

**EAST AFRICAN COURT OF JUSTICE**

**FIRST INSTANCE DIVISION**

**Hearing: 15th July 2020** *from* ***9:30 am***

*(Via Video Conference)*

***Reference No. 1 of 2019 East Africa Law Society vs the Attorney General of the United Republic of Tanzania & The Secretary General of the East African Community***

**Reference filed:** 28th March 2019.

**Articles:** 6 (1), 7(1) (a) & (2), 8(1) (a) & (c), 23(1), 25(1) & (2), 27 (1), 30(1) & (2), 67 (3), 69 (1) & (2), 71(1) (b) (d) (e) (l) & (4) of the Treaty for the Establishment of the East African Community (EAC) and all enabling provisions.

**Subject matter:** Alleged improper nomination of a Judge of the East African Court of Justice (EACJ).

The Applicant, challenges the appointment of Hon. Justice Sauda Mjasiri by the United Republic of Tanzania to serve as a Judge of this Court on grounds that Her Ladyship did not at the time of appointment and subsequently, hold all critical qualifications thus making her ineligible for the appointment. The Applicant alleges that; such appointment contravenes Article 24 of the EAC Treaty.

The Applicant avers that, the nomination process of Her Ladyship was clouded with secrecy and her appointment only became public following her taking of oath of office. That, failing to design a public process that affords the citizens and the general public to know and vet the prospective nominees to the EACJ, the 1st Respondent contravened its obligations under Articles 6(d) and 7(1) of the EAC Treaty that requires it to conduct its businesses transparency, accountability, public participation and with regard to good governance principles.

The Applicant’s case against the 2nd Respondent is on alleged failure to properly advice the Community and to initiate the process of investigation of the nomination process leading to the appointment of Her Ladyship to the EACJ contrary to his express mandate under Article 71 of the EAC Treaty.

The Applicant therefore prays in among other things for declarations and orders that, the 1st Respondent in nominating Hon. Justice Sauda Mjasiri to the EACJ contravened Articles 24, 6(d) & 7(1) of the EAC Treaty for want of transparency, fairness, equal opportunity, accountability and public participation. From the foregoing, a declaration be issue that Her Ladyship is not properly nominated and/or appointed to the office of Judge at the EACJ. Further seeks for a declaration that, the 2nd Respondent acted in breach of the EAC Treaty by failing to properly advice the Community to investigate and verify the qualifications of Her Ladyship and processes leading to her nomination.

The 1st Respondent argues that, Hon. Justice Sauda Mjasiri was appointed as a Judge of the High Court of Tanzania and later on as a Justice of Appeal after she had met all conditions stipulated under the Constitution of the United Republic of Tanzania. Her appointment as a Judge to the East African Court of Justice is valid. Her nomination was due to her competence, experience and professionalism. The 1st Respondent avers that, the process of nominating Hon. Justice Sauda Mjasiri was done transparently and all required procedures were followed thus the 1st Respondent did not contravene its obligation under Article 6(d) and 7(1) of the EAC Treaty.

The 1st Respondent avers that, the appointment of Her Ladyship was made public when the Counsel to the Community called upon Her Ladyship to take oath. Hon. Justice Sauda Mjasiri being a Tanzanian and being fronted to replace another Judge from the United Republic of Tanzania, she was nominated by competent authorities. The 1st Respondent pray for dismissal of the Reference in it’s entirely with cost.

The 2nd Respondent submits to have communicated to the 1st Respondent the criteria for nomination of a Judge for appointment to the East African Court of Justice and given that the nomination by the 1st Respondent had met criteria as envisaged in Article 24(1) of the EAC Treaty, the 2nd Respondent did not have to undertake any investigations and advice to the contrary. Therefore, he is not blameworthy and no cause of action against him. The 2nd Respondent prays for dismissal of the Reference against him and a declaration *inter alia* that, he did not breach any provisions of the Treaty in not advising the Community against the appointment of Hon. Justice Sauda Mjasiri and had no basis to investigate the qualification and nomination of Her Ladyship, a jurist of recognised competence for appointment as a Judge.

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