



**EAST AFRICAN COURT OF JUSTICE
FIRST INSTANCE DIVISION**

Ruling: 5th February 2020 from 9:30 am
(Open Court, 2nd floor, EAC Headquarters)

Application No.3 of 2019 (Arising from Reference No.9 of 2019) Francis Ngaruko v the Attorney General of the Republic of Burundi

Application filed on: 31st May 2019.

Article: 39 of the Treaty for the Establishment of the East African Community.

Rule: 21(2) of the EACJ Rules of Procedure, 2013.

Subject matter: *Property dispute.*

The Applicant requests this Honourable Court to issue orders preserving the status quo of the disputed property pending hearing and determination of the Reference.

The Applicant request that, he be able to continue residing, farming and do business in the subject property until the matter is finally disposed of.

The Applicant persuaded the Court to grant the orders sought arguing that, the Reference raises a triable issue which is challenging a decision of the judicial body of the Respondent state for not complying with Article 6(d) of the Treaty for the Establishment of the East African Community.

The Applicant argues that, if this Honourable Court does not exercise its discretionary jurisdiction to grant the orders sought, then he will suffer irreparable injury following his complete removal from his primary and dwelling home, a place he has lived for fifty years of his livelihood. Further, he will be removed from his only source of livelihood since all his businesses, farms and primary dwelling house are situated in the subject property. The Applicant adds that, he is an ageing person, unemployed and depending entirely on the disputed property.

On the other hand, the Applicant submits, even though it would be possible to determine that the loss could be quantified in terms of money, but that damage at whatever time it comes would not be able to redress destruction of livelihood, anguish, both mental and physical basically the devastating factors that would happen.

On the balance of convenience, the Applicant submits that, the Respondent is not alleging any injury that would occur to them should the Court make the decision to preserve the status quo until this matter is disposed of. But to the Applicant, if the status quo is maintained, the balance of convenience is that the Applicant has been in occupation of the disputed property for fifty (50) years together with his family.

Secondly, the Applicant will continue improving the property in terms of constructing, farming, realising productivity out of it and paying taxes to the government. That, should the Court eventually determine that the Applicant has not proved his case on merit, then naturally the property will go to the Respondent together with the improvements that shall have been made.

The Respondent, Attorney General of the Republic of Burundi on his part submits that, the challenged decision by the Special Court of Lands and Other Assets was executed on 17th May 2019 and on 2nd May 2019. The Applicant was notified about the execution, he was present and declared to be satisfied. That, this Application is an abuse of the Court process and has to be dismissed with costs and allow the Reference to proceed.

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