



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



(Coram: Yohane B. Masara, PJ; Charles O. Nyawello, Charles A. Nyachae, Richard Muhumuza & Richard Wabwire Wejuli, JJ)

APPLICATION NO. 2 of 2021
(Arising from Reference No. 14 of 2021)

- 1. ISSA MUZAMIL SEBIT 1st APPLICANT**
- 2. THE SOUTH SUDAN BAR ASSOCIATION 2ND APPLICANT**

VERSUS

**THE ATTORNEY GENERAL OF
THE REPUBLIC OF SOUTH SUDAN RESPONDENT**

29TH SEPTEMBER 2022

RULING OF THE COURT

A. INTRODUCTION

1. This is a joint Application by Issa Muzamil Sebit and the South Sudan Bar Association (“the Applicants”) for interim orders against the Minister of Justice/Attorney General of the Republic of South Sudan, pursuant to Articles 5(3)(a),(c), 6(d), 7(1)(a),(d) and (2), 8(1)(c) and (4), 23, 27(1) 30, 39 of the Treaty for the Establishment of the East African Community (“the Treaty”) and Rules 4, 25(1),(2) and (3), 27(1), 52(1), (2), (3) and (4), 53(1) and 84 (1) of the East African Court of Justice Rules of Procedure 2019 (“the Rules”).
2. The first Applicant is a citizen and resident of the Republic of South Sudan. He is a practicing Advocate and describes himself as the President of the 2nd Applicant.
3. The Second Applicant is a legal person resident in the Republic of South Sudan, established under Section 43(2) of The Advocates Act, 2013 and is responsible for private legal practice.
4. The Applicants’ address of service for the purpose of this Application is c/o M/s Semuyaba, Iga & Co. Advocates, Plot 65 Buganda Road, P.O. Box 12387, Kampala,Uganda; and M/s Pan African Law Chambers (PALC), LLP, Juba, Republic of South Sudan.
5. The Respondent is the Minister of Justice and Attorney General of the Republic of South Sudan sued in his representative capacity as the Principal Legal Advisor of the Government of the Republic of South Sudan.
6. The Application arises from Reference No. 14 of 2021 filed in this Court on 1st April 2021. The Applicants allege that the decision of the Court

of Appeal of the Republic of South Sudan dated 17th February 2021, which nullified the convention of the General Assembly of the Bar Association of the Republic of South Sudan and invalidated the elections of that Bar Association held on 19th – 20th February 2020, was taken without hearing the parties. That this was against the laws of the Republic of South Sudan and the provisions of the Treaty, specifically Articles 6(d) and & 7(2), as well as International Law.

B. REPRESENTATION

7. At the hearing, the Applicants were represented by Justin Semuyaba and Wani Jada Santino, Learned Advocates, while the Respondent was represented by Mr Biong Pieng Kuol, Learned Counsel for the Respondent.

C. THE APPLICANTS' CASE AND SUBMISSIONS

8. The Applicants' case is contained in the affidavits sworn by Issa Muzamil Sebit, the 1st Applicant, and Gabriel Bior Mayom, an Advocate of the High Court of the Republic of South Sudan and Secretary General of the 2nd Applicant, sworn on 31st March and 1st April 2021 respectively.

9. The crux of the Applicants' case is that the Respondent, through a decision of the Court of Appeal nullified the elections of the 1st Applicant and the General Assembly of the Bar Association organised by the 2nd Applicant held on 19th - 20th February 2020, without a hearing of the Applicants, in contravention of procedure for the hearing of judicial reviews under the laws of the Republic of South Sudan.

10. The Applicants alleged that by failing to observe due process of the law in hearing and disposing of the case against the Applicants, the

Respondent violated its own Code of Civil Procedure as well as Articles 6(d) and 7(2) of the Treaty.

11. The Applicants submitted that the execution of the Decree setting aside the General Assembly of the Bar Association administrative decision, before the Court Order became final after exhaustion of all remedies, is prohibited by the Laws of South Sudan. That the move to commence execution of this decision by the Court of Appeal before an appeal filed in the Supreme Court by the Applicants was heard, defied the law and amounted to violations of the rule of law and that such violations should be restrained by the Court pending final determination of the main Reference.
12. The Applicants further stated that the decision of the Court of Appeal dated 17th February 2021 mandated specific individuals to hold elections within 60 days and that if they were not restrained by this Court, those individuals may organise elections which will render the Reference filed in this Court nugatory, since the 60 days decreed by court started running from the date of communication of the Decree, which was 11th May 2021.
13. That the Court of Appeal decision to seize the premises of the 2nd Applicant and hand it over to individuals it appointed in its decision, before the lapse of 15 days period for filing appeals, is an abuse of authority and will weaken and crumble down the Bar Association as an institution.
14. The Applicants also stated that allowing third parties or nominees of the Court of Appeal to run and manage the Bar Association, instead of the elected officials, pending the determination of the main Reference amounts to interference with the independence of the Bar Association

and violates Article 136 of the Transitional Constitution of South Sudan and will cause confusion among the Advocates and members of the public.

15. That the decision to seize the premises and properties of the Applicants by Court Police, who are agents of the Respondent, will render the Bar Association unable to discharge its statutory obligation of renewing licences and membership subscriptions for the year 2021, which Section 26(2) of the Advocates Act, 2013 requires to be done between March and May 2021. That this will make the 2nd Applicant and the Bar Council fail to discharge their functions and therefore breach their statutory obligations.
16. The Applicants summarise their case by asserting that the loss they continue to suffer cannot be quantified or appeased by damages and that the balance of convenience would be in their favour if the temporary injunction is granted.
17. As a result, the Applicants seek the following orders:
 - a) **Pending determination of the main reference filed in this court, an interim order and/or a temporary injunction doth issue restraining the Respondent, their employees, or agents from holding new elections until the main reference is heard and disposed of by the Court;**
 - b) **An Order maintaining the status quo of the applicants as the legitimate persons running the Bar Association until final determination of the reference;**
 - c) **An Order doth issue against the Respondent to stop its agents from occupying the premises of the 2nd Applicant;**

d) Any Orders or Directive the Court may deemed necessary.

D. THE RESPONDENT'S CASE AND SUBMISSIONS

18. The Respondent's case is contained in the affidavit deponed on 12th April 2022 by Sulafedin Abubaker Adam, and in the Respondent's written submissions filed on 26th April 2022.
19. The Respondent contested the prayers in the Application and urged the Court not to grant the interim orders or interlocutory injunction sought by the Applicants.
20. The Respondent grounded his submissions on the fact that the General Assembly convention and elections held on the 19th and 20th February 2020 which brought the Applicant in office as the President of the South Sudan Bar Association, violated the law, notably, Rule 37 of South Sudan Bar Association Elections Rules and Regulations 2014, which requires at least a quorum of 50%+1 of the registered Advocates.
21. That the decision of the Court of Appeal, subject of the Reference, was lawfully and legally made in accordance with Section 295 of the Civil Procedure Act, 2007, and that as such, the execution of the decision of the Court of Appeal was done in accordance with Section 292 (1) of the Civil Procedure Act, 2007. That the execution was therefore lawful because the submission of appeal does not serve as a stay of execution of the decision appealed against.
22. The Respondent further submitted that it was wrong for the Applicants to assume that their appeal to the Supreme Court automatically amounted to a request of stay of execution of the decision of the Court of Appeal.

23. On the issue of elections, Counsel for the Respondent argued that the Applicants have no reasons to worry, as the Executive Committee mandated by the decision of 17th February 2021 to hold elections of the South Sudan Bar Association is not likely to call for elections, as it has not been able to do so since the decision of the Court of Appeal in question was taken and, accordingly, the Applicants should not be afraid that the issue of elections will render the Reference nugatory.
24. Conversely, Counsel for the Respondent argued that the Applicants have nothing to suffer or lose as the 1st Applicant would be at liberty to participate and contest like any other party, were the elections to be held any time sooner.
25. In response to the issue of seizing the premises, properties and running and managing the affairs of the 2nd Applicant, Counsel for the Respondent submitted that the former Executive Committee was mandated by the decision of 17th February 2021 to run the affairs of the Bar and that it was indeed a necessary arrangement to avoid any legal or administrative vacuum in the South Sudan Bar Association for delivery of services to Advocates and the public at large.
26. Addressing the issue of the *status quo* raised by the Applicants, Counsel for the Respondent advanced an opposing understanding of what *status quo* is. He is of the view that because the Executive Committee is the one running the affairs of the South Sudan Bar Association as mandated by the Court of Appeal, it is reasonable to argue that any request for an interim order reinstating the 1st Applicant to run the affairs of South Sudan Bar Association is not preservation of *status quo*. That such a decision would impact on the final disposal of

the Reference itself as that particular issue in this Application is the subject matter of the Reference pending determination.

27. Counsel for the Respondent concluded his submissions by emphatically stating that the decision of the Court of Appeal dated 17th February 2021 was in accordance with Articles 6(d) and 7(2) of the Treaty and Articles 2, 3, 7 and 27 of the African Charter on Human and People's Rights.

E. COURT'S DETERMINATION

28. Having summarised the case and submissions from the Parties herein, we now turn to consider the substance of the issue in the Application, which is: **whether the Applicants' prayer for interim orders should be granted.**

29. We have considered the matter in the context of the pleadings and submissions made by both Parties.

30. The grant of interim orders is governed by Article 39 of the Treaty and Rules 52 and 84 of the Rules. These provisions bestow upon this Court powers to make any interim orders or issue any directions which it considers necessary or desirable and such interim orders and directions shall have the same effect *ad interim* as decisions of the Court.

31. This Court has had occasion to entertain interlocutory applications for interim orders and accordingly has clarified on the procedure of granting the same.

32. In **Francis Ngaruko vs Attorney General of the Republic of Burundi, EACJ Application No. 3 of 2019**, the Court upheld a three-fold test for grant of interim orders thus:

“First, the court needs to be satisfied that there is a serious question to be tried on the merits of the applicant’s Reference, that the applicant has a cause of action that depicts substance and reality. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court doubts, it will decide an application on the balance of convenience.”

33. The above quoted three-fold test is sequential in nature. The Court in **Adam Kyomuhendo vs The Attorney General of the Republic of Uganda and 6 Others, EACJ Application No. 11 of 2020** held that: **“The conditions for granting an interlocutory injunction are sequential so that the second condition can only be addressed if the first one is satisfied and, only when the court is in doubt would recourse be made to the third condition”**.

34. Regarding the first condition relating to the serious question to be answered, this Court, in **British American Tobacco vs. Attorney General of the Republic of Uganda, EACJ Application No.13 of 2017**, citing with approval the case of **American Cyanamid Company vs Ethicon Limited (1975) AC 396**, stated that the Court “must be satisfied that the claim is not frivolous or vexatious.” Differently put, there should be a serious question for determination, which question should be inferred from the substantive Reference without or before delving into the merits of the case. Thus, in the **British American Tobacco** case, it was held that:

“Within the context of EAC Community law, a cause of action demonstrating the prevalence of a serious triable issue has been held to exist where the Reference raises a legitimate legal question under the Court’s legal regime as spelt out in Article 30(1); more specifically, where it is the contention therein that the matter complained of violates the national law of a partner State or infringes any provision of the Treaty. Causes of action before this Court are grounded in a party’s recourse to the Court’s interpretive and enforcement function as encapsulated in Article 23(1) of the Treaty, rather than the enforcement of typical common law rights.”

35. We find the above decision to be authoritative on this matter. In the present Application, the Applicants argued that the Reference has a probability of success because the decision by the Court of Appeal of 17th February 2021 violated Articles 6(d) and 7(2) of the Treaty relating to principles of rule of law, human rights, democracy, social justice, transparency, accountability and good governance, as well as the failure to recognise, promote and protect human and people’s rights. Thus, the Applicants are inviting this Court to exercise its interpretive mandate under the Treaty.

36. This Application arises from a Reference in which the Applicants fault the Respondent for violating its national laws where, allegedly, the act of passing judgement against the Applicants, without according them fair trial in accordance with the domestic laws of South Sudan is challenged as a violation of the domestic law and the provisions of the Treaty. These allegations call for interrogation and for evidence to be adduced to ascertain whether the impugned acts are *ultra vires* and

thus offend the sanctity of the Treaty. Consequently, we find that the Application raises serious triable issues for determination.

37. We now turn to the second test, which is whether, in the absence of interim orders, the Applicants stand to suffer irreparable damage and loss which cannot be compensated in monetary terms.
38. In **Mary Ariviza & Another vs Attorney General of the Republic of Kenya & Another, EACJ Application No. 3 of 2010**, citing with approval the decision of **Giella & Cassman Brown Co. Ltd, E.A Industries vs Trufoods, [1972] E A 420**, the Court stated that “An interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages.”
39. Further, in the case of **Castro Pius Shirima vs Attorney General of Burundi & 6 Others, EACJ Application No. 11 of 2016**, it was established that an injunctive order is not allowed where the Applicant fails to establish that they would suffer an irreparable injury that could not be compensated by an award of damages.
40. Similarly, In **Timothy Alvin Kahoho vs The Secretary General of the East African Community, EACJ Application No. 5 of 2012**, the Court was clear that injury, whether repairable or irreparable, is a question of evidence and must be proved.
41. In the instant application, the Applicants contend that the loss they continue to suffer cannot be quantified or appeased by damages. That is to say, if persons appointed by the Court of Appeal were to conduct elections before the disposal of the Reference before this Court, it will render the decision of the Court nugatory and will lead to utter confusion among the advocates and the general public.

42. Furthermore, the Applicants submitted that the continued presence of third parties or nominees of the Court of Appeal at the premises of the 2nd Applicant destroys the reputation, public confidence and integrity of the institution of the Bar Association in the eyes of the public, donors, and stakeholders and such destruction of credibility cannot adequately be compensated with damages.
43. In response to this specific issue, Counsel for the Respondent contended that the Executive Committee which was mandated by the Court of Appeal to manage and protect the operations and interests of the South Sudan Bar Association has done and continues to do its work diligently.
44. He further argued that the Applicants would not incur irreparable injury nor should they fear to have the decision of this Court rendered nugatory because the mandated Executive Committee does not want to hold the elections as directed by the Court of Appeal, for reasons not clear up to this point in time, and that there is no indication of conducting them at the nearest future.
45. With respect, we do not find it sufficient for Counsel for the Respondent to argue that because the elections have not been conducted or because there are no signs for them happening any time soon, therefore the Applicants should not advance to Court seeking assurance.
46. However, equally unconvincing is the Applicants' submission that they will suffer irreparable injury if elections are held. This is so because, other than stating so, no sufficient proof has been adduced to attest to the possibility of injury, let alone an irreparable one, the holding of the elections would occasion. In any event, as submitted by Counsel for

the Respondent, the 1st Applicant would be at liberty to equally participate as a contestant in the elections just like other parties.

47. We find the Applicants' submission that the Bar Association's reputation and public confidence would be affected by the presence of third parties or nominees of the Court of Appeal insufficiently substantiated. In our view sustaining this argument appears to be presumptuous, as it would be speculative to predict the outcome of the Applicants' prayers to this Court in the main Reference.

48. In light of the above, we are not convinced that there is potential harm to the Applicants, let alone one that cannot be adequately compensated with damages if the interim orders sought are not granted.

49. Given the foregoing, we do not deem it necessary to move on to the test of the balance of convenience as we have no doubt that the orders sought in this Application are not warranted for the reasons stated herein above.

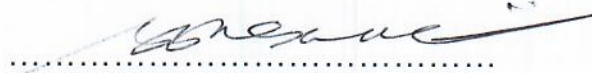
F. CONCLUSION

50. In the result, we decline to grant the interim orders sought by the Applicants and accordingly dismiss this Application in its entirety.

51. We further order that costs of the Application abide the outcome of the Reference.

52. It is so ordered.

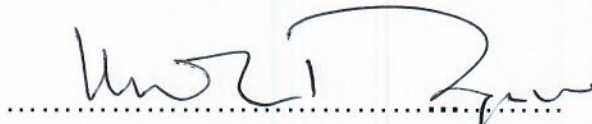
Dated, signed and delivered at Arusha this 29th day of September 2022.



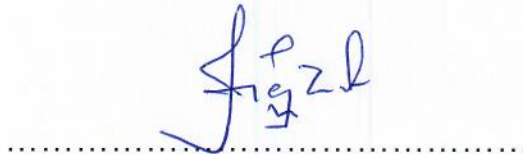
.....
Hon. Justice Yohane B. Masara
PRINCIPAL JUDGE



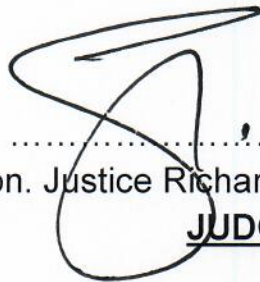
.....
Hon. Justice Dr Charles O. Nyawello
DEPUTY PRINCIPAL JUDGE



.....
Hon. Justice Charles A. Nyachae
JUDGE



.....
Hon. Justice Richard Muhumuza
JUDGE



.....
Hon. Justice Richard Wabwire Wejuli
JUDGE