IN THE EAST AFRICAN COURT OF JUSTICE

AT ARUSHA

FIRST INSTANCE DIVISION

*(**Coram**: Yohane B. Masara, PJ; Richard Wabwire Wejuli, DPJ; Richard Muhumuza, Gacuko Leonard & Kayembe Ignace Rene Kasanda; JJ)*

APPLICATION NO. 7 OF 2024

(Arising from **Reference No. 10 of 2024)**

CENTRE FOR LAW ECONOMIC AND POLICY OF EAST AFRICAN INTEGRATION (CLEP EAST AFRICA) .. APPLICANT

VERSUS

THE ATTORNEY GENERAL OF THE REPUBLIC OF KENYA ....1st RESPONDENT

THE SECRETARY GENERAL OF THE EAST AFRICAN COMMUNITY .... 2ND RESPONDENT

24TH NOVEMBER, 2025

RULING OF THE COURT

A. INTRODUCTION

1. The instant Application arises from **Reference No. 10 of 2024** filed in this Court on 15th February 2024 by the Centre for Law Economic and Policy of East African Integration (CLEP East Africa) ("the Applicant"). against the Attorney General of the Republic of Kenya ("the 1st Respondent") and the Secretary General of the East African Community ("the 2nd Respondent").

2. On the same day, the Applicant filed this **Application No. 7 of 2024,** craving for interim orders pursuant to Article 39 of the Treaty for the Establishment of the East African Community ("The Treaty"), Rules 4, 52 and 84 of the East African Court of Justice Rules, 2019 ("The Rules") and other enabling provisions of the law.

3. The Applicant is a limited liability company incorporated in the Republic of Uganda; thus, a legal person and a resident of the Community within the meaning of Article 30 of the Treaty. It describes itself as a think-tank and a research centre on the process of East African integration. The Applicant's address for the purposes of this Reference is: c/o *Centre for Law Economic and Policy on East African Integration, 6th Floor, BMK House, Nyabong Road, Wampewo Avenue, Kampala, Uganda.*

4. The 1st Respondent is the Attorney General of the Republic of Kenya, sued in his representative capacity as the Principal Legal Adviser of the Government of the Republic of Kenya. The Respondent's address for service is: c/o *Office of the Attorney General and Department of*

Justice, Sheria House, Harambee Avenue, P.O. Box 40112 – 00100, Nairobi.

5. The 2nd Respondent is the Secretary General of the East African Community ("The EAC") sued in his official capacity as the Principal Executive Officer of the EAC as well as in his capacity as the Head of the EAC Secretariat, the Secretary to the Summit and the custodian of the Legal Instruments of the Community.

B. REPRESENTATION

6. At the hearing held on 15th November 2024, the Applicant was represented by Dr Elisha Ongoya, Ms Emilly Osiemo and Dr Edmond Shikoli, learned Advocates. The 1st Respondent appeared through Mr Thande Kuria, Deputy Chief State Counsel; while the 2nd Respondent was represented by Dr Anthony Kafumbe, Counsel to the Community.

C. THE APPLICANT'S GROUNDS FOR THE APPLICATION

7. The Applicant's grounds for the Application are set out in the Notice of Motion filed before this Court on 15th February 2004. The Notice of Motion is supported by the Affidavit deponed by MUTEMI MBILA on 15th February 2024. The Applicant also filed written submissions in support of the Application, which submissions were orally highlighted at the hearing.

8. As earlier stated, this Application emanates from **Reference No. 10 of 2024** pending before this Court, in which the Applicant impugns the Economic Partnership Agreement (hereinafter "EPA") between the Republic of Kenya, a Partner State of the East African Community, and the European Union ("the EU") purportedly entered in violation of Article 5(2), 6(d), 7(2), 8(1)(c), 8(3)(c), 29, 70, 75, 76, 116, 130 and 151

of the Treaty; Article 2(4)(c), 12 and 37 of the Protocol on the Establishment of the East Africa Customs Union ("the Custom Union Protocol"); Article 37 of the Protocol on the Establishment of the East Africa Community Common Market ("the Protocol") and Article 4(2) of the African Continental Free Trade Area Protocol on Trade in Goods ("AfCFTA"), among other provisions of the law.

9. The Applicant filed this Application under a certificate of urgency on the grounds that "*if the coming into force and/or implementation of the Kenya-EU EPA is not halted by this Honourable Court, the Reference will be rendered nugatory with the effect that the final determination of the Reference will be deemed to have been overtaken by events.*"

10. In the same breath, the Applicant averred that "*unless this Application is heard and orders issued, the Applicant, as a resident of the Community, will be detrimentally affected and the same cannot be adequately compensated by way of damages.*"

11. In the Notice of Motion, the Applicant seeks the following orders, as reproduced verbatim:

    i. **The Honourable Court be pleased to issue a temporary injunction restraining the 1st Respondent from ratifying the Kenya European Union Economic Partnership Agreement pending the *inter partes* hearing and determination of this Application and the Reference;**

    ii. **The Honourable Court be pleased to issue a temporary injunction restraining the coming into force of the Kenya - European Union Economic Partnership**

Agreement pending the *inter partes* hearing and determination of this application and the Reference;

iii. **The Honourable Court be pleased to issue a temporary injunction restraining the 1st Respondent from implementing the Kenya-European Union Economic Partnership Agreement pending the hearing and determination of the Application and the Reference;**

iv. **Costs to abide the outcome of the Reference;** and

v. **Any other orders that this Honourable Court may issue as it deems fit to meet the ends of justice."**

D. RESPONDENTS' REPLY TO THE APPLICATION

i. The 1st Respondent

12. The 1st Respondent's response is encapsulated in the replying Affidavit deponed by Robert Kung'u, Deputy Chief State Counsel seconded by the Attorney General's office to the Ministry of Investments, Trade and Industry, dated 14th November 2024. At the same time, the 1st Respondent lodged a document titled "The 1st Respondent's written submissions". Finally, the 1st Respondent Counsel summarized his case during the oral submissions.

13. The 1st Respondent objected to the grant of temporary injunction sought by the Applicant.

ii. The 2nd Respondent

14. The 2nd Respondent opposed the Application and contends through the Replying Affidavit sworn by Ms Kokutulage Kazaura, Senior Legal

Officer in the Office of the Counsel to the Community that there are no specific prayers against the 2nd Respondent in the instant Application.

15. In essence, the 2nd Respondent maintains that the Applicant does not meet the threshold for the grant of interim injunctions.

E. PARTIES' SUBMISSIONS

i. Applicant's Submissions

16. In their oral submissions, Counsel for the Applicant focused on the requirements for granting interim orders as settled by this Court in its various decisions.

17. On the first requirement, namely, whether this Application raises serious triable issues, Counsel Osiemo referred to the cases of **Francis Ngaruko vs The Attorney General of Burundi, EACJ Application No. 3 of 2019**, **Attorney General of the United Republic of Tanzania vs African Network for Animal Welfare, EACJ Reference No. 9 of 2010** and the case of **Kioo Ltd vs Attorney General of the Republic of Kenya, EACJ Application No.9 of 2020**.

18. According to Counsel Osiemo, serious triable issues is the cause of action in the Reference and, in such a context, the Applicant has raised serious triable issues affecting the integration of the Community.

19. Counsel stated that the Application and the main Reference object to the Economic Partnership Agreement between the 1st Respondent, which is a Partner State of the East African Community, and the European Union which is a third State, relates to breach of the Treaty.

20. That, the impugned Agreement was entered in violation of the Treaty for failure to notify other Partner States as required by Article 37 of the

Common Market Protocol and Article 37 of the Customs Union Protocol.

21. Counsel went on to point out that the 1st Respondent and the EU amended the EPA negotiated in 2016 by all the existing Partner States. It is Counsel's submission that the Republic of Kenya and the EU came up with a new EPA Agreement, contrary to Article 37 of Customs Union Protocol that obliges a State that intends to amend an agreement to notify the Secretary General and other Partner States.

22. Counsel Osiemo highlighted that when in 2023 the 1st Respondent was negotiating the new EPA Agreement, the Democratic Republic of Congo and the Republic of South Sudan had joined the Community. These are new Partner States which were not there in 2014.

23. According to Counsel, these new Partner States had the right to be notified for any comments and objections as this agreement will affect the free movement of goods, services and even the environment.

24. The Applicant's Counsel urged the Court to find that a serious triable issue has been established, which merit being granted interim orders.

25. The second condition canvassed by the Applicant is the irreparability of the harm to be suffered if the injunction sought is not granted.

26. To demonstrate that the Applicant will suffer irreparable injury, which would not adequately be compensated by an award of damages, Counsel Ongoya relied on the case of **Kioo Ltd vs the Attorney General of Kenya** *(supra)* where this Court, citing ***Blackstone's Civil Practice 2005***, provided direction as to when damages would be considered inadequate, *inter alia* when "**the defendant is unlikely to be able to pay the sum likely to be awarded at trial…**"

27. It is the Applicant's submissions that the nature of violations anticipated by the actions of the Republic of Kenya in the circumstances of this case are incapable of quantification and redress by way of damages.

28. To substantiate on the irreparability of the harm, Counsel Ongoya referred to the areas covered by the Economic Partnership Agreement, notably the endangered species.

29. That, having regard to the subject matter of the EPA, it was Counsel's assertion that the harm likely to be suffered by the implementation of the Economic Partnership Agreement is such as is incapable of quantification using market trends and is therefore incapable of compensation.

30. Submitting on the third requirement, that is, the balance of convenience, Counsel Shikoli asserted that the latter tilts in favour of the Applicant. Counsel was of the opinion that the implementation of the Agreement be halted to allow parties to canvass the Reference fully and that in case the Court finds in favour of the Respondents, those interim orders issued will lapse and the implementation of that Agreement will automatically be set in motion.

31. Counsel Shikoli maintained that if the 1st Respondent is allowed to proceed with the implementation of the Agreement, it will be impossible to reverse the process if the Court was later to decide in favour of the Applicant.

32. Submitting on the issue of the lengthiness and costs of the processes undertaken by the 1st Respondent, Counsel referred to the case of **British American Tobacco vs the Attorney General of the Republic**

of Uganda, EACJ Application No. 13 of 2017, where the Court held that:

> ***"We are hard pressed to appreciate how a lengthy, costly enactment process can negate the obligation upon lawmakers to enact national laws that are in compliance with Partner States' obligations under the Treaty and its attendant Protocols, or how the fact of costliness of an enactment process can be used to mitigate against a party's right to proper application of a law. Even in the interim, we are unable, to fathom how the lengthiness or costliness of a law enactment process can amount to irreparable injury to a party that enacted it in the event that the application of such law was stayed temporarily until the disposal of the Reference."***

33. In Counsel's view, the lengthiness or costliness of a process cannot amount to an irreparable injury and that the implementation of the application of that process of law can be stayed pending the hearing and determination of such a Reference.

34. The Applicant therefore concluded that the balance of convenience tilts in favour of granting the interim order sought to conserve the substratum of the entire case.

35. We must at this point state that when highlighting his Written Submissions, the Applicant abandoned prayers (1) and (2) relating respectively to the ratification and the coming into force of the EPA, restricting the reliefs sought to only the halting of implementation of the Agreement.

ii. 1st Respondent's Submissions

36. Counsel for the 1st Respondent countered one by one the conditions for the grant of an interlocutory injunction as proposed by the Applicant.

37. Essentially, the 1st Respondent vehemently opposes the Applicant's allegations and contends that the Application does not satisfy the principles set by this Court to warrant the exercise of its discretion to issue the temporary injunctive orders sought.

38. Counsel Kuria stated that the issue of whether **Reference No. 10 of 2024** from which the instant Application emanates raises a triable issue is uncontroverted. He agreed with Counsel for the Applicant that the matter raises a triable issue in line with the principles as enunciated in the case of **Giella vs Cassman Brown & Co Ltd [1973] EA 360.**

39. Concerning the second and third conditions, namely whether there is irreparable damage and whether the balance of convenience tilts in favour of the Applicant, Counsel for the 1st Respondent maintained that the issue that the Applicant will suffer irreparable harm that cannot be compensated by way of damages is contested.

40. It is Counsel's view that the allegations are premised on Article 37 of the Customs Union Protocol and whether there was notification to the 2nd Respondent that Kenya intends to enter into the Kenya - EU EPA. On that issue, Counsel referred to paragraph 7 of the Replying Affidavit by Robert Kung'u where he expressed his apprehension that the issuance of the interim injunctive orders will dispose of the matter without interrogating the factual, legal and evidential threshold supporting each party's case and which can only be done at the full hearing of the main Reference.

41. For the 1st Respondent, the Court will have to determine in finality the issue whether the Applicant will incur irreparable harm, since Article 92 of the EPA Agreement provides that there is cooperation in the area of environment which shall include the protection and sustainable management of environment.

42. Counsel Kuria further contended that the Applicant failed to establish that he would suffer any irreparable injury that could not be compensated by the award of damages if the injunctive order sought is not granted.

43. According to Counsel, the Republic of Kenya applied the Resolution of the Summit that any country within the EAC can enter into an Economic Partnership Agreement and any other country can join in later on the basis of the doctrine of variable geometry.

44. On the issue relating to the balance of convenience, Counsel for the 1st Respondent contended that it will be in favour of the *status quo*. In that regard, Counsel stated that the litigation is of public interest and there is no allegation in the Applicant's Affidavit supporting either the Reference or the Application that any of the EAC Partner States has raised the issue of consent or the issue of application of the doctrine of variable geometry.

45. For Counsel Kuria, the Republic of Kenya has already committed itself diplomatically within the framework of EPA and exercised its sovereignty, signed and ratified on the 18th December 2023 and 24th of April 2024 respectively.

46. It is the 1st Respondent's apprehension that if the Court was to make its decision at this juncture, it will greatly prejudice the Republic of Kenya diplomatically as stated in the Respondent's Affidavit.

47. Counsel Kuria therefore urges this Court to decline to giving any interim injunctive reliefs to the Applicant which would jeopardize the Kenya- European Union Economic Partnership Agreement.

48. To reinforce his stance, Counsel for the 1st Respondent relied on the case of **Castro Pius Shirima vs Attorney General of Burundi & 6 Others, EACJ Application No. 11 of 2016.**

49. Consequently, the 1st Respondent seeks to have the Application dismissed with costs.

iii. The 2nd Respondent's Submissions

50. On his part, Counsel for the 2nd Respondent did not agree with the Applicant that the matter raised triable issues. Relying on the case of case of **Alvin Kahoho vs The Secretary General of the East African Community, EACJ Application No 5 of 2012**, Counsel stated that this Court emphasized that for interim orders, the Applicant must show a *prima facie* case with the probability of success. Secondly, an injunction will not be granted unless the Applicant might otherwise suffer irreparable injury that cannot be compensated by an award of damages and lastly, where the Court is in doubt, it will decide the application with the balance of convenience.

51. To strengthen his stance, the 2nd Respondent relies on the case of **Giella vs Cassman Brown** *(supra)* as applied in **Alvin Kahoho vs Secretary General of the East African Community** ***(supra).***

52. The 2nd Respondent's Counsel contended that the Applicant has not established that he has a *prima facie* case with a probability of success. Dr Kafumbe argued that the Applicant is challenging a matter that the Community at the level of Summit has already agreed upon to implement on the basis of variable geometry. In his view, the Applicant is contesting matters that were exhaustively canvassed by the 21st Ordinary Summit and a decision was taken at paragraph 9 of the *communiqué* accepting the use of variable geometry.

53. In addition, the 2nd Respondent believes that the Applicant can be compensated by damages and therefore he is not going to suffer irreparable injury if the injunction is not granted.

54. Finally on the issue of the balance of convenience, Dr Kafumbe was of the position that since the Republic of Kenya has signed off the impugned Agreement and has already ratified the same, the 1st Respondent would suffer more inconvenience if a temporary injunction sought is ordered at this juncture.

55. Dr Kafumbe concluded therefore that the instant Application does not meet the threshold that this Court has set out and urged the Court to decline to grant the orders sought by the Applicant.

iv. <u>Submissions in Rejoinder</u>

56. In rejoinder, Counsel for the Applicant countered the Respondents' submissions but agreed with the 1st Respondent that the Reference incontestably raises triable issues.

57. Counsel for the Applicant echoed her earlier position that the matter raises triable issues and that the injury to be incurred is not capable of being compensated by way of damages.

58. With regard to the issue of variable geometry, Ms Osiemo averred that what was agreed is that Kenya and EU continue with their initial negotiations under the 2014 EAC-EPA, but Kenya went ahead to further amend the initial 2014 EPA and came up with a new EPA. Counsel for the Applicant maintained that it was necessary that the other Partner States are informed as it affects the Community.

59. Replying to Counsel Kuria, Counsel Osiemo urged the Court, if it denied interim orders, at least it preserves the *status quo,* to the extent that the Republic of Kenya will not suffer prejudice because when the initial EPA was not implemented or was not signed by all the Partner States, the Republic of Kenya has been trading under the generalized scheme of preference where they trade goods to the EU free of duty.

60. After the Submissions from the Parties, the Court put few questions to Counsel in order to get clarity of a number of issues.

61. On the question whether what Kenya did was to amend the previous EU-EAC EPA or is a new negotiation of trade, Counsel for the 1st Respondent answered as follows: **"...indeed we had conceded as so, just a variation based on the principles that the Partner States discussed on the implementation of variable geometry, and there is no harm in that**..."

62. As to the question regarding the principle of variable geometry and the way it has been applied in the instant case, Dr Kafumbe responded that "*It is to do with the implementation.*"

63. Responding to the question whether the agreement was already negotiated, Counsel Kafumbe went on to state:

> ***"Yes, because they had already negotiated and the thinking then was that all of them could sign as a bloc which was not possible and the basis of that, they said those who were able can commence under the principle of variable geometry. The principle of variable geometry is just a tool for implementation on what has been agreed upon by the Community."***

64. Counsel for the Applicant opposed Dr Kafumbe's contention on the ground that variable geometry required implementation and did not allow the Republic of Kenya to modify and amend the initial agreement which, according to Applicant's Counsel, defeats the said principle.

v. <u>Court's Determination</u>

65. We have carefully considered the affidavits in support of the Notice of motion and the rival submissions for and against the Application.

66. For this Application, we deem it imperative to refrain ourselves from canvassing the aspects that touch on merits or demerits of the Reference from which the Application arises.

67. Therefore, the Court cannot, without delving into substance of the Reference, discuss whether or not the 1st Respondent concluded a new agreement or has made amendments to the existing EPA. It is for the same reason that the Court restrains itself from canvassing the issue whether the action of the 1st Respondent was or was not an implementation of the principle of variable geometry.

68. That said, turning back to the matter at hand, the Court is called to determine the issues of interim order raised in the Application.

69. In the case **of <u>Timothy Alvin Kahoho vs the Secretary General of the East African Community</u>** (*supra*), this Court noted that:

> ***"The grant or refusal to grant a temporary injunction is an exercise of the Court's judicial discretion which must be exercised judiciously. The purpose of a temporary injunction is to maintain the status quo. The conditions for the grant of a temporary injunction are well settled in our jurisdiction although they have been stated in various terms over the years."***

70. The criteria for granting of an interim injunction are set up in the case of **<u>Giella vs Cassman Brown & Co Ltd</u>** (*supra*) as updated by the jurisprudence of this Court.

71. In the case of **<u>Francis Ngaruko vs the Attorney General of the Republic of Burundi</u>** (*supra*), the Court held as follows:

> ***"This Court has had occasion to consider numerous interlocutory applications for interim orders. It has upheld a trifold test for the grant of interim orders laid out in <u>Giella vs. Cassman Brown [1973] EA 258</u>, albeit with deference to the demonstration of a serious triable issue rather than a prima facie case as the first principle that should be satisfied in an application for the grant of interim orders (...);***
>
> ***Consequently, we categorically state that applications for interim orders should be subjected to the following trifold tests:***

> ***First, the Court needs to be satisfied that there is a serious question to be tried on the merits of the Applicant's Reference, that the Applicant has a cause of action that depicts substance and reality.***
>
> ***Secondly, an interlocutory injunction will not normally be granted unless the Applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages;*** *and*
>
> ***Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience."***

72. Thus, to succeed in his application, a party has an *onus probandi* to demonstrate that he meets the requirements as settled by this Court.

73. In this regard, the three issues have to be determined when it is a question of the assessment of the merit of the Application. These are:

    i. **Whether the main Reference raises serious triable issues;**
    ii. **Whether the Applicant stands to suffer an irreparable Injury which cannot be adequately compensated by an award of damages; and**
    iii. **Where the balance of convenience lies, if the court is still in doubt.**

74. Article 39 of the Treaty provides that:

"The Court may, in a case referred to it, make any interim orders or issue any directions which it considers necessary or desirable. Interim orders and other directions issued by the Court shall have the same effect ad interim as decisions of the Court."

75. Before the Court delves into analysing of each one of the issues raised, we wish to point out that the issue whether the Reference raises triable issues is not in dispute since all parties, except the 2nd Respondent, agree on the fact that the Reference raises serious triable issues. As long as the Reference challenges potential abrogation of the Treaty provisions, the first test is surmounted. Thus, we need not dwell on discussing an uncontested issue.

76. Having been satisfied with the first, we now turn to the second issue namely **"Whether the Applicant stands to suffer an irreparable injury which cannot be adequately compensated by an award of damages."**

77. **Black's Law Dictionary, 10th Edition**, defines an irreparable injury as "*An injury that cannot be adequately measured or compensated by money and is therefore often considered remediable by injunction.*"

78. In this regard, it behoves upon the Applicant to show that the impugned actions by the Respondent would cause irreparable harm if the interim order sought is not granted. In other words, the Applicant carries a burden of proof to establish that he will suffer irreparable loss that cannot be compensated by way of damages.

79. In **Mbidde Foundation Ltd and Rt. Hon. Margaret Zziwa vs Secretary General of the East Africa Community and Attorney General of Republic of Uganda, EACJ Application No. 5 of 2014**, this Court cited with approval the principle set out in the case of **Giella vs Cassman Brown** (*supra*) as follows:

> ***"The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial; but the plaintiff 's need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated under the plaintiff 's undertaking in damages if the uncertainty were resolved in the defendant's favour at trial."***

80. Furthermore, the Court went on and stated that:

> *"...**this Court was extensively referred to the decision in Giella vs. Cassman Brown (1973) EA 358 (CA) as applied in Prof. Peter Anyang' Nyongo & 10 others vs. The Attorney General of the Republic of Kenya & 3 others, EACJ Ref. No. 1 of 2006 in support of the preposition that an Applicant who seeks a temporary injunction must show (...) secondly, that non-grant of the temporary injunction would expose such an Applicant to irreparable injury that would not be justly compensated by an award of damages,***

..." see also British American Tobacco (U) Ltd v The Attorney General of The Republic of Uganda, EACJ Application No. 13 of 2017.

81. In the **African Network for Animal Welfare (ANAW) vs The Attorney General of the United Republic of Tanzania, EACJ Reference No. 9 of 2010**, this Court upheld that ***"... the environment, once damaged is rarely ever repaired."***

82. Outside the EAC, Cass R. Sunstein of Chicago University maintains that **"On a widespread view, environmental harms are presumed to be irreparable and to provide an appropriate occasion for such relief.**" – see his working paper No. 407 of 2008, titled "*Two Conceptions of Irreversible Environmental Harm*" at http://chicagounbound.ed/law.

83. In the main Reference, the Applicant demonstrated that the impugned Agreement between the 1st Respondent and EU touch widely on environmental and biodiversity aspects.

84. The Applicant successfully demonstrated the irreparable nature of the harm to be incurred once the case was not to be determined in her favour. She has shown that the harm to be incurred if the **Reference** is determined in his favour is incapable of quantification using market trends, thus incapable of compensation and redress by way of damages.

85. Since the Respondent by his plea contends that the injury is capable to be compensated by awarding damages, the *onus probandi* shifts to him to demonstrate the assertion. This is the application of the legal maxim "*reus in excipiendo fit actor.*"

86. Even if the Respondents assert "*that this is a matter that can be compensated by damages*" and "*believe that the Applicant can be compensated by damages and therefore he is not going to suffer irreparable injury if the injunction is not granted*", they fail to show how to assess the *quantum* of compensation and who to compensate since the Reference is instituted in the public interest; namely, the Community.

87. The Court, therefore, finds and holds that the second criterion for the grant of an interim injunction is also satisfied.

88. We now turn to consider the issue of **balance of convenience**. In **Timothy Alvin Kahoho** (*supra*) this Court set up the sequences of assessing the trifold tests. At this regard it stated as follows:

> ***"The conditions for granting an interlocutory injunction are sequential so that the second condition can only be addressed if the first one is satisfied and when the court is in doubt the third one can be addressed."***

89. It appears therefore that the third condition is deployable only in instances where doubt exists as to the Applicant's right or irreparable harm.

90. Thus, in the Court's view, the Applicant has satisfactorily demonstrated and persuaded that it will suffer irreparable injury if the injunction is not granted.

91. On the other hand, the interim injunctive order, namely, the stay of implementation of the EPA is a consensual measure to the extent that both the Applicant and the 1st Respondent plead for the preservation of the *status quo.*

92. Regarding costs, as the instant Application is pegged upon a Reference that is yet to be heard and determined, costs thereof, if any, shall abide the outcome of the aforesaid Reference.

F. CONCLUSION

93. In the result, and for the reasons given herein, we find that the Application meets the conditions for the grant of an interim order, which is consequently allowed.

94. The implementation of the Economic Partnership Agreement between the Republic of Republic of Kenya and the European Union is stayed until the determination of **Reference No. 10 of 2024.**

95. Given the importance of the case, the Registrar is directed to ensure that the hearing of the Reference is fast tracked.

96. Costs to abide the outcome of the case.

97. It is so ordered.

Dated, signed and delivered at Arusha this 24th day of November 2025.

Hon. Justice Yohane B. Masara
PRINCIPAL JUDGE

Hon. Justice Richard Wabwire Wejuli
DEPUTY PRINCIPAL JUDGE

Hon. Justice Richard Muhumuza
JUDGE

Hon. Justice Dr Leonard Gacuko
JUDGE

Hon. Kayembe Ignace Rene Kasanda
JUDGE