



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



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

**REFERENCE NO.7 OF 2015**

**ALICE NIJIMBERE..... APPLICANT**

**VERSUS**

**EAST AFRICAN COMMUNITY SECRETARIAT ..... RESPONDENT**

**23<sup>RD</sup> MARCH, 2016**

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## JUDGMENT OF THE COURT

### Introduction

1. The Reference dated 28<sup>th</sup> October, 2015 is premised on Article 30 of the Treaty for the Establishment of the East African Community (hereinafter “**the Treaty**”) and Rule 24 of this Court’s Rules of Procedure, 2013. It seeks order to be reproduced shortly.
2. The Applicant has described herself as an advocate of P.O. Box 1096 Arusha, Tanzania and the Respondent is the East African Community Secretariat of the same address.

### Representation

3. The Applicant appeared in person while the Respondent was represented by Dr. Anthony Kafumbe, Counsel for the East African Community.

### Background

4. The Reference was prompted by the Respondent’s decision not to grant what the Applicant calls “*dispensation*” in interviewing her for the position of Registrar of this Court in Arusha and not Bujumbura in the Republic of Burundi. She alleges that the said decision was an infringement of *inter alia* Article 6(d), (e) and (f) of the Treaty.
5. She now seeks the following orders in that regard:
  - i) An annulment of the decision taken by the East African Community Secretariat (hereinafter ‘**the Respondent**’) in the meeting held on 28<sup>th</sup> September 2015 regarding her request for a dispensation to be interviewed at the Headquarters of the EAC for the position of Registrar due to a genuine reason;

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- ii) An interim order suspending the process of recruitment of the Registrar until the pleadings are closed;
- iii) The Court to declare the decision made by the EAC Secretariat in that regard to be null and void;
- iv) The Court to re-launch the process of interviews and organize a different interview panel in accordance with the East African Community Rules and Regulations, 2016; and
- v) The Court to award the costs of this Reference to the Applicant.

### The Applicant's Case

6. The Applicant's case is contained in her Reference aforesaid, her Affidavit of 1<sup>st</sup> December, 2015, Rejoinder to the Respondent's Affidavit in reply and written submissions filed on 15<sup>th</sup> December, 2015.
7. In summary, her case is that, sometime in June, 2015, the Respondent advertised for interested persons to apply for the position of Registrar of this Court. She duly applied for the position on 6<sup>th</sup> July, 2015, was shortlisted and invited for an interview on 28<sup>th</sup> September, 2015 at 14:15 hours at the offices of the Ministry of East African Community Affairs in Bujumbura. The invitation aforesaid was dated 23<sup>rd</sup> September, 2015.
8. She was also directed by an email of the same date sent by the Respondent's agent, M/S Deloitte Consulting Ltd. of Dar es Salaam, Tanzania (hereinafter "**Deloitte**") that she was to make her own travel and accommodation arrangements prior to the interview and that her expenses would be reimbursed, if need be.

9. The Applicant then wrote an email to Deloitte on 24<sup>th</sup> September, 2015 at 10:37 a.m. and stated *inter alia* as follows:

- i) That she was unable to travel to Bujumbura as requested;
- ii) That she should be granted a “*special dispensation*” to attend the interview in Arusha since she had been “*informed that the interview panel will be seated at the EAC Headquarters using teleconference services.*”

10. On 25<sup>th</sup> September, 2015 at 10:22 a.m., Deloitte wrote to her and stated that the directive of the relevant authority was that each shortlisted candidate would be interviewed in their country of origin. Further, since no reason had been given why she wanted a special dispensation, she was requested to give such reasons. At 11:36 a.m. the same day, she responded and stated thus:

***“Please be informed that my daughter is sick and her health status does not allow me neither to travel with her nor to leave Arusha because I have no one to assist her during my absence. Even now, I am at the Hospital.” (sic)***

11. At 13:56 hrs the same day, she was requested to give documentary proof that the “*child is hospitalized before the relevant decision makers seek consideration in regard to your request.*” She sent a single document from AAR Health Services at 9:02 a.m. on 26<sup>th</sup> September, 2015 in answer thereto and on 28<sup>th</sup> September, 2015, (the day of the interview), she sent a reminder at 8:23 a.m. Deloitte responded at 9:17 a.m. and stated that the relevant decision makers had not yet communicated their decision to it.

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12. At 11:07 a.m. on 28<sup>th</sup> September, 2015, an email was sent to her forwarding the decision of the Deputy Secretary General in-charge of Finance and Administration, the Counsel to the EAC and the Director of Human Resource and Administration at the EAC Secretariat to the effect that:

- a) A candidate for the aforesaid interview can only be interviewed by video conference at his or her country of origin;
- b) The Applicant's child was not admitted in any hospital and that the document presented indicated that the child was to return to hospital after one week from 25<sup>th</sup> September, 2015 for observation. The Applicant ought therefore, to have left the child with the father and travelled to Bujumbura for the interview; and
- c) To grant all candidates a level playing field, all of them ought to be interviewed via video conferencing at the Ministries responsible for EAC Affairs in their respective Partner States, hence the decision in (a) above.

13. At 14:14 hours, five minutes before her interview was to start, the Applicant protested at the above decision and reiterated that she was unable to travel to Bujumbura on account of having a sick child. She added that the "*EAC Management*" knew that her husband, an EAC employee, was on an EAC mission in Kampala and could not therefore take care of the child; and that by sitting for the interview in Arusha, the playing ground would still remain level for all candidates. Such an action in any event, she added, would save the EAC expenses related to her air ticket and accommodation. She concluded by "*advising*" the EAC to reconsider its position, "*otherwise [she*

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would] take other available legal recourse.” She was never interviewed, hence the present Reference.

14. It is her further case in any event that her situation ought to have been understood by the EAC decision makers and that the doctrine of *force majeure* should have been applied in her favour. She has added that she has suffered discrimination, has lost the right to employment and opportunity to advance herself professionally and financially as a result of the Respondent's actions.

15. For the above reasons therefore, the Applicant seeks the orders elsewhere set out.

### **Respondent's Case**

16. The Respondent, in answer to the Reference filed a Response dated 9<sup>th</sup> November, 2015, an Affidavit in reply sworn on 7<sup>th</sup> December, 2015 by Mr. Joseph Ochwada, Director, Human Resources and Administration at the EAC as well as written Submission dated 12<sup>th</sup> January, 2016.

17. His case is that the Reference is misguided as the Applicant was given an opportunity to participate in the interview aforesaid but she failed to seize it. In any event, that the Reference cannot stand for the following other reasons:

- a) The Statement of the Reference should be rejected because the Applicant sued the EAC Secretariat as opposed to suing the Secretary General, knowing that the Secretariat of the EAC has no legal personality to be sued as a Respondent before this Court;

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- b) Service of the Court documents and hearing with a Certificate of Urgency when Court was not in vacation was erroneous and inconsistent with Rule 19(2) of the EACJ Rules of Procedure 2013;
- c) The Applicant who says she is an advocate has not complied with Rule 17(5) of the EACJ Rules of Procedure 2013 by not attaching evidence to show she is entitled to appear before a superior Court in a Partner State; and
- d) The matter does not raise a cause of action against the Respondent because it did not owe the Applicant any statutory or other duty of care to ensure that she must be interviewed at the EAC Secretariat as she had requested.

18. Without prejudice to the above, the Respondent's case is also that the decision to interview all candidates in their respective Partner States was prudent and a policy of the Council of Ministers under Article 14 of the Treaty.

19. Further, that to bend that policy to accommodate the Applicant would have created an uneven playing field, more so, where the reasons given by the Applicant for alleged inability to travel to Bujumbura were unacceptable. In that regard, it is also its contention that the medical records of the Applicant's child, supplied by the Applicant herself, indicated that the child had not been admitted in any hospital and therefore the Applicant could have made arrangements for the child's care while she attended the interview.

20. The Respondent also adds that all other candidates for the interview complied faithfully with the directive regarding the place and manner of the interview and they should not be punished by restarting the

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process afresh to accommodate the Applicant. That the requirements for attendance of interviews in Partner states was meant to ensure verification of the Applicant's qualification and nationality and since all other interviewees had complied with the requirement, it would have been unlawful to treat the present Applicant differently.

21. Lastly, that neither *force majeure*, discrimination, nor breach of any Article of the Treaty had been proved and the Reference ought to be dismissed with costs.

### **Applicant's Case in Rejoinder**

22. The Applicant, in a rejoinder to the Respondent's contentions states, and of relevance to the Reference, that the Respondent had the means to verify the Applicant's qualifications and nationality without her being required to be interviewed in Bujumbura.

23. Further, that her experience as a former Judge and now as a senior advocate in Burundi gave her very high chances of being appointed the Registrar of this Court but the Respondent denied her that chance and even tarnished her reputation thereby.

### **Scheduling Conference**

24. On 24<sup>th</sup> November, 2015, at a Scheduling Conference attended by the Applicant and Counsel for EAC, the Parties and the Court decided that the following issues were uncontested:

- i) That the Applicant applied for the position of Registrar and was shortlisted by Deloitte and Touch Consulting Tanzania Limited based in Dar-es- Salaam, Tanzania;
- ii) That the notification of her shortlisting was done by Deloitte Consulting Limited by email dated 23<sup>rd</sup> September, 2015;

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- iii) That the candidate requested a special dispensation to be interviewed at the Headquarter of the EAC on 25/09/2015;
- iv) That the Applicant's request was rejected and communicated to her on 28<sup>th</sup> September, 2015, the date of the interview, at exactly at 12:04 (Tanzania Time);
- v) That the candidate reacted to the decision the same day at 14:10 hours by seeking a re-consideration of the decision by EAC decision makers; and
- vi) That the Applicant filed an Administrative Appeal on 06<sup>th</sup> October 2015 and received on 07<sup>th</sup> October 2015 by the Secretary General of EAC but the appeal remained without a response.

25. The following issues were contested and are therefore falling for our determination:

- i) Whether the conduct of the Respondent in refusing to interview the Applicant in Arusha as she had requested breached Articles 6(d), (e), (f) and 71(h) of the Treaty and Regulation 20(7) and (8) of the EAC Staff Rules and Regulations 2006;
- ii) Whether the Respondent abused his administrative powers by communicating the decision rejecting the request of dispensation, which he received on a Saturday and responded just one hour before the interview time on the following Monday contrary to Article, 71(h) of the Treaty;
- iii) Whether the Respondent breached provisions of Regulation 20(7) of the EAC Staff Rules and Regulations, 2006 by requesting the

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Applicant to arrange her own means of travel and accommodation expenses contrary to Article 6(d) of the Treaty; and

iv) Whether the Applicant is entitled to the prayers sought.

26. We propose to deal with each issue separately after summarizing the submissions made by the Parties. Before doing so however, one issue partly arose in the Respondent's response to the Reference but was not followed up at the hearing: **Whether the Respondent can properly be sued - in its own name.** In that regard, the EAC Secretariat is created under Article, 66 as read with Article 70 of the Treaty and its functions are then set out in Article 71 thereof. Under Article 71(2), the Secretary General is enjoined to act on behalf of the Secretariat and in Article 67(3)(a), he is the Head of the Secretariat.

27. Article 4 of the Treaty grants the EAC legal capacity and under Article 4(3), it is represented in Court proceedings as a body corporate, by the Secretary General.

28. Under Article, 30(1) of the Treaty, a natural person, such as the Applicant, can challenge "*any Act, regulation, directive, decision, an action of a Partner state or an institution of the Community on grounds of unlawfulness or infringement of the Treaty.*"

29. Partner States require no definition but institutions of the Community are defined in Article 9(3) of the Treaty so as to be the East African Development Bank and the Lake Victoria Fisheries Organization.

30. The Secretariat is an Organ of the EAC under Article 1(g) of the Treaty and it seems to us that it can only be sued through the Secretary General and not directly as a Respondent. As we know it, where a wrong party in Law has been sued, no orders should be

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issued against it. That is all we should say on that issue-See also Ref.No.3 of 2007,East African Law Society vs AG of Kenya & 3 Others

**Issue No.(i): Whether the Conduct of the Respondent in Refusing to Interview the Applicant in Arusha as she had requested Breached Articles, 6(d), (e), (f) and 71(h) of the Treaty and Regulation, 20(7) and (8) of the EAC Staff Rules and Regulations, 2006.**

31. On this issue, the Applicant submitted that by its actions aforesaid, the Respondent breached the principles of social justice, gender equality, as well as the promotion of Human and People's Rights in accordance with the provisions of the African Charter on Human and Peoples' Rights. They also breached the Anti-Discrimination Act, 1991 because she was denied special dispensation merely because she was a mother of a sick infant and the only shortlisted candidate from the Republic of Burundi. She was also denied such dispensation while the Respondent knew or ought to have known that she was resident in Arusha and not Bujumbura.

32. It was her other submission on this issue that the principle of gender equality would only have been guaranteed if, as the only other woman in the interview, she had been granted the special dispensation that she had sought.

33. On the issue of payment and refund of the cost of travel and accommodation, she submitted that although that issue was provided for in Regulation 20(7) of the EAC Staff Rules and Regulations the two days' notice for her to make such an arrangement was unfair and stressful to her.

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34. The Respondent on the other hand submitted on this issue that the principle of good governance enshrined in Article 6(d) of the Treaty was properly applied when the Respondent treated all interviewees equally and also acted accountably when it decided to reimburse any costs incurred by the candidates who had been invited for the interview aforesaid. That therefore, the inability of one candidate to participate in the interview process because her child was sick cannot amount to a violation of Article 6(d) of the Treaty.
35. On the allegations of discrimination, the Respondent's submission was that the Anti-Discrimination Act, 1991 referred to by the Applicant is an Australian domestic statute with only persuasive value to this Court. In any event, that the other women who had been shortlisted to attend the interview did so, and were interviewed in their Partner States.
36. Regarding the principle of equal opportunity and gender equality, the Respondent argued in part that the said principles are embedded in the recruitment and interview process as evidenced by the fact that both genders are given equal opportunities in the EAC.
37. On the complaint that the Applicant was not given a response to the request for special dispensation, the Respondent stated that the Applicant had made the request on 26<sup>th</sup> September, 2015 which was a Friday and a response could only conceivably be done the following Monday, 28<sup>th</sup> September, 2015. In the circumstances, no injustice was thereby occasioned to the Applicant.

**Determination on Issue No.(i)**

38. In determining the above issue in the context of the submissions above, we deem it appropriate at this stage to reproduce Articles 6(d),

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(e) and (f), Article 71(h) of the Treaty as well as Regulation 20(7) and (8) of the EAC Staff Rules and Regulations which the Applicant relies on as the legal basis for her Reference.

39. Article 6(d), (e) and (f) and Article 71(h) provide as follows:

Article 6(d):

***“The fundamental principles that shall govern the achievements of the objectives of the Community by the Partner States shall include:***

***a) .....***

***b) .....***

***c) .....***

***d) Good governance including adherence to the principles of democracy, the rule of law, accountability, transparency, social justice, equal opportunities, gender equality, as well as the recognition, promotion and protection of human and peoples’ rights in accordance with the provisions of the African Charter on Human and Peoples’ Rights.***

***(e) Equitable distribution of benefits; and***

***(f) Co-operation for mutual benefits”***

Article 71(h):

**“The Secretariat shall be responsible for:**

***a) .....***

***b) .....***

***c) .....***

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d) .....

e) .....

f) ***The general administration and financial management of the Community.***

40. Regulation 20(7) and (8) then provide as follows:

***“7. The Community shall pay travel and accommodation expenses for the short listed candidates for the posts advertised; and***

***8. Recruitment of staff of the Community shall as far as possible, be reflective of equal representation of the Partner States.”***

41. In the specific circumstances of this Reference, the issues arising for analysis on the issue at hand are therefore:

i) Whether the Respondent’s decision not to grant the Applicant a special dispensation regarding the place of interview was a breach of the principles of social justice, equal opportunities and gender equality; and

ii) Whether the Applicant was discriminated against on account of her gender and fact of being a mother. Further, whether any of the provisions of the African Charter on Human and Peoples’ Rights were thereby violated.

42. As Regulation 20(7) is to be substantively determined in Issue No.3, we shall not address it at this stage but we shall address Regulation 20(8) which is on equal representation of Partner States in appointments within the Respondent Secretariat.

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43. Rule 71(h) on the other hand requires no interpretation as it is a general provision on the functions of the Secretariat.

Social Justice, Equal Opportunities, Gender Equality and Equal Representation

44. Social justice as we understand it, is the principle that all individuals and groups are entitled to fair and impartial treatment and have equal opportunities. It is also premised on the natural Law that covers all people regardless of gender, origin, possession or religion – see Black's Law Dictionary, 9<sup>th</sup> Edition and Online Dictionary, 2<sup>nd</sup> Edition.

45. In that context, we note that the Applicant has claimed that her status as a mother and woman was what triggered the Respondent's actions; that therefore, she was unlawfully treated and denied the above rights. To address that contention, we must revisit the facts leading to the offending action.

46. In her initial email of 24<sup>th</sup> September, 2015, at 10:37 a.m. (and we have deliberately stated the times that the emails were exchanged), she gave no reason why she wanted to be interviewed in Arusha and not Bujumbura. When pressed to explain her reasons, she responded on 25<sup>th</sup> September at 11:36 a.m. to say that her daughter was sick and at that very moment, she was in hospital.

47. We have in that regard seen an AAR Insurance Claim Form dated 25<sup>th</sup> September, 2015 which indicates that the child had been suffering from periodical fever, nausea and vomiting for the previous five days and was treated on that day and required to return for observation after one week. On 24<sup>th</sup> September 2015, the child was therefore not in hospital and had not been treated and that explains

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the Applicant's email of 25<sup>th</sup> September 2015; that she was in hospital at the time she sent the email. She has not however explained why on 24<sup>th</sup> September 2014 she never gave any reason for her plea to be interviewed in Arusha but we presume that it was on account of the sick child.

48. The Respondent, having seen that form, took the view that since the child was not admitted in hospital, then the Applicant was in a position to travel to Bujumbura for her interview. Is that an unreasonable decision in breach of the right to social justice, equal opportunity and gender equality? We think not.

49. Granted, the Applicant was placed in a situation where in her judgment she could not travel to Bujumbura. What options were open to the Respondent in the circumstances? The Applicant offered the option of an interview at the EAC Headquarters because she had knowledge that the interviews were being conducted there. The Respondent's decision on the other hand to have a level playing field, and that each candidate should be treated equally in all aspects of the interview process was, in our view, logical, reasonable and lawful. The converse would in fact have been unreasonable i.e. that is where one candidate faces interviewers in the seat of the EAC while all others are in their Partner States probably having travelled there from elsewhere. Allegations of bias and favourable treatment of the Applicant, real or perceived, would have discredited the entire exercise *ab initio*. Equality would not only be applicable where the Applicant is concerned but also where other interviewees are concerned.

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50. In addition to the above, the Respondent did not casually dismiss the Applicant's plea for dispensation but interrogated it and decided that the interview had to take place as scheduled. Had the plea been summarily dismissed, we may have frowned upon such an action but not in the present circumstances. We have reached that conclusion because, there is an obligation that in the conduct of its affairs and specifically where an administrative decision has to be reached, there is a necessary implication that the Respondent is required to observe the rules of natural justice. One of these rules is that of fair hearing (*Audi alteram partem*) – See **Administrative Law, Eighth Edition by H.W.R. Wade and C.F. Forsyth at page 469**).

51. We are satisfied therefore, that having heard the Applicant and made a determination that was fair and reasonable in the circumstances, we cannot find any serious fault on the part of the Respondent.

52. In addition to the above, we also do not see where her gender comes in because she was an applicant in her professional capacity and the fact that her motherhood may have interfered with a professional pursuit cannot convert the issue into one of gender inequality.

53. What of the principle of *force majeure* that the Applicant alluded to in her Reference and raised in submissions? That principle, as we understand it, and as explained in **Chitty on Contracts, Vol.1** at para.14-148 is that '*force Majeure*' in English Law is wider than that of '*Act of God*' or '*vis major*'. The latter refers to a natural cause that makes the performance of a legal obligation impossible without human intervention. Assuming therefore that the Applicant's child's sickness was a natural occurrence, can it be said that the child's sickness was beyond the Applicant's control? One of the expectations

of the principle of *force majeure* is that the one pleading it had no options available in performing any legal obligation. In that context and as regards her attendance at the interview, like the Respondent, we are unable to find that she had no other way of mitigating her circumstances and we are satisfied that neither *vis major* nor *force majeure* are applicable to her circumstances and we so find.

54. Turning to Regulation 20(8) above, the Applicant argued that because she was the only candidate from the Republic of Burundi shortlisted for the interview, the fact that she missed the said interview means that the principle of equal representation of staff from Partner States was flouted.

55. With respect, the reason why the interview was not conducted had all to do with the Applicant's unfortunate circumstances and not simply because she was from Burundi. She was also shortlisted for the interview because she was qualified for the job subject to the interview and not principally because she was from Burundi. The fact that she was the only one from Burundi only attests to these credentials and not her nationality *per se*.

### ***Discrimination***

56. On allegations of discrimination, as we understand it, discrimination occurs where there is any distinction, exclusion, restriction or preference based on any ground such as race, sex, national or social origin, and which has the effect of nullifying or impairing the recognition, enjoyment or exercise by all persons on an equal footing of all rights and freedoms – (see: **UN Human Rights Committee General Comment 18.7**)

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57. We also note that not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a legitimate purpose – (See: **General Comment No.18.13 (supra)**).

58. We have also read excerpts from the Australian Anti-Discrimination Act, 1991 where some of the outlined grounds for discrimination are parental status, gender identity and family responsibilities. In the same Act, which we agree is only persuasive to this Court, direct discrimination is defined as to happen *when “a person with an attribute is treated less favorably than another person without the attribute”*.

59. In that regard, which other interviewee with a sick child was treated differently from the Applicant? Which other woman interviewee demanded or requested to be interviewed at the EAC Headquarters in Arusha and was so interviewed unlike the Applicant? Against what other person’s treatment shall we measure the Applicant’s treatment by the Respondent to enable us determine whether there was discrimination? With respect, none, and we do not see how discrimination can be proved without answers to the above questions. It is trite that he who alleges must prove and in this case, the Applicant has failed to prove any allegations of discrimination.

60. Regarding the African Charter on Human and Peoples’ Rights, the Parties made no reference to any specific provisions thereto as applicable to the present Reference and we shall therefore not speculate and apply any of its provisions to the Applicant’s circumstances.

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61. In the end and for the above reasons, we must answer Issue No.1 in the negative.

**Issue No. (ii): Whether the Respondent Abused his Administrative Powers by Communicating the Decision Rejecting the Request of Dispensation, which he Received on a Saturday and Responded to just One Hour Before the Interview Time on the Following Monday Contrary to Article, 71(h) of the Treaty.**

62. This issue speaks for itself and while we have alluded to it earlier, our answer to it is simple; elsewhere above, we deliberately reproduced the chain of communication between the Applicant, Deloitte and the Respondent. At no time did the Applicant protest about the short notice given (if at all it was short). She sought dispensation for a wholly different reason; that her child was sick.

63. In fact in the totality of this Reference, one would have expected the Applicant to seek to have the Respondent move the interview date to enable her sort out the issue of the sick child but she did nothing like that. She stuck to her preferred position of an interview in Arusha on 28<sup>th</sup> September, 2015 and not any other date, a matter we have said was not an option she could legitimately demand without the acquiescence of the Respondent.

64. We also note that the communication between the Applicant, Deloitte and the Respondent took place between 24<sup>th</sup> September 2015 and 28<sup>th</sup> September 2015. Two of those days fell on a weekend and it was impractical to expect that a concise answer on any question arising would be given to the Applicant prior to Monday, 28<sup>th</sup> September 2015 which happened to have been the day of the interview. We are unable to fault the Respondent in such circumstances.

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65. In any event, this issue was an afterthought, has no basis in either the Reference itself nor in the events prior to the filing of the Reference and we must answer it in the negative.

**Issue No.(iii) Whether the Respondent Breached the Provision of Regulation 20(7) of the EAC Staff Rules and Regulations, 2006 by Requesting the Applicant to find her Own Means of Travel and Accommodation Expenses Contrary to Article, 6(d) of the Treaty.**

66. Elsewhere above, we reproduced Regulation 20(7) and in the context of the Reference, with tremendous respect to the Applicant, this issue was also introduced as an afterthought. We say so because, in her email of 24<sup>th</sup> September, 2015 to Deloitte, she stated thus:

***“Thank you also for having expressed Deloitte’s willingness to reimburse the costs of my travel and accommodation in Bujumbura.”***

67. By so stating, she did not demand advance payment for travel and accommodation even if she had, the Respondent’s response to the issue is reasonable. We say so because if some shortlisted candidates receive air tickets and monies for accommodation but do not show up for interviews, what assurance of a refund can the Respondent have?

68. Regulation 20(7) does not also state that the payment must be in advance of the interview and since the EAC is a membership organization ran on funds from Partner States, to put such monies at risk of loss cannot be an accountable way of managing resources.

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69. In any event, what is the issue all about? It is academic because the Applicant did not turn up for the interview and the question of payments, refunds etc cannot now arise.

70. Without saying more, issue No. (iii) is answered in the negative.

**Issue No. (iv) Whether the Applicant is Entitled to the Prayers Sought:**

71. Turning back to the prayers in the Reference:

- a) **Prayer (i)** seeks annulment of the decision refusing to grant the Applicant "*dispensation to be interviewed at the Headquarters of the EAC for the position of Registrar due to a genuine reason.*"

We have held that although the Applicant's child was sick hence her inability to attend the interview, she could have managed her situation, reasonably, to enable her do so hence our finding above that the decision of the Respondent cannot amount to a violation of the Treaty in Article, 6(d), (e) and (f) as claimed and therefore, that prayer must and is hereby dismissed.

- b) **Prayer (ii)** seeks an interim order that the process of recruitment of the Registrar for this Court should be suspended until the pleadings are closed.

It is obvious that at this stage, this Court cannot grant interim reliefs and whatever the merits or otherwise of that Prayer, it is denied and is therefore, dismissed.

c) **Prayer (iii)** is to the effect that the aforesaid decision should be declared null and void but once we have found no violation of the Treaty, the same cannot be granted and is instead dismissed

d) **Prayer (iv)** seeks a re-launch of the interview process but it is obvious that we see no need to grant such a prayer and the same is similarly dismissed.

72. Before we conclude however, in the cause of Submissions, the Applicant introduced one other remedy; compensation for her alleged losses. In that regard, we can only state that such a claim cannot be introduced to pleadings in such a manner and we shall not delve into it at all. We say so because, where a matter is not pleaded and the other Party has no opportunity to respond to it, the ends of Justice would not be met if a court were to determine it.

73. Lastly, on the issue of costs, under Rule 111 of this Court's Rules of Procedure, 2013, costs follow the event unless the Court "*for good reasons otherwise orders.*" In our view, the Applicant was unable to attend the interview for reasons she thought entitled her to special dispensation. We have said that the Respondent nonetheless acted reasonably despite the Applicant's circumstances and that we see no breach or violation of the Treaty on its part. In the end, we deem fit that each Party should bear its own costs.

#### **Disposition**

74. Having held as we have done above, the Reference herein is dismissed but each Party shall bear its own costs.

75. Orders accordingly.

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Dated, delivered and signed at Arusha on this 23<sup>rd</sup> Day of March,  
2016.



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