



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



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

APPLICATION No. 8 OF 2017

(Arising from Reference No. 5 of 2017)

WANI SANTINO JADA APPLICANT

VERSUS

- 1. THE ATTORNEY GENERAL OF THE
REPUBLIC OF SOUTH SUDAN 1ST RESPONDENT**
- 2. THE SPEAKER OF THE PARLIAMENT
OF SOUTH SUDAN..... 2ND RESPONDENT**
- 3. THE SECRETARY GENERAL OF
THE EAST AFRICAN COMMUNITY 3RD RESPONDENT**

DATE: 5TH JUNE 2017

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RULING OF THE COURT

1. This Application was brought under Articles 5, 6(d), 7(2), 8(1)(c), 13, 14, 15, 16, 20, 21, 22, 23, 27(1), 29, 30, 33, 38, 39, 44, 53(3), and 71 of the Treaty for the Establishment of the East African Community (hereinafter referred to as "**the Treaty**"), as well as Rules 1(2), 17, 21, 22, 23, 24, 74, 84 and 85 of the East African Court of Justice Rules of Procedure, 2013 (hereinafter referred to as "**the Rules**").
2. The Applicant, Wani Santino Jada, seeks *ex parte* interim orders under certificate of urgency restraining the members of the 4th Assembly of the East African Legislative Assembly (EALA) from convening, administering an oath of office or otherwise recognizing the allegedly unlawful nomination of the nominees from the Republic of South Sudan until the hearing by this Court of a related Application for interim orders *inter partes*, **Application No. 5 of 2017**.
3. It is the Applicant's contention that on or about the 11th March 2017, His Excellency the President of the Republic of South Sudan appointed nine (9) persons to represent the said Partner State in EALA in violation of Article 50 of the Treaty.
4. The South Sudan nominees to the 4th Assembly of EALA whose nomination is in issue herein are:
 - a. Gabriel Garang;
 - b. Gai Dheng Nhial;
 - c. Joseph Okelle;
 - d. Anna Itto;
 - e. Gabriel Alaak Garang;
 - f. Thomas Duoth;
 - g. Gedion Gatban Thoan;

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h. Isaa Aiz Justin, and

i. Adil Elias Sundeng

5. At the hearing of this Application, the Applicant (who was self-represented) argued that whereas the swearing-in of EALA MPs that was due to take place today 5th June 2017 at 2.30 pm had since been deferred indefinitely, it could nonetheless transpire before the hearing of his Application for interim orders *inter partes* thus rendering the said Application nugatory.

COURT'S DETERMINATION

6. The Proviso to Rule 21(2) does provide for the grant of *ex parte* orders where the Court is satisfied that the delay caused by proceeding *inter partes* could occasion an irreparable injustice. Rule 21(2) reads:

No motion shall be heard without notice to the parties affected by the application.

Provided, however, that the First Instance Division, if satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable injustice, may hear the motion and make any ex parte order upon such terms as to cost or otherwise, and subject to such undertaking, if any, as the Division deems just. (*Emphasis ours*)

7. In the instant case, the Applicant has argued quite persuasively that **Application No. 5 of 2017** (the *inter partes* application) could be rendered nugatory thus occasioning a gross injustice to him, if the Respondents are not restrained from proceeding with the swearing-in of the South Sudan EALA nominees that were appointed vide an impugned process. We do agree with the Applicant in this regard.

8. Furthermore, we are mindful that in an *ex parte* application of this nature the Court would determine the injustice the Applicant stands to suffer on the face of the record, subject to sufficient proof thereof in the application *inter partes*. Indeed Rule 21(3) does enjoin the Court to schedule the hearing of the *inter partes* application within thirty (30) days from the granting of *ex parte* orders.
9. On the face of the record before us in the present Application, it does appear to us that the provisions of Article 50(1) of the Treaty may not have been followed in the election of the nine (9) South Sudan nominees to the 4th Assembly of EALA.
10. In the result, we take the view that the justice of this matter dictates that the Court does and hereby grants Interims Orders (*Ex Parte*) as sought by the Applicant in the following terms:
 - I. An Order is hereby issued restraining the East African legislative Assembly (EALA) from administering the oath of office, or otherwise recognizing the following nominees thereto from the Republic of South Sudan pending the hearing of **Application No. 5 of 2017** (*inter partes*): -
 - a. Gabriel Garang;
 - b. Gai Dheng Nhial;
 - c. Joseph Okelle;
 - d. Anna Itto;
 - e. Gabriel Alaak Garang;
 - f. Thomas Duoth;
 - g. Gedion Gatban Thoan;
 - h. Isaa Aiz Justin, and
 - i. Adil Elias Sundeng

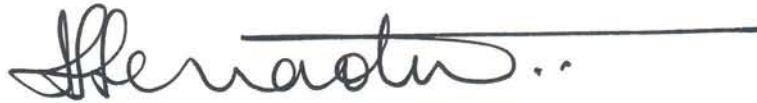
- II. **Application No. 5 of 2017** is hereby set for hearing on Thursday 15th June 2017 at 9.30 am.
- III. It is hereby orders that these *Ex Parte* Orders are served on the Respondents forthwith.
- IV. We make no Order as to costs.

It is so ordered.

Dated and delivered at Arusha this 5th day of June 2017.



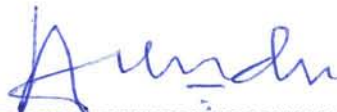
Hon. Lady Justice Monica K. Mugenyi
PRINCIPAL JUDGE



Hon. Justice Isaac Lenaola
DEPUTY PRINCIPAL JUDGE



Hon. Justice Faustin Ntezilyayo
JUDGE



Hon. Justice Fakihi A. Jundu
JUDGE



Hon. Justice Audace Ngiye
JUDGE