



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



(Coram: Jean Bosco Butasi, PJ; Isaac Lenaola, DPJ; Faustin Ntezilyayo, J; Monica K. Mugenyi, J & Fakihi A. Jundu, J)

APPLICATION No. 23 of 2014

(ARISING FROM REFERENCE No. 17 OF 2014)

**RT. HON. MARGARET ZZIWA, THE SPEAKER OF THE EAST
AFRICAN LEGISLATIVE
ASSEMBLY.....APPLICANT**

VERSUS

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

DECEMBER 16. 2014

RULING OF THE COURT

INTRODUCTION

1. The Application dated 10th December 2014 is premised on Article 39 of the Treaty for the Establishment of the East African Community (hereinafter referred to as the “**Treaty**”) and Rules 21 and 22 of the East African Court of Justice Rules of Procedure (hereinafter referred to as “**the Rules**”). The Applicant, Rt. Hon. Margaret Zziwa, is the Speaker of the East African Legislative Assembly (hereinafter referred to as the “EALA”) and she seeks ex-parte orders in the following terms:

“a) This Honorable Court be pleased to dispense with service of this Notice of Motion and hear the Motion and grant an ex-parte order in the First Instance Court owing to the urgency of the matter [sic];

b) This Honorable Court be pleased to dispense with some Rules in the first instance as the delay that shall be caused by proceeding in the ordinary way would entail irreparable injustice in relation to these proceedings owing to the urgency of the matter [sic];

c) The East African Legislative Assembly is prohibited and restrained from convening on the 17th December 2014 for purposes of considering the Committee Report intended to move a Motion for a resolution to remove the Applicant/Speaker of the EALA from office.

d) The Assembly Committee of Legal, Rules and Privileges be restrained from conducting any further investigations in this matter or tabling any report in the Assembly pending the hearing and determination of the Reference filed in this Honorable Court.

e) That costs of and incidental to this Application be provided for.”

2. The Application is supported by grounds on the face of it as well as an Affidavit in support sworn by the Applicant on 10th December 2014. We have taken note of both the said grounds as well as the contents of the Affidavit.

3. In brief, what happened was that sometime in March 2014, some Members of the EALA gave notice of intention to move a Motion for a resolution to remove the Applicant from Office. Proceedings in that regard were later terminated by the Applicant in a Ruling delivered on 4th June 2014 for reasons that some of the Members of the Assembly had withdrawn their support for the resolution. A Reference filed by the Applicant in this Court (**EACJ Reference No. 3 of 2014**) was also withdrawn for the same reasons.

4. On 26th November 2014, the Assembly convened in Nairobi, renewed the issue of removal of the Applicant and resolved to refer the matter for investigation by its Committee of Legal, Rules and Privileges. It also resolved to suspend the Applicant for 21 days pending a report of the said Committee. The Assembly later also resolved to meet on 17th December 2014 to discuss the

Report of the Committee and that is what triggered the filing of **Reference No. 17 of 2014** and the present Application.

5. In the above context, it should be recalled that a party seeking *ex-parte* orders is obligated by Rule 21(2) of the Rules to show that:

- a) Proceeding in the normal way would cause delay and;
- b) The delay would or might entail irreparable injustice.

Rule 73(2) of the Rules also provides that the Court may grant an *ex-parte* interim order “**if satisfied that it is just to do so.**”

6. In submissions, Mr. Jet John Tumwebaze in addressing the expectations of the above Rules stated that the Applicant stands to suffer irreparably because:

i) ***if the proceedings of the Assembly were in violation of the Treaty in that a “Temporary Speaker”, a title unknown to Community Law, presided over the alleged suspension;***

ii) ***the Applicant has been a public figure with over 14 years’ experience and her reputation will be ruined if she is impeached for alleged incompetence and misconduct;***

iii) ***the notice of the Assembly’s meeting for 17th December 2014 was made outside the Assembly’s Calendar of activities;***

iv) ***all her protestations about the unlawful conduct of Members of the Assembly have been ignored and that***

the single agenda for the meeting of 17th December 2014 is her removal and that if the orders sought are denied and the removal is allowed, then she stands to “suffer irreparable injury.”

v) the Application ought to be dispensed with in a timely manner as it is urgent and is meant to ensure the adherence of the rule of law by the Assembly.

7. In addition, he submitted that the Court has the authority and mandate to issue the orders sought under Article 27 of the Treaty and it should not wait to undo any damage that the removal of the Applicant would cause to her and the East African Community.

8. Further, that the bias of some members of the Committee of Legal, Rules and Privileges crystallised when they refused to recuse themselves from the Committee’s proceedings.

DETERMINATION

9. We have considered the above submissions and the Application under consideration in the context of the proviso to Rules 21(2) as well as Rule 73 and we have no doubt in our minds that the matter is urgent. We say so because the Report of the Committee aforesaid is scheduled for tabling and discussion on 17th December 2014, only a day away. The Applicant’s fate as Speaker may well depend on the outcome of the sitting of the Assembly and so we deem it appropriate that the Application should be heard *ex-parte* at the first instance.

10. Turning back to the specific prayers sought, we note that prayer (c) is final in nature and we do not know what would be heard inter-partes if we grant it. Prayer (d) is only partly final in nature and there is certainly something to be said about it the *ex-parte* stage.

11. Having so said, however, has the Applicant established that she will suffer irreparable injustice if the Application is not granted? In submissions as well as in ground no. 7 in support of the Application and paragraph 52 of the supporting Affidavit, the Applicant argued strenuously that she will suffer “**irreparable injury**”. Such injury in our view is not the same as “irreparable injustice”. Damage, real or perceived, to reputation may indeed be an irreparable injury but not necessarily an irreparable injustice. “**Justice**” is defined as “**the fair and proper administration of laws**” while “**irreparable injustice**” is “**injury that cannot be adequately measured or compensated by money**”. (See *Black’s law Dictionary, 9th Edition*)

12. Damage for reputation can certainly be compensated by money contrary to the Applicant’s submissions, but if we also heard the Applicant well, she was arguing that being subjected to an unlawful process is an injustice. That may well be so, but where is the evidence that such an injustice is irreparable?

13. When we enquired of Mr. Tumwebaze whether the alleged injustice cannot be undone in the future, he stated that the **Anyang’ Nyong’o case** is a good example of a situation where this Court arrested an unlawful situation by granting an injunction. The learned counsel neither gave us the citation for

that case nor referred us to any of the many decisions of this Court that involved Prof. Anyang' Nyang'o. That fact notwithstanding, however, it was upon the Applicant to show the irreparability of any injustice that the process of the removal may cause to her, but she failed that test, in our eyes.

14. It is also our view that since the Applicant (through her advocates) made representations to the Committee, to pre-judge its decision and that of the Assembly on all the objections raised to the proceedings would be unjust, a path this Court refuses to take.

15. We also note that Article 53(3) of the Treaty provides for the removal of the Speaker of the Assembly and so any holder of the office ought to know that that possibility is always alive and pursuing that course of action will not amount to irreparable injustice to the Applicant.

16. Lastly, the burden of a party seeking *ex-parte* order is high and in the present case, noting the history of the dispute between the Applicant and the Assembly of which she is the Speaker, and bearing in mind the need to maintain the principle of separation of power (with necessary checks in appropriate circumstances), we are unable to accept the Applicant's case that she is entitled to any *ex-parte* orders.

In the event, let the Application dated 10th December 2014 be fixed for hearing *inter-parte*.

Conclusion

17. In the final result, we do hereby dismiss this Application with no order as to costs.

It is so ordered.

Dated, Delivered and Signed at Arusha this 16th Day of December, 2014.

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**JEAN BOSCO BUTASI
PRINCIPAL JUDGE**

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**ISAAC LENAOLA
DEPUTY PRINCIPAL JUDGE**

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**FAUSTIN NTEZILYAYO
JUDGE**

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**MONICA K. MUGENYI
JUDGE**

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**FAKIHI A. JUNDU
JUDGE**