the Rules of Procedure of the House, but in good practice, if you keep opening up a document whenever it is required - several times within a term - it does not augur well – (*Interjection*). I would propose...Mr. Speaker please protect me from the hon. Ogalo – (*Laughter*).

The Speaker: You are protected; proceed!

Mr Mulengani: Thank you, sir.

Mr Speaker, the culture of opening up documents several times is really not

good, so I would support the Committee's resolution to demand for an urgent ratification of the Treaty by the Partner States.

Mr. Speaker, another example that I would like to give as an effect of the delayed ratification of the Treaty is that there are about seven Bills that we have passed in this House, and I do not know whether the delayed ratification of the Treaty is one of the reasons why they have not been assented to, because people are giving excuses as they are politicking. But I am also aware that the only country that has not even looked at the Treaty with a view to ratifying it, Kenya, according to the honourable Secretary General, the Ministers are still in their offices officially – (*Interjection*). They are in their offices officially, and if the East African Community issues are taken as priority in this country, then I see no reason whatsoever for Kenya not to ratify the Treaty.

Similarly for Uganda, I want to say that Uganda should have done this much earlier. The reason I say this is because we have a Minister responsible for the Community affairs, who might not have been directly involved in the organization of the CHOGM (The Commonwealth Heads of Government Meeting) who should have been able to ensure that we move the Community's activities ahead.

Mr Speaker, I want to say that the delayed achievement of the Strategic Plan 2006-2010 should not be blamed on anybody when we get into fire-fighting so as to implement the plans. I hope the Secretary General then will not say that the Second East African Legislative Assembly did not perform its duties

because of CHOGM, or the delayed ratification of Treaty – *(Interruption)*. What I am trying to emphasise here is that we should give weight to the Community activities if we really want to attain what we are saying that we require for the East African Community to move ahead – *(Applause)*.

Mr. Speaker, sir, lastly, I want to seek a clarification from the Committee. In the last paragraph on page two, they say:

“...do now resolve to urge all the Partner States, through the Council of Ministers, to speed up the process of ratification of the amendments and to deposit their respective instruments of ratification with the Secretary General.”

What I am asking specifically here is: what is the speed? These are relative terms. We as a legislative assembly and issues of the Community are all time bound. What does the Committee think about this speed? Is it by December, 2007 or by January or February, 2008? Let us be practical so that we set the time limits.

As you will realize from what most of my colleagues have said on the Floor today, there is no reason why seven months down the road the amendments to the Treaty are not yet ratified when the Partner States took time to prepare, and they made very serious arrangements, including a dinner that we were not invited for in Kampala – *(Laughter)* - and they signed the Accession Treaty! I think we need to be serious. Let us stop saying things here and then walk out, and people say “they have spoken and gone; politicians are

like that”! We need serious commitment from the Council. Let them come here and explain to the House the reasons that have led to the delayed ratification of amendments to the Treaty.

Mr. Speaker, I want to support the Motion and to request the Committee to put a time limit for presenting the ratification instruments to the Secretary General. I thank you, Mr Speaker - *(Applause)*.

Chairperson, Committee on Legal, Rules and Privileges (Mr. Abdullah Mwinyi (Tanzania): Mr. Speaker, I thank you for availing me this opportunity to respond to a few of the comments that have been raised by my colleagues.

After further clarifying that Tanzania has already ratified the changes, and in view of the hon. Dr. Masha’s suggestion, I would amend paragraph 4 on page two to read as follows:

“Now this Assembly, noting that up to now all the Partner States have neither ratified the amendments nor deposited the instruments of ratification with the Secretary General, except the United Republic of Tanzania...”(Interjection) - That is the only country that has ratified – (Interruption)-

The Speaker: Hon. Mwinyi, I think it is not just about ratification; the issue is about ratification and depositing of instruments of ratification with the Secretary General. I think maybe the Secretary General can clarify. There is a difference between ratification and depositing. The changes take place after

depositing the instruments. *Bwana Secretary General*, can you clarify please.

The Secretary General (Amb. Mwapachu): Hon. Speaker, sir, I think you are right in the way in which you are moving on this matter. It is true that the United Republic of Tanzania has already ratified the amendments to the Treaty, but the ratification will only take effect upon the ratification document being deposited with the Secretary General. My understanding is that it has already been forwarded to the Secretary-General. I am yet to see it, so until I see it, it has not been ratified – *(Laughter)*.

The Speaker: So, I think the way it stands, all of them have not done anything.

Mr. Mwinyi: After your intervention, hon. Speaker, we shall keep the Motion as it is.

The Counsel to the Community (Mr. Wilbert Kaahwa): Mr. Speaker, sir, I stand on a point of clarification regarding the Motion. As the Chairperson of the Committee of the Legal, Rules and Privileges proceeds, I take this opportunity, by way of a friendly proposal with regard to a paragraph he has not yet come to in the Motion, which reads:

“Do now resolve to urge all the Partner States through the Council of Ministers to speed up the process of ratification of the amendments and deposit their respective instruments of ratification with the Secretary-General.”

Mr Speaker, that is the gist of the Motion. In terms of Article 150(6) of the Treaty, you do not need the Council of Ministers to take any action in this regard because the obligation subsequent to the adoption of the amendments rests squarely and within the four corners of the Treaty, on the Partner States. The Council has no role whatsoever. So my clarification is with regard to there being no need to resolve through the Council of Ministers. I thank you sir.

Mr. Mwinyi: Mr. Speaker, in view of the Counsel to the Community’s intervention, I would now seek to amend our resolution on the last paragraph of page two to read as follows:

“Do now resolve to urge all Partner States to speed up the process of ratification of the amendments and to deposit their respective instruments of ratification with the Secretary-General.”

Another point I would like to comment on is in respect to the hon. Kabourou’s contribution. The hon. Kabourou queried the legality of the Republics of Rwanda and Burundi to participate in the meetings of the Summit, the Council of Ministers and various other organs of the Community with the exception of the East African Legislative Assembly. It is a valid point but what is stopping the Republics of Rwanda and Burundi from participating fully is a weakness in the Treaty. I would like to turn to Article 48(1) of the Treaty, which stipulates that Members of the Assembly shall be 27 elected Members and five ex-officio Members. That gives actual numbers. If Rwanda and Burundi come on board,

there will be 45 Members, and –
(*Interjection*)

Mr Kabourou: Hon. Speaker, I agree with the hon. Mwinyi on that particular point, only that my understanding is that amendments to those Articles of the Treaty have also been proposed and forwarded to whoever is responsible, and yet, because of the same lacklustre performance, nothing has been done. This is what I am saying. It should have been done, and, therefore, we would not have this problem of Article 48(1).

Mr. Mwinyi: Mr. Speaker, with no further clarifications to make – (*Laughter*) - I would urge all the honourable Members to support the Motion.

(*Question put and agreed to*)
Resolution Adopted

MOTION

For a Resolution of the East African Legislative Assembly for the Appointment of Judges of East African Court of Justice

Mr Daniel Wandera Ogalo (Uganda):
Mr. Speaker, sir, I beg to move_

THAT this Assembly, do resolve to urge the Summit to appoint the President and other judges of the East African Court of Justice and to determine for them more comprehensive terms and conditions of service.

Mr Karani: Seconded

Mr Ogalo: Mr. Speaker,

WHEREAS Article 9 (1) of the Treaty for the Establishment of the East African Community (hereinafter called the Treaty) established the East African Court of Justice (hereinafter called the Court) as an organ of the Community, and Article 9 (4) requires the Court to perform the functions conferred upon it by the Treaty;

WHEREAS Article 23 of the Treaty vests the Court with the power to ensure adherence to law in the interpretation and application of the Treaty as well as compliance with the Treaty, and Article 27 further clothes the Court with jurisdiction to interpret the Treaty;

AND WHEREAS under Article 24 (1) and (4) the President, Vice President and Judges of the Court are appointed by the Summit, which power cannot be delegated by reason of Article 11(9) of the Treaty;

NOW, This Assembly,

AWARE that His Lordship Justice M. Ole Keiwua and His Lordship Justice Augustino Ramadhan have ceased being Judges of the East African Court of Justice, their terms of office having come to an end in November 2007 leaving only four Judges to man the Court and therefore making it impossible for the Court to realise the

quorum for a full bench of five Judges;

FURTHER AWARE that the Court has no President at the moment and it is unknown when the Summit will appoint the President of the Court;

NOTING that under Article 24(6) of the Treaty the President shall direct the work of the Court, represent it, regulate disposition of matters brought before the Court and preside over its sessions;

CONCERNED that the present state of affairs deprives East Africans, employees of the Community, natural persons, the Council of Ministers and the Summit access to the full bench of the Court;

FURTHER CONCERNED that the present state of affairs effectively renders an organ of the Community inoperative;

AWARE that on the 18th day of June, 2007 in Kampala, the Summit approved an honorarium for the Judges of the Court;

Do now resolve as follows;

1. That the Summit do immediately appoint a President and such number of judges that will ensure a full bench of the Court;
2. That the Summit do reconsider their decision with a view to determining for the judges a more comprehensive

terms and conditions of service commensurate with the judges of a court of similar jurisdiction; and,

3. That this resolution be transmitted to the Chairman of the Council of Ministers, and that the Secretary General places the same on the agenda of the next meeting of the Council of Ministers.

Mr. Speaker, sir, this Motion seeks, foremost, to emphasise the necessity to have the institutions of the Community working. These institutions were created by the Treaty, and essentially they seem to follow something similar to what we have: an Executive, a Judiciary and a Parliament. Now, the essence of having these institutions is to have checks and balances so that no one institution can usurp the powers or the duties of another and cause a situation where there is a paralysis in the Community – *(Applause)*.

Accordingly, a situation where we have one organ inoperative creates a Community which is not a Community because one organ is more or less not working.

Mr. Speaker, sir, a court is a place we all go to for dispute resolution. We all go to the court because we cannot decide to fight it out and have those who are most strong carry the day. So, we submit ourselves to the jurisdiction of the court, a decision is given and thereby, we have things running smoothly.

That is why the Treaty provides for the following categories of people to access the Court: Employees of the

Community. It was foreseen that there is a possibility that the employees of the Community may have grievances against the Community. So, the Treaty provided for those disputes to be resolved. The Treaty then provided for natural persons - any East African - to walk into the Court and file a matter where he is aggrieved. The situation now as it stands is that an East African aggrieved would go to Arusha and he would be told we are still waiting for the reconstituted Court; please go back with your grievances. That is a recipe for anarchy.

The others are the Council of Ministers. The Treaty itself allows the Council of Ministers to go to the East African Court of Justice for redress. The Treaty itself allows the Summit to go to the East African Court of Justice for redress. It is therefore clear that the Treaty foresaw that there is only one institution which will address disputes, and that is the East African Court of Justice. So, when we have a situation where the Court is not fully constituted, then we have no organ to settle disputes which arise in the Community. And that, Mr Speaker, is dangerous for us.

Under the Treaty, the President of the Court is the one who is in charge of the administration of that Court; he represents the Court; he is the one who appoints the quorum of the Court. So if he is not there, nobody is speaking for the Court, a quorum cannot be constituted and there is no administration going on. It is therefore important, Mr Speaker, sir, at this critical time when we are moving into a Common Market, when there is even more likelihood of disputes arising, that we have mechanisms in place to resolve any disputes which are present and

which may be arising. Right now, even the Customs Union is working and disputes can arise any time. Where should the East Africans go if there is a dispute about this Customs Union when we do not have a fully functional Court? It is therefore imperative that we have an organ of the Community which delivers justice to the people of East Africa.

It is in respect of this, Mr. Speaker, that I propose this Motion to urge the Summit to appoint the President and other judges of the East African Court of Justice to enable the organ to be operational.

Mr. Speaker, sir, it is a well known fact that the doctrine of separation of powers is essential for good governance in any institution, any place or country, and we need that to happen in our Community.

Mr. Speaker, sir, as we talk now of a federation -we have even said let us hurry it up- we must put in place institutions that will support that federation. We must start building those institutions, and it is necessary that the Court is working to put in place mechanisms to support the federation. It will be difficult for the East Africans to come up and wholly embrace a federation and say we want to be one country although we do not have a Court, when they have been used to court systems in their countries. They will need to know a place where they can go. So, as we say we want to federate, we must put in place institutions which will support the federation.

Mr. Speaker, sir, on the question of honoraria, which was granted to the judges, this reminds me of the Assembly itself. When the Assembly first came

into existence in 2001, it was told that, you know, things are still being worked out, meanwhile have this honorarium here and be using that as terms and conditions of service are worked out. The Assembly had a big fight in order to come out of that honorarium then of US\$1,000 per month into having terms and conditions of service for the Members of the Assembly.

What I regret is that the Assembly seems not to have bothered about the Court, and that nobody has spoken for the Court, and that it continued without any terms and conditions of service from the year 2001. It is six years; anybody working would really require knowing what his or her terms of service are.

Honorarium...yes we appreciate it, but it borders also on the independence of the judiciary. It borders on a judge who is being told that at the end of five years, you will be given honorarium. Now, the way the judge has to work through all those five years, with due respect, may be influenced by the fact that the pay is at the real end and yet the decisions have to be made now – (*Laughter*). So, it is not fair to the judges.

It is just right that the judges do their work without fear or favour; that they work on the evidence before them and that their terms are well defined and they know them. We have this in our Partner States; we know the security of tenure of the judges of the Partner States. You do not just wake up tomorrow and you say you are sending away a judge; you do not wake up tomorrow and tell him I will pay you after five or ten years. So, as we build the institutions of the Community, it is necessary that we put in place

mechanisms and systems which will support our Community.

Mr. Speaker, sir, I have listened with a lot of interest to your contributions to the last Motion, and, indeed, it appears that we are faced with a situation where something is not moving. This Assembly must now assume a role higher than that of any other Parliament or Assembly. It must assume a role that will make the Community to move. Imagine; we now have to ask the Summit to do what it is supposed to do under the Treaty – (*Shame, shame!*) Really, to remind the Summit to appoint a judge! It does not augur well for the Community. So, the Assembly will have to rise above what other Parliaments normally do, take on the situation and continue trying to get all the other organs on board so that the objectives of the Community as set out in the Treaty by the people of East Africa are realized.

Mr. Speaker, sir, I beg to move – (*Applause*).

Mr Clarkson Otieno Karan (Kenya):

Mr. Speaker, I beg to second the Motion. It is well known why the East African Community was established; it was established for the sole purpose of serving East Africans, and it was seen that for the Community to be able to function and discharge its duties, it would need three organs. Anyone denying any of the organs its mandate to function is, in essence, an enemy of the East Africans.

Mr. Speaker, to have the judicial system of the East African Community not functioning...I really do not understand what the people concerned are thinking. This is because you are saying that an

East African has no opportunity to go and seek redress.

Mr. Speaker, the hon. Ogalo has comprehensively narrated the functions of all these organs, but we get refuge in the fact that one country is going through elections...when we were discussing the previous motion, we noted that Kenya is going through an election process, and we have seen some things that have been suspended because Kenya is in an election mood. Mr Speaker, do we normally create a vacuum even in our Partner States because we are going for elections? President Kibaki is still the President of the Republic of Kenya and he has Ministers – (*Interjection*). The other day, we had to swear in a Minister of the Republic of Kenya to take his position in this Assembly and all the Cabinet Ministers are still functioning in that country. If we are not able to create a vacuum in our Partner States, why do we see it fit to create a vacuum in the East African Community? (*Applause*)

Mr. Speaker, I know even the Secretary-General, who is a Member of this House, took an oath when he became the Secretary-General of the Community. In doing so, he swore to protect the functions of the Secretariat. He is the Secretary to the Summit – if I am not mistaken; he is also the Secretary the Council of Ministers – if I am not mistaken – (*Laughter*). Mr Speaker, if the Secretary-General is not careful, he is going to carry a load which is not his. Unless he rises up to take his full responsibility of ensuring that he discharges his duties and reports back to this House that he has done whatever is rightfully his duty before the Summit

and that it is the Summit that is not taking action...

Mr. Speaker, in the last meeting of this Assembly, we passed a Bill concerning transport in Lake Victoria. It is a known fact that, that Bill cannot be operationalised unless the Lake Victoria Basin Commission Bill is put in place. That is within the knowledge of the Secretariat. In essence, we are saying the Bill we passed about transport in Lake Victoria is just like a piece of paper; it cannot be operationalised. And, Mr Speaker, we thought that we would even get that Bill to be discussed, but when you see a letter that Kenya is going for elections and things are not happening, unless we become serious in the duty we have been given to discharge by East Africans, then we might as well just say that we do not need this Community.

Mr. Speaker, the East African Community has three organs, as it has been stated. The other time it was the legislative arm that was not functioning, for various reasons, today there is no President at the East African Court of Justice, and then we want the House Business Committee to visit the European Parliament and see how it operates. We also want to visit other similar organizations to see how they operate. Are we going for tours and talks or are we going to learn from those institutions, Mr Speaker? I do not know how to make this resolution more serious than it is, but a mechanism to force those people who call themselves “the Summit” and its Secretary to understand that they must discharge their duties for the people of East Africa – (*Applause and Interjection*).

The Counsel to the Community (Mr Kaahwa (Ex-officio): On a point of order, Mr. Speaker, sir, the Treaty by its provisions establishes a Summit of Heads of State with its composition. Is the hon. Member on the Floor in order to refer to the Members of the Summit as properly established as “those people who call themselves members of the Summit”?

Mr Karan: Mr. Speaker, I beg to withdraw and apologise, but it is because of the manner in which action is not being taken – (*Applause*) – because to me it is the East Africans who are important. But for the sake of giving comfort, I withdraw and apologise.

Mr. Speaker, I want to say that this Motion on the Floor needs the support of every honourable Member. In an institution that is functioning well it would not have been brought on the Floor of the House because these are things which should have been done without any problem. But since we have now created a situation where our Court cannot function, it has prompted this Motion to be brought to the Floor of the House. In essence, what we are displaying is that we have a Community that does not function, because if one organ is not functioning, it is not worth being called an East African Community. With those few remarks, Mr Speaker, I beg to second the Motion – (*Applause*).

Ms Janet Mmari (Tanzania): Honourable Speaker, before I contribute to the Motion, let me officially congratulate the two honourable Members, the hon. Juma Mwapachu and Dr Machage who were sworn in

yesterday. I did not get the time to do so yesterday – (*Interruption*).

The Speaker: I think it is your personal congratulations; not official. We have already done that.

Ms Mmari: Okay; point taken.

Hon. Speaker, sir, this is a very important Motion because it is touching on the existence of an organ; the official, effective existence of an organ. This is happening to one organ but it could happen to any other organ. We have a Swahili adage which says, “*ukiona mwenzio ananyolewa nywele, na wewe pia tia nywele zako maji au utakaponyolewa nywele, utaumia sana kama zitakuwa kavu.*”

For the benefit of the hon. Ogalo – (*Laughter*) - may be I will say the meaning in English. It simply means that when you see your colleague suffering from an issue, you better prepare because when it happens to you, it may be even more painful.

Mr. Speaker, sir, I believe Members will recall that this Assembly as one of the organs could not come into existence, and we had to be delayed for over six months. This shows how we are going through the same things. It is simply means that the way the Treaty has been put in place is not sufficient. Something has to be done and a number of changes have to be made, otherwise we will find ourselves in the same situation. Can you actually close your eyes and try to imagine the Council not working for six months? Or, probably, worse still, the Secretariat not working for six months? I know we may think it is a far-fetched thinking, but it could also happen. If it

happens, I can assure you that this Community will not be there.

Hon. Speaker, while I support the Motion, I think there is something that is missing when you read it. I remember that in June we were told that the Summit was going to put in place an appellate mechanism for the Court. I understand that it has been ratified effective 1st July, 2007. But up to now, no judges have been appointed to the Court of Appeal, and it is not featuring in this Motion.

Hon. Speaker, sir, I am also looking at some of the other resolutions that we have been asked to adopt, for instance, the resolution for the Summit to reconsider their decision with a view to determining for the judges more comprehensive terms and conditions of service. I believe that is a noble cause, but may be we should be thinking of putting in place a mechanism that will keep on looking at terms and conditions of service for all the organs and institutions of the Community, rather than tackling this in a piecemeal approach – *(Applause)*. We should probably be thinking of coming up with a Commission or something of that nature.

Hon. Speaker, having said that, I would like to change the section of the resolution which starts “...Do now resolve as follows...” such that after the existing no (1) which reads:

“That the Summit do immediately appoint a President and such number of judges”, to come up with a new number (2) which states:

“That the Summit do immediately appoint judges for the East African Court of Appeal”

That way, we will know that the appellate mechanism can work. After that we would then change number (3) so that we come up with the commission and then number (4). I thank you, honourable Speaker.

Ms Sylvia Kate Kamba (Tanzania):

Mr. Speaker, sir, I am also standing here in support of the Motion. I do not have much to say, but I need clarification whether this is an issue to be discussed or it is an administrative issue. I am saying this because I know, looking at how the judges are appointed, their term of office is known, and I think it is up to the Secretary-General's office and specifically the Attorney-General of the Community, who is supposed to note and advise – *(Interjection)*. That is why I wanted clarification.

The Counsel to the Community (Mr Kaahwa):

On a point of information, Mr. Speaker, sir, may I inform my honourable friend on the Floor that to the extent that the Treaty does not create the office of the Attorney-General of the Community, we only have a Counsel to the Community.

The Speaker: I think what she was just trying to say is that you advice just like the Attorney-General does.

Ms. Kamba: Sometimes when he addresses himself, that is his title – *(Laughter)* – but I thank you for the clarification. All the same, for me I thought this was an administrative matter rather than an issue to be brought as a Motion because it is should be

understood that once you appoint judges, their terms of office is known. Therefore, the Counsel to the Community, working hand in hand with the Secretary-General and the Registrar of the Court, should advise the Council to take note of such an issue so that we do not have a vacuum. I call it a vacuum in the sense that currently we do not have a court in the East African Community.

As we are all aware, the Court promotes compliance with the Treaty, and, therefore, the implementation of programmes that have to be interpreted into law will not be having that support now. We all know that courts can assist in the full implementation of regional integration; issues which address poverty eradication in our region – *(Interruption)*

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Dr. Mwapachu: Hon. Speaker, sir, allow me to respond to a few items that have been raised by the honourable Members – *(Interruption)* -

The speaker: Hon. Secretary General, I thought you were rising on a point of information?

Dr. Mwapachu: Well, there is a point of information, but there are various other issues – *(Interruption)* -

The Speaker: I think you will have time to do that later. Please carry on, hon. Kamba.

Ms Kamba: Mr. Speaker, I was just saying that if, for example, we have disagreements with the Council, where do we go now that we do not have a Court in place? *(Interjection)* So I would urge the offices of the Secretary-

General, the Registrar and in particular, the Counsel to the Community to try to avoid such administrative issues. That is my understanding. I believe that if the Summit was well advised and informed in advance, such vacuums would not occur – *(Applause)*. We should stay in our offices and address issues pertaining to the Community. These are serious issues. We are now addressing issues concerning a very serious body in the East African Community; the Court. This is a Court that has not been taken seriously, even in terms of remuneration. Things are done in an ad hoc manner.

Mr. Speaker, I want to add my voice in support of this Motion and urge the office of the Secretary-General to put in place a mechanism that will address such issues so that the Summit is seriously advised well in advance. Everybody knew that Justice Ramadhani would be retiring before we went to Kampala. That is why we were actually shown how much money they were being given. It was addressed publicly, so they knew. Now, I do not understand why up to date, nothing has happened.

Mr. Speaker, sir, after saying all this, let me also add my voice in congratulating the Secretary-General who was sworn in yesterday, together with Minister Dr. Machage who is not here with us today.

I beg to support – *(Applause)*.

The Secretary-General (Dr. Juma Mwapachu): Thank you, hon. Speaker, in support of the Motion before the House, allow me to make a few remarks in response to some of the comments and well considered proposals that have been submitted by the honourable Members. I think the first thing that I

need to say before this August House is that everything that has been said about the state of the legal system within the East African Community is definitely not a happy one because we are literally in a state of lax ever since the amendments to the Treaty were undertaken whereby two chambers were now supposed to be established, namely a court of first instance and an appellate court. These two chambers have not as yet been put into place, but I want to assure this august House that enough has been done on the part of the Secretariat in terms of making an appeal to the responsible institutions and organs with a view to implementing the directive that the Heads of State have given with regard to the restructuring of the East African Court of Justice.

Let me also mention that notwithstanding the absence of the new structure of the East African Court of Justice, it does not mean that we have a situation where there is no Court to function. We do have a Court that is functioning; in fact, the last proceedings of the Court only took place barely two weeks ago in Arusha.

Hon. Speaker, let also state that, of course one could give a very strict interpretation of the current state of lax in the sense that following the decision of the Summit to reconstitute the Court into two chambers, one could be begging that decision for only the court of first instance to continue, and if possible, that one could challenge this particular situation. But be that as it may, there is a Court that continues to operate as a court of first instance until such a time that the appellate court is established, and maybe the judges themselves reassigned various

responsibilities either within the court of first instance or the appellate court.

I also wish to clarify, hon. Speaker, that pursuant to Article 26(4) of the Treaty, the Vice-President of the Court is allowed to perform all the functions of the office of the President, and, therefore, it does not necessarily follow that in the absence of the President of the Court, there is no leader to administer the management and proceedings of this Court. So, once the President has retired, the Vice-President is still in place.

Perhaps I could also use this opportunity to inform this august House that the Republic of Kenya has already appointed another judge to take the place of the retiring Justice Moijo ole Keiwua – (*Applause*). (*Interjection*)- Well, I am being assisted here by the Counsel to the Community that Kenya has merely recommended a judge for appointment, because the Summit is the one that finally determines. The Partner States just submit names for the approval of the Summit. But, of course, it actually means that prior to the Summit meeting, the candidate from Kenya would not be allowed to take the oath of Judge of the East African Court of Justice.

Mr. Speaker, there has been a great deal of passionate appeal in this House about the tenure of the judges in terms of permanency as opposed to the ad hoc terms of the present Court, and even the reconstituted Court, as well as the terms and conditions of service of the judges. I want to assure this august House that this is a matter that has been very much at the heart of our work within the East African Community; just as the issues concerning the Speaker of this House is

very much at the heart of the work of the Secretariat – (*Applause*).

Can you please protect me, hon. Speaker, because I think this is now being extended to the honourable Members? But I am quite sure that at the right moment, this is a matter that we would have to address much more broadly, but I want also to report that towards the end of the term of the Right hon. Justice ole Keiwua, there was a memorandum that was submitted by their Lordships to the Chairperson of the Council of Ministers, which I have been given advantage to have a copy thereof, where there are concrete proposals that are being submitted with respect to the permanency of the Court as well as to the fixed terms and conditions of service, very much pursuant to what is provided under Article 144 of the Treaty for the Establishment of the East African Community.

I may also report that on the agenda of the Council of Ministers, which has now been postponed, this question about the permanency of the Court as well as the issue of fixed terms and conditions of service as opposed to honorarium or *ex-gratia* – (*Interjection*) -

Mr Akhaabi: Mr. Speaker, may I have a clarification on what Article 144 provides?

Dr. Mwapachu: Hon. Speaker, I never made reference to Article 144. I made reference to Article 140(4), which reads as follows:

“Until such time as the Council determines that the Court is fully operational, a judge appointed under Article 24 of this Treaty

shall serve on an ad hoc basis. Notwithstanding the provisions of paragraph 5 of Article 25 of this Treaty, the salary and other terms and conditions of service of a judge serving on an ad hoc basis shall be determined by the Summit on the recommendations of the Council.”

Hon. Speaker, that is the Article that I was making reference to, and that is the Article for which fundamental change is being sought to be made so as to come up with a shift from the ad hoc system, both in terms of the tenure of the judges or the manner in which the judges operate, as well as in their terms and conditions of service, away from honoraria or *ex-gratia* payments to the usual salaries as well as the pensionable terms of service.

Hon. Speaker, sir, before the hon. Member intervened, I was saying that the Secretariat has already put this matter in the agenda of the Council, and, therefore, when the Council sits after this electoral process in Kenya, this will be one matter that will be before the Council.

Hon. Speaker, I beg to support the Motion – (*Applause*).

The Speaker: I will now call on the hon. Ogalo to reply.

Mr. Daniel Wandera Ogalo (Uganda): Thank you, Mr. Speaker, Sir, for giving me this opportunity to make a short reply.

I want to thank the Members who have contributed to and supported the Motion.

First and foremost, I want to thank hon. Mmari for the amendment she proposed that the Summit do appoint judges of the court of appeal. I accept that amendment to the resolution, so that we do not only deal with the East African Court of Justice but also deal with the court of appeal.

Mr. Speaker, sir, some matters have been raised by the honourable Secretary-General. The first issue that I want to comment on is that even two weeks ago, the Court was deliberating. Two weeks ago would put it to some time in November. As the Secretary-General and honourable Members know, the term of office of the judges in question ended on the 30th of November, 2007. Now, what they were doing two weeks ago was within their term. What we are addressing now is after their term has ended. So, if they were sitting before 30th of November, they were perfectly right to do so. After the 30th of November, we have a problem.

Mr. Speaker, sir, the second point is on the question of the number of judges. When these two go, we are left with four judges. Now, that means that a full bench, which is defined as five judges, cannot be convened. There is no quorum for a full bench of five judges. We are aware that all the cases that have come before the Court before have been handled by a full quorum of five judges. So, right now, it is not possible to have a quorum of five judges to be able to sit as a full bench.

Under the rules, I would concede that the President could put in place a bench of three judges, but that would have to be the President, which brings me to the point that was raised. It is true, as the

Secretary-General has said that Article 26(4) provides for a Vice-President who can act. Unfortunately, the way the Treaty was written has got some problems. Even under the Treaty itself, if a Judge President is unable to take part in a case, he does not just go away and the Vice-President takes over. He, under Article 26(7), is supposed to report to the Summit and the Summit is supposed to appoint a President, and the Vice-President is there. So, the interpretation which can be placed on this can go either way. That is the danger of the whole thing.

Some will argue that if the President being present in Court disqualifies himself from a case and the Treaty requires that the Summit have to appoint a successor for him, how can the Vice-President, when there is no appointment of the substantive President, be able to act? There is a conflict there; there is definitely a conflict there, and it is necessary that we avoid them by simply doing what the hon. Kate Kamba said, that these are matters that should be put to the Summit early enough so that we do not have to do administrative work. If it was so simple, we would not even be here. But now, Justice Ole Keiwua has gone, he did not hand over to anybody because there was no President to hand over to.

Otherwise, I am thankful for the comments made by the Secretary-General that right now some things have been done, like the terms and conditions of service, and I only request that it is speeded up.

Mr. Speaker, sir, with those few remarks, I beg to move – (*Applause*).

The Counsel to the Community (Hon. Wilbert Kaahwa): Mr. Speaker, sir, I know you are about to put the question, but with your permission, may I, on the basis of Rule 34 of our rules of procedure, as the House considers this Motion, propose and amendment. This is on the basis of the fact that on the strength of my convictions and from the bottom of my heart, I support the Motion.

Mr. Speaker, sir, I think it is very important for the House when it makes these resolutions to have the wordings succinctly put for the avoidance of doubt and any misconceptions or misunderstandings by those to whom the resolutions are addressed. I am particularly referring to the third paragraph on page two of the Motion, before you come to the resolutions.

This paragraph expresses the House's concern that the present state of affairs deprives East Africans, employees of the Community, natural persons, the Council of Ministers and the Summit, access to the full bench of the Court.

The short point I am making is that the category of those persons who are deprived has not been completed, if you look at the jurisdiction of the Court as provided in Chapter 8 of the Treaty. There are also legal persons.

So, I am proposing that we amend the Motion by adding "legal persons" before "natural persons", because "legal persons", also under the provisions of Article 30, can access the Court of Justice. And given the void now, they are denied that access. I thank you, Mr Speaker.

Mr. Ogalo: It is accepted, Mr. Speaker, sir.

(Question put and agreed to)

Resolution Adopted.

ADJOURNMENT

The Speaker: Hon. Members, we have come to the end of business today. As you are aware, we have a courtesy call on the Chief Minister at 4.30 p.m. I request that once we finish we go to our buses and leave straight away.

I adjourned the House until tomorrow at 2.30 p.m.

(The House rose at 4.20 p.m. and adjourned until Thursday, 6 December 2007 at 2.30 p.m.)