

**EAST AFRICAN COURT OF JUSTICE**

**FIRST INSTANCE DIVISION**

**Judgement: 22nd July 2020** *from* ***9:30 am***

*(Via Video Conference)*

***Reference No. 8 of 2018 Hassan Bassajabalaba & Another vs the Attorney General of Uganda***

**Reference filed:**17th April 2018.

**Articles:** Article 39 of the Treaty for the Establishment of the East African Community (EAC).

**Rules:** Rules 1(2), 21(1), (2), (3) (4) & (5), 17, 24 and 73 (1) & (2) of the EACJ Rules of Procedure, 2013.

**Subject matter:**  Alleged inordinate delay in delivering justice.

The Applicants are challenging the Constitutional Court of Ugandan for inaction and loud silence in continued failure to determine and deliver judgment in Applicants’ *Constitution Petition No. 12 of 2013*. The Applicants alleges that, such action/omission constitutes a violation of the fundamental and operational principles enshrined in Articles 6(d) and 7(2) of the EAC Treaty and Articles 7(1)(d) and 26 of the African Charter of Human and People’s Rights.

The Judiciary of the Republic of Uganda in delivering judgement in *Constitutional Petition No. 12 of 2013* three and a half years later from the date of hearing and the judgment being signed by four of the five Justices of the Court whereby three of the Justices had vacated office and ordered for the continued trial of the Applicants, violated the said provisions of the EAC Treaty and the African Charter on Human and People’s Rights.

Further, actions of Uganda Police Force acting in collaboration with the Directorate of Public Prosecutions in ignoring subsisting injunctive orders to summon the Applicants to appear before its officers and attempting to continue with the criminal prosecution of the Applicants in Criminal Case No. 003/2013, violated the EAC Treaty provisions and the African Charter on Human and People’s Rights.

Moreover, alleges that, actions of the Government of Uganda of elevating Justices of the Constitutional Court who heard the Applicants petition, to superior courts or allowing them to retire before delivering Judgement, thereby depriving the Applicants of timely justice also constitutes a violation of the EAC Treaty and the African Charter on Human and People’s Rights.

In addition, actions and omissions of the Minister of Justice and Constitutional Affairs of Uganda in failing to address the continued persecution of the Applicants and rather condoning the same violated the EAC Treaty provisions.

That the foregoing actions and omissions of the Government of Uganda through its bodies and agents breached the provisions of the Treaty and the African Charter on Human and People’s Rights, rendering it highly improbable that the Applicants shall be accorded Justice in the Courts of Uganda. The Applicants therefore seek for several declarations not limited to;

1. a declaration that inaction and loud silence by the Government of Uganda and Judiciary, especially the Constitutional Court in the continued failure to determine and deliver judgment in the Applicants’ Constitution Petition No. 12 of 2013, constitutes a violation of the rule of law and is an infringement of Articles 6(d) and 7(2) of the EAC Treaty.
2. a declaration that, the actions of the Uganda Government through the Uganda Police force ignoring a subsisting order of a temporary injunction, taking advantage of inordinate delay, and or failure by the Constitutional Court of Uganda to determine the Applicants’ Petition, to summon the Applicants to appear before its officers on 24th April, 2018 for interrogation in preparation of hearing of criminal case No. 003, constitutes a violation of the rule of law and in an infringement of Articles 6(d) and 7(2) of the Treaty.
3. a permanent injunction staying all criminal charges and proceedings against them in the Chief Magistrates Court of Buganda Road vide Misc. Application No. 22 of 2013, Criminal Case No. 003 of 2013 in the Anti-Corruption Division of the High Court and further order staying any continued hearing, re-hearing and determination of the Constitutional Petition No. 12 of 2013.

The Respondent opposes the Reference arguing that, there was no violation of the rule of law and/or infringement of any Treaty provisions and obligations. Further that, the declarations and orders sought by the Applicants offend and undermine the sovereignty of the Ugandan judicial system and the said Constitutional petition was duly heard and determined and that, the failure by one of the presiding Justices to sign the judgment did not render the court’s decision illegal.

That, there was cause and justification for the Constitutional Court delivering its judgment in the said time frame and that during the time, the Applicants rights were always protected by an injunctive order. There was no inordinate delay in delivery of the Judgment and the Applicants were not deprived of justice as alleged.

Further argues that, the orders of the Constitutional did not infringe the said provisions and after the Constitutional Court delivered the said Judgment, the Court’s injunctive order in respect of *Criminal Case No. 003 of 2013* lapsed. The actions of the Uganda Police were within its Constitutional mandate of protecting law and order and investigating crime among others.

The Respondent denies that the Applicants were maliciously prosecuted and contends that its actions did not infringe any of the alleged provisions and therefore, the Applicants are not entitled to any of the orders and declarations sought since such orders are intended in among others to frustrate the speedy criminal trial of the Applicants who are reasonably suspected to have committed serious criminal offences. The Respondent pray that the Reference be dismissed with costs.

*This is a document produced by the Registry to assist in understanding forthcoming matters before the Court. It does not bind the Court. For authoritative Decisions, Judgments and general information about the Court please visit* [*http://www.eacj.org*](http://www.eacj.org)

*Contact: Registrar, East African Court of Justice, P.O. Box 1096 Arusha, Tanzania Tel: +255 27 2506093 Fax: +255 27 27 2509493 Email:* *eacj@eachq.org*