



**IN THE EAST AFRICAN COURT OF JUSTICE AT ARUSHA**

**APPELLATE DIVISION**

**(Coram: Emmanuel Ugirashebuja, P.; Liboire Nkurunziza, VP.;  
Edward Rutakangwa, Aaron Ringera, and Geoffrey Kiryabwire,  
JJ.A.)**

**APPEAL NO. 2 OF 2017**

**BETWEEN**

**HON. DR. MARGARET ZZIWA ..... APPELLANT**

**AND**

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

*[Appeal from the judgment of the First Instance Division (Monica K. Mugenyi, P.J.; Isaac Lenaola, DPJ.; Faustin Ntezilyayo, Fakihi A. Jundu and Audace Ngiye, JJ.) dated 3<sup>rd</sup> February 2017 in Reference No. 17 of 2014]*

## **JUDGMENT**

### **A. INTRODUCTION**

1. This is an Appeal by Dr. Margaret Zziwa (“the Appellant”) against the Judgment of the First Instance Division of this Court (“the Trial Court”) dated 3<sup>rd</sup> February 2017 whereby the Trial Court partially allowed the Amended Reference filed in the Trial Court on 24<sup>th</sup> February 2015 and ordered each party thereto to bear their own costs.
2. The Respondent to the Appeal is the Secretary General of the East African Community. In the Trial Court, the Appellant was the Applicant and the Secretary General to the East African Community was still the Respondent.
3. The Appellant is, in this Court, as she was in the Trial Court, represented by Mr. Justin Semuyaba, duly instructed by Semuyaba Iga & Co. Advocate of Kampala, Uganda and Mr. Jet John Tumwebaze, duly instructed by the firm of Kampala Associated Advocates of Kampala, Uganda. The Respondent is, in this Court, as it was in the Trial Court, represented by Mr. Stephen Agaba, duly instructed by the Counsel to the Community.

### **B. BACKGROUND**

4. The factual background of this Appeal is comprehensively summed up in the Judgment appealed from and is with minor, albeit pertinent, modifications outlined herein below.

5. The Appellant who was a member of the East African Legislative Assembly (“EALA”) from the Republic of Uganda was in June 2012 elected as the Speaker of EALA.
6. Sometime in early 2014, the idea of her removal from the office of Speaker was mooted by some members of the Assembly. On 20<sup>th</sup> March 2014, possibly to prevent such a move, Mbidde Foundation Ltd filed **Reference No. 3 of 2014 (Mbidde Foundation Ltd v The Secretary General of The East African Community and The Attorney-General of Uganda)**, contesting the procedure prescribed for the removal of the Speaker for allegedly violating the provisions of the Treaty for the Establishment of the East African Community (“the Treaty”). The same Applicant also filed an Application for interim orders pending the determination of the Reference, to wit, **Application No. 5 of 2015**.
7. On 26<sup>th</sup> March 2014, a Notice of intention to move a Motion for the removal of the Appellant from the Office of Speaker was formally lodged with the Clerk to the Assembly.
8. The Clerk forwarded the said Notice to the Assembly on 27<sup>th</sup> March 2014. On the same day, the Clerk received a Motion detailing the grounds for the removal of the Appellant. That Motion was included in the Assembly’s Order Paper and brought to the Appellant’s attention on 31<sup>st</sup> March 2014.
9. On 1<sup>st</sup> April 2014, the Motion was presented to the Assembly Plenary but before it could be referred to the Committee on Legal, Rules and Privileges, a member of the Assembly raised a point of

order invoking the Assembly's *Sub judice* Rule given the pending determination of **Reference No. 3 of 2014** by the Trial Court. Following the ensuing debate, the Appellant ruled that the Assembly could not proceed with the motion and adjourned the House *sine die*.

10. The Appellant subsequently filed **Reference No. 5 of 2014 (Margaret Zziwa v The Secretary General of the EAC)** challenging her intended removal for allegedly violating Treaty provisions that guaranteed her a right to fair hearing. The Appellant also filed **Application No. 10 of 2014**, in which she sought interim orders restraining the EALA from investigating or removing her from office pending the determination of the above Reference. That Application was subsequently consolidated with the earlier **Application No. 5 of 2014** and the consolidated Applications were dismissed by the Trial Court.
  
11. On 20<sup>th</sup> May 2014, prior to any further deliberation on the Motion for the Appellant's removal from office, three members of the Assembly from Tanzania withdrew their signatures from the Motion, a move which was followed by one member from Kenya on 2<sup>nd</sup> June 2014. Against that background, on 4<sup>th</sup> June 2014 when the matter of the Appellant's removal from office arose in the re-called Assembly, the Appellant ruled that the Motion had lapsed given that under the EALA Rules of Procedure, such a Motion required the signatures from the Tanzanian members of the Assembly.

12. Following the above events, the **Consolidated References Nos. 3 and 5 of 2014** were, by consent of the Parties, withdrawn on 15<sup>th</sup> August 2014.
  
13. Notwithstanding the above events, in November 2014, fresh actions were initiated to remove the Appellant from office. On 26<sup>th</sup> November 2014, 32 members of EALA convened in the designated Assembly Chambers in Nairobi; summoned the Clerk to ‘preside over the Assembly’; allegedly locked the Appellant in her office; elected a ‘Temporary’ Speaker to preside over the Motion for the Appellant’s removal; referred the said Motion to the Assembly’s Committee on Legal, Rules and Privileges for investigation, and suspended the Appellant from the office of Speaker of the Assembly.
  
14. The Appellant contested the legality of the foregoing actions through **Amended Reference No. 17 of 2014** filed in the Trial Court in which she sought a permanent injunction against her removal from office. The said Amended Reference was expressed to be brought under Articles 4(1) and (3), 5, 6(d), 7(2), 8(1) (c ), 23, 27(1), 29, 30, 33, 37, 38, 39, 44, 53(3), 56, 71, and 73 of the Treaty and Rules 1(2), 17, 21, 24, 84 and 85 of the East African Court of Justice Rules (“the Rules”). Additionally, *vide* **Application No. 23 of 2014**, the Appellant unsuccessfully sought interim orders to forestall the reconvening of the Assembly to consider the Committee report. On 17<sup>th</sup> December 2014, the Assembly commenced censure proceedings which culminated in the Appellant’s removal from the Office of Speaker on 19<sup>th</sup> December 2014.

15. On 24<sup>th</sup> February 2015, the Appellant filed in the Trial Court an Amended Reference in which she contested the legality of her said removal from office and sought the following reliefs:
- (a) A declaration that the purported sitting of the Assembly on 26<sup>th</sup> November 2014 without the elected Speaker of the Assembly violated Articles 53 and 56 of the Treaty and the Rules of Procedure of the Assembly.
  - (b) A declaration that the said sitting and any subsequent sittings not presided over by the elected Speaker and actions of members of EALA were *ultra vires*, illegal, unlawful, procedurally wrong, null and void and of no legal consequence.
  - (c) A declaration that the Committee on Legal, Rules and Privileges was improperly constituted for the purpose of this particular matter as a majority of its members were also accusers/petitioners/complainants and witnesses against the Applicant and thus their participation in the Committee constituted a breach of the rules of natural justice, specifically the rule against bias.
  - (d) A declaration that the proceedings of the Committee violated the rules of natural justice and its report is null and void and that the alleged grounds of misconduct listed in the Motion were manifestly frivolous and constituted a violation of Article 53(3) of the Treaty.
  - (e) A declaration that the ruling of the Speaker of 4<sup>th</sup> June 2014 and the Ruling of the Court of 15<sup>th</sup> August 2014 disposed of the impeachment Motion and whoever was aggrieved should have appealed to the Court and an Order quashing the actions of the EALA in removing the Applicant from the office of the Speaker.

- (f) A declaration that the removal of the Applicant from office was *ultra vires* the Treaty, Rules of Procedure of the Assembly and rules of natural justice.
  - (g) An award of General Damages for the embarrassment, inconvenience, pain, mental anguish and reputational damage.
  - (h) An award of aggravated and/or exemplary and punitive damages for the wanton conduct of the members of EALA.
  - (i) An award of special damages in the form of loss of earnings of a salary of USD 6,700 per month and Housing allowance of USD 3,000 per month, plus other allowances and financial benefits.
  - (j) Interests on the sums awarded from the date of the removal of the Applicant from the office of Speaker until payment in full.
  - (k) An Order of reinstatement of the Applicant, Rt. Hon. Margaret Zziwa, to the office of Speaker of the EALA.
  - (l) A permanent injunction restraining and prohibiting the Respondent and directing the EALA from considering a non-existing impeachment Motion.
  - (m) Any other reliefs and/or remedies that the Court deems fit.
  - (n) An order that the Respondent shall pay all the costs of this Reference.
16. At the Scheduling Conference held by the Trial Court on 6<sup>th</sup> May 2015, the following issues were framed for the Court's determination:
- (a) Whether the Assembly's Rules of Procedure were followed by EALA in the suspension of the Applicant from the Office of Speaker, and whether the proceedings were null and void and ought to be set aside.

- (b) Whether the appointment/election of a Temporary Speaker was in conformity with the Treaty and the Assembly's Rules of Procedure.
  - (c) Whether the actions, proceedings and findings of the Committee on Legal, Rules and Privileges, and the eventual removal of the Applicant as Speaker by the Assembly were in conformity with the provisions of Article 53 and 56 of the Treaty, the Rules of Procedure, as well as the rules of natural justice.
  - (d) Whether the grounds for the removal of the Speaker presented to and investigated by the Committee on Legal, Rules and Privileges were the grounds envisaged under Article 53 of the Treaty.
  - (e) Whether the Applicant was entitled to the remedies sought.
17. Upon consideration of the Amended Reference, the evidence adduced and the submissions of Counsel for the Parties, the Trial Court answered the issues framed as follows: -
- (a) There was no legal basis for the suspension of the Speaker of EALA by the Assembly. Issue No. (1) was answered in the negative.
  - (b) The election of a Temporary Speaker contravened Article 56 of the Treaty and was devoid of legal basis. Issue No. (2) was answered in the negative.
  - (c) There was a breach of Rule 9(6) of EALA's Rules of Procedure by the Appellant by dint of her presiding over a House whose sole business was her removal from office.



- (d) The actions, proceedings and findings of the Committee on Legal, Rules and Privileges, and the eventual removal of the Appellant as Speaker by the Assembly were in breach of the provisions of Articles 53 and 56 of the Treaty, and Rule 9 of the Assembly's Rules of Procedure, as well as rules of natural justice. Issue No. (3) was answered in the negative.
  - (e) Most of the grounds for removal of the Speaker presented to and investigated by the Committee on Legal, Rules and Privileges were grounds envisaged under Article 53 of the Treaty. Issue No. (4) accordingly succeeded in part and failed in part.
18. With respect to the remedies sought in the Amended Reference, the Trial Court pronounced itself as follows: -
- (a) With regard to prayers (a), (b), (c) and (d), Declarations were issued that (i) the purported sitting of the Assembly on 26<sup>th</sup> November 2014 without the elected Speaker was unlawful to the extent that it violated Article 56 of the Treaty and the Assembly's Rules of Procedure; (ii) the Committee on Legal, Rules and Privileges, in allowing members of the Assembly who initiated the Motion for removal of the Applicant to sit and determine whether she should in fact be removed, violated the basic rules of natural justice; and (iii) the Report of the Committee on Legal, Rules and Privileges was invalid.
  - (b) With respect to prayers (e) and (k), the same were refused on the grounds that quashing the actions of EALA and reinstating the Applicant would offend one of the principles in Article 6(d) of the Treaty, namely, democracy and the rule of law which necessarily included the principle of separation of powers.

- (c) With respect to prayers (g), (h), (i) and (j) which sought special and general damages and interest thereon, the same were refused on the grounds that (i) there was no legal provision in the Rules for the award of damages as a remedy; (ii) given the interpretative jurisdiction of the Court depicted in Articles 23 and 27 of the Treaty, the issuance of declarations on Treaty compliance or the lack thereof was deemed to be a sufficient remedy; and (iii) the authorities cited by the Applicant in support of an award for damages were irrelevant as they related to dismissal of employees from service whereas the Applicant was not an employee of EALA but an elected Speaker whom the members had the mandate under Article 53 of the Treaty to remove.
- (d) With regard to the prayer for costs, the same was refused on the ground that the Applicant had flouted Rule 9(6) of EALA Rules of Procedure by presiding over a matter in her own cause, which conduct, “quite possibly” could have triggered the events the subject matter of the Reference.

### **C. THE APPEAL TO THE APPELLATE DIVISION**

19. The Appellant being partially dissatisfied with the above decision of the Trial Court initiated an Appeal by contemporaneously lodging a Notice of Appeal and a Memorandum of Appeal on 7<sup>th</sup> April 2017. She proffered the following grounds of Appeal, namely;
- (a) The Learned Justices of the East African Court of Justice (First Instance Division) erred in law in holding that they did not have the mandate under Articles 23 and 27 of the Treaty and/or any other provisions of the Treaty to reinstate the Appellant as Speaker of the East African Legislative Assembly.

- (b) The Learned Justices of the East African Court of Justice (First Instance Division) erred in law in holding that the Appellant breached Rule 9(6) of the East African Legislative Assembly Rules of Procedure by presiding over the proceedings for her removal on 1<sup>st</sup> April and 4<sup>th</sup> June 2014.
- (c) The Learned Justices of the East African Court of Justice (First Instance Division) erred in law when they held that there was no legal provision in the Treaty and the Rules of Procedure of the East African Court of Justice 2013 for the Court to base upon to award special and general damages.
- (d) The Learned Justices of the East African Court of Justice (First Instance Division) erred in law when they held that the Appellant had been successful in three (3) out of five (5) issues and partly succeeded on the other two issues and would thus have been entitled to 3/5 of the costs but declined to award the Appellant costs.

20. The Appellant asked the Court:

- (a) To allow the Appeal;
- (b) To partially vary the judgment of the Trial Court and to quash the impugned actions/decisions of EALA;
- (c) To reinstate the Appellant as Speaker of the EALA;
- (d) To grant the Appellant special and general damages as pleaded in the Reference;
- (e) To grant the Appellant the costs of the Appeal and of the Reference;
- (f) To grant such consequential, further or other order(s) as it may deem just and equitable for the implementation of any order on special and general damages and costs and the Secretary General

of the East African Legislative Assembly makes appropriate arrangements for payment of those damages and costs [*sic*].

21. At the Scheduling Conference of the Appeal, the grounds were consolidated into the following issues:
  - 1) Whether the Trial Court erred in law in holding that the Court did not have the mandate under Articles 23 and 27 of the Treaty and any other provisions of the Treaty to reinstate the Appellant as the Speaker of the Assembly.
  - 2) Whether the Trial Court erred in law in holding that the Appellant breached Rule 9(6) of the Assembly's Rules of Procedure by presiding over the proceedings of the Assembly for her removal from office on 1<sup>st</sup> April and 4<sup>th</sup> June 2014.
  - 3) Whether the Trial Court erred in law in declining to award the Appellant general and special damages as prayed in the Reference.
  - 4) Whether the Trial Court erred in declining to award the Appellant the costs of the Reference.
22. After the Scheduling Conference, the Parties in compliance with this Court's Directions filed their written submissions and on the 13th February 2018, they appeared before the Court and highlighted those submissions at some length.
23. We propose to deal with the above issues sequentially.

**Issue No. (1) : Whether the Trial Court erred in law in holding that the Court did not have a mandate under Articles 23 and 27 of the Treaty and any other provision of the Treaty to reinstate the Appellant as the Speaker of the Assembly.**

## **Appellant's Case.**

24. Counsel for the Appellant submitted that it was evident from the plain reading of Articles 23(1) and 27(1) of the Treaty that the Court is not limited to the interpretation of the Treaty only but has a mandate to ensure compliance therewith and adherence to law. Accordingly, Counsel argued, the Trial Court having found that the conduct of EALA with respect to the Appellant violated Article 56 of the Treaty and all its actions were null and void, it followed that it should have ordered reinstatement of the Appellant as part of its mandate of ensuring compliance with the Treaty and adherence to the law. Counsel further argued that the effect of nullifying the Assembly sitting of 24<sup>th</sup> November 2014 and all consequential actions was that the Appellant legally held the office of the Speaker of EALA and the Court should have confirmed the same.
25. In support of his submissions, Counsel for the Appellant cited **Benjamin Leornard Malfoy v United African Company Ltd [1962] AC 152** where Lord Denning posited that:

*“if an act is void, then it is a nullity in law. It is not only bad, but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without much ado. Though it is sometimes convenient to have the court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad”.*

Counsel pointed that in similar vein, the Supreme Court of Nigeria in **Federal Civil Service Commission v Laoye [1990] LRC 451** had made a declaration that the unlawful dismissal of the respondent was void and of no legal effect and the respondent was still an employee of the appellant and should, therefore, be reinstated as such without prejudice to his entitlements or promotions which might have accrued to him during the period of

his dismissal. Counsel also relied on **Hon. Michiel Dapianlong & 5 Others V Chief (Dr.) Joshua Chibi Dariye & Another SC 39 of 2007**, where the Supreme Court of Nigeria affirmed the Court of Appeal decision to restore and reinstate a State Governor who had been wrongly removed.

26. Counsel for the Appellant strongly criticized the Trial Court's reasons for not making an order of reinstatement. He submitted that the principle of checks and balances should not be struck down by the sword of separation of powers. He submitted that by invoking the rule of law principle of separation of powers to decline to order EALA to reinstate the Appellant, the Trial Court in effect abdicated its cardinal responsibility of ensuring compliance with the Treaty. In his view, the rule of law value enshrined in Article 6 (d) entails ensuring that the Treaty is properly applied and complied with by all as breach of the same was likely to lead to disputes and threaten the very existence of the East African Community.
27. In support of the submission that the doctrine of separation of power must give way to the principle of checks and balances in appropriate cases, Counsel for the Appellant drew the Court's attention to the following authorities from domestic courts. In **Twinobusingye Severino V Attorney-General [Constitutional Petition No. 47 of 2011]**, the Constitutional Court of Uganda delivered itself as follows: -

*"...a mechanism of checks and balances was built in the Constitution to ensure that no single organ of the State acts in contravention of the Constitution without being stopped by the rest of the other two organs, or any of them. Otherwise when everything is normal and in accordance with the Constitution, the internal management of the organs of State is a no-go*

*area for the others. For example, the judiciary has no powers to interfere or question methods of internal management and running of the affairs of Parliament **unless** a complaint is raised by an aggrieved person in courts of law”.*

And in **Hon. Martin Nyaga Wambora v the Speaker of the County Assembly of Embu [Petition No. 2 of 2014]**, the High Court of Kenya opined as follows: -

*“This Court is alive to the doctrine of separation of powers which is part and parcel of our constitution’s architectural design but we are also of the view that it is the responsibility of the Court to ensure that each state organ **complies** with the Constitution and the law. Where a citizen alleges a contravention of his constitutional rights, the Court has a duty to investigate and determine that complaint so long as it is justiciable.”*

## **Respondent’s Case**

28. Counsel for the Respondent supported the Trial Court’s holdings that the doctrine of separation of powers (which is a key element in the rule of law principle) made it a preserve of the Assembly to elect and remove a Speaker as per Article 53 of the Treaty, and, accordingly, reinstatement as a remedy was not available to the Appellant, as to grant it would be a usurpation of the Assembly’s powers by the Court for it would be an imposition of a Speaker not appointed by the House. Counsel invoked in aid the authority of the Constitutional Court of South Africa in **Hugh Glenister v President of South Africa and 12 Others CCT 41/08** where that esteemed court delivered itself as follows: -

*“Court must be conscious of the vital limits on judicial authority and the constitutional design to leave certain matters to other branches of government. They too must observe the Constitutional limits of their authority. This*

*means that the judiciary should not interfere in the processes of other branches of government unless to do so is mandated by the Constitution.”*

29. Counsel for the Respondent further submitted that in any event the remedy of reinstatement is overtaken by events and no longer available as the Appellant is no longer a member of EALA and as per Article 53 of the Treaty, no one can serve as a Speaker of EALA if he/she is not an elected member of the Assembly. Counsel also submitted that at the time of the judgment by the Trial Court, another Speaker, namely, Honourable Kidega, had been elected and, accordingly, the prayer for reinstatement was moot. Counsel cited the case of **Hon. Miria Matembe & Others vs Attorney General of Uganda [Constitutional Petition No. 02/2005]** where the Court had been presented with a Petition challenging a Bill of Parliament which at the time of deciding the Petition had been withdrawn from the floor of Parliament. The court held:

*“...the petition was largely overtaken by events when the Bill was withdrawn from the floor of Parliament. Thirdly, even if the Bill had not been withdrawn, we are sceptical as to whether the orders sought by the petitioners would be enforceable or effectively implemented. It is a well established principle that a court of law will not issue an order which is unenforceable and also would not act in vain.”*

### **Appellant’s Submissions in Reply**

30. Counsel for the Appellant emphasized that since the Trial Court found that the Appellant was unlawfully removed from office and



that such an action was of no legal consequence, an order of reinstatement would only have confirmed an existing legal position.

31. Lastly, Counsel submitted that since the term of office of the Assembly had now expired and the Appellant could no longer be reinstated to her job, the Court should use its wide discretion to award the Appellant exemplary, punitive and general damages for the illegal actions of her removal from office.

### **THE COURT'S DETERMINATION**

32. The Court has carefully read the Record of Appeal and considered the written and oral submissions by the Learned advocates of the Parties. Having done so, the Court takes the following view of the matter.
33. We reject the submissions of the Respondent that the prayer for the reinstatement of the Appellant was moot or overtaken by events as at the date of Judgment by the Trial Court. We do so for the following reasons. The Record shows that the Appellant was suspended from office on 26<sup>th</sup> November 2014, she filed the Reference on 10<sup>th</sup> December 2014, Hon Kidega was elected as Speaker to replace her on 19<sup>th</sup> December 2014, the Amended Reference was filed on 24<sup>th</sup> February 2015, the Judgment of the Trial Court was delivered on 23<sup>rd</sup> February 2017, and the life of the Assembly ended in June 2017. Clearly, at the time of the Judgment appealed from, the life of EALA had not come to an end and, accordingly, an order for the Appellant's reinstatement would not have been moot.
34. The more substantial issue is whether the Trial Court had the mandate, power, or jurisdiction to grant the remedy of

reinstatement. In that regard, the import of Articles 23(1) and 27(1) of the Treaty and the doctrine of separation of powers in light of the provisions of Article 56 of the Treaty were elaborately debated by Counsel before us. Article 23(1) provides as follows:

***“The Court shall be a judicial body which shall ensure adherence to the law in the interpretation and application of and compliance with this Treaty”***

[Emphasis ours]

And Article 27(1) provides as follows:

*“The Court shall initially have jurisdiction over the interpretation and application of this Treaty”.*

35. Having read those provisions, the Court accepts the submissions by Counsel for the Appellant that its mandate is not limited to only interpretation of the Treaty. The Court is the guardian of the Treaty and is charged with ensuring adherence to the law in the application of and compliance with the Treaty. In plain language, it is the Court’s duty to ensure that the Partner States and other duty bearers under the Treaty march in step with the Treaty and any breaches thereof are remedied as may be appropriate in the circumstances. In that regard, the Court takes inspiration from the Opinion of the European Court of Justice in **Andrea Francovich and Danila Bonifaci v Italy (1991) ECR 1- 5357** to the effect that:

*“full effectiveness of European Community Rules would be impaired and the protection of the rights which they grant be weakened if individuals are unable to obtain redress when their rights are infringed by a breach of Community law for which a member state can be held responsible.”*

Being thus inspired, we are of the firm opinion that the full effectiveness of East African Community Laws including the Treaty and the protection of the rights granted by such laws requires the Court to grant effective relief by way of appropriate remedies in the event of breach of such laws. Otherwise such laws would be no more than pious platitudes. In the present circumstances, the Trial Court having found that the proceedings for the removal of the Appellant as Speaker were null and void and that, accordingly, her removal was illegal and in breach of the Treaty, it followed, in our view, that in the eyes of the law she continued to hold the office of Speaker and the Court could not but order her reinstatement as part of its mandate to ensure adherence to the law and compliance with the Treaty. In short, we hold that Articles 23(1) and 27(1) of the Treaty do not confine the Court's mandate to mere Treaty interpretation and the making of declaratory orders but confer on the Court, being an international judicial body, as an aspect of its jurisdiction, the authority to grant appropriate remedies to ensure adherence to law and compliance with the Treaty. In so holding, we are not unaware of the Trial Court's finding that nothing in the Treaty or in the Rules conferred on the Court a power to grant the remedy of reinstatement. In that regard, we completely disagree with the Trial Court's view for the reasons set out below.

36. The East African Community (the Community) is created by the Treaty and is obviously an international organization. As such, it possesses international legal personality. The leading authority for the proposition that International organizations possess international legal personality is the opinion of the International Court of justice in the case of **Reparation for injuries suffered in the service of the United Nations, Advisory Opinions, ICJ Reports, 1949, p.174**. The

international legal personality of the Community may in any event be deduced from Article 4 of the Treaty itself. The consequence of the Community possessing international legal personality is that it bears rights and duties at international law and is responsible for the non fulfillment of its obligations.

37. Article 9(4) of the Treaty is pertinent and provides as follows:

*“The organs and institutions of the Community shall perform the functions, and act within the limits of the powers conferred upon them by the Treaty.”*

38. Treaties usually do not prescribe the international responsibility of parties thereto or created thereby, or the consequences of breach of that responsibility. Depending on whether the violation of international responsibility complained of was by a state or an international organization, the principles of law applicable are found in the body of law known as state responsibility or the responsibility of international organizations. In the instant matter, the breach of Treaty is by EALA, an organ of the Community, and, accordingly, the appropriate law is the law on the responsibility of international organizations. In that respect, the Court is of the considered opinion that the governing principles are those expressed by the International Law Commission (ILC) in its **Draft Articles on the Responsibility of International Organizations, with Commentaries, 2011**. The draft articles detail the international responsibility of international organizations in articles 3,4, and 6 which are in Part Two, and the legal consequences for the breach thereof in articles 30,31,33,34,35 and 36 which are in Part Three.

39. Draft articles 3,4 and 6 posit the law as follows:

*“3. Every internationally wrongful act of an international organization entails the international responsibility of that organization.*

*4. There is an internationally wrongful act of an international organization when conduct consisting of an act or omission:*

*(a) is attributable to that organization under international law; and*

*(b) constitutes a breach of an international obligation of that organization.*

*6(1). The conduct of an organ or agent of an international organization in the performance of functions of that organ or agent shall be considered an act of that organization under international law, whatever position the organ or agent holds in respect of the organization.*

*(2) The rules of the organization apply in the determination of the functions of its organs and agents.”*

40. From the circumstances of this matter and bearing the content of the above draft articles in mind, it is clear to the Court that EALA’s removal of the Appellant as Speaker in contravention of the Treaty was an internationally wrongful act which is attributable to the Community and accordingly entails the Community’s international responsibility. The legal consequences of such breach would, if the complainant were a State or another international organization, be cessation and non repetition (Article 30) and/ or reparation (Article 31). Article 34 makes it clear that reparation may take the form of restitution, compensation and satisfaction, either singly or in combination. We repeat for a reason which will be self evident below that Articles 30, 31,33,34,35 and 36 are all in Part Three of the Draft Articles.

41. Draft Article 33 provides as follows:

*“1. The obligations of the International organization set out in this part may be owed to one or more states, to one or more organizations, or to the international community as a whole, depending in particular to the character and content of the international obligation and on the circumstances of the breach.*

*2. This part is without prejudice to any right, arising from the international responsibility of an international organization, which may accrue directly to any person or entity other than a state or an international organization.”*

42. The Court apprehends the provision of Draft Article 33 to mean this: where a primary rule of international law (such as the Treaty) entitles an actor in international law who is not a state or an international organization to invoke the international responsibility of an international organization, the legal consequences are not to be sought in the ILC Draft Article 30 or 31 but are left to be determined by the Tribunal before which such responsibility is invoked in accordance with the primary rule.

43. Article 23 of the Treaty has conferred on this Court the duty to ensure adherence to the law in the interpretation, application and compliance with the Treaty. And Article 30 thereof has given any person who is resident in a Partner State the right to directly invoke the international responsibility of the organization created by the Treaty, namely, the East African Community, on his or her own account without the intermediation of the state to which he or she is a national. The Treaty itself (not unusually) has not prescribed the nature and form of the international responsibility resulting from a breach thereof. In those circumstances, we are of the considered opinion that the Treaty having provided a right, it is for the Court to

provide such remedy or remedies as may be appropriate in each individual case. In our view, the legal consequences to be visited upon the Community in consequence of a breach of its international obligation to a person resident in a Partner State may, in appropriate cases, include cessation (usually known as injunction in internal law), reparation (which may take the form of restitution, or compensation), satisfaction, or similar, or other remedies.

44. In the above premise, the Court finds and holds that the lamentation by the Trial Court that it had no power under the Treaty or the Rules to grant the remedy of reinstatement (it would be restitution in international legal parlance) was without justification in the Treaty itself or in the law of responsibility of international organizations.

45. The Court next asks whether the remedy should have been refused in deference to the doctrine of separation of power. The Court rejects the Trial Court's holding to that effect for two reasons. First, and most weighty, from the international law perspective, which is the applicable law in this matter, the actions complained of are attributable to the Community itself and the functional independence of any offending organ from the other organs is immaterial. The EALA having violated Article 56 of the Treaty in removing the Appellant from office and that conduct being attributable to the Community in international law (as was determined by the Trial Court), the Community cannot invoke the doctrine of separation of powers to bar the Court from ordering her reinstatement on the basis that matters of election and removal of the Speaker are within one of its organ's exclusive mandate. Secondly, the Court is in complete agreement with the jurisprudence from the superior courts of the Partner States

cited to us from which may be distilled the principle that the doctrine of separation of powers is only sacrosanct where the independent organs of the State concerned are acting within the law. Any State organ or institution that marches out of step with the law, is liable to be brought in line by the courts with the sword of checks and balances. In the premise, the doctrine of separation of powers could not and cannot in either international law or internal law (which is not relevant in the case at hand) shield any Community organ or institution from judicial scrutiny for any transgression of the Treaty or other Community laws.

46. In short, the Court finds that the Appellant's reinstatement was not moot at the time of the Trial Court's Judgment, the Court had the mandate under the Treaty to grant the remedy, and the doctrine of separation of powers could not and did not preclude that remedy.

47. The upshot is that Issue No. 1 is answered in the affirmative.

**Issue No. 2: Whether the Trial Court erred in law in holding that the Appellant breached Rule 9(6) of the Assembly's Rules of Procedure by presiding over the proceedings of the Assembly for her removal from office on 1<sup>st</sup> April and 4<sup>th</sup> June 2014**

**Appellant's Submissions**

48. Counsel for the Appellant submitted that the Trial Court erred in law in finding that the Appellant breached Rule 9(6) of the Rules of Procedure of the Assembly for the reasons that the same was not pleaded by the Respondent, it was not framed as an issue for trial, parties did not lead evidence on it, and they did not address the Court on it in their submissions. Counsel pointed out that under Rule 53(1)



(a) of the Rules, the Court is enjoined to conduct a Scheduling Conference to agree on, *inter alia*, issues for determination by the Court and that when the same was done on 6<sup>th</sup> May 2015, the issue of breach of Rule 9(6) by the Appellant was not framed as an issue for trial; a fact acknowledged by the Trial Court in its own Judgment.

49. Counsel further submitted that the Trial Court in any event misapplied the facts and came to the wrong conclusion that the proceedings of the Appellant's removal from office had commenced and therefore the Appellant was in breach of Rule 9(6) by presiding over the proceedings of her removal. In substantiation of the contention, Counsel argued that had the Trial Court looked at the Hansard of the House (as it was entitled to and should have done as per the decision of the Appellate Division in **The Secretary General of EAC v Rt. Hon. Margaret Zziwa [Appeal No. 7 of 2015]**, it would not have come to the erroneous conclusion that the proceedings for the Appellant's removal had commenced on 1<sup>st</sup> April 2014 and therefore the Appellant had breached Rule 9(6) by presiding over proceedings of her removal. Counsel submitted that the Motion was never tabled and therefore the proceedings never commenced. Counsel pointed out that a closer look at the Hansard of 1<sup>st</sup> April 2014 and the Hansard of 26<sup>th</sup> November 2014 would have supported the Appellant's evidence that the Motion was interrupted on 1<sup>st</sup> April 2014 but was only later tabled on 26<sup>th</sup> November 2016 when the mover of the Motion, Hon. Peter Mathuki, was recorded as saying "*I wish now to lay the Motion on the table for removal of the Speaker of the East African Legislative Assembly from office. I wish to table it now.*"

50. Counsel for the Appellant further submitted that the Trial Court erred in law in choosing to adopt the definition of "*Tabling*" from the

United Kingdom's Parliament website in disregard of the definition of "table" as enshrined in the Rules of EALA and thereby arrived at the wrong conclusion as to when the Motion was tabled. Counsel for the Appellant relied on several decisions from the courts of the Partner States of Uganda, Tanzania and Kenya for the propositions that parties and the courts are bound by the pleadings and issues framed, relief not founded on the pleadings will not be given, and it is not open to the Court to base a decision on an un-pleaded issue except where it appears from the course followed at the trial that the un-pleaded issue had been left to the Court for decision.

51. Counsel for the Appellant also argued that Rule 9(6) was not an issue in the Amended Reference and that the matter of the Appellant's conduct in April and June 2014 were resolved by the withdrawal by consent of the Reference No. 3 and No. 5 of 2014. Counsel further argued that in November 2014, when the Appellant was suspended thereby precipitating the filing of the Amended Reference in February 2015, the issue of the motion to impeach the Appellant was no longer live.

## **RESPONDENT'S SUBMISSIONS**

52. Counsel for the Respondent submitted that contrary to the contention of Counsel for the Appellant, the issue of the Appellant's breach of Rule 9(6) of the EALA Rules of Procedure was very pertinent and the Respondent raised it in pleadings, led evidence on it and addressed it in submissions. With respect to the evidence on the issue, Counsel drew the Court's attention to pages 776 - 777, 853 - 854, 960 and 1024 of the Record of Appeal and with respect to the

submissions, the Court's attention was drawn to the content of submissions at pages 383-384 and 456 of the Record of Proceedings.

53. Counsel also defended the Trial Court's resort to the United Kingdom's Parliamentary Practice and submitted that it correctly applied the law to the facts of the case and judiciously arrived at the conclusion that the Appellant breached Rule 9(6) of the Assembly Rules of Procedure by presiding over the proceedings for her removal from office on 1<sup>st</sup> April and 4<sup>th</sup> June 2014.

## **APPELLANT'S REPLY**

54. In reply, Counsel for the Appellant reiterated his submissions on the importance of pleadings and contended that where the Parties have signed a joint Scheduling Conference Memorandum, they are bound by it. He submitted that the evidence of the Appellant and her witnesses on the issue was irrelevant as the fact of the lapse of the Motion for removal of the Appellant from the office of Speaker on the 1<sup>st</sup> April and 4<sup>th</sup> June 2014 was an agreed fact and, accordingly, there was no need for the proof or disproof of such a fact at the trial.

55. Finally, Counsel submitted that where the law gives a definition of a word or term as used in the Statute, one must assign that word or term that same meaning and not any other meaning from another jurisdiction.

## **THE COURT'S DETERMINATION**

56. The Court's review of the Pleadings, the Conference Scheduling Notes, the Written Submissions and the oral highlights thereof

disclose that the matter of the Appellant's breach of Rule 9(6) of the Assembly's Rules of procedure, which provide that **"the Speaker in respect of whom proceedings for removal have commenced shall not preside over the proceedings"** was not pleaded by any party and it was not an issue framed for trial at the Scheduling Conference. It was nonetheless extensively canvassed in evidence and the submissions of the parties.

57. Now, it is trite law that parties are bound by their pleadings, that no relief will be granted by a court unless it is founded on the pleadings, and that it is not open to the Court to base a decision on an un-pleaded issue unless it appears from the course followed at the trial that the un-pleaded issue had been left to the Court for decision in the matter at hand. It is clear to the Court that no relief was granted by the Trial Court based on that un-pleaded issue. However, the relief of costs which was claimed by the Appellant was denied on the basis of the Trial Court's finding on that un-pleaded issue. Now, could it be said that from the course followed at the trial the issue was left to the Trial Court for decision? From the submissions of Counsel for the Respondent, it is clear that the issue was raised as a bar or hurdle to the Appellant's quest for the reliefs sought on the premise that she had misconducted herself and should not, therefore, benefit from her own wrong. From the Appellant's submissions it is equally clear that the position was taken that the matter was un-pleaded and ought not to be dealt with, and if dealt with, the Trial Court should answer it in the negative on the premise that the proceedings for the Appellant's removal from office had not commenced in April or June 2014 when the contentious rulings by her were made because the motion for her removal had not been moved in the Assembly. Looking at the matter from that perspective, this Court finds that the issue of the Appellant's

breach of Rule 9(6) of EALA's Rules of procedure was implicitly left to the Trial Court's determination. Accordingly, we cannot fault the Trial Court for addressing and determining the issue. The Court hastens to add that if the Appellant's complaint about the Trial Court's determination of that issue was hinged on its un-pleaded status, this Appeal, on that point, would have been best framed as a point of procedural irregularity, which it was not.

58. With respect to the substantive merit of this ground of Appeal, it is apposite to set out how the Trial Court dealt with the matter. In Paragraphs 74 and 75 of the Judgment appealed against, the Trial Court delivered itself as follows on the commencement of proceedings for the removal of the Speaker:

*"74 . . . the commencement of such proceedings would ensue once the motion was, formulated and duly tabled in the Assembly, ready to be moved. It begets logic that at that point the presiding speaker would have been sufficiently placed on notice that a motion for impeachment has commenced.*

*75. We do not accept the proposition advanced by learned Counsel for the Applicant that Parliamentary proceedings entail debate in respect of a motion, only commencing once a motion has been moved, seconded and tabled."*

59. With respect to the conduct of the Speaker, the Trial Court at Paragraph 77 delivered itself as follows:

*"77 In the instant case, it would appear that on 1<sup>st</sup> April 2014, the Applicant Presided over a House the sole business of which was her removal from office. It bespoke an obvious conflict of interest and clearly offended the rules of natural justice for the Applicant to have presided over and made decisions in her own cause. In our considered view, it was precisely such a mischief that Rule 9(6) sought to avert. We do, therefore, find that there was a breach of Rule 9(6) of the Assembly Rules of Procedure by the Applicant."*

60. The Court entirely agrees with the conclusions of the Trial Court in those Paragraphs and finds no error of law in the finding that the Appellant breached Rule 9(6) of the Assembly's Rules of Procedure by presiding over the proceedings of the Assembly for her removal from office on 1<sup>st</sup> April and 4<sup>th</sup> June, 2014. Issue No. 2 is, accordingly, answered in the negative.

61. Before proceeding to the determination of the next issue, the Court wishes to make some observations on the correct approach to adjudication in adversarial systems of litigation such as we have in this Court. The purpose of adjudication is to determine live disputes between the parties. Those disputes are obviously captured in the pleadings and formulated as issues for trial and they must be relevant to the reliefs sought by the parties. In the instant matter, it was obviously unsurprising that no relief sought in the Reference was founded on the Appellant's conduct as Speaker on the 1<sup>st</sup> April and 4<sup>th</sup> June, 2014. Everything revolved on her alleged illegal removal from office in the proceedings of November and December 2014 which culminated in the decision of 19<sup>th</sup> December, 2014 to remove her from office. The live issue in the Amended Reference was whether the Appellant had been removed from office in breach of Article 56 of the Treaty. Her conduct prior to such removal while emotionally and, perhaps, morally relevant, was legally wholly irrelevant as it could not in law be a defence or justification for the alleged violation of the Treaty by the Assembly. Furthermore, such conduct was not and could not be pleaded as a basis for any counter-claim by the Respondent as the Rules do not contemplate any counterclaim in a Reference. Putting on our legal spectacles, the Court clearly sees the introduction by the Respondent of the Appellant's conduct with

respect to the Assembly's proceedings in April and June 2014 as a red herring. It was much ado about nothing. It has nonetheless resulted in waste of precious judicial time in both this Court and the Trial Court. The Court expresses the hope that in the future, red herrings will be spotted early, promptly ignored, and all guns aimed at the real targets.

**Issue No. 3: Whether the Trial Court erred in law in declining to award the Appellant general and special damages as prayed in the Reference**

**Appellant's submissions**

62. Counsel for the Appellant submitted that the provisions of Articles 6, 7, 8, 23, 27, 30 and 44 of the Treaty read together conferred sufficient legal authority to the Trial Court to entertain matters relating to Treaty interpretation, application, compliance, infringement and violations and consequent award of compensation and/or damages. Counsel cited this Court's decision in **Reference for a Preliminary Ruling under Article 34 of the Treaty made by the High Court of the Republic of Uganda in the proceedings between the Attorney General of the Republic of Uganda and Tom Kyahurwenda [case stated No. 1 of 2014]** (hereafter "**Tom Kyahurwenda case**") for the proposition that damages and compensation could be awarded by the national courts for a Partner State's breach of Treaty obligations. Counsel also invoked the academic opinion of Professor Edward F. Ssempebwa in his **East African Community Law**, at p.81 paragraph 7:154 **on liability for compensation for breach of Community law** where the learned author opines as follows: -

*“East African Community law would be greatly strengthened if it were to follow the European jurisprudence on State liability for its breach. The leading authority in European law is **Andrea Francovich and Danila Bonifaci v Italy (1991) ECR) 1- 5357** in which the ECJ considered whether an individual could sue a State for damages due to its failure to implement a directive. The Court held that the **“full effectiveness of community rules would be impaired and the protection of the rights which they grant would be weakened if individuals are unable to obtain redress when their rights are infringed by a breach of Community law for which a member State can be held responsible.”**”*

[Emphasis ours].

63. Counsel for the Appellant further submitted that the Trial Court reasoned wrongly when it took the view that because the Appellant as a Speaker was elected by peers who had the mandate under Article 53 of the Treaty to remove her, and as general damages are awarded as a matter of discretion, the Appellant could not be awarded general damages, as to do so would be to allow her to benefit from her own wrong of contravening Rule 9(6) of the Assembly’s Rules of Procedure, which action might have triggered other actions, some of which were patently unlawful.

64. Counsel for the Appellant also presented the Appellant’s case as a human rights violation case properly sounding in the international human rights instruments to which the Treaty makes reference and submitted that these instruments require the provision of effective remedies for breach of human rights. Counsel cited jurisprudence from the European Court of Justice to demonstrate that violations of human rights enshrined in the European Convention for the protection of Human Rights and Fundamental Freedoms were redressed by awards of general damages.



65. With respect to the nature and quantum of damages, the Appellant placed reliance on her submissions in the Trial Court and faulted the said Court for declining to be persuaded by those submissions on the basis that the authorities relied upon related to dismissal of employees from service and the damages awarded were thus for unlawful dismissal.

### **Respondent's Submissions**

66. Counsel for the Respondent submitted that the Trial Court arrived at the correct decision in not allowing the Appellant to benefit from her role in the impasse that dogged the Assembly and led to her removal as Speaker by awarding her general damages. Counsel contended that whether or not to award general damages fell within the discretion of the Court and the Trial Court had exercised its discretion judiciously in denying the Appellant general damages and there was, accordingly, no need to interfere with the discretion of the Trial Court. In that regard, Counsel argued, the Appellate Court can only interfere with a finding of the Trial Court on damages where the impugned decision was based upon a wrong principle of law or the amount was so high or low as to make it an entirely erroneous estimate of damages. Reliance was placed on the Supreme Court of Uganda decision in **General Parts (U) Ltd and Haruna Semakula vs The Non Performing Assets Recovery Trust, [Civil Appeal No. 9 of 2005]**.

67. Counsel for the Respondent also supported the Trial Court's conclusion that the authorities relied upon by the Appellant in support of an award for general damages were irrelevant as the said cases

related to dismissal of employees from employment whereas the Appellant was not an employee of EALA. Counsel further invited the Court to confirm that in the circumstances, the declaration made by the Trial Court in favour of the Appellant was a sufficient remedy.

68. With respect to aggravated damages, Counsel for the Respondent relied on the Ugandan authorities in both the Court of Appeal and the Supreme Court to the effect that such damages are awardable only where the Court finds the acts of the offender not only unlawful but degrading, callous and inflicting exceptional harm. Counsel submitted that in the instant case, the conduct of the Appellant herself was inconsistent with the requirements of her high office and in part corresponded to the grounds of misconduct envisaged under Article 53(3) of the Treaty for the removal of a Speaker.

69. With respect to special damages, Counsel for the Respondent submitted that it was trite law that special damages cannot be recovered unless specifically proved. Counsel submitted it was for the Appellant to prove the legal basis for the special damages claimed. In his view, the Appellant's claim for special damages was misconceived in that it wrongly equated removal from the office of Speaker with dismissal from employment. He pointed out that even after the Appellant's removal as Speaker, she continued to serve as a member of EALA with all the benefits due to her *qua* member.

## **Appellant's Submissions in Rejoinder**

70. In reply, Counsel for the Appellant submitted that the Trial Court having found the Respondent to have breached the Treaty in removing the Appellant from office, it should have awarded damages, and by refusing to do so on the basis that she had contravened Rule 9(6) of the EALA Rules, the Trial Court had acted upon a wrong principle of law. Counsel argued that the issue of breach of Rule 9(6) was not before the Trial Court for trial, and the Appellant who was found to have been removed from office in complete disregard of the law clearly deserved to be awarded general damages.

71. With respect to aggravated damages, Counsel for the Appellant submitted that this was a classic case in which such an award was due to the Appellant. The blatant breach of the law by law makers, the ill treatment of the Appellant which caused exceptional harm to her reputation and her family must be condemned by the Court through an award of aggravated damages, Counsel contended.

72. With regard to special damages, Counsel for the Appellant submitted that special damages were specifically pleaded and proved in the oral and documentary evidence. Counsel drew the Court's attention to pages 764 – 765 of the record of proceedings and exhibit p.36 which was a letter written by the Clerk of EALA regarding the financial entitlement of the Speaker.

## **THE COURT'S DETERMINATION**

73. The Court commences its determination of this issue by recalling in brief that the Trial Court declined to award the relief of damages on the grounds that (i) there was no provision in the Court's Rules for the award of damages as a remedy, and given the interpretative

jurisdiction of the Court as depicted in Articles 23 and 27 of the Treaty, the issuance of declarations on Treaty compliance or the lack thereof had been deemed to be a sufficient remedy to the parties; (ii) general damages are awarded as a matter of judicial discretion and considering the Appellant's contravention of Rule 9(6) of the Assembly's Rules of Procedure an action which might have triggered other actions, some patently unlawful, she could not be seen to benefit from her role in the procedural impasse that dogged the Assembly; and (iii) the authorities cited by the Appellant for award of damages concerned dismissal of employees from service whereas the Appellant was not in the shoes of an employee dismissed from service as she was elected by peers who had the mandate under the Treaty to remove her.

74. The Court's review of the submissions by Counsel for the parties reveals that the following questions call for answers. First, whether the remedy of damages is in principle available in the East African Court of Justice. Secondly, if it is, what is the nature of damages that may be awarded. Thirdly, the quantum of such damages in this case. Fourthly, whether interest on damages should have been awarded and the rate thereof.

75. On whether the remedy of damages could have been granted by the Trial Court, the Court is perfectly clear that it could. We reiterate our holding in paragraph 43 above that the legal consequences to be visited upon the Community in consequence of a breach of its international obligation to a person resident in a Partner State may, in appropriate cases, include cessation (usually known as injunction in internal law), reparation (which may take the form of restitution or compensation), satisfaction, or similar, or other remedies.

Accordingly, the Court holds that to the extent the Trial Court declined to award damages on the basis that it could not find justification therefor in its interpretative jurisdiction of the Treaty under Articles 23(1) and 27(1) or the Rules, it misdirected itself and erred in law. The remedy of compensation (usually known as damages in internal law) is very firmly established in international law, and is available for the Community's breach of its Treaty obligations where a claimant establishes that the Act, regulation, directive, decision or action of the Community complained of has caused such claimant a loss which is financially assessable.

76. With regard to the Trial Court's second reason for declining to award damages, namely that general damages are in the discretion of the Court and the Court would not exercise such discretion in favour of the Appellant who had contravened Rule 9(6) of the EALA Rules, this Court is of the opinion that whereas such may be the practice and jurisprudence of the municipal courts in tort claims, there is no authority that was cited to us, and we know not of any, that the same principle applies in international tribunals with respect to claims for compensation for breach of Treaty obligations. We accordingly find and hold that the reasoning of the Trial Court was without foundation in international law.

77. With regard to the relevance of the authorities cited by Counsel for the Appellant in support of his submissions for an award of damages, we agree with the Trial Court that the same were obviously concerned with awards to employees unlawfully dismissed from service. We however find the Trial Court's distinction of them on the basis that the Appellant was not an employee of the Assembly, as she was an elected official, specious. To our minds, there is no

difference in principle between the action of unlawful dismissal of an employee and unlawful removal from office of an elected official. In this Court's view, both are legal wrongs remediable by compensation. In the instant matter, the Appellant's removal from office as Speaker was found by the Trial Court itself to be a breach of Article 56 of the Treaty. That wrong entailed compensation for consequential loss.

78. In short, we conclude that the Trial Court erred in law in declining to award the Appellant compensation. We next consider the matter of assessment of the compensation claimed.

79. Assessment of compensation being a factual inquiry is obviously within the competence of the Trial Court (see the East African Court of Appeal decision in **Chandaria v. Ghadially [1962] EA 501**). It is also the law that the Trial Court should, even if it were minded to dismiss the suit on liability, consider the quantum of compensation it would have awarded had it made a finding of liability in favour of the Appellant (see the decision by the Kenyan Court of Appeal in **Owayo v. Aduda [2007] 2KLR 140, 156**). That approach is the correct one and is anchored on the sound reasoning that should the finding that there is no liability and, accordingly, compensation should not be awarded, be reversed by the Appellate Court, the latter Court is entitled to benefit from the Trial Court's factual findings on the quantum thereof.

80. In the instant matter, the Trial Court omitted to discharge that mandate of assessing compensation. Ordinarily, that omission would on a successful appeal on the availability of the remedy, impel this Court to remit the case back to the Trial Court for assessment of compensation. However, given the convoluted nature of this litigation and the delays that might ensue between such an order and the final

disposal of the matter, the Court has in the interest of expeditious justice decided, not without some hesitation, to exercise its inherent power and assess the compensation due to the Appellant.

81. The Court takes the view that as the gravamen of the Appellant's case is unlawful removal from office, the compensation should cover the financially assessable loss. We say so without forgetting that the Appellant's Counsel endeavored at length to present the case also as one of breach of the Appellant's human rights for which general damages should have been awarded. In that respect, we say at once that Counsel's argument was disingenuous for, from our detailed consideration of the pleadings, it is evident that the Reference was not pleaded with particularity, or at all, as a human rights cause. Little wonder then that the Respondent's Counsel did not respond to it as a human rights cause and the Trial Court too did not consider and determine it as such.

82. As regards the financial loss suffered by the Appellant in consequence of the Respondent's breach of Article 56 of the Treaty, the Appellant pleaded a monthly loss of salary of \$7,100, housing allowance of \$3,000, responsibility allowance of \$ 300, entertainment allowance of \$350, communication allowance of \$600, education allowance per child (4) per annum of \$1,200, gratuity of 25% of the basic salary in the sum of \$450, and allowances during plenary sitting divided into six sessions and totaling 80 days on the basis of a sitting allowance per day of \$200. She prayed for interest on the above amount at 24% per annum from the date of unlawful removal from office till payment in full. At the trial, it emerged that the Appellant continued receiving a salary and allowances as a member of EALA despite the loss of office as Speaker. She testified that after her

removal from office in December 2014 as Speaker, her salary from January 2015 was reduced by three thousand eight hundred dollars. That evidence was not contradicted. In the circumstances, the Court finds and holds that the financially assessable loss suffered by the Appellant in consequence of her unlawful removal from office was Three Thousand Eight Hundred Dollars per month (\$3,800 per month). It was agreed during the oral highlighting of the Parties' submissions that the life of the Assembly of which the Appellant had been removed as Speaker ended in June 2017. That being the case, the Appellant's quantifiable loss was One Hundred and Fourteen Thousand Dollars (\$114,000) calculated as follows:  $\$3,800 \times 30$  months (i.e. January 2015 to June 2017 both months inclusive).

83. With respect to interest on the said damages, the Court observes that Article 38 of ILC draft Articles on the responsibility of international organizations provides as follows:

*“ 1. Interest on any principal sum payable under this chapter shall be payable when necessary in order to ensure full reparation. The interest rate and mode of calculation shall be so set as to achieve that result.*

*2. Interest runs from the date when the principal sum should have been paid until the date the obligation to pay is fulfilled.”*

84. The above article is in identical terms with Article 38 of the ILC draft articles on State responsibility. Indeed the commentary to the above article states as follows:

*“The rules contained in Article 38 on the responsibility for internationally wrongful acts with regard to interest are intended to ensure application of the principle of full reparation. Similar considerations in this regard apply to international organizations.*



*Therefore both paragraphs of article 38 are here reproduced without change.”*

The ILC commentary on the above Article 38 on responsibility of states for internationally wrongful acts states in part as follows at Page 269:

*“Support for a general rule favouring the award of interest as an aspect of full reparation is found in international jurisprudence. In the S. S. “Wimbledon”, the Permanent Court awarded simple interest at 6% per annum as from the date of judgment, on the basis that interest was only payable from the moment when the amount of the sum due has been fixed and the obligation to pay has been established.” . . . The experience of the Iran – United States claims Tribunal is worth noting. In Islamic Republic of Iran v. United States of America (Case A-19), the full Tribunal held that its general jurisdiction to deal with claims included the power to award interest, but it declined to lay down uniform standards for the award of interest on the ground that this fell within the jurisdiction of each chamber and related “to the exercise. . . of the discretion accorded to them in deciding each particular case.”*

85. The Court takes inspiration from the above jurisprudence and concludes that, as a regional international Court, it has the jurisdiction and discretion to award interest on compensation. With respect to the date from which interest should be awarded, the Court takes inspiration from the jurisprudence referred to in the ILC Commentary which is congruent with the decision of the East African Court of Appeal in **MUKISA BISCUIT MANUFACTURING CO. LTD. V. WEST END DISTRIBUTORS LTD. (NO. 2) [1970] EA 469** where that Court held that:

*“. . .where a person is entitled to a liquidated amount . . . he should be awarded interest from the date of filing suit. Where, however, damages have to be assessed by the Court, the right to those damages does not arise until they are assessed and therefore interest is only given from the date of judgment”*

In the present case, the Appellant's claim for loss of earnings was obviously in the nature of a liquidated claim rather than general damages at large to be assessed by the court. Accordingly, we hold that interest shall be paid from the date of filing of the Amended Reference until payment in full. As regards the rate thereof, we consider that as this is not a commercial cause and further that the currency of payment is American dollars, a rate of six (6) percent per annum is a fair one. The Court will so decree.

86. The upshot of our consideration of this part of the Appeal is that Issue No. 3 is answered partially in the affirmative. It is a categorical yes in so far as special damages are concerned, and It is a negative in so far as general, aggravated and/or exemplary damages are concerned but for different reasons. And the Appellant will be awarded interest on the sum of American Dollars One Hundred and Fourteen Thousand (\$114,000) at the rate of six (6) per centum per annum from the date of the filing of the Amended Reference in the Trial Court till payment in full.

**Issue No. 4: Whether the Trial Court erred in declining to award the Appellant the Costs of the Reference**

**Appellant's Submissions**

87. Counsel for the Appellant submitted that costs are awarded at the discretion of the Court in accordance with Rule 111(1) of the Rules and they follow the event. He pointed out that the Appellant was the successful party as the Trial Court had concluded that she was successful in three (3) of the five (5) issues framed and would be entitled to 3/5 of the costs. Counsel cited several authorities from the superior Courts of Kenya and Uganda all of which discuss the

principles on which costs are to be awarded and from which may be distilled the principle that a successful party is not to be denied costs except on the basis that the matter was of public interest or his or her conduct disentitled such party to costs. Counsel also invoked the authority of this Court in **Alcon International Ltd V Standard Chartered Bank of Uganda & 2 Others [EACJ Appeal No. 3 of 2013]** where the Court held that in an appeal against the Trial Court's order on costs, the proper question was whether the Trial Court had exercised its discretion judiciously in declining to give costs to the successful party. Counsel submitted that in denying the Appellant costs on the basis of her conduct in presiding over the Assembly's proceedings in April and June 2014, the Trial Court exercised its discretion improperly as those matters were not pleaded or framed as an issue for determination.

88. Counsel for the Appellant prayed that the Trial Court's order on costs be set aside and the Appellant be awarded costs with a certificate for two Counsel.

### **Respondent's Submissions**

89. Counsel for the Respondent submitted that though the basic rule is that costs follow the event, the matter was ultimately in the discretion of the Court. He relied on the case of **Angella Amudo v The Secretary General of the East African Community, [Taxation Reference No. 3 of 2016]** where the Court held:

*“Regarding costs, Rule 111 of the Rules provides that costs shall follow the event. The Rules also grant the Court discretion to determine whether any party is entitled to costs.”*

Counsel also invoked the authority of the Constitutional Court of South Africa in the case of **Clive Ferrera and Others v Powell Oliver M Levin**

**& Others [Constitutional Court Case No. CCT 5/45]** where that Court pronounced itself on the issue of costs as follows:

*“The Supreme Court has, over the years, developed a flexible approach to costs which proceeds from two basic principles; the first being that the award of costs, unless expressly otherwise enacted, is in the discretion of the presiding judicial officer and the second is that the successful party should, in general rule, have his or her costs. Even this second principle is subject to the first. The second principle is subject to a large number of exceptions where the successful party is deprived of his or her costs. Without attempting either comprehensiveness or complete analytical accuracy, depriving successful parties of their costs can depend on circumstances such as, for example, the conduct of parties, the conduct of their legal representatives, whether a party achieves technical success only, the nature of the litigants, and the nature of the proceedings.”*

Counsel also invoked the Kenyan Court of Appeal decision in **Karanja v Kabugi & Another [1976-1985]** E.A. 165 wherein it was held that:

*“A successful party should not be deprived of his costs unless his conduct has led to the litigation which, but for his conduct, might have been averted. Where no reasons are given for departing from the general rule that costs follow the event, an appellate court will interfere if satisfied that the order is wrong.”*

90. Counsel for the Respondent submitted that the Trial Court had found that the conduct of the Appellant had triggered the events that led to her removal as Speaker and that was a sufficient and judicious reason to depart from the principle advanced in Rule 111 that costs follow the event. Counsel submitted that in the premise, the Trial Court rightly declined to grant an award of costs to the Appellant.

### **Appellant’s Reply to the Respondent’s Submissions**

91. Counsel for the Appellant submitted that the Trial Court had not exercised its discretion judiciously for the reasons that, first, in denying her costs, it apportioned blame for the litigation as if this was a tort claim, and secondly, by the time the Motion to remove the Appellant from office was filed with the Clerk of EALA on 27<sup>th</sup> March 2014, the Appellant had not breached Rule 9(6) and therefore her conduct could not have triggered anything or led to litigation. Lastly, during the oral highlights, Counsel submitted that the relevant conduct that could disentitle a successful party from costs was conduct during the trial of the case, such as failure to bring witnesses on time or at all.

## **THE COURT'S DETERMINATION**

92. The Court entirely agrees with the postulation of the principles governing the award of costs by the Constitutional Court of South Africa in the case of **Clive Ferreira and Others V. Powell Olives M. Levin & Other (Supra)**. If we may paraphrase it in our own words, the principles are these: costs are in the discretion of the court; in exercising such discretion, the Court bears in mind that costs follow the event and that a successful party may only exceptionally be deprived of costs depending on the particular circumstances of the case such as the conduct of the parties themselves or their legal representatives, the nature of the litigants, the nature of the proceedings or the nature of the success. Those are the guiding principles to the court deciding at first instance on whether to award costs.

93. Once the matter moves to the appellate level, the pertinent consideration is whether the trial court exercised its discretion judicially in declining to give costs to the successful party.

94. The reasons the Trial Court gave for declining to award costs to the Appellant are elaborated at Paragraph 117 of the Judgment appealed from in the following words:

***“In the instant case, as we have stated herein, although not specifically framed as an issue for determination, the Applicant herein did flout Rule 9(6) of the Assembly’s Rules of Procedure by presiding over a matter in her own cause. Quite possibly this conduct on her part, as the steward of the Assembly, could have triggered the unfortunate series of events that have been the subject of this Reference. We do find that to constitute sufficient, judicious reason for this Court to depart from the principle advanced in Rule 111 that costs follow the event.”***

95. Having weighed the rival submissions, the Court is persuaded that the Trial Court exercised its discretion improperly in denying the Appellant her costs. The Court is not moved by the submission by Counsel for the Appellant that the Appellant’s conduct in presiding over the Assembly’s proceedings concerning her removal as Speaker contrary to Rule 9(6) of the Assembly Rules of Procedure could not be factored into the exercise of the Court’s discretion because it was not pleaded or framed as an issue for Trial. Obviously, the conduct of parties or their representatives that might incline a court to deny costs to a successful party would not be conduct which was material to the

case at trial and which therefore was expected to have been pleaded. It is conduct which manifests itself in the course of the litigation. What has moved this Court is the consideration that proceedings for the removal of the Appellant as Speaker and which culminated with her illegal removal from office were not precipitated by her action of presiding over the Assembly's sitting on 1<sup>st</sup> April and 4<sup>th</sup> June 2014. The proceedings for her removal were mooted before those events and crystallized into a motion for her removal which was filed with the Clerk on 27<sup>th</sup> March, 2014 and subsequently reactivated in November 2014. It could not therefore be objectively stated that her conduct on those dates led to litigation in the form of either **Reference No. 5 of 2014** or **Reference No. 17 of 2014** as amended in 2015. Furthermore, and in any event, the Court observes that even the Trial Court itself was not certain that the Appellant's conduct triggered the litigation. The Trial Court's conclusion was that "**quite possibly**" such conduct "**could have**" triggered the unfortunate series of events the subject matter of the Reference. In our view, and we have said so at Paragraph 70 above, the Appellant's alleged conduct was a red herring. And it was definitely not conduct in the Reference or conduct that gave rise to the Reference. In the premise, it was an irrelevant factor, and the Trial Court, in taking it into account in exercising its discretion, thus exercised such discretion improperly.

96. Having concluded that the Trial Court exercised its discretion improperly, in depriving a successful party of its costs, we are constrained to answer Issue No. 4 in the affirmative.

## **E. THE REMEDIES**

97. The Appellant prayed that the Appeal be allowed, that the judgment of the Trial Court be partially varied and the impugned actions and/or decisions of EALA be quashed, the Appellant be reinstated as Speaker of EALA, the Appellant be granted special and general damages as pleaded in the Reference, the Appellant be granted the costs of the Reference and of the Appeal, and that the Court give such consequential, further or other orders as may be just and equitable for the implementation of any order on damages and costs.

98. The Respondent prayed the Court to dismiss the Appeal with costs and make such other orders as it deemed fit.

99. We now proceed to consider the remedies sought in sequence.

### **(1) Allow/Disallow the Appeal**

100. As the Court has determined issue numbers 1, 3, and 4 in favour of the Appellant and found issue number (2) to have been inconsequential, it is apparent that the Appeal succeeds and is allowed.

### **(2) Variation of the judgment of the Trial Court**

101. This prayer is inextricably linked with prayers (3), (4), and (5) and cannot be considered without addressing the latter. It is accordingly deferred.

### **(3) Reinstatement of the Appellant as Speaker of EALA**



102. In its determination at Paragraphs, 44, 45, and 46, the Court has concluded that the Trial Court erred in law in holding that it did not have the mandate to reinstate the Appellant. However, it is a matter of public knowledge and is common ground that the Assembly of which the Appellant could have been reinstated came to an end in June 2017. In those circumstances, reinstatement is now moot and the Court would be acting in vain to so order. The prayer therefore cannot be granted.

(4) **Special and General Damages**

103. From the Court's analysis and determinations at Paragraphs 75, 76, 77,78, 81, 82, 83, and 85 it is clear that the Court's conclusions are that (i) the Trial Court had the jurisdiction to and could have granted the remedy of damages, (ii) general damages were not an appropriate remedy in the circumstances of the case, (iii) special damages were proved in the sum of One Hundred and Fourteen thousand Dollars (\$114,000), and (iv) interest should be paid on that amount at the rate of six (6%) per cent per annum from the date the Amended Reference was filed in the Trial Court till payment in full.

(5) **Order on Costs**

104. It is clear that the Appellant has substantially succeeded in this Appeal. Indeed, only in respect of Issue No. 2 has the Court returned a negative verdict. However, we have said that that issue was a red herring in the Trial Court and ought not to have been entertained on any proper consideration of the Reference. In the premise, we find that the Appellant is entitled to her costs both in this Court and in the Trial Court.

105. As regards certification for two Counsel, the Court notes that Counsel for the Respondent did not oppose the prayer. And the Court itself is of the persuasion that this was a complex matter, cutting a new path in Treaty interpretation, application and compliance. And the Court further takes notice that both here and below, the Appellant was represented by Counsel from two different law firms in Kampala, Uganda. In the result, we would certify the case as appropriate for costs for two Counsel in this Court and below.

106. It is evident from the conclusions in paragraphs 102, 103, 104, and 105 that the judgment of the Trial Court stands to be varied to the extent that (i) the finding by the Trial Court that it had no jurisdiction to grant the remedy of damages will be set aside and substituted with a finding that the Trial Court had the jurisdiction or mandate to grant that remedy, and an order that the Appellant be awarded compensation in the sum of USD 114,000 with interest thereon at 6 per cent per annum from 24<sup>th</sup> February 2015 till payment in full; and (ii) the order on costs will be set aside and substituted with an order that the Appellant do be granted the costs of the Reference and of the Appeal, and that such costs are certified for two counsel.

**(6) Further or Other Reliefs**

107. In view of our findings and conclusions above, it is neither expedient nor necessary to grant the further or other orders sought by the Appellant as they would serve no useful purpose.

**F. CONCLUSION**

108. The upshot of the Court's consideration of this Appeal is that:

- (1) The Appeal be and is hereby allowed with costs here and below with a certificate for two Counsel.
- (2) The judgment of the Trial Court be and is hereby partially varied by:
  - (i) affirming orders (a) (b) (c) therein,
  - (ii) setting aside order (d) therein
  - (iii) adding the following further order and numbering it as (d):

*“the Appellant be and is hereby awarded special damages in the sum of American Dollars One Hundred and Fourteen Thousand (\$114,000) together with interest thereon at six (6) percent per annum from 24<sup>th</sup> February 2015 till payment in full.”*
- (3) The Appellant’s prayer for reinstatement as the Speaker of the East African Legislative Assembly be and is hereby declined.

**IT IS SO ORDERED**

Dated, delivered and signed at Arusha this 25<sup>th</sup> day of May 2018.

.....  
Emmanuel Ugirashebuja  
**President**

.....  
Liboire Nkurunziza  
**Vice President**

.....  
Edward Rutakangwa  
**Justice of Appeal**

.....  
Aaron Ringera  
**Justice of Appeal**

.....  
Geoffrey Kiryabwire  
**Justice of Appeal**