IN THE EAST AFRICAN COURT OF JUSTICE
AT ARUSHA

(Coram: Moijo M. ole Keiwua P, Joseph N. Mulenga VP, Augustino S. L. Ramadhani J, Mary Stella Arach-Amoko J, Harold R. Nsekela J)

REFERENCE NO. 1 OF 2007

BETWEEN

JAMES KATABAZI AND 21 OTHERS ..... APPLICANTS

VERSUS

SECRETARY GENERAL OF THE EAST AFRICAN COMMUNITY..... 1ST RESPONDENT

THE ATTORNEY GENERAL OF THE REPUBLIC OF UGANDA..... 2ND RESPONDENT

DATE: 1ST DAY OF NOVEMBER, 2007

JUDGMENT OF THE COURT.

This is a reference by sixteen persons against the Secretary General of the East African Community as the 1st respondent and the Attorney General of Uganda as the 2nd Respondent.

The story of the claimants is that: During the last quarter of 2004 they were charged with treason and misprision of treason and consequently they were remanded in custody. However, on 16th November, 2006, the High Court granted bail to fourteen of them. Immediately thereafter the High Court

was surrounded by security personnel who interfered with the preparation of bail documents and the fourteen were re-arrested and taken back to jail.

On 24th November, 2006, all the claimants were taken before a military General Court Martial and were charged with offences of unlawful possession of firearms and terrorism. Both offences were based on the same facts as the previous charges for which they had been granted bail by the High Court. All claimants were again remanded in prison by the General Court Martial.

The Uganda Law Society went to the Constitutional Court of Uganda challenging the interference of the court process by the security personnel and also the constitutionality of conducting prosecutions simultaneously in civilian and military courts. The Constitutional Court ruled that the interference was unconstitutional.

Despite that decision of the Constitutional Court the complainants were not released from detention and hence this reference with the following complaint:

> The claimants aver that the rule of law requires that public affairs are conducted in accordance with the law and decisions of the Court are respected, upheld and enforced by all agencies of the Government and citizens and that the actions of a Partner State of Uganda, its agencies and the

second respondent have in blatant violation of the Rule of Law and contrary to the Treaty continued with infringement of the Treaty to date.

The claimants have sought the following orders:

(a) That the act of surrounding the High Court by armed men to prevent enforcement of the Court's decision is an infringement of Articles 7(2), 8(1)(c) and 6 of the Treaty for the Establishment of the East African Community (The Treaty).

(b) That the surrounding of the High Court by armed men from the Armed Forces of Uganda is in itself an infringement of the Fundamental principles of the Community in particular regard to peaceful settlement of disputes.

(c) The refusal by the second respondent to respect and enforce the decision of the High Court and the Constitutional Court is infringement of Articles 7(2), 8(1)(c) and 6 of the Treaty.

(d) The continual arraignment of the applicants who are civilians before a military court is an infringement of Articles 6, 7, and 8 of the Treaty for Establishment of the East African Community.

(e) The inaction and the loud silence by the first respondent is an infringement of Article 29 of the Treaty.

(f) Costs for the Reference.

The 1st respondent in his response at the outset sought the Court to dismiss the reference on two grounds: One, that there was no cause of action disclosed against him, and two, that the affidavits in support of the reference were all incurably defective. In the alternative, the 1st respondent argued that:

> The allegations which form the basis of the Application have at no time been brought to the knowledge of the 1st Respondent and the Claimants are, therefore, put to strict proof.

The 2nd respondent, on the other hand, virtually conceded the facts as pleaded by the claimants. After admitting that the claimants were charged with treason and misprision of treason, the 2nd respondent stated in his response:

(e) That on 16th November, 2005, the security Agencies of the Government of Uganda received intelligence information that upon release on bail, the Claimants were to be rescued to escape the course of justice and to go to armed rebellion.

(f) That the security Agencies decided to deploy security at the High Court for purely security reasons and to ensure that the claimants are re-arrested and taken before the General Court Martial to answer charges of terrorism and unlawful possession of firearms.

(g) That on 17th November, 2005, all the Claimants were charged in the General Court Martial with terrorism

> and unlawful possession of firearms which are service offences according to the Uganda People's Defence Forces Act, No. 7 of 2005.

Thus, in effect, the 2nd respondent is affirming that the acts did take place but contends that they did not breach the rule of law.

The claimants were represented by Mr. Daniel Ogalo, learned counsel, while the 1st respondent had the services of both Mr. Colman Ngalo, learned advocate, and Mr. Wilbert Kaahwa, learned Counsel to the Community. The 2nd respondent was represented for by Mr. Henry Oluka, learned Senior State Attorney of Uganda assisted by Mr. George Kalemera and Ms. Caroline Bonabana, learned State Attorneys of Uganda.

When the matter came up for the scheduling conference under Rule 52 of the East African Court of Justice Rules of Procedure (The Rules), Mr. Ngalo raised a preliminary objection that there is no cause of action established against the 1st respondent. The pleadings of the claimants do not disclose that at any stage, the Secretary General was informed by the applicants or by anybody at all that the applicants had been incarcerated or confined or that their rights were being denied.

Mr. Ogalo responded by submitting that under Article 71(1)(d) of the Treaty one of the functions of the Secretariat, of which the 1st respondent is head, is:

> the undertaking either on its own initiative or otherwise, of such investigations, collection of information, or verification of matters relating to any matter affecting the Community that appears to it to merit examination.

Mr. Ogalo contended that it is not necessary that the 1st respondent must be told by any person "because he can, on his own, initiate investigations".

The Court dismissed the preliminary objection but we reserved our reasons for doing so and we now proceed to give them. At the time of hearing the preliminary objection the Court had not reached the stage of a scheduling conference under Rule 52. It is at that conference that points of agreement and disagreement are sorted out. It was our considered opinion that the matter raised could appropriately be classified at the scheduling conference as a point of disagreement.

But apart from that the matter raised by Mr. Ngalo was not one which could be dealt with as a preliminary objection because it was not on point of law but one involving facts. As LAW, J. A. of the East African Court of Appeal observed in Mukisa Biscuit Manufacturing Co. Ltd. v. West End Distributors Ltd. [1969] E. A. 696 at p. 700:

> So far as I am aware, preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.

Then at p. 701 SIR CHARLES NEWBOLD, P. added:

> A preliminary objection is in the nature of what used to be a demurrer. **It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained** or if what is sought is the exercise of judicial discretion. (Emphasis is supplied.)

The Court of Appeal of Tanzania in Civil Reference No. 32 of 2005, Etiennes Hotel v National Housing Corporation dealt with a similar issue and, after citing Mukisa Biscuits with approval, held:

> Here facts have to be ascertained in all the remaining six grounds of the so called preliminary objection and that is why the respondent has filed two affidavits which have been objected to by the applicant.
>
> We are of the decided view that grounds of preliminary objection advanced cannot be disposed off without ascertaining facts. These are not then matters for preliminary objection. So, we dismiss the motion for preliminary objection with costs.

Whether or not the 1st respondent had knowledge of what was happening to the complainants in Uganda can never ever be a point of law but one of fact to be proved by evidence and, therefore, it could not be a matter for a preliminary objection and hence the dismissal.

We may as well point out here, for the sake of completeness, that Mr. Ngalo also challenged the legality of the affidavits filed in support of the reference. However, in the course of answering questions from the bench he abandoned his objection in the following terms:

> Your Lordships, I am not going to pursue this point. I concede that these affidavits are sufficient for the purposes of this application.

Two issues were agreed upon at the scheduling conference which were:

1. Whether the invasion of the High Court premises by armed agents of the second respondent, the re-arrest of the complainants granted bail by the High Court and their incarceration in prison constitute infringement of the Treaty for the Establishment of the East African Community.
2. Whether the first respondent can on his own initiative investigate matters falling under the ambit of the provisions of the Treaty.

As for the first issue Mr. Ogalo submitted that the Court was called on to interpret Articles 6, 7, 8, 29 and 71 of the Treaty and implored the Court to do so by looking at "the ordinary meaning of the words used in those provisions, the objectives of the Treaty and the purposes of those articles".

His main plank of argument was that the acts complained of violated one of the fundamental principles of the Community as spelled out in Article 6(d), that is, rule of law. As to the import of that doctrine he referred us to The Republic v. Gachoka and Another, [1999] 1 EA 254; Bennett v. Horseferry Road Magistrates' Court and Another [1993] 2 All ER 474; and a passage in Kanyeihamba's Commentaries on Law, Politics and Governance (Renaissance Media Ltd, 2006) p 14.

The learned advocate pointed out that the first complaint is the act of surrounding the High Court of Uganda by armed men so as to prevent the enforcement of the decision of the Court. The second act was the re-arrest and the incarceration of the complainants.

Mr. Ogalo pointed out that the acts complained of constituted contempt of court and also interference with the independence of the Judiciary. He concluded that both contempt of court

and the violation of the independence of the judiciary contravene the principle of the rule of law.

As for the second issue Mr. Ogalo was very brief. He submitted that the 1st respondent is empowered by Article 71 (1)(d), on his own initiative, to conduct investigation, collect information or verify facts relating to any matter affecting the Community that appears to him to merit examination. The stand taken by Mr. Ogalo was that if the 1st respondent properly exercised his powers under the Treaty, he should have known the matters happening in Uganda as a Partner State and take appropriate actions.

He, therefore, asked the Court to find both issues in favour of the complainants.

In reply Mr. Ngalo pointed out that what concerned the 1st respondent was the second issue. The learned counsel submitted that the complainants are alleging that the 1st respondent ought to have reacted to what the 2nd respondent was doing in Uganda. However, he contended, there is no evidence that the 1st respondent was aware of those activities. He pointed out that Article 29 starts by providing "Where the Secretary General considers that a Partner State has failed …" and he argued that for the Secretary General to "consider" he

has to be aware but the complainants have failed to establish that awareness.

As for Article 71 Mr. Ngalo submitted that it provides for the functions of the Secretariat as an institution of the Community and not as to what happens in the Partner States.

For the 2nd respondent Mr. Oluka dealt with the surrounding of the High Court, the re-arrest and the continued incarceration of the complainants. The learned Senior State Attorney pointed out that all the three matters were fully canvassed and decided upon by the Constitutional Court of Uganda. Therefore, he submitted that this Court is prohibited by the doctrine of *res judicata* from dealing with those issues again.

Mr. Oluka conceded that though the facts in this reference and those which were in the petition before the Constitutional Court of Uganda are substantially the same, the parties are different. In the Constitutional Petition No. 18 of 2005, the parties were The Uganda Law Society and the Attorney General of Uganda while in this reference the parties are James Katabazi and 21 Others, on the one hand, and the Secretary General of the Community and the Attorney General of Uganda, on the other hand. Nevertheless, Mr. Oluka stuck

to his guns that the doctrine of *res judicata* applies to this reference.

He also submitted that under Article 27 (1) this Court does not have jurisdiction to deal with matters of human rights until jurisdiction is vested under Article 27(2). He, therefore, asked the Court to dismiss the reference with costs.

There are three issues which we think we ought to dispose of at the outset: First, whether or not Article 71 is relevant in this application. Second, whether or not the doctrine of *res judicata* applies to this reference. Last, is the issue of the jurisdiction of this Court to deal with human rights.

It is the argument of Mr. Ogalo that Article 71 (1) (d) imposes on the 1st respondent the duty to collect information or verify facts relating to any matter affecting the Community that appears to him to merit examination. Mr. Ngalo, on the other hand, contends that Article 71 (1) (d) sets out the functions of the Secretariat as an institution of the Community and not as to what happens in the Partner States

Article 71 (1) (d) provides as follows:

1. The Secretariat shall be responsible for:
    (a) …
    (b) …
    (c) …

> (d) the undertaking either on its own initiative or otherwise, of such investigations, collection of information, or verification of matters **relating to any matter affecting the Community** that appears to it to merit examination; (Emphasis is supplied.)

Mr. Ngalo wanted to confine the functions of the Secretariat under Article 71 (1) (d) to internal matters of the Secretariat as an organ, which he erroneously referred to as an institution, divorced from the duties imposed on the Secretary General under Article 29. It is, therefore, our considered opinion that Article 71 (1) (d) applies to this reference.

Are we barred from adjudicating on this reference because of the doctrine of *res judicata?* The doctrine is uniformly defined in the Civil Procedure Acts of Kenya, Uganda and Tanzania as follows:

> No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.

Three situations appear to us to be essential for the doctrine to apply: One, the matter must be “directly and substantially”

in issue in the two suits. Two, parties must be the same or parties under whom any of them claim litigating under the same title. Lastly, the matter was finally decided in the previous suit. All the three situations must be available for the doctrine of *res judicata* to operate. In the present case one thing is certain: The parties are not the same and cannot be said to litigate under the same title. Mr. Oluka himself has properly conceded that.

Secondly, while in the Constitutional Court of Uganda the issue was whether the acts complained of contravene the Constitution of Uganda, in the instant reference the issue is whether the acts complained of are a violation of the rule of law and, therefore, an infringement of the Treaty. Therefore, the doctrine does not apply in this reference.

Does this Court have jurisdiction to deal with human rights issues? The quick answer is: No it does not have. Jurisdiction of this Court is provided by Article 27 in the following terms:

> 1. The Court shall initially have jurisdiction over the interpretation and application of this Treaty.
> 2. The Court shall have such other original, appellate, human rights and other jurisdiction as will be determined by the Council at a suitable subsequent date. To this end, the Partner States shall conclude a protocol to operationalise the extended jurisdiction.

It very clear that jurisdiction with respect to human rights requires a determination of the Council and a conclusion of a protocol to that effect. Both of those steps have not been taken. It follows, therefore, that this Court may not adjudicate on disputes concerning violation of human rights *per se*.

However, let us reflect a little bit. The objectives of the Community are set out in Article 5 (1) as follows:

> 1. The objectives of the Community **shall be to develop policies and programmes aimed at widening and deepening co-operation among the Partner States in** political, economic, social and cultural fields, research and technology, defence, security and **legal and judicial affairs**, for their mutual benefit. (Emphasis supplied.)

Sub-Articles (2) and (3) give details of pursuing and ensuring the attainment of the objectives as enshrined in sub-article (1) and of particular concern here is the "legal and judicial affairs" objective.

Then Article 6 sets out the fundamental principles of the Community which governs the achievement of the objectives of the Community, of course as provided in Article 5 (1). Of particular interest here is paragraph (d) which talks of the rule of law and the promotion and the protection of human and peoples rights in accordance with the provisions of the African Charter on Human and Peoples' Rights.

Article 7 spells out the operational principles of the Community which govern the practical achievement of the objectives of the Community in Sub-Article (1) and seals that with the undertaking by the Partner States in no uncertain terms of Sub-Article (2):

> The Partner States undertake to abide by the principles of good governance, including adherence to the principles of democracy, **the rule of law**, social justice **and the maintenance of universally accepted standards of human rights.** (Emphasis supplied.)

Finally, under Article 8 (1) (c) the Partner States undertake, among other things:

> Abstain from any measures likely to jeopardise the achievement of those objectives or the implementation of the provisions of this Treaty.

While the Court will not assume jurisdiction to adjudicate on human rights disputes, it will not abdicate from exercising its jurisdiction of interpretation under Article 27 (1) merely because the reference includes allegation of human rights violation.

Now, we go back to the substance of this reference. As we have already observed in this judgment, the 2nd respondent has conceded the facts which are the subject matter of this reference and, so, they are not in dispute. He has only offered

some explanation that the surrounding of the Court, the re-arrest, and therefore, the non observance of the grant of bail, and the re-incarceration of the complainants were all done in good faith to ensure that the complainants do not jump bail and go to perpetuate insurgency.

Mr. Ogalo invited us to find that explanation unjustified because it was not supported by evidence. We agree with him and we would go further and observe that "the end does not justify the means".

The complainants invite us to interpret Articles 6(d), 7(2) and 8(1)(c) of the Treaty so as to determine their contention that those acts, for which they hold the 2nd respondent responsible, contravened the doctrine of the rule of law which is enshrined in those articles.

The relevant provision of Article 6(d) provides as follows:

> The fundamental principles that shall govern the achievement of the objectives of the Community by the Partner States shall include:
>
> (a) …
>
> (b) …
>
> (c) …
>
> (d) good governance including adherence to the principles of democracy, **the rule of law**, accountability, transparency, social justice, equal opportunities, gender equality, as well as the recognition, promotion and protection of human and

> peoples rights in accordance with the provisions of the African Charter on Human and Peoples' Rights; (Emphasis supplied.)

The starting point is what does rule of law entail?

From Wikipedia, the Free Encyclopedia:

> The rule of law, in its most basic form, is the principle that no one is above the law. **The rule** follows logically from the idea that truth, and therefore law, **is based upon fundamental principles** which can be discovered, but **which cannot be created through an act of will**. (Emphasis is supplied.)

The Free Encyclopedia goes further to amplify:

> Perhaps the most important application of the rule of law is the principle that governmental authority is legitimately exercised only in accordance with written, publicly disclosed laws adopted and enforced in accordance with established procedural steps that are referred to as due process. The principle is intended to be a safeguard against arbitrary governance, whether by a totalitarian leader or by mob rule. Thus, the rule of law is hostile both to dictatorship and to anarchy.

Here at home in East Africa Justice George Kanyeihamba in Kanyeihamba's Commentaries on Law, Politics and Governance at page 14 reiterates that essence in the following words:

> The rule of law is not a rule in the sense that it binds anyone. It is merely a collection of ideas and principles propagated in the so-called free societies to guide lawmakers, administrators, judges and law enforcement agencies. **The overriding consideration in the theory of the rule of law is the idea that both the rulers and the governed are equally subject to the same law of the land**.
> (Emphasis is supplied.)

It is palpably clear to us, and we have no flicker of doubt in our minds, that the principle of **"the rule of law"** contained in Article 6(d) of the Treaty encapsulates the import propounded above. But how have the courts dealt with it? In The Republic v. Gachoka and Another the Court of Appeal of Kenya reiterated the notion that rule of law entails the concept of division of power and its strict observance. In Bennett v. Horseferry Road Magistrates' Court and Another, the House of Lords took the position that the role of the courts is to maintain the rule of law and to take steps to do so.

In that appeal the appellant, a New Zealander, while living in Britain obtained a helicopter by false pretences and then fled the country. He was later found in South Africa but as there was no extradition treaty between Britain and South Africa, the police authorities of the two countries conspired to kidnap the appellant and took him back to Britain. His defence to a charge before a divisional court was that he was not properly

before the court because he was abducted contrary to the laws of the two countries. That defence was dismissed by the divisional court. However, on appeal to the House of Lords LORD GRIFFITHS remarked at page 108:

> If the Court is to have the power to interfere with the prosecution in the present circumstances it must be because the judiciary accept a responsibility for the maintenance of the rule of law that embraces a willingness to oversee executive action and to refuse to countenance behaviour that threatens either basic human rights or the rule of law.

His Lordship went on:

> It is to my mind unthinkable that in such circumstances the court should declare itself to be powerless and stand idly by.

He then referred to the words of LORD DEVLIN in Connelly v. DPP [1964] 2 All ER 401 at 442:

> The courts cannot contemplate for a moment the transference to the executive of the responsibility for seeing that the process of law is not abused.

The appeal was allowed and the appellant was let scot-free.

Have the facts complained of in this reference breached the sacred principle of rule of law as expounded above?

Let us briefly reiterate the facts even at the risk of repeating ourselves: The complainants were granted bail by the High Court of Uganda but some armed security agents of Uganda

surrounded the High Court premises pre-empting the execution of the bail, re-arrested the complainants, re-incarcerated them and re-charged them before a Court Martial. The complainants were not released even after the Constitutional Court of Uganda ordered so.

Mr. Ogalo left no stone unturned to persuade us to find that what the soldiers did breached the rule of law. He referred us to similar facts in the case of Constitutional Rights Project and Civil Liberties v. Nigeria, Communication 143/95, 150/96 – AHG/222 (XXXVI) Annex V p 63. In that matter Chief Abiola, among others, was detained and the Federal Government of Nigeria refused to honour the bail granted to him by court. In the said Communication the African Commission on Human Rights had this to say in paragraph 30 on page 67:

> The fact that the government refuses to release Chief Abiola despite the order of his release on bail made by the Court of Appeal is a violation of Article 26 which obliges State parties to ensure the independence of the judiciary. **Failing to recognise a grant of bail by the Court of Appeal militates against the independence of the judiciary.** (Emphasis supplied).

The facts in that Communication are on all fours with the present reference and we find that the independence of the judiciary, a corner stone of the principle of the rule of law, has been violated.

The African Commission went further to observe in paragraph 33 that:

> The government attempts to justify Decree No. 14 with the necessity for state security. While the Commission is sympathetic to all genuine attempts to maintain public peace, it must note that too often extreme measures to curtail rights simply create greater unrest. It is dangerous for the protection of human rights for the executive branch of government to operate without such checks as the judiciary can usefully perform.

That is exactly what the Government of Uganda through the Attorney General, the 2nd respondent, attempted to do, to justify the actions of the Uganda Peoples' Defence Forces:

(e) That on 16th November, 2005, the security Agencies of the Government of Uganda received intelligence information that upon release on bail, the Claimants were to be rescued to escape the course of justice and to go to armed rebellion.

(f) That the security Agencies decided to deploy security at the High Court for purely security reasons and to ensure that the claimants are re-arrested and taken before the General Court Martial to answer charges of terrorism and unlawful possession of firearms.

We on our part are alarmed by the line of defence offered on behalf of the Government of Uganda which if endorsed by this Court would lead to an unacceptable and dangerous precedent, which would undermine the rule of law.

Much as the exclusive responsibility of the executive arm of government to ensure the security of the State must be respected and upheld, the role of the judiciary to provide a check on the exercise of the responsibility in order to protect the rule of law cannot be gainsaid. Hence the adjudication by the Constitutional Court of Uganda referred to earlier in this judgment. In the context of the East African Community, the same concept is embodied in Article 23 which provides:

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

We, therefore, hold that the intervention by the armed security agents of Uganda to prevent the execution of a lawful Court order violated the principle of the rule of law and consequently contravened the Treaty. Abiding by the court decision is the corner stone of the independence of the judiciary which is one of the principles of the observation of the rule of law.

The second issue is rather nebulous and we better reproduce it for a better comprehension:

> Whether the first respondent can on his own initiative, investigate matters falling under the ambit of the provisions of the Treaty.

Article 29(1) of the Treaty provides as follows:

> Where the Secretary General considers that a Partner State has failed to fulfil an obligation under this Treaty or has infringed a provision of

> this Treaty, the Secretary General shall submit his or her findings to the Partner State concerned for that Partner State to submit its observations on the findings.

The Secretary General is required to "submit his or her findings to the Partner State concerned". It is obvious to us that before the Secretary General is required to do so, she or he must have done some investigation. From the unambiguous words of that sub-Article there is nothing prohibiting the Secretary General from conducting an investigation on his/her own initiative. Therefore, the glaring answer to the second issue is: Yes the Secretary General can on his own initiative investigate such matters.

But the real issue here is not whether he can but whether the Secretary General, that is, the 1st respondent, should have done so. It was in this regard that there was heated debate in the preliminary objection on whether or not the Secretary General must have intelligence of some activity happening in a Partner State before he undertakes an investigation.

We dismissed the preliminary objection for the reason that the issue was not a point of law but one of fact requiring evidence. That evidence of whether or not the 1st respondent had knowledge, however, was never produced by the complainants in the course of the hearing. This, therefore, is the appropriate juncture to determine whether or not knowledge is an

essential prerequisite for an investigation by the 1st respondent.

We are of the decided opinion that without knowledge the Secretary General could not be expected to conduct any investigation and come up with a report under Article 29(1).

We may as well add that it is immaterial how that information comes to the attention of the Secretary General. As far as we are concerned it would have sufficed if the complainants had shown that the events in Uganda concerning the complainants were so notorious that the 1st respondent could not but be aware of them. But that was not the case for the complainants.

In almost all jurisdiction courts have the powers to take judicial notice of certain matters. We are not prepared to say that what is complained of here is one such matter. However, the powers that the Secretary General has under Article 29 are so encompassing and are pertinent to the advancement of the spirit of the re-institution of the Community and we dare observe that the Secretary General ought to be more vigilant than what his response has portrayed him to be.

In any case, it is our considered opinion that even if the 1st respondent is taken to have been ignorant of these events, the

moment this application was filed and a copy was served on him, he then became aware, and if he was mindful of the delicate responsibilities he has under Article 29, he should have taken the necessary actions under that Article. That is all that the complainants expected of him: to register with the Uganda Government that what happened is detestable in the East African Community.

In the result we hold that the reference succeeds in part and the claimants are to have their costs as against the 2nd respondent.

MOIJO MATAIYA OLE KEIWUA
THE PRESIDENT

JOSEPH N. MULENGA
THE VICE-PRESIDENT

AUGUSTINO S. L. RAMADHANI
JUDGE

MARY STELLA ARACH-AMOKO
JUDGE

HAROLD R. NSEKELA
JUDGE