



**EAST AFRICAN COMMUNITY
EAST AFRICAN COURT OF JUSTICE**



First Instance Division to hear both parties in an Application challenging Tanzania Political Parties (Amendment) Act, 2019

The *inter parte* hearing in *Application No. 2 of 2019 (Arising from Reference No. 3 of 2019) Freeman A. Mbowe & 4 Others vs The Attorney General of the United Republic of Tanzania* will be on *Tuesday 5th November 2019* from *9.30 a.m.*

The Applicants seek for Court orders refraining the Respondent from applying and using certain provisions of the Political Parties (Amendment) Act 2019, which are challenged in *Reference No. 3 of 2019 Freeman A. Mbowe & 4 Others vs The Attorney General of the United Republic of Tanzania* until the said Reference which is pending before this honorable court is heard and determined.

In the Reference, the Applicants are challenging the Political Parties (Amendments) Act No. 1 of 2019 in its current form for allegedly; placing unjustified restrictions on the freedom of association; being discriminative and restricting people's right to participate in public affairs; denying people's right to personal security and safety; and contravening the principles of democracy, rule of law, good governance and human rights which the United Republic of Tanzania (Respondent) has committed to abide by through the EAC Treaty, the International Covenant for Civil and Political Rights, the Universal Declaration of Human Rights and the African Charter of Human and Peoples' Rights.

The Applicants are natural persons and citizens of the United Republic of Tanzania. The first Applicant is a member and party chair of *Chama cha Demokrasia na Maendeleo (CHADEMA)*, a political party registered in Tanzania. The second Applicant is a member and party leader of *Alliance for Change and Transparent-(WAZALENDO)*, a political party registered in Tanzania. The third Applicant is a member and party Chair of the *Chama cha Umma*, a political party registered in Tanzania. The fourth Applicant is a former first Vice President of the Revolutionary Government of Zanzibar and a member of the *Alliance for Change and Transparent (WAZALENDO)*, a political party registered in Tanzania. The fifth Applicant is Zanzibar Deputy Secretary General for *Chama cha Demokrasia na Maendeleo (CHADEMA)*.

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

It is the Applicants' case that, the Government of the United Republic of Tanzania (URT) through the office of the Registrar of Political Parties has announced applying provisions of the Political Parties (Amendment) Act, 2019 which are complained of by the Applicants in *Reference No.3 of 2019 Freeman A. Mbowe & 4 Others vs The Attorney General of the United Republic of Tanzania*, a matter pending determination by the East African Court of Justice - First Instance Division.

The Applicants alleges that, the application of the Act put Applicants' political parties in danger of being forced to formulate party policies which are contrary to their founding ideology, belief and foundation; danger of losing members vide

arbitrary suspension of membership and being denied right to participate into public affairs.

Further submits that, the application of the Act limits the rights of Tanzanians to receive information through civic education and limits the rights of the Applicants and Tanzanians in general from giving civic education without seeking permission from the Registrar of Political Parties.

A Chairman of Tanzania Constitutional Forum, a non-governmental organisation (NGO) states in his affidavit supporting the Application that, they have a mandate to provide civil education, advocacy of human rights and constitutional rights among others to the general public of the United Republic of Tanzania.

However, he says coming into effect of the Act bring about barricades as to the performing of their fundamental duties. This is because, the Act require them to notify the Registrar of Political Parties 30 days in advance before providing any civil education by giving details of training program, the target group, training materials, aims and expected results.

The Chairman states that, on 7th June 2019, the National Electoral Commission (NEC) of the United Republic of Tanzania issued a schedule of upgrading the National Voters Registers and according to the schedule, Arusha and Kilimanjaro Regions had to start the exercise on the 23rd June, that is 17 days since the schedule was issued.

The Chairman further submits, under the circumstance where the schedule is issued in a span of 17 days to the date of upgrading the National Voters Registers, it is practically impossible for Tanzania Constitutional Forum to notify the Registrar of Political Parties 30 days in advance. The consequence being that, if Tanzania Constitutional Forum proceeds to disseminate civic education without the notification, they are prone to criminal penalties of being arrested, detained and taken to court and

subjected to pay a fine equivalent to 2500 USD or imprisonment of 3 to 12 months.

On the other side, failure to provide the civil education, the general public will not be informed on the importance of participating in the exercise and subsequently denied the right to vote and such a loss cannot be compensated. Moreover, the Act gives the Registrar of Political Parties powers to determine who shall give civic education and the kind of civic education to be given in among others.

In an affidavit in reply the Respondent states that, the requirement to inform the Registrar on the intention to provide civic education is limited to NGO's and institutions who target to give civic education to the political parties and not the general public as alleged. The Respondent further states that, such a requirement aims at ensuring transparency, accountability and protection of state security and order.

The Respondent further states that, the penalties imposed to the institutions and individuals is limited to their acts or omissions in relation to the obligation to inform the Registrar when they wish to provide civic education to members of political parties and not the general public. Also submits that, the Act does not give absolute power to the Registrar to decide on the kind of civic education as alleged but rather guides him/her when disapproving the information given to give reasons for his decision which is a manifestation of the rule of law and good governance.

Further submits, the Act was passed among other things to regulate the conduct of political parties with the spirit of promoting institutionalism, intra-party democracy, political and financial accountability which are essential elements of any modern democratic state and it is compatible with principles of rule of law, good governance, democracy and human rights stipulated in the EAC Treaty, African Charter of Human and Peoples' Rights and other international instruments ratified by Tanzania.

The intra parte 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 27th May 2019 pursuant to Articles 6(d), 7(2), 8(1) & 38(2) of the EAC Treaty and Rule 21 of the EACJ Rules of Procedure, 2013.

Composition of the Court

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

Representatives of the Parties

Applicants: John Mallya

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.

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