



EAST AFRICAN COURT OF JUSTICE DISMISSES THE APPEAL BY THE ATTORNEY GENERAL OF BURUNDI THAT CHALLENGED THE ELECTION OF THE 4TH EALA SPEAKER, WITH COSTS TO THE SECRETARY GENERAL OF THE EAC (RESPONDENT) AND HON. FRED MUKASA MBIDDE (INTERVENER).

4 June 2020, Arusha, Tanzania. PALU received a judgment from the EACJ Appellate Division earlier today, during a virtual court proceeding, in Appeal No. 2 of 2019, the case of the Attorney General of the Republic of Burundi v. The Secretary General of the East African Community (Respondent) and Hon. Fred Mukasa Mbidde (Intervener). The Appeal had been heard on 20 February 2020 and arose from a Judgment of the 1st Instance Division of the EACJ at Arusha that had been rendered on 2nd July 2019, in Reference No. 2 of 2018. The Intervener was represented by the PALU legal team and Mr. Justin Semuyaba, Advocate from Uganda.

By a majority of 4 to 1 Judges, the Court dismissed the Appeal with costs to the Secretary General of the EAC (Respondent) and Hon. Fred Mukasa Mbidde (the Intervener). The Vice President of the Court, Hon. Hon. Justice Liboire Nkurunziza, will deliver his Dissenting Opinion at a later date. The AG of Burundi (Appellant) had raised the following grounds of appeal:

- a. That the First Instance Division of the Court erred in law, in not finding the Speaker of the 4th Assembly of EALA was elected in contravention of Articles 53(1) and 57(1) of the EAC Treaty and Rule 12(1) of the Assembly's Rules of Procedure.
- b. That the First Instance Division erred in law by striking out the affidavits sworn by the Counsel for the Applicant in the Reference and by not invoking Rule 1(2) of the Court's Rules of Procedure to order production of evidence from the Respondent and the intervener on the fact of quorum during the said election.

Meanwhile, Hon. Fred Mukasa Mbidde (Intervener), a Member of the Assembly filed a cross appeal seeking the Appellate Division to review the decision of the First Instance Division by setting aside the order declining to award him and the Respondent costs for the proceedings in the Reference and prayed for dismissal of the appeal with costs against the Appellant.

The 1st instance Division had ruled that the Affidavit evidence produced by the Attorney General of Burundi amounted to hearsay and could not be relied upon in the determination of the Reference before it. It had further chastised the Attorney General of Burundi and criticised the act of the Counsel of the AG of



Burundi also acting as the sole witness, swearing multiple Affidavits, thereby offending the rules of evidence. The First Instance Division had therefore expunged the said Affidavits from the court record.

The Appellate Division confirmed the Decision of the First Instance Division, stating that it was correct in declining to find that the Speaker of the 4th Assembly of EALA, Hon. Martin Karoli Ngoga had been elected in in contravention of Articles 53(1) or 57(1) of the EAC Treaty or Rule 12(1) of the Assembly's Rules of Procedure, and by striking out the Affidavits sworn by the Counsel for the Applicant in the Reference, Mr. Nestor Kayobera, who is the Director General of Judicial Organisation, in the Ministry of Justice, Civic Protection and Holder of the Seal of the Government of Burundi. The Appellate Division also confirmed that the First Instance Division was correct in not invoking Rule 1(2) of the Court's Rules of Procedure to order production of evidence from the Respondent and the intervener on the fact of quorum during the said election. In a Judgement that severe criticized the Office of the Attorney General of Burundi, the Court affirmed the basic principle that it is the person that alleges something that must prove it, and cannot shift that burden to the Respondent or other parties by wrongly invoking the inherent powers of the Court (Rule 1[2] of the Court's Rules).

Following the scathing criticism of the conduct of the Office of the Attorney General of Burundi, the Appellate Division concurred with the Intervener, and granted costs to the Secretary General of the EAC and the Intervener (Hon. Fred Mukassa Mbidde.)

Notes to Editors

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