



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



(Coram: Yohane B. Masara, PJ; Richard Wabwire Wejuli, DPJ; Richard Muhumuza, Gacuko Leonard & Kayembe Ignace Rene Kasanda; JJ)

**CONSOLIDATED APPLICATIONS NO. 16 & NO. 17 OF 2025
(Arising From References No. 45 and No. 46 of 2025)**

AMB. MOHAMED AHMED AWIL 1ST APPLICANT

ALI ABDULLNUR OSMAN 2ND APPLICANT

ABDULLAHI MOHAMED AHMED 3RD APPLICANT

AND

THE FEDERAL REPUBLIC OF SOMALIA 1ST RESPONDENT

**THE EAST AFRICAN LEGISLATIVE
ASSEMBLY (EALA) 2ND RESPONDENT**

21ST NOVEMBER 2025

RULING OF THE COURT

A. INTRODUCTION

1. The Applications were brought under Articles 6(d), 7, 8, 23, 27, 30, 33, 39, 48, 50 of the Treaty for the Establishment of the East African Community (the Treaty) and Rules 52(1), (2), (3), and (4) of the East African Court of Justice Rules of the Court, 2019 (“the Rules”).
2. The Applications arise from the Applicant’s **References No. 45 and No. 46 of 2025**.
3. The Court was moved to, and heard the Application under a Certificate of urgency.
4. The Applicants seek Interim/Interlocutory relief, pending the hearing and determination of the References; restraining and prohibiting the 2nd Respondent from recognizing, administering the oath of office to, seating, or from in any way treating as validly elected, the nine individuals whose names were forwarded to EALA pursuant to the Parliamentary Resolution dated 16 October 2025 or any other persons purporting to represent Somalia arising from the impugned process so as to preserve the subject-matter of the dispute and prevent irreparable harm to the integrity of EALA and the integration process.
5. They also pray that the costs of the Applications abide the outcome of the References.
6. The grounds of the Applications are elaborately stated in Affidavits in support thereof deponed by the respective Applicants but primarily are that the ostensible election process contravened

Article 50 of the Treaty by failing to ensure a transparent, competitive, and representative election, resulting in an outcome dominated by the ruling Justice and Solidarity Party (“JSP”) and elite sub-clans, in breach of the principles of democracy and good governance enshrined in Articles 6(d) and 7 of the Treaty, and should therefore be annulled.

B. BACKGROUND

7. Somalia became a full East African Community (“EAC”) Partner State in March 2024. Under Article 50 of the Treaty, each Partner State is required to elect nine members to the East African Legislative Assembly (“EALA”) through a transparent, competitive and representative process conducted by its National Assembly or equivalent.
8. In October 2025, Somalia conducted its first such exercise. On 11 October 2025, the Speakers of both Houses of the Federal Parliament of Somalia appointed a five-member ad hoc committee to oversee the process. The committee drafted rules, including nomination fees and imposed a five-day timeline, 11th to 15th October 2025 within which the exercise commenced and concluded.
9. Eighteen candidates were presented and on 15 October 2025 a joint sitting of Parliament voted. Nine individuals, all allegedly affiliated with the ruling Justice and Solidarity Party and allegedly drawn predominantly from the inner circle of the President, Prime Minister and Speakers, were declared elected.
10. The names were forwarded to EALA, whereupon the Applicants then filed References and these consolidated Applications seeking

declarations of nullity, permanent and interim injunctions restraining the seating of the nominees and an order for fresh, Treaty-compliant elections.

C. PARTIES

11. In **Application No.17 of 2025**, the Applicant, Abdullahi Mohamed Ahmed, is a male adult of sound mind and a Member of the House of the People of the Federal Parliament of Somalia. He is a resident of the Community within the meaning of Article 30 of the Treaty.
12. In **Application No. 16 of 2025**, the 1st Applicant is Amb. Mohamed Ahmed Awil, an adult male of sound mind working and living for gain in Mogadishu, and the 2nd Applicant is Ali Abdunur Osman also a male adult of sound mind, working and living for gain in Mogadishu.
13. The Applicants' address of service is c/o Yufnalis N. Okubo, Advocate, Kileleshwa, Githunguri Road, Taj Gardens C6, P.O. Box 60417-00200, Nairobi, Kenya.
14. The 1st Respondent in both Applications is the Attorney General of the Federal Republic of Somalia. His address of service for purposes of this matter is C/o ALP Kenya Advocates, West Park Towers, 5th Floor, Mpesi Lane, Off Muthithi Road, P.O. Box 102942-00101 Nairobi.
15. The 2nd Respondent in both Applications is The East African Legislative Assembly (EALA) c/o The Secretariat, East African Community Headquarters, Afrika Mashariki Road, P.O. Box 1096, Arusha, Tanzania.

16. Noteworthy, by consensus of the parties, the 1st Respondent was changed to be correctly reflected as; “The Attorney General of the Federal Republic of Somalia.”

17. However, no change was made to correctly name the 2nd Respondent as “the Secretary General of the EAC”, in conformity with the provisions of the Treaty and practice of the Court.

D. REPRESENTATION

18. The Applicants are represented by Mr Yufnalis N. Okubo, Advocate. Amb. Mohamed Ahmed Awil, the 1st Applicant and Mr Ali Abdul Noor Osman, the 2nd Applicant were in attendance.

19. The 1st Respondent is represented by Mr Hannington Amol, Advocate, of ALP Kenya Advocates. In attendance were the Republic of Somalia’s officials namely; Mr Mohamed Abdillahi Hassan (Senior Whip, House of the People), Hon. Mohamed Gulaid, Member of the Federal Parliament and former Deputy Prime Minister, Mr Abdul Samal Omar- Presidential Envoy and former Foreign Affairs Minister and Mr Abdinasir Drait Boulait- Secretary General of the Federal Parliament.

20. The 2nd Respondent was not represented by Counsel although its Clerk, Mr Alex Lumumba Obatre was present in Court and he informed the Court that the Assembly had no legal representation as there was no Counsel to the Community and that he was in Court to follow the proceedings. He however confirmed service of Court process upon the Assembly.

21. The **Applications No. 16 and No. 17 of 2025** were, by consensus of the parties, consolidated and heard *inter partes*, although the 2nd Respondent (EALA) did not file any Replies to the Applications.

E. ISSUES

22. The two issues for determination are:

- i. **Whether the court has jurisdiction to entertain the Applications and the References; and**
- ii. **Whether the Applicants are entitled to the reliefs sought.**

F. COURT'S DETERMINATION

23. We have carefully addressed our minds to all the pleadings, affidavits in evidence, submissions and the relevant laws and precedents and now render our analysis and determination as follows:

Issue 1: Whether the Court has Jurisdiction to entertain the Applications and the references

24. This Court has, over the years, developed a clear and consistent jurisprudence distinguishing two categories of disputes arising from the election of members to the EALA under Articles 50 and 52 of the Treaty: (a) pre-seating challenges to the validity of the election process itself, which engages Article 50 directly and (b) post-seating challenges concerning the continued membership of a person who has already been sworn in and is sitting as a member of the Assembly and these are expressly reserved by Article 52 to

the domestic institutions of the Partner State, thereby excluding the Court's jurisdiction once seating has occurred.

25. **Pre-seating challenges under Article 50** directly fall squarely within this Court's interpretive and enforcement jurisdiction under Articles 23, 27(1) and 30(2) of the Treaty. Where a process is so fundamentally defective that it cannot properly be characterized as an "election" at all, or where it manifestly fails the Treaty standards of transparency, competitiveness and representativeness "*as much as it is feasible*", allowing seating would irreversibly incorporate illegitimate representatives into a Community organ, thereby undermining the rule of law and principles of integration enshrined in Articles 6(d) and 7 of the Treaty.
26. At this stage, the Court is not second-guessing a completed domestic electoral outcome protected by Article 52, it is preventing a Treaty violation from crystallizing in the regional institution.
27. The leading authorities which are all still good law in this regard are **Prof. Peter Anyang' Nyong'o & 10 Others vs Attorney General of Kenya & Others, EACJ Reference No. 1 of 2006**, in which Kenya's ruling-party-dominated voice-vote process was reviewed and annulled pre-seating for want of genuine competition and representativeness. In **Hon. Abdu Katuntu vs Attorney General of Uganda, EACJ Reference No. 3 of 2012**, an interim injunction restrained seating pending determination of the validity of biased rules, and in **Wani Santino Jada vs Attorney General of South Sudan, EACJ Application No. 8 of 2017**, the Court restrained seating after the President of the Republic of South Sudan had simply appointed members without any parliamentary election.

28. **Post-seating disputes**, by contrast, are expressly reserved by Article 52 of the Treaty to the domestic institutions of the concerned Partner State. Once a member has taken the oath and is participating as a full member of EALA, any question whether that individual validly holds the seat, whether arising from loss of qualification, recall, resignation, or even an alleged earlier procedural irregularity raised only after seating, falls exclusively within the jurisdiction of the organ competent under the Partner State's laws to determine such questions for its own National Assembly.
29. This deliberate limitation prevents this Court from functioning as an appellate election tribunal over completed domestic outcomes and respects Partner State sovereignty over the final composition of their delegations once integration has been effected by seating.
30. This position was espoused in **Rev. Christopher Mtikila vs Attorney General of Tanzania, EACJ Reference No. 2 of 2007**, in which the elected members were already seated. This Court declined jurisdiction, holding that membership questions were governed by Article 52. This position was upheld in **Democratic Party & Hon. Mukasa Mbidde vs Secretary General of the EAC & Attorney General of Uganda, EACJ Reference No. 6 of 2011** where challenges to the 2012 Ugandan EALA electoral process raised after seating were dismissed for want of jurisdiction under Article 52 of the Treaty.
31. The distinction is critical in the present consolidated Applications. The challenge has been mounted before any of the nine nominees have taken the oath or sat in the EALA. The plenary session at

which oaths would be administered is scheduled to commence only on 23 November 2025. The Applicants allege a process so defective that it does not, in their submission, constitute an “election” within the meaning of Article 50.

32. This is classically a pre-seating challenge falling within the Anyang’ Nyong’o, Katuntu, and Wani Santino Jada (*supra*) line of authority, and wholly outside the Mtikila and Democratic Party & Mbidde (*supra*) rule that applies only after seating has occurred.
33. Whereas Article 52 therefore has no application at this stage, as there is as yet, no “*question concerning membership*” of a seated member to refer to domestic institutions, the Court retains full jurisdiction to examine whether the process complied with Article 50 of the Treaty.
34. Accordingly, the Preliminary Objection is overruled. This Court has jurisdiction to entertain both the References and the consolidated Applications.

Issue 2: Whether the Applicants are entitled to the Interim Reliefs sought

35. Under **Article 39 of the Treaty**, this Court has jurisdiction to grant interim measures, where necessary, to preserve the rights of parties pending the determination of a Reference. It states:

"The Court may, in a case referred to it, make any interim orders or issue any directions which it considers necessary or desirable. Interim orders and other directions issued by the Court shall have the same effect ad interim as decisions of the Court."

36. This Article empowers the Court to grant provisional measures, including injunctions or conservatory orders, to preserve the status quo, prevent irreparable harm, or ensure the effectiveness of its final judgment while a matter is pending.

37. Rule 84 of the Rules operationalizes Article 39 of the Treaty and sets out the procedural framework for applications for interim/interlocutory relief. It provides:

"Pursuant to the provisions of Article 39 of the Treaty, the Court may in any case before it, upon application supported by affidavit, issue interim orders or directions which it considers necessary and desirable upon such terms as it deems fit."

38. These provisions collectively ensure the Court can protect the integrity of proceedings and prevent irreparable prejudice or damage during litigation.

39. The criteria for granting an interim injunction in this Court's jurisprudence mirror the three-stage test established in **Giella vs Cassman Brown & Co Ltd [1973] EA 358**. This is the classic and binding test in the Court. It requires the applicant to show a *prima facie* case with probability of success, meaning that on the interlocutory material the applicant must appear more likely than not to win at full trial. This is a higher and more rigorous threshold than the "***serious question to be tried***" standard in **American Cyanamid Co vs Ethicon Ltd [1975] AC 396**.

40. The standard in **Giella vs Cassman Brown** was expressly adopted and applied by this Court in **Alvin Kahoho vs Secretary General**

of the EAC & 2 Others, EACJ Application No. 2 of 2014, in Prof. Anyanga Nong'o (*supra*) and in several other decisions by this Court. The test is based on the following questions:

- a) **Is there a serious question to be tried, a *prima facie* case, with a probability of success? If not, the application fails outright. The applicant must show that the claim is not frivolous or vexatious. That there is a serious, arguable issue on the merits, with a probability of success;**
- b) **Secondly, would damages be an adequate remedy for the applicant or, conversely, for the respondent if the injunction is wrongly granted? Would the Applicant suffer irreparable harm. If damages would adequately compensate the Applicant, an injunction will normally be refused. The court also considers whether damages would be an adequate remedy for the respondent if the injunction is granted but the Applicant later fails at trial.**
- c) **Thirdly, only if damages are inadequate or the position remains unclear does the court reach the balance of convenience, weighing which party, or the public, would suffer greater irreparable harm if the injunction is granted or refused, and choosing the course that causes the least overall injustice pending final determination.**

41. The questions are addressed in sequence. The balance of convenience is the tie-breaker when the first two tests are inconclusive or when both sides would suffer some irreparable harm. The balance of convenience is the Court's pragmatic judgment about which party will suffer the least injustice or greatest

irreparable harm if the interim injunction is either granted or refused, and the court will normally act to minimize the risk of irreversible damage pending the final decision. We now move to apply the tests to the instant case:

i. **Whether there is a serious issue to be tried, a *prima facie* case with a probability of success**

42. This is the **first and threshold hurdle** the Applicants must cross. It answers the basic question as to whether **this case is so weak or frivolous that the court should refuse even to consider granting temporary relief.**

43. If the answer is “*no, there is at least a serious issue, with a probability of success, worth fully trying*”, the Court moves on to the next tests. If the case is hopeless on its face, the application for interim relief is dismissed immediately.

44. In common usage in the context of the Treaty, the “*National Assembly*” under Article 50 is straightforward. Typically, in some of Partner States where the bicameral legislative representation structure is adopted, it is the lower house of parliament responsible for electing EALA members. However, Somalia's legislative structure, as enshrined in Chapter 6 of its Provisional Constitution, deviates from this norm.

45. The Provisional Constitution establishes the Federal Parliament as a bicameral body made up of the House of the People, also referred to as the Lower House, and the Upper House, which represents Federal Member States. Jointly, the two houses constitute

themselves into “*The Federal Parliament*” which fulfils legislative functions.

46. The 1st Respondent positions the Federal Parliament, through joint sittings, as the equivalent electing body. In the impugned October 2025 EALA elections, a joint committee is said to have vetted candidates, and the joint parliament conducted the vote in a unified session chaired by the Speaker of the House of the People, the Lower House.
47. Whereas this adaptation is pragmatic, the Applicants allege bias in the joint process, claiming Article 50's representativeness was violated by favouring the ruling Justice and Solidarity Party (JSP).
48. This Court has interpreted Articles 50 and 52 of the Treaty, establishing that national procedures must uphold Treaty standards of transparency, competitiveness, and diversity. Two landmark cases that provide instructive precedents are **Prof. Peter Anyang' Nyong'o & 10 Others vs Attorney General of Kenya** (*supra*) in which Kenyan opposition figures challenged their National Assembly's EALA nomination process as flawed, culminating into a full trial of the matter and similarly, **Hon. Abdu Katuntu vs Attorney General of Uganda** (*supra*) in which Uganda's EALA election rules were challenged for failing proportional representation under Article 50(2) of the Treaty. The Uganda-EALA elections were alleged to have proceeded with an all-NRM slate, paralleling alleged JSP dominance in the instant case.
49. The process, in the instant case, is alleged to have fallen short of transparency standards, exhibiting procedural opacity, bias, and

exclusionary elements that echo the flaws annulled in Anyang' Nyong'o and in Katuntu, (*supra*).

50. A consolidated list identifies nine proposed members said to have been elected based on the 4.5 Clan formular that is rooted in Garowe Principles. However, despite surface balance, the list is skewed toward JSP affiliates.
51. The Applicants argue that handpicking ignored the joint Parliament's inherent 4.5 clan-based diversity and opposition parties, rendering the result unrepresentative yet the Respondents contend that this was complied with to the letter and that there are no opposition parties.
52. The foregoing alleged process flaws that excluded opposition and underrepresented sub-clans/minorities and apparent misrepresentations regarding the existence of opposition or any form of parliamentary political parties in Parliament breach proportional representativeness envisaged under Article 50 of the Treaty.
53. On the face of it (*prima facie*), the ostensible election process contravened Article 50 of the Treaty by failing to ensure a transparent, competitive, and representative election.
54. In our opinion, these are serious questions that are neither frivolous nor vexatious that stand the probability of success and ought to be tried on the merits of the References.
55. We will now proceed to the second and third limbs.

ii. **Whether the Applicant would suffer irreparable harm**

56. Having found a serious question to be tried, the Court turns to the second limb: *whether the Applicants would suffer harm that is not adequately compensable in damages if interim relief is refused.*
57. Although Somalia's 45 clan formula constitutes a pragmatic mechanism for securing diversity in a fragile polity, its application in the impugned process is said to have been devoid of transparency. Should the nine nominees be sworn in and seated at the EALA plenary commencing on 23 November 2025, they would immediately become full members of the Community's legislative organ.
58. Even if the References were subsequently heard and decisively upheld, declaring the process null and void *ab initio*, any subsequent attempt to remove **seated** members would raise "**questions concerning membership**" governed exclusively by Article 52 of the Treaty. A category of dispute this Court has repeatedly held to lie beyond its jurisdiction once seating has occurred – see **Rev. Christopher Mtikila vs Attorney General of Tanzania** (*supra*) and **Democratic Party & Mukasa Mbidde vs Secretary General of the EAC & Attorney General of Uganda** (*supra*). The Treaty violation would thereby become irreversible at Community level.
59. No monetary award could restore the Applicants' forfeited opportunity to contest in a genuine, Treaty-compliant election, reverse legislation or decisions influenced by improperly seated members, or repair the broader erosion of democratic norms and the Community's people-centred integration agenda.

60. This Court has consistently recognized precisely such irreparable harm in pre-seating EALA disputes as was manifested in **Prof. Peter Anyang' Nyong'o & Others vs Attorney General of Kenya** (*supra*); **Hon. Abdu Katuntu vs Attorney General of Uganda** (*supra*); and **Wani Santino Jada vs Attorney General of South Sudan** (*supra*).

61. Harm of this institutional and reputational character is incapable of quantification.

62. We are satisfied that irreparable harm that cannot be adequately remedied by damages would indeed ensue and that damages are therefore manifestly inadequate.

63. We proceed to the third limb, the balance of convenience.

iii. Who does the Balance of Convenience favor?

64. Having found both a serious question to be tried and that damages would be an inadequate remedy, we now turn to the decisive third limb: **where does the balance of convenience lie?**

65. The *status quo ante* is that Somalia, since its accession in March 2024, has had no seated representatives in EALA. The Assembly has continued to function with 63 members rather than the would-be full component of 72, had Somalia been fully integrated. This temporary under-representation has caused no discernible disruption to the Community's legislative programme, nor has it been suggested that the absence of Somali members has paralyzed the Assembly's work. A short further delay pending the expeditious determination of the References, which this Court will prioritize,

would maintain that existing position and cause only minimal inconvenience.

66. By contrast, refusal of relief would permit the nine nominees to be sworn in and seated at the plenary commencing on 23 November 2025. If the References are subsequently upheld, the Community would be confronted with the irreversible presence of members elected through a process found to be in breach of Article 50. The Court would then be powerless to remedy the violation at regional level, leaving the Assembly tainted by representatives whose legitimacy has been judicially impugned. Such an outcome would inflict far greater harm upon the integrity of the Community's institutions, public confidence in the integration process, and the rule of law than any transient delay in Somalia's full representation.

67. This Court has repeatedly emphasized, in the specific context of pre-seating EALA disputes, that the balance of convenience favours restraint where a *prima facie* Treaty breach is established. See **Hon. Abdu Katuntu vs Attorney General of Uganda; Wani Santino Jada vs Attorney General of South Sudan** (supra).

68. The public interest in upholding the democratic and representative character of the Community's sole legislative organ decisively outweighs the inconvenience of a brief postponement.

69. The third limb is accordingly satisfied in favour of the Applicants. The balance of convenience manifestly favours the Applicants.

G. CONCLUSION

70. For the reasons set out above, we are satisfied that the Applicants have met all three limbs of the **Giella vs Cassman Brown** test (*supra*).

71. A *prima facie* case with a probability of success is made; damages are wholly inadequate to remedy the harm that would flow from refusal to grant interlocutory relief and the balance of convenience overwhelmingly favours preservation of the *status quo* pending a full and expeditious determination of the References.

72. The public interest in ensuring that the East African Legislative Assembly is composed only of members elected in conformity with Article 50 of the Treaty decisively outweighs any temporary inconvenience arising from a short delay in Somalia's representation.

73. The consolidated Applications accordingly succeed.

H. CONSEQUENTIAL ORDERS

IT IS HEREBY ORDERED THAT:

74. Pending the hearing and determination of the **References Nos. 45 & 46 of 2025**, the 2nd Respondent, its Speaker, Clerk or any officer acting on its behalf, is restrained and prohibited from:

- a) convening, recognizing, administering the oath of office to, seating, or otherwise treating as validly elected representatives of the Federal Republic of Somalia the nine individuals, whose names were transmitted pursuant to the Federal Parliament**

Resolution dated 16 October 2025 (Ref: BJFSB-11/10/11/2025) or any other persons purporting to have been elected under the impugned process; and

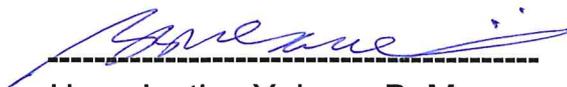
b) issuing any notification or taking any step in recognition of the nine individuals, whose names were transmitted pursuant to the Federal Parliament Resolution dated 16 October 2025 (Ref: BJFSB-11/10/11/2025) or any other persons purporting to have been elected under the impugned process.

75. The foregoing restraint shall operate from the date hereof and remain in force until the final disposal of the References or until further orders of this Court.

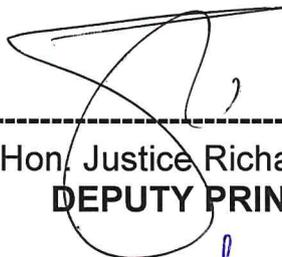
76. In light of the urgency of the matter and the imminent commencement of the EALA plenary session on 23 November 2025, the **References (Nos. 45 and 46 of 2025)** are hereby certified urgent. The Registrar shall fix them for hearing on a priority basis, not later than the immediately following session of the Court.

77. Costs of the Applications shall abide the outcome of the **References No. 45 and No. 46 of 2025**.

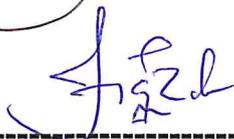
Dated, signed and delivered at Arusha this 21st Day of November 2025.



Hon. Justice Yohane B. Masara
PRINCIPAL JUDGE



Hon. Justice Richard Wabwire Wejuli
DEPUTY PRINCIPAL JUDGE



Hon. Justice Richard Muhumuza
JUDGE



Hon. Justice Dr Leonard Gacuko
JUDGE



Hon. Kayembe Ignace Rene Kasanda
JUDGE