IN THE EAST AFRICAN COURT OF JUSTICE

APPELLATE DIVISION AT ARUSHA

(Coram: Nestor Kayobera, P.; Sauda Mjasiri, VP.;
Anita Mugeni; Kathurima M'Inoti; Cheborion Barishaki, JJ.A)

APPEAL NO. 5 OF 2022

BETWEEN

THE ATTORNEY GENERAL OF THE UNITED REPUBLIC OF TANZANIA.....APPELLANT

VERSUS

FREEMAN MBOWE.....1ST RESPONDENT

ZITTO Z. KABWE.....2ND RESPONDENT

HASHIMU RUNGWE.....3RD RESPONDENT

SALUM MWALIMU.....4TH RESPONDENT

LEGAL AND HUMAN RIGHTS CENTRE.....5TH RESPONDENT

[Appeal from the Judgment of the First Instance Division of the East African Court of Justice at Arusha by Yohane Masara, PJ.; Audace Ngiye, DPJ; Dr. Charles Nyawello, Charles Nyachae and Richard W. Wejuli , JJ. dated 25th March, 2022 in Consolidated References No. 3 & 4 of 2019].

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JUDGMENT OF THE COURT

A. INTRODUCTION

1. This is an Appeal brought before this Appellate Division of the East African Court of Justice (EACJ) by the Attorney General of the United Republic of Tanzania (the "Appellant") against the Judgment of the First Instance Division of this Court ("the Trial Court"), arising out of Consolidated References Nos. 3 & 4 of 2019 dated 25th March 2022 in which Freeman Mbowe and others (the "Respondents"), were partly successful.

2. Being aggrieved by the judgment of the Trial Court, on 22 December 2022, the Appellant filed Appeal No. 5 of 2022 requesting this Court to reverse part of the Judgment of the Trial Court and declare the provisions of sections 3, 4, 5, 9, 15, and 29 of the Political Parties (Amendments) Act are justifiable and consistent with the Treaty for the Establishment of the East African Community ("the Treaty").

3. The Appellant is a State Party to the Treaty and is represented in this Appeal by Mr. Hangi Chang'a, Principal State Attorney, Ms. Vivian Method, Senior State Attorney; and Mr. Samagi Johannes, State Attorney.

4. The Respondents are natural persons and residents of the United Republic of Tanzania. They are leaders and members of various political

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parties in the Appellant state. In this Appeal the Respondents are represented by Mr. Fulgence Massawe, Advocate.

B. BACKGROUND

5. The background to this Appeal as gleaned from the Memorandum and Record of appeal is as follows.

6. In the consolidated Reference No. 3 & 4 of 2019, the basis of the dispute between the parties was the decision of the Appellant to amend the Political Parties Act No.1 of 2019 (herein referred to as the Act).

7. It was the allegation of the Respondents that some of the provisions of the Act as amended were tainted with unjustifiable restrictions of democracy, good governance, and freedom of association which are fundamental and operational principles of the Treaty.

8. It was further alleged that such restrictions violated Articles 6(d), 7(2), and 8(1) (c) of the Treaty.

9. Under the Reference, the Appellant, the then Respondent in the Trial Court opposed the Statement of Reference on the basis that, the Act was enacted to promote institutionalized, intra-party democracy, political and financial accountability in conformity with the Constitution of the United Republic of Tanzania,1977, the Treaty and other International Human Rights Instruments.

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10. The decision to enact the Act was inspired by the deterioration of intra-party democracy and the abuse of freedom of expression and association, among others. Therefore, the enactment of the Act was consistent with the principles of good governance, transparency, accountability, and democracy as stated in Articles 6(d), 7(2), and 8(1)(c) of the Treaty.

C. THE REFERENCE

11. In the Trial Court, the 1st to 5th Respondents lodged Reference No. 3 of 2019 while the 6th Respondent filed Reference No. 4 of 2019. At the hearing the parties agreed, with the approval of the Court, that the two References be consolidated and heard together. Therefore, the term "Reference" refers to the consolidated References.

12. The Reference by the Respondents challenged the Political Parties (Amendment) Act No.1 of 2019, which was enacted by the Parliament of the United Republic of Tanzania on January 29, 2019, assented to by the President of the United Republic of Tanzania on February 13, 2019, and officially gazetted in the Government Gazette on February 22, 2019.

13. The Reference was supported by Affidavits of all the Respondents and invited the Trial Court to scrutinize the provisions of sections 3(5)(b),(e),(f) 5A (1), (2), (3), (4), (5) and (6), 5B (1), (2), (3) and (4), 6A (5), 6B (a), 8C (2), (3) and (4), 8E (1), (2), (3), 11 A (2), (3), (4) and (5), 23, 21D, 21E of the impugned Act which they alleged were in violation of Articles 6(d), 7(2),and 8(1)(c) of the Treaty.

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14. The amendments to the Act provide for powers of the Registrar, including the power to demand information from political parties, regulation of civic education and capacity building training, formation of political parties, qualification of people applying for registration of political parties, restriction of membership, contents of political parties' constitutions, coalition of political parties, offences and penalties.

15. On 18th June 2019, the Appellant challenged the Reference by filing a Response to the Reference supported by affidavits and a notice of Preliminary Objection.

16. The Appellant maintained that the impugned Act was enacted to promote institutionalism, inter-party democracy, political and financial accountability, which are key tenets of democracy, rule of law, and good governance recognized by the Constitution of the United Republic of Tanzania, 1977, the Treaty, and other international human rights instruments to which the Respondent is a party.

17. On 9th September 2019, the matter came for Scheduling Conference via video conference and parties agreed on the following issues for determination by the Trial Court: -

    i. whether the Court has jurisdiction to entertain the Reference;
    ii. whether the cited provisions of the impugned Act are in violation of the Treaty; and
    iii. to what relief are parties entitled?

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18. Having considered the pleadings and submissions from both parties, in relation to Issue No. 1 on whether the Trial Court has jurisdiction to hear and determine the Reference, the Trial Court held that it had jurisdiction to hear and determine any Reference in which violation of the Treaty is alleged.

19. In relation to Issue No. 2 on whether the impugned sections of the Political Parties (Amendment) Act No. 1 of 2019 is in violation of Article 6(d), 7(2), and 8(1)(c) of the Treaty, the Trial Court found that certain sections of the impugned Act failed the three-tier test, namely sections 3, 4, 5, 9, 15, and 29 are in violation of the Treaty. Consequently, the Respondents partly succeeded in their case. Therefore, the Appellant was ordered to take the necessary measures to bring the said Political Parties (Amendment) Act No. 1 of 2019 into conformity with the Treaty.

20. Regarding Issue No. 3 on what reliefs are the parties entitled to, the Trial Court ordered that, taking into account the nature of the case, each party bears its own costs.

THE APPEAL

21. Being dissatisfied with the judgment of the Trial Court, the Appellant filed an appeal in the Appellate Division based on the following grounds in its Memorandum of Appeal: -

a. that the First Instance Division erred in law for failure to determine whether it has jurisdiction to order for cessation of the Political Parties

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(Amendment) Act No.1 of 2019 as reflected in paragraph 38 of the impugned Judgment;

b. that the First Instance Division erred in law by holding that the provisions of sections 3, 4, 5, 9, 15 and 29 of the Political Parties (Amendment) Act are wide and imprecise based on speculations and unsubstantiated allegations by the Respondents thus holding the above provisions to be in violation of Articles 6(d), 7(2) and 8(1)(c) of the Treaty;

c. that the First Instance Division erred in law in the application of rules of interpretation of statutes by reading the impugned provisions in isolation and not as a whole in apprehension of the mischief they intended to cure;

d. that the First Instance Division erred in law in its Judgment by disregarding the arguments by the Appellant both in oral and written submissions in justification of the enactment of the impugned provisions; and

e. that the First Instance Division erred in law to invoke the three-tier test in absence of evidence by the Respondents that the impugned provisions limit the rights and freedoms before the burden is shifted to the Appellant to justify such limitations.

22. The Appellant asked the Court to allow the Appeal and to grant the following orders: -

1. to revise part of the Judgment and declare the provisions of sections 3, 4, 5, 9, 15 and 29 of the Political Parties (Amendment) Act as justifiable and ~~consistent with the Treaty;~~

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2. to declare that the Respondents failed to prove their case to the standard required for the Court to enter Judgment in their favour; and
3. costs be borne by the Respondents.

D. ISSUES FOR DETERMINATION

23. The following issues were agreed upon by the parties and approved by the Court during the Scheduling Conference which was held on 9th August, 2022: -

i. whether the First Instance Division erred in law by holding that it had jurisdiction to hear and determine the Reference;

ii. whether the First Instance Division erred in law by holding that the provisions of Sections 3,4,5,9,15 and 29 of the Political Parties (Amendment) Act No.1 of 2019 violated Articles 6(d), 7(2) and 8(1)(c) of the Treaty; and

iii. what remedies, if any, are the parties entitled to?

F. PARTIES' SUBMISSIONS AND ARGUMENTS: ISSUE NO. 1

24. For Issue No.1 on whether the Trial Court erred in law by holding that it had jurisdiction to hear and determine the Reference, the Appellant argued that, upon reflection, they do not contest the jurisdiction of the Court. The Appellant therefore applied to abandon issue No. 1.

25. On their part, the Respondents, did not oppose the request by the Appellant to abandon Issue No. 1 on jurisdiction of the Trial Court.

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26. Since both parties agreed to abandon Issue No. 1 on the jurisdiction of the Trial Court to hear and determine the Reference, the jurisdiction of the Trial Court is no longer contested. Accordingly, Issue No. 1 is answered in the negative.

G. PARTIES' SUBMISSIONS AND ARGUMENTS: ISSUE NO. 2.

27. Whether the Trial Court erred in law by holding that the provisions of Sections 3, 4, 5, 9, 15, and 29 of the Political Parties (Amendment) Act No. 1 of 2019 violated Articles 6(d), 7(1) and 8(1)(c) of the Treaty.

APPELLANT'S SUBMISSIONS

28. On Issue No. 2 the Appellant divided its submissions regarding the shortfall of the Trial Court's Judgment into the following five grounds: -

a. burden of proof;

b. shifting of burden of proof;

c. principles of statutory interpretation;

d. apprehension of evidence by the Trial Court; and

e. failure to state reasons for the decision.

a. Error in the law in determining Onus of Proof.

29. The Appellant submitted that it is an elementary principle of law that whoever alleges the existence of a particular fact must prove it. It was the contention of the Respondents that the impugned provisions were wide, unclear, contained unjustifiable restrictions on freedom of association, and violated the principles of democracy and good

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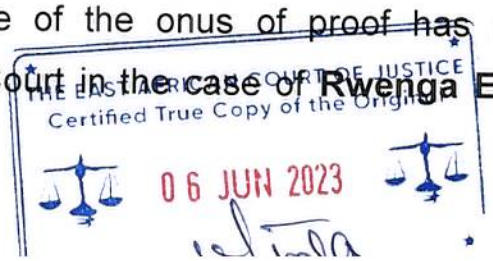
governance. On that account, it was the duty of the Respondents to prove the existence of the said facts.

30. The Appellant averred that it is a settled position of this Court as stated in the case of ***Henry Kyarimpa vs. Attorney General of Uganda,*** Appeal No. 6 of 2014, at page 31 paragraph 71 that:-

> *"It is a cardinal principle of procedure in International Courts that he who asserts must prove. In Shabtai Rosnne: The Law and the Principal of the International Court, 19200-2005, Volume III, Procedure, p.1040 of the general principles of evidence in the International Court of Justice is expressed thus: 'Generally, in the application of the principle actori incumbit probation the court will formally require the party putting forward a claim or a particular contention to establish the elements of fact and of law on which the decision in its favour might be given …'*
>
> As the Court has said 'Ultimately, …. *it is the litigant that seeks to establish a fact who bears the burden of proving it".*

31. Based on the above principle and the allegations made by the Respondents, the Appellant submitted that the Respondents did not discharge their burden of proof.

32. It was the Appellant's contention that mere allegations by the party that the law is wide and ambiguous are not enough. The Appellant submitted that the issue of the onus of proof has previously been addressed by the Trial Court in the case of **Rwenga Etienne & Other**



vs. Secretary General of EAC, Reference No. 7 of 2015, at page 20 paragraph 45, the Trial Court held: -

> *"Courts require the party that raises a claim or advances a particular contention to establish the elements of fact and of law on which the decision in its favour might be given. Ultimately, it is the litigant who seeks to establish a fact who bears the burden of proving it."*

33. It was contended that section 3 of the Act was challenged on account of one of the functions vested in the Registrar of Political Parties. That the said function was stated in section 5(b) which reads "*Without prejudice to subsection (4), the functions of the office of the Registrar shall be to: - monitor intra party elections and nomination process.*"

34. The Appellant contended that throughout its Judgment, the Trial Court based its findings on the mere allegations of the Respondents and disregarded the vital principles of burden of proof and misapplied the three-tier test.

35. To this effect, the Appellant reiterated that this was like putting the cart before the horse, which in turn led the Trial Court to reach an erroneous conclusion.

36. Based on the above arguments, the Appellant prayed this Court to allow the Appeal based on the above criterion.

b. Shifting the burden of proof and application of the three-tier test

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37. The Appellant submitted that in invalidating the impugned provisions, the Trial Court relied on three-tier tests developed in the case of ***CORD vs. The Republic of Kenya & others,*** HC Petition No.2 of 2017, ***and Media Council of Tanzania & 2 Others vs. The Attorney General of the United Republic of Tanzania,*** EACJ, Reference No. 2 of 2017. The tests used were as follows: -

i. *Is the limitation provided by the law? It must be part of the statute and be clear and accessible to citizens so that they are clear about what is prohibited.*

ii. *Is the objective of the law so pressing and substantial? It must be important to the Society; and*

iii. *Has the State, in seeking to achieve its objective, chosen a proportionate way to do so? This is the test of proportionality relative to the objective or purpose it seeks to achieve.*

38. The Appellant submitted that the Respondents were duty-bound to prove each and every allegation they made. That such a burden never shifted until and when it is first discharged by the person alleging.

39. It was the submission of the Appellant that all allegations on clarity of the provision required rules of interpretation of the statute and not the application of the three-tier test which is applicable on limitation of rights. That, the Court is justified to apply the three-tier test after it is proved that the provision in question indeed limits rights. That if a limitation is proved, then the burden to justify such limitation of rights is shifted to the State. In the premises, the Appellant reiterated that when the State

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justifies its limitation, the trial Court will scrutinize such justification in line with the stated test.

40. In support of the above, the Appellant cited the case of ***Julius Ndyanabo vs Attorney General*** *(2004) TLR 14* which was cited and approved in the case of ***Media Council of Tanzania & 2 Others vs. the Attorney General of the United Republic of Tanzania,*** *EACJ, Reference No. 2 of 2017*.

41. Based on the above, the Appellant submitted that the Trial Court had to indicate clearly the set of criteria upon which the decision was based, short of which there would never be predictability and certainty in determining the clarity of words used in statutes. To this effect, the Appellant prayed that this Court allows the Appeal with costs.

c. Principles on Interpretation of Statute.

42. The Appellant submitted that Sections 3, 4, 5, 9, 15, and 29 of the Act, were found in violation of Articles 6(d), 7(2), and 8(1)(c) of the Treaty for being unclear, wide and containing unjustifiable restrictions based on the three-tier test. However, the Appellant added, in reaching that decision, the Trial Court, throughout the Judgment, never applied any principles of statutory interpretation.

43. It was the submission of the Appellant that the dispute involved the interpretation of the statute and that is why the Trial Court opted to test the precision and clarity of each provision challenged by the Respondents. Therefore, the Trial Court was obliged to invoke the rules

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of statutory interpretation in resolving the allegations as to precision, vagueness, and clarity of the impugned provisions.

44. The Appellant argued that the words which were alleged to be ambiguous and unclear ought to have been interpreted in their ordinary meaning and if such ambiguity could not be resolved, then the Trial Court was bound to invoke other rules of statutory interpretation such as the mischief and purposive approaches. However, the Trial Court did not apply any rule of interpretation in this case.

45. In addition, it was the contention of the Appellant that the Trial Court, being an International Court of Justice for the East African Community charged with interpretation and application of the Treaty, it is bound by the rules of interpretation of the Treaty under the Vienna Convention on the Laws of Treaty 1969, which are applicable in the same way as in interpreting statutory provisions. This position is stated in the case of ***East African Law Society & 4 Others vs. Attorney General of Kenya & 3 Others,*** Reference No. 3 of 2007, on page 23, where the Court relied on the **Vienna Convention** to set out international rules of interpretation of treaties.

46. Alternatively, the Appellant lamented that the Trial Court ought to have sought guidance on rules of interpretation of statutes applicable in Tanzania before condemning the Appellant. The rules applicable in Tanzania resemble those applicable in the interpretation of treaties as stated in the case of ***Barclays Bank Tanzania Limited vs. Phylisiah Hussein Mcheni,*** Civil Appeal No. 19 of 2016, Court of Appeal of

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Tanzania at Dar es Salaam (unreported) citing with approval the case of ***Ngasa Kapuli Sengerema vs. Republic***, Criminal Appeal No. 160 "B" of 2014 (unreported) at page 6.

47. The Appellant submitted that, if for any reason the Trial Court opted not to apply the principles guiding statutory interpretation, then it ought to have considered other aids of interpretation, which it failed to do.

48. It was contended that similar approach taken in the interpretation of Treaty provisions should have been taken in the interpretation of the impugned statute as it was in the case of ***East African Law Society & 4 Others vs. The Attorney General of Kenya***, Reference No. 3 of 2007 [EACJ] at page 24, where the First Instance Division held that: -

> *"Taking into account the said general principle of interpretation enunciated in Article 31 of the Vienna Convention, we think that we have to interpret the treaties not only in accordance with their ordinary meaning but also in their context and in light of their objective and purpose. Primarily, we have to take the objective of the Treaty as a whole, but without losing sight of the objective or purpose of a particular provision."*

49. The Appellant contended that the approach of the Trial Court resulted in the misdirection and misinterpretation of the impugned provisions which led to the erroneous conclusion that the impugned provisions are ambiguous, unclear, wide, and unjustifiable.

d. Misapprehension of facts and law by the Trial Court.

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50. The Appellant submitted that in addition to the Trial Court disregarding the rules of burden of proof, rules of shifting burden of proof, and rules of interpretation of statutes before arriving at its findings, its Judgment was also predicated on a misapprehension of facts and law in terms of what the Respondents pleaded in their Statement of Reference and supporting Affidavits and what the Appellant pleaded.

51. The Appellant acknowledged that this Court is precluded from examining issues of fact when entertaining appeals under the provisions of Article 35A of the Treaty. The Appellant, however, argued that, in the course of analyzing factual issues, where there is a departure from rules of procedure, this Court can intervene under 35A(c) of the Treaty to consider the facts and law under procedural irregularity. This position is supported by the decision of this Court in the case of ***Alice Nijimbere vs. Secretory General of EAC,*** Appeal No, 1 of 2016, where it was held:-

> *"...Findings of fact are precluded on questioning on appeal under Article 35A of the Treaty. However, the Court is not barred from observing that the facts that formed the core of the Court's decision are readily discernible from the pleadings and affidavit evidence..."*

52. To this effect, the Appellant argued that in order to arrive at a just and fair decision, the Trial Court was duty-bound to properly evaluate evidence by both parties and their submission. This duty is imperative as stated in the case of ***Alice Nijimbere vs. Secretary of EAC,*** supra, at page 29 where it was held: -

"We take it to be settled law that in judicial decisions, a proper evaluation of evidence involves objective scrutiny of the entire evidence proffered by the parties, be it oral, documentary, real, or demonstrative, with a view to reaching balanced conclusions of facts and/or reasonable inferences of fact and applying them to the governing law(s).

53. Based on the two underlying legal principles above, the Appellant prayed that the Court scrutinizes how the Trial Court evaluated the evidence. The Appellant cited a number of examples where the Trial Court allegedly misapprehended the pleadings, which we do not deem necessary to reproduce.

54. The Appellant further argued that both in its pleadings and oral submissions, it invited the Trial Court to differentiate between civic education regulated by the Registrar of Political Parties under section 4 of the impugned Act and voter civic education which is regulated by the National Electoral Commission, but the Trial Court disregarded the issue thus arriving at an erroneous decision.

55. The Appellant submitted that in arriving at its decision, the Trial Court committed an error in law by omitting and disregarding the justifications stated in the Appellant's submission, such as global threats of terrorism, radicalism, hatred, and unchecked civic education being a threat to national security. Despite such a clear exposition, the Trial Court concluded at paragraph 83 of the Judgment that: -

"We are unable to identify a legitimate objective, and certainly not one that is pressing and substantial to justify the limitation of rights that is created by the said Section 5A. We find, therefore, that Section 5A fails the second of the three-tier test."

56. It was the submission of the Appellant that the Trial Court finding was based on misapprehension of the Appellant's justifications and submissions. In the end, the Appellant was condemned on speculation and not based on evidence adduced before the Trial Court. It was argued that a similar prejudice is manifested on the Trial Court's *obiter dictum* at paragraph 84 of page 344 of the Amended Record of Appeal, Vol. II, where the Court stated: -

"If indeed there was such an objective, in our considered opinion, the said section would in any event fail the third test of being proportionate relative to the objective or purpose. So, section 5A would in any event fail the third of the three-tier test."

57. The Appellant submitted that by dint of the above statement, even if it had justified and stated the objective of the said provision, the Court had already formed the opinion that such an objective would fail, which is unfair and a serious departure from the rules of fair hearing. It was contended that omission by the Trial Court to consider important evidence of a party leads to a wrong decision as was held by this Court in ***Angela Amudo vs. Secretary General of the East African Community,*** Appeal No. 4 of 2015 [EACJ], at page 37, where the Court held that:-

"The above cited omissions and irregularities, in our considered opinion, lead to only one irresistible conclusion. This is that the learned Trial Justices committed errors of law and procedure, commissions and omissions which led to a wrong decision and therefore, a failure of justice, as well articulated by Mr. Agaba in his submissions".

58. The Appellant argued that the Trial Court committed the same misapprehension of law, when it was determining the fate of Section 6A (5) introduced by Section 5 of the Act by disregarding the Appellant's plea to read and interpret Section 6A as a whole. The Appellant contended that even in the absence of its plea, the impugned provision reflects the spirit of Articles 6(d) and 7(2) of the Treaty because section 6A (5), of the impugned Act provides as follows:-

"A political party shall promote the union of the United Republic, the Zanzibar Revolution, democracy, good governance, anti-corruption, national ethics and core values, patriotism, secularism, Uhuru torch, national peace and tranquility, gender, youth and social inclusion..."

59. The Appellant submitted that a provision cannot be nullified just because the word "promote" is unclear as ruled by the Trial Court. The Appellant argued that a statute cannot define and explain each and every word in drafting and that for the same reason, the terms rule of law, good governance, transparency, accountability, and social justice in the Treaty have not been defined nor has the Treaty provided criteria for their interpretation. As a result, it was contended, the absence of such definition does not make them invalid or unclear.

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60. The Appellant submitted that despite the provision embodying the spirit of the Treaty, the Trial Court confined itself to only one word, **"promote"** for what it said to be a lack of clarity and precision. In that regard, the Appellant prayed to the Court to find merit in the appeal following the Trial Court's departure from the rules of procedure and commission of errors.

Failure to state reasons for the decision.

61. The Appellant submitted that it is trite law that the judgment of the Court shall contain, among others, reasons for the decision. This is provided under Rule 79(5) (h) of the East African Court of Justice Rules of Procedure, 2019. However, in the present matter, the Appellant argued that the Trial Court did not provide reasons for arriving at the decision regarding the validity of some of the impugned provisions. The Appellant cited paragraph 84 of the Judgment at page 344 and paragraph 96 at page 349 of the Amended Record of Appeal, Vol. II. The Appellant submitted that the said omissions and irregularities by the Trial Court led to a wrong decision hence the failure of justice.

62. It was the Appellant's further submission that the Trial Court was bound to explain what constitutes a clear and precise provision. For those reasons, the Appellant prayed that this Court finds merits on this point.

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63. Lastly the Appellant prayed that the Court allows the Appeal with costs and declare the provisions of Sections 3, 4, 5, 9, 15, and 29 of the Political Parties (Amendment) Act consistent with the Treaty.

RESPONDENTS' SUBMISSIONS

64. The Respondents responded to the fives matters raised by the Appellant in Issue No. 2, namely, burden of proof, shifting of the burden of proof, principles of statutory interpretation, apprehension of evidence by the Trial Court, and failure to state reasons for the decision, in the following order:

a. Error of law in determining Onus of Proof

65. For the above issue the Respondents submitted that their Reference sought determination by the Trial Court of whether there was a violation of Articles 6(d), 7(2) and 8(1)(c) of the Treaty.

66. The Respondents submitted that the Reference was supported by five affidavits and three additional affidavits by John Mnyika, William Simon and Abdul Nondo, together with annexures thereto, which proved violation of the Treaty.

67. They further submitted that in its reply to the Reference, the Appellant justified the violation of the Treaty and thus had the onus of proving the reasons for the limitation and what purpose it serves.

68. In the Respondents' view, no evidence was needed to determine vagueness, lack of clarity, or ambiguity of a sentence or words in the statute. What was needed was the statute in one hand and the Treaty in the other, and a comparison of the two, which the Trial Court did by

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considering the submissions of both parties and later rendering a Judgment.

69. In a nutshell, the Respondents submitted that they succeeded in demonstrating to the Trial Court how the impugned provisions were in violation of the Treaty while the Appellant failed to justify the limitation imposed by the law on the conduct of political party affairs in the Appellant State.

b. The shifting of the burden of proof and application of the three-tier test.

68. On shifting of the burden of proof, the Respondents submitted that the Appellant did not understand the gist of the Judgment. The Respondents contended that since it was the Appellant who argued that the limitation was justified, the burden was on the Appellant to prove justification, and requiring the Appellant to prove justification is not shifting the burden of proof.

69. On the application of the three-tier test, the Respondents contended that the Trial Court properly and correctly applied the test and principles. They further added that they adduced enough evidence during the trial, including but not limited to affidavits, pleadings, statutes, different letters, and other information, which proved that the statute violated the operational and founding principles of the Treaty.

70. They also submitted that the Appellant in paragraph 3.16 of its submissions has raised the following questions: -

i. whether the trial Court had the evidence from Political Parties warranting confusion and ambiguity

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in the said provision given the facts that the Reference was not brought by political parties who are key stakeholders;

ii. what are the criteria set by the Court to determine the precision and clarity of legal provisions in any statute; and

iii. is a standalone provision of the statute like the Treaty self-exhaustive and explanatory without considering other materials such as the preamble and objective of the statute?

71. In answer to the above questions the Respondents argued that although there is no mandatory provision in the impugned statute that requires that political parties must give evidence, it was very clear that the Respondents herein are leaders of political parties such as John Mnyika (General Secretary of Chama cha Demokrasia na Maendeleo (CHADEMA), and Abdul Nondo (Chairman of Youth Wing ACT-Wazalendo) who would be affected by the statute.

72. In addition, the Respondents submitted that there is no requirement that a Reference must be brought by political parties because the impugned provisions has an effect on the public in general and have an effect on exercise of multiparty democracy in the Appellant State.

73. It was also the Respondents' view that the Trial Court read and reasoned from the statute and compared it with the requirement of the

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Treaty and properly concluded that the limitation was not justified under the three-tier test.

c. The principle of statutory interpretation

74. On this issue, the Respondents argued that this Court is mandated to interpret the Treaty, not statutes, and that the interpretation of statutes is for domestic courts. It was submitted that the Court is not bound to apply principles of statutory interpretation but the principles of Treaty interpretation and that the Court is only bound by the principles of stare decisis (precedent) according to the law.

75. In the Respondents' view, the Reference was not about interpretation of the statute but about violation of the Treaty, consideration of which is the duty of the Court, in accordance with the clear guiding principles of interpretation of the Treaty.

76. The Respondents further submitted that the Appellant had failed to prove or show the reasons why the Court should not use the three-tier test which has been used by this Court for a long time. They contended that for this Court to depart from previous precedents on the guiding principles of interpretation of the Treaty, there must be evidence to justify such departure which the Appellant failed to provide.

77. The Respondents argued that the three-tier test, also known as the proportionality test, is used regularly in interpretation of the law by the courts, including by the Court of Appeal of the Appellant in the case of **Kukutio Ole Pumbun vs. Attorney General & Another** [1993] TLR

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159 and **Julius Ishengoma Ndyanabo vs Attorney General** [2004] TLR 41.

78. It was submitted that in the case of ***Kukutia Ole Pumbun,*** the Court of Appeal held that a law that seeks to limit or derogate from the basic right of an individual on the ground of public interest will be saved by Article 30(2) of the Constitution if it meets two requirements. Firstly, such a law must be lawful in the sense that it is not arbitrary. It should provide adequate safeguards against arbitrary decisions and provide effective control against abuse by those in authority when using the law. Secondly, that the limitation imposed must not be more than necessary to achieve the legitimate object. This is also known as the principle of proportionality.

79. The Respondents also referred to the case of **Julius Ndyanabo,** (supra) where the Court of Appeal added that: -

> *"Fundamental rights are not illimitable, to treat them as being absolute is to invite anarchy in society, those rights can be limited, but the limitation must not be arbitrary unreasonable, and disproportionate to any claim of state interest."*

d. **Misapprehension of facts and law**

80. On this issue, the Respondents submitted that it was a matter of fact and that the Treaty and Rules of Procedure prohibit the Appellant from appealing on a point of fact. It was argued that although the Appellant had maintained that the issue was a point of law, the Appellant had argued matters of fact

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81. It was the Respondents' view that all matters of fact had already been determined by the Trial Court, and thus this Court cannot revisit the said facts. They contended that whether or not there was a legitimate purpose for the impugned statute was a matter of fact, not law.

e. The Court's failure to state reasons for the decision

82. In challenging the above assertion by the Appellant, the Respondents submitted that there were reasons for the decision in the Judgment and that this ground of appeal is devoid of merit and must fail.

83. They further submitted that the reasons for the decision can be found by reading the whole Judgment and not selecting some paragraphs as the Appellant was doing. Referring to paragraph 84 of the Judgment, it was submitted that the same was a concluding paragraph and contained reasons, namely, that the impugned sections were not proportionate relative to their objective purpose and also did not satisfy the three-tier test.

84. On the same vein, it was submitted that paragraph 96 of the Judgment. Cited by the Appellant as containing no reasons was a concluding paragraph, the reasons having been set out in paragraph 95 of the Judgment and that the reasons were clearly stated to be violation of the Treaty and failure to satisfy the three tier test due to lack of precision and clarity.

85. Lastly, the Respondents submitted that the Appellant had failed to satisfy any of the grounds of appeal and expounded by the Court in ***Simon Peter Ochieng & Others vs. the Attorney General of the Republic of Uganda*** (supra). For all the foregoing reasons, the Respondents urged the Court to dismiss the appeal.

H. THE COURT'S ANALYSIS AND DETERMINATION.

86. Having carefully considered the submissions of both parties, it is now the duty of this Court to assess and determine whether the Trial Court erred in Law by holding that the provisions of Sections 3, 4, 5, 9, 15, and 29 of the Political Parties (Amendment) Act No. 1 of 2019 violated Articles 6(d),7(2) and 8(1)(c) of the Treaty.

87. We deem it necessary to reproduce faithfully hereunder the impugned sections of the Political Parties Act as gazetted which provide as follows:-

"Section 3
The principal Act is amended in section 4, by- (a) adding immediately after subsection (4) the following:

> *"(5) Without prejudice to subsection (4), the functions of the office of the Registrar shall be to-*
> *(a) supervise the administration and implementation of this Act;*
> *(b) monitor intra-party elections and nomination process;*
> *(c) disburse and monitor accountability of Government subvention to political parties which qualify under this Act;*
> *(d) provide guidelines and monitor income and expenditures of political parties and accountability of party resources;*

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(e) provide civic education regarding multiparty democracy, laws administered by the Registrar and related matters;
(f) regulate civic education provided to political parties;
(g) advise the Government on issues related to political parties;
(h) facilitate communication between political parties and the Government;
(i) undertake research on political parties, multiparty democracy and political parties financing; and
(j) undertake any other functions conferred by this Act or any other written law."
(k) renumbering subsection (5) as subsection (6).

SECTION 4

The principal Act is amended by adding immediately after section 5 the following new sections: -

"5A: (1) A person or institution within or outside the United Republic wishing or requested to conduct civic education or any kind of capacity building training or initiative to a political party, shall prior to conducting such training, inform the Registrar by issuing a thirty days' notice stating the objective and kind of training, training programme, persons involved in such training, teaching aid and expected results.

(2) Upon receipt of information under subsection (1), the Registrar may disapprove the training or capacity building programme and give reasons for such disapproval.

(3) Any person who contravenes this section, commits an offence and is liable, on conviction to a fine of not less than five hundred thousand shillings but not exceeding five million shillings or to imprisonment for a term of not less than three months but not exceeding twelve months or to both.

(4) Any institution which contravenes this section, commits an offence and is liable, on conviction to a fine of not less than five million shillings but not exceeding thirty million shillings.
(5) Any person or institution which contravenes this section shall, in addition to penalties under this section be ordered by

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the Registrar to submit the information on the training or training programme within such period as prescribed by the Registrar.

(6) A person or institution which fails to comply with an order under subsection (5) commits an offence".

"5B (1) The Registrar may, in the execution of functions and responsibilities under this Act, demand from a political party or a leader any information as may be required for implementation of this Act.

(2) A political party which contravenes subsection (1) shall be liable to a fine of not less than one million shillings but not exceeding ten million shillings.

(3) A leader of a political party who contravenes this section or provides false information to the Registrar, commits an offence.

(4) Any person or institution which contravenes this section shall, in addition to penalties under this section be ordered by the Registrar to submit the information within such period as prescribed by the Registrar."

SECTION 5

The principal Act is amended by adding immediately after Part II the following new Part:-

"6A. (1) A political party may, subject to the Constitution of the United Republic and this Act, be formed to further objectives and purposes which are not contrary to the Constitution of the United Republic, the Constitution of Zanzibar or any other written law in the United Republic.

(2) A political party shall be managed by adhering to the Constitution of the United Republic, the Constitution of Zanzibar, this Act, its constitution, principles of democracy and good governance, non discrimination, gender and social inclusion.

(3) A political party general meeting and national executive committee or any similar organ shall not delegate their core functions prescribed in the party constitution.

(4) For the purpose of subsection (3), core functions means: -

(a) in the case of the party national general meeting, be enactment and amendment of party constitution, election of party national chairman, deputy national chairman and nomination of presidential candidate; and

(b) in the case of the party national executive committee, be enactment and amendment of the party rules, election of secretary general and party's national leaders.

(5) A political party shall promote the union of the United Republic, the Zanzibar Revolution, democracy, good governance, anti- corruption, national ethics and core values, patriotism, secularism, uhuru torch, national peace and tranquility, gender, youth and social inclusion in the-

(a) formulation and implementation of its policies;

(b) nomination of candidates for elections; and

(c) election of its leaders."

6B. *A person shall qualify to apply for registration of a political party if-*

(a) that person is a citizen of the United Republic by birth and both parents of that person are citizens of the United Republic;

(b) that person is a person of sound mind;

(c) that person is undischarged bankrupt having been declared by the court of competent jurisdiction;

(d) that person has attained or is above the age of eighteen years;

(e) that person can read and write in Kiswahili or English; and

(f) that person is a person who, within five years prior to the date of submission of application has not been convicted or sentenced for commission of an offence of dishonesty, economic crime, corruption, tax evasion or offences relating to gender based violence".

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SECTION 9

The principal Act is amended by adding immediately after section 8B the following :-

"8C. (1) Every political party shall maintain updated registers for-

(a) members of the party;

(b) leaders of the party at each party administrative level; and

(c) members of party organ at each party administrative level.

(2) The Registrar may, by notice in writing, require a political party to submit any of registers mentioned in subsection (1) or any particulars relating to such register, within a period stated in the notice.

(3) A political party which fails to comply with the requirement of this section may be suspended in accordance with provisions of this Act.

(4) Notwithstanding subsection (3), a leader of political party which contravenes subsection (1) commits an offence and shall on conviction be liable to a fine of not less than one million shillings and not exceeding three million shillings or to imprisonment for a term of not less than three months.

8E. (1) A political party, a leader or a member shall not recruit, deploy or form a militia, paramilitary or security group of any kind or maintain an organisation intending to usurp the functions of the police force or any government security organ.

(2) A political party shall not conduct, finance, coordinate or order to be conducted or coordinated, military style training or any kind of training on the use of force or the use of any kind of weapon to its members or any other person.

(3) A political party which contravenes the requirement of this section, shall be deregistered and every leader or member of the party concerned shall be liable on conviction to imprisonment for a term of not less than five years but not exceeding twenty years or to both."

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SECTION 15

The principal Act is amended by repealing sections 11A and 11B and replacing for them the following: -

"11A. *(1) Two or more political parties fully registered in accordance with the provisions of this Act may form a coalition before or after general election and shall submit to the Registrar an authentic copy of the coalition agreement entered into between or among such parties.*

(2) The decision to form a coalition shall be made by a national general meeting of each political party intending to form coalition and shall be in writing and duly executed by persons authorized by political parties to execute such agreements on behalf of each political party intending to form a coalition.

(3) A coalition agreement entered into before a general election shall be submitted to the Registrar at least three months before that election.

(4) A coalition agreement entered into after the general election shall be submitted to the Registrar within fourteen days after the signing of the coalition agreement.

(5) A coalition agreement shall set out the matters specified in the Second Schedule to this Act.

(6) Political parties to coalition under this section shall maintain their status as individual registered political parties, and shall continue to comply with all the requirements governing political parties under this Act and any other relevant laws."

SECTION 29

The principal Act is amended by adding immediately after section 21C the following new sections: -

"21D. *(1) Any person who contravenes any provision of this Act to which no specific penalty is prescribed, shall be liable on conviction to a fine of not less than three million*

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shillings but not exceeding ten million shillings or to imprisonment for a term of not less than six months but not exceeding one year or to both.

(2) Any political party which contravenes any provision of this Act to which no specific penalty is prescribed, shall be liable to a fine of not less than ten million shillings and not exceeding fifty million shillings or to suspension or to deregistration.

21E. *(1) Without prejudice to the generality of the power conferred by this Act, the Registrar may suspend any member of a political party who has contravened any provision of this Act from conducting political activities.*

(2) Any party member who conducts party or political activities or participates in an election or causes any person to conduct party political activity or participate in an election during period of suspension of such party, commits an offence.

(3) Where the Registrar is satisfied that a member of a political party has contravened this Act, the Registrar shall, in writing require the political party to take such measures against the member as prescribed in the party constitution within fourteen days.

(4) Where the political party fails to comply with the requirements of the Registrar under subsection (3), or where the measures taken by a political party are not satisfactory, the Registrar may, in writing notify the member and the political party of his intention to suspend that member from conducting political activities.

(5) Upon receipt of notification from the Registrar under subsection (4), the member shall, within fourteen days, make representation to the Registrar on the matter.

(6) Where the member fails to make representation to the Registrar within the period specified under subsection (3),

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or if the representation made is not satisfactory, the Registrar shall suspend that member from conducting political activities for a period not exceeding six months, and notify the relevant political party accordingly."

88. The Appellant divided Issue No. 2 in into five grounds and submitted at length on each and the Respondents in opposing the appeal replied to every issue. This Court will determine every ground as presented by the Appellant.

a. Error of law in determining Onus of Proof

89. For the Appellant the principle on onus of proof, is very clear that he who alleges must prove. It was contended that in this case, the Respondents simply alleged several issues and the Court acted only on allegations without evidence.

90. The Appellant also submitted that the Respondents tendered affidavits which simply narrated what happened during the enactment of the impugned statute and that those affidavits are simply allegations and speculation based on fear of events that had not happened. Such fear, it was contended, cannot be the basis for invalidating provisions of the law.

91. In support of the above, the Appellant referred this Court to the case of ***Rwenga Etienne & Others vs Secretary General*** (supra), as well as the case of ***Henry Kyarimpa vs Attorney General of Uganda*** (supra).

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92. According to the Respondents, in reply to the issue of the burden of proof, they contended that what they brought to the Trial Court were not mere allegations or fears. They submitted that they filed a valid Reference supported by five affidavits and availed the impugned statute to the Trial Court so that it could be weighed against the Treaty.

93. They also filed additional affidavits along with letters from the Registrar, (they referred this Court to the Record of Appeal, page 105, volume 1), which demonstrate that they discharged their burden of proof.

94. Consequently, it was contended that the Trial Court did not err since it had the opportunity to scrutinize the impugned sections of the statute in relation to the Treaty as well as the affidavits and the letters attached thereto.

95. In **Rwenga Etienne & Others v. Secretary General of East African Community** (supra) at page 20 the Court held that: -

> "*It is a well-recognized rule of procedure that s/he who asserts must prove their case. Courts require the party that raises a claim or advances a particular contention to establish the elements of fact and of law on which the decision in its favour might be given*".

96. To determine this issue, we looked at the Record of Appeal and found that in their Reference No. 3 of 2019 and Reference No. 4 of 2019, the Respondents did file the statement of Reference and Affidavits in

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support along with the impugned statute, some letters from the Registrar as well as additional affidavits which are evidence as it has been confirmed by this Court in **The Attorney General of Burundi vs. Secretary General of the East African Community,** Appeal No. 2 of 2019 at paragraph 41 where this Court held twice in the same paragraph that: - "*Affidavits are evidence".*

97. That affidavit evidence fully substantiated and supported the Reference and the Respondents' concern that the impugned provisions constituted a violation of the Treaty on account of their broadness, vagueness and lack of precision.

98. From the above we find that the Respondents discharged their duty of proving their case on a balance of probabilities before the Trial Court. We also find that throughout the Judgment, the Trial Court carefully analyzed each and every impugned provision of the statute as put before the Court as well as all the evidence adduced by the Respondents in support of the Reference. The Court also weighed carefully every impugned section *vis-a-vis* the Treaty.

99. Therefore, from the above, we find that the Trial Court did not commit any error in concluding that the Respondents had discharged their burden of proof.

b. Shifting of the burden of proof.

100. As regards the issue of shifting of the burden of proof, the Appellant argued that the Trial Court faulted him for failing to prove limitation and

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therefore for failing the three-tier test. It was contended that to require the Appellant to justify the said limitations before it was proven that they existed, was to shift the burden of proof from the person making the allegation, the Respondent, to a person against whom the allegations were directed, namely the Appellant.

101. According to the Respondents, on the other hand, it was the Appellant who justified the limitations in the impugned statute and therefore the burden was on the Appellant to prove justification, and proving justification cannot be regarded as shifting the burden of proof.

102. In ***Henry Kyarimpa vs The Attorney General of Uganda*** (supra), at paragraph 71, this Court held that: -

> *"Generally, in the application of the principle actori Incumbit probatio the court will formally require the Party putting forward a claim or a particular contention to establish the elements of fact and of law on which the decision in its favour might be given.... As the Court has said: '**Ultimately, it is the litigant seeking to establish a fact who bears the burden of proving it**. In other words, the burden of proof is on the one who would fail if no proof was offered*". [Emphasis added].

103. From the above, we are satisfied that there was no shifting of the burden of proof constituting an error of law. Once the Respondents satisfied the Trial Court that the impugned statute introduced limitations to their rights of participating in the activities of political parties, the burden shifted to the Appellant to prove that the limitations were justified

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under the Treaty and under the three-tier test. That did not constitute unlawful or invalid shifting of the onus of proof to the Appellant.

104. In view of what has been stated hereinabove, we find that the Trial Court did not err due to the fact that in the course of a trial, the evidential burden of proof shifts to the opposite party to demonstrate, like in this case, the justification of the limitation brought by the amendment in the impugned statute.

C & d. The Application of the three-tier test and the Principles of Interpretation of Statutes

105. We have carefully considered the rival arguments by the parties on the above issues and we deem it appropriate to address these principles together, although the Appellant submitted on each separately.

106. The Appellant submitted that the Trial Court erred by applying the three tier test prematurely before applying the principles of interpretation of statutes. In the view of the Appellant, application of the three tier test depended on the outcome of application of the principles of interpretation of statutes. It was thus contended that the Trial Court erred by its failure to follow the rules of interpretation of the statutes.

107. As for the Respondents, it was argued that the Trial Court properly used the three-tier test, and that principles of statutory interpretation of statutes do not apply to the interpretation of international conventions and treaties. It was submitted that the three-tier test, also known as the proportionality test, is regularly used in the interpretation of the law by

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the courts as demonstrated in the cases of ***Kukutio Ole Pumbun vs. Attorney General & Another*** (supra) and ***Julius Ishengoma Ndyanabo vs Attorney General*** (supra).

108. As for the Application of the principles of statutory interpretation, the Appellant submitted that the Trial Court should have invoked the rules of statutory interpretation such as the mischief rule and purposive approach, so that the words which were alleged to be vague, ambiguous and unclear could be interpreted in their ordinary meaning.

109. On the principles of statutory interpretation, the Respondents submitted that the case brought before the Trial Court was not about the interpretation of the statute but rather the violation of the Treaty by the provisions of national law. It was also contended that the Trial Court was concerned with the interpretation of the Treaty, not the statute.

110. Under the statement of Reference in the **Record and Memorandum of Appeal Vol. II, page 11, para 5-7,** we find that the Respondents' claim before the Trial Court was for determination of whether or not some sections of the Political Parties (Amendments) Act No.1 of 2019 were in violation of the Treaty. There is no dispute that the Trial Court was moved to determine the consistency of the impugned sections of the statute with the Treaty.

111. To determine whether national laws that are claimed to have violated the Treaty are indeed contrary to the Treaty, this Court has, in a number of its decisions, applied the principle of three tier test.

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112. In ***Burundian Journalists' Union vs Attorney General of the Republic of Burundi*** (supra) at page 31 para 85, the Court held that: -

> *"Having said so, what is the test to be applied by this Court in determining whether a National Law, such as the Press Law, meets the expectations of the Treaty? The Treaty gives no pointer in answer to this question, but by reference to other courts, it has generally been held that the tests of reasonability and rationality, as well as proportionality, are some of the tests to be used to determine whether a law meets the muster of a higher law. In saying so, it is of course beyond peradventure to state that Partner States, by dint of Article 8(2) of the Treaty, are obligated to enact National Laws to give effect to the Treaty, and to that extent, the Treaty is superior law."*

113. Later in ***Media Council of Tanzania & 2 others vs The Attorney General of the United Republic of Tanzania***, Reference No. 2 of 2017, the Court applied the three-tier test as follows: -

> *"In answering its own question, what is the test to be applied by this Court in determining whether a National Law ...meets the expectation of the Treaty, and finding no answer in the Treaty itself, the Court adopted the three part test set out by the Supreme Court of Canada".*

114. We therefore, find that the principle of three tier test has been the tool used by this Court to examine an impugned national law to determine whether it is in violation of the Treaty. Accordingly, the Trial Court did

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not err in law by using the test which is also consistent with the principle of *stare decisis*. In ***Fred Mukasa Mbidde vs. Attorney General of Burundi & Other,*** Appl. No. 6 of 2018 at page 13 the Court held that: -

> *"The EACJ firmly recognize[s] the doctrine of judicial precedent as a cardinal rule in the determination of cases ... judicial precedent engenders legal certainty in the administration of justice, ensuring as far as possible that similar facts attract a similar result from courts.".*

115. As for the principles on interpretation of statutes, Article 27 of the Treaty provides that: -

> "*The Court shall initially have jurisdiction* ***over the interpretation*** *and application of this Treaty:".* [Emphasis added]

116. From the above the Trial Court was not called upon per se, to interpret and apply national statutory law. Rather, it was called upon primarily to scrutinize the impugned provisions of the national law to confirm its consistency with the Treaty. The Court did so using the three-tier test as a tool deployed by this Court in similar cases and in accordance with the principle of stare decisis.

117. Therefore, this Court finds that Trial Court did not err in law by using the three tier test instead of the principles on interpretation of statute to analyze whether the alleged provisions were in violation of the Treaty.

f. Misapprehension of facts and law by the Trial Court

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118. When submitting on this issue, the Appellant acknowledged that this Court is precluded from examining issues of facts when entertaining an appeal under the provisions of Article 35A of the Treaty. The Appellant however, stated that, in the course of analyzing factual issues, where there is a departure from rules of procedure this Court can intervene under Article 35A(c) of the Treaty to address the facts and law under procedural irregularity. The Appellant cited cases of ***Alice Nijimbere vs. Secretary General of EAC*** (supra) and ***Angela Amudo vs. Secretary General of the East African Community***, supra.

119. Accordingly, the Appellant prayed that this Court finds merit in this appeal due to the Trial Court's departure from the rules of procedure and errors in its decision.

120. The Respondents submitted that this point is a matter of facts that cannot be the subject of appeal, and that although disguised as a point of law, the Appellant had in fact argued matters of fact. In the Respondent's view, this issue is not a point of law but a matter of fact that cannot be challenged at the appeal level, because this Court is prohibited from doing so by law.

121. We entirely agree with the Respondents that the issue above is a matter of facts and cannot be the subject of appeal. Even the Appellant conceded that, but still prayed that the Appellate Division departs from the Treaty and Rules of Procedure and scrutinize how evidence was evaluated by the Trial Court with a view to coming to a different conclusion.

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122. Where the jurisdiction of the Appellate Court is limited to matters of law only, the question whether the Trial Court misapprehended the evidence can only become a matter of law where it is established that the Trial Court ignored clear evidence on record and came to a palpably perverse judgment that no reasonable tribunal could have reached. That however does not require the Appellate Court to analyze and re-evaluate the evidence on record to determine whether the Trial Court came to a correct decision.

123. In **Damodar Lal v. Sohan Devi & Others,** CA No. 231 of 2015 the Supreme Court of India explained that wrong reading of evidence by the Trial Court does not render a decision perverse and that if there is some evidence on record which is acceptable and which could be relied upon, the conclusions of the Trial Court cannot be perceived as perverse and its findings cannot be interfered with. The Court explained itself as follows: -

> *"Even if the finding of fact is wrong, that by itself will not constitute a question of law.* ***The wrong finding should stem out on a complete misreading of evidence or it should be based only on conjectures and surmises.*** *Safest approach on perversity is the classic approach on the reasonable man's inference on the facts. To him,* ***if the conclusion on the facts in evidence made by the court below is possible, there is no perversity.*** *If not, the finding is perverse.* ***Inadequacy of evidence or a different reading of evidence is not perversity."*** [Emphasis added).

123. In **Simon Peter Ochieng vs the Attorney General of the Republic of Uganda** (supra), page 13, this Court categorically held that the right of appeal is limited to the grounds provided under **Article 35 (A) of the Treaty** and **Rule 86 of the Rules of Procedure, 2019** which both highlight that the three grounds are: -

(a) *Point of law*

(b) Lack of jurisdiction; or

(c) Procedural irregularity

124. In the same case this Court held that: -

> "*Where a dismissal was '**solely on matters of fact**' the appeal is incompetent and untenable".* [emphasis added]

125. Citing the case of ***Alice Nijimbere*** (supra), the Appellant wants the Court to evaluate the facts and law under procedural irregularity; however, this was not an issue put before this Court. For that reason, we find that this issue is devoid of merit and untenable.

g. Failure to state reasons for the decision.

126. On the above issue, the Appellant claimed that the Trial Court did not provide reasons for arriving at its decision regarding the validity of some the impugned provisions. On their part, the Respondents submitted that the reasons for the decision can be found by reading the whole judgment and not by reading some paragraphs in isolation.

127. It is an established and basic principle that the Judgment of the Court shall contain, among others, reasons for decisions. In ***The***

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Attorney General of Uganda vs. East African Law Society, Appl. No. 7 of 2012 of Feb. 14, 2013, page 9, the Court held that: -

> *"Under Rule 79(4) of the 2019 Rules, the Court is required to provide 'the points for determination, the decision arrived at [and] the reasons."*

128. In view of what has been said above, we have examined the Judgment of the Trial Court and are satisfied that the Court carefully examined each and every impugned section of the Statute and gave detailed reasons on whether the provisions were or were not in violation of the Treaty. Therefore, we find that this issue lacks merit.

129. Ultimately, and for all the foregoing reasons, we answer Issue No. 2 in the negative.

ISSUE No. 3: REMEDIES

130. Rule 120 of the East African Court of Justice Rules of Procedure, 2019, provides that: -

> *"The Court may, in dealing with any appeal, confirm, reverse, or vary the judgment of the First Instance Division, remit the proceedings to it with such directions as may be appropriate, order a new trial where it is manifest that a miscarriage of justice has occurred, and make any incidental or consequential orders, including orders as to costs*".

131. Having considered the respective pleadings and submissions of both parties, we find that: -

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On Issue No. 1, the Appellant agreed with the Respondents to withdraw this issue challenging the jurisdiction of the Trial Court. Therefore, this Court is no longer seized of that issue for determination.

132. On issue No. 2, on whether the Trial Court erred in law by holding that the provisions of Sections 3, 4, 5, 9, 15, and 29 of the Political Parties (Amendment) Act No. 1 of 2019 violated Articles 6(d), 7(1), and 8(1)(c) of the Treaty, the Appellant prayed for this Court to allow the Appeal with costs and declare the provisions of Sections 3, 4, 5, 15, and 29 of the Political Parties (Amendment) Act consistent with the Treaty. On their part, the Respondents prayed for the appeal to be dismissed for lack of merit.

133. We have carefully considered the rival submissions and pleadings on the five grounds of appeal as presented by the Appellant, and found all of them to be without merit.

134. Having failed to establish any errors of law committed by the Trial Court in the impugned Judgment, the Appellant is not entitled to the remedies it had applied for.

COSTS

135. As to costs, only the Appellant prayed for costs. In terms of Rule 127 of this Court's rules: -

> *"Costs in any proceedings shall follow the event unless the Court shall, for good reasons, otherwise order."*

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In general, the principle states that costs follow the event, which means that the costs of an action are usually awarded to the successful party. However, it should be noted that the award of costs is at the discretion of the Court.

136. In the present appeal, the unsuccessful party asked for costs, and the successful party did not. However, the unsuccessful party is not awarded costs.

137. As for the successful party, we believe that the relevant question to ask is if the successful party had requested for costs, would this Court exercise its discretion judiciously in denying it costs?

138. Since the case before this Court is a matter of public interest, in **Simon Peter Ochieng and Other,** (Supra) page 19, para 41, the Court held that: -

> *"On the issue of costs, we recall that it is our established jurisprudence that this Court has constantly exercised its discretion not to award costs in litigation involving the public interest."*

139. Therefore, in the same vein we order that each party shall bear their own costs both in this Court and in the Trial Court.

DISPOSITION

140. In the final result: -

(1) The Appeal is hereby dismissed.

(3) Each party shall bear its own costs both in the Reference and in the Appeal.

IT IS SO ORDERED

DATED, DELIVERED and SIGNED in Arusha on this 26th day of May 2023.

26-05-2023

.....

Nestor Kayobera

PRESIDENT

.....

Sauda Mjasiri

VICE PRESIDENT

.....

Anita Mugeni

JUSTICE OF APPEAL

THE EAST AFRICAN COURT OF JUSTICE
Certified True Copy of the Original
06 JUN 2023
Signed.....
DEPUTY REGISTRAR

.....

Kathurima M'Inoti

JUSTICE OF APPEAL

.....

Cheborion Barishaki

JUSTICE OF APPEAL