



EAST AFRICAN COURT OF JUSTICE

ANNUAL REPORT
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ARUSHA, TANZANIA

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HAPPY BIRTHDAY EACJ

1. Oh ye Court majestic, Court mystic :
Spread wide your motherly wings
over your brood of six fledgling chicks
To them you impart judicial refuge,
To them you assure judicial recourse.
2. Conceived against the Colonial backdrop
of a benign imperial reign,
You grew into midlife : against the torment
of death by strangulation
wrought by an angry, discordant
political wind of Three sovereigns.
3. To Death, you descended
Near-Extinction, you tested
But soon, a mere Three decades soon
dry bones of your Past arose
You resurrected glorious :
into the vibrant body that you now wear
A star-studded Future Awaits :
decked in an Abundance of Blessings
4. May you live long: Justice and Truth to dispense.
From the high Cooperation of your Colonial Past
May you live immortal to spread deep and wide
the Integration of Today
May you live to blow the candles of the Jubilee!
nay, of the Century!!

Happy Birthday EACJ

DEDICATION: In Celebration of Twenty Years of the Existence of the East African Court of Justice,
this verse of poetry is proffered!

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ABBREVIATIONS



AD	Appellate Division
AfCHPR	African Court of Human and People's Rights
AU	Africa Union
DRC	Democratic Republic of Congo
EAC	East Africa Community
EACJ	East African Court of Justice
ECOWAS	Economic Community of West African States
FID	First Instance Division
IDLO	International Development Law Organization
IGAD	Inter-Governmental Authority on Development
UNESCO	United Nations'Education, Scientific and Cultural Organization

*Hon. Mr. Justice Nestor Katobera
Judge President
East African Court of Justice (EACJ)*



FOREWORD

BY THE JUDGE PRESIDENT
HON. MR. JUSTICE NESTOR KAYOBERA

It is with great pleasure that I present our esteemed readers with the 2022 Annual Report of the East African Court of Justice (EACJ). This report covers the period running from November 2021 to October 2022 and highlights the one-year milestones of the Court. The report further offers a platform to amplify public knowledge on the significant milestones achieved by the EACJ in the past 1 year and serves as a repository for future reference. It highlights landmark cases which positively impacted public confidence and Court operations generally.

The EACJ as one of the organs of the East African Community (EAC) established under Article 9 of the Treaty for the Establishment of the East African Community, was in existence since 2001, when it was inaugurated. In November 2021, the Court celebrated its 20th anniversary, a major milestone that offered an opportunity to reflect on the successes and challenges of the two decades of executing its mandate to ensure the adherence and application of and compliance with the EAC Treaty.

The EACJ has since been a critical component to the EAC Integration agenda by settling disputes which have built its jurisprudence, and guided the integration process as mandated by the Treaty.

I, therefore, take this opportunity to congratulate the Judges, Staff and various stakeholders who have been part of the journey to ensure the successful execution of the EACJ mandate. It is the Court's desire to have its mandate in the integration process; recognized, utilized, appreciated and trusted as a world-class Court dispensing quality justice in a prosperous Community.

I call upon all our esteemed stakeholders; lawyers, members of the private sector, civil society organizations, academia, researchers and national judiciaries among others, to read this report to have first-hand information on how the East African Court of Justice carries out its mandate under the Treaty.

I equally wish to appreciate the EAC Partner States for their consistent support towards driving the integration agenda.

EXECUTIVE SUMMARY

The East African Community (EAC) is an intergovernmental organisation composed of seven countries in the Great Lakes region of East Africa. These countries include Democratic Republic of the Congo (DRC), the United Republic of Tanzania, the Republics of Kenya, Burundi, Rwanda, South Sudan, and Uganda. The Community was first established in 1967 but disbanded in 1977. The EAC was then revived on the 7th of July 2007 and has steadily increased its member base since revival.

The East African Court of Justice (EACJ) is an organ of the EAC which was inaugurated in November 2001 as the judicial arm of the EAC. Since its inception, the Court has made commendable progress in realizing its mandate. It has contributed to the EAC integration process by settling disputes. In this way, it has guided the integration process and contributed to the development of regional jurisprudence. However, it still operates on an ad-hoc basis due to the nature of the services of the judges.

The volume of work facing the Court is increasing. The continued deepening and widening of EAC integration means more economic, financial, commercial, social labour and political transactions. The potential disputes that will arise out of the transactions require the involvement of the Court. The Court faces serious challenges as it works to deliver on its mandate with the limited resources at its disposal. With wider integration comes a higher demand for the Court's services. It is therefore imperative that the Court develops adequate internal capacity to deliver on its

mandate. The Court needs to raise its visibility by making its services more available and visible within the area of jurisdiction. While the official language of the court is English, there is need to accommodate the various languages spoken within the area of jurisdiction when developing reading materials. Tanzania has started the process of translating the brochures and other reading materials to Kiswahili thus making it easier for Tanzanian nationals to understand the workings of the Court.

The Court aims to have its integral role in the EAC integration process recognized and appreciated. For the EAC to enjoy increased trade and enhance its economic development, it is crucial to have a functional and trusted dispute resolution mechanism in place. This will go a long way in building investor confidence and assuring East African Citizens that there is an organ that is capable of guiding the integration process according to law, thereby leading to the enjoyment of the fruits of integration by all.

CHAPTER 1:

THE EAST AFRICAN COURT OF JUSTICE



1.1 The Court at a glance

The EACJ is the judicial arm of the East African Community established under Article 9 of the Treaty for the Establishment of the East African Community. The Court was inaugurated on 30th November 2001, when the first Judges and the Registrar were sworn into office. Over the last twenty years, the Court has executed its mandate; ensuring adherence to law in the interpretation and application of the Treaty for the Establishment of the Community (EAC). In the process, it has expanded its jurisprudence and promoted the rule of law, regional integration, cross-border trade and investment. The Court also handles matters of arbitration and mediation.

1.1.1 Vision

A world-class Court dispensing quality justice for a prosperous Community

1.1.2 Mission

To contribute to regional Integration by ensuring adherence to justice, rule of law and fundamental rights and freedoms through the interpretation and application of and compliance with the East African Community Law

1.1.3 Core Values

Independence

Impartiality

Integrity

1.2 The role of the Court

The Court's mandate is established Under Article 23 of the Treaty as a judicial body whose role is to ensure the adherence to law in the interpretation and application of and compliance with the Treaty. The temporary Seat of the Court is in Arusha in the United Republic of Tanzania until such time the Summit of EAC Heads of State determines its permanent Seat as required by the Treaty.

1.3 The Jurisdiction of the Court

The Court has jurisdiction to hear and determine:

- i. Disputes on the interpretation and application of the Treaty.
- ii. Disputes between the Community and its employees arising from the terms and conditions of employment or the interpretation and application of the Staff Rules and Regulations.
- iii. Disputes between the Partner States regarding the Treaty if the dispute is submitted to it under a special agreement.
- iv. Disputes arising out of an arbitration clause contained in a contract or agreement which confers such jurisdiction on the Court to which the Community or any of its institutions is a party.

- v. Disputes arising out of an arbitration clause contained in a commercial contract or agreement in which the parties have conferred jurisdiction on the Court.
- vi. Disputes arising out of a mediation clause contained in an agreement in which parties have conferred jurisdiction to the Court.
- vii. Advisory opinion regarding a question of law arising from the Treaty which affects the Community upon a request from the Summit, the Council or a Partner State.
- viii. Preliminary ruling on a question concerning the interpretation or application of the provisions of the Treaty or the validity of the regulations, directives, decisions or actions of the Community upon a request from any court or tribunal of a Partner State to enable it to give judgment on a matter raised before it.
- ix. The jurisdiction of the Court shall be extended to include original, appellate, human rights and other jurisdiction at a suitable date to be determined by the Council.
- x. The Court's jurisdiction to handle Trade and Investment matters was granted, a Protocol to operationalize the extended jurisdiction was signed and the EAC Partner States are in the process of ratification.

It is necessary to note that the EACJ does not explicitly have jurisdiction over human rights matters. However, articles 6(d) and 7(2) of the EAC Treaty create scope for human rights matters to be brought before the EACJ.

Article 6(d) states:

“The fundamental principles that shall govern the achievement of the objectives of the Community by the Partner States shall include 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 per the provisions of the African Charter on Human and Peoples’ Rights.”

Article 7(2) states:

“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.”



Hon. Mr. Justice Nestor Kayobera
Judge President
(Republic of Burundi)



Hon. Lady Justice Sauda Mjasiri
Vice President
(United Republic of Tanzania)

*Current composition
of the EACJ Appellate
Division*



Hon. Lady Justice Anita Mugeni
(Republic of Rwanda)



Hon. Mr. Justice Kathurima M'Inoti
(Republic of Kenya)



Hon. Justice Cheborion Barishaki
(Republic of Uganda)



Hon. Mr. Justice Yohane Masara
Principal Judge
(United Republic of Tanzania)



Hon. Justice Dr. Charles Oyo Nyawello
Deputy Principal Judge
(Republic of South Sudan)



Hon. Justice Charles Oyako Nyachae
(Republic of Kenya)

*Current composition
of the EACJ First
Instance Division*



Hon. Mr. Justice Richard Wabwire Wejuli
(Republic of Uganda)



Hon. Mr. Justice Richard Muhumuza
(Republic of Rwanda)



Hon. Justice Dr. Leonard Gacuko
(Republic of Burundi)

CHAPTER 2:

THE STRUCTURE OF THE COURT



2.0 The Structure of the Court

2.1 The First Instance Division Of The Court



*Hon. Mr. Justice Yohane Masara
Principal Judge*

The 1st Instance Division is one of the Divisions of the EACJ whose mandate is to ensure adherence to law in the interpretation and application of and compliance with the Treaty.

The Division is headed by the Principal Judge Hon. Justice Yohane B. Masara (pictured), who is responsible for the performance of the functions of the First Instance Division. He is deputised by the Deputy Principal Judge, Hon. Justice Dr. Charles O. Nyawello.

The Division comprises six (6) Judges; namely, the Principal Judge, the Deputy Principal Judge and four (4) other Judges, all from the six EAC Partner States as per the structure below:

The Principal Judge is a resident Judge, while the remaining five judges work on an ad hoc basis.

The decisions of the First Instance Division are not final. An aggrieved party can file an appeal before the Appellate Division of the Court.

2.2 The Appellate Division Of The Court



*Hon. Mr. Justice Nestor Kayobera
Judge President*

The Summit of the EAC Heads of States designates two Judges of the Appellate Division as the President and Vice –President respectively, with the responsibility to perform such functions as set out

in the Treaty for the Establishment of the East African Community, 1999.

The current President of the Court is Hon. Justice Nestor Kayobera and the Vice-President of the Court is Hon. Lady Justice Sauda Mjasiri.

The President and Vice-President, are not supposed to be nationals of the same Partner State.

The President's office is held on a rotational basis, for a one-year term. The President is the head of the Court. He is responsible for:

- i. the administration and supervision of the Court and,
- ii. directs work for the Appellate Division,

- iii. represents the court,
- iv. regulates the disposition of matters brought before the Court and,
- v. presides over its sessions.

The Appellate Division is composed of five Judges, one each from the Republics of Rwanda, Burundi, Kenya, Uganda and the United Republic of Tanzania. Until the Treaty is amended, the Republic of South Sudan and the Democratic Republic of Congo cannot recommend a Judge to the Appellate Division.

When the Court was inaugurated on 30th November 2001, the President and the Principal Judge used to perform their statutory functions off-site, a practice that was likely to undermine the Court's efficiency in light of the increasing volume of work for the regional Court. However, with effect from 2nd July 2012, the services of the President and the Principal Judge became full-time following a directive by the 24th Ordinary Meeting of the EAC Council of Ministers held on 26th November 2011 in Burundi. Apart from the President and the Principal Judge, other Judges serve on an ad hoc basis.

The Appellate Division, whose decision is final, hears appeals from the First Instance Division on point of law, procedural irregularity and lack of jurisdiction.

2.3 The Registry



*Her Worship Christine Mutimura-Wekesa
Deputy Registrar*

The staff of the Court are headed by the Registrar who is a judicial officer, and the accounting officer who oversees the day-to-day administration of the Court. The Registrar is assisted by the Deputy

Registrar in the management of judicial work. Staff in the office of the Registrar include those who work in the respective departments of the information resource centre, research services, transcription services, Information and Communication technology, finance, the registry and public relations etc.

The Court has had two Registrars since its inception. His Worship Dr John Eudes Ruhangisa left after being appointed as Justice of the High Court of the United Republic of Tanzania in 2014. He was then replaced by His Worship Mr Yufnalis Okubo who had previously served as the Legal Counsel and head of Institutional Affairs at the Inter-Governmental Authority on Development (IGAD).

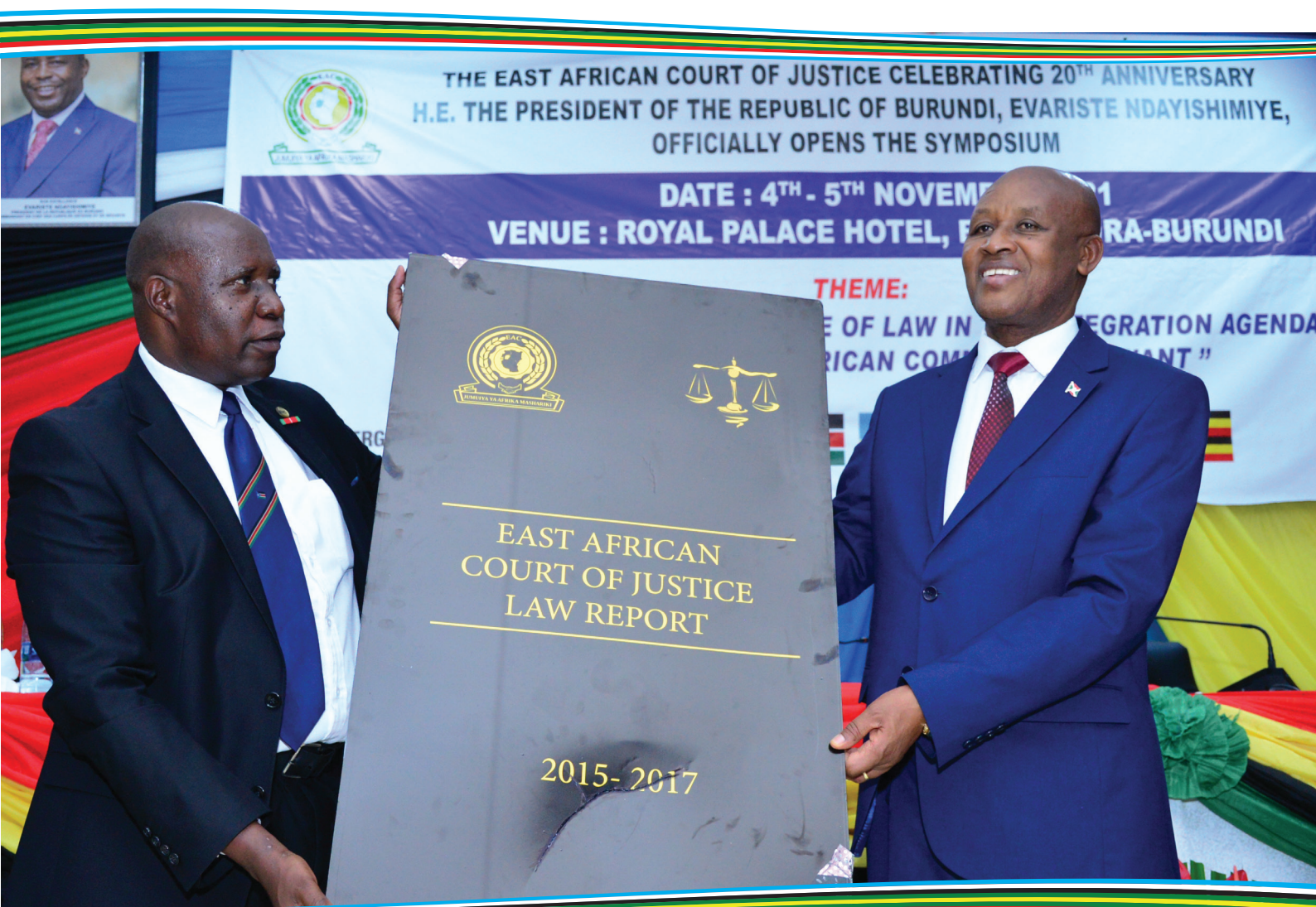
The position of the Registrar of the Court is currently vacant after His Worship Yufnalis Okubo retired from the position on 31st March 2022, after attaining the mandatory retirement age of 60 years. The recruitment process for the Registrar is currently underway.

The Deputy Registrar, Her Worship Ms Christine Mutimura is currently undertaking the role of the Registrar as she oversee the day-to-day administration of the Court.

The functions of the registrar include:

Administration of the Court, managing the Court registry and the sub-registries in the capitals of the East African Community, conduct taxation matters, prepare and present the budget of the Court to the EAC Council of Ministers, prepare and present the annual report of the Court, prepare the cause list for hearing of the first instance division and the appellate division, represent the Court in all policy meetings and any other international meetings.

H.E Prosper Bazombaza (right) Vice President of the Republic of Burundi & President of EACJ (left) launching the 3rd Volume of EACJ Law Report during the EACJ 20th Anniversary in Bujumbura.



CHAPTER 3:

THE LEGAL FRAMEWORKS GOVERNING THE COURT



3.0 The Legal Frameworks Governing the Court

3.1 Treaty for the Establishment of the East African Community, 1999

The Treaty for the Establishment of the East African Community was signed on November 30th, 1999, and after being ratified by the original three Partner States of Kenya, Uganda, and Tanzania, it came into effect on July 7th, 2000. On June 18th, 2007, the Republics of Rwanda and Burundi ratified the EAC Treaty and, as of July 1st, 2007, they were admitted as full members of the Community. South Sudan became a full member of the East African Community on September 5th, 2016. The Democratic Republic of the Congo (DRC) formally joined the East African Community (EAC) on April 8th, 2022, after the signing of the Treaty of the Accession of the DRC into the EAC.

To improve the quality of life of the people of East Africa through increased competitiveness, value-added production, trade, and investments, the EAC was founded with a vision to establish a prosperous, competitive, secure, stable, and politically united East Africa. It also provides a platform to widen and deepen economic, political, social, and cultural integration.

3.2 The East African Court of Justice Rules of Procedure, 2018

The powers granted in article 42 of the Treaty for the formation of the East African Community are used to adopt the rules of procedure for the East African Court of Justice. Including the schedules and forms that are attached at the rear of the Rules, the Rules have a total of 135 sections. The Rules cover a wide range of topics, including the Registry, document preparation, filing, timing, amendment, and modes of service. They also cover matters such as appearance and representation, court vacations and holidays, the institution of proceedings at the Court, written proceedings, third-party interventions, amendment of pleadings, withdrawal and discontinuance, oral proceedings, judgments and orders, appellate processes, costs, and fees.

3.3 The East African Court of Justice Arbitration Rules, 2012

The powers granted in article 42 of the Treaty for the formation of the East African Community are used to create the 2012 East African Court of Justice Arbitration Rules. Article 32 of the Treaty's arbitration rules applies to all arbitration procedures. The applicability of the Rules may be changed or waived at any time by the parties to the arbitration.

In general, the rules include the structure and procedure of the arbitral procedures, including disclosure, challenging an arbitrator's appointment, replacing an arbitrator, and the location, timing, and format of hearings. The Rules also cover how decisions are made and how the arbitral ruling is implemented.

3.4 Guidelines for Preliminary Rulings

The East African Court of Justice has jurisdiction to give preliminary rulings on the interpretation of East African Community law and on the validity of the regulations, directives, decisions or actions of the Community. That general jurisdiction is conferred on it by Article 34 of the Treaty for the Establishment of East African Community (the Treaty).

A national court or tribunal may refer a question to the Court for a preliminary ruling as soon as it finds that a ruling on the point or points of interpretation or validity is necessary to enable it to give judgment; it is the national court which is in the best position to decide at what stage of the proceedings such a question should be referred.

The guidelines provide practical information intended to provide guidance to national courts as to whether it is appropriate to make a reference for a preliminary ruling and, should they proceed, to help them formulate and submit questions to the Court.

3.5 Guideline for Witness Protocol for Video Conference Proceedings

According to the Guidelines for Video Conference Proceedings, if a witness is going to testify, the court must make sure the witness protocol is established in advance, including where the witness will connect from, what documents will be used (electronic or paper), and whether there will be any interruptions or potential sideline coaching. It must be taken

into account how the witness will be sworn in and if the witness is not required to confirm if they will have access to a suitable religious source.

3.6 Court Manual: A Practical Guide to the Law and Practice of the East African Court of Justice

This Guide aims to clarify who does what; how proceedings are handled in the Court; and how users of the Court can get the most out of the services provided by the Court.

Many of the laws and procedures that control the Court's operations have been simplified and summarized in the guide for easy and ready understanding. It should, therefore, be used only as a guide to the substantive provisions governing the operations of the Court (i.e. the primary law of the Court).

3.7 Protocol on the Establishment of the East African Community Common Market, 2010

Following the Customs Union, which became fully operational in January 2010, the Common Market is the second pillar in the East African Community's regional integration process (as outlined by the Treaty for the Establishment of the East African Community). On November 30th, 2009, the day of the EAC's 10th-anniversary celebrations, it was signed by the heads of state. Following approval by each of the five partner countries—Burundi, Kenya, Rwanda, Tanzania, and Uganda—it came into

effect on July 1st, 2010. According to Article 76 of the EAC Treaty, the East African Community Common Market has been established.

3.8 Protocol on the Establishment of the East African Community Customs Union, 2005

According to Article 75 of the Treaty for the Establishment of the East African Community, the Customs Union is the first Regional Integration milestone and a crucial component of the East African Community (EAC), which has been in existence since 2005.

It denotes that the EAC Partner States decided to establish free trade (or no duty imposed) on goods and services among themselves and have also decided on a common external tariff (CET), under which imports from nations outside the EAC zone are subject to the same tariff when sold to any EAC Partner State.

The EAC Rules of Origin and specific provisions of the Protocol for the Establishment of the East African Community Customs Union must be followed by the free movement of goods within the EAC.

*Ololosokwan Village residents
demonstrate against their eviction
from the Serengeti National Park.*



CHAPTER 4:

SELECTED JUDGEMENTS OF THE COURT



4.0 SELECT JUDGMENTS OF THE COURT

4.1 Select Cases: First Instance Division of the Court

4.1.1 KALALI STEVEN v. THE ATTORNEY GENERAL OF THE REPUBLIC OF RWANDA

Case Number:	REFERENCE NO. 2 OF 2019
Respondent:	THE ATTORNEY GENERAL OF THE REPUBLIC OF RWANDA
Complainant:	KALALI STEVEN
Date filed:	2019
Country:	Rwanda
Date of Judgement:	23 rd June 2022

Issues for Determination

1. Whether the Respondent's acts of closure of her border point(s) and blocking of access to the border point(s) contravenes Articles 5(2), 6(b), (c) (d), 7(1)(c) & (2), 8(1)(c), 74 and 76 of the Treaty for the Establishment of the East African Community.

2. Whether the acts of the Respondent in restricting the freedom of movement of Rwanda citizens to Uganda against their wish is in breach of Articles 6(b)(c), 123(1)(3)(a)(c)(e), 124(2) and 7(2)(d) of the Treaty for the Establishment of the East African Community.
3. Whether the Respondent's act of disallowing Ugandan traders from entering its border points with the goods contravenes Article 7(7) of the East African Common Market Protocol; and
4. What remedies are available to the parties?

Summary of the Judgement

The Applicant alleged that the Respondent state closed its border points with the Republic of Uganda and restricted Uganda traders, and also restricted Rwanda citizens from entering or travelling to Uganda. That these actions were in contravention of the Treaty, in particular Articles 5(2), 6(b), (c) & (d), 7(1)(c) & (2), 8(1)(c), 74, 76, and 124, as well as Articles 3, 5, 6, 7(7), 24 and 29 of the Common Market Protocol.

The Respondent denied the allegations contained in the Reference and averred that in a bid to expedite the construction of a one-stop border point at the Gatuna border, the ongoing construction work necessitated the diverting of all heavy trucks destined to and/or transiting via the said Gatuna border post to using a different border post-Kagitumba/ Mirama Hills, and at Cyanika. This was to facilitate the smooth flow of goods and services.

The Respondent also denied having at any point restricted Rwandan citizens from travelling to Uganda. That it merely advised them not to travel and if they did travel, to do so with caution as many Rwandan citizens had been mistreated and detained in Uganda for no justifiable reasons, after which they were allegedly dumped at the border between the two countries, without any charges being preferred against them

At the scheduling conference for purpose of evidence, the parties were directed to file additional affidavits within a specified time. The Applicant complied with the directions but the Respondent did not comply. The Court dismissed the Respondent's application seeking an extension of time to have his additional affidavit filed late and to be deemed to be properly on record. Having dismissed the Respondent's application to have an additional affidavit on record, her only affidavit left on record was also found to be fatally defective for having been deposed by counsel having conduct of the matter and for that reason was struck out.

The case, therefore, proceeded to a hearing without evidence from the Respondent rebutting the Applicant's evidence on record. The court stated that where an affidavit is struck out leaving no evidence, it is still incumbent upon the Court to consider the evidence of the opposing party, in the case of an Applicant probability, notwithstanding the absence of evidence on behalf of the Respondent.

Upon considering the evidence on record and submissions by both parties **the Court held in favour of the Applicant** on all the issues for determination and declared that the Respondent's act: of closure of her border point(s) and blocking of access to the border point(s) contravened Articles 5(2), 6(b), (c) & (d), 7(1)(c), 8(1)(c), 74 and 76(1) of the Treaty; in restricting freedom of movement of Rwanda Citizens to Uganda against their wish is in breach of Articles 6(b) & (c), 7(2), 123(1),(3)(a), (c) and 7(1)(b) of the Treaty and Article 7(7) of the Common Market Protocol; of disallowing Ugandan traders from entering its border point(s) with goods contravenes Articles 6(b) & (c) and 7(1)(b) of the Treaty and Article 7(7) of the Common Market Protocol. The Court ordered the Respondent to ensure compliance with its obligations under the Treaty and the Common Market Protocol. Each party was ordered to bear its costs.

4.1.2 OLOLOSOKWAN VILLAGE COUNCIL & 3 OTHERS V. THE ATTORNEY GENERAL OF THE UNITED REPUBLIC OF TANZANIA

Case Number:	REFERENCE NO. 10 OF 2017
Respondent:	THE ATTORNEY GENERAL OF THE UNITED REPUBLIC OF TANZANIA
Complainant:	OLOLOSOKWAN VILLAGE COUNCIL & 3 OTHERS
Date filed:	21st September 2017
Country:	Tanzania
Date of Judgement:	22nd September 2022

Issues for Determination

1. Whether the EACJ has jurisdiction to hear and determine the Reference;
2. Whether or not, the Reference offends the principles of the National Land Policy which are the objectives of the Village Land Act, Section 3 (1) of the Village Land Act No.5. of 1999;
3. Whether or not the applicants were ejected from Serengeti National Park or their respective villages.
4. Whether the acts, omissions and conducts of the Respondents violate Article 6(c) 6(d) and 7(2) of the treaty and Article 15(1) of the Protocol on the Establishment of the East African Common Market; and
5. What remedies are the parties entitled to?

Summary of the Judgement

The Court maintained that it had jurisdiction over the matter; that the case was admissible (including on having been filed within time, and that there is no requirement to exhaust local remedies by going to Courts of the Respondent State that deal with land matters). Also positively, the Court accepted the principle that there is village land separate from Serengeti National Park (SNP). The Court didn't say that the government had the right to evict the villagers from the 1,500 km² of village land. It concluded that the Applicants failed to prove that the 2017 evictions took place on village land and not in Serengeti National Park.

The Court contended that the witnesses' testimony contradicted each other and was generally insufficient. The Court also threw out the detailed Report of the expert witness who testified on behalf of the Applicants, on the account of being a Kenyan national, and did not possess a work permit to undertake work in Tanzania. For the aforementioned reasons, the Court determined that there was insufficient evidence from the applicants to demonstrate that they were evicted from village land, and not from the Serengeti National Park (SNP). The court dismissed the claims of the Applicants.

4.2 Select Cases from the Appellate Division

4.2.1 ATTORNEY GENERAL OF THE REPUBLIC OF KENYA v. MARTHA WANGARI KARUA & OTHERS

Case Number:	APPEAL NO 4 OF 2021
Respondent:	MARTHA WANGARI KARUA & OTHERS
Complainant:	ATTORNEY GENERAL OF THE REPUBLIC OF KENYA
Date filed:	30th November 2020
Country:	Kenya
Date of Judgement:	28th February 2022

Issues for Determination

1. Whether the First Instance Division erred in law by exercising appellate jurisdiction over the interpretation of the Constitution of Kenya by the Supreme Court of Kenya;
2. Whether the First Instance Division erred in law by exercising a human rights jurisdiction which jurisdiction the honourable court does not have;
3. Whether the First Instance Division erred in law by treating the Supreme Court of Kenya as a Court of First Instance thereby misapplying the principles on which time starts to run for purposes of computing the limitation of time;
4. Whether the Respondent was entitled to remedies granted by the First Instance Division of the Court.

Summary of the Judgement

The East Africa Court of Justice First Instance Division rendered its judgement on 30th November 2020. The Court ruled and declared that the Republic of Kenya violated Martha Karua's right to access justice through its judicial organs (Supreme Court) acts and/or omissions. The EACJ held that Kenya violated its commitment to the fundamental and operational principles of the EAC, specifically the principle of rule of law guaranteed under Article 6(d) and 7(2) of the EAC Treaty. It issued compensation in general damages of USD 25,000 to the applicant at a simple interest rate of 6% per annum. This was a momentous decision for the court and a big victory for Hon. Martha Karua had lost all her attempts to find justice in this case since 2017 when the case was first instituted at the High Court of Kenya sitting at Kerugoya. The case has proved to be significant for the human rights jurisprudence of the EACJ, as it is the first human rights-oriented case where general monetary damages have been granted and not just declaratory orders.

Hon Martha Karua was a candidate for Governor the Kirinyaga County in Kenya's 2017 elections. She lost to Hon Anne Mumbi Waiguru (the first intervener) in the case. She filed an election petition in 2017 in the Court of Kenya at Kerugoya challenging Hon Waiguru's win. This petition was struck out for the non-fulfilment of the technical requirement under rule 8(1) of the Elections (Parliamentary and County Elections) Petition Rules, 2017 which requires election petitions to state the date of the declaration of results of the election. Martha Karua then successfully appealed this decision to the Court of Appeal in Nyeri which allowed the appeal and remitted the case back to the High Court to be determined on its merits. The High Court dismissed the case again on another technicality: the six months for the determination of electoral petitions under sec 75(2) of the Kenyan Elections Act, 2011 had elapsed. This position was later upheld by the Court of Appeal and the Supreme Court which is the highest court in Kenya. So, Hon. Martha Karua lost all her cases at the domestic level without ever being heard on the merits. The cases were decided on procedural technicalities on the reasoning that some referred to as formalistic and mechanical. The First Instance issued a judgment in favour of the Respondent and awarded the Respondent costs of the litigation and damages.

The Attorney General of Kenya was dissatisfied by the said decision and filed an appeal to the Appellate Division of the Court alleging among other grounds that the Trial court erred in law by exercising Appellate jurisdiction against the apex Court of Kenya, a jurisdiction it does not possess and further that it also entertained matters of human rights a jurisdiction the Court does not have so far.

The Appellate Division of the Court dismissed the Appeal and upheld the judgment of the Trial Court stating while it is true that the Court does not have appellate jurisdiction over decisions of domestic Courts of Partner States it does have powers to interrogate whether a particular domestic law as applied by National Courts violated the Treaty or otherwise.

On the issue of exercising human rights jurisdiction the Court, citing its previous decisions stated that the Court is empowered by the jurisdiction to ensure adherence to law in the interpretation and application of and compliance with any and each provision of the EAC Treaty, including allegations for breach of Article 6(d) and 7 (2) regardless of the nature of the allegations.

The Court dismissed the Appeal with Costs and upheld the decision of the First Instance Division.

4.2.2 THE ATTORNEY GENERAL OF THE REPUBLIC OF BURUNDI V. NIYONGABO THEODORE & ANOTHER

Case Number:	Application No. 6 of 2022
Respondent:	Niyongabo Theodore & Another
Complainant:	The Attorney General of the Republic of Burundi
Date filed:	2022
Countries:	Burundi
Date of Judgment:	11th May 2022

Issues for Determination

The two Appellants together with one other person filed a Reference before the East African Court of Justice alleging that the decision of the Tribunal Grande Instance of Muha of annulling their certificates of the title without assigning reasons thereof and not following the special

procedure as spelt by Burundian law was a violation by the Respondent State of the principle of the rule of law and human and people's rights under various Articles of the Treaty for the Establishment of the East African Community, The Common Market Protocol and the African Charter of Human and Peoples Rights, and the East African Court of Justice Rules.

The First Instance division dismissed the Reference among other grounds on the ground that the Applicants had failed to discharge the burden of proof that would fault the Respondent State.

Summary of the Judgment

Dissatisfied with the decision the Appellants appealed to the Appellate Division on among other grounds that the Trial Court committed a procedural irregularity by failing to exercise its inherent powers to seek information that was vital to base on its judgment, holding that the Appellants did not provide sufficient proof for the alleged violations, questioning suo motu the veracity of the appellant's assertions and that it also committed an error of law by failing to recognise the Appellants as bonafide purchasers of value without notice.

The Appellate Division of the Court agreed with the Appellants that because of the special requirements under Burundian law the Trial Court ought to have sought information from the parties which in the end formed a basis of its judgment.

The Appellate Division agreed with the Appellants that indeed the Trial Court had committed an error of law by raising an issue and basing part of its determination on it without affording the Appellants a chance to submit it.

On the issue of bona fide purchaser without notice, the Appellate Division ruled that even though this principle is not enshrined in Burundian law, it is however a principle with universal application and the Trial Court committed an error of law by not recognizing the Appellants as such.

The Court allowed the Appeal to award the Appellants monetary damages and Costs of the litigation in both divisions of the Court.

The Judge President of the East African Court of Justice, Justice Nestor Kayobera (front photo, third right) in a group photo with participants at the Media Training workshop convened by the regional court in Kampala, Uganda. Also in the photo are (from left) Ms. Joyce Abala of GiZ, EACJ Deputy Registrar Christine Mutimura, legal scholar Dr. Henry Onoria, East African Law Society President Bernard Oundo and Ms. Veronica Kayaga of Radio One, Kampala.



CHAPTER 5:

REPORT OF THE COURT



5.0 REPORT OF THE COURT

5.1 Report of The First Instance Division of the Court

The Court session of the 1st Instance Division are convened quarterly with the past year's sessions held as follows:

- 8th to 26th November 2021.
- 2nd March 2022 to 8th April 2022
- 26th May 2022 to 24th June 2022
- 1st September 2022 to 30th September 2022

During the sessions by the First Instance Division **66** matters were adjudicated on, this comprised of **35** References, **5** Claims and **26** Applications. The Division delivered **17 Judgments** and **8 Rulings**

Matters Adjudicated: First Instance Division

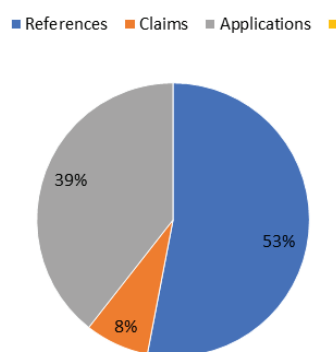


Figure 1: Matters Adjudicated in the First Instance Division

5.1.1 The mandate of the 1st Instance

The 1st Instance Division is one of the Divisions of the EACJ whose mandate is to ensure adherence to law in the interpretation and application of and compliance with the Treaty.

The Principal Judge is a resident Judge, while the remaining five judges work on an ad hoc basis. The ad-hoc nature of the Court has largely contributed to backlogs, especially now that the number of cases filed has considerably increased.

5.1.2 Judges of the 1st Instance Division

The Division is headed by the Principal Judge Hon. Justice Yohane B. Masara is responsible for the performance of the functions of the First Instance Division. He is deputised by the Deputy Principal Judge, Hon. Justice Charles O. Nyawello.

The Division comprises six (6) Judges; namely, the Principal Judge, the Deputy Principal Judge and four (4) other Judges, all from five of the EAC Partner States. South Sudan and DRC have no representation at the EACJ as of the reporting period.

5.2 Report of The Appellate Division of the Court



The Appellate Division has undertaken the following sessions from November 2021 to 30th September 2022;

- a. 8th to 26th November 2021.
- b. 8th to 28th February 2022.
- c. 9th to 31st May 2022.
- d. 8th to 31st August 2022.

The table below shows the performance of the court with respect to determination of cases within the reporting period.

Time Frame	No. of Cases filed	No. of Cases Pending	Percentage of Cases Determined
November 2021 – October 2022	7	2	71%

Table 1: Performance of Appellate Court. Source: EACJ Official Website Statistical Computation

With regards to the rulings made:

Time Frame	Total Number of Cases Before the Court	No. of Rulings Made	No. of Cases Pending (Excluding cases filed after November 2021)	Variance Rate
November 2021 – October 2022	24	14	8	58%

Table 2: Rulings made by EACJ Appellate Court. Source: EACJ Official Website Statistical Computation

5.2.1 The mandate of the Appellate Division

The President's office is held on a rotational basis, for a one-year term. The President is the head of the Court. He is responsible for

- the administration and supervision of the Court;
- directs work for the Appellate Division;
- represents the court;
- regulates the disposition of matters brought before the Court;
- presides over its sessions.

The Appellate Division, whose decision is final, hears appeals from the First Instance Division on point of law, procedural irregularity and lack of jurisdiction.

5.2.2 Judges of the Appellate Division

The Summit of the EAC Heads of States designates two Judges of the Appellate Division as the President (Hon. Mr. Justice Nestor Kayobera) and Vice – President (Hon. Lady Justice Sauda Mjasiri) respectively, with the responsibility to perform such functions as set out in the Treaty for the Establishment of the East African Community, 1999. The President and Vice-President, are not supposed to be nationals of the same Partner State.

The Appellate Division is composed of five Judges, one each from the Republics of Rwanda, Burundi, Kenya, Uganda and the United Republic of Tanzania. Until the treaty is amended, the Republic of South Sudan and the Democratic Republic of Congo cannot recommend a Judge to the Appellate Division

5.3 The Report of the Registry

5.3.1 The Registry

5.3.1.1 The Sub- Registries

5.3.1.1.1 Introduction

The Court established Sub-Registries in the partner states' capital cities to bring justice closer to the people.

A senior judicial officer of the National court oversees the Court Clerks who work in each sub-registry and handle cases for both Divisions.

Cases are received and filed in the sub-registries and instantly sent to the Main Registry via an electronic case management system.

The expense of litigants travelling to Arusha to file matters and complete other procedures has decreased due to the sub-registries. Parties to a case only travel to Arusha for case hearings.

5.3.1.1.2 Report from the Bujumbura Sub-Registry

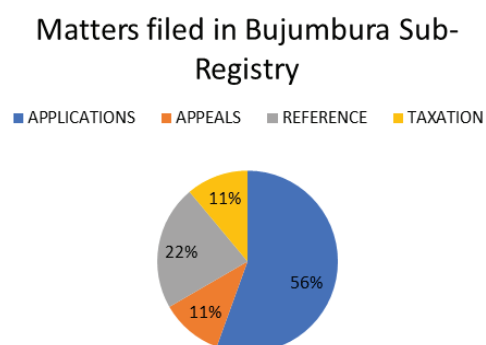


Figure 2: Matters Filed in Bujumbura Sub-REgistry

5.3.1.1.3 Report from the Dar -es-salaam Sub- Registry

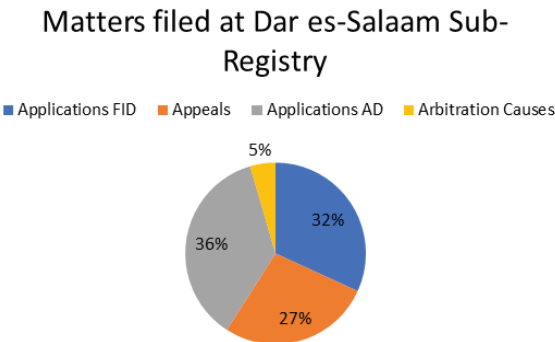


Figure 3: Matters filed at Dar es-Salaam Sub-Registry

5.3.1.1.4 Report from the Kampala Sub Registry

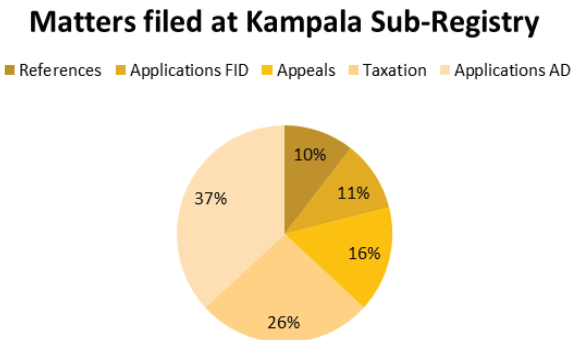


Figure 4: Matters Filed at Kampala Sub-Registry

5.3.1.1.5 Report from the Kigali Sub Registry

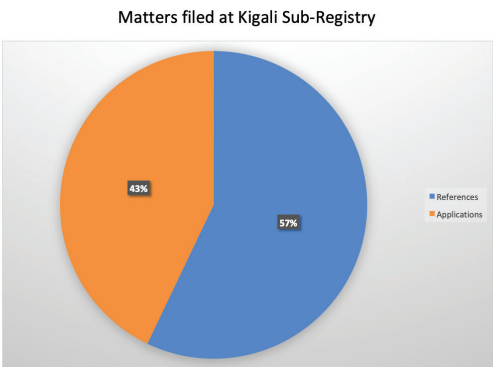


Figure 5: Matters Filed at Rwanda Sub-Registry

5.3.1.1.6 Report from the Nairobi Sub-Registry

Matters filed at Nairobi Sub-Registry

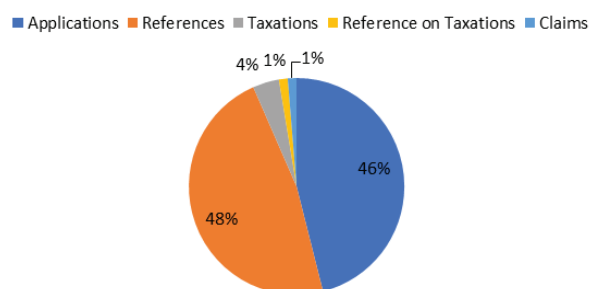


Figure 6: Matters Filed at Nairobi Sub-Registry

5.3.2 Finance and Administration Matters

The Court's operational budget is funded by Partner States' contributions. A few activities such as capacity building have been supported by the Court's development partners.

During this reporting period, the EAC Council of Ministers approved an annual budget of USD 3,791,723.00 out of which, the Court received USD 2,919,627 as remittance from the Partner States. This was a drop in budgetary allocation as compared to the previous year in which, the approved budget was USD 3,970,406.00 for the activities of the EAC Organs and Institutions.

The analysis below contains a summary of the approved budget versus the actual amount received over the last three Financial Years which shows a steady decline in budget allocation and the funds received over the years.

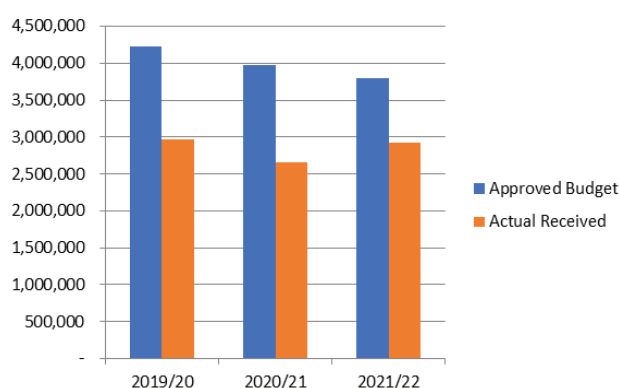


Figure 7: Summary of the Approved Budget versus the Actual Amount Received

The inadequate financing for Court operations and untimely disbursement of funds have led to delays in the implementation of planned activities thus impacting negatively the delivery of service.

5.3.3 Human Resource Matters

Judges of the Court

During the reporting period, the terms of the following two judges came to an end:

- i. Hon. Justice Audace Ngiye, from the Republic of Burundi was a Judge of the Court, in the 1st Instance Division from 2015 to 2022. He also served as the Deputy Principal Judge of the Court;
- ii. Hon. Justice Geoffrey Kiryabwire, from the Republic of Uganda was a Judge of the Court, in the Appellate Divisions from 2015 to 2022. He also served as the Vice President of the Court.



Hon. Justice Cheborion Barishaki appointed Judge of the Appellate Division from the Republic of Uganda, being sworn in.



Hon. Justice Dr. Leonard Gacuko appointed Judge of the First Instance Division from the Republic of Burundi, being sworn in.

Consequently the 22nd Summit of EAC Heads of State designated Hon. Justice Dr. Charles Nyawello as Deputy Principal Judge and Hon. Lady Justice Sauda Mjasiri as Vice-President of the Court.

The 22nd Summit of EAC Heads of State also appointed the following Judges:

- i. Hon. Justice Dr. Leonard Gacuko, from the Republic of Burundi was appointed Judge in the 1st Instance Division. He is also a serving Judge of the COMESA Court Justice. His term is for a duration of seven years, non-renewable.
- ii. Hon. Justice Cheborion Barishaki, from the Republic of Uganda was appointed Judge in the Appellate Division. His is also a serving Judge of the Court of Appeal of Uganda His term is for a duration of seven years, non-renewable.

Registry Staff

During the reporting period, Registrar of the Court, His Worship Yufnalis Okubo retired from the service of the Court. The Council of Ministers is yet to recruit a new Registrar.

The Network Administrator, Mr. Arnauld Gahimbare also resigned from his position to take on a more senior position in one of the Institutions of the Community.

The 47th Extra-ordinary Meeting of the EAC Council of Ministers appointed the following staff of the Registry:

- i. Her Worship Christine Mutimura as the Deputy Registrar, who took her oath of office on 6th May, 2022;
- ii. Mr. Ferdinand Nakintje as the Court Administration;
- iii. Ms. Nina Sokoine as the Personal Assistant to the President of the Court;
- iv. Ms. Betty Nankya as the Senior Personal Secretary to the President;
- v. Ms. Dorcas Onyiso as the Senior Personal Secretary to the Principal Judge; and
- vi. Ms. Mildred Atieno Ongany as the Secretary to the Registrar.

5.3.4 The Court and Technology

EACJ embarked on an ambitious journey to use ICT in the administration of justice as part of its vision to be “a world class Court dispensing quality justice for a united, prosperous community”.

The Court has put in place a **Case Management and Recording System (CMRS)** that is designed to facilitate the following:-

- i. Electronic filling of cases by litigants and their advocates to file cases without necessitating travel to the registries;
- ii. The electronic management of cases from their initiation to its finalization. This allows Courts Registries to share e-files in real time;
- iii. Audio and visual recording of Court’s sessions. The court recording systems captures, produces, delivers and stored the digital verbatim record of court proceedings. The recordings can be availed to the Court’s stakeholders on demand to the Registrar within 24 hours.
- iv. Live streaming of Court’s proceedings.

5.3.4.1 The EACJ Information Communication and Technology (ICT) Strategic Plan 2022-2026

The East African Court of Justice (EACJ) with the support from the Partnership fund, developed and adopted in November, 2021 its ICT Strategic Plan for the period 2022 – 2026.

The EACJ ICT Strategic Plan recognises that the Court will use ICT as an enabler in its duty of dispensing quality justice to the citizens and residents of the East African Community (EAC).

The Strategic Plan seeks to support the Court in applying ICT as a tool in the dispensation of justice through the following focus areas and Goals:

Focus Area		Goals
1.	ICT Governance	ICT Environment that is compliant with Leading International digital court standards, ICT Standards, Internal policies and procedures, cyber laws and Supporting the Organisational Objectives
2.	Operational Efficiency	Operational Efficiency through continuous Business Improvements and Innovations
3.	ICT infrastructure	Efficient and Effective ICT Infrastructure.
4.	Stakeholder Experience	Enhanced stakeholders' experience, organisational corporate image and visibility through ICT

Figure 8: EACJ ICT Focus Areas and Goals

For integral realisation of the ICT Strategic plan, the Court undertook the following activities in the past year.

Funding for ICT initiatives remains one of the key constraints of the Court. This is due to limited resources as well as inadequate justification in existing business cases for ICT investments. The ICT Strategy will be used to properly articulate ICT investment propositions to internal and external stakeholders as well as to optimise and unlock the value in existing ICT investments.

In implementing the ICT Strategic Plan, the Court has seen an increased coverage and reach to the East African residents through e-filing of pleading and submissions and established formal ICT disaster recovery plans.

Some of the challenges encountered in realizing the Court’s ICT goals, include:

- i. The current ICT environment exposes the Court to cyber and privacy threats and attacks;
- ii. The Court highly depends on the digital records for recording Court cases and files. Currently there are no adequate measures to digitally classify and secure electronic records;
- iii. There are no service level agreements to manage and support the hosting of ICT infrastructure;
- iv. The current ICT structure presents capacity gaps to effectively support the EACJ;
- v. High dependency on the EAC Secretariat for ICT infrastructure support continues to present challenges to the court in the advent of limited infrastructure resources.
- vi. Limited funding to support ICT initiatives within the EACJ; and
- vii. Limited capacity of the Court to deliver justice using ICT.

5.3.4.2 The EACJ Web portal

The Courts Web-based platform (www.eacj.org) is the single point of accessing information on the Court by interested parties. This has enabled local, regional and global web users access a variety of information like: Cause Lists, briefs on forthcoming cases, case rulings, judgments as well as press releases and news on activities of the court.

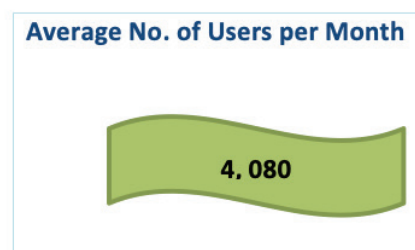
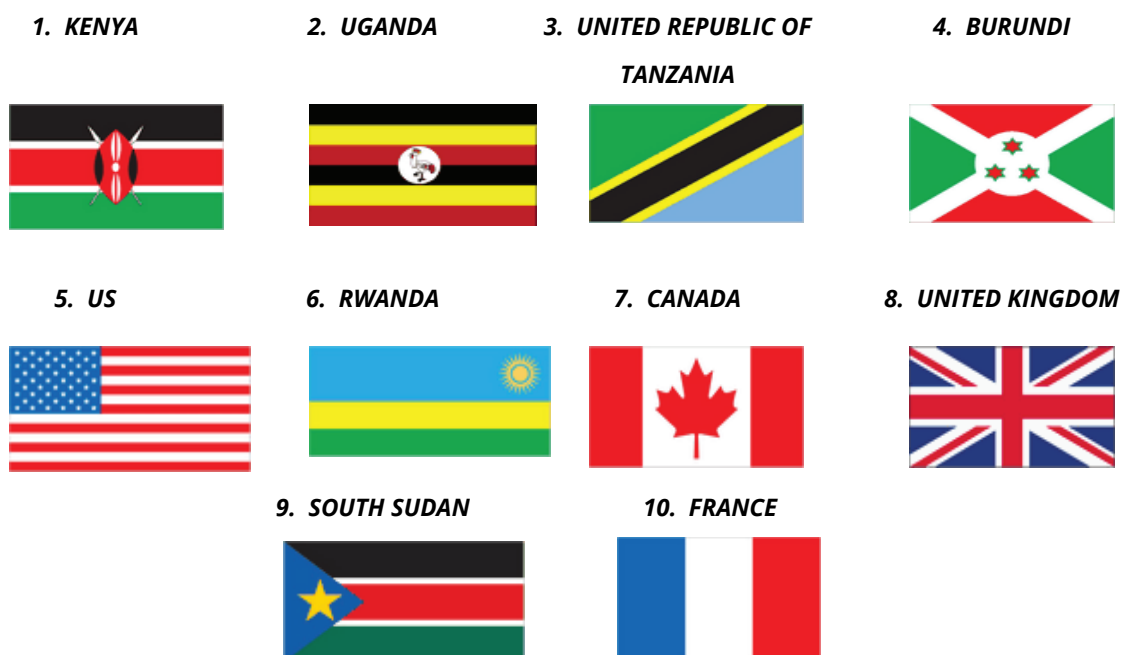


Figure 9: Traffic on the EACJ web-based platform

Countries with the highest traffic to the East African Court of Justice Website



5.3.5 Engagements with Stakeholders

5.3.5.1 Engagements with other Courts

5.3.5.1.1 African Court on Human and Peoples' Rights

The President paid a courtesy call to Lady Justice Imani Daud Aboud, President of the African Court on Human and Peoples Rights on 12th April 2022, in Arusha, Tanzania to share experience and promote working relations under the Memorandum of Understanding. It was agreed that the Courts would make efforts to undertake joint activities and programmes aimed at improving and strengthening their collaboration.

5.3.5.1.2 International Residual Mechanisms for Criminal Tribunals (IRMCT)

The Judges of the Appellate Division led by President of the Court Justice Nestor Kayobera paid a courtesy call to the President of the United Nations-IRMCT, Justice Carmel Agius to learn from the Mechanism and promote good working relations.

The Mechanism was established by the UN- Security Council to carry out the functions of the former International Criminal Tribunal for Rwanda (ICTR) & International Criminal Tribunal for Yugoslavia (ICTY) following their closure in 2015 & 2017 respectively.

The two courts shared experiences on the progress made on digitization of court processes and information resources. It was agreed that collaboration between the courts be enhanced.

5.3.5.2 Engagements with Development Partners

5.3.5.2.1 United Nations Educational, Scientific and Cultural Organisation (UNESCO)

In December 2021, UNESCO, a specialised agency of the United Nations, entered into a Memorandum of Understanding with the Court as a framework for their collaboration in the development of joint activities aimed at strengthening freedom of expression, public access to information, the safety of Journalists, rule of law and the protection of human rights and strengthen jurisprudence data bases.

Further, UNESCO convened a joint specialized training of Judges of EACJ and the Judiciary of from 19-23 September 2022 Tanzania in Arusha. The aim was to share knowledge on international and regional standards on freedom of expression, access to information and safety of journalists and how these norms can be used by national and regional Courts.

UNESCO in its support to the 2nd Annual EACJ Judicial Conference which took place on 26th - 28th October, 2022, funded the High- Level Training for Judges of the East African Court of Justice and the Judiciary of Uganda on international and regional standards on freedom of expression, access to information, safety of journalists and digital challenges related to the internet. It also supported the Regional Media Trainid for Editors and Reporters on the East African Court of Justice. This training was aimed at enhancing the knowledge of Editors and Journalists on the Mandate of the Court and its role in regional integration. These two activities were organised as part of a series of activities leading up to the 2nd Annual East African Court of Justice's Judicial Conference.

5.3.5.2.2 *International Development Law Organisation*

The Regional Manager for Africa, Mr Romauldo Mavenzenge paid a courtesy call on to the Court to discuss possible areas for collaboration. He expressed IDLO's interest in supporting the Court's Annual Judicial Conference and other activities aimed at fostering the rule of law in the region. IDLO was a key funder of the 2nd Annual EACJ Judicial Conference which took place on 26th - 28th October, 2022 in Kampala, Uganda.

5.3.5.2.3 *Konrad Adeneur-Stiftung (KAS)*

The Court hosted a team supported by KAS composed of jurists from the Republic of Kenya, Uganda, Nigeria, Ghana, South Africa, Cameroon, Rwanda, the Democratic Republic of Congo and the United Republic of Tanzania. The focus of discussion was on the mandate, composition, jurisdiction, initiative of the Court to take its services closer to East Africans and the jurisprudence promoting regional integration. KAS was a key funder of the 2nd Annual EACJ Judicial Conference scheduled which took place on 26th - 28th October, 2022

5.3.5.2.4 *The Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH (GIZ)*

Ms Claudia Imwolde – Kraemer, Senior Policy Officer from the Germany Federal Ministry for Economic Cooperation and Development paid a courtesy call on the President of the Court on 5th July, 2022, to discuss on possible areas of collaboration with the Court. The Court shared its vision of widening and deepening intergration through enhancing access to justice in the region

and expressed its appreciation to the GIZ for its support to the Court through their capacity building program. GIZ in its support to the 2nd Annual EACJ Judicial Conference, which took place on 26th -28th October, 2022, funded the Regional Media Training for editors and reporters of the East African Court of Justice. This training was aimed at enhancing the knowledge of Editors and Journalists on the Mandate of the Court and its role in regional integration. This activity was organised as part of a series of activities leading up to the 2nd Annual East African Judicial Conference.

5.3.5.2.5 The Raoul Wallenberg Institute of Human Rights and Humanitarian Law

RWI and the EACJ have had a long standing cooperation, whose objective has been to promote fair and efficient justice and adherence to the rule of law, thereby contributing to strengthened implementation of human rights commitments.

During this period RWI was one of the funders of the 2nd Annual East African Court of Justice Judicial Conference.

Courtesy visits to the Court

- *The Hon Justice Juma H. Ibrahim, the Chief Justice of Tanzania on 11th February, 2022;*
- *The Minister of Justice and Attorney of the Republic of Burundi Hon Domine Banyankimbona, the President of the Supreme Court Hon Emmanuel Gatereste and the Prosecutor General Mr Sylvestre Nyandwi on 25th March 2022;*
- *The Hon. Justice Dustan Mlambo, the President of the International Association of Refugee and Migration Judges, African Chapter on August 15th 2022;*
- *His Excellency Amb. Richard Kabonero, the High Commissioner of Uganda, to the United Republic of Tanzania and Members of the Students' Guild Makerere University Kampala (MUK) on 25th February 2022;*
- *Her Excellency Elisabeth Jacobsen, Ambassador of Norway to United Republic of Tanzania on 25th May 2022;*
- *Her Excellency, Paul Cartier, the Ambassador of Belgium on 11th May, 2022;*
- *Mr. Bion N. Bliss, the Deputy Political and Economic Chief of the US Embassy in Dar es Salaam Tanzania on 26th August 2022;*
- *Ms Claudia Imwolde – Kraemer, Senior Policy Officer from the Germany Federal Ministry for Economic Cooperation and Development, 5th July, 2022;*
- *Members of the Kenya Mediation Accreditation Committee (MAC) on 30th March 2022;*
- *Members of the Parliamentary Committee on Regional Integration of the National Assembly of Kenya on 6th April 2022;*
- *Members of Pan African Parliament - Uganda Chapter On 17th May 2022;*
- *Members of the Parliamentary Budget and EAC Affairs Committees of the National Assembly of Uganda on 18th May, 2022;*
- *Journalists from all Media Houses in Tanzania on 17th June 2022;*
- *Members of the Executive Council of the East African Magistrates and Judges Association on 3-4 October 2022*

5.3.6 Conferences

5.3.6.1 *The First Tripartite Judicial Dialogue between Regional and Sub-regional Courts in Africa*



The Judicial Dialogue between Regional and Sub-regional Courts in Africa took place in Zanzibar, United Republic of Tanzania from 27- 29 June 2022. The Tripartite Dialogue drew participants from the EACJ, the African Court on Human and Peoples' Rights (AfCHPR) and the ECOWAS Court of Justice (CCJ), representatives of partner institution and members of the academia.

The main objective of the Dialogue was to discuss issues of common interest, including the challenges faced by the Courts and how to strengthen cooperation among them.

The Regional Dialogue was official opened by H.E Dr Hussein Ali Mwinyi, President of the Revolutionary Government of Zanzibar, who urged the Courts to consolidate their cooperation so as to strengthen the African Human Rights system as conceived by the African Union, EAC and ECOWAS.

By the end of the dialogue the three Courts agreed to promote and strengthen the contextualisation of human rights standards and their implementation. The courts also recommended holding similar bi-annual dialogues and regular jurisprudential and procedural exchange between international, regional and sub-regional courts.

5.3.6.2 The 9th East Africa International Arbitration Conference



The conference which took place along the fringes of the Commonwealth Heads of Government meeting in June 2022, in Kigali, Rwanda, considered various topical issues ranging from trends in government related arbitration in Africa, lessons in contracting and arbitration from global uncertainty and the pandemic as well as Africa's place in the progress of arbitration practice. The Court was represented by the President and a Judge of the Appellate Division. The President took the opportunity to publicize the Court's jurisdiction in arbitration matters, the unique advantages and cost-effective services offered to litigants as compared to services offered by private arbitration centers.

5.3.6.3 The Commonwealth Judges & Magistrates Association (CMJA) 19th Triannual Conference

The conference was held in Accra, Ghana from 4-9 September 2022 under the theme "Access to Justice in a Modern World". The aim was to promote better understanding of judicial independence amongst Judicial officers of all ranks and from all parts of the Commonwealths. It also aimed at promoting greater awareness of International Treaties and Laws relating to the development of access to justice.

The President, Judges of the Court and the Deputy Registrar were in attendance to exchange knowledge with their counterparts.

5.3.7 Other activities that Court participated in

5.3.7.1 *Delegation of Heads of EAC Organs and Institutions and eminent leaders to the Democratic Republic of Congo (DRC)*



The Principal Judge of the East African Court of Justice, Hon. Justice Yohane Masara was part of a delegation of the Heads of EAC Organs and Institutions and eminent regional business leaders, to the bloc's newest Partner State, the Democratic Republic of the Congo (DRC) from 6th September to 9th September, 2022.

The EAC maiden mission to Kinshasa aimed at enhancing awareness among DRC government officials on the existing EAC instruments, create trade synergies, explore and build business partnerships and immediate linkages for business associations. The 4-day mission kicked off with a two-day forum amongst DRC Government officials and the EAC Secretariat, the East African Legislative Assembly (EALA) and the East African Court of Justice (EACJ) as well as the eight institutions of the Community.

The forum provided a platform for heads of EAC Organs and Institutions to enhance awareness and understanding of the various commitments in the integration pillars and the governing instruments that are in place at the EAC level, to DRC government officials. The Principal Judge used this opportunity to highlight the Courts mandate and its vision, and also gave guidance on the appointment of a Judge to the East African Court of Justice.

CHAPTER 6:

CHALLENGES OF THE COURT



6 CHALLENGES OF THE COURT

The Court has earned a reputation as an institution that could be trusted as a neutral arbiter in disputes brought by a wide range of stakeholders; the public, private sector, civil society, Partner States and EAC Organs and Institutions.

However, the Court faces the following challenges;

- i. The service of the Judges of the Court continues to be ad hoc and only the President and the Principal Judge are based in Arusha. The Judges have to undertake their duties at their capitals as well as at the EACJ. This has led to an increase in case backlog.
- ii. Visibility of the Court continues to be a challenge and requires increase awareness creation or sensitization.
- iii. The Court depends on Partner States contributions, the continued delay on disbursements has affected Court's ability to carry out its activities.
- iv. The Court lacks Administrative and financial autonomy due to delay in the enactment of the Administration of Justice Bill, 2016.

*H.E Yoweri Kaguta Museveni,
President of the Republic of Uganda
with EACJ Judges, Chief Justices of
EAC Partner States, Ministers, and
EAC Secretary General at the 2nd EACJ
Judicial Conference*



CHAPTER 7:

ACHIEVEMENTS OF THE COURT



7 ACHIEVEMENTS OF THE COURT

7.1 20th Anniversary Celebrations

The Court commemorated 20 years of its existence in November 2021. To mark this milestone, a series of activities bringing together diverse stakeholders to deliberate and reflect on the journey undertaken by the Court from 2001 to 2021.

As part of the celebrations, a Judicial Symposium was held on 4-5 November 2021 in Bujumbura, Burundi under theme of *“EACJ @20: Upholding the Rule of Law in the integration agenda towards the EAC we want”*

The following are some of the recommendations:

1. The need to conduct more Sessions especially on hearing of urgent matters;
2. For effective virtual court investment in equipment, infrastructure and training in-house in the Court and the Bar and Court-users;
3. Upgrade the Sub - registries into quasi- regional courts where Judges can sit physically to hear and determine case;

4. Implement virtual arbitration to increase accessibility and cut costs while also ensuring quality control;
5. Assess the EACJ dispute resolution awareness of small and medium traders and reasons for their hesitancy in litigating against governments in cross border trade-related disputes;
6. Amend the Treaty to give the EAC Secretary General more effective discretion to bring Partner States before the Court when they breach the Treaty;
7. Take the lead in the establishment of an East African Law Development Centre for practical training on all aspects of advocacy before the Court;
8. Establish an East African Judicial Service Commission in the future to appoint and discipline judges

7.2 Annual Rotation of the Court's November Sessions held in Bujumbura, Burundi

In November 2021, the Court successfully conducted its first annual rotational session at the Supreme Court of Burundi in Bujumbura from 8th-26th November 2021. The aim of the annual rotation of the Court is to enhance visibility and bring the Courts services closer to East Africans.

The success of this session was a result of cooperation between various Ministries, Agencies and Judiciary of Burundi and the court commends all of them for their support.

In November 2022 the commercial court of

Uganda at Kampala shall host the November session of the EACJ.

Transcribing Success

During the rotational Court session in November 2021 in Bujumbura, there was smooth running of the transcribing unit in executing its mandate normally. Digitalization of the transcription unit has enabled it to work remotely.

7.3 Launch of the Revised Mid-Term Strategic Plan 2018-2023

The revised mid-term strategic plan was launched on the 5th November 2021 in Bujumbura Burundi by the Vice President of Burundi who was the chief guest representing the President of Burundi.

The plan sets out the strategic direction of the court and guides the management of the court to ensure that resources are utilized efficiently and effectively. By this plan, the court reaffirms its dedication to the development of EAC through support of the integration process, promotion of rule of law and development of regional jurisprudence.

The overall strategy of the court is to dispense quality justice.

The strategic goals of the Court are:

- i. institutionalisation of the Court,
- ii. design of the Court under the Treaty;

- iii. appreciation of the Court;
- iv. visibility of the Court;
- v. capacity of the Court;
- vi. information technology.

In achieving its strategic goals, the Court is making effort to strike a balance between the aspect it must adapt and evolve, and the aspects that makes it distinctive.

7.4 East African Court of Justice Law Report (EACJLR)

The third volume of the Court's law report covering key decisions of cases filed between 2015 and 2017 was launched in Bujumbura on 5th November 2021. Among the decisions reported include: free movement of goods across the region as guaranteed by the EAC Customs Union and Common Market Protocols; the international responsibility attributable to Partner States for conduct of their organs including judicial organs, even the highest Courts; the international responsibilities of the EAC Secretariat; press freedom; employment – related cases. The Court is grateful to the Raoul Wallenberg Institute for supporting the publication of this report.

7.5 The 2nd Annual East African Court of Justice Judicial Conference

The East African Court of Justice convened its 2nd Annual East African Court of Justice Judicial Conference from the 26th – 28th November 2022 at the Mestil Hotel in Kampala, Uganda. The

conference whose theme was “Transforming access to justice in the EAC” brought together Chief Justices and Judges from the National and Regional Courts of Judicature, Legal Practitioners, Representatives of Civil Society Organizations, Academia and the Private Sector.

Also in attendance were the Chairperson of the EAC Council of Ministers, the Rt. Hon 1st Deputy Prime Minister and EAC Affairs, the Minister of Justice, the Attorney General and former Judges of the East African Court of Justice.

The Objective of the Conference was to stimulate high-level conversations and discussion on current and emerging legal and judicial issues between judges, court users and academia in the EAC.

His Excellency the President of the Republic of Uganda who officially closed the Conference, urged the East African Court of Justice and the National Judiciaries to do more to support regional integration.

The Conference made a number of resolutions which include:

- i. The EACJ should enhance its visibility in order to educate the public and court users about the Court's role as a judicial arm of the Community and its rules of procedure;
- ii. Capacity development should be a permanent feature of the courts, so as to keep the Judges, staff and court users regularly updated with knowledge of the law and practice before the Court;

- iii. The Courts should introduce translation and sign language services to cure the language barrier faced by court users when interfacing with the Courts and national and regional level;
- iv. Partner States which are yet to ratify the Protocol on Extended Jurisdiction of the EACJ to hear Trade and Investment Matters and the Protocol on Extended Jurisdiction of the EACJ to hear human rights cases are called upon to fast-track the process;
- v. Courts should embrace and continue working towards incorporation of technology in court processes to facilitate improved productivity, streamline case flow, reduce case processing time, and better service delivery; which are all essential to access to justice.
- vi. Alternative Dispute Resolution (ADR) should be made an integral part of the policies aimed at improving access to justice in the region to ensure adequate resourcing to develop and maintain ADR projects. Furthermore, Partner States should create institutions and structures to ensure the administration of ADR; and
- vii. Judiciaries including the EACJ should be given a self-accounting status to enable their budgetary independence to exercise control over their own funds and apply these funds in accordance with their own priorities for a better administration of Justice.

The 3rd Annual East African Court of Justice Judicial Conference is expected to take place in October, 2023 in Kigali, Rwanda

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