



**IN THE EAST AFRICAN COURT OF JUSTICE AT
ARUSHA FIRST INSTANCE DIVISION**



(Coram: Jean Bosco Butasi, PJ, Isaac Lenaola, DPJ, Faustin Ntezilyayo J.)

CONSOLIDATED REFERENCES NOS.3 AND 5 OF 2014

**MBIDDE FOUNDATION LTD..... 1ST APPLICANT
RT. HON. MARGARET N. ZZIWA..... 2ND APPLICANT**

VERSUS

**THE SECRETARY GENERAL OF THE
EAST AFRICAN COMMUNITY.....1ST RESPONDENT**

**THE ATTORNEY GENERAL OF THE
REPUBLIC OF UGANDA.....2ND RESPONDENT**

15TH AUGUST 2014

RULING OF THE COURT

INTRODUCTION

On 20th March 2014, MBIDDE FOUNDATION LTD, referred to as “1st Applicant”, filed **Reference No.3 of 2014** in this Court alleging that the procedure for the removal of the Speaker of the East African Legislative Assembly infringes the EAC Treaty Provisions.

Thereafter, on 21st March 2014, some Members of the East African Legislative Assembly (EALA) tabled a **Notice of Motion** for the removal of the Speaker from Office.

When the Petition for the removal of the Speaker of the EALA was introduced before the Assembly, RT. HON. MARGARET ZZIWA, (hereinafter to be referred as “the 2nd Applicant”) suddenly adjourned the Assembly *sine die* before the said Petition reached the Committee on Legal, Rules and Privileges for investigation as provided under the Rules of Procedure of EALA. The 2nd Applicant then filed **Reference No.5 of 2014** on the 14th April 2014 before this Court challenging the Rules of Procedure for the removal of the Speaker as provided under the East African Legislative Assembly Rules of Procedure.

In the meantime and prior to the hearing of the main References, the 1st and 2nd Applicants filed separate Applications seeking interim Orders to restrain the EALA from investigating or removing the 2nd Applicant from Office pending the determination by the Court of **References Nos.3 and 5 of 2014**. Without delving into details, the two (2) Applications were consolidated

and heard on 9th May 2014 and the Ruling related thereto was delivered on 29th May 2014.

The Court on that day ordered the consolidated Applications to be dismissed and that the costs thereof shall abide the outcome of the consolidated References. Finally, the Court ordered that the consolidated References be heard on priority basis.

It is worthy noting that, immediately after delivery of the Ruling, all the Parties agreed for a Scheduling Conference on 20th June 2014.

On 19th June 2014, however the Applicants lodged a Notice of withdrawal of the References in this Court. In a nutshell, the Applicants said that:

“This action has been prompted by the fact that three members of East African Legislative Assembly from the United Republic of Tanzania after careful consideration of the Motion and the grounds for the removal of the Speaker withdrew their signatures.

This implies that the Motion on which this Reference was anchored falls short of the mandatory requirements under Rule 9 of the Rules of Procedure of the East African Legislative Assembly. The Assembly has since found that, the Motion collapsed and can no longer form part of the Business of the House.

In addition, the Heads of State of the East African Community have embarked on addressing the political fallout arising from the impeachment Motion.

Consequently, there is no basis for the Reference as it is no longer based on any real facts/dispute and has been rendered academic, hypothetical and thus, unjusticiable before the Courts of Law.”

The Applicants thus sought that upon withdrawal of the consolidated References, the Court should order each Party to bear its own costs hitherto incurred.

At this stage and for the sake of clarity, it is not superfluous to recall that, beyond making appearances in all proceedings related to the consolidated Applications aforesaid, the Respondents had made the necessary research and filed their respective responses to the Consolidated References.

On 20th June 2014 therefore when the consolidated **References Nos. 3 & 5 of 2014** came for the Scheduling Conference, representation was as follows:

1. Hon. Mr. Fred Mukasa Mbidde and Mr. Justin Semuyaba represented the 1st Applicant;
2. Dr. Kalu Karumiya and Mr. Jet John Tumwebaze appeared for the 2nd Applicant;
3. Mr. Wilbert Kaahwa, Counsel to the Community and Mr. Stephen Agaba, Principal Legal Officer, appeared for the 1st Respondent; and

4. Ms. Christine Kaahwa, Commissioner Executions, Mr. Jimmy Oburu Odoi, Principal State Attorney and Mr. Geoffrey Mandete, State Attorney represented the 2nd Respondent.

On that day, the Applicants referred this Court to the “**Notice of Withdrawal**” of the consolidated References and also sought Orders that each Party should bear its own costs.

Taking into account the new developments in the EALA, while the Respondents did not oppose the withdrawal and discontinuance of the proceedings on one hand, they opposed the submissions by the Applicants that each Party should bear its own costs by arguing that this Reference was not a “*Public Interest Litigation*” to attract such an order. They contended in that regard that they had been taken by surprise by those submissions because they had expected to meet, discuss and reach an agreement on costs pursuant to Rule 51(2) of the East African Court of Justice Rules of Procedures 2013 (hereinafter “the Rules”).

For the sake of clarity, we reproduce below in extenso Rule 51(2) aforesaid:

“The Parties may agree in writing the terms of any such withdrawal or discontinuance and lodge such agreement in the registry. In the absence of such an agreement, the Court may order such terms as to costs, the filing of any other Reference or Claim and otherwise as the Court considers just.”

As said earlier, all the Parties agreed upon the withdrawal and discontinuance, but differed on the issue of costs. The issue that arises therefore is whether the consolidated References fall under the term “*Public Interest Litigation*” and therefore no Party should suffer costs and in the alternative, whether the Respondents are entitled to costs following the event of withdrawal of the References.

On behalf of the 1st Applicant, Mr. Fred Mukasa Mbidde asserted that:

“The matter has been rendered nugatory by the participation and actions of the Respondents or at least those represented by the Respondents in this Court.”

Mr. Mbidde further expressed that the 1st Respondent was brought before this Court in accordance with Article 4(3) of the Treaty and as such, he represented the EALA; one of the Organs of the Community established under Article 9 of the Treaty. Learned Counsel also referred this Court to a letter dated 3rd June, 2014 and written to some EALA members by the Chairperson of the Summit to substantiate that even Partner States took part in the process that culminated in the collapse of the References. He therefore concluded that what is said above showed that the matter was in the nature of “*public interest litigation*” and therefore no Party should be penalized with costs upon its withdrawal.

Mr. Justin Semuyaba, Learned Counsel for the 1st Applicant further averred that, the Motion to remove the Speaker from the

House was initiated by some EALA members. Afterwards, they rethought, changed their minds and then decided to stop their Motion. It is that turnaround which prompted the withdrawal of the References.

In conclusion, he said that if some EALA members had not withdrawn their signatures from the Motion before the House, the 1st Applicant would have pursued this Reference but the withdrawal of the Motion rendered it nugatory and valueless.

Dr. Karumiya, Learned Counsel for the 2nd Applicant on his part referred the Court to its own Ruling on that matter where it opined that:

“...the office of the Speaker is vital to the operations of the EALA and the removal of the holder thereof should never be approached casually or flippantly.”

To show that the matter is therefore of “*public interest*”, Counsel for the 2nd Applicant went on to say that the role of EALA is vital in the integration process of EAC. He then concluded that the above development shows enough that the Reference is of *public interest* and therefore, submitted that each Party should bear its own costs.

Mr. Tumwebaze, Learned Counsel for the 2nd Applicant complemented his colleague Dr. Karumiya and argued that the Secretary General was sued in his Executive capacity under Article 4(3) of the Treaty and in such a representative capacity, he was to represent the EAC including EALA members when they decided to move a Motion and signed it in order to impeach the

Speaker. But in the meantime and at this stage, there has been a reversal of the situation inasmuch as the EALA members who signed the Motion withdrew their signatures. Consequently, the set of facts that constituted the grounds of the cause of action have been extinguished by the conduct of the Respondents and the Reference therefore became ineffective. That is why he ended up submitting that each Party should bear its own costs.

On the contrary, Counsel for the Respondents firmly opposed the Applicants' submissions. First and foremost, Mr. Wilbert Kaahwa, Counsel for the 1st Respondent contended that, taking into account all surrounding circumstances, he had no objection to the withdrawal and discontinuance of the proceedings. But, as regards the costs, he argued that the Applicants ought to reimburse the costs incurred because the Reference was not a "*public interest litigation*". It was Mr. Kaahwa's further argument that, even if the 1st Respondent was not the successful Party in the main hearing, he should be paid the equivalent of the costs that he should have paid had he lost the References in accordance with Rule 51(2).

Ms. Christine Kaahwa, Learned Counsel for the 2nd Respondent underscored that in the Court's Ruling, the Court found that the 2nd Respondent was not under any obligation to seek an advisory opinion on this matter. Similarly therefore, the Court would have in any event dismissed the Reference against the Attorney General if the Motion had not been withdrawn. Furthermore, Counsel for the 2nd Respondent pointed out that, the withdrawal amounted to a win-win situation for the Attorney General and

since costs follow the event, the 2nd Respondent should be paid costs of the said withdrawal of the Reference. For the Counsel for the 2nd Respondent, the **event** would mean what has been decided by this Court rather than what transpired in EALA.

Counsel for the 2nd Respondent finally stressed that even if the public was interested in what was happening in EALA, it does not make it automatically a subject of public interest.

After considering arguments and counter arguments of the Applicants and Respondents respectively, we now turn back to the main bone of contention placed before us namely: ***“whether the Consolidated Reference Nos.3 & 5 raised issues of public interest, or in other words was it public interest litigation?”***

First and foremost, what is *“Public Interest?”*

Black’s Law Dictionary, (9th Edition) defines *“Public Interest”* as:

“The general welfare of the public that warrants recognition and protection. Something in which the public has a stake, especially, an interest that justifies Governmental regulation.”

From the above definition, it is our understanding that, **Public Interest Litigation** is litigation for the protection of the public interest. Right now it is worthy to pause and ask ourselves whether the 1st and the 2nd Applicants aimed to protect public interest when filing their References and whether the

consolidated References are is clothed with issues of public interest.

First of all and as far as the 1st Applicant is concerned, Article 30(1) of the Treaty allows any Legal or Natural Person to refer for determination by this Court, the legality of any Act, regulation, directive, decision or action of a Partner State or an institution of the Community for being unlawful or a violation of the Treaty.

In suing both the Secretary General pursuant to Article 4(3) read in conjunction with Article 9 of the Treaty, and the Attorney General of the Republic of Uganda in his representative capacity on behalf of the Republic of Uganda (a Partner State), Mbidde Foundation, in its capacity of legal person, did not pursue a personal interest according to Mr. Mbidde. Mbidde Foundation moved the Court for interpretation of Articles 5(1), 6(d), 7(2), 36 and 53(3) of the Treaty as well as Rule 9 of the EALA Rules of Procedures and as such there was no direct personal interest. No material or any other evidence was placed before us by the Respondents to convince us to the contrary and we so find.

With regard to the 2nd Applicant, the RT. HON. MARGARET ZZIWA, she is the Speaker of EALA established under Article 53 of the Treaty and EALA is the legislative arm of the Community. The role of EALA is pivotal in the integration process of the region and the position of the Speaker as the presiding officer of the Assembly is crucial for the management and trust of EALA.

In order to appreciate the importance of the office of the Speaker, one may consider the duties and functions as enshrined in the

Treaty for the Establishment of the East African Community and Rules of Procedure for EALA. Without belabouring the point, the Speaker presides over all the EALA Sessions and is the Head of the administration of EALA and therefore responsible for its overall direction and management.

Secondly, under Article 49(2) and (3) of the Treaty, the Assembly under direction of the presiding officer:

- “(2) a. ***shall liaise with the National Assemblies of the Partner States on matters relating to the Community;***
- b. ***shall debate and approve the budget of the Community;***
- c. ***shall discuss annual reports on the activities of the Community, Annual Audit Reports of the Audit Commission and any other reports referred to it by the Council;***
- d. ***shall discuss all matters pertaining to the Community and make recommendations;***
- e. ***may for purposes of carrying out its functions, establish any Committee or Committees for such purposes as it deems necessary;***
- f. ***shall recommend to the Council the appointment of the Clerk and other Officers of the Assembly; and***
- g. ***shall make its Rules of Procedure and those of its Committees.***

(3) ***The Assembly may perform any other functions as are conferred upon it by the Treaty.***”

For the achievement of this mandate, the Speaker directs all the activities of EALA Committees and presides over proceedings of the House in accordance with Article 48(2) of the Treaty and Rule 8(1) of the Rules of Procedure of EALA.

This mandate is of great public interest in the integration process of the Community. We are therefore in full agreement with Dr. Karumiya, Learned Counsel for the 2nd Applicant when he said that the holder of the office of the Speaker should not be removed casually or offhandedly. As regards the functioning of the EALA, the Office of the Speaker is indeed crucial in the discussion and approval of the budget of the Community by EALA members and it is well known that the Community is funded by the taxpayers of the Partner States.

Furthermore, the office of the Speaker has a great role in the follow up of EAC activities and in liaising between the National Assemblies of the Partner States and EAC. As a result, the role of the office of the Speaker is essential in the advancement of the EAC integration process; it is like a communication vessel between EAC, Partner States and the Citizens of the Community for a smooth integration process. In addition, the withdrawal of the signatures from the Motion by some EALA members was beyond the 2nd Applicant’s control.

In addition, from the date the References were filed before this Court until the date it was withdrawn, it is the 2nd Applicant who

wore the identifying mark of EALA's uniform. The Applicants filed the References to protect and defend the Office of the Speaker from the tentative and future casual removal of the Speaker as stated earlier and the Respondents did not place before us compelling reasons that the 2nd Applicant (RT. HON. MARGARET ZZIWA) should be separated from her pivotal position in these proceedings as the Head of one Organ of the Community.

For the above reasons, therefore, it is our point of view that removal of the Speaker cannot be a private matter such as it is between a tenant and a landlord. On the contrary, it is a matter of great public importance to the East African Community at large.

Before we conclude on public interest litigation, we are fortified by the findings of the Supreme Court of India in **Petition No.663 of 2004 B.P. Singhal vs. Union of India & Anr** where on the issue of costs in public interest litigation the Supreme Court held that:

“.....the Writ Petition is filed as a public interest litigation in the wake of the removal of the governors of States of Uttar Pradesh, Gujarat, Haryana and Goa on 02/07/2004 by the President of India on the advice of the Union Council of Ministers....” and did not accordingly order for costs prayed. **(See 2nd and last paragraphs of the above Judgment).**

Moreover, in **Air 1982 SC 149, S. P. Gupta vs. President of India and Others on 30 December, 1981**, the Petitioner

challenged the Constitutional validity of the order transferring the Chief Justice K. B. N. Singh. The Court found that the matter was of public interest litigation and ordered that **“there would be no order as to costs in both the groups of Writ Petition”** (See Paragraph 118 of the Judgment).

It follows from the above two cases that the Public was affected by the removal of Governors and the transfer of Judge K. B. N. Singh.

Similarly, the removal of the Speaker, the main issue in the consolidated References herein was a matter of in the nature of *public interest litigation*. In any event, and the withdrawal of the signatures by some members of EALA which rendered the same References moot cannot be attributed to the Applicants. Neither should they be penalized for changed circumstance that did not have their direct input.

Turning back to the issue of costs and in the above context, according to Rule 111(1), costs shall follow the event unless the Court orders otherwise for good reasons. In these circumstances, the event, namely, the withdrawal of the consolidated References was occasioned by the Applicants, but, as said elsewhere above, it was also caused the actions of some Members of EALA who were initially signatories to the Petition seeking the removal of the Speaker.

Sub-Rule 2 of the 111 provides that, any Party which incurs costs improperly or without reasonable cause would be reimbursed by the opposite Party. In applying that sub-Rule, the

main issue is whether the Consolidated References were properly and with reasonable cause placed before this Court.

It is our firm view in answer to that issue that the Applicants pursued a reasonable cause in filing their References. Consequently, the Applicants cannot be faulted for the withdrawal in the changed circumstances.

In light of all the above reasons, we now make the following orders:

- a) **References Nos.3 & 5 of 2014** are hereby marked as “*withdrawn by consent of the Parties*”; and
- b) Each Party shall bear its own costs.

It is so ordered.

Dated, Delivered and Signed at Arusha this 15th Day of August 2014.

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**JEAN BOSCO BUTASI
PRINCIPAL JUDGE**

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**ISAAC LENAOLA
DEPUTY PRINCIPAL JUDGE**

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**FAUSTIN NTEZILYAYO
JUDGE**