



EAST AFRICAN COMMUNITY
EAST AFRICAN COURT OF JUSTICE



First Instance Division to hear an *ex parte* Application concerning alleged incommunicado detention of Mr Kerbino Wol Agok (A South Sudanese)

Hearing of *Application No. 20 of 2018 (Arising from Reference No. 19 of 2018) Garang Michael Mahok vs The Attorney General of South Sudan* will be tomorrow *Wednesday 6th March 2018 from 9.30 a.m.*

The Applicant seeks orders that; the Respondent (the Attorney of the Government of the Republic of South Sudan) be ordered to;

- a. Provide this Honorable Court with precise and credible information as to the exact whereabouts of Mr Kerbino Wol Agok
- b. Provide assurance to this Honorable Court that the Respondent will immediately allow access to Mr Kerbino Wol Agok by his family, friends, associates, legal counsel and doctors
- c. Provide this Honorable Court with reasons for freezing Mr Kerbino Wol Agok personal and corporate bank accounts, confiscation of monies therein and the closure of his businesses

Further that, the Respondent either releases Mr Kerbino Wol Agok or arraigns him before a competent, impartial and effective Court or tribunal and pending the determination of the Reference, the Respondent, with immediate effect, reverse the closure of Mr Kerbino Wol Agok businesses and personal and corporate bank accounts.

In the Reference which is pending before the First Instance Division, the Applicant is challenging the alleged arbitrary detention of Mr Kerbino Wol Agok since 27th April 2018 without being informed of reasons for his arrest, without being charged or brought before a competent impartial Court or tribunal. Such actions are condemned for being in violation of the Constitution and laws of the Respondent

State and in violation of Article 6(d) and 7(2) of the Treaty for the Establishment of the East African Community.

The Applicant therefore prays for the above orders pending hearing *inter parte* and pending determination of the Reference.

The Applicant, Garang Michael Mahok is a citizen of the Republic of South Sudan. The Applicant is a personal friend and work colleague of Mr Kerbino Wol Agok whom he have known for 9 years.

The Respondent is the Attorney General of the Republic of South Sudan sued on behalf of the Government.

The Applicant alleges that, the basis of the urgency of this Application is that, following peaceful demonstration and outreach to the international community undertaken by prisoners at the National Security Service (NSS) Headquarters in South Sudan on Sunday 7th October 2018, there has been no information formally or informally as to the were about or the physical, mental or emotional status of Mr Kerbino Wol Agok.

Further in the week subsequent to Sunday 7th 2018, Agents of the Respondent have frozen the personal and corporate bank accounts of Mr Kerbino Wol Agok , taken his monies and closed his businesses, without the due process of law and without giving any reasons at all.

That unless this Honourable Court hears this motion immediately and grants the prayers sought, with or without modification, Mr Kerbino Wol Agok could lose his life or be irreparably injured. Further, his businesses could be permanently terminated, without the due process of law and such losses cannot be adequately compensated by way of damages and would lead to irreparable injustice.

The Applicant submits that, this Application is premised on the ground that, Mr Kerbino Wol Agok was arrested by agents of the Respondent on Friday 27th April 2018 and has continued to be arbitrary detained, incommunicado at the headquarters of the Respondent's National Security Service (NSS) or at such other places within the sole knowledge and control of the Respondent.

That Mr Kerbino Wol Agok has never been charged nor formally informed of the reasons for his arrest and continued detention. Further during the entire period of his incarceration, Mr Kerbino Wol Agok has not been allowed formal access to his family, friends, associates, legal counsel or doctors.

That, agents for the Respondent have refused to release Mr Kerbino Wol Agok and others despite provision of the Revitalized Agreement for the Resolution of Conflict in South Sudan signed on 12th September 2018 and a Republican Order (Presidential Decree) No. 17 of 27th September 2018.

That following the event of 7th October 2018, there has been no formal or informal communication of the whereabouts of Mr Kerbino Wol Agok leading his family, friends and associates to be extremely concerned that his life may be in danger.

Further, this Court is entitled to take judicial notice of the fact that persons, including suspects, have disappeared without trace in the hands of Agents of the Respondent State.

That proceeding to hear the case *inter partes* could lead to death or irreparable injury of Mr Kerbino Wol Agok or irreparable injury in terms of his physical, mental and emotional wellbeing.

Moreover, proceeding to hear the case *inter partes*, would lead to irreparable harm to, and permanent failure of Mr Kerbino Wol Agok businesses.

That prejudice to the Applicant and Mr Kerbino Wol Agok is greater when weighed against the prejudice to the Respondent if the orders are not granted. The grant of *ex parte* orders would not cause any injustice to the Respondent and it is therefore imperative that, in the above

circumstances and in the interest of justice and to prevent irreparable injury and irreparable injustice, the interim orders sought be granted *ex parte*.

The hearing will be on the above date, in open Court, 2nd floor, EAC Headquarters.

Procedure

The Application was lodged in the East African Court of Justice - First Instance Division on 30th October 2018 pursuant to Article 39 of the Treaty and Rule 1(1), 21 and 73 of the EACJ Rules of Procedure, 2013.

Composition of the Court

The hearing will be before the following Honourable Judges: Lady Justice Monica Mugenyi (Principal Judge), Justice Dr Faustin Ntezilyayo (Deputy Principal Judge) Mr Justice Fakihi Jundu, Mr Justice Audace Ngiye and Mr Justice Charles Nyachae.

Representatives of the Parties

Applicant: Donald Omondi Deya

Respondent: Representative Attorney General's Office

About the Court

The East African Court of Justice (EACJ or 'the Court'), is one of the organs of the East African Community established under Article 9 of the Treaty for the Establishment of the East African Community. Established in November 2001, the Court's major responsibility is to ensure the adherence to law in the interpretation and application of and compliance with the EAC Treaty. Arusha is the temporary seat of the Court until the Summit determines its permanent seat. The Court has sub-registries in each of the Partner States, save for South Sudan.

This Case Summary is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on <http://www.eacj.org>.

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