



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



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

REFERENCE NO. 10 of 2016

**M/S QUICK TELECOMMUNICATIONS SERVICES
(Represented by James Alfred Korosso)..... APPLICANT**

VERSUS

**THE ATTORNEY GENERAL OF
THE UNITED REPUBLIC OF TANZANIA..... RESPONDENT**

3RD JULY 2019

JUDGMENT OF THE COURT

A. INTRODUCTION

1. This is a Reference filed on 5th December 2016 by M/S Quick Telecommunications Services, a Tanzanian registered Partnership (hereinafter referred to as the '**Applicant**') owned by four Tanzanians, namely James Alfred Korosso, Elizabeth Alfred Korosso, Nicolas Obwana and Benedict Korosso, trading between Moshi, Himo and Arusha Townships, in the United Republic of Tanzania. The Applicant is represented by Mr. James Alfred Korosso and its address of service is: Quick Telecommunications Services, C/O The Managing Director, Mr. James Alfred Korosso, Old Plaza Cinema Building, Ground Floor, Opposite Moshi Bus park, P.O. Box 10200, Moshi, Tanzania
2. The Respondent is the Attorney General of the United Republic of Tanzania who is sued in his capacity as the Principal Legal Advisor of the United Republic of Tanzania. His address of service for the purposes of this Reference is given as Attorney General's Chambers, 20 Kivukoni Road, P.O. Box 9050, 11492 DAR ES SALAAM, TANZANIA.
3. The Reference was amended on 13th January 2017 and on 20th July 2018.

B. REPRESENTATION

4. The Reference was heard on 15th November 2018. The Applicant was represented by its Managing Director, Mr. James Alfred Korosso, while Mr. Daniel Nyakiha and Ms. Rehema Muturia appeared for the Respondent.

THE APPLICANT'S CASE

5. The Applicant's representative alleged that, on 24th April 2012, he lodged in the High Court of Tanzania at Arusha a suit registered as **Land Case No. 19 of 2012** which was heard and determined by Judge Fatuma H. Massengi and Judgment was delivered partly and unprofessionally by awarding the Applicant a minimum award and costs against "the plaint and its prayers." [sic] He also alleged that Judge Fatuma H. Massengi's unprofessional decision frustrated his application for leave to appeal to the Court of Appeal by confiscating application documents to the effect that the Application was time barred and the company sustained loss of business in relation to that case, including failure to service the bank loan from Barclays amounting to Tsh. 195,222,391.62 as of 27th July 2015. Furthermore, the Applicant alleged that it had been subjected to violent intimidation and was offended by Judge Fatuma H. Massengi.
6. He further averred that faced with such a situation and other challenges in pursuing his case, the matter was eventually brought before the Judges Ethics Committee, but dismissed. He contended that before the said Committee, he was subjected to a tensional and repellent atmosphere by the Judges of the Ethics Committee and Justice Fatuma H. Massengi. In this regard, he submitted that the Judges of the Ethics Committee failed to abide by their oath of office, the rules and procedures of the said Committee, the rule of law, the Constitution of the United Republic of Tanzania, the statutes and the EAC Treaty.
7. The Applicant's representative contended that he wrote a complaint letter to the Chief Justice of the United Republic of

Tanzania and on 16th June 2016, the Judges Ethics Committee responded to the said letter by inviting the Applicant to attend a hearing of his complaint in three separate days and on 4th October 2016, the said Committee delivered its ruling and dismissed the said complaint.

8. The Applicant's representative further averred that following the dismissal of the complaint by the Judges Ethics Committee, he lodged this Reference contending that the acts, conducts and omissions of the Respondent and his Agents are in violation of the statutes and the Treaty for the Establishment of the East African Community (hereafter referred to as the 'Treaty') in that they violate Articles 6(d) and 7(2) of the Treaty.

9. The Applicant therefore prayed for the following declarations and orders:

- a. A declaration be issued that the Respondent and his Agents have violated the Treaty for the Establishment of the East African Community;*
- b. A declaration be issued that the Respondent and his Agents have contravened Articles 6(d) and 7(2) of the Treaty for the Establishment of the East African Community;*
- c. A declaration further be issued that the Respondent and his Agents have contravened Articles 5(1) and 8(1)(c) of the Treaty for the Establishment of the East African Community;*
- d. The Ruling of the Judges Ethics Committee members on the Applicant's claims against Judge Fatuma H. Massengi delivered on 04th October 2016 be declared by*

this Honorable Court that it is unprofessional and the same is nullified.

- e. The Respondent's Agents namely, Judge Fatuma H. Massengi, Judge M.S. Mbarouk, Judge B.M.K Mmila, Judge A.G. Mwarija, Judge H.T Songoro and Honorable K. Revocati be declared terminated from the Office for contravening their oath of office, the rule of law, the Constitution of the United Republic of Tanzania and EAC Treaty.*
- f. An order be issued that the Respondent and his Agents be liable for the damages born out from the date of eviction from the business premises that is 24th April 2012 to the date of affection of the orders due to their failure to deliver justice to the Applicant.*
- g. An order be issued that all the retirement benefits of Judge Fatuma H. Massengi, Judge M.S. Mbarouk, Judge B.M.K Mmila, Judge A.G. Mwarija, Judge H.T. Songoro and Honorable K. Revocati be withheld by the Respondent herein for the purpose of compensation to the Applicant herein.*
- h. An order be issued that damages caused jointly by the Respondent and his Agents to the Applicant totalling Tsh. 3,000,000,000, equivalent to USD 1,376,146.79 through their acts and omissions be compensated by the said Agents of the Respondent in this case.*
- i. An order be issued that the action and omissions of the Respondent's Agents is unprofessional, against the rule of law and administration of justice and is an abuse of the Court process.*

- j. An order be issued that that application for leave to appeal or the Applicant be allowed to appeal on the judgment of the Land Case No. 19 of 2012 for justice to take its course or to be seen done.*
- k. An order be issued that the Respondent and his Agents be ordered to pay costs of the Reference.*
- l. An order be issued that the Respondent and his Agents pay interest of the said sum.*
- m. An order be issued that the Respondent and his Agents pay interests on the decretal sum at commercial rate to the date of payment.*
- n. An order be issued that the Respondent herein be ordered to affect all orders originating from this Reference immediately without fail.*
- o. An order be issued that all payment cheques that may originate from the orders above be transacted through the East African Court of Justice watch.*
- p. Any other relieves that the Court may deem fit and equitable.*

C. THE RESPONDENT'S CASE

10. The Respondent has raised 3 points of Preliminary Objections on Point of Law, but later on, he abandoned the 2nd ground of Preliminary Objections and maintained the remaining grounds namely:

- a. The Court lacks jurisdiction to entertain the matter.*
- b. The Reference is incompetent for contravening Rule 39(1) of the East African Court of Justice's Rules of Procedure, 2013 (hereinafter referred to as the "Rule").*

c. The Respondent averred that, all that is stated in the Applicant's case is denied in its totality because the Respondent's Agents performed their duties legally, properly and in accordance with the Laws of Tanzania. Otherwise, the Applicant is put to strict proof.

d. The Respondent prayed for:-

i. Dismissal of the Reference

ii. Costs be awarded to the Respondent.

iii. Any other Orders the Court may deem right and just to grant.

D. ISSUES FOR DETERMINATION

11. Pursuant to Rule 53 of the Rules of this Court, a Scheduling Conference was held on 6th June 2017 at which the following were framed as issues for determination:

a. Whether this Court has jurisdiction to hear and determine the Reference.

b. Whether the Reference is properly before the Court.

c. Whether the acts or decisions complained of by the Applicant, if proved, contravene Articles 6(d) and 7(2) of the Treaty.

d. What remedies are available to the Parties.

12. We propose to deal with Issue 2 together with Issue No. 1 because most of the Respondent's submissions on Issue No. 2 are pertaining to the jurisdiction of the Court, while the Applicant's short submissions on Issue No. 2 refer entirely to the Court's jurisdiction. Another part of the Respondent's submissions on

Issue No. 2 relating to the legality of the Judges Ethics Committee's impugned acts will be addressed in Issue No.3.

E. CONSIDERATION AND DETERMINATION OF ISSUES

Issues Nos.1 and 2: Whether the Court has jurisdiction to hear and determine the Reference and whether the Reference is properly before the Court

Respondent's submissions

13. As stated above in paragraph 10, the Respondent challenged the jurisdiction of the Court in his Notice of Preliminary Objection filed on 20th February 2017.
14. The Respondent's written submissions were filed on 13th November 2018. The Respondent's Counsel started his submission by providing the background to the instant case. He averred that the Applicant's claims before this Court are based on the original **Land Case No. 19 of 2012** in a domestic Court, where the Applicant, as a plaintiff, filed a claim for specific damages of Tshs. 93,258,500 against Allan Solomon Mruma, Asseri Solomon Mruma, Tabu Simile and Nutmeg Auctioneers, alleging breach of the tenancy agreement which existed between them.
15. He also averred that the Applicant partially succeeded in the Land Court as some defendants were ordered to return the properties owned by the plaintiff. However, being dissatisfied with the decision of the High Court in the aforementioned land case, it filed for leave to appeal to the Court of Appeal, but the leave was dismissed for having been filled out of time.
16. The Respondent's Counsel further stated that, on 04th March 2016, the Applicant made allegations against Hon. Judge Fatuma

H. Massengi, a Trial Judge in **Land Case No. 19 of 2012** to the Chief Justice of the United Republic of Tanzania who forwarded the allegations to the Judges Ethics Committee. He added that, under Judiciary Administration Act No. 4 of 2011, the said Committee has been empowered to deal with any complaints either by its own motion or brought to it by any person having a complaint.

17. It was also the contention of the Respondent's Counsel that any person aggrieved by the decision of the Judges Ethics Committee is required to challenge the said decision by judicial review. He then referred the Court to the case of **Sanai Mirumbe and Another Vs. Muhere Chacha** (1990) TLR 54 in which the Court of Appeal of the United Republic of Tanzania had laid down the circumstances under which Prerogatives Orders might be issued. He pointed out that the Court of Appeal held that:

“The High Court is entitled to investigate the proceedings of a lower court or tribunal or public authority on any of the following grounds apparent on the record:-

- a) Taking into account matters which it ought not to have taken into account;***
- b) Not taking into account matters which it ought to have taken into account;***
- c) Lack or excess of jurisdiction;***
- d) Conclusion arrived at is so unreasonable that no reasonable authority could ever come to it;***
- e) Rules of natural justice have been violated;***
- f) Illegality of procedure or decision.”***

18. Against that background, the Respondent's Counsel submitted that the Applicant, if dissatisfied with the Judges Ethics Committee, was required by law to challenge the decision by applying for prerogative orders. He underscored that the Applicant's complaints against the trial judge had been referred to the Judge Ethics Committee and they were determined in the presence of the Applicant.

19. Learned Counsel also contended that the Applicant's Notice of Appeal filed on 13th November 2015 in the Court of Appeal of Tanzania against Hon. Justice Fatuma Massengi's judgment delivered at Arusha on 30th October 2015 had neither been struck out nor withdrawn by the Applicant. He opined that in accordance with Rule 89 of the Court of Appeal Rules, 2009, the Applicant could have withdrawn the Notice of Intention to Appeal if he so wished and/ or if he had no interest to pursue such an appeal. He then argued that since the Applicant had not withdrawn the Notice of Appeal from the Court of Appeal, it was still awaiting determination of the Court and the Applicant therefore had two channels to pursue his claim and allegations. Those channels were to lodge an appeal to the Court of Appeal which the Applicant had done or to file an application for judicial review if he so intended to challenge the decision of the Judges Ethics Committee as per the direction of the Court of Appeal in the case of **Sanai Mirumbe** (supra).

20. Moreover, Counsel for the Respondent asserted that the jurisdiction of this Court as enshrined in Article 27 of the Treaty is the interpretation and application of the Treaty. In that regard, he submitted that Article 27 does not confer an appellate jurisdiction on this Court over the decisions of the Partner State's Supreme

Court (See Honorable Sitenda Sebalu Vs. The Secretary General of the East African Community, the Attorney General of the Republic of Uganda, Honorable Sam. K. Njuba and Electoral Commission of Uganda, EACJ Reference No. 1 of 2010). He asserted that in that case, the Court held that Article 27 does not confer appellate jurisdiction of this Court over the decision of the Supreme Court of Uganda and that the said article was intended strictly for appealing a decision within the Court from the First Instance Division.

21. Relying on the above-mentioned authority, the Respondent's Counsel argued that since the Applicant's claims arose from Land Case No. 19 of 2012, and the Applicant had an appeal pending in the Court of Appeal and a further option of filing an application for judicial review against the decision made by the Judges Ethics Committee, it was therefore precluded by the Treaty from bringing the same claims to this Court. He opined that no law or procedures confer to this Court any jurisdiction over the allegations made by the Applicant.

22. He also submitted that the scope of jurisdiction envisaged by the "founders of the Treaty" [sic] does not extend to the determination of the validity of the decision of the Judges Ethics Committee which is a judicial organ. In that regard, he contended that if the Court entertained this Reference, it would be sitting as an appellate court to determine the validity of a decision of an organ of a Partner State of which no jurisdiction has been vested in it.

23. Counsel further submitted that the matter before this Court is not for interpretation and application of the Treaty and therefore the jurisdiction of the Court is ousted.

Applicant's submissions

24. Conversely, in its written and oral submissions, the Applicant's representative strongly disagreed with the Respondent and contended that this Court has jurisdiction to hear and determine the Reference. He contended that Article 4(1) and (2) of the Treaty read together with Article 9(1) (e), which automatically refers to Articles 23,27(1) and 30 of the Treaty show that this Court has the inherent power to hear and determine this Reference.

25. In support of his argument, the Applicant's representative referred the Court to the case of **East African Centre for Trade Policy and Law Vs. The Secretary General of the East African Community, EACJ Reference No. 9 of 2012**, p. 46 where the Court stated that:

"The proviso to Article 27(1) and Article 30(3) undermines the supremacy of the EACJ and therefore contravenes Articles 5,6,8(1)(4) and (5) and 23 of the Treaty."

26. Reliance was also placed on the said Court's judgment at page 45 where it opined that:

"We don't think that it takes away directly or by implication the interpretative jurisdiction of this Court - Our view remains the same as above on the issue."

27. The Applicant's representative also submitted that the jurisdiction of the Court is vested in it under Article 27 of the EAC Treaty which provides that the Court shall have jurisdiction over the interpretation and application of the Treaty. He further submitted that Article 23 of the Treaty provides that the Court's role shall be

to ensure the adherence to law in the interpretation and application of and compliance with the Treaty.

28. The Applicant's representative then stressed that he had filed this Reference seeking interpretation and application of his rights under Articles 6(d) and 7(2) of the EAC Treaty. He further contended that through the orders sought from the Court, he is seeking to ensure that the Respondent's complies with his Treaty obligations.

29. He also averred that the interpretation and application of Articles 6(d) and 7(2) of the Treaty had previously been dealt with by this Court in the case of **The Attorney General of the Republic of Kenya Vs. Independent Medical Legal Unit, Appeal No.1 of 2011** where it stated:

“The respective partner States’ responsibilities to their citizens and residents have, through those States voluntary entry into the EAC Treaty, been scripted, transformed and fossilized into the several objectives, principles and obligations now stipulated in, among others, Articles 5, 6, 7 of the Treaty the breach of which by any partner State, gives rise to infringement of the Treaty. It is that alleged infringement which through interpretation of the Treaty under Article 27(1) constitutes the cause of action [...]”

30. The Applicant's representative further stated that the Court's aforementioned position was buttressed in the case of **Samuel Mukira Mohochi Vs. The Attorney General of the Republic of Uganda, EACJ No. 5 of 2011** where the Court opined that:

“The reasoning of this Court in Mukira Muhochi was to the effect that all the fundamental principles of the EAC under Article 6 are ‘foundational, core, indispensable and enforceable.’”

31. He also referred the Court to the case of East African Centre for Trade Policy and Law Vs. The Secretary General of the East African Community, Reference No. 9 of 2012, citing the Court’s judgment in Professor Anyang’ Nyong’o where the Court stated that:

“Under Article 33(2) the Treaty obliquely envisages interpretation of the Treaty provisions by national courts. However, reading the pertinent provisions with Article 34, leaves no doubt about the primacy if not the supremacy of this Court’s jurisdiction over the interpretation of provisions of the Treaty.”

32. In further reference to the case of East African Centre for Trade Policy and Law Vs. The Secretary General of the East African Community (supra), the Applicant submitted that the point of argument in that judgment was that the Treaty was amended to create *inter alia* a proviso to Articles 27(1) and 30(3). The Applicant’s representative pointed out that in the said case, the Court having found that it had jurisdiction to determine the Reference, went on to determine that issue at length and finally found that the Reference was properly before it and concluded thus:

In concluding this issue, we would like to echo the statement by the Court in the East African Law Society (supra) that:

“1. By the provisions under Articles 23, 33(2) and 34 the Treaty established the principle of overall supremacy of the Court over the interpretation and application of the Treaty to ensure harmony and certainty.

The new proviso to Article 27, and paragraph 3 of Article 30 have the effect of compromising that principle and/or contradicting the main provision. It should be appreciated that the question of what ‘The Treaty reserves for a partner State’ is a provision of the Treaty and a matter that ought to be determined harmoniously and with certainty. If left as amended, the provisions are likely to lead to conflicting interpretations of the Treaty by national Courts of the partner States..... We strongly recommend that the said amendment be revised at the earliest opportunity of reviewing the Treaty.”

33. Furthermore, the Applicant's representative relied on the case of **Samuel Mukira Mohochi** (supra) on pages 83 to 90 to stress the point that the instant Reference is properly before the Court. Other authorities relied upon were the Constitution of the United Republic of Tanzania 1977, **James Katabazi & 21 Others Vs. The Secretary General of the East African Community, EACJ Reference No. 1 of 2007**, **Professor Peter Anyang' Nyong'o Vs. The Attorney General of Republic of Kenya, EACJ Reference No. 1 of 2006**. The Applicant's representative contended that in

the latter case, the Court reasoned on the cause of action that forms a set of facts or circumstances that in law give rise to a right to sue or to take out an action in Court for redress or remedy.

34. The Applicant's representative further referred the Court to the case of **The Attorney General of the Republic of Kenya Vs. Independent Medical Legal Unit, EACJ Appeal No. 1 of 2012** where the Court dealt with preliminary objection on its jurisdiction and showed how to handle such a matter. The Applicant's representative averred that this Court had dealt with a similar question in the case of **Samuel Mukira Mohochi** (supra). He contended that in view of the instant Reference touching on the bottom of the intention of the establishment of the Treaty as reflected in Articles 4,5,6,7,8 and 23, this Court ought to have regard to its necessity to promoting the rule of law within EAC Partner States. He thus urged the Court to take into account Rule 55 (3), b, c, and d of the Court's Rules and dismiss any preliminary objections raised and aimed at oppressing the local society, "hence bring to the attention of the organs and administrators of the partner states that there is a superior monitoring organ monitoring their ill performances lastly arriving in the objectives of the community" [sic].
35. To sum up his submissions on this issue, the Applicant urged the Court to disregard the technicalities and hence administer substantive justice without undue regard to the said preliminary objections to the Reference before it. He further called upon the Court to use its inherent powers as stated in Rule 1(2) of the Court's Rules.

Determination of Issues Nos.1 and 2

36. We have carefully read and considered the pleadings and submissions together with the supporting legal authorities cited by the parties. The background to this case is reproduced herein above. The case arose from **Land Case No. 19 of 2012** lodged in the High Court of Tanzania at Arusha and the matter has also been dealt with by the Judges Ethics Committee which has dismissed the Applicant's complaints.

37. The Applicant has instituted this Reference against the Respondent seeking to hold the Government of the United Republic of Tanzania vicariously liable for alleged wrongful acts committed by the Judges Ethics Committee. It claims that the said acts violate its rights under Articles 6(d) and 7(2) of the EAC Treaty.

38. The Respondent, on his part, contends that the subject matter of this Reference does not fall within this Court's jurisdiction for the reason that if the Applicant wanted to challenge a decision of the Judges Ethics Committee, it ought to have filed an application before the Respondent's competent Court by way of judicial review.

39. The jurisdiction of this Court is set out in Articles 23(1) and 27(1) of the Treaty. We reproduce the provisions of the said articles for ease of reference. Article 23(1) provides that:

"The Court shall be a judicial body which shall ensure the adherence to law in the interpretation and application of and compliance with this Treaty."

As for Article 27(1), it states that:

Healy,

“The Court shall initially have jurisdiction over the interpretation and application of this Treaty:

Provided that the Court’s jurisdiction to interpret under this paragraph shall not include the application of any such interpretation to jurisdiction conferred by the Treaty on organs of Partner States.”

Also relevant for this case is Article 30(1) of the Treaty which provides that:

“subject to the provisions of Article 27 of this Treaty, any person who is resident in a Partner State may refer for determination by the Court, the legality of any Act, regulation, directive, decision or action of a Partner State or an institution of the Community on the grounds that such Act, regulation, directive, decision or action is unlawful or is an infringement of the provisions of this Treaty.”

40. From the abovementioned provisions of the Treaty, it is clear that Article 27(1) designates the jurisdiction of this Court as the interpretation and application of the Treaty; Article 30(1) on its part provides the context within which such jurisdiction would be exercised. This Court has had opportunities to address the question of its jurisdiction in different decided cases. It has consistently found its jurisdiction to have been sufficiently established where it was averred on the face of the parties’ pleadings that the matter complained of constituted an infringement of the Treaty (See Hon. Sitenda Sebalu vs. The Secretary General of the East African Community & Others, EACJ Ref. No. 1 Of 2010 and Prof. Peter Anyang’ Nyong’o & 10

Others Vs. The Attorney General of the Republic of Kenya & 2 Others, EACJ Ref. No. 1 of 2006.

41. As stated hereinabove, the Applicant filed the present Reference against the Respondent based on its vicarious liability for alleged wrongful acts, conducts and omissions of the Judges Ethics Committee. He contends that the said acts, conducts and omissions are in violation of Tanzanian statutory law, as well as the Treaty in that they violate Articles 6(d) and 7(2) of the Treaty. The Applicant therefore prays for among others, a declaration to be issued that the Respondent and his Agents have contravened Articles 5(1), 6(d), 7(2) and 8, 1 (c) of the Treaty.

42. As the case stands, this Court is called upon to determine the legality of the Respondent's acts on the grounds that the impugned acts are an infringement of the abovementioned provisions of the Treaty. This is well within its mandate under Article 30(1) of the Treaty. We have heard the Respondent's contention that by adjudicating the matter, the Court would have assumed appellate function which has not been bestowed upon it by the Treaty or would be exercising a judicial review which is the preserve of Tanzanian Courts. However, considering the provisions of Articles 27 (1) and 30(1) reproduced hereinabove, we are not convinced by the Respondent's arguments and hereby hold that this Reference falls squarely within the Court's jurisdiction. Issues Nos 1 and 2 are therefore answered in the affirmative.

Issue No. 3: Whether the acts or decisions complained of by the Applicant, if proved, contravene Articles 6(d) and 7(2) of the Treaty.

Applicant's submissions

43. The Applicant's representative first of all submitted that by wrongly stating that the judgment in **Land Case No. 19 of 2012** was delivered on 27th October 2012, the Trial Judge infringed her oath of office, the Constitution of the United Republic of Tanzania and Articles 6(d) and 7(2) of the Treaty.
44. He also alleged that there was lack of seriousness in the Trial Judge's judgment and the way she had analysed evidence. He contended that she deliberately disorganized the Applicant's pieces of evidence such as annextures to its case or failed to hear some witnesses, such as Mr. Kitundu, in order to weaken the Applicant's case.
45. The Applicant's representative further submitted that the Applicant's properties were seized forcefully without any court order, sold without any record of sale indicating for example the amount of the sale, and that the trial judge did not even ask the defendants in the land case to explain such anomalies.
46. It was also the representative's contention that he was intimidated and harassed by the Trial Judge when he tried to make a follow up on the case before the High Court at Arusha.
47. The Applicant's representative also took issue with the way the Judges Ethics Committee handled the Applicant's claims against the Trial Judge. In this regard, he contested the "ill formation" of the Committee and alleged that it had arrived at a pre-conceived verdict without due consideration of all claims raised against the Trial Judge and that during the hearing, the Committee had subjected him to harassment, tension and a repulsive atmosphere.

48. In line with the foregoing, the Applicant's representative submitted that the members of the Judges Ethics Committee had infringed their oath of office and had failed to abide by the Constitution of the United Republic of Tanzania. In the same vein, he submitted that the acts, conduct and omissions of the Respondent and his agents violate the Constitution of the United Republic of Tanzania and the EAC Treaty.
49. The Applicant's representative further contended that the Respondent had caused the Applicant's business to collapse, and that much suffering was caused to him, the Applicant's business partners, the company staff and their extended family. It was also submitted that the Respondent's acts had undermined the relations of the Applicant and its bank, Barclays Bank Ltd.
50. On the same issue, the Applicant's representative submitted that the cost of damages jointly caused by the Respondent and his agents to the Applicant and its associates through their acts and omissions from 24th April 2012, the date of the eviction from the business premises, amounted to Tshs.3,000,000,000, equivalent to USD 1,976,146.79.

Respondent's submissions

51. On this issue, the Respondent contended that since much of the Applicant's complaints are against the Judges Ethics Committee castigating the way it had handled its case following alleged irregularities committed by Judge Fatima Massengi, it ought to have brought its claims before domestic courts as determined in the case of **Sanai Mirumbe** (supra) according to which, if the Applicant was not satisfied with the decision of the Judges Ethics Committee, it ought to have filed a Judicial Review against such a

decision, which he has not done. The Respondent's Counsel also submitted that nowhere had the Applicant indicated that the failure of the Judges Ethics Committee to determine its claim had violated or contravened Articles 6(d) and 7(2) of the Treaty.

52. The Respondent's Counsel also reiterated that this Court should not be used as an appellate body towards the decision of both the Judges Ethics Committee or the trial judge simply because there is no contravention or infringement of the principles enshrined in Articles 6(d) and 7(2) of the Treaty, contrarily to the Applicant's allegations.

53. The Respondent's Counsel also submitted that the Applicant's claim against the trial judge for the alleged wrongful handling of its case was duly heard and determined by the Judges Ethics Committee and therefore, the Applicant's seeming appeal before this Court had nothing to do with Articles 6(d) and 7(2) of the Treaty. He also submitted that the Applicant's allegations that Hon. Judge Fatuma Massengi's lack of seriousness in her judgment was a matter subject to appeal and in that respect, the Committee which heard its complaint had advised it to refer the case to the Court of Appeal for determination. Learned Counsel added that what was termed by the Applicant as intended to weaken its case was a very good ground of appeal before the Court of Appeal of Tanzania which is clothed with the jurisdiction to determine the matter and grant remedies sought as opposed to this Court.

54. Counsel further submitted that the Judges Ethics Committee, exercising its powers under section 38 of the Judiciary Administration Act No. 4, 2011 had addressed all the allegations being tabled before this Court. He argued that the mere fact that

the Applicant was not satisfied with the decision of the Judges Ethics Committee did not entail abuse of legal process in the domestic courts since the Applicant is required to lodge its appeal in a superior court on the grounds already elaborated in the case of **Sanai Mirumbe & Another Vs. Muhere Chacha** (supra). Counsel opined that it was the Applicant's negligence that led to failure to file an application for leave to appeal on time, and thus resulted into dismissal of its case for being time barred. He hastened to add that the Applicant could not blame Judge Massengi or Judge Mwaimu for its failure. Relying again on the case of **Hon. Sitenda Sebalu Vs. The Secretary general of the East African Community** (supra) and **Hon. Sam K. Njuba Vs. Electoral Commission of Uganda**, Counsel also submitted that the Applicant was abusing due process by inviting this Court to act as an appellate court against the decision of the High Court of Tanzania, an act not envisaged by Article 27 of the Treaty.

55. In sum, the Respondent submitted that he did not contravene Articles 6(d) and 7(2) of the Treaty since all the Applicant's allegations against Hon. Judge Massengi were heard and determined by a competent authority and at all level the Applicant did participate to the proceedings and was heard, thus its claims before this Court are baseless and unfounded.

Determination of Issue No. 3

56. We have carefully considered the pleadings and parties' rival arguments in respect of this issue. In line with our findings on Issue No.1, we consider that this Court is called upon to exercise its interpretative mandate and determine whether due process was observed by the Judges Ethics Committee in addressing the

Applicant's complaints regarding alleged wrongful actions of Hon. Judge Massengi.

57. From the onset, it is apposite to shed some light on the Judges Ethics Committee and its functions within the United Republic of Tanzania's judicial system. The Judges Ethics Committee is established under Article 37(1) of the Judiciary Administration Act, 2011, which also determines its composition. Article 38(1) of the said Act provides that the functions of the Committee shall be:

- a) to receive and investigate complaints against [...] a Judge;***
- b) serve a Judge with a complaint;***
- c) [...]***
- d) hear the complaint.***

58. Article 40(1) of the Act states that any complaint against a Judge may be lodged with the Committee by a person who has an interest in the matter. Article 41(2) of the same Act provides that a complaint shall contain adequate information disclosing an act or omission complained about and circumstances upon which that act or omission was committed. Article 41(3) stipulates that without prejudice to subsection (2) of Article 41, a complaint may be made regarding any of the following matters: (a) handling of cases; (b) allegation of corruption; (c) behaviour inconsistent with the Code of Judicial Ethics, and (d) inability to perform the functions of a Judge.

59. As stated hereinabove, the Applicant wrote a letter to the Chief Justice complaining about how its case had been handled by Judge Fatima Massengi and the Chief Justice forwarded the Applicant's complaints to the Judges Ethics Committee, which as indicated in paragraph 57 is competent to investigate such

complaints. It is not in dispute that the Committee heard the matter in the presence of the Applicant and dismissed the case on 4th October 2016.

60. Dissatisfied with the decision of the Judges Ethics Committee, the Applicant filed this Reference on 5th December 2016. It is worth pointing out that in paragraph 46 of the Affidavit of James Alfred Korosso filed on 13th April 2018, he stated that he had chosen to file his case before this Court considering it superior to the Tanzanian judicial system. The question that arises then is whether this course of action is what entails due process in this matter.

61. The Respondent contends that if the Applicant was not satisfied with the decision of the Judges Ethics Committee, he ought to have challenged it before the High Court of Tanzania by way of judicial review. In support of his position, he refers the Court to the case of **Sanai Mirumbe & Another Vs. Muhere Chacha**. According to this authority, the Applicant ought to have challenged the impugned decision of the Judges Ethics Committee before the High Court of Tanzania. The Respondent's Counsel has also urged the Court not to determine the present Reference contending that by doing so, the Court would be sitting as appellate court of the decision rendered by the High Court of Tanzania. With regard to the latter contention, as stated herein above, we are of the view that what is in issue in this Reference is the decision taken by the Judges Ethics Committee on the Applicant's complaints against alleged mishandling of its case by Hon. Judge F. Massengi. In this respect therefore, the contention that if this Court determined this matter it would be sitting as an appellate court does not arise because the decision of the Judges

Recd.

Ethics Committee is not a decision of a court of law subject to appeal to a superior court.

62. Nonetheless, considering the case at hand, we are persuaded by the Respondent's argument and supporting authority that the legal course of action was for the Applicant to file a case before the High Court of Tanzania if he was not satisfied by the decision of the Judges Ethics Committee. Having failed to do so, it cannot claim that due process of the law was not followed and that Articles 6(d) and 7(2) were violated by the Respondent. In the result therefore, Issue No. 3 is answered in the negative.

Issue No. 4: What remedies are available to the Parties

63. The Applicant has prayed for declarations and orders as reproduced hereinabove in the Applicant's Case. Considering our findings on Issue No. 3 that the Respondent did not violate the principles enshrined in Articles 6(d) and 7(2), the declarations sought in (a), (b) and (c) are not granted.

64. With regard to prayer (d) that the Court declares unprofessional and null the Ruling of the Judges Ethics Committee delivered on 4th October 2016 and prayer (i), we decline to grant the prayers as per our findings on Issue No. 3.

65. Concerning prayer (e) related to the termination of office, prayer (g) on retirement benefits for Judge Fatuma H. Massengi, Judge M.S. Mbarouk, Judge B.M. Mmila, Judge A.G. Mwarija, Judge H.T. Songoro and Hon. K. Revocati, and prayer (j) on the leave to appeal Judgment in **Land Case No. 19 of 2012**, the Court declines to grant the said prayers for they falls outside its statutory jurisdiction.

66. As regards prayers (f), (h), (l), (m), (n) and (o) on damages, interest thereto and other payments claimed by the Applicant against the Respondent and his agents, these prayers are not granted because no violation of the Treaty was found against the Respondent.

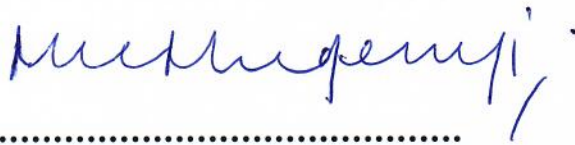
67. On the costs of the Reference, Rule 111(1) of the Court's Rules provides that **"Costs in any proceedings shall follow the event unless the Court shall for good reasons otherwise order."** The Applicant has failed in all its claims against the Respondent and shall therefore bear costs of the Reference.

F. CONCLUSION

51. Given our findings, **Reference No. 10 of 2016** is dismissed with costs to the Respondent.

G. It is so ordered.

Dated, Signed and Delivered at Arusha this 3rd July 2019



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MONICA K. MUGENYI
PRINCIPAL JUDGE



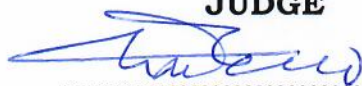
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FAUSTIN NTEZILYAYO
DEPUTY PRINCIPAL JUDGE



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FAKIH A. JUNDU
JUDGE



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AUDACE NGIYE
JUDGE



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CHARLES O. NYAWELLO
JUDGE