

Human Rights Decisions of the East African Court of Justice

MAY 2015

SUMMARIES OF 18 DECISIONS by the East African Court of Justice between May 2013 and February 20 which relate to its jurisdiction over the rule of law or otherwise impact on human rights. Produced by lawyers at the Open Society Justice Initiative with the assistance of Rightslink at Columbia Law School in order to bring the decisions of global human rights tribunals to a wider audience.

Decisions on Merits

[Democratic Party v. Secretary General of the EAC & 4 Others](#), Judgment of 29 November 2013

[Venant Masenge v. Attorney General of the Republic of Burundi](#), Judgment of 18 June 2014

[African Network for Animal Welfare v. Attorney General of the United Republic of Tanzania](#), Judgment of 20 June 2014

[Benoit Ndorimana v. the Attorney General of the Republic of Burundi](#), Judgment of 28 November 2014

Procedural Decisions

- a) Decisions concerning cases filed out of time and lack of jurisdiction

[Mbugua Mureithi Wa Nyambura v. Attorney General of the Republic of Uganda & Attorney General of the Republic of Kenya](#), Judgment of 24 February 2014

[Professor Nyamoya Francois v. Attorney General of the Republic of Burundi and Secretary General of the EAC](#), Judgment of 28 February 2014

[Union Trade Centre Limited v. Attorney General of the Republic of Rwanda](#), Judgment of 27 November 2014

[Hilaire Ndayizamba v. Attorney General of the Republic of Burundi & Secretary General of the EAC](#), Judgment of 28 February 2014

- b) Decisions concerning leave to intervene as amicus curiae

[Avocats Sans Frontier v. Mbugua Mureithi Wa Nyambura & 2 Others](#), Judgment of 28 August 2013

[Forum pour Renforcement de la Societe Civile & 6 Others v. Burundian Journalists' Union & Attorney General of the Republic of Burundi](#), Judgment of 15 August 2014

[UHAI EASHRI & Health Development Initiative Rwanda v. Human Rights Awareness & Promotion Forum & the Attorney General of the Republic of Uganda](#), Judgment of 17 February 2015

- c) Decisions concerning interim orders

[Attorney General of the Republic of Uganda v. East African Law Society & Secretary General of the EAC](#), Judgment of 17 May 2013

[Venant Masenge v. Attorney General of the Republic of Burundi](#), Judgment of 18 June 2014

[UPRONA Party & 2 Others v. Attorney General of the Republic of Burundi & Secretary General of the EAC](#), Judgment of 15 August 2014

[East African Law Society v. Attorney General of the Republic of Burundi and the Secretary General of the EAC](#), Judgment of 15 August 2014

[Uganda Association of South Sudan Limited & 3 Others v. Attorney General of Uganda & 5 Others](#), Judgment of 5 September 2014

[Bonaventure Gasutwa & 2 others v. the Attorney General of the Republic of Burundi](#), Judgment of 28 November 2014

d) Decisions concerning costs

[Hon. Sitenda Sebalu v. Secretary General of the East African Community](#), Judgment of 22 November 2013

[M/S Quality Chemical Industries Ltd & M/S National Medical Stores v. Godfrey Magezi](#), Judgment of 19 June 2014

Decisions on the Merits

Democratic Party v. Secretary General of the East African Community & 4 Others

29 November 2013, EACJ First Instance Division, Ref. No. 2 of 2012

The court's jurisdiction is limited to the interpretation and application of the Treaty for the Establishment of the East African Community (EAC Treaty). No violation of the rule of law (article 6(d), 7(2)) or the requirement for international cooperation (article 126, 130) because the act complained was at the discretion of the member state.

Rwanda, Kenya, Uganda, and Burundi failed to make individual country declarations accepting the competence of the African Court on Human and People's Rights (African Court), as required by articles 5(3) and 34(6) of the Protocol to the African Charter on Human and People's Rights on the Establishment of an African Court on Human and People's Rights (Protocol). The applicant alleged that each state, after ratifying the African Charter on Human and People's Rights (African Charter) and the Protocol, was obligated to submit this declaration "expeditiously." The applicant argued that the failure to submit declarations prevented the applicant, other organizations, and individuals from bringing claims for human rights violations before the African Court, and thus violated the African Charter and the Protocol. In addition, the applicant argued that EAC Treaty articles 6(d) and 7(2) that require partner states to act in accordance with the principles of good governance, and articles 126 and 130 requiring partner states to honor their international obligations, were also violated.

The court determined that it had jurisdiction to consider the claims for violation of the EAC Treaty, but found that there were no violations of the EAC Treaty articles. While article 130 of the EAC Treaty allows the court to mandate compliance where a state party has "failed to honor commitments made" to an international organization, it found that the delay in submitting declarations did not constitute such a failure. The court noted that article 34(b) of the Protocol does not require states to submit declarations "expeditiously" – rather, they can be submitted "at any time" following ratification of the Protocol. It further held that it lacked the authority to rule on the alleged violations of the African Charter or the Protocol, stating that the proper forum for such a claim was the African Court. The court stated that it only has authority to interpret the EAC Treaty and cannot "delve into" state party obligations created by other international instruments.

Link to [full judgment](#) (PDF)

Venant Masenge v. Attorney General of the Republic of Burundi

18 June 2014, EACJ First Instance Division, Ref. No. 9 of 2012

The court has jurisdiction to rule on alleged EAC Treaty violations arising out of a property dispute; the court declared that the occupation of applicant's property was unlawful and infringed article 6(2) of the Treaty; the court declined to grant the applicant's requests for other declaratory and injunctive relief, as this would intervene in the jurisdiction of the national courts of Burundi.

The applicant owned 24 hectares of property in Gihanga commune under a Registration Certificate issued by the Registrar of land titles. He alleged that a local “troublemaker,” assisted by the mayor of Gihanga commune, began to illegally occupy and exploit his land, and that he urged Burundi’s minister of home affairs to intervene and restore his property rights, to no effect. He argued that the Government of Burundi is vicariously liable for the actions of the mayor of Gihanga commune and the inaction of the minister of home affairs, claiming that these actions violated principles of good governance and the rule of law under article 6(d) and 7(2) of the EAC Treaty.

The court determined that the applicant was under no duty to exhaust local remedies in advance of filing a petition with the court. The court also found that it had jurisdiction to consider the alleged violation of article 6(d), and article 7(2)) because the applicant’s complaint relates to obligations under the EAC Treaty, namely, to act in accordance with the rule of law. The court held that both article 6(d) and article 7(2) had been infringed, noting that the applicant held legal title to the land in question in accordance with 317 of Burundi Land Act of 2011 and the Government of Burundi failed to show that they had legally expropriated the applicant’s title.

Despite this finding, the court refrained from granting the declaratory and injunctive relief requested, which would have required the government to immediately demolish “all illegal constructions and occupations,” and restore to the applicant the full and exclusive use of the land in question. The court held that such orders went beyond its jurisdiction to interpret the EAC Treaty and fell within the remit of Burundi’s national courts, presumably because the relief requested required a determination of Burundian law.

Link to [full judgment](#) (PDF)

African Network for Animal Welfare v. The Attorney General of the United Republic of Tanzania

20 June 2014, EACJ First Instance Division, Ref. No. 9 of 2010

The court held that the proposal to construct a bitumen road across the Serengeti National Park is unlawful and infringes articles 5(3)(c), 8(1)(c), 111(2) and 114(1) of the EAC Treaty requiring partner states to conserve, protect and co-operate in the management of natural resources and the environment; injunction granted.

The applicant challenged the proposed action by the Government of Tanzania to construct a road intended for use by the general public across the Serengeti National Park. The applicants, the African Network for Animal Welfare (ANAW), alleged violations of Tanzania’s environmental obligations under the EAC Treaty, the African Convention on the Conservation of Nature and Natural Resources, the Rio Declaration, the Stockholm Declaration and the UN Declaration of Biodiversity in the construction of the Serengeti highway.

The applicants argued that the construction of the road would have deleterious environmental and ecological effects to the national park, including but not limited to disrupted animal migration, fragmentation of animal habitats, loss of scenic and visual quality, deterioration of air quality, increased poaching activity and surface water and soil pollution. The applicant argued that the government’s actions would violate article 114 (1) (a) of the EAC Treaty which enjoins partner states to conserve, protect and manage the environment, and articles 5 (3) (c), 8(1)(c) and 111(2) which obligate partner states to co-operate in the management of natural resources.

The court concluded that if the road were constructed as planned it would cause devastating and irreversible damage to the Serengeti and neighboring parks like the Masai Mara in Kenya. The

court issued a declaration stating that the initial proposal to construct the bitumen road is unlawful and infringes on articles 5(3)(c), 8(1)(c), 111(2) and 114(1) of the EAC Treaty. The court also granted a permanent injunction restraining the Government of Tanzania from constructing and maintaining the planned road across the Serengeti, subject to its right to undertake other programs or initiate policies that would not have a negative impact on environment and ecosystem of the Serengeti National Park. The court found that because the proposal to construct the road was a violation of the EAC Treaty, noting that the construction would have irreversible and deleterious effects, it had the jurisdiction to grant an injunction.

Link to [full judgment](#) (PDF)

Benoit Ndorimana v. the Attorney General of the Republic of Burundi

28th November 2014, EACJ First Instance Division, Ref. No. 2 of 2013

Application dismissed on the basis that the violations of articles 6(d) and 7(2) of the EAC Treaty could not be established. The applicant's claim rested on proving violations of a "definitive and enforceable judgment." The court found the judgment relied on was not sufficiently definitive.

The applicant was arrested in 1989 by the Intelligence Service of the Republic of Burundi. Upon the applicant's release in 2002, he sued the Government of Burundi for indemnification for losses suffered to his pharmaceutical enterprises due to his arbitrary detention, and received judgment in his favor. The applicant contends that the government's failure to pay the ordered damages and accrued interest violates articles 6(d) and 7(2) of the EAC Treaty.

The court held that it did not have jurisdiction to grant the applicant's prayers relating to the right to "enjoy his vested interests" in the damages ordered, or to make an order requiring the respondent to pay the damages. The court reasoned that, in accordance with past case law and article 23, 27 and 30, which grounds the court's jurisdiction in interpreting the EAC Treaty and restricts interpretation of the EAC Treaty to matters not reserved to partner states, the court did not have the power to decide such matters.

The court did find jurisdiction, however, to consider whether the applicant's prayers relating to the failure of the attorney general to execute a "definitive and enforceable" judgment is a violation of articles 6(d) and 7(2) of the EAC Treaty. The court found no violation because the judgment the applicant relied on was not "definitive and enforceable," but in fact pending before the Supreme Court of the Republic of Burundi. For this reason the reference was dismissed and the issue of the timeliness of the reference was not considered.

Link to [full judgment](#) (PDF)

Procedural Decisions

Decisions concerning cases filed out of time and lack of jurisdiction

Mbugua Mureithi Wa Nyambura v. Attorney General of the Republic of Uganda & Attorney General of the Republic of Kenya

24 February 2014, EACJ First Instance Division, Ref. No. 11 of 2011

The court has jurisdiction to consider alleged EAC Treaty violations arising out of a human rights issue; the reference is time-barred under article 30(2) because it was not filed within 2 months from when the events giving rise to the alleged violations began.

The applicant is a Kenyan human rights lawyer who travelled to Uganda in September 2010 to represent six Kenyan citizens who were on trial for allegedly committing terrorist bombings in Kampala. Upon arriving in Kampala, the applicant was arrested by officers from Uganda's Rapid Response Unit (RRU) and detained incommunicado with his clients at the RRU station in Kireka. The applicant's belongings were seized, and he was told that he would also be charged with terrorism and murder. He was later transferred to Entebbe International Airport Police Station and RRU officers escorted him to a Kenya-bound Uganda Airlines aircraft. At this time, the officers returned his passport, mobile phone, and other personal belongings.

The applicant alleged violations of the EAC Treaty, East African Common Market Protocol, African Charter, and the UN Basic Principles on the Role of Lawyers. Specifically, he argued that his detention, interrogation, and the seizure of his belongings without a warrant, violated the respondent's obligation to act in accordance with principles of good governance and the rule of law required by EAC Treaty articles 6(d) and 7(2). The applicant also claimed that he was deported or forcibly removed from Uganda without due process, in violation of EAC Treaty articles 6(d) and 7(2), as well as article 104(1) relating to the free movement of persons. The applicant requested relief in the form of general, exemplary, and/or punitive damages.

The court found that it had jurisdiction to consider the alleged EAC Treaty violations, affirming its authority to consider any alleged violation of the EAC Treaty, regardless of whether the allegations also touch on human rights issues. The EAC Treaty concerns the rule of law and good governance but does not expressly include human rights obligations. However, the court did not consider the merits of the applicant's claims because it found that the reference was time-barred under article 30(2) of the Treaty. Article 30(2) requires applicants to file references within two months of the actions complained of, or within two months of the day when the applicant became aware of the actions. The court noted that the applicant did not file the reference until 30 December 2011, over a year after the actions complained of had occurred. The applicant reasoned that his reference was delayed because he wanted to find out more about why he was detained before filing. The court rejected this argument on the grounds that the information sought by the applicant relating to reasons for the detention (when, where, why, and by whom the applicant had been detained), were apparent at the time of the alleged violations. The court dismissed the reference.

Link to [full judgment](#) (PDF)

Professor Nyamoya Francois v. Attorney General of the Republic of Burundi & Secretary General of the EAC

28 February 2014, EACJ First Instance Division, Ref. No. 8 of 2011

The court has jurisdiction to consider alleged EAC Treaty violations arising out of a human rights issue; the reference is time-barred under article 30(2) (time limits for filing) because it was not filed within two months from when the events giving rise to the alleged violations began.

The applicant, a member of the opposition party in Burundi, was arrested and detained on 28 July 2011, under the orders of the public prosecutor, for alleged subornation of witnesses in a murder

trial. The applicant alleges that his due process rights and right to be free from arbitrary detention were infringed when the Prosecutor refused to release him from jail after the Tribunal of First Instance in Bujumbura ordered his immediate provisional release on 19 August 2011. He alleged that this action constituted a violation of the rule of law under article 6(d) of the EAC Treaty. The applicant also alleged that the secretary general of the East African Community had failed to fulfill his obligations to investigate the case and submit findings to the government under articles 29 and 71(1)(d) of the EAC Treaty, by failing to intervene in the matter after it was widely reported by news media both in Burundi and internationally.

The court found that it did not have jurisdiction to grant the applicant's request for a declaratory judgment regarding his right to freedom or to order his immediate release, as these were matters for the courts of Burundi to determine in the first instance

In response to the first respondent's contention that the court lacked jurisdiction to consider the reference because it contained allegations of human rights violations, the court reiterated that a reference's "mere inclusion of allegations of human rights violations" will not prevent the court from exercising its authority to interpret the EAC Treaty.

The court further held that the reference was time barred, rejecting the applicant's argument that his complaint was based on a "process of acts" which began with his arrest in July 2011 and did not end until his release in February 2012. Although the court acknowledged that the acts complained of happened over a period of time, ending in February 2012, the court reiterated reasoning first stated in the case of Attorney General of Kenya v. IMLU (appeal number 1 of 2011), that the time limitation period set out in article 30(2) begins on the date on which the alleged acts began, rather than the date on which they end, adding that the requirement of legal certainty necessitates a strict interpretation of article 30(2). Because the applicant filed the reference on 14 October 2011, more than two months after his arrest took place on 28 July 2011, the court declined to consider the applicant's claims on the merits and dismissed the reference.

Link to [full judgment](#) (PDF)

Union Trade Centre Limited v. Attorney General of the Republic of Rwanda

27 November 2014, EACJ First Instance Division, Ref. No. 10 of 2013

The court held that responsibility could be attributed to the state for conduct of a commission tasked with managing abandoned property because it exercised a state function. No jurisdiction to decide on whether due process was followed (articles 6 and 7 EAC Treaty) until a local court determines the legality of the conduct according to local law. No violation of articles 5(3) and 8(1) as they relate to policies of partner states rather than conduct.

Since 1997, the applicant ran and managed the Union Trade Centre (UTC) mall in Kigali. In 2013, the Kigali City Abandoned Property Management Commission (Commission) informed tenants of the UTC mall to direct their rental payments to the Commission's committee responsible for unclaimed property. The applicant argued that the Commission's actions were unlawful and sought to hold the Government of Rwanda responsible for the acts of the Commission. The applicant argued that the Commission's actions were in contravention of the requirement for partner states to act in accordance with the rule of law and principles of good governance (articles 6(d), 7(1) and (2) of the EAC Treaty), to strengthen partnerships with the private sector, and to create conditions favorable to achieving the objectives of the community (5(3) and 8(1) of the EAC Treaty).

The respondent argued that the reference was outside the court's jurisdiction because actions of the Commission were separate from state actions, and could not be attributed to the state. In addition, the respondent argued that reference was an abuse of court process because a case against the Commission was pending in the local courts. Finally, the respondent argued that the reference was out of time.

The court held that though the EAC Treaty governs the obligations of partner states in the community, the ILC articles are relevant as supplementary rules to determine the culpability of partner states for the acts or omissions of their organs. The court found that the acts of the commission could be attributed to the state because the commission was mandated to perform a state function (article 5 ILC Articles).

The court held that it did not have jurisdiction to decide whether articles 6 and 7 of the EAC Treaty had been breached, however, because local courts had not yet established whether the commissions acts were in contravention of local law. The court found that there had been no breach of articles 5(3) and 8(1) of the EAC Treaty as these articles relate to policies taken by partner states likely to "jeopardize the realization of the objectives of the Community..." rather than conduct.

On the issue of time limits, the court found that the reference was filed within the two month time limit, refusing to consider new evidence from the respondent on the ground that it had been presented too late in the proceedings.

Finally, the court ordered the parties to bear their own costs, noting a derogation from the usual rules of procedure, because the case dealt with issues of particular public importance.

Link to [full judgment](#) (PDF)

Hilaire Ndayizamba v. Attorney General of the Republic of Burundi & Secretary General of the East African Community

28 February 2014, EACJ First Instance Division, Ref. No. 3 of 2012

The applicant alleged a violation of secretary general's duties (article 29(1) and 71 (1) (d)), violation of state responsibility (article 6(d)), unlawful detention, and violation of due process. The reference is time-barred under article 30(2) because it was not filed within two months from when the alleged violations began.

The applicant, a resident of the Republic of Burundi, filed a petition with the court alleging that the authorities of Burundi violated his due process rights and subjected him to arbitrary detention. On 15 October 2009, the applicant was arrested by the public prosecutor of Burundi on suspicion of murder of Ernest Manirumva of Olucome, the Vice President of an anti-corruption organization named The Observatory for the Fight Against Corruption and Economic Embezzlement. The applicant claimed that after his arrest he was not charged within the time stipulated by article 75 of the Burundi Code of Penal Procedure and that he was subjected to arbitrary and unlawful detention by the agents of the Government of Burundi. The reference alleged an infringement of the rule of law under article 6(d) of the EAC Treaty. He also claimed that the Secretary General of the East African Community failed to fulfill his obligations to the applicant pursuant to article 29(1) and 71 (1) (d) of the EAC Treaty. The relief prayed for was immediate release and the costs of the reference.

The court decided that it had jurisdiction over the claim under article 6(d), 29 and 71(1) of the EAC Treaty, and the costs of the reference to the court. However, the court determined that it had no jurisdiction to grant the applicant's release given that the court's jurisdiction extends only to the interpretation of the EAC Treaty as set out in article 23 EAC Treaty (Role of the Court), and the extended human rights jurisdiction referred to in article 27(2) (Jurisdiction of the Court) had not yet been implemented.

Although the court decided that it had jurisdiction to hear the claim concerning the interpretation of the EAC Treaty, the case was dismissed as it was not filed within the two month time limit stipulated by article 30(2). The court rejected "the legal concept" of "legal continuing violations," and held that the clock began on 15 June 2011 when the detention complained of commenced. The fact of the applicant's continued detention did not persuade the court to stray from a restrictive interpretation of article 30(2). The reference to the court on 23 February 2012 was accordingly considered to be out of time.

Link to [full judgment](#) (PDF)

Decisions concerning leave to intervene as amicus curiae

Avocats San Frontieres v. Mbugua Mureithi Wa Nyambura & 2 Others

28 August 2013, EACJ First Instance Division, App. No. 2 of 2013

The application to enjoin the applicant as amicus curiae in the case of Mbugua Mureithi Wa Nyambura v. Attorney General of the Republic of Uganda & Attorney General of the Republic of Kenya, Reference no. 11 of 2011 was granted.

The applicant filed a notice of motion asking for the court's leave to intervene as amicus curiae in Mbugua Mureithi Wa Nyambura v. Attorney General of the Republic of Uganda & Attorney General of the Republic of Kenya, Reference No. 11 of 2011. In an affidavit supporting this motion, the applicant stated that it wished to join as amicus due to its interest in the "independence, freedoms, and fundamental rights of lawyers and law societies in the East Africa region." The applicant argued that it would make a unique contribution to the case, limited to questions of law, and that any inconvenience to the parties would be outweighed by applicant's assistance to the court in interpreting the EAC Treaty and "advancing respect for the rule of law" in the community.

The court found that the applicant's affidavit expressed its interest in the case sufficiently, so that no additional "statement of interest" was required under rule 36 of the court's rules of procedure (application for intervention and amicus curiae). The court granted the application, noting the applicant's stated purpose in its articles of association, namely to promote and protect human rights, including "the right relating to a fair trial and the exercise of the rights of the defence." The court was convinced that the applicant would contribute to achieving an unbiased and fair determination of the matters.

Link to the [full judgment](#) (PDF)

Forum pour Renforcement de la Société Civile & 6 Others v. Burundian Journalists' Union & Attorney General of the Republic of Burundi

15 August 2014, EACJ First Instance Division, App. No. 2 of 2014 (arising from Ref. No. 7 of 2013)

Participation and status of amicus curiae

The applicants, a variety of domestic and international NGOs, argued that numerous provisions of Burundian law violated freedom of expression and freedom of press as well as the good governance requirements of articles 6(d) the 7(2) of the EAC Treaty. The question before the court was whether amicus curiae could assist the court in identifying and explaining the types of media regulation that constitute an infringement on press freedom, and offer reasons why freedom of speech and freedom of the press are essential components of both the fundamental principles of the EAC Treaty, contained in article 6(d) of the Treaty, and the operational principles of the Community, as set out in article 7 (2) of the Treaty.

The court noted that it has a wide discretion to ask for assistance of amicus curiae if it considers that by doing so, the interests of justice would be served. The court looked to jurisprudence of the South African Constitutional Court (CC) in stating that an amicus “must have an interest in the proceedings, must be relevant to the proceedings, and raise new contentions which may be useful to the court.” The court noted the CC’s findings that “the role of an amicus is to draw the attention of the court to relevant matters of law and fact and to which attention would not otherwise be drawn.”

The court found that the applicants met the amicus curiae test, with the court reasoning that the applicant’s statement of interest proved that they are involved with and have knowledge of the issues relevant to the case. In addition, the court noted that PEN International, International Press Institute and PEN Kenya Centre are well known for their involvement freedom of the press matters. The court also noted that it is in the process of settling its jurisprudence and thus the case and court would benefit from expert opinion.

Link to [full judgment](#) (PDF)

UHAI EASHRI & Health Development Initiative Rwanda v. Human Rights Awareness & Promotion Forum & the Attorney General of the Republic of Uganda

17 February 2015, EACJ First Instance Division, Apps. No. 20 and 21 of 2014 (arising from Ref. No. 6 of 2014)

The applications to enjoin a reference challenging the validity of the Ugandan Anti-Homosexuality Act 2014 as amicus curiae were denied. The second applicant did not demonstrate sufficient interest in the outcome of the case as required by rule 36 of the court’s rules of procedure, and the first applicant was not sufficiently neutral to assist the court as an amicus curiae.

The applicants filed a notice of motion asking for the court’s leave to intervene as amicus curiae in a reference that contested the validity of sections of Uganda’s now repealed Anti-Homosexuality Act 2014.

The court stated that rule 36 of the court’s rules of procedure require an applicant to demonstrate that it has an interest in the outcome of the substantive reference in addition to establishing circumstances that prima facie justify its appearance as amicus curiae. The court refused both

applications. The second applicant was denied leave to intervene on the basis that it did not demonstrate an interest in the outcome of the case; the case challenged a Ugandan law, whereas the stated purpose of the second applicant was limited in territorial scope to work in Rwanda. The first applicant was also refused leave to intervene as amicus curiae because the court considered that while it had an interest in the outcome of the case, the first applicant could not be sufficiently neutral in the proceedings because the objectives of the first applicant were contrary to the purpose of the Anti-Homosexuality Act 2014.

Link to the [full judgment](#) (PDF)

Decisions concerning interim orders

Attorney General of the Republic of Uganda v. East African Law Society & Secretary General of the EAC

17 May 2013, EACJ First Instance Division, App. No. 1 of 2013

The court granted applicant's motion to stay proceedings pending a judgment on applicant's appeal before the court's appellate division.

The applicant filed a notice of motion requesting that the court stay its February 2013 ruling and orders regarding Reference no. 12 of 2012, pending the determination of the reference by the court's appellate division. The court's February 2013 order had granted leave for the respondents to file additional evidence in support of their case. The applicant argued that this additional evidence would prejudice him by changing the nature of the case. The applicant argued that his appeal requesting guidance on when new evidence can be adduced in proceedings, and on what grounds, would be rendered nugatory without a stay of proceedings.

The court held that a notice of appeal is a sufficient expression of an intention to file an appeal, and as such, a notice of appeal is sufficient to find the basis to stay proceedings. The court granted the applicant's motion, finding that the applicant may sustain a substantial loss unless the order is granted, because the applicant's appeal would be rendered nugatory. The court found that the further two criteria required in order for the court to grant a stay of proceedings had been satisfied, firstly, that the application had been made without unreasonable delay (being made within 2 weeks of the February 2013 ruling); and secondly, the court held that the applicant was exempt from the requirement to file security for costs under the exemption for applicants who are partner states, the secretary general or any of the institutions of the community (rule 115(2) of the court's rules of procedure).

Link to [full judgment](#) (PDF)

Venant Masenge v. Attorney General of the Republic of Burundi

18 June 2014, EACJ First Instance Division, App. No. 5 of 2013

The court declined to grant an interlocutory injunction ordering the respondent to cease all activities on the applicant's land.

This application arose out of Reference no. 9 of 2012 in which the applicant claimed that the respondent was vicariously liable for the infringement of his property rights, in violation of the good governance requirements of articles 6(d) and 7(2) of the EAC Treaty. The applicant

requested that the court grant a temporary injunction ordering the respondent to cease all activities and construction on the applicant's land pending a final determination on the reference regarding the land dispute.

The court declined to grant the injunction, finding that although the applicant's reference claims had a good chance of succeeding, the applicant would not be "irreparably harmed" by the activities and construction on his land, and that damages would be a more appropriate form of relief if the applicant's reference was successful.

Link to [full judgment](#) (PDF)

UPRONA Party & 2 Others v. Attorney General of the Republic of Burundi & Secretary General of the East African Community

15 August 2014, EACJ First Instance Division, App. No. 4 of 2014 (arising from Ref. No. 2 of 2014)

The remedies the applicant requested were 'decisively final' and could not be determined at an interlocutory stage of the proceedings

The applicants challenged the creation of a National Commission for Lands and other Assets (Commission), that they claimed had been granted powers akin to those of the judiciary, in breach of articles 6(d) and 7(3) of the EAC Treaty. The applicants argued that the decisions of the Commission are final, and cannot be appealed to any court, thereby creating a separation of powers issue. In addition, members of the Commission are appointed directly by the president.

The court held that the applicants request for an interim interlocutory order declaring the Commission incompetent to determine matters related to land and other assets, was decisively final, and consequently the court would be unable to grant such an interim order at the current stage of proceedings. The court also drew attention to the fact that the Commission had been functioning for several years, and was created by the Legislature of Burundi. Suspending its operations at the interim stage of proceedings would therefore be a particularly drastic act.

Link to [full judgment](#) (PDF)

East African Law Society v. Attorney General of the Republic of Burundi and the Secretary General of the EAC

15 August 2014, EACJ First Instance Division, App. No. 3 of 2014 (arising from Ref. No. 1 of 2014)

The remedies the applicant requested were "final in nature" and could not be determined at an interlocutory stage of the proceedings.

The applicant was a lawyer in Burundi who had been disbarred. The Public Prosecutor of Burundi issued an order prohibiting the applicant from travelling outside Burundi during the course of an ongoing hearing. The applicant argued that these actions violated articles 6(d) and 7(1) and (2) of the EAC Treaty, and therefore requested the court to issue a quashing order and a stay of the decision of the Court of Appeal of Bujumbura.

The court held that the remedies requested by the applicant were ‘final in nature’ and therefore could not be ordered at the ‘interlocutory’ stage. The court referred to a decision from the Supreme Court of the Philippines in distinguishing between a final and interlocutory court order: “[A]n interlocutory order does not dispose of a case completely, but leaves something more to be adjudicated upon. The term ‘final’ judgment or order signifies a judgment or an order which disposes of the case as to all the parties, reserving no further questions or directions for further determination.” Since granting the applicant’s demands would involve a quashing order and a stay of the decision taken by the Court of Appeal of Bujumbura, the court decided to wait until the main reference was determined.

Link to [full judgment](#) (PDF)

Uganda Association of South Sudan Ltd. & 3 Others v. Attorney General of Uganda & 5 Others

5 September 2014, EACJ First Instance Division, Ref. No. 8 of 2013

The court denied first applicant’s request to extend the time to file its proof of legal status as a corporate body, and struck the first applicant from the reference

This is an interim order striking the first applicant from the reference for its failure to properly file its certificate of incorporation and memorandum and articles of association with the court, as required by rule 24(4) of the court’s rules of procedure, which states that any corporate body filing a reference must also file proof of its existence as a corporate body.

At a scheduling conference, the first and third respondents raised a legal objection, arguing that the first applicant’s certificate of incorporation and memorandum and articles of association had been improperly filed with the court. In response, the first applicant withdrew these materials and asked the court to extend the time for it to file the materials properly. The court refused to grant this request, finding that the first applicant had not shown “sufficient grounds” for the application and noting that it had already granted a similar request by the first applicant’s two months earlier. The court struck the first applicant from the reference.

Link to [full judgment](#) (PDF)

Bonaventure Gasutwa & 2 others v. the Attorney General of the Republic of Burundi

28th November 2014, EACJ First Instance Division, App. No. 18 of 2014 (arising from Ref. No. 13 of 2014)

Interim order granted. The court confirmed that the meeting of the UPRONA political party’s central committee would be legal.

The applicants are members of UPRONA, an opposition party in Burundi that intended to challenge the incumbent party in the May 2015 general elections. The applicants sought ex parte interim relief from the court that would stay the meeting ban of the party’s central committee, issued by the ministry of home affairs, and declare such a meeting lawful. The applicants alleged that the meeting ban was issued in violation of articles 6(d) and 7(2) of the EAC Treaty, which require partner states to act in accordance with principles of good governance and the rule of law.

The court declined to hear the application ex-parte, failing to be persuaded of the urgency of the matter and the potential for irreparable injustice. The court granted interim relief on an inter-partes basis in respect of one prayer however, on the legality of meetings of UPRONA's Central Committee. The court reasoned that both parties to the case were in agreement that UPRONA was a properly constituted political party under Burundian law, noting that the Supreme Court of the Republic of Burundi had recognized the legal status of the group in 2012. As such, the court granted an interim order pending hearing that stated that "UPRONA Party is legally authorized to hold the meeting of its Central Committee elected in 2009."

Link to [full judgment](#) (PDF)

Decisions concerning costs

Hon. Sitenda Sebalu v. Secretary General of the EAC

22 November 2013, EACJ First Instance Division, Ref. No. 8 of 2012 (arising from Ref. No. 1 of 2010 and Taxation Ref. No. 1 of 2011)

The court found the respondent in contempt for failure to pay applicant's taxed costs as ordered in Tax Cause No. 1 of 2011; the court also found the Council of Ministers of the East African Community in contempt for failing to conclude and implement a protocol establishing the court's appellate jurisdiction, as the court had ordered in Ref. No. 1 of 2010.

In an earlier phase of this litigation (Reference No. 1 of 2010), the court granted the applicant's request for a declaratory order against the respondent, urging the East African Community to take "quick action" in concluding and implementing a protocol expanding the court's jurisdiction – specifically its appellate jurisdiction for cases ruled on by EAC member states' highest national courts. Afterwards, the applicant filed a bill of costs in Taxation Cause No. 1 of 2011, pursuant to which the court ordered that the respondent (as well as the Republic of Uganda, a respondent in the earlier reference) pay the applicants USD 105,068.20. The council of ministers did not implement the court's judgment regarding Reference No. 1 of 2010, and the respondent failed to pay the applicant its share of the costs.

The court found the council of ministers in contempt of the court for failure to implement the court's judgments in Reference No.1 of 2010 and Taxation Cause No. 1 of 2011. The court also found that such failures constituted a violation of the EAC Treaty, including article 38 which requires a partner state to "take, without delay, the measures required to implement a judgment of the court." The court offered the respondent the opportunity to purge this finding of contempt if the respondent paid the applicant its share of the taxed costs within three months of the date of this judgment.

Link to [full judgment](#) (PDF)

M/S Quality Chemical Industries Ltd. & M/S National Medical Stores v. Godfrey Magezi

19 June 2014, EACJ First Instance Division, App. No. 8 & 9 of 2014 (arising from Ref. No. 5 of 2013)

The court granted applicants' requests for respondent to reimburse them for legal costs.

The applications arose out of Reference No. 5 of 2013. The applicants complained that the respondent instituted and then withdrew his reference against them in an irregular manner and requested that the court order the respondent to pay the legal costs.

The respondent claimed that he had sued the applicants as well as the Inspector General of the Government (“IGG”) as “interested parties” in order to compel them to intervene in the reference or join as *amicus curiae*. The registrar of the court then served the applicants and IGG with notifications of summons requiring each party to file a response to the reference. However, all parties and the court agreed that the court’s rules of procedure do not allow for “interested parties.” The respondent then withdrew his reference as against the applicants and the IGG in his amended statement of reference notifying the applicants and the IGG by letter.

The court granted the applicants’ requests for costs and ordered the respondent to reimburse the IGG for costs as well, noting that it has authority to grant costs when a reference is withdrawn or a party is wrongfully impleaded. The court noted that parties who “deliberately drag others to court” in an improper manner “do so at their own peril.” The court held that the only time it will deny a successful party costs, is when there has been “conduct” which would require the exercise of the court’s discretion. The court’s judgment was underscored by its endorsement of a judgment of the Court of Appeal of England and Wales, which held that “...tribunals should not follow a practice on costs, which might encourage speculative claims, by allowing claimants to start cases in the hope of receiving an offer to settle, failing which, they could drop the case without any risk of a costs sanction.”

Link to [full judgment](#) (PDF)

**E-mail: info@justiceinitiative.org
www.justiceinitiative.org**



The Open Society Justice Initiative uses law to protect and empower people around the world. Through litigation, advocacy, research, and technical assistance, the Justice Initiative promotes human rights and builds legal capacity for open societies. Our staff is based in Abuja, Amsterdam, Bishkek, Brussels, Budapest, Freetown, The Hague, London, Mexico City, New York, Paris, Phnom Penh, Santo Domingo, and Washington, D.C.