



IN THE EAST AFRICAN COURT OF JUSTICE AT ARUSHA

FIRST INSTANCE DIVISION



*(Coram: Monica K. Mugenyi, PJ; Isaac Lenaola, DPJ; Faustin Ntezelyayo J;
Fakihi A. Jundu, J and Audace Ngiye J.)*

REFERENCE NO. 17 OF 2014

RT. HON. MARGARET ZZIWA APPLICANT

VERSUS

THE SECRETARY GENERAL,

EAST AFRICAN COMMUNITY RESPONDENT

RULING OF THE COURT

1. The above Reference was scheduled for hearing of oral evidence on 8th and 9th September 2015. However, on 8th September 2015, the Respondent raised a preliminary point of law premised on Section 20 of the East Africa Legislative Assembly (Powers and Privileges) Act; the gist of which was that the Applicant and her witnesses were members and/ or officers of the East Africa Legislative Assembly but had not secured leave from the Assembly to adduce evidence before this Court.
2. Rule 41(2) of the East African Court of Justice Rules of Procedure provides for a Respondent to raise a preliminary objection by giving notice therefor before the Scheduling Conference. Such notice shall entail 'not less that

grounds for the objection.

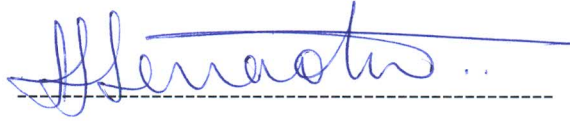
3. We do realize that the Respondent had no notice of the witnesses the Applicant intended to call and therefore could not have given notice of this particular objection before Scheduling. However, the spirit of Rule 41 is to avert trial by ambush and the attendant delays to proceedings before this Court as has transpired in this matter.
4. Therefore, we take the considered view that the Respondent should have endeavoured to give 7 days' notice to the Court and the Applicant of his intended preliminary objection. In this regard, we note that the Respondent was given the list of witnesses on 9th June 2015. This would have given the Respondent three (3) months within which to serve due notice of the preliminary objection within reasonable time before today's hearing.
5. In the result, we find that the Respondent's preliminary objection is improperly before this Court. We so rule.

Dated at Arusha this 8th day of September 2015.



Hon. Lady Justice Monica K. Mugenyi

PRINCIPAL JUDGE



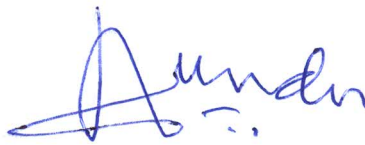
Hon. Justice Isaac Lenaola

DEPUTY PRINCIPAL JUDGE



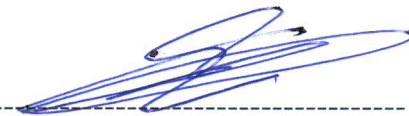
Hon. Justice Faustin Ntezilyayo

JUDGE



Hon. Justice Fakihi A. Jundu

JUDGE



Hon. Justice Audace Ngiye

JUDGE