

TANZANIA / JUDGMENT

zziwa v secretary general of the east african community reference 17 of 2014 2015 eacj 102 6 november 2015

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IN THE EAST AFRICAN COURT OF JUSTICE AT ARUSHA FIRST INSTANCE DIVISION (Coram: Monica K. Mugenyi, PJ; Isaac Lenaola, DPJ; Faustin Ntezelyayo J; Fakihi A. Jundu, J & Audace Ngiye J.) REFERENCE NO. 17 OF 2014 RT. HON. MARGARET ZZIWA
APPLICANT VERSUS THE SECRETARY GENERAL, EAST AFRICAN
COMMUNITY..... RESPONDENT 6TH NOVEMBER, 2015 Reference No. 17
of 2014 Page 1 RULING OF THE COURT

1. The above Reference was scheduled for hearing of oral evidence on 8th and 9th September 2015. However, on 8th September 2015, the Respondent raised a preliminary point of law premised on Section 20 of the East Africa Legislative Assembly (Powers and Privileges) Act, 2003; the gist of which was that the Applicant and her witnesses were members and/ or officers of the East Africa Legislative Assembly (EALA) but had not secured leave from the Assembly to adduce evidence before this Court. This Court did at first instance find that the preliminary point of law was improperly raised before it given that it contravened the spirit of Rule 41(2) of the East African Court of Justice Rules of Procedure (hereinafter referred to as 'the Rules'), which essentially is to avert trial by ambush and the attendant delays to proceedings before this Court.
2. When the matter resumed with the hearing of the Applicant's oral evidence, learned Counsel for the Respondent did again raise the question of whether she had express leave from EALA to adduce evidence before this Court. The Court did thereupon order the Respondent to file a formal Notice of Preliminary Objection in this matter and the said Objection would be heard on 9th September 2015. At the hearing of the Objection, the Applicant was represented by Mr. Justin Semuyaba while Mr. Stephen Agaba appeared for the Respondent.
3. In a nutshell, it was the Respondent's contention that the East Africa Legislative Assembly (Powers and Privileges) Act, 2003 had been enacted under Article 61(2) of the Treaty for the Establishment of the East African Community (hereinafter referred to as 'the Treaty') in order to preserve the sanctity of the Assembly (EALA) and protect the principle of

separation of powers. Against that background, Mr. Agaba contended Reference No. 17 of 2014 Page 2 that section 20 of the East Africa Legislative Assembly (Powers and Privileges) Act did not contravene the Treaty, but rather enjoined any Member or Officer of EALA that sought to attest to proceedings in the Assembly or a Committee thereof to secure the special leave of the Assembly prior to doing so in any court or elsewhere outside the Assembly.

4. In response to questions from the Bench, Mr. Agaba abandoned the second leg of the Preliminary Objection where the Respondent had sought to invoke section 32 of the East Africa Legislative Assembly (Powers and Privileges) Act as a bar to the submission to any court by the Speaker or Clerk to the Assembly. Nonetheless, learned Counsel did maintain that whereas Article 30 of the Treaty authorized Members of EALA to institute proceedings before this Court, they were not at liberty to adduce evidence on the Assembly's proceedings in Court without the leave of the Assembly.
5. Conversely, the Applicant contended that the Treaty, as the grund norm of the East African Community (EAC), took precedence over statutes promulgated by the Community and, to the extent that Article 30 thereof granted her locus standi to file a matter before this Court, she was acting within her legal rights to adduce evidence in support of her case. Mr. Semuyaba further argued that whereas the Respondent sought to rely upon section 20 of the EALA (Powers and Privileges) Act to deny the Applicant the opportunity to adduce evidence before this Court without leave of the Assembly, section 36 of the same Act permitted a copy of a journal printed or purporting to be printed in the official gazette of the Community to be admitted in all courts without proof that it had been so printed. Learned Counsel referred this Court to section 2 of the Act that Reference No. 17 of 2014 Page 3 defined the term 'journal' to include minutes of the Assembly or the official record of the Assembly's proceedings. We understood Mr. Semuyaba to contend that the said journal was already on the Court record having been so admitted and allotted exhibit numbers; had been formally sought from the Clerk to the Assembly pursuant to an application that was granted by this Court on 6th May 2015, and the same Clerk had since been issued with witness summons by dint of the same Court Order. In learned Counsel's view, therefore, the Respondent could not be heard to object to the Clerk's appearance as a witness.
6. Mr. Semuyaba referred us to numerous authorities in support of his argument that parliamentary privilege was not absolute; rather, that this Court did have jurisdiction to inquire into the legality of the Assembly's proceedings. We deem it necessary to make specific mention of two (2) cases that were cited by learned Counsel for the Applicant, namely, Hon. Zachary Olum & Another vs. The Attorney General of Uganda Constitutional Petition No. 6 of 1999 and Calist Mwatela & 2 Others vs. The Secretary General of the EAC Ref. No. 1 of 2005. According to Mr. Semuyaba, the gist of the decision in Hon. Zachary Olum (supra) was that requiring anybody to seek leave of the Speaker of Parliament prior to adducing evidence in Court was a denial of access to justice and information, and therefore a violation of the fundamental rule of natural justice. We also understood learned Counsel to argue that since the Applicants in Calist Mwatela (supra), who at the time were sitting

members of EALA, were able to adduce evidence without recourse to section 20 of the EALA (Powers and Privileges) Act; the same privilege should pertain to the present Applicant. We shall revert to these cases later in this judgment. Reference No. 17 of 2014 Page 4

7. In response to questions from the Bench, Mr. Semuyaba argued that if the intention of the Legislature had been to either oust the jurisdiction of this Court or forestall the tendering of evidence in respect of EALA proceedings before it, the East Africa Legislative Assembly (Powers and Privileges) Act would have made express provision for such eventualities. Learned Counsel maintained that this Court did have the jurisdiction to entertain any matter to do with Treaty interpretation or application such as the Reference in issue presently, and the only way such a matter could be proven was by evidence. Further, we understood Mr. Semuyaba to reiterate his contention that this Court had issued witness summons to the Clerk of the Assembly under express purview to produce certain documents and the said documents had since been admitted on the Court record, therefore the Respondent could not stop the Court from entertaining the said evidence. In any event, in learned Counsel's opinion, the case of Calist Mwatela & 2 Others (supra) had set a precedent where evidence of the Assembly's proceedings could not be blocked under pretext of the EALA (Powers and Privileges) Act. Finally, Mr. Semuyaba affirmed that the Applicant had not applied for the purportedly requisite leave for her witnesses to adduce evidence before this Court.
8. In Reply, learned Counsel for the Respondent contended that the issue before this Court was not whether or not this Court had jurisdiction to entertain the Reference or indeed whether the Applicant had locus standi to institute the said Reference, but rather whether the Applicant and such of her witnesses that were affected by section 20 of the EALA (Powers and Privileges) Act had complied with the said legal provision. Mr. Agaba reiterated his earlier position that the Applicant and her witnesses were at liberty to adduce whatsoever evidence they wished to present provided they secured the requisite leave from the Assembly to do so. With regard Reference No. 17 of 2014 Page 5 to section 36 of the same Act, learned Counsel argued that not all journals of the Assembly were printed in the EAC Gazette therefore, in his view, whereas section 36 pertained to the Gazette of the Community, the journals and Hansard of the Assembly were not necessarily printed therein.
9. Mr. Agaba took issue with the authorities cited by opposite Counsel, arguing that they were inapplicable to the present Preliminary Objection. He distinguished the case of Hon. Zachary Oluo (supra) from the present circumstances, arguing that in the cited case the Parliament of Uganda did not have procedures on how the leave sought would be granted which the Applicant had not demonstrated to be the case presently. In the same vein, Mr. Agaba contended that learned Counsel for the Applicant had not demonstrated to this Court that the Applicants in the Calist Mwatela case had not secured the requisite leave. He further argued that even if the Applicants in that case had not secured the said leave, two wrongs did not make a right.

10. In response to questions from the Bench, Mr. Agaba could not confirm whether or not the documentary evidence that the Clerk to the Assembly had been ordered to present to this Court had, in fact, been gazetted within the precincts of section 36 of the East Africa Legislative Assembly (Powers and Privileges) Act. Learned Counsel argued that, having been summoned by Court Order, the Clerk was obliged to obey the Court Order but did also require leave of the Assembly to so appear. In an attempt to distinguish the terms 'elsewhere' in section 20(1) and 'place' in section 36, Mr. Agaba argued that whereas documents that were published in the Community Gazette referred to in section 36 of the said Act could be tendered in any place, journals and Hansards of the Reference No. 17 of 2014 Page 6 Assembly were not necessarily published in the said Gazette. Finally, learned Counsel did seem to agree that it would be premature to refuse a witness to testify before this Court before it had been established that his or her evidence did, in fact, fall within the ambit of the restrictions in section 20 of the Act.
11. We must state from the onset that we do agree with learned Counsel for the Respondent that the EALA (Powers and Privileges) Act was legally enacted under Article 61 of the Treaty and is, therefore, valid and applicable law within this Court's territorial jurisdiction.
12. Section 20(1) of the said law provides: "Notwithstanding the provisions of any other law, no member or officer of the Assembly and no person employed to take minutes or record evidence before the Assembly or any Committee shall, except as provided in this Act, give evidence elsewhere in respect of the contents of such minutes or evidence or of the contents of any documents laid before the Assembly or such Committee, as the case may be, or in respect of any proceedings or examination held before the Assembly or such Committee, as the case may be, without special leave of the Assembly first had and obtained in writing."
13. Section 20(1) thus prohibits the tendering 'elsewhere' of evidence pertaining to the contents of minutes, evidence, documentation, proceedings or examination laid before or arising in the Assembly or a Committee thereof without the special leave of the Assembly in writing. The said prohibition relates to the following categories of people – members and officers of the Assembly, as well as persons employed to take minutes or record evidence before the Assembly or a Committee thereof. Reference No. 17 of 2014 Page 7
14. Learned Counsel for the Respondent did argue that the term 'elsewhere' within the context of the EALA (Powers and Privileges) Act meant elsewhere other than the Assembly itself. Given that section 20 falls under Part IV of the Act, which generally provides for evidence in EALA, we cannot fault Mr. Agaba on this interpretation of the term. It does seem logical to conclude that the prohibition in section 20(1) applies to evidence that is sought to be given anywhere else other than before the Assembly or a Committee thereof. The question would be the nature of the evidence that falls within the ambit of the prohibition in section 20(1), and whether or not this Court can at this stage of the proceedings reasonably deduce the Applicant's evidence to fall within the said category of evidence. Stated differently, what is in issue before us presently is the extent to which section 20(1) applies to the circumstances of this case.

15. In the case of James Katabazi & 21 Others vs. Secretary General of the EAC & Another Ref. No. 1 of 2007 the notion of rule of law in its most basic form was depicted as ‘the principle that nobody is above the law.’ The Court in Katabazi (supra) did also acknowledge the overriding consideration in the theory of the rule of law as ‘the idea that both the rulers and the governed are equally subject to the law of the land.’
16. For present purposes, therefore, we find untenable Mr. Semuyaba’s argument that requiring anybody to seek leave of the Speaker of Assembly prior to adducing evidence in Court per se is a denial of access to justice and information, and therefore a violation of the fundamental rule of natural justice. It seems apparent to us that for as long as the EALA (Powers and Privileges) Act remains on the Community’s statute books, it must be complied with by all persons within the Community’s territorial jurisdiction, leaders and governed alike. Consequently, any member of the Assembly Reference No. 17 of 2014 Page 8 would be just as bound by the provisions thereof as the Community’s leaders or citizens. We are unable to appreciate how compliance with valid laws of the Community translates into a violation of the principle of natural justice that forms an integral tenet of the notion of rule of law. In any event, given that the Applicant has not made any attempt to seek the requisite leave, it would be premature to portend that she had been denied access to justice. The unreasonable denial by the Assembly of the leave sought therefrom would be another matter.
17. We deem it necessary at this stage to address the issues arising from the Calist Mwatela case as raised by learned Counsel for the Applicant. In that case, three (3) members of EALA did file a Reference under Article 30 of the Treaty challenging the validity of a meeting of the Sectoral Council on Legal and Judicial Affairs held between 13th – 16th September 2005, as well as the decisions taken by the said meeting in relation to Bills then pending before the Assembly. It is noteworthy that at the time of filing the said Reference the EALA (Powers and Privileges) Act was already in force, having been enacted into law in 2003. The Reference was supported by affidavits deposed by all 3 Applicants, but the legality thereof was not challenged by the Respondent therein.
18. We have carefully considered the judgment in the above Reference. Clearly the question as to whether or not sitting members of the Assembly could legally adduce evidence in court without leave of the Assembly was neither framed as an issue in that case, nor canvassed by any of the parties or addressed by the Court. Consequently, with respect, we do not share Mr. Semuyaba’s view herein that Calist Mwatela (supra) had set a precedent where evidence of the Assembly’s proceedings could not be blocked on account of the EALA (Powers and Privileges) Act. That issue was not Reference No. 17 of 2014 Page 9 considered at all in that case. It has now arisen in the present case and learned Counsel did concede that the Applicant herein had not sought the requisite leave. We take the view that it is inconceivable for this Court to sit idly by and perpetuate non-compliance with the EALA (Powers and Privileges) Act on the pretext that in Calist Mwatela (supra) sitting members of EALA were able to adduce evidence without recourse to section 20 of the EALA (Powers and Privileges)

Act. That would amount to an abdication of our judicial duty, an eventuality that this Court cannot and shall not contemplate.

19. In the result, we are satisfied that any member or officer of the Assembly, as well as persons employed to take minutes or record evidence before it or a Committee thereof must comply with the provisions of section 20 of the Act with regard to securing special leave from the Assembly.
20. Be that as it may, as depicted above, the evidence that must be subjected to the leave of the Assembly before it can be adduced elsewhere includes contents of minutes, oral evidence, documentation, proceedings or examination laid before or arising in the Assembly or a Committee thereof. The import of this provision is two-fold. First, it clearly suggests that evidence that falls outside the foregoing parameters can be adduced without the leave of the Assembly. Thus, for present purposes, the Applicant would be acting well within her legal rights to adduce evidence before this Court that has nothing to do with the minutes, evidence, documentation, proceedings or examination laid before or arising in the Assembly or a Committee thereof. Secondly, section 20(1) expressly prohibits the tendering of the contents of this evidence and not the evidence per se. Thus, in principle, reference may be made to minutes or documentation placed before the Assembly without adducing the contents thereof as captured in a specific Reference No. 17 of 2014 Page 10 Minute, and similarly reference may be made to the proceedings of the Assembly without relaying the specific contents of such proceedings as captured by the Hansard. That is not to say that mere reference to such documentation is sufficient proof thereof; rather, as we have stated hereinabove, proof of the documents enlisted in section 20 would necessitate their production with the requisite leave of the Assembly.
21. In the instant case, the Applicant opted to give oral evidence as opposed to evidence by affidavit. This course of action is provided for by Rule 65(1) of this Court's Rules of Procedure. Had she adduced affidavit evidence it would have been inordinately clear whether or not her evidence ran afoul of the provisions of section 20 of the EALA (Powers and Privileges) Act. This Court would have been quite capable of making a determination on the face of the affidavits that she had attested to matters within the ambit of section 20 without special leave from the Assembly. The present circumstances, however, are such that it would be tantamount to pre-empting the Applicant's oral evidence to presume that she was going to attest to matters that can only be attested to with the special leave of the Assembly. Section 20 is not couched in language that prevents members of the Assembly from testifying in courts at all regardless of the nature and import of their evidence. It is couched in terms that define the parameters of the restriction ingrained therein. We have defined the Court's construction of the said parameters hereinabove. Without the benefit of the present Applicant's oral evidence or that of any of her intended witnesses, therefore, it would be premature to adjudge the Applicant's evidence as running afoul of section 20 of the EALA (Powers and Privileges) Act, and prevent her from testifying in Reference No. 17 of 2014. We so hold. Reference No. 17 of 2014 Page 11

22. We now revert to the documentation presented to the Court by the Clerk to the Assembly. The facts of the present case are that the Clerk to the Assembly did produce documentation pursuant to a Court Order to that effect and the said documentation was admitted on the Court record. The said documentation was produced pursuant to summons issued by this Court following an application for that purpose by the Applicant that was not contested by the Respondent.
23. Rule 56(1) of the East African Court of Justice Rules of Procedure provides for the production of documents before this Court as follows: “Any party in a claim or reference may obtain on application to the Court, summons to any person whose attendance is required either to give evidence or to produce documents.”
24. With regard to non-compliance, Rule 56(4) of the Rules provides: “Where a person summoned to give evidence or produce a document fails to appear or refuses to give evidence or to produce the document the Court may in its discretion impose upon the witness a pecuniary penalty not exceeding USD 200.”
25. Therefore, the Order that emanates from Rule 56(1) is tantamount to witness summons compelling a person to give evidence or produce documents in his or her possession, failure of which s/he would be penalized. Thus, in the present case, the Clerk to the Assembly was compelled to produce documentation in his custody. He did indeed dutifully produce the required documentation and it was duly admitted on the Court record. Against that background, we do find it pertinent to consider the import of the prohibitions contained in section 20 of the EALA (Powers and Privileges) Act Reference No. 17 of 2014 Page 12 viz the essence of the witness summons issued under Rule 56(1) of this Court’s Rules.
26. Rule 56(2) of the Rules prescribe specificity of the witness summons as to whether or not a witness’ attendance is required at trial. It reads: “Every witness summons shall specify the time and place of attendance, and whether attendance is required for purposes of giving evidence or to produce a document, or for both purposes. The summons shall describe with reasonable accuracy the document required.”
27. In the present case, the witness summons that were issued read as follows: “Whereas your attendance is required to give evidence and/or provide documents described as:
 - i. The legal opinion given by the Counsel to the Community whether to Chair the fateful sitting in Nairobi. ii. The proceedings of the Legal Rules and Privileges Committee. iii. The proceedings of the sitting of the Assembly of 18th December 2014. On behalf of Rt. Hon. Margaret Zziwa, the Applicant in the above case/ Reference, you are hereby required (personally) to appear before this Court on the 8th and 9th September 2015 at 9.30 o’ clock in the forenoon, and/or to such other date to which the case may stand adjourned, and not to depart thence without the leave of Court. Reference No. 17 of 2014 Page 13 If you fail to comply with this Order without lawful excuse, you will be subject to the consequences of non-attendance laid down in Rule 56(4) of the East African Court of Justice Rules, 2013. ...”

28. Clearly, the witness summons did specify that the Clerk was required to produce the sought documentation and appear in person at the trial. Indeed, the documentation he produced was admitted on the Court record pursuant to the same Order. The question then is whether that Order of Court can be ousted by the provisions of section 20 of the EALA (Powers and Privileges) Act.
29. Though not defined in this Court's Rules, it is well recognized that witness summons amount to court process, the non-compliance with which would amount to contempt of court. This is aptly captured by Halsbury's Laws of England, 2001 Reissue, Vol 9(1), para. 458, p.55 in the following terms: "Disobedience to process. It is a civil contempt of court to refuse or neglect to do an act required by a judgment or order of the court within the time specified in the judgment or order."
30. We do recognize that the legal provision for witness summons and/ or Orders for the production of documents is outlined in the procedural Rules of the Court, which are tantamount to subsidiary legislation viz the EALA (Powers and Privileges) Act. However, we do also note that good governance and rule of law are well articulated in Articles 6(d) and 7(2) of the Treaty as governing principles to which the East African Community committed to observe. We reproduce the said Articles below for ease of reference: Article 6(d) Reference No. 17 of 2014 Page 14 "The fundamental principles that shall govern the achievements of the objectives of the Community by the Partner States shall include: Good governance including adherence to the principles of democracy, the rule of law, accountability, transparency, social justice, equal opportunities, gender equality, as well as the recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights." Article 7(2) "The Partner States shall undertake to abide by the principles of good governance, including adherence to the principles of democracy, the rule of law, social justice and the maintenance of universally accepted standards of human rights."
31. As we did state earlier herein, the notion of rule of law hinges on the basic premise that no single person (natural, corporate or otherwise) is above the law, the rulers and the governed both being equally subject to the law of the land. See Katabazi (supra). For present purposes, in our considered view, the notion of good governance is correspondingly rooted in the demonstrable respect for the rule of law. To our minds, respect for due court process is an important tenet of respect for and observation of the rule of law and good governance principles. In the same vein, the recognition accorded to the Court by the Treaty, as well as the Court's role in ensuring adherence to the law in Treaty application and compliance cannot be over-emphasized. Thus Article 23(1) of the Treaty pronounces the function of the Court as a judicial body vested with the mandate to 'ensure the adherence to the law in the interpretation, application of and compliance with the Treaty.' Reference No. 17 of 2014 Page 15

32. Furthermore, we are constrained to point out that just like the enactment of the EALA (Powers and Privileges) Act is rooted in Article 61(2) of the Treaty; the Rules of Procedure of the Court are similarly premised on Article 42(1) of the Treaty. They are intended to 'regulate the detailed conduct of the business of the Court.' To that extent, they preserve the sanctity and legitimacy of the Court. Judicial functions are of necessity premised on the presentation of cogent and credible evidence. It cannot be suggested, therefore, that court process – such as witness summons – that give effect to the Court's mandate as established by the Treaty can be ousted by an Act of the Assembly. On the contrary, as we have endeavoured to demonstrate above, the Court's Rules of Procedure derive their legitimacy directly from the Treaty.
33. We find it pertinent to reproduce the following Article by Lord Justice Gross, 'The Judiciary: The Third Branch of the State' (April 2014) as cited with approval by this Court in the case of Simon Peter Ochieng & Another vs. Attorney General of Uganda Ref. No. 11 of 2013: "The proper and effective functioning of any State committed to the rule of law depends on its branches understanding and being respectful of each other's respective roles and functions. Understanding is the basis from which the branches can work together within a framework of separation of powers to maintain ... the rule of law."
34. We take the view that the foregoing jurisprudence aptly captures the equal and unequivocal recognition of the function of each organ of the Community in the governance thereof, and informs the interrelation between the different branches of governance in the Community. It is a non-negotiable tenet of the rule of law that all court orders must be respected and obeyed. Reference No. 17 of 2014 Page 16 They are not issued in vain and are binding on the subjects thereof unless and until successfully challenged by related court action.
35. In the result, we are satisfied that the documentation produced by the Clerk to the Assembly is properly on record pursuant to a valid Court Order, and the said Clerk is under a legal obligation to appear as a witness in this matter pursuant to the same Order without need for the special leave of the Assembly. In any event, should he of his own volition deem it necessary to seek leave of the Assembly the onus would be upon him, having been duly served with witness summons, to secure the said leave.
36. Before we take leave of this issue we propose to address the question of the journal in so far as it applies to the matter before us presently. Section 36 reads as follows: "A copy of the Journal printed or purporting to be printed in the Official Gazette of the Community shall be admitted in evidence in all courts and places without any proof being given that such copy was so published."
37. On the other hand, section 2 defines journals to mean 'the minutes of the Assembly or the official record of the proceedings.'
38. It seems to us that Mr. Semuyaba's argument that the documentation that was produced by the Clerk amounted to 'the' journal is unsustainable. It was not supported by any evidence beyond this submission from the bar. We, similarly, did not find any evidence to support Mr.

Agaba's contention that not all journals of the Assembly were printed in the EAC Gazette. In our view, a literal interpretation of sections 2 and 36 would suggest that journals were the official record of the proceedings akin to what is referred to as 'Hansards' in other jurisdictions which, once printed in the Official Gazette Reference No. 17 of 2014 Page 17 of the Community, were admissible in evidence without need to prove the fact of publication. This interpretation would portend that publication in the Official Gazette was sufficient for purpose of the admissibility of journals in evidence without need for further proof thereof, and therefore the Official Gazette was conclusive proof of the authenticity of journals published therein. Be that as it may, we do not find section 36 relevant to the present case as none of the documentation or journals produced before this Court were proven to have been published in the Official Gazette.

39. Finally, we deem it necessary to address the arguments of learned Counsel for the Applicant with regard to the position advanced in Hon. Zachary Oluo (supra). We have carefully considered the decision in that case. The issue therein for present purposes was whether section 15 of Uganda's National Assembly (Powers and Privileges) Act, which prohibited members and designated employees of Parliament from using evidence of proceedings in the Assembly or its Committee elsewhere without the special leave of the Assembly having first been obtained, was unconstitutional. The majority decision in that case was that the said legal provision was unconstitutional. The reasons advanced for this position were as follows. "It is therefore well entrenched in the legal system that the State may not derogate from its obligations to ensure that a citizen has a fair trial, which entitles him an opportunity to avail himself of all necessary material in support of his case. Section 15 therefore is in conflict with Articles 28 and 44(c) when it leaves the decision to grant leave to obtain information to Parliament." (per Mpagi Bahigine JA) "In my view, in such a society section 15 cannot be justified because it derogates on the right to fair hearing. Subjecting the exercise of a Reference No. 17 of 2014 Page 18 guaranteed right to the permission of another authority is derogation. It is prohibited by Article 44(c) of the Constitution." (per Okello JA) "A provision that denies honourable members of Parliament, together with those they represent, access to information that is otherwise readily available to the public cannot enhance the prestige or dignity of Parliament." (per Twinomujuni JA)
40. As can be deduced from the foregoing judgment excerpts, in that case the constitutionality of section 15 of the National Assembly (Powers and Privileges) Act was in issue. Section 15 is apparently the equivalent of section 20 of the EALA (Powers and Privileges) Act. Nonetheless, in the matter before us the question as to whether or not section 20 is in compliance with the Treaty was not in issue. It was never raised in pleadings in Reference No. 17 of 2014, from which the present preliminary objections originate. Therefore, we do not find the decision therein applicable to a determination of the Applicant's compliance with a validly existing law, which was the issue under consideration presently.

41. In conclusion, we find that it has not been satisfactorily established before us that the evidence the Applicant intends to adduce before this Court does, in fact, fall within the ambit of section 20 of the EALA (Powers and Privileges) Act. We take the view that it would be premature at this stage to forestall her evidence on the pretext that it does not comply with the provisions of section 20 of the said Act. We do, nonetheless, reiterate our position herein that the Act is valid Community law and must be complied with by all witnesses that seek to adduce evidence that falls within the parameters thereof. The only exception in this regard would be the Clerk to the Reference No. 17 of 2014 Page 19 Assembly who, as we have held hereinabove, was summoned as a witness in this matter pursuant to a Court Order.
42. In the final result, we do hereby over-rule the objections raised by the Respondent with costs to the Applicant. Dated at Arusha this 6th day of November 2015.

Hon. Lady Justice Monica K. Mugenyi PRINCIPAL JUDGE

Hon. Justice Isaac Lenaola DEPUTY PRINCIPAL JUDGE

Hon. Justice Faustin Ntezelyayo JUDGE

Hon. Justice Fakihi A. Jundu JUDGE

Hon. Justice Audace Ngiye JUDGE Reference No. 17 of 2014 Page 20

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