



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



Coram: Monica K. Mugenyi, PJ, Faustin Ntezilyayo, J, Fakihi A. Jundu, J.)

APPLICATION NO. 15 OF 2017
(Arising from Reference No. 10 of 2017)

OLOLOSOKWAN VILLAGE COUNCIL & 3 OTHERS..... APPLICANTS

VERSUS

**THE ATTORNEY GENERAL OF THE
UNITED REPUBLIC OF TANZANIA.....RESPONDENT**

25TH JANUARY 2018

RULING OF THE COURT

A. INTRODUCTION

1. This is an Application by four (4) Village Councils for interim orders against the Attorney General of the United Republic of Tanzania (hereinafter referred to as “**the Respondent**”) pursuant to Articles 6(d), 7(2), 27(1), 30, 39 of the Treaty for the Establishment of the East African Community (hereinafter referred to as “**the Treaty**”) and Rules 1(2), 21, 22, 23, 84 and 85 of the East African Court of Justice Rules of Procedure 2013 (hereinafter referred to as “**the Rules**”).
2. The Village Councils in question are Ololosokwan Village Council, Oloirien Village Council, Kirtalo Village Council and Arashi Village Council (hereinafter referred to collectively as the “**Applicants**”). They are all legal entities established by law in the United Republic of Tanzania, body corporate that are contained within the Ngorogoro District, Arusha Region.
3. The Application arises from **Reference No. 10 of 2017** filed against the Attorney General of the United Republic of Tanzania. The gravamen of the Applicants’ contention is that, on 04th August 2017, despite possessing legal documents as a proof of ownership of land that borders the Serengeti National Park to the West, members and residents of the Applicants had received correspondence from the Respondent State, directing them to remove their cattle and their bomas (homesteads) from the Serengeti National Park, as well as an area that was termed “the Loliondo Game Controlled Area.”

4. The Applicants further contended that on 05th August 2017, each Applicant was ordered to vacate its residents from the demarcated area bordering the Serengeti National Park and that the eviction, removal of livestock and the burning of bomas took place on land that legally belongs to the Applicants.

5. It is therefore the Applicants' contention that the Respondent's aforesaid impugned actions contravened and violated the Constitution of the United Republic of Tanzania, Village Land Act 1999 and Wildlife Conservation Act, 2009 as well as the Treaty.

6. The Applicants seek the following orders:

(a) This Honourable Court be pleased to dispose with service of this Motion in the First Instance Court owing to the urgency of the matter.

(b) Pending the hearing and determination of this application inter parties this Honourable Court be pleased to issue an interim ex parte order restraining and prohibiting the Respondent from evicting the Applicants' residents from the disputed land, confiscation of livestock by the Respondent belonging to the Applicants' residents grazing on the disputed land, the burning of bomas belonging to the Applicants' residents constructed on the disputed land; the prosecution of the Applicants' residents found on the disputed land and physically assaulting the Applicants' residents found on the dispute land.

(c) The costs of this Application be provided.

7. The Applicants have approached this Court under a certificate of urgency whereby they contended that the forceful eviction, confiscation of livestock and burning of bomas was causing untold hardship on the villagers residing in the Applicants' land; that the purpose of the application would be rendered nugatory if it was not determined before the commencement of the hearing of the main application and that therefore, they urged the Court to accept the Certificate of Urgency and dispose of the Application as soon as possible.
8. This Application is being resisted by the Respondent which, on 15th November 2017, has also challenged its competence by filing a notice of preliminary objection on one point of law, namely "***That, the Applicants do not have requisite authority to institute this Application in Court.***"
9. At the hearing of the Respondent's preliminary objection held on 17th November 2017, the Applicants were represented by Ms. Anita Alfred Kyaruzi and Mr. Mark Mulwambo and Ms. Aidah Kisumo appeared for the Respondent.

B. SUBMISSIONS

10. From the onset, Counsel for the Applicants said that she was seeking an adjournment of the hearing on the preliminary objection stating that she had only been served of the same that very morning. It was then her contention that as provided for by Rule 41(2) of the Court's Rules, the Respondent should have given not less than 7 days written notice of preliminary objection to the Court and to the Applicants.

11. In response to Ms. Kyaruzi's contention, Mr. Mulwambo pointed out that Rule 41(2) talked about a preliminary objection to a Reference raised before the scheduling conference in accordance with Rule 53 and that the Rules did not provide for raising a preliminary objection on an application for injunction. In addition, stressing that they had proceeded under Rule 41(1) of the Rules, he prayed the Court to hold that the preliminary objection was valid as it was properly before the Court.

12. In reply, Ms. Kyaruzi submitted that in the absence of any rules governing the notice of preliminary objection of an application, the same rules that apply to a notice of preliminary objection to a Reference should also apply to an application. Therefore, she maintained that the Applicants should still receive the 7 days' notice.

13. On that disputed matter, the Ruling of the Court was as follows:
"Rule 41(2) is very clear as it specifically talks about a scheduling conference to a Reference and therefore, if the Rule is silent, the Court cannot impute it to apply to an application. Consequently, the Notice of Preliminary Objection on the Application is properly before the Court and the Court shall proceed to hear it."

14. Moving the Court on the preliminary objection, Ms. Kisumo contended that the Applicants before the Court did not have the requisite authority to institute the Application. She argued that the Application was brought by four (4) Village Councils which are part and parcel of the local government authorities in the Respondent

State and as such, they form part of the Government of the United Republic of Tanzania which is the Respondent before this Court.

15. It was Counsel's further submission that the Government of the United Republic of Tanzania appearing before this Court as a State was by law required to be represented by the Attorney General of the United Republic of Tanzania and that, therefore, the Applicants were improperly before this Court.

16. In support of the foregoing arguments, learned Counsel relied on the Local Government District Authority Act Cap. 287 revised edition 2002 under sections 55 and 56. She also referred to the Office of the Attorney General (Discharge of Duties) Act of 2005 and stated that section 31 of that Act amended the Local Government District Authority Act, Cap. 287 revised edition 2002 by creating a new section which is cited as section 192(A) which provides under sub-section one that:

Save as it is otherwise expressly provided appearance by or on behalf of a district or a township in any civil case or matter in a Court in which a local government authority is a party shall be made by a Solicitor authorized by the local government authority.

17. She also cited sub-section 3 of that section which states that:

Notwithstanding the provisions of sub-section 1 where a local government authority had not employed or engaged a Solicitor or where with respect to any proceedings in Court to which a local government is a party that local government authority may be

represented by any law officer, a State Attorney or a legal officer authorized in that behalf by the local government authority.

18. In light of the foregoing, learned Counsel submitted that the Counsel representing the Applicants before this Court was neither a law officer nor a State Attorney, a Solicitor or a legal officer duly authorized by the Local Government (District Authorities) Act Cap. 287 revised edition 2002.

19. Learned Counsel further submitted that Village Councils were required by the Local Government (District Authorities) Act Cap. 287 to institute proceedings where necessary through the District Councils and that the present Application was improperly before this Court.

20. In conclusion, Ms. Kisumo submitted that since the Village Councils did not have the authority to institute the matter before this Court and whether they have the authority to institute the matter, the matter should have been instituted by the Attorney General of the United Republic of Tanzania since they form part and parcel of the Government of the United Republic of Tanzania. It was the Respondent Counsel's submission that this Application is improperly before this Court.

21. With regard to the additional argument that the Village Councils did not get the Village Assembly's Authority to institute the Application, when asked to clarify, Counsel abandoned it.

22. In response to the Respondent's submissions, Counsel for the Applicants submitted that the instant Application's aim was to bring

to the attention of the Court the Respondent's violations of its international obligations under the EAC Treaty and other relevant international legal instruments.

23. She contended that the Applicants were bringing this Application in their position as the heads of the various Village Councils, and that therefore they were representing the claims of the villagers within those Councils. She further submitted that their purpose was to have the checks and balance of the acts of the Respondent State.

24. Responding to an issue raised by the Respondent that Counsel for the Applicants could not duly represent them, learned Counsel referred to Rule 17(5) of this Court Rules that states that: "***The advocate for party shall file with the Registrar a certificate that he/she is entitled to appear before a superior Court of a partner State.***" She contended that she had been duly appointed by the Applicants in this particular case instituted by the four (4) Village Councils as indicated elsewhere above, and that according to the Court Rules, those Village Councils were properly before this Court.

25. She further contended that this matter had not to be brought before the District Courts as wrongly argued by Counsel for the Respondent because it was a matter on the violations of international obligations of the Respondent State. That therefore, the Applicants had duly come before this Court to seek guidance on the issue of the violation of the Respondent's alleged international obligations.

26. In reply, Mr. Mulwambo stated that they had no objection to counsel in person and her ability to appear before this Court, but that the Respondent's objection was that the group she was representing, that is the Village Councils being part of the United Republic of Tanzania's Government, should be represented by the category of four (4) people according to the Village Local Government Authority Act, to wit a State Attorney, a Legal Officer, a Law Officer or a person who has duly been authorized by the Local Government Authority to represent those Village Councils.

27. Mr. Mulwambo further argued that for the Village Councils to come and institute this matter before this Court was like the Government suing itself, which was not proper. He thus contended that the right person who was authorized by law to represent the Government was the Attorney General of the United Republic of Tanzania and that the Applicants did not have the capacity to institute proceedings without the consent or authorization of the District Authority or the Attorney General.

C. COURT'S DETERMINATION

28. We have carefully considered the oral submissions made by both Parties and analyzed the authorities referred to us in support of their respective arguments.

29. It can be gleaned from the Respondent's Notice of Preliminary Objection and Parties' submissions thereto that the only issue for determination is whether the four (4) Village Councils have the requisite authority to institute the instant Application in this Court against the Attorney General of the United Republic of Tanzania.

30. Counsel for the Respondent have submitted at length that according to Tanzanian Laws, especially The Local Government (District Authorities) Act, 1982 and the Office of the Attorney General (Discharge of Duties) Act, a Village Council, despite being a body corporate, had to be authorized by the local government authority in order to institute a lawsuit and that in any case, it could not sue the Attorney General of the United Republic of Tanzania since a Village Council was part of the Government.

31. Counsel for the Applicants, on her part, relied on the provisions of the Treaty, the Court Rules, i.e. Rule 17(3) & (5) and the Local Government (District Authorities) Act, 1982 and contended that the Village Councils in question had *locus standi* before this Court and that she had duly been appointed to represent them.

32. In light of the foregoing rival submissions, it is apposite to reproduce the main legal instruments applicable to the instant case for ease of reference. According to Article 30 (1) of the Treaty, “... ***any person who is resident in a Partner State may refer for determination by the Court, the legality of any Act, regulation, Directive, decision or action of a Partner State or an institution of the Community on the grounds that such Act, regulation, directive, decision or action is unlawful or is an infringement of the provisions of this Treaty.***” (Emphasis added)

33. As for Rule 17(3) of the Court Rules, it states that “***a corporate or company may either appear by its director, manager or secretary, who is appointed by resolution under the seal of the corporation or the company, or may be represented by an***

advocate.” (Emphasis added). Rule 17(5) provides that: ***“The advocate for a party shall file with the Registrar a certificate that he or she is entitled to appear before a superior court of a Partner State.”***

34. Article 26(2) of the Local Government (District Authorities) Act, 1982 reads as follows: ***“...Upon the issue of a certificate of incorporation in relation to a village, the village council of the village in question shall, with effect from the date of that certificate, be a body corporate, and shall- (...)***

(b) in its incorporate name, be capable of suing or being sued.

35. Counsel for the Respondent has also referred us to section 31 of the Office of the Attorney General (Discharge of Duties) Act of 2005 which amended the Local Government (District Authorities) Act Capt. 287 revised edition 2002 by creating a new section which is cited as section 192A (1), reproduced elsewhere above in this Ruling.

36. As clearly indicated in the abovementioned Court Rules, the latter envisage the type of parties that would appear before the Court and provides for companies, individuals, legal entities, body corporate under Rule 17(3). It is not in dispute that the Village Councils in question are body corporate and since the Court Rules have provided for a body corporate to appear before this Court and had laid out the manner in which they can be represented, we are not convinced by the Respondent’s argument that the matter at hand has to be governed by the Tanzanian Laws if at all they provided for Village Councils’ appearance and representation in Court. In this regard, having carefully read the provisions of the

Local Government (District Authorities) Act referred to us, it is clear in our mind that this Act neither talks about appearance by or on behalf of the Village Council nor refers to any authorization to be sought by a Village Council before instituting a case in Court. We find untenable, therefore, the Respondent Counsel's argument that by extension, since a Village Council is at the bottom of local government entities, it should be authorized by a superior body such as the District Council and represented in Court according to the relevant provisions of the Local Government (District Authorities) Act. It is also worth noting that according to section 3 of the Local Government (District Authorities) Act, 1982, this Act only applies to a court of Mainland Tanzania of competent jurisdiction.

37. Regarding the Respondent's other argument that a Village Council cannot sue the Attorney General of the United Republic of Tanzania, a quick perusal of selected case law involving Village Councils shows that Village Councils had in the past sued the Attorney General (Tanzania) together with some governmental institutions seeking order recognizing their ownership of disputed lands. (See Mondorosi, Sukenya and Soitsambu Village Councils vs. Tanzania Breweries Limited, Tanzania Conservation Ltd, Ngorongoro District Council, Commissioner for Lands and Attorney General (Tanzania), reported in Gilbert, J. (2017). Litigating Indigenous Peoples' Rights in Africa: Potentials, Challenges and Limitations, *International Comparative Law Quarterly*, 66(3), 657-686). Thus, the aforesaid argument is untenable as well.

38. Given the foregoing, therefore, we are of the view that Article 30(1) of the Treaty and Rule 17(3) & (5) of the Court Rules give *locus standi* before this Court to a Village Council which is a body corporate in the terms of Article 26(2) of the Local Government (Districts Authorities) Act, 1982.

D. CONCLUSION

39. In light of our findings, we are of the considered view that the three (3) Village Councils in question have the legal capacity to institute a case before this Court and therefore, the Notice of preliminary objection raised by the Respondent is dismissed. We direct that **Application No. 15 of 2017** be fixed for hearing forthwith.

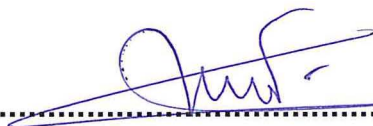
40. Costs to abide the outcome of the main Reference.

41. It is so ordered.

Dated, Signed and Delivered at Arusha this 25th Day of January 2018.



.....
HON. LADY JUSTICE MONICA K. MUGENYI
PRINCIPAL JUDGE



.....
HON. DR. FAUSTIN NTEZILYAYO
JUDGE



.....
HON. JUSTICE FAKIHI A. JUNDU
JUDGE