



EAST AFRICAN COMMUNITY

EAST AFRICAN LEGISLATIVE ASSEMBLY (EALA)

The Official Report of the Proceedings of the East African Legislative Assembly

8TH SITTING - FOURTH ASSEMBLY: THIRD MEETING – FIRST SESSION

Wednesday, 7th March 2018

The East African Legislative Assembly met at 9:30 a.m. in the Chamber, EALA

Wing, EAC Headquarters, Arusha, Tanzania

PRAYER

(The Speaker, Mr. Martin K. Ngoga, in the Chair)

(The Assembly was called to order)

The Speaker: I will make my communication at the end of the sitting. Therefore, we will relocate that item.

The Speaker: Hon. Members, I received communication from one of the Members. I looked at the circumstances of the communication and invoked my powers under Rule 11(5). This sitting is called under Rule 11(5) where the Speaker can call a sitting out of the schedule when circumstances so require. I wanted to contextualise the reason we are seated here at this particular time.

MOTION

UNDER RULE (30D) TO SUSPEND RULE 12(B)

Mr Chris Opoka-Okumu (Uganda): Mr. Speaker, Sir, I rise under Rule 30(d) to move a Motion without notice.

Rt. hon. Speaker, having looked around, the required number of Members from the Republic of Burundi is lacking.

I beg to move:-

THAT, this House suspends Rule 12 to enable the House discharge its noble duty entrusted to it by the Treaty.

I beg to move.

(Hon. Susan Nakawuki, hon. Francoise Kalinda, hon. Gai Rout Kim, hon. Josephine Lemoyan, hon. Rwigema, hon. Rose Akol, hon. Aburi Mpuri seconded)

The Speaker: Hon. Chris, could you justify?

Mr Habib Mohammed Mnyaa (Tanzania):
On a point of procedure.

The Speaker: We can only have one Motion at a time. Listen to me. Could you resume your seat, hon. Mnyaa? We cannot have two Members standing at the same time.

Mr Mnyaa: Thank you but this is a point of procedure.

The Speaker: I will give you time to speak.

Mr Opoka-Okumu: Rt hon Speaker, it is very important that this House considers the Motion, which is on the Order Paper. The very decision and existence of this House are under threat. The very duty of honourable Members is under threat. The very important decisions taken by this House, which should not be reviewed except by leave of this House, are under threat. Unless the Motion on the Order Paper, being brought by hon Mbidde is discussed by this House, this very House might be challenged on its very existence.

Rt hon Speaker, the rule requiring quorum has been abused over and over again in this House. While it is a principle that the minority need to be heard, when the minority decide to absent themselves to render nugatory any decision made by the majority

that challenges the very foundation of the existence of this House.

Therefore, I entreat hon. Members to support this Motion without notice to suspend the rule so that a decision that has been made by this House stands.

I beg to move.

The Speaker: Hon. Chris, under what rule did you move, if you can remind me.

Mr Opoka-Okumu: Under Rule 30(d)

The Speaker: Honourable Members, the Motion before us is that Rule 12(b) be suspended. Debate is open.

(Question proposed)

Ms Susan Nakawuki Nsambu (Uganda):
Thank you Mr. Speaker. I rise to support the Motion by hon. Chris Opoka. This is an issue of concern to all of us. Members have decided to misuse the rules of this House for their personal unknown agenda. All of us have been given facilitation to attend to all the activities of the Assembly. All of us are mandated to be here at any time we are called upon because that is what we swore to do, to serve the people of East Africa. We are all aware that the Assembly is under attack. Yesterday, the court gave a directive and guided us on how to proceed. My colleague, hon. Mbidde, has come up with a Motion that is very critical when it comes to the operations of this Assembly.

Some Members have deliberately decided to absent themselves. They are somewhere enjoying the Community money but absent when it comes to the duties of the Assembly. I want to thank hon. Christopher Nduwayo and hon. Sophie Nsavyimana from Burundi

for understanding the noble duty for which they were elected. *(Applause)*

This morning, I found hon. Jean Marie trying to convince hon. Sophie not to attend the Assembly. He is around the corridors but has deliberately decided not to be here.

Mr. Speaker, as a Commissioner, I request you to enforce our rules when it comes to non-attendance. The people who come to pick money and go should refund the monies because they have not performed the duties for which they were elected. We will follow up on this particular matter. For the times that people pick money and go, they should be penalised. We will also be counting the number of times that people that people have missed sittings of the Assembly. If people continue absenting themselves, they should as well go back home so that we get people who are willing to work. I am saying this without any fear of contradiction. When we were drafting our Rules of Procedure, such a scenario was in research and that is why the rule of suspension of application of any rule of procedure was included to cater for such situations.

I beg to support that we suspend the rule on quorum so that we proceed with this noble business of the Assembly.

I beg to move.

Mr Christopher Nduwayo (Burundi): Thank you hon. Speaker. I was actually very surprised when somebody said that Burundians are not here today. I am a Burundian. Maybe you should find out what has happened to my fellow Burundians. Maybe they are sick. If they did not send any letter to explain why they are not here, as a Burundian, I do not know why they are not here.

I support the Motion to suspend Rule 12. Thank you.

The Speaker: Hon Members, I do not see anyone else rising to contribute to this.

Ms Fatuma Ibrahim Ali (Kenya): Thank you Mr. Speaker. I do not know whether we have moved to the substantive Motion.

The Speaker: Not yet.

Ms Ali: Mr. Speaker, I was a bit uncomfortable in how hon Susan was discussing and debating the issue concerning EALA Members in this House. I think we should not bring out issues of ill motive against Members. Members are mature enough either to be present or to choose not to be present.

Mr. Speaker, I think we need to respect our Members. We need to respect each other. Hon Susan suggested that some Members had ill motive for not attending the sitting. I personally think she should withdraw that statement.

Mr Mnyaa: Mr. Speaker, I am not opposing the suspension of Rule 12. However, I have served the Parliament of Tanzania for 10 years. I have also visited other parliaments. However, I have not seen the suspension of a rule happening when the quorum is not complete. We suspend a rule of procedure when there is already quorum. Therefore, the idea of suspending Rule 12 without quorum, I doubt whether it is the normal way of doing things in parliament.

Please, Mr Speaker, ascertain whether this is possible. Can we suspend the quorum rule when we have no quorum?

The Speaker: Hon. Mnyaa, the issue of quorum becomes an issue when it is raised and ascertained. It is not assumed.

Mr Abdikadir Omar Aden (Kenya): Thank you Mr. Speaker. On the onset, I stand to support the Motion. I have no objection to the Motion on the Floor. However, I have two things. I think we need to move away from depending on this emergency plug as an Assembly. All the time, we call on the suspension of Rule 12 as a standard *operandi*. It is not good for the integrity of the House. I think we need to start thinking of how we can do whatever we can. We are only lacking one Member among our colleagues from Burundi. If we had that one Member, we would not be talking about this. This will cast doubts on the integrity of this House if we continue to use this as a measure of operation. I am only supporting this Motion today because of the importance I know about the Motion we are about to discuss, which is for all of us.

I want to say that in future, for us to use this Motion again, since we used it last time and it was critical- This House would not have had the opportunity to constitute a Commission and Members of various Committees if we did not use that rule at that point in time. However, we are now three months down the Assembly. We have known our colleagues. If I knew that there would be a quorum issue, I would have probably, as an individual, grabbed the hand of one friend from the Burundi Chapter and brought them along to this House. That is, in my view, the measure we should use.

The other one is that hon. Fatuma mentioned an issue regarding my good colleague, hon. Susan. We are all colleagues. Hon. Susan is my very good friend. It will negate the spirit of bringing us together if we discuss each other as Members and when a Member is not

here to defend himself or herself. Procedurally, in other jurisdictions or parliaments, it is not allowed. Probably, in my ignorant of the rules, discussing the conduct of a Member, unless hon. Susan is ready to table substantively the evidence she says she has, I beg in the spirit of our cooperation and respect for each other as Members, that hon. Susan be kind enough to withdraw that statement against our colleague. *(Applause)*

Ms Nakawuki: Thank you very much hon Speaker. First, I would like to clarify to my colleagues that there is no ill motive. When I was coming in, I heard what I am talking about, if you were inside here and did not hear, then listen to me who heard. I heard it myself.

The Speaker: Hon. Susan, would you consider the situation because the Member in question is not in the House? Records should expunge that part of reference to that particular Member.

Ms Nakawuki: I concede Rt hon. Speaker. Could I proceed?

The Speaker: Yes.

Ms Nakawuki: Rt. hon. Speaker, I would like my colleagues to understand that the rules are explicit. Rule 84(1) is particular. Let me read it verbatim.

“Notwithstanding the provision of any rule to the contrary, any Member may, with the leave of the House move that any Rule be suspended in its application to a particular Motion before the House and if the Motion is carried the rule in question shall be suspended.”

Rt hon Speaker, we are not at discretion to say that this should not be applied because it

is not the case with other parliaments. The EALA is a different parliament. It is not a Partner State parliament. It is a Parliament with its own rules of procedure. Otherwise, the Treaty would have required us to use the rules of procedure of other parliaments. This is a different parliament. I am concerned as an East African, not only as a Member of EALA, when we have important business of the Assembly and you as the Speaker do not have a letter from any Member explaining the reasons they are not around. The rules dictate that if I am not able to attend the proceedings of parliament, I should put it in writing to the Speaker for the Speaker to grant me the leave to be away. This is in our Rules of Procedure.

Ms Wanjiku Muhia (Kenya): On a point of order, Mr. Speaker. I rise on a point of order with regard to the fact that hon. Susan said that she heard a Member saying. This is a House of records and we cannot operate on hearsay.

The Speaker: The reference is already out of record. It has been expunged.

Ms Muhia: She has withdrawn. I am now raising a point of order on her continuous attack to Members that if they are not coming to Parliament then they need to write a letter. This House is sitting probably for the next two hours. What has informed her that the Members who are not here right now will not appear? Is that in order?

The Speaker: Hon. Wanjiku, the reference to a rule that will be applied is not out of order. We have that rule that says that a Member who does not attend proceedings without leave, there is a way they are handled. Hon. Nakawuki is referring to that rule. We do not wish to see it apply against anyone. I do not think this is an attack to anyone. You can refer to a rule and the rule is there. I wish we could dispose this.

(Question that Rule 12(b) be suspended put and agreed to)

MOTION

UNDER PROVISIONS OF RULE 11(5)

SEEKING SPECIAL LEAVE OF THE HOUSE TO INTERVENE AND TO USE RECORDS OF THE HOUSE AT THE EACJ (CASE REFERENCE NO.02 OF 2018)

Mr Fred Mukasa-Mbidde (Uganda): Hon. Speaker, I beg to move a Motion:

THAT, this House resolves to grant special leave to intervene and to use records of the House at the East African Court of Justice (EACJ) in case Ref No.02 of 2018.

I beg to move.

(Hon. Fatuma Ndagiza, hon. Josephine Lemoyan, Kim Rout Gai, hon. Sophia, Pamela, Rose Akol, Dr. Ann Itto seconded)

Thank you very much Rt hon Speaker and Members who have seconded this Motion. There is a case before the EACJ whose citation is Reference No.2 of 2018. This is a case filed by the Republic of Burundi, through the Attorney General thereof, seeking among others to nullify the activities that the elected Members of this Assembly engaged in; of election of a Speaker to this House and to suspend any operations of this House until that reference is resolved before court. I am an advocate of all courts of adjudication.

I have appeared consistently and repeatedly before this honourable court. I know how

long a case takes before it is resolved before the EACJ. For avoidance of doubt mere exchange of documents takes one year between parties. We have 45 days within which to exchange documents that have been filed. There are 45 days available for a reply; 45 days for a rejoinder if any and then a date is set for scheduling. A date can then be set for hearing. Members are aware that we spent almost a whole year without commencing activities of this august House. I do not know why all of you, Members, stood to be elected. However, at least, I know why I stood. It was not by mistake and it was not an emergency. I stood for another term. Therefore, I knew what I was heading for. Therefore, clearly, I know. This was not a clog or an intention to merely keep myself away from home. I thought there was a duty before me to extinguish for the people of East Africa.

Honourable Members, this case has not been filed by Members of this Assembly from the Republic of Burundi. I would like you to take special recognition of this fact. This has been filed by non-Members of this Assembly, persons that are not eligible to elect a Speaker of this Assembly. I have tried even to look at the records of those persons; they have never been Members of this Assembly. They are running their own shows in their own Partner States. The Members of this Assembly are yet to let us know whether they are for or against what is before court against this Assembly. This is what is raising tempers by Members of this Assembly.

Honourable Members, one writer said, once you introduce anti-infested faggots in your courtyard, faggots that are infested with ants, which you can also call logs of trees, you cannot begin to complain when lizards pay you a visit because that is their food. Now, when you begin to engage in conduct that is lackadaisical, you cannot claim that I am

acting towards you in a manner that is not respectful. Do you really deserve respect?

Honourable Members, I know the pedigree of most Members I am, at least, the ones I am close to. I know how important you are back at home where you come from. Some of you are very serious businesspersons, some of you are professionals, and some of you are extremely wealthy. You did not come here to earn a living. I know that. In fact, your being here, some of you, is to the detriment of your personal progress. Now, if some of you are here with that description, I do not think you will fail to take if somebody disregards the sacrifice you make by being here.

Honourable Members, I personally fall under that description I have given. I did not come here to save myself from hunger. That is not true. We have extremely serious struggles that we are engaged in. We do not want to stop in these organs only. I want to be a member of the Summit. All these organs have to be occupied. We are engaging ourselves in activities calculated to make progress. We cannot sit here as if this is the end of the road.

Honourable Members, I can safely tell you that if some of you do not want to save the works and progress of this Assembly, there are other organisations that are already with us thinking that we must be protected. One of them is the Pan African Lawyers Union (PALU). They want to save a Member. We have a Speaker of the Assembly who has not only appeared before courts of adjudication on the African ground but has also appeared at the bar of world court. I think I must make these things clear because it appears we do not know one another. We have not spend a lot of time together. Therefore, clearly, we probably do not know each other properly. The Pan African Lawyers have produced, written and joined the Assembly to save the activities of this Assembly including the

election of the Rt hon Speaker here. Therefore, in the next appearance, we will be with the lawyers jointly appearing to save the works of this Assembly, which works, probably some of the Members do not want to save. I am sorry I have divulged this but it is public information. They have already filed a notice before court, we have already admitted them and they will join us in the next sitting of the court.

What happened yesterday is that there was an injunction sought by the Attorney General from the Republic of Burundi seeking an order of the court for all the operations by yesterday, of this Assembly, should be stopped and we go back. There was also an application pursuant to the imprimatur that was given by this House to intervene. The two matters were considered by the EACJ. The court ordered: One, that, we file afresh our application to intervene and the court would hear it. Two, the court dismissed the application for an injunction against this House by the Republic of Burundi.

Honourable Members, God was available. I am sure he is still acting and working with us. In this matter, I am sure that God is extremely partisan. He is with us. Therefore, what we need is to ascertain the veracity of Members. Members, you must come out clear. Do you want to be Members of this Assembly? Do you seek that this Assembly conducts its work or are you merely being wobbly available for mobilisation to either side? I consider that lethargic and I cannot do it.

We are moving under Article 40. Article 40 of the Treaty for the establishment of the East African Community (EAC) gives this Assembly a right to intervene in a matter before court. If you think that, the decisions of that court can injure you without you being heard, this is clear. All lawyers know the legal principle of *audi alteram partem*. You

must hear the other party before a decision is made that injures the other party.

Honourable Members, this Assembly was not involved in a matter before court but they were seeking for orders that would stop us from working. That is why we are intervening to have our case heard; that, we, who participated in this activities, this is what we did. We are saving the functions of this Assembly under Article 49. Those who have copies of the Treaty, kindly, take a look. It is important for you to understand why we are before court. This is not ornamental. We are not mere busy bodies. We are following *pari passu*, the operations and provisions enshrined in this Treaty because that is our job.

Finally, Rt hon Speaker, I request honourable Members to consider and support this Motion with utmost good faith. This Motion seeks to strengthen the resolve of this Assembly that we want to work despite the differences we may have. It is extremely impossible that all of us will have a common opinion except if only one person did the thinking and the rest of us did the following. The objective reasons that made it a logical necessity for a Parliament of this nature to be established were among others; one, that all opinions should be debated to arrive at one single opinion that moves the House. That is what we are trying to do. We cannot keep maintaining our disagreements by way of establishing parallel corridors. We cannot move.

All the other organs are working, honourable Members. Members of the Summit are doing their work even those they have appointed as Ministers are doing their jobs including the Attorney General who is suing us. In fact, members of other organs like the Summit have their jobs protected by the gun. Wherever they go, you will see guns

protecting them. They erect a protective wall around their jobs in a way that you cannot get close to them for a handshake unless they allow. However, you, honourable Members, are letting your guard down. Are you sure, you want to be Members of this Assembly?

Kindly, support this Motion and we move ahead.

The Speaker: Thank you hon. Mbidde. Before I proceed, I want to acknowledge and welcome some important visitors that we have here today. These are staff of the Senate, Parliament of Kenya: Ms Magdalene Ndungu, Ms Fatuma Issa and Mr Frank Mutulu. You are most welcome and we are honoured to have you today. You are most welcome and we are honoured to have you today. *(Applause)*

(Question proposed)

Dr Abdullah Hasnuu Makame (Tanzania): Thank you very much Mr Speaker. We have a very important Motion to consider. As the Mover of the Motion said, this is a Motion that will determine the operations of the House.

Mr Speaker, you also heard submissions in the previous Motion, Members are very concerned about the welfare of the Assembly and the Community at large. For that reason, I recall when we were waiting for December to come, when we did not even know that we would be sworn-in in December, hon Mbidde really comforted us through our own line forum. As he said, he did it out of good faith because he wanted us to kick-start the process of the Assembly.

Hon Mbidde is requesting to be granted leave together with any other Member. The Motion submitted says; grant leave to hon Mbidde and any other Member to intervene. That is in

order. However, we would like to have some few clarifications considering that this Community is run by funds or contributions from Partner States. We would like to be assured that the leave granted to hon Fred Mukasa Mbidde and any other Member will not have any financial bearing to the Assembly or the Community and it is a leave that will not raise an invoice to the Assembly in future. If that is so and acceptable, then I would like to propose an amendment to the Motion. The Motion ends with number two.

Therefore, I propose we have a third item saying that the services that will be rendered by hon Fred Mukasa Mbidde and any other Member to intervene will have no financial bearing to the Community and will be done without any *quid pro quo* and that it will be done in good faith. There will be no change of money between the Community and the people who will offer the services.

I beg to submit.

The Speaker: Procedurally, you need to put your proposed amendment in writing and submit it to the Clerk. As for the clarifications you sought, there will be time for the Mover to respond.

Mr Mnyaa: I will submit it immediately.

Mr Paul Musamali Mwasu (Uganda): Thank you very much Rt hon Speaker for this opportunity and dear colleagues. I stand here to support the Motion as moved by hon Fred Mukasa Mbidde for two or three reasons. One, I want to add to what he said. We are not here in Arusha as tourists. In fact, for your information, some of us are in our active age and productive period. We are supposed to be having families and I was challenged by my friends who have twins. My being here affects my family and therefore, affects my energy. For that reason, we should not play

around when we are supposed to work and to contribute to our Community.

Rt hon Speaker, the reason we are here is for us to fast track. Remember and for your information, in the process of our integration, we have many things we have not done because of the delay in the inauguration of the Fourth Assembly of EALA. For that reason, anything that drags us behind is unfortunate and we must work on it to ensure that it does not stop us from doing our work. I support hon Mbidde's Motion to enable us dispose of the case so that we are not, in any way, disturbed by anything as we try to execute our duties.

On that note, I would like to call upon Members – I am a Member of the Legal, Rules and Privileges Committee – to amend any rules that are in our Rules of Procedure that impede us from doing our work. We have the mandate to amend those rules. Therefore, let us embark on the process of amending the rules by applying Rule 85 of our Rules of Procedure to amend the rules that may impede our processes and work here.

I was worried. I want to share with you the worry. I was worried when my colleague, hon Abdikadir, my neighbour here, said that he did not know that there would be issues of quorum and had he known he would have grabbed one of the Members from the Republic of Burundi and come with him here. For us to avoid suffering from the disease of “grabbiosis”, I think we should amend the rules so that we may proceed.

Mr Abdikadir Omar Aden (Kenya): Thank you Mr Speaker. Indeed, my colleague and friend, hon Musamali, is a man of many words. I admire his language and style. However, one thing I did not realise – I know that there are many opportunities lost; some in business and some in other issues –

however, I did not realise that there was an opportunity lost in seeking to make twins. I sympathise with him.

I beg to support this Motion right from the onset. I do not have any objection at all to the Motion. It is important to all of us. Hon Mbidde has eloquently explained the reason why this Motion is necessary.

Mr Speaker, I want to seek a bit of your guidance on a number of issues with regard to the manner in which we are moving this Motion. I had an opportunity yesterday to speak to hon Mbidde with the hope that we could intervene prior to coming here. Parliament is a House of records, procedures and traditions. I am happy with this Motion and we must move it and pass it. Being a House of records, I expected the Mover to verbatimly move the Motion, as is in record, so that it is in the *Hansard*. His off the cuff explanation of things is captured but not the Motion as it is. I thought that in the procedures, as they apply, the Motion should first be substantively moved then he can add any other comments. Thereafter, we can debate the Motion as is. If you will grant me later, an opportunity to speak to the Motion, I think that I should stop at this point and grant hon Mbidde, for the clearance of doubt, to move the Motion substantively and then we can contribute.

The Speaker: Hon Members, I think that was a procedural mishap on our side. Thank you hon Aden for alerting us on that, apologies. Hon Mbidde, do you realise that procedural mishap?

Mr Mbidde: Rt hon Speaker, I think we need to keep on advising Members on raising procedural matters while citing the rules. Rule 29 on moving of Motions does not give rise to a standard practice. That is just a standard practice but I was going to give the

highlights of the prayer at the end of the submission knowing very well that everyone has a copy of the Motion.

The Speaker: Hon Mbidde, I think what you did earlier was to justify. Could you now substantively move for the record?

Mr Mbidde: Hon Members, the Motion before you can now be read to ascertain that the one I have is exactly the one that you have. That is the essence of the reading. It is not within the rules. It is moved under Article 40 of the Treaty and section 20 of the Assembly's Powers and Privileges Act. It is a Motion seeking special leave of the House to intervene and to use records of the House at the East African Court of Justice in case Ref No 2 of 2018.

WHEREAS the 4th Assembly was duly convened for the 1st Meeting of the 1st Session of the 4th Assembly vide the letter of the Clerk dated 1st December 2017;

AND WHEREAS the Assembly duly met from 15th - 23rd December 2017 to perform its inaugural activities in line with the provisions of the Rules of Procedure of the Assembly, specifically Rules 4, 5, and 6;

AND WHEREAS it has come to the knowledge of Hon. Mbidde Mukasa Fred that, the aforesaid processes that were duly undertaken by the Assembly in line with its mandate under its Rules are now a subject of Court proceedings in the East African Court of Justice under Reference No. 02 of 2018 filed by the Attorney General of the Republic of Burundi versus the Secretary General of the Community. The subject matter of the case being that the Attorney General of the Republic of Burundi is challenging the election of Speaker;

CONVINCED THAT the matters raised in the reference touch on the sanctity of the

Assembly within its jurisdiction and therefore it should be well represented in Court, the absence of which may lead to a misrepresentation of the Assembly. It is therefore, of utmost importance to enjoin Hon. Mbidde as an intervener to the case Reference No. 02 of 2018;

GUIDED HOWEVER BY Article 40 of the Treaty and Section 20(1) of the Assembly Powers and Privileges Act 2003; thus:

“Notwithstanding the provisions of any other law, no member or officer of the Assembly and no person employed to take minutes or record evidence before the Assembly or any Committee shall, except as provided in this Act, give evidence else-where in respect of the contents of such minutes or evidence or of the contents of any document laid before the Assembly or such a Committee, as the case may be, or in respect of any proceedings or examinations held before the Assembly or such a Committee, as the case may be without the special leave of the Assembly first had and obtained in writing”;

FURTHER GUIDED BY Rule 23 of the Assembly Rules of Procedure which stipulates the manner and processes through which Journals and Records of the House, including all papers and accounts presented to or belonging to the House, are kept, processed or transmitted only under the express leave of the House, or order of the Speaker. The documents/Records of the House in respect of the Court being which the Member intends to use being:-

1. *The letter of the Clerk of the East African Legislative Assembly convening the First Sitting of the 4th Assembly in December 2017 for purposes of subjecting the Members to Oath or Affirmation of Allegiance.*
2. *The Proceedings of the 1st Meeting of the 1st Session of the 4th Assembly*

presided over by the Clerk. (The Hansard of December 2017).

3. *All the documents related to the travel itinerary of the Members and related expenses facilitating Members to attend the swearing in function in December 2017.*
4. *The list of Members of the 4th Assembly as Tabled by the Clerk during the inauguration sitting.*
5. *Nomination Papers of all candidates who were nominated for Speakership and the Members who nominated/seconded them in December 2017.*
6. *The Proceedings and the results thereof of the Election of Speaker in December 2017.*
7. *Any other documents/materials related to the 1st Meeting of the 1st Session of the 4th Assembly and the constitution of Committees.*

NOW THEREFORE, THIS HOUSE DO RESOLVE TO:-

1. *Grant leave to Hon. Fred Mukasa Mbidde and any other Member of the Assembly who may want to intervene, and/or appoint lawyers to represent it in the case reference No. 02 of 2018 in the East African Court of Justice.*
2. *Grant leave to Hon. Fred Mukasa Mbidde to use the records of the House in Case reference No. 02 of 2018.*

The Speaker: The Motion had been moved and it is possible to move the Motion in a condensed way. That is how we handle

Motions regarding the Budget. What hon Mukasa Mbidde has done is to help us to have it properly placed in the Hansard. However, the way it had been moved before was in order. We now resume debate.

Mr Aden: Mr. Speaker, thank you for your guidance with regard to the procedure on moving of Motions. I think Rule 26 is clear that we have the written Motion before us. However, due to the importance of this Motion, it is very important to dot the i's and cross the t's. This is going to be a record among the records that hon Mbidde will use in the courts of law and it is very important for the Hansard to correspond to the signed Motion as forwarded by the Member. I thank you for that indulgence.

Secondly, this House had deliberated on this issue in Kampala. We debated this Motion. It is not the first time that the Motion seeking us to grant special leave of the House for the use of the records to be granted to hon Mbidde and any other Member who was interested for that matter. I tend to feel that probably it was my oversight not to have read the *Hansards* on the conclusion of that report because I remember I put in an amendment.

The amendment may not have read the word "intervene" but, indeed, the intention was to grant this House or any other person, who was interested to conjoin in those court proceedings to do so because of the interests that this House has with what is happening at the court. I wanted at that juncture, to ask and seek, in his clarifications later, the Mover of the Motion, what the House is doing today.

Are we amending a decision that the House has done in the past in which case, do we have that provided for in our rules? In other jurisdictions, we have that provided for in the rules. I want to guide Members that I refer to other jurisdictions because it is the tradition

of all parliaments to refer to the good practices of other jurisdictions of Houses of Parliaments in other parts of the world.

You will often be hearing the Speaker, as he makes substantive rulings on certain matters, referring to the rulings of a Speaker in Australia, another Speaker in the US and another one Uganda. Therefore, when we refer to other jurisdictions, it is a common practice for parliaments to cross check and refer to other best practices. The question I have for the Mover to clarify is; are you putting a new Motion before us today? If that is yes, that is what I am debating today. If that is no and you say that you want to amend the previous decision of the House, then I will say probably you needed to have clarified to us under what rule and procedure we are debating on.

This particular issue and its importance cannot be under emphasised. We need the courts to have a good understanding of what the state of the matter and what happened. For that reason and the reason why I wanted hon Mbidde to read this Motion for the *Hansard* is that upon reading the *Hansard*, I now realise that the Mover, in his second paragraph said;

And whereas the Assembly duly met from 18th to 23rd of December, 2017. Is that accurate? I do not think it is. I do not think that this House duly met from 18th to 23rd. I think this House met from 18th onwards. I think we need to look into that and possibly amend this now because we have the opportunity to do so.

In your prayers, you say that in the resolution, you would like to seek in the House, resolution No.1 is clear with regard to hon Fred Mukasa Mbidde and other Members of the Assembly who may want to intervene, but in resolution No.2, you say, “grant leave to

hon Fred Mbidde to use records of the House.” What happens to the other Members? Is that again an oversight or do we need to amend that to say that we should include the other Members so that they too can have the opportunity to use the records of the House?

Hon Speaker, I do not think there are further justifications I would like to give. I did my bit in Kampala. All I needed is to guide ourselves on the procedures and to take note of the few issues we need to tighten and probably amend so that we have a perfect document.

I support the Motion.

The Speaker: Thank you hon Aden. As for the amendments you have proposed, please, put them in writing and submit them to the Clerk.

Mr Opoka-Okumu: Thank you Rt hon Speaker. I rise to support the Motion to enable hon Mukasa Mbidde to intervene or any other Member. To allay the fears of Dr Makame, when you look at the Assembly’s Powers and Privileges Act, no Member can appear in a court of law and use materials of the Assembly without leave of the Assembly itself. I think that is why hon Mukasa Mbidde is asking us to grant him leave to intervene. His interest is to intervene to protect the decision and integrity of this Assembly. That is very important, hon Members. We need to be heard especially in a situation where the other party to the case is not even a Member of this Assembly. He is not even an organ of the Community. I think it is very important that leave be granted to hon Mukasa Mbidde or any other Member to intervene to protect the integrity and decision taken by this House.

Rt hon Speaker, I do not want to take too much time. I support the Motion.

Mr Adan Mohamed Nooru (Kenya): Thank you hon Speaker for giving me this opportunity. This Motion, as hon Abdikadir has said, was discussed and disposed of. It is only the manner in which we presented the amendments that is different. In the original Motion, we were asking to be enjoined but in this one, we are asking to intervene. There is nothing different from what we had in Kampala. That is what we need to understand, first and foremost. Therefore, even those who are absent are party to this Motion because they were party to the resolutions in Kampala. Their absence does not make any difference, in my own understanding.

I think this Motion is before this House for the interest of this House. It is not for the interest of any individual. Not all of us can move the Motion. At least, we must have one Member moving the Motion. Therefore, it is not an issue of being there. It is in the interest of this House and its existence that is being challenged. We have an obligation and are duty bound to defend the Treaty and this institutions as we swore to do.

There is no two way about it. It is just the procedural issues, which are being discussed from one point to the other. Different Members have raised issues of procedure. I do not want to visit those issues. One Member raised the issue of moving a Motion and another one regarding the practices in other parliaments regarding procedures in the suspension of rules in terms of quorum and said that this does not apply in other parliaments.

That is true because there is no quorum pegged on Partner States. Quorum is only pegged on individuals or the Members who

are present in the jurisdictions where we come from. There is a difference between operations and rules and that is why we live within our rules despite the fact that it is good to borrow good practices from other institutions.

I quite agree and support the Motion only that the substance of the Motion is about who will intervene. The intervention is by the EALA and not by an individual. Therefore, the substance of the Motion should be that we want to intervene because of the issues that have been raised like the cost implication. The other issue of the case being an individual kind of thing has been raised. To avoid those doubts, many amendments have been proposed. However, I want us to consolidate and dispose of those amendments.

The substance of the Motion on the fourth paragraph should be, “convinced that the matter raised in the reference touching on the sanctity of the Assembly within the jurisdictions and therefore should be well represented in court. The absence of which may lead to the misrepresentation of the Assembly. It is, therefore, of utmost importance to enjoin the EALA to intervene and not hon Mbidde as an individual.” That may cover the issue of who will represent us. In the resolution, I think hon Mbidde should be the lead person.

Therefore, I propose that it reads; “the House grants leave for hon Mukasa Mbidde to lead any other Members of the Assembly or outside lawyers to intervene in this matter on behalf of the Assembly.” We should consolidate that and make the intervention for the interest of the common good of the Assembly and not for the interest of hon Mbidde so that the issue of cost implication when outside lawyers are involved is

covered. Those are the amendments I want to propose.

I want to plead with hon Members. This issue is very important and critical. It is the same as when we were here last December when we had suspended the rules to constitute the House. What we constituted is being challenged. It is as if we should not have constituted the House and it should not be in existence. Let us understand the substance in this matter and handle it in a manner that it has come to us. We should avoid the sideshows regarding the procedures and non-procedures, which have not been followed.

With that, I support.

Mr Odongo George Stephen (Uganda): Thank you Rt hon Speaker. I rise to support the Motion. I would like to support this Motion with a caveat. I was not very lucky to debate this Motion when it first came in Kampala. I am happy that I have had a chance to weigh-in on this debate and to have my voice captured. My teeth may smile but my heart hurts because the toxic environment that we were in sometimes back seems to be reconstructing itself again here when this Assembly has made some mileage. We have had some traction, we have had some very positive vibes, East Africans are expectant of this Assembly but here we are again trying to reinforce the narrative that every time this Assembly sits, there is an emergency and there is an issue that divides this Assembly.

While I hurt, I am conscious of the fact that we must move on and we must build a very strong Assembly and a very strong Community. Why I placed a caveat on this support is because I would like us to anticipate the consequences of the decisions of court. The decision of court will not be the end of this Assembly and neither will they be the end of who East Africans are. It is simply

going to be very instructive on how to conduct business as an Assembly. That is why I said that I would support this Motion with a caveat.

Listen; in my community, they say; if a mad man finds you taking a bath and you have left your clothes hanging on the door and he picks your clothes and starts running away, please, do not get out and start running after the mad man because the community will not tell the difference between that mad man and you. To the contrary, you may be the mad person. That means, therefore, while we are prosecuting and examining this case, we have to exercise leadership. This Assembly must rise above the triviality that we have been deeply entrenched.

Rt hon Speaker, for those who have taken us to court, I also have something instructive from my community. It says that when you are chasing a hyena, please, be careful. Even as you pursue the hyena, reserve some energy because once the hyena becomes desperate, it could turn back and run for your dear life. At least, you should have reserved some energy to run to safety.

Those who have taken this Assembly to court, I caution you; be very careful with the consequences of the decisions you have taken. (*Applause*) - The decisions of this Assembly are meant to unite. The issues that divide us should be resolved without necessarily going to the extremes of litigation. Litigation produces winners and losers. However, this Assembly is supposed to be an Assembly that debates and if there are differences, it should be that all of us are winners. The decision to go to court was a bad decision because there were very many avenues to revolve, if at all, there were differences. It is for that reason that what is happening in court is not that EALA is in the dock. It is not that the EAC is in court. East

Africans are in court. The people who are in the dock are East Africans because this Assembly represents their interests and if this Assembly passes a resolution, it is in their interest. Therefore, to challenge the decision of this Assembly is to challenge the interests of the East African people. As we present our case in court, hon Mbidde, please raise the level of discussion beyond the discussion of the interpretation of the Rules of Procedure. Let it be that the East Africans who brought us here have a stake in the decisions that will be taken and they must have confidence in the decisions that are taken by this House. If at any one point, anyone no matter how much they are protected by the law keep on running to contest the decision of this Assembly, that puts the integrity of this House to test.

What is happening there is a real test of who we are as a Community. It goes to the very core of integration and the spirit that brings us together. The absence – I call it the artificial denial – of what you would call quorum, as I said it in December is in bad taste. If indeed, anyone had a strong case, then that person should facilitate this House to use the records of this Assembly to argue out our case in court. I am saying that we must move fast but also be cautious of the fact that the consequences of that decision must be managed whether for or against our defence. We must be able to manage. That is why I said that I am supporting this Motion.

However, the caveat is that our demeanour, the way we present our case, should be that we are still one irrespective of our differences. When two brothers are fighting, whenever they come close to a hole, the one pushing the other to a hole tells the other, please, take caution. There is a hole there. That means that he is conscious of the fact that this fight is just a disagreement, but that should not be to exterminate the existence of the other. Those who are in court should not

take it that the existence of this Assembly as they had applied, the prayer that was there initially, should stop business. I think that was in bad taste. It is our responsibility now as a House, not only to support hon Mbidde and any other person who is intervening but also to reach out to those who have taken us to court and persuade them that this is not the best option. I do not think it is late for us to reach a consensus.

I support the Motion.

The Speaker: Yes, hon Kasamba. We should try to be brief because we have other issues to attend to after this sitting.

Mr Mathias Kasamba (Uganda): Thank you Rt hon Speaker. I stand here to support this Motion. Having listened to my colleagues, hon Aden and George, I just want to add one aspect to affirm our necessity to support this Motion wholeheartedly. It is common knowledge that the parties who have taken us to court, the Attorney General of Burundi versus the Secretary General are all not organs of the Assembly live alone the personality of the Secretary General who is an ex officio of this this. As an Assembly, we have been put under attack.

We cannot give wholehearted freedom to the two parties to take decisions on our behalf when we are mere onlookers. This gives us the premises for us to defend the decision we undertook on 18th and 19th of December. I am aware that we started off very well. We should be one. However, as individuals and as partners, we have peculiar differences and understanding. That is why we are here. I am at pains for some of my colleagues from Burundi. The purpose of any Assembly is to sit down, agree and disagree, and resolve. However, we have now been taken to court. We cannot sit and wait for the court decisions. We must be on the table as the

decisions of the court are being defended. That is why I stand to support the Motion and pray that we will restrain from causing further injury.

As my colleagues has said, let us offer an olive branch to those who think that our existence is a threat to their existence and that is the purpose of cooperation. Let us cooperate despite some of the degree of negativity from Partner States and individuals who are assuming that without their interests being portrayed, the Assembly should be put in suspension.

I support the Motion. I thank you.

Mr Denis Namara (Uganda): Thank you Rt hon Speaker. I also stand to support the Motion. However, I want to make it very clear to Members that our colleagues from the Republic of Burundi are not opposed to being here. I am one of those who interacts with them. The challenge is that this battle is not a battle for these Members of Parliament. It is a battle for the higher powers.

Yesterday I was in court and was keen to listen to the submissions of the Attorney General. The Republic of Burundi sent the Attorney General to be their counsel in this case. Therefore, you can understand the magnitude of this issue. Good enough we have the Chairperson, Council. I request that the Chairperson, Summit and the Council of Ministers do intervene in this matter. Yes, because I know that the Chair Summit and the Chair Council can talk to the President of the Republic of Burundi. Once they talk to the President of the Republic of Burundi, that case may even be withdrawn.

Yesterday, when I was in court, as a lawyer, you could clearly see that in his submissions, the Attorney General was extremely technical. Sorry to say, he was even more

technical that our counsel. He was extremely technical. He would want to defeat us on technicalities and to throw the application out on technicalities. They know that once this application is allowed, the case will have no future. The basis of this case is hinged on this application being granted or allowed by court. The reason I am talking about that is that I support this Motion. However, I would also want to propose and amendment. The amendment is on the title. Whatever is on the Motion is justification. However, the Motion has to be extremely clear.

The Motion seeks special leave of the House to intervene and to use records of the House at the East African Court of Justice in case reference No.2 of 2018. If I may seek clarification. I would prefer that it be clear on who will intervene. The way it is now is as if the House is seeking leave to use records.

The Motion should be seeking special leave of the House for hon Mukasa Mbidde and any other Member to intervene. Otherwise, the counsel from the Republic of Burundi will try to throw it out on technicalities. He will say that this Motion was not for hon Mbidde but for the House. When I read it now, it says that this House should intervene and not hon Mukasa Mbidde. Whatever is down is just justification. The Motion should be very clear.

Therefore, I support the Motion with an amendment.

The Speaker: Hon Susan. Hon Members, how long do you want to go on with this? Maybe after hon Susan we could have hon Fatuma Ibrahim, hon Rose Akol and hon Simon Mbugua, we could close.

Ms Nakawuki: Thank you Rt hon Speaker. I rise to support the Motion by hon Fred Mukasa Mbidde. Allow me, first of all, to say

that yesterday when we went to court, after the application for an interim order by the Attorney General of Burundi to suspend the Assembly until the main suit is disposed of; I thought that every single Member of this Assembly would be present today to ensure that we become interveners, to defend and protect the sanctity of this Assembly. To my surprise, I realise that there are Members who are still absent today after what we experienced yesterday. For the record, allow me to read Rule 93 of our Rules of Procedure for the information of my colleagues.

Rule 93(1): *Every Member shall, during the session of the Assembly or any special Sitting, attend the Sittings of the House unless leave of absence has been granted to him or her by the Speaker.*

93(2) *Except with the permission of the Speaker in writing, a Member shall not absent himself or herself from seven consecutive sittings of the House during any period when the House is continuously sitting.*

I wanted to put that on record so that Members get to know that we are not at liberty to choose when to come or when not to come or to come when it best suits us. When we were in court yesterday, if we were to ascertain quorum, then we would really have a quorum because everyone had some sort of interest in the matter that was pending before court. Meanwhile, my colleagues are wondering why we are still considering this issue when hon Mbidde sought leave when we were in Kampala.

For those who were in court yesterday, the court guided. Justice Isaac Lenaola expressly stated that hon Mbidde should come back to the Assembly and seek leave to be joined as an intervener. The application yesterday was seeking leave of court for an *amicus curie*

who is a friend of the court and as a party to the suit. That is why the court used its rules and procedures and guided counsel on how we should proceed. That is why hon Mbidde is back here. It was under the guidance of the EACJ for him to seek fresh leave to be joined as an intervener and to seek special leave to use the records of the Assembly in evidence. The court also committed itself to expedite this matter and conclude it within the shortest time possible and asked hon Mbidde to get the leave as quickly as possible. This explains why we are here today and not any other day.

Rt hon. Speaker, when I look at Reference No 02 of 2018 which is the main application pending before court, the first prayer is; nullification of the election of the Speaker and subsequently nullifying all activities so far performed by this Assembly. I hope that anyone can make reference to that court and look at the prayers. The other prayer is for costs; that, the Assembly should pay costs for all that it did in its powers.

Rt hon Speaker, anything that touches on the Assembly to which I am a Member, I will, without fear or favour fight it. I will fight for my rights as a Member of the Assembly and for the rights of the people of East Africa. I am not here to look for any friends. No! I am here to fight for the people who are voiceless, who cannot come here to talk for themselves. (*Applause*) I will talk, talk and talk as long as I am convinced that what I am saying is the truth.

Hon Speaker, the issue of people absenting themselves without leave of the Speaker is conduct unbecoming of a Member of Parliament. We will not just sit as accomplices. I am not going to acquiescence to any of that when the sanctity of this Assembly is compromised. I am talking with a lot of pain because we suffered this before. When we were in the Third Assembly, almost

every single chapter had a time when they walked out, deliberately to deny the House quorum to proceed with the business of the Assembly. We suffered this several times. There were times when we could not transact but we just left. We sat the first day, there was no quorum, and we went. We came back the following day and we left. Third day, really? Are we being true to the vow we took, hon Members? This is not an issue of looking for popularity or not. It is an issue of doing what is right. I am not ready to face that again.

Hon Speaker, I had a long vacation since 5th June when the Third EALA ended up to 18th December. That is almost seven months down the road. I was at home on vacation. Now, somebody comes with an interim order wanting to send me back home to sit without doing the job for which I was elected. I am not going to allow that to happen. I am ready for whatever it takes.

Hon Speaker, I understand when I read this application, Ref No 2 of 2018, that this case is against the Secretary General of the EAC. However, when I look at all the prayers, none of the prayers touches the Secretary General. All the prayers directly touch the EALA to which I am a Member. That shows me that I have to defend myself in the best way possible.

EALA, as hon George Odongo said, is in the dock. The EAC is in the dock. The people of EAC are in the dock. This gives us all the reasons to be interveners in the matter. I want to agree with hon Namara because many of us have reached out to our colleagues. I have taken the initiative. I have even discussed with the Secretary General asking him to reach out back home and, at least, advise accordingly because this case will instead of uniting the Assembly, divide the Assembly and even the Community at large.

I have even reached out to our colleagues from the Burundi Chapter and, in fact, they have made it clear that this is not about them. That is why it is not them who went to court but the Attorney General. I really agree with that because yesterday, when we were in court, the court guided the Attorney General on the interim order that he was requesting. The court asked him several times: You want the court not to recognise whom and how? Several times. He eventually made it clear that he wanted the court to grant an order for EALA to stop transacting and for Members to go back home. The court guided him that this had already been overtaken by events. He was asked to withdraw that application and go the merits of the main application.

The Attorney General had this to say. "I cannot withdraw this application. I am not at liberty to do so. The court should do its job and do whatever it wants." In short, he was telling the court to throw out the application because his hands were tied. He could not do much as much as he is the Attorney General and the applicant in this matter. Therefore, this sends a signal. The outsider we are looking at could be beyond himself. Therefore, the Assembly should come out and defend itself in the best way possible.

My colleague, hon Makame talked about the issue of financing the case, but, hon Speaker, this is not about individuals. This EALA, it is the Assembly itself. So, if we have capacity in our small budget, we can forego anything, be it our transport, refreshments or anything, even if it means contribution. I could even sponsor myself.

The Speaker: Hon Susan, I think I should have guided Dr Makame when he raised that issue. The case has costs already on the Community. With or without EALA being involved, it has costs because there are judges who are sitting and lawyers are appearing. It

is not for free or *pro bono*. Therefore, if you are concerned about the costs, the Community is already incurring costs.

Ms Nakawuki: Thank you hon Speaker for that guidance. As I conclude, I am calling upon you, Rt hon Speaker and the Clerk to look for funding within our budget so that we take care of this case. To me, as a lawyer, there is no small case. If you take your good case lightly, you lose because the court may pronounce itself in any way. Therefore, you have to be vigilant because “equity aids the vigilant and not the indolent.” That is why hon Mbidde is here.

I want to support him because Section 20 of the Assembly’s Powers and Privileges Act requires him to get leave of the Assembly if he is to use the records of the Assembly for evidence or if he is to appear in court. That is why we have to grant him this leave. I also agree with other colleagues who want to amend the Motion to make sure that all interested Members are made part. However, we cannot force everyone. If we say that we are granting leave to the Assembly, we may be having those who do not want to be part of that plea. I think it is better that we go with the people who are interested. I want to express my desire to be joined as an intervener because I want to go with this all the way, without fear of favour or contradiction.

I beg to support.

Ms Ali: Thank you Mr Speaker for allowing me to speak on this Motion. On the onset, I would like to support this Motion. I support the Motion in terms of the requests demanded as per the Motion in terms of hon Mbidde and others representing the Assembly and for the necessary materials and information required of this Assembly to be provided. I support.

Hon Speaker, I support this Motion, not because I have a different interest. My interest is that one of the applications challenges the election of the Speaker. I am very clear in understanding that the people who elected the Speaker are the Members of this House. I, being a Member of this House, are being accused of using the Rules of Procedure of this Assembly and electing the Speaker.

Hon. Speaker, if I recall, more than 43 Members elected the Speaker, when I use my basic arithmetic. I was one of them. I am not in any way guilty of electing the Speaker. I thought that when we were electing the Speaker, we were doing it for the EAC to fast track some of the activities that have stalled and to work for the citizens of the EAC.

Hon Speaker, what I find very strange is the nature of the case being put against the Assembly. I agree with hon Susan that this is not about the Speaker but about the Assembly, which is being accused. I need a clarification. I think the Assembly is an institution that can sue and be sued. I have a problem with seeking intervention in this case to nominate hon Mbidde. I think it has been done in an *ad hoc* manner. As a legislator I read the Rules of Procedure and the Treaty and I was wondering, since this is an institution that can sue and be sued, what is the appropriate procedure for intervention at an administrative level to appoint an advocate? Is it the Commission?

In the National Assembly where I belong, it is the Commission, which represents the institution. In this circumstances, appointment of legal representation of EALA – because we need to delink between the Speaker who is sitting and who we elected and EALA. I think this case is about EALA and not the Speaker. The Speaker is just a beneficiary of EALA’s action.

Hon Speaker, so that we do not go into an *ad hoc* manner of legislating, I think we need to clarify. The code of conduct or the Rules of Procedure are clear; that, a Member or anyone who represents EALA in court does so on voluntary basis. I am assuming that hon Mbidde has clearly stated that he is not seeking any payment because he has significant resources to cushion himself. I was worried when I was seated.

What are the procedures used in this Assembly when we want to identify a lawyer and what institutional structures are we are supposed to use in identifying legal representation? Is it the Commission, a committee or how do we constitute a lawyers' representation because this is an institution that can sue and be sued? This is an *ad hoc* manner of identifying intervention by a lawyer.

I was disappointed yesterday. I am not a lawyer but I have been working with lawyers all my life and I understand some basic legal issues. I do not think the lawyer for our case has impressed me, to be honest. I have engaged you and I have talked to you about it although you assisted me to feel comfortable that he is okay. However, I do not feel that he is okay. If this was discussed earlier and there was an institutional framework to select –
(*interruption*)

The Speaker: When a leader expresses disappointment that can be worrying to the troops. As a commander, I must try to be strong even when I feel that I am not.

Ms Ali: Thank you Mr. Speaker. That is why I have admitted in this discussion that you really cushioned my feelings. However, for the sake of institutional memory and for proper functioning of an institution, we need to have structures in place to identify a pool

of lawyers and not just one that you hand-pick from somewhere.

I support the Motion.

Ms Akol Rose Okullu (Uganda): Thank you Rt hon Speaker for giving me this opportunity to speak before this Assembly on this matter. I rise to support this Motion because I am part and parcel of this Assembly. When the Speaker of this Assembly or the activities of this Assembly are questioned in court, I am also questioned. I support any person who goes to court in defence of what we did here when we were electing our Speaker.

I want to seek a clarification. I am so far happy with those who would like to stand before court to represent the interests of this Assembly. So far, hon Mbidde and hon Nakawuki have come up. This is with regard to the clause in this Motion that says, and any other Member.

Now thereof we resolve:

“That hon Fred Mukasa Mbidde and any other Member.”

I think by now we are clear as to who among us, Members, would like to represent us in court. This is just for avoidance of doubt. When we say; any other Member, this could also be an opportunity for any other Member to go and misrepresent the interests of this Assembly or what we want to see happen in court. It could be an opportunity for any other Member to go and misrepresent us there. Therefore, the Motion should be clear as to who these Members are. (*Applause*)

Therefore, I believe that it is hon Mbidde so far, and hon Nakawuki. If there are any others, this is the time to stand and say, yes, I would like to join hon Mbidde and Nakawuki

on this matter. If that is not the case, then we should be very specific as hon Namara put it, the counsel for Burundi is very technical. I was not there yesterday but when I listened to him, I thought that we should close the gaps in this Motion and I think that is one of the gaps. By now, we should be very clear as to who will represent us and, therefore, the Motion should be rephrased to reflect that.

Secondly, I would also like to seek clarification. We have listed on page 2 the documents and records of the House in respect of what the House should allow the Members who are representing us in this matter to use in court. Several documents have been quoted here but I would like us to be very specific especially because I know we may – so far, hon Mbidde and hon Nakawuki – may have to use our Rules of Procedure and the Treaty that we relied on as substantive documents when we were conducting the business of electing a Speaker for this House.

Now, in the list of documents that they wish to use, I think that the Treaty for the establishment of the EAC and the Rules of Procedure should specifically be listed but not just referred to as other documents. This is because these are substantive documents of the House that we used then and are using now while conducting our proceedings. I am seeking clarification whether at this point in time an amendment should not be moved to list these two documents as substantive documents that will be relied upon by people representing us.

The Speaker: Should we take it that you are moving that amendment?

Ms Akol: Yes.

The Speaker: Please, put it in writing and hand it over to the Clerk.

Ms Akol: Thank you Rt hon Speaker. Apart from that, I end my submission by saying that these are things we read about but at times, we take them for granted. When you set out to do something, you must put all our effort, mind and energy. I believe that is what this Assembly set out to do right from the onset. It is very disheartening even as we sit here to realise that some of the Members who are not even party to this suit have also enjoined themselves. This is just like a story in a book that we read in P1 or P2. The book talks about someone seated on a branch but at the same time cutting the same branch that he is seated on.

These are the circumstances we are in. I just want to call upon these Members to know that they are not part and parcel of this. They should just come back to the House and sit with us as we deliberate on the very nerve or issues that may lead to the disintegration of the EAC. Their not being here means that they do not care whether this Community or Assembly subsists. I just want to call upon them to come back and be part of us because we are one. What brought us together should keep us together.

I beg to submit.

Mr Mbugua Nganga Simon (Kenya): Thank you Mr Speaker for giving me this opportunity. I want to support this Motion and to support my other colleagues who have made their remarks. First, mine is to say that as a House, we are naked. We need to be enjoined in this case to cover ourselves. The people who have taken this case to court did not do it in good faith and we all know that. This case is not in good faith and it may take all of us home. I do not think there is anyone among us who is ready to go home. Therefore, we must fight. We must use all our

energies to make sure that we fight to our last breath.

Mr Speaker, this case fumigates our very existence in this House. This case is not good for integration and yet we are all advocating for integration. My heart bleeds today. We were all elected to discharge our mandate in helping this Community come together. However, we seem to be forgetting along the way. We had taken off very well. However, I think that turbulence is on its way back. I do not know what is happening. However, the induction we will have later must address the very existence of the formation of the EAC.

The business of the House must continue and we must make sure, as my friend, Susan said, we must talk to our colleagues. We must persuade them so that we have a way forward. Where will these fights take this House? Where will the fights take this Assembly? Every time, there is an issue of quorum.

Mr Speaker, you are our leader. We have chosen you to be our leader. We want you to provide guidance. I support hon Mbidde for coming up with the Motion. I also want to support my very good friend, hon Rose, who is here, that we must know the people who will be enjoined in the case. Otherwise, we will have the same problem that we have. All of us know that in court, we are not represented as an Assembly

That is a fact and that is what is there. We need representation as soon as possible. We need representation ASAP.

Thank you Mr Speaker for giving me the opportunity. I support the Motion.

The Speaker: Thank you hon Simon. I get your point to essentially mean that the case is not in the best interest of the Assembly. That is the point. Therefore, I will expunge from

the record, reference to bad faith so that we conform to the language of our rules. Your point will not be lost.

Mr Mbugua: Most obliged, Mr Speaker.

Ms Mugenyi Mary (Uganda): Thank you Mr Speaker for giving me an opportunity to contribute to this Motion. A lot has been said today and a lot was said in Kampala. I think we all agree that this Motion is important for us to exist as the Fourth EALA. I was elected to work for the EAC as a Member of Parliament and I would definitely not be supportive of anything that threatens my work and that goes for all my other colleagues as you have heard.

I remember the length of time we took without work after being elected after we were sworn-in. The parliaments that had elected us were quite unhappy with what was going on. You have also heard what transpired in the Third EALA, the turbulence and disharmony. When we came, we were very determined to be harmonious and to do the work of the EAC.

Mr Speaker, I want to thank you because we have started well. The EAC has started feeling us. The two trips that we undertook, one to the Central Corridor and the other to Northern Corridor, our being at the Summit and the many other visits we made to the different institutions of the Community raised the awareness of the existence of the Community, not just EALA, but the existence and the work of the Community which to me should emphasise the need for this Parliament to continue with its work.

I support the Motion, not because I want to show differences or to side with one side and not the other. In fact, it would not have been my preferred choice for us to be in court. We are supposed to be ambassadors in the region.

We are supposed to work cordially and, indeed, I must say that we have enjoyed a very good cordial relationship. The harmony we have experienced and the warmth we feel in our systems is something that we feel in our system that, surely, as East Africans, we are happy to be together. This can only go on if this Parliament continues to work.

However, my main concern – I would like now to turn to the Executive. It is unfortunate that we only have one Member of the Executive present. However, maybe the message will go. The Executive needs to grant space and respect to the Parliament as the legislature and as an independent body. Therefore, do not use parliamentarians to do jobs that they are not convinced. I say this with confidence because I know that my fellow colleagues from Burundi would have liked to be here and to see this Parliament transact its business smoothly.

The fact that they are not here, I know it is not their own making. I will refer to the founders of modern democracy and what they aimed to do. We have different organs of the state, in this case, of the Community. They all are supposed to play different roles and complement each other so that good governance is achieved. However, if the Executive will be using the legislature against their own conviction, then we will never achieve the democracy that that we are dreaming of. It will remain a dream.

Rt hon Speaker, lastly, I would like to request the Committee on Legal, Rules and Privileges to substantially review our Rules of Procedure. We cannot continue to do things in piecemeal and in an *ad hoc* manner. We need to substantially review our Rules of Procedure so that we get rid of the impediments that are very clear to us.

I thank you, Mr Speaker. Lastly, if we are not happy with our legal representation because this has already gone into the *Hansard*, then we need to look into that so that we are properly represented. There is no short cut to that.

The Speaker: Thank you for that. Hon Mbidde, could you respond?

Mr Mbidde: Thank you Rt hon Speaker. Hon Members, I have received proposed amendments from you.

The Speaker: Hon Mbidde, if you could take very little time.

Mr Mbidde: Much obliged, Mr Speaker. I will take very little time. Some of the amendments, I will disregard them for professional persuasion. We are here attending to a Motion that is already owned by the House. Therefore, the Motion we are debating is almost a twin sister of a Motion we passed in Kampala. Therefore, the question would be; why are we here before we entertain the amendments? I will address it practically or even place it within the precincts of law as proposed by hon Abdikadir. However, first and foremost, I have heard questions about lawyers, good or bad, many lawyers, and many interveners and at the same time, I heard a question from my brother, who has run away, talking about *quid pro quo*.

Now, when you address this House, you have to be extremely premised within the precincts of meanings of words. This is an Assembly of people who have generally seen signposts reading; no sign ahead. I take offence, Mr Speaker. The problem is that he is absent. Now, *quid pro quo* would indicate that I have a personal economic interest in this matter. I take offence because I do not have any personal economic interest, to begin with, in

this matter. I would have wished my brother to be here while I talk about it. However, now that he is not here, I will confront him outside, away from the rules of the House.

Rt hon Speaker, we are here addressing ourselves to a new Motion. It is not an amendment. The rules of the House do not provide for an amendment of a Motion, which is already passed by the House. You have already been introduced to the history of this Assembly. The rules we have so far have not yet obtained the opinion of the Fourth Assembly.

These were drafted by the Third Assembly, which had its own exigencies, intricacies and its own phantasmagoria. What happened is that there was a serious benchmark process of the Rules of Procedures with those of Partner States' parliaments. However, this is the regional parliament. Therefore, it was wrong for us to think that rules would apply *pari passu* as if this is a Partner State Parliament. There is a problem. We need to look into the rules. The suggestion by hon Mary must be taken very seriously. The Committee on Legal, Rules and Privileges must address that.

Therefore, we are here under the law of meetings, general practices. The general rule is that whatever is not expressly provided for is impliedly excluded. That is the law. Therefore, we are here sitting akin. What are the powers of the Assembly? I think somebody talked about the Commission and the what.

Once the Assembly sits, it has the full powers guided by the Speaker. It has full and final powers akin to the powers of the general meeting under table "A" for those who are practicing advocates handling the law regarding meetings of body's corporates. This Assembly is the alpha and omega. Even

when the Commission has failed to do anything, the moment the Assembly is constituted; it can amend anything including your lifetime in this Assembly. Therefore, here we have full powers to take a decision.

Rt hon Members, therefore, this is a new Motion that has been presented to the House. It does not in any way amend any other Motion and we are here because of one major thing; that the old Motion – I am wrong in calling it the wrong Motion – the Motion in Kampala had the term "interested parties" meaning I was granted leave as an interested party. That would indicate that we must do an application for joinder as parties to oppose the matter before court, which is Ref No 2 of 2018. The rules of that court do not provide for that framework. Therefore, we are here to make sure that we consistently remove "interested parties" to maintain "interveners" which was there. Now, what happened before court, hon Members? When you look at Rule 22 of that court, you will see that it provides for intervener/*amicus curie*. Therefore, for any lawyer who is typing it is easy for him, typographically, to forget to remove *amicus curie* and to leave the word there. However, whereas the grounds and application *passé* is hinged towards one major thing; intervention.

The Republic of Burundi have an Attorney General who is a very brilliant lawyer. I agree with hon Namara. He only looked at where the error was and made a reply only pursuant to the error made by the advocate, which was typographical. It has nothing to do with the rule. The law was under Article 40 and Rule 22. I do not want to go into the details of the court.

However, in terms of the application for amendment, the court agreed with both parties, nobody lost; that, we need to come and obtain a new amendment, which

excludes interested parties. Now, in terms of amending this Motion and excluding one word, I would not include several because we will have a problem. If I did not approach a lawyer for a withdrawal, we would have got a decision that dismisses our application. So, that means that we would not have an application of that nature before that court, by either you or anybody else because it would suffer *res judicata*. Therefore, I will leave the amendments out for purposes of proper pursuit of this application.

Honourable Members, please, bear with me. Let us not again create further reasons and causes for which we will fail in our clamour to be represented in the Assembly. However, I will address the typo graphics here. One of them being of course, the dates within which we had an Assembly. That must be corrected.

Rt hon Speaker, the inclusion, “on behalf of the Assembly” by hon Aden should be taken. Hon Odongo, I like the adages you used while explaining but at the same time, the same community has an adage that says *papai pore iragueto* (Mr Mbidde spoke in a vernacular language) *a pawpaw falls on the head of the person who has hooked it*. So, if you do not want to be touched and knocked by a pawpaw, please, do not hook it.

Some care needs to be taken if you want to sail safely as Members of the Assembly. So, those who are intriguingly trying to make sure that our lives are uncomfortable, please, a reply is also practicable. Kindly, let us sail through safely in order to reach the end safely. I take the amendment by hon Namara. I do not remember what it was about but I had indicated here that it was about my name. For specifics to be reflected, let the name be included.

Honourable Members, this matter will be heard before the closure of this session that

we are in. Therefore, we may not name persons whose interventions may not be before court because that again may introduce several other problems to our application. Therefore, we will maintain the name and move on.

The nature of intervention, according to hon Fatuma is *ad hoc*. No, not at all. It follows the law. For us who have appeared before court severally know that you can win and even lose. Lawyers have won and even lost. It does not matter whether you are pursuing a presidential or an election petition. This appears everywhere and these amendments are allowed. There is nothing *ad hoc*.

About the advocate, the advocate in question is a very serious advocate of all courts of ad judicature. He has handled cases of close to UGX169 billion in Uganda. He has won several cases before this court. However, of course, I know that usually, clients’ measure advocates by the manner in which they speak before judges. However, what we present before court are called oral highlights. The biggest material is given in terms of documents. Those are the rules of this court. Therefore, he may not even speak at all but still may win the case. He has won several cases. However, we have been joined, as I told you, by lawyers from PALU and of course, that again points at the necessity to revisit Dr Makame’s insinuation that I have an economic intent. In fact, even without raising it under the rules because I should have raised it. In this matter, Dr Makame, I am not appearing in *propria persona*. I am represented. Therefore, I have no earning that is possible under the law that I can obtain.

The Speaker: I am assuming that you are addressing the Speaker. (*Laughter*)

Mr Mbidde: Rt hon Speaker much obliged. I am extremely intrigued. Since this is the

first time that my honourable colleague is doing it, I will save him from what I would have said. I am sure you are aware that I am extremely sublime when it comes to antagonistic exchanges. I do not have it, I do not intend to have it and, in fact, I am not hungry for it, Dr Makame.

Rt hon Speaker, finally, in the interest of time, there was again hon Akol who talked about the Rules of Procedure and the Treaty. All those are laws applicable but are not documents applicable to this House. Those are laws of the Community. Therefore, those can be adduced as law applicable. We do not need a Motion for them to be adduced. The only materials that the Motion needs to cover are those saved under this very great law of ours, which is the East African Legislative Assembly, Powers and Privileges Act and the Rules of Procedure. Those documents are not accessible to anyone except with leave of this Assembly. Those are the ones we have applied to obtain leave, thereof.

Honourable Members, let me thank the Members that have contributed to this Motion. Dr Makame, hon Musamali, hon Abdikadir, hon Opoka, hon Aden Noor, hon Odongo, hon Kasamba, hon Namara, hon Nakawuki, hon Fatuma, hon Akol, hon Mbugua, hon Mary and the rest that in the interest of time did not but were likely to present in support of this Motion.

With that, I seek that the Assembly grants leave that we proceed as the Motion presupposes.

I beg to move.

The Speaker: Thank you. *(Applause)*

(Question, that the House resolves to grant special leave to intervene and to use records

of the House at the EACJ in case Ref No 2 of 2018 put and agreed to)

(The Motion was passed with amendments)

COMMUNICATION FROM THE CHAIR

The Speaker: Thank you hon Mbidde and hon Members. I will spare you the announcements I intended to make because this is a special sitting. I will make them in our next sitting. However, since I cannot be part of the debate, I just want to explain a few things; the circumstances around me as one of you.

First is that I have been engaging with the Secretary General to find a way to resolve this matter in the most expedient way possible. I am not in a position to promise whether we will succeed or not but those efforts are there. Two is that this Assembly is in a boat. We are in a boat that is either likely to sail safely together or sink together. It is a particular situation where we are either all safe or unsafe. Therefore, anyone who could be instigating or getting excited about it is missing the point because this is not, as most of you said hon Members, about me. If it were about me, particularly, I would know how to put up a proper fight when a fight is brought towards my direction.

Apart from being a Member of EALA, the rest of my career has been in courts of law. It is the only other thing I have done with the exception of being a Member of EALA. Therefore, if I had a feeling that this is something particularly about me, I would know how to defend myself. However, this is something about all of us. Therefore, it is very disappointing. When you look at it, from beginning, the time of the elections, someone

has been hoping that a fight will erupt and instead of positioning himself to resolve it, they have positioned themselves to benefit from the fight that they wish should happen. That is a very disappointing kind of attitude.

Two years ago, the Secretary General of this Community was appointed through consensus. It was not like the Speaker who is elected even when some Members oppose. The Speaker is elected when majority decide. However, for the Secretary General, it must be consensus from all of them. The reason we have the Secretary General coming from where he comes from is that we did not have a single head of state opposing his appointment. That is two years ago when the situation was much worse than what it is today.

Honourable Members, let us have this in mind. That, nobody stands to benefit from any chaos that we can cause. No one. Particularly, I am here because I was asked by you and by my Partner State to be here. There could arise a situation that can cause me to be out of here in a minute. If that happened, because I serve under a certain political discipline, I would not oppose.

Therefore, it is not about me, first and foremost. It is about a bigger interest that I am representing and when it ceases to exist or when the considerations change – I belong to a political family that does not allow individual interests coming above general interests – I will comply. Therefore, as long as you see me here, it is because those general interests still exist and those are the ones I am serving.

Therefore, we are applying the rules. I have spoken to some very senior people who have told me not to apply the rule regarding quorum and that it is not good. We have not come up with any rules as the Fourth EALA.

We found the rules here. We cannot shy away from applying them until we amend them. Let any Member who does not like any rule move a Motion to remove it.

As long as we have the rules, we will continue to apply them. There is no shying away. If it is inconveniencing anyone, that is not my problem. If you feel that there is a rule that is an inconvenience to you, there is a way to deal with it. My duty and my oath is to apply the rules as I found them through the Rules of Procedures, as I found them. I do not have powers to change anything; be it in the rules or the procedures.

Therefore, let us continue as a team believing that we are serving the general interests as well as our interests. There should not be anyone, in my opinion, thinking that he is doing any other person a favour. No one. We are here in our individual capacities. We contested to be here. We have interests we are defending; general, and that eventually translates to our own situations. However, nobody should think that they are doing anyone else a favour.

If you cause a problem, we all know the routes that lead to court. We can choose to be here and transact the business for which we were elected or we could choose to spend our time in court. The good thing is that the doors of court are not exclusive. They allow anyone who wants to be there to go there at the time they think they should be there.

You will forgive me. I am speaking the way I am speaking because I hear many things. Yes, I hear a lot. I am not a person who is hypocritical, I even get to a point where I mention names when it is necessary but I think I do not have to that point.

Thank you honourable Members. The House stands adjourned.

ANNOUNCEMENTS

INTERNATIONAL WOMEN'S DAY

Sorry, today is International Women's Day.

Hon. Members: Tomorrow.

The Speaker: Tomorrow? Thank you. The International Women's Day does not mean that it is a day for women only. It is a day for all of us because there cannot be a man worth the name who does not honour this day. There is a programme that has come out and which we have communicated to you.

We request you to participate in the activities in the manner we have communicated to you. I personally will not be around because I have to travel to process visas for my other travels that I intend to undertake. However, I have requested hon Adan to represent me. All honourable Members who will not be having Committee activities should attend the events that are planned. I think that is the most important announcement to make for now.

ALLOCATION OF OFFICES TO MEMBERS

Honourable Members, we have allocated offices. I know that you have not found furniture in the offices and those, which have furniture, the furniture is very old. We know about that situation and we discussed it in the Commission. We had two choices to make; either, to wait until we procure furniture or we show you your offices as we go through the process of procuring furniture and we preferred to go through the second option. Therefore, there is a procedure underway, in the Commission for you to have furniture in your offices.

In the meantime, you will bear with us because this is an item that was not there in the budget before. Therefore, we are trying to do reallocation from another line so that we can procure furniture for you. As for other issues that are very important, I know, even if they may sound small, that there are business cards that you should have had by now but which you do not have. I have given a directive that if the service provider does not make them available today, that particular part of the contract must be rescinded and another service provider found to provide them.

ADJOURNMENT

Honourable Members, I now adjourn the House until Tuesday, 13th March 2018 at 2.30 pm.

The House rose at 12.20 pm to reconvene on Tuesday, 13th March 2018 at 2.30 pm