

Appeal No. 2 of 2021 East Africa Law Society v The Attorney General of the United Republic of Tanzania & Another

Coming up for Judgment: 31st August 2022.

Appeal filed: on 15th January 2021

Treaty Provision: Article 6(d), & (2), 24 & 35A of the Treaty for the Establishment of the East African Community, 1999

Subject matter: Treaty interpretation

The Appellant is an umbrella organisation of all EAC national law societies with an observer status in the East African Community. They filed a Reference in the First Instance Division of the Court contending that, the process of nomination and eventual appointment of Justice Suda Mjasiri as a Judge in the Appellate division of the East African Court of Justice was shrouded in secrecy and did not involve other important stake holders to make the process transparent and credible. In the Appellant's view this process was in contravention to the requirements of Articles 24,6(d) and 7(2) of the Treaty.

The First Instance division dismissed the Reference with costs holding that Article 24 of the Treaty has two distinct limbs and thus two different sets of qualifications for appointment of Judges and that a Judge may be appointed using one or the other. Further, the Court reasoned that the wording of the Article has left a wide latitude to Partner States for the process of nominating Judges and thus the said appointment was in compliance with the Treaty.

Dissatisfied with the said decision the Appellant filed the instant appeal arguing that interpreting the two limbs of Article 24 as independent and exclusive of each other is an error of law and may lead to undesirable results. The Appellant also argues that the scheme of the Treaty as a whole envisages a people centred Community in all aspects of the process of integration and the participation of East Africans is not only restricted to certain aspects of integration alone.

Finally, they oppose the award of costs in public interest litigation as this may discourage and lock the halls of justice to other public-spirited litigants.

The Respondents on their part agree wholly with the reasoning of the First Instance Division of the Court and pray that the Appeal be dismissed with costs in both divisions.

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