

Tabled by - Hon. Pete Matariki
on Thursday 04/02/2016.



HA 3/2/16

**EAST AFRICAN COMMUNITY
EAST AFRICAN LEGISLATIVE ASSEMBLY**

**REPORT OF THE COMMITTEE ON LEGAL, RULES AND
PRIVILEGES ON THE CONSIDERATION OF A
RESOLUTION MOVED UNDER RULE 30(J) OF THE
ASSEMBLY RULES OF PROCEDURE ON A MATTER
OF PRIVILEGES ARISING FROM A THREAT
OF TENURE OF OFFICE OF FOUR MEMBERS OF THE
EAST AFRICAN LEGISLATIVE ASSEMBLY**

January, 27 & February, 3, 2016



**Clerk's Chambers
EAC Headquarters,
EALA Wing, 3rd Floor
Arusha, Tanzania**

4TH FEBRUARY 2016

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1.0 INTRODUCTION AND BACKGROUND INFORMATION

1.1 INTRODUCTION

The Committee on Legal, Rules and Privileges (LRP) is a Standing Committee of the East African Legislative Assembly (EALA) established under Article 48 (3) of the Treaty for the Establishment of the East African Community (the Treaty) and Rule 80 (2)(b) of the EALA Rules of Procedure. One of the functions of the Committee on LRP as provided by Rule 81 and Annex 5 of the Rules of Procedure of the Assembly is to receive, review, scrutinize and investigate the complaints of breaches of the Independent Mandate, Privileges and Immunities of the Assembly.

1.2 BACKGROUND

On 3rd November, 2015, the Rt. Hon. Pascal Nyabenda, Speaker of the Burundi National Assembly communicated to the Rt. Hon. Daniel Fred Kidega, Speaker of EALA on the cessation of membership of EALA of four Hon. Members from Burundi. The cessation was said to be in accordance with Article 51 (3) (b) of the Treaty on the following grounds:

- a) Hon. Jeremie Ngendakumana was elected by the Burundi National Assembly representing the CNDD-FDD Party and which has expelled him from among its ranks;
- b) Hon. Dr. Martin Nduwimana and Hon. Frederic Ngenzebuhoro were elected by the Burundi National Assembly representing UPRONA Party which by a decision 003/2015 and 002/2015 terminated their Membership; and
- c) Hon. Yves Nsabimana was elected by the National Assembly of Burundi from FRODEBU Nyakuri Political Party which is no longer represented in the current Burundi National Assembly.



Upon receipt of the said letter the Rt. Hon. Speaker of EALA informed the concerned Hon. Members and requested the Counsel to the Community (CTC) to give his written opinion on the matter. On 16th November, 2015, the CTC provided his detailed opinion. Basing on the opinion provided by CTC, the Rt. Hon. Speaker of EALA replied to the letter of the Speaker of the Burundi National Assembly in which he communicated that: *"After consultations with the relevant offices, I have found it is not tenable that the membership of the said Members has ceased because the letter was contrary to Article 51 of the Treaty and other provisions of the Treaty.*

Consequently, on 25th November, 2015, the Rt. Hon. Speaker of EALA, during his communication to the 3rd Meeting of 4th Session of the 3rd Assembly, held in Kigali, informed the Assembly about the letter he received from the Speaker of Burundi National Assembly and all the steps he had taken to address the matter.

On 25th November, 2015, Hon. AbuBakr Ogle moved ***a motion under Rule 30(j) of the Rules of Procedure for a resolution of the Assembly on a matter of privilege arising from a threat of tenure of office (the Motion is hereby annexed)***. In addition to backing the position that was conveyed to the National Assembly of Burundi by the Rt. Hon. Speaker of EALA, the motion sought to move the House to resolve to:

- (i) *Affirm the precedent set by the Second EALA on similar threats to the tenure and security of Members;*
- (ii) *Specifically uphold the rights of every elected Member to complete their tenure without the curtailment of their rights and privileges*



through intimidation, harassment and threats of physical harm to themselves and their families;

- (iii) Urge Partner States not to introduce any attempt to unlawfully manipulate the institutions and or officials to threaten Members and or undermine the status, which will amount to an affront principals of the Treaty;*
- (iv) Appeal to the other Organs and Institutions of the Community including the Summit to utmost to guarantee the sovereignty and security of all Members of EALA and staff of all other Organs and Institutions of this Community;*
- (v) Condemn in the strongest terms possible all attempts to undermine the integrity of this Assembly and the claim to the privileges and status of its Members.*

The Rt. Hon. Speaker referred the motion to the Committee on Legal Rules and Privileges for consideration.

2.0 METHODOLOGY

- a) The Committee held a meeting in Arusha, United Republic of Tanzania on 27th January and 3rd February, 2016.
- b) The Committee reviewed various legal instruments and precedents pertaining to the independence, immunities and privileges of East African Legislative Assembly. Among others, the Committee considered the following:
 - i. The Constitution of the Republic of Burundi;
 - ii. The Treaty for the Establishment of the East African Community;
 - iii. The East African Legislative Assembly (Powers and Privileges) Act, 2003;

- iv. The Administration of the East African Legislative Assembly Act;
- v. The decision of the East African Court of Justice in Legal Brains Trust (LBT) Limited and The Attorney General of Uganda (Reference No. 10 of 2011);
- vi. The Rules of Procedure of the Assembly; and
- vii. The opinion provided by the Counsel to the Community on this matter.

3.0 OBSERVATIONS

3.1 The Meaning and Purposes of Privileges of Assemblies

- a) Parliamentary privilege is an essential component of parliamentary democracy, it exists to enable Parliament to function effectively and efficiently without undue impediment. Parliamentary privilege traces its origins to the emergence of the British Parliament in the Middle Ages. As initially construed it was concerned with "privilege" in terms of the status or power of members of Parliament (a select group itself) vis-à-vis the Crown¹.
- b) According to the Parliament of Canada², parliamentary privileges also refers to the powers possessed by the House to protect itself, its Members, witnesses and its procedures from interference from the courts or the Executive, so that it can effectively carry out its principal functions of inquiry, debating, legislating and holding the Government to account. The

¹ A report of the Matter of Privileges: A Discussion Paper on Canadian Parliamentary Privileges in the 21st Century, January 2015

² Compendium. House of Commons. Parliamentary Privileges. Available at www.parl.gc.ca/About/House/Compendium/web-content/c-topic-parliamentaryprivilege-e-pdf.



rights and immunities usually associated with parliamentary privilege include the following:

- i. freedom of speech;
- ii. freedom from arrest in civil actions;
- iii. freedom from obstruction, interference or intimidation;
- iv. freedom from the obligation to answer a summons or be a member of a jury;
- v. the right of Parliament to regulate its own affairs as they relate to its debates and proceedings; and
- vi. the control of access to the precincts of parliament and to exclude strangers;

c) It was noted that Article 61 of the Treaty, Part II of the East African Legislative Assembly (Powers and Privileges) Act, 2003, Rules 3, 30(j) and 47(b) of EALA Rules of Procedure provide for the privileges of this Assembly and its Members. Because the law recognizes and protects the privileges of EALA and its Members, it is therefore upon this Assembly to protect its privileges and the privileges of its Members.

d) It was noted further that the East African Court of Justice in Legal Brains Trust (LBT) Limited and The Attorney General of Uganda stated that *"Article 51 (1) of the Treaty provides that an elected member shall hold office for five years and be eligible for re-election for a further term of five years"*³

³ Reference No. 10 of 2011 at page 23

3.2 The Scope of the Motion Moved Under Rule 30 (J) of the Rules of Procedures by Hon. AbuBakr Ogle

The Motion was referred to the Committee on LRP because it was grounded under Rule 30 (j) of the Rules of Procedure of the Assembly. The Committee considered the scope of the Motion and the five proposed resolutions as follows:

a) Affirm the precedent set by the Second EALA on similar threats to the tenure and security of Members.

The doctrine of Precedence in parliamentary practice is not clearly established the same way the decisions of higher courts are binding on lower courts. Prior parliamentary resolutions on similar matters can only be persuasive to the current or future Assemblies;

b) Specifically uphold the rights of every elected Member to complete their tenure without the curtailment of their rights and privileges through intimidation, harassment and threats of physical harm to themselves and their families.

Article 51 (3) of the Treaty provide for the circumstances under which an elected Member can vacate his or her seat in the Assembly. Save only as provided by the Treaty, an elected Member shall not vacate his or her seat. The relevant issue which needs to be interrogated is the applicability of Article 51 (3) (b) of the Treaty to the four Hon. Members.

c) Urge Partner States not to introduce any attempt to unlawfully manipulate the institutions and or officials to threaten Members and or undermine the status, which will amount to an affront principals of the Treaty.

By ratifying or acceding to the Treaty, Partner States bind themselves to uphold the fundamentals and operating principles of the Treaty in regards to the privileges of Hon. Members of EALA.

d) Appeal to the other Organs and Institutions of the Community including the Summit to guarantee the sovereignty and security of all Members of EALA and staff of all other Organs and Institutions of this Community.

Article 9 (4) of the Treaty provides that Organs and Institutions of the Community shall perform the functions, and act within the limits of the powers conferred upon them or under the Treaty. The functions of the Summit are specifically stipulated by Article 11 (3) of the Treaty.

e) Condemn in the strongest terms possible all attempts to undermine the integrity of this Assembly and the claim to the privileges and status of its Members.

The Assembly and the Committee have been notified that the Rt. Hon. Speaker of EALA has addressed the issues raised by the Rt. Hon. Speaker of the Burundi National Assembly by communicating to him that the tenure of the named Hon. Members has not ceased as the action would be contrary to Article 51 of the Treaty.

4.0 FINDINGS OF THE COMMITTEE

- a) The Committee finds that the events listed in paragraphs 3(a), (c), (d), (e) and (f) of Article 51 of the Treaty have not occurred in respect of all the four Hon. Members referred to in this matter;

- b) With regard to the application of Article 51 (3) (b) of the Treaty, the issue is whether the four Hon. Members have ceased to qualify being elected as Members of the Burundi National Assembly in accordance with the Constitution of the Republic of Burundi;
- c) Article 50 (1) of the Treaty provides that Members of the Assembly are elected to represent various political parties represented in the Assembly, shades of opinion, gender and other special interest groups in Partner States;
- d) Article 50 (2) sets out the qualification for a person to be elected as a Member of EALA. Paragraph (b) of this Article requires that the person should be qualified to be elected a Member of the National Assembly of that Partner State under its Constitution **(this requirement applies only at the time election of Members of EALA);**
- e) Article 165 of the Constitution of the Republic of Burundi provides for the qualification for a person to be elected Member of the Burundi National Assembly:
- i. Be of Burundian nationality and origin,
 - ii. be twenty five years old at least,
 - iii. enjoy all of their civil and political rights; and
 - iv. Must not have been convicted for a crime or misdemeanor of common law to a penalty determined by the electoral law.

The communication from the Rt. Hon. Speaker of the National Assembly of Burundi is to the effect that the said cessation of the named Hon. Members related to:

- a) their ceasing to be members of political parties they belonged to at the time of their election; and
- b) their political parties are no longer having representatives in the National Assembly of Burundi.

The communication by the Rt. Hon. Speaker of the National Assembly of Burundi raises a number of questions as follows:

- a) Does the Constitution of the Republic of Burundi specifically bar a person from being elected Member of the Burundi National Assembly because he/she does not belong to any political party?
- b) What happens to a Member of Burundi National Assembly if his or her Party ceases to exist during the Member's tenure of Parliament?
- c) Is the Burundi National Assembly vested with jurisdiction to determine the question as to whether any seat at EALA has become vacant?

The Committee addressed itself to the issues raised above by making reference to the Treaty, the Constitution of the Republic of Burundi and other relevant laws governing the EALA. The Committee also took into account the action taken by the Second EALA in March 2011, in respect of Hon. Manasse Nzobonimpa. The Committee is therefore satisfied that the action taken by the Rt. Hon. Speaker of EALA in addressing this matter is in accordance with the provisions of the Treaty.

5.0 RECOMMENDATIONS

In light of the observations and findings of the Committee set out above, the Committee recommends as follows:

1. The Assembly reaffirms the position taken by the Rt. Hon. Speaker of EALA as communicated to the Rt. Hon. Speaker of the Burundi National Assembly;
2. Urge Partner States, Organs and Institutions of the Community to uphold and apply the principles and provisions as enshrined in the Treaty in respect to privileges of Hon. Members of EALA; and
3. Amendment of the Motion moved under Rule 30 (J) by Hon. AbuBakr Ogle of the Rules of Procedure by deleting all the proposed Resolutions and replacing thereof with the following two resolutions:
 - a. Reaffirms to the position taken by the Rt. Hon. Speaker of EALA as communicated to the Rt. Hon. Speaker of the Burundi National Assembly on the matter of the affected Hon. Members; and
 - b. Urge Partner States and their Institutions, Organs and Institutions of the Community to uphold and apply the principles and provisions as enshrined in the Treaty and other laws of the Community in respect to privileges of Hon. Members of EALA.

Hon. Speaker Sir, I beg to move.

REPORT OF THE COMMITTEE ON LEGAL, RULES AND PRIVILEGES ON THE CONSIDERATION OF A RESOLUTION MOVED UNDER RULE 30(J) OF THE ASSEMBLY RULES OF PROCEDURE ON A MATTER OF PRIVILEGES ARISING FROM A THREAT OF TENURE OF OFFICE OF FOUR MEMBERS OF THE EAST AFRICAN LEGISLATIVE ASSEMBLY

1. Hon. Peter Mutuku Mathuki

2. Hon. Judith Pareno

3. Hon. Joseph Kiangoi Ombasa

4. Hon. Martin Ngoga

5. Hon. Valerie Nyirahabineza

6. Hon. Christophe Bazivamo

7. Hon. Twaha Issa Taslima

8. Hon. Charles M. Nyerere

9. Hon. Maryam Ussi Yahya

10. Hon. Dora C. K. Byamukama

11. Hon. Mukasa Fred Mbidde

12. Hon. Susan Nakawuki

13. Hon. Frederic Ngenzebuhoro

14. Hon. Leonce Ndarubagiye

15. Hon. Isabelle Ndahayo



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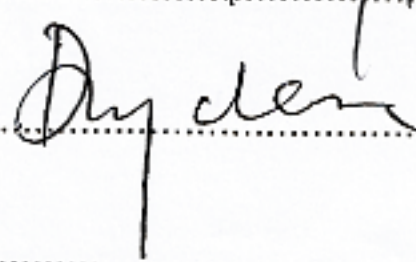
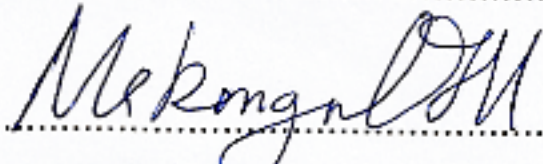
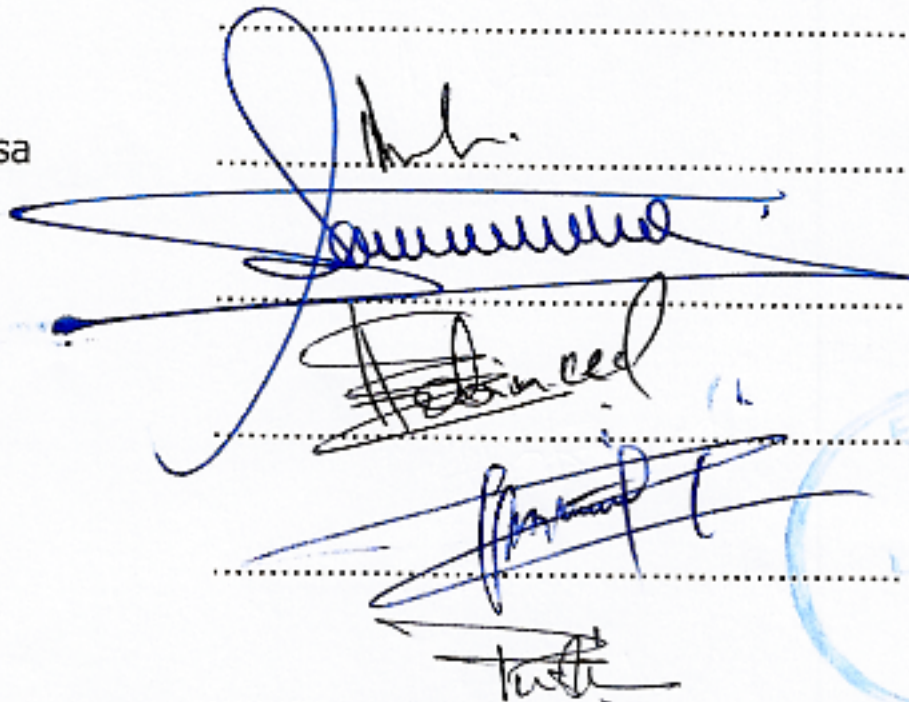
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**EAST AFRICAN COMMUNITY
EAST AFRICAN LEGISLATIVE ASSEMBLY**

**MOTION FOR A RESOLUTION OF THE ASSEMBLY MOVED UNDER RULE 30(J) OF
THE ASSEMBLY RULES OF PROCEDURE ON A MATTER OF PRIVILEGE ARISING
FROM A THREAT OF TENURE OF OFFICE**

WHEREAS Members of the East African Legislative Assembly are elected under the provisions of the EAC Treaty;

AND WHEREAS their tenure is guaranteed by the same Treaty under Article 51;

AND WHEREAS upon election, all the Members of the Assembly are required to take oath before taking their seats in the Assembly purposely to protect and defend the EAC Treaty and lay claim to the sanctity and privileges of this Assembly;

CONCERNED HOWEVER THAT, there is an attempt to breach the EAC Treaty through threats to the loss of tenure of four of the Members of the Assembly from Burundi, namely: Hon. Jeremie Ngendakumana, Hon. Yves Nsabimana, Hon. Frederic Ngenzebuhoro and Hon. Dr. Martin Nduwimana. (This threat coming through a letter from the Parliament of Burundi to EALA and availed to the four MPs on the premise that the conditions through which they presented themselves for elections had now changed even when their status changed from being candidates for elections at that time, to Members of the Assembly as it is now.

FURTHER CONCERNED THAT the state of affairs affects the tenure, privileges and rights of the Members;

NOTING THAT it touches on the spirit, reputation, integrity, and independence of the Assembly;

FURTHER NOTING THAT the threat has a potential for undermining the authority of the Assembly and compromises its functioning under the Treaty;

DEEPLY CONCERNED THAT it will jeopardize the safety, security and status of Members.

NOW THEREFORE THIS ASSEMBLY RESOLVES TO:

1. Affirms the precedent set by the 2nd EALA on similar threats to the tenure and security of Members.
2. Specifically uphold the rights of every elected Member to complete their tenure without the curtailment of their rights and privileges through intimidation, harassment and threat to physical harm to themselves and their families.
3. Urge Partner States not to introduce any attempt to unlawfully manipulate their institutions and/or officials to threaten Members and/or undermine their status which would amount to an affront to the principles under the Treaty.
4. Appeal to the other Organs and institutions of the Community including the Summit to at its utmost, guarantee the safety and security of all Members of EALA and staff of other Organs and institution of the Community.
5. Condemn in the strongest term possible all attempts to undermine the authority of the Assembly and the claim to the privileges and status of its Members.

MOVED BY: HON. ABUBAKAR OGLE

SECONDED BY:

