IN THE EAST AFRICAN COURT OF JUSTICE

AT ARUSHA, TANZANIA

APPELATE DIVISION

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

APPLICATION NO. 3 OF 2025

[IN THE MATTER OF APPEAL NO. 2 OF 2025]

BETWEEN

THE ATTORNEY GENERAL OF THE FEDERAL REPUBLIC OF SOMALIA..... APPLICANT

AND

AMB. MOHAMED AHMED AWIL.....1st RESPONDENT

ALI ABDULANUR OSMAN..... 2nd RESPONDENT

ABDULLAHI MOHAMED AHMED..... 3rd RESPONDENT

AND

THE SECRETARY GENERAL OF THE EAST AFRICAN COMMUNITY..... 4th RESPONDENT

[Being an Application for stay of execution pending Appeal from the Ruling and Order of the First Instance Division at Arusha by Honorable Yohane B. Masara, PJ; Richard Wabwire Wejuli, DPJ; Richard Muhumuza, Gacuko Leonard & Kayembe Ignace Rene Kasanda, JJ.) dated 21st November, 2025 in Consolidated Applications No. 16 and 17 of 2025 arising from Reference No. 46 of 2025]

RULING OF THE COURT

A. BACKGROUND

1. The Federal Republic of Somalia ("The Applicant") joined the East African Community ("EAC"), as the 8th Partner State in March 2024 in accordance with Article 3 of the Treaty for the Establishment of the East African Community ("the Treaty").

2. Among the Organs and Institutions of the Community established by Article 9 of the Treaty are the East African Court of Justice ("EACJ") which is the Judicial Organ of the Community mandated to ensure adherence to law in the interpretation and application of and compliance with the Treaty, and the East African Legislative Assembly ("EALA") which is the Legislative Organ of the Community as provided under Articles 23 and 49 of the Treaty.

3. Article 50 of the Treaty is titled "**Election of Members of the Assembly**" and provides as follows: -

    1. "*The National Assembly of each Partner State shall elect, not from among its members, 9 members of the Assembly, who shall represent as much as it is feasible, the various political parties in the National Assembly, shades of opinion, gender and other special interest groups in that Partner State, in accordance with such procedure as the National Assembly of each Partner State may determine.*

    2. A person shall be qualified to be elected a member of the Assembly by the National Assembly of a Partner State in accordance with paragraph 1 of this Article if such person: -

        (a) is a citizen of that Partner State;

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(b) is qualified to be elected a member of the National Assembly of that Partner State under its Constitution;

(c) is not holding office as a Minister in that Partner State;

(d) is not an officer in the service of the Community; and

(e) has proven experience or interest in consolidating and furthering the aims and objectives of the Community."

4. On 11th October 2025, the Speakers of both Houses of the Federal Parliament of the Applicant appointed a five-member *ad hoc* Joint Committee to oversee the process of its first election of nine members to EALA. The Committee drafted rules, which provided for, among others, qualification of candidates and payment of nomination fees. The Committee set a five-day timeline, from 11th to 15th October 2025, within which the exercise should commence and conclude, and on 15th October 2025, a joint sitting of Parliament elected nine (9) individuals from eighteen (18) candidates presented to the Joint Committee.

5. Thereafter, the names of the nine elected individuals were forwarded to EALA pursuant to a Parliamentary Resolution dated 16th October 2025.

B. PROCEEDINGS IN THE FIRST INSTANCE DIVISION

6. Before the said persons could assume their offices, the Respondents filed two separate References in the First Instance Division ("the Trial Court"), seeking, among others, an order nullifying the election of the nine (9) members from the Applicant, permanent and interim injunctions to stop their swearing in and assumption of office and an order for fresh and Treaty-compliant elections. The References were No. 45 of 2025 and No. 46 of 2025 and were based on alleged violation of Articles 6(d), 7, 8, 23, 27, 30, 33, 39, 48 and 50 of the Treaty.

7. The Respondents also filed in the Trial Court two interlocutory applications, namely Application No. 16 of 2025 arising out of Reference No. 45 of 2025 and Application No. 17 arising out of Reference No. 46 of 2025, seeking interim/interlocutory reliefs, pending the hearing and determination of the References; an order restraining and prohibiting EALA from recognising as validly elected the nine members from the Applicant or any other person purporting to represent the Applicant; and administering the oath of office, or allowing them to sit, so as to preserve the subject-matter of the dispute and prevent irreparable harm to the integrity of EALA and the integration process.

C. THE PARTIES AND THEIR REPRESENTATION

8. Application No.16 of 2025, was filed by the 1st and 2nd Respondents, both citizens of the Applicant and resident in Mogadishu. Application No.17 of 2025 was filed by the 3rd Respondent, equally a citizen of the Applicant, a Member of the House of the People of the Applicant, and a resident of the Community within the meaning of Article 30 of the Treaty.
9. In the Trial Court and in this Court, all the Respondents were represented by Mr. Yufnalis Okubo, Advocate, of Kileleshwa, Githunguri Road, Taj Gardens C6, P.O. Box 60417-00200, Nairobi, Kenya.
10. The 1st Respondent in both Applications was the Attorney General of the Applicant in the current Application in his capacity as the Principal Legal Advisor of the Applicant, represented by Mr. Hanningtone Amol, of c/o ALP Kenya Advocates, West Park Towers, 5th Floor, Mpesi Lane, Off Muthithi Road, P.O Box 102942-00101, Nairobi.
11. The 2nd Respondent in both Applications was the East African Legislative Assembly (EALA), c/o the Secretariat, East African Community Headquarters, Afrika Mashariki Road, P.O. Box 1096, Arusha, Tanzania. Although duly served, the 2nd Respondent was not represented by Counsel and did not file any documents. Mr. Alex Lumumba Obatre, its Clerk, was

present in Court, and informed the Trial Court that the Assembly had no legal representation as there was no Counsel to the Community and that he was in Court just to follow the proceedings. He however confirmed service of Court process upon the Assembly.

12. At the hearing of Applications No.16 and No.17 of 2025, the two were consolidated by consent of the parties.

D. ISSUES FOR DETERMINATION

13. The Trial Court identified two issues for determination, namely:
    i. *Whether the Court had jurisdiction to entertain the Applications and the References; and*
    ii. *Whether the Respondents were entitled to the reliefs sought.*
14. The Court rendered its Ruling on 21st November 2025 and found in favour of the Respondents in the two issues. On the first issue, the Trial Court held that Article 52 of the Treaty had no application at that stage, because there was yet no "question of membership" to refer to domestic institutions. However, the Court found that it retained full jurisdiction to examine whether the process of the elections complied with Article 50 of the Treaty, and accordingly, answered issue No.1 in the affirmative, namely that it had jurisdiction to entertain both the References and the consolidated Applications.
15. As for the 2nd Issue on remedies, the Trial Court found that the Respondent's prayers were deserved and therefore restrained and prohibited EALA, its Speaker, Clerk or any officer acting on its behalf, from:
    a) Convening, recognizing, administering the oath of office to, seating or otherwise treating as validly elected representatives of the Federal Republic of Somalia the nine individuals, whose names were transmitted pursuant to the Federal Parliament Resolution dated 16th

October 2025 (Ref: BJFSB-11/10/11/2025) or any other persons purporting to have been elected under the impugned process; and

b) Issuing any notification or taking any step in recognition of the nine individuals, whose names were transmitted pursuant to the Federal Parliament Resolution dated 16th October 2025 (Ref: BJFSB-11/10/11/2025) or any other persons purporting to have been elected under the impugned process.

16. The Trial Court also held that the forgoing restraint shall operate from the date thereof and remain in force until the final disposal of the References or until further orders of the Court; that in light of the urgency of the matter and the imminent commencement of the EALA plenary session on 23rd November 2025, the References Nos. 45 and 46 of 2025 were certified urgent and the Registrar was directed to fix them for hearing on a priority basis, not later than the immediately following session of the Court.

E. THE APPEAL AND THE PRESENT APPLICATION

I. THE APPEAL

17. Aggrieved by the Ruling and Orders of the Trial Court rendered on 21st November 2025, the Applicant filed in this Court on 27th November 2025 a Notice of Appeal and Appeal No. 2 of 2025 against the whole of the decision on the grounds that:

i. The Trial Court, having found that elections had indeed been conducted by the joint sitting of the Federal Parliament, erred in law in assuming jurisdiction over the matters and issuing an order of stay of implementation of the outcome of the said elections, against the express provisions of Articles 52, 30(2) and 27(1) of the Treaty, which circumscribes the jurisdiction of the Court and excludes from it matters reserved by the Treaty to Partner States.

ii. The Trial Court erred in law by venturing into the matters wholly reserved for the National Assembly of the Applicant under Article 50,

in finding that the subject elections were not inclusive of political parties, when in fact the applicable formula for sharing political power in the Applicant was demonstrated to have been applied.

iii. The Trial Court erred in law by basing its decision on an erroneous conclusion that the current Federal Parliament of the Applicant has political parties that ought to have been involved in the subject elections of Members of Parliament to EALA under Article 50 of the Treaty, when in fact there are no parliamentary political parties at the moment and there have never been under the Applicant's current transitional political system.

iv. The Trial Court erred in law and committed a procedural irregularity in failing to take into account evidence tendered before it, thus arriving at a patently unfair and erroneous decision, inconsistent with Articles 50 and 52 of the Treaty.

v. The Trial Court erred in law by restraining the swearing in of the Applicant's EALA MPs-elect thus denying the Applicant an opportunity to carry on with the integration mandate, contrary to the objectives of the Treaty.

vi. The Trial Court erred in law and further committed a procedural irregularity in departing from known and applicable precedents of the First Instance Division and binding precedents of the Appellate Division, and consequently arrived at an unfair, erroneous, unjust and an appealable decision.

18. The Appellant proposed to ask the Court for Orders that:

a. The entire Appeal be allowed;

b. The Decision of the Trial Court be and is hereby set aside;

c. Costs of the Appeal be paid for by the 1st, 2nd and 3rd Respondents;

d. The Court grants any other relief it considers just and fair in the circumstances.

II. THE PRESENT APPLICATION

19. On the same date, that is on 27th November 2025, the Applicant filed in this Court under certificate of urgency Application No. 3 of 2025 seeking, in the material part:
    i. an Order under rule 87(4) of the Court's Rules staying the Order of the Trial Court issued on 21st November 2025 restraining the swearing in, taking of oath and assumption of office of the nine (9) Members of Parliament elected by the Federal Parliament of the Applicant to represent it at EALA;
    ii. an order that the Application and the Appeal be determined on expedited basis;
    iii. any other order that the Court deems just and fair in the circumstances; and
    iv. an order that costs of and incidental to the Application abide the outcome of the Appeal.
20. The Application was supported by an affidavit sworn by Mohamed Abdullahi Hassan (Mr. Hassan), the then Chairperson of the Joint *ad hoc* Committee set up by the Speakers of the two levels of Parliament, that is "the Speaker of the House of the People" and the "Speaker of the Upper House" to oversee the election of the Applicant's EALA Members. Mr. Hassan explained at length the essence of the *Garowe* Principles, the 4.5 formula and their justification in the lived realities of the Applicant, and how they were deployed in the impugned elections.
21. In summary, Mr. Hassan deposed that as the Applicant emerged from a history of prolonged armed conflict, various stakeholders constituted in the form of dominant and minor clans agreed to a transitional form of governance, under what is commonly referred to as the *Garowe* Principles, where all forms of political power and positions are shared on the basis of a 4.5 formula, which principle is embedded in Article 3 (3) and 3(4) of the

Provisional Constitution of the Federal Republic of Somalia. The provision demands sharing of power, and consultative and inclusive governance. Under the arrangement, each of the four dominant clans, namely, the *Dir, the Darood, the Hawiye, and the Digil and Mirifle* is entitled to share in equal proportion in the first part (4) while the coalition of the minor clans are entitled to the second part (0.5).

22. He further explained that the *Garowe* Principles had served the Applicant well and were the basis of the 2021 elections. Whilst the Applicant strove to wean itself of the Principles and adopt universal suffrage, it still faced numerous challenges, including active armed conflict affecting significant geographical areas of the nation, which made the continued use of the *Garowe* Principles inevitable for national stability.

23. Mr. Hassan further deposed that since the elections of 2021, there are no parliamentary parties in the Applicant's Federal Parliament, which by virtue of Article 55 of the Provisional Constitution, consists of the House of the People and the Upper House (Senate). Specifically, the deponent denied that there was a ruling party in the Applicant as found by the Trial Court. Instead, the Parliament is composed of representatives of each clan using the 4.5 formula. Even the national leadership is constituted on the basis of the arrangement, with the President, the Prime Minister, the Speaker of the Upper House, the Speaker and the Deputy Speaker of the House of the People, all being from different clans. Mr Hassan defended the 4.5 political power sharing formula as a quintessential tool for ensuring peace and stability in the Applicant's fragile democracy.

24. Specifically, as regards election of members of EALA, he deposed that the nine seats were distributed in accordance with the 4.5 formula under the *Garowe* Principles and shared among the clans, prior to nomination of candidates from those clans, vetting and election by the Applicant's Parliament. To facilitate the process, the Parliament made stop-gap rules for the conduct of the elections, which facilitated a fair and smooth process

under the superintendence of the non-partisan Joint *ad hoc* Committee comprising of the top leadership of the two Houses and chosen on the basis of the 4.5 formula. The committee received the names of nominated candidates, vetted them and submitted to Parliament the names of 18 candidates who met the stipulated qualifications. The Parliament then voted for the nominees using the secret ballot method and the nine candidates with the highest votes were picked as EALA MPs-elect.

25. The elected candidates were from all the clans with five men, four women among whom were two youth representatives, one male and one female and two civil society representatives. It was deposed that contrary to the allegation that the Parliament rubber-stamped a list of names submitted by the President, genuine elections were held in compliance with Article 50 of the Treaty which produced inclusive representatives.

26. Based on the foregoing, the Applicant submitted that its Appeal is arguable for the following reasons:

    a) The Trial Court erred in law in failing to properly apply and in context, the judicial requirements for grant of an interlocutory injunction;

    b) The Respondents' Applications did not meet the threshold of a *prima facie* case, on the basis that there was no jurisdiction on the part of the Trial Court;

    c) The purported loss to be suffered by the 1st ,2nd and 3rd Respondents was merely their claim to the right to be elected as EALA MPs which is a claim that can be compensated by an award of damages and would not lead to irreparable loss or injury;

    d) The public interest of the Applicant to be allowed to participate in the EAC integration processes through its elected EALA MPs far outweighs the personal interest of the 1st, 2nd and 3rd Respondents;

    f) Contrary to the finding of the Trial Court, the Applicant complied with the requirements of Article 50 of the Treaty, within its limitations and

political realities, and that the impugned decision and orders could push the Country to the edge of a political crisis, in an already fragile transitional governance system currently held together only by the *Garowe* Principles on power sharing;

g. The impugned Orders effectively shut out the Applicant from the EAC integration process by denying it the rights and benefits that accrue through participation in EALA and other legislative processes, while at the same time requiring it to discharge its obligations to the other Partner States.

h. EALA is the platform through which the citizens of the Applicant can exercise their rights to participate in the EAC integration, and the impugned Orders have the effect of denying the citizens representation, without a determination date in sight; and given the *ad hoc* nature of the Court, there is likelihood that the determination of the References will take long, and the Applicant will remain without representatives in EALA.

i. The Applicant's MPs-elect would serve for only two years, until the end of the current life of EALA session, and by that time it is likely that the References and any likely appeal would not have been determined, thus denying the Applicant an opportunity to participate in the EALA legislative processes for the entire life of the current session.

j. Lastly, that the public interest of the citizens of the Applicant to be involved in the EALA legislative processes through the said elected representatives far outweighs any injury or loss that could occur to the 1st, 2nd and 3rd Respondents, if the Court stays the impugned Order, and that it is just and fair that the impugned Orders of the Trial Court be stayed or set aside.

F. AFFIDAVITS IN REPLY TO THE APPLICATION

27. On 9th December 2025, the 1st and 3rd Respondents filed their Affidavits in reply to the Notice of Motion. Those affidavit are similar in content and substance, and in summary aver that there is no urgency in the Application or otherwise to warrant priority hearing; that the Orders of the Trial Court do not in any way prevent the Applicant from participating in the EAC integration process so long as it complies with the law; that there are very many organs and institutions other than EALA through which the Applicant is participating in the activities of EAC; that the Orders issued by the Trial Court have not stopped the Applicant from participating in the EAC integration process through other organs and institutions except for EALA; that even in the absence of members from the Applicant in EALA, the Applicant still participates in Council meetings and all other sectoral meetings and activities of EAC; and that participating in the EAC integration processes is not premised on having representatives in EALA.
28. The deponents further aver that whereas the last session of EALA ended its sitting of 4th December 2025, the life of the current 5th Assembly will end towards the end of 2027 and that the Applicant, having deposited the instruments of ratification of the EAC Treaty on 4th March 2024, has not felt it important or urgent for a period of over one year and seven months to enact regulations or rules for the elections of its EALA members; and that since the life of the current EALA shall end towards the end of 2027, there is no urgency in the Application.
29. The said Respondents further contend that the Applicant's arguments are for the main Appeal rather than the application for stay of execution and that the Applicant admits its failure to comply with Article 50 of the Treaty, as regards the rules for conducting elections, thus rendering the current Application untenable and frivolous. In these Respondents' 'view the Applicant cannot claim that it has complied with Article 50 of the Treaty

while it has confirmed that it has no rules as envisaged under the said Article.

30. While agreeing that EALA is a platform through which the citizens of the Applicant can exercise their rights and freedoms to participate in the EAC integration, these Respondents state that it is not the only institution, and that non-participation in the activities of only one institution does not deprive the Applicant of the opportunity to participate in EAC integration. It is averred that the Applicant has failed to demonstrate an arguable appeal to justify grant of an order of stay of execution, and that there is no evidence of the Applicant suffering irreparable harm because of the orders of the Trial Court. Further, the deponents state that the balance of convenience favours maintaining the restraining orders, which preserve the subject matter of the References and that if it the Order is lifted or stayed, the References will become moot, defeating the Court's ability to provide an effective remedy.

31. In the view of these Respondents, granting an order of stay of execution would effectively pre-determine the case by allowing assumption of office before the legality of the election process is determined, and would extinguish the very subject matter of the References. It is also contended that the Applicant will not suffer irreparable harm if stay of execution in not granted, because if it succeeds in the References, the EALA MPs will simply be sworn in. Further, that the Applicant's claim is not time-sensitive, which explains why for more than one year and seven months the Applicant had not carried out elections of its MPs; that a delayed swearing-in is a reversible administrative matter; and that the rights of the MPs-elect, if any, can be fully restored after determination of the References.

32. The Respondents state that if stay of execution is granted and the MPs-elect are sworn in and assume office, the entire References will become moot and that it will be impossible to "un-swear" them once they have begun exercising their legislative powers; that the Respondents 'rights to a

meaningful judgment will be destroyed; that the harm to the Applicant is reversible while that to the Respondents is irreversible; that the purpose of interim measures is to preserve the *status quo* and not to disturb it; that since the MPs have not been sworn in, maintaining the *status quo* preserves the Court's ability to render an effective decision, while granting the stay will irreversibly alter the situation; and that the balance of convenience weighs overwhelmingly in favour of preserving the *status quo* and allowing the References to be heard on its merits.

33. They further assert that the Reference, being about the integrity of EALA and the regional democratic process, it is in public interest and in the Respondents 'interest that the legality of the process be established before assumption of office; that granting stay of execution will undermine public confidence by permitting potentially unlawful office holders to exercise legislative authority; and that public interest aligns with strict legality and not premature assumption of office.

34. Lastly, that since the References were certified urgent, the Applicant, if it was serious, should have sought priority listing of the main References for hearing rather than stay of execution, which in effect has frozen the References, and all this points to bad faith on the Applicant's part.

G. THE HEARING OF THE APPLICATION

35. During the hearing held in open Court at the EAC Headquarters on Wednesday 14th January 2026, the Applicant's learned Counsel, Mr. Hannington Amol, Advocate, was accompanied by officials of the Applicant, while two of the Respondents were in Court with their learned counsel, Mr Yufnalis Okubo. The 4th Respondent was neither in Court nor represented, although it was duly served with the hearing notice. The Applicant's and the Respondents' submissions were primarily a reiteration of the respective points set out above, which we do not find necessary to rehash, save to highlight the main points.

H. APPLICANT'S SUBMISSIONS

36. The Applicant submitted that in determining whether or not to grant an order for stay of execution pending appeal, the Court considers whether the appeal is arguable and whether it will be rendered nugatory if it succeeds without an order of stay of execution. He added that other relevant considerations are set out in Rule 87 of the EACJ Rules of Procedure and that the Applicant had satisfied all the considerations. He cited a number of persuasive authorities from the Partner States, primarily from Kenya, which we do not find necessary to set out here as there is no dispute on the principles that guide the Court in an application for stay of execution.

37. Counsel submitted the Appeal is arguable because, contrary to the Respondents' claim that they were locked out from participating in the election of EALA MPs, the 1st and 2nd Respondents participated in those elections, but one did not meet the nomination criteria and the other did not muster enough votes. He added that Article 50 of the Treaty does not require rules for elections but that the Treaty leaves it to the Partner States to use such procedures as determined by the National Assemblies of each Partner State, and so there was no violation of the Treaty as found by the Trial Court.

38. Counsel further submitted that the allegation that the nominees and elected representatives were solely members of an alleged ruling party was not true because firstly, there was no ruling party either at the material time or now and that there are no parliamentary parties in the Applicant. He contended that the Trial Court erred in holding that there was a ruling and parliamentary parties in the Applicant, which ought to have been consulted and participated in the elections, contrary to clear evidence on record. It was also contended that even where parliamentary parties are in

existence, Article 50 of the Treaty does not envisage participation in elections for EALA MPs by non-parliamentary parties.

39. It was counsel's further submission that the Appeal was arguable because the Trial Court erred in assuming jurisdiction over the References in breach of Article 52 of the Treaty because the elections of the EALA MPs had already taken place. Counsel further argued that the Court erred by placing the interests of three individuals above those of the Applicant and by misapplying the Treaty and holding that it was not possible to annul the elections of EALA members once they are sworn-in. In counsel's view the Treaty vested in the national institutions of the Partner States the jurisdiction to do so. In support of his argument, he cited the decision of this Court in **Attorney General of the United Republic of Tanzania v. Anthony Calist Komu**, Appeal No.2 of 2015.

40. Regarding whether the Appeal risked being rendered nugatory, Counsel submitted that if the Orders of the Trial Court were not stayed, the Applicant will be left without representation for an indeterminate period which will have serious ramifications to EAC integration. He contended that the nine representatives were elected to serve for a term in EALA which is already running and that there is not determinate date when the Reference or the Appeal will be heard; that each passing day is a loss of the tenure for which the said MPs were elected; that without a clear date for sooner determination of the References, the MPs 'term will run its course or will be substantially depleted by the time the dispute is resolved; that there is no other way of extending the term of EALA; and that the MPs-elect cannot be compensated with a new term because fresh elections are required.

41. It was also contended that the Applicant will have no recourse over decisions made and laws enacted by EALA in the absence of its representatives and therefore, there will be no way of reversing such occurrences; and that while the Respondents can be compensated, the

Applicant and the Citizens of the Somalia cannot. Specifically, as regards the Respondents, it was submitted that their only discernible loss is the opportunity to serve in EALA, which can be quantified in terms of lost salaries should the Court determine that they were entitled to be elected, and that their loss can be adequately redressed by award of damages.

42. On balance of convenience, counsel submitted that it lays in favour of granting the order of stay of execution and allowing the Applicant's representatives to discharge their mandate while the Respondents ventilate their grievances. He added that denying the elected representatives to serve their term is tantamount to holding the Applicant and its citizens at ransom, because of the personal interests of the three Respondents.

43. Finally, Counsel submitted that the loss of opportunity already occasioned by the restraining Orders is not reversible under any circumstances and that no feasible compensation will remedy the loss. He urged the Court to issue an order of stay of execution in the interest of the citizens of the Applicant and for advancing the integration Agenda with the participation of Members of Parliament from the Applicant in EALA.

I. RESPONDENTS 'SUBMISSIONS

44. In support of the Respondents' case, Mr. Yufnalis Okubo, learned Counsel, submitted that no elections were held by the Applicant as required by Article 50 of the Treaty, because of lack of the rules required by the section 12 of the East African Legislative Assembly Act. Counsel argued that the Respondents wanted to contest for the positions of Members to EALA but the process, which had been predetermined before, locked out them from being elected. It was counsel's further submission that a distinction must be made between EALA MPs-elect and those that have already been sworn-in and that the Respondent's Reference was based on

Article 50 of the Treaty, which relates to MPs-elect who have not been sworn in office.

45. Counsel further submitted that the Ruling and Orders of the Trial Court restraining the purported elected MPs to be sworn-in and from assuming office in EALA, is the most judicious as it maintains the *status quo*. He added that the current Application is intended to make moot both the References in the Trial Court and the Appeal in this Court because once the MPs are sworn-in and assume office in EALA, there will be no possibility to un-swearing them or to reverse laws which will have been passed by an illegally constituted EALA. Further, that the only way to preserve the References is to dismiss the Application and proceed with the hearing and determination of the References, because it was certified urgent.

46. It was Counsel's submission that the Applicant's appeal does not raise any arguable issues and that this Court cannot stay the Orders of the Trial Court because that Court found that the Applicant had committed illegalities. In Counsel's view, an illegality cannot be stayed. He also contended that the Appeal will not be rendered nugatory because EALA has been functioning without the Applicant's MPs and that a little more delay would not make any difference.

47. Asked by the Court to confirm whether there are indeed political parties in the Applicant or a strong ruling party and opposition parties as found by the Trial Court, Counsel, after consulting with the Respondents present in Court, conceded that there were no political parties in the Applicant's Parliament and could not tell where the reference to Justice and Solidarity Party (JSP), as the ruling party referred to in the Ruling of the Trial Court, came from. In response to another question by the Court whether elections had been conducted as stated by the Applicant, Counsel admitted that in the replying affidavits the Respondents had not denied that the elections were conducted, but still maintained from the bar that no elections had

taken place. Lastly, when asked by the Court whether the three respondents had participated in the elections, Counsel expressed ignorance of any elections conducted by the Applicant. We shall revert these issues later in this Ruling.

48. In rejoinder, Counsel for the Applicant submitted that the Respondents could not claim to have been locked out of the election in light of the evidence on record showing that one of them had paid the required nomination fee of 10,000 USD and received a certificate of nomination to contest the elections. He added that those documents were filed in the Trial Court by the Respondents themselves and that the allegations that they were locked out or that no elections were held are untenable. It was also Counsel's view that Article 50 of the Treaty does not require rules for election of EALA Members by the National Assemblies of the Partner States, but leaves it to each Partner State to decide its own procedure for conducting the elections, depending on the circumstances and the nature of the political system of the country.

J. COURT'S ANALYSIS AND DETERMINATION

49. We have carefully considered and analysed the Application before us, the respective supporting affidavits, the ruling of the Trial Court as well as the parties 'submissions and authorities. While we are acutely aware that in an interlocutory application like the one before us the Court does not make definitive findings on the matters in dispute in the appeal and that it is the remit of the Court to make such finding when it hears the appeal, in this Application the Respondent's readily concede that contrary to the views of the Trial Court, the Applicant's Parliamentary system does not currently have political parties and, we would add, that it is a glaring misnomer in the Applicant's context to talk of ruling and opposition parties.

50. In our considered view, the Ruling of the Trial Court and Orders restraining and prohibiting the Applicant's MPs-elect to EALA from being sworn-in or assuming their offices was predominantly based on the finding by that Court that the election process violated the letter and spirit of Article 50 of the Treaty, by among others favouring candidates of the ruling party and not giving opportunity to candidates of the opposition parties. Thus, for example, in paragraph 47 of the impugned Ruling, the Trial Court stated as follows:

> "*...the Applicants allege bias in the joint process, claiming Article 50's representativeness was violated by favouring the ruling Justice and Solidarity Party (JSP).*"

As we have stated, the Respondents took a diametrically opposed position in this Court, conceding, there is no Ruling Party in the Federal Parliament of the Applicant as alleged in the Trial Court. It is an eminently arguable point whether the Trial Court based its decision on a misapprehension of the facts on record.

51. In paragraph 48, the Trial Court added that:

> *'This Court has interpreted Articles 50 and 52 of the Treaty, establishing that national procedures must uphold Treaty standards of transparency, competitiveness and diversity. Two landmark cases that provide instructive precedents are* ***Prof. Peter Anyang 'Nyong'o &10 Others vs Attorney General of Kenya*** *(supra) in which Kenya opposition figures challenged their National Assembly's EALA nomination process as flawed, culminating into a full trial of the matter and similarly,* ***Hon. Abdul Katuntu vs Attorney General of Uganda*** *(supra) in which Uganda's EALA election rules were challenged for failing proportional representation under Article 50(2) of the Treaty. The Uganda-EALA elections were alleged to have proceeded with an all-NRM slate, paralleling JSP dominance in the instant case." (Emphasis added).*

Once again, it is plainly obvious that the Trial Court based its Ruling and Orders on the finding that the elections for EALA MPs in the Applicant were dominated by an alleged ruling party known as the Justice and Solidarity Party (JSP) to the detriment of opposition parties as was the situation in **the Katuntu case**. The Respondents themselves admit that there is no such ruling party represented in the Applicant's Parliament and which dominated opposition parties, which are equally non-existent. This too is an arguable point regarding the factual basis of the impugned Ruling and Orders.

52. In paragraph 50, Trial Court found that:

> *"A consolidated list identifies nine proposed members said to have been elected based on the 4.5 clan formula that is rooted in Garowe Principles. However, despite surface balance, the list is skewed toward JSP affiliates." (Emphasis added).*

53. In paragraph 52, the Court held that:

> *"The foregoing alleged process flaws that excluded opposition and underrepresented sub-clans/minorities and apparent misrepresentations regarding the existence of opposition or any form of parliamentary political parties in Parliament breach proportional representativeness envisaged under Article 50 of the Treaty." [Emphasis added).*

54. Lastly, in paragraph 53, the Court found that:

> *"On the face of it (prima facie), the ostensible election process contravened Article 50 of the Treaty by failing to ensure a transparent, competitive and representative election."*

55. From the Ruling of the Trial Court in the above cited paragraphs of the Ruling, it is discernible that Trial Court found there is a ruling party in the Applicant that controlled and dominated the election process in the same manner as in Kenya and Uganda in the **Anyang 'Nyong'o and Katuntu cases** (supra). In fact, the Court found the JSP in the Applicant to be akin

to the NRM in Uganda in terms of dominance, which the Respondents now admit is not the case.

56. Rule 87 of the Rules of this Court sets out the basis upon which the Court may issue an order of stay of execution. The rule provides as follows:

"87(*1*) *An appeal shall not operate as a stay of proceedings or of the decree or order appealed from except so far as the Court may order, nor shall execution of a decree or order be stayed by reason only of an appeal having been preferred from the decree or order, but the Court may for sufficient cause order stay of execution of such decree or order.*

(2) .....

(3)(1) No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the Court is satisfied: -

(a) That substantial loss may result to the party applying for stay of execution unless the order is made;

(b) That the application has been made without unreasonable delay; and

(c) *That security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.*"

57. The above rule confers upon this Court discretion to stay execution of a decree or order of the Trial Court if the Applicant demonstrates sufficient cause. What will constitute sufficient cause will depend on the peculiar circumstances of each case. The rule however, prohibits the Court in mandatory terms from issuing an order of stay of execution unless failure to do so may result in substantial loss to the Applicant; the application has been made without unreasonable delay and the Applicant has given security for the due performance of the decree or order that the Court may ultimately issue.

58. We have no doubt that the Application before us was made without unreasonable delay because the impugned Ruling and Orders were issued on 21st November 2025 and the present Application lodged on 27th November 2025, barely six days from the date of the Ruling. As regards security, the Applicant explained that it was ready and willing to offer any security as specified or directed by the Court because it was not in a position to decide in advance what would constitute adequate or appropriate security. From the nature of this Application, involving a Partner State and its citizens, it is the Court's finding that no order for security is necessary for now.

59. Further, in determining whether or not substantial loss is likely to occur, the Court considers the peculiar circumstances of each case. We would agree with the Applicant that substantial loss does not necessarily equate to irreversible loss, but it is loss of a nature that would be debilitating and seriously inhibit a party in its day- to- day business or undertaking, or would require huge resource outlay to undo. We shall consider this issue together with the question whether the Applicant has demonstrated sufficient cause.

60. Two other relevant considerations to bear in mind in determining whether an Applicant has established sufficient cause to warrant grant of an order of stay of execution and whether he or she is likely to suffer substantial loss are whether the appeal or intended appeal is arguable and whether, if it succeeds absent an order of stay of execution, it will be rendered nugatory. If the Court were to find an appeal or intended appeal frivolous, clearly the Applicant will not have shown sufficient cause to justify an order of stay of execution. Similarly, if the Court finds that the appeal or intended appeal will not be rendered nugatory, the Applicant will be hard-pressed to show that he or she will suffer substantial loss.

61. From the parties 'own submissions and their respective affidavits, as well as the Ruling of the Trial Court, especially the paragraphs we have set out above, we have absolutely no doubt that the Applicant's appeal is arguable. Among the arguable issues that we readily perceive are whether the Trial Court erred by assuming jurisdiction in the matter; by basing the Ruling on patently misleading factual basis, by proceeding on the basis that the Applicant has a ruling party in whose favour the elections were skewed and opposition parties which were emasculated in the elections; and by holding that election of EALA MPs cannot be annulled after they are sworn-in. We need not say more in this regard because these issues will be substantively addressed in the Appeal and we cannot prejudge them in an interlocutory application.

62. As regards whether Appeal No. 2 of 2025 will be rendered nugatory if it succeeds in the absence of an order of stay of execution, we agree with the Applicant that the Respondents still have a remedy under the Treaty, even if the Applicant's EALA MPs are sworn-in. We also do not think that the swearing in of the said MPs will take away the jurisdiction of the Court in a matter it is already seized of.

63. In addition, taking into account the concessions made by the Respondents regarding the erroneous factual basis of the Trial Court's findings, the balance of convenience, the public interest of the Partner States and the peculiar and notorious history and circumstances of the Applicant, which have compelled it to innovate outside conventional arrangements to create a semblance of order, peace, security and stability, the scales tilt decidedly in favour of granting an order of stay of execution.

64. The Respondents argue that the rights of the citizens of the Applicant can still be protected in other organs and institutions of the Community, such as the Sectoral Council and the Council of Ministers, and not necessarily by participating in EALA. The same position was advanced by the Trial Court that maintaining the status quo would not have any adverse

consequence to the People of Somalia or to the Applicant taking into account that EALA has been functioning smoothly even without EALA Members from the Applicant.

65. With due respect, keeping out representatives of a Partner State on grounds which the Respondents themselves admit to be factually incorrect, may lead to even a more blatant violation of the Treaty, especially Article 7(1)(f) on the Operational Principles of the Community which provides that:

"*The principles that shall govern the practical achievement of the objectives of the Community shall include the equitable distribution of benefits accruing or to be derived from the operations of the Community and measures to address economic imbalances that may arise from such operation.*"

66. Indeed, EALA is the only Legislative Organ of the Community established under Article 9 of the Treaty and any position or view that the Applicant is adequately represented by virtue of representation in other organs of the Community has no basis under the Treaty. In addition, it is difficult to fathom any appropriate or adequate compensation that would redress a Partner State or its People for keeping away its representation during legislation or adoption of the budget of the Community by EALA.

67. Before we conclude this Ruling, we wish to comment on the regrettable failure of the 4th Respondent to appear in a dispute of this magnitude on the ground of a vacancy in the substantive office of the Counsel to the Community (CTC). In our perception, a vacancy in the substantive office of the CTC does not incapacitate the office from executing its duties and functions under the Treaty and such interpretation aligns with the principle of continuity in administrative functions of the Community.

68. There is also established precedent where, due to a vacancy in the substantive office of the CTC, the Secretary General, in his or her capacity as the Principal Executive Officer, delegated an officer to serve as the

CTC in acting capacity pending the Council of Minister's approval in an effort to safeguard the interests of the Community. That happened in 2015 when a Principal Legal Officer in the office of the CTC was appointed to perform the duties of the CTC in a bid to ensure that the Community's legal obligations were not neglected. The Acting CTC appeared in this Court and argued cases in which the Community was a party and discharged the duties of the office until the substantive CTC was appointed.

69. In the interest of representation of the Community in Court, we do not see any reason why a similar course of action should not be adopted in the present circumstances.

K. DISPOSITION

70. In light of the above analysis, we make the following Orders:

1. The Applicant's Application dated 26th November 2025 is hereby allowed;
2. The Ruling and Orders of the Trial Court of 21st November 2025 restraining the swearing in, taking of oath and assumption of office of the nine (9) Members of Parliament elected on 15th October 2025 by the Federal Parliament of Somalia to the East African Legislative Assembly are hereby stayed pending the hearing and determination of Appeal No.2 of 2025; and
3. The costs of this Application shall abide the outcome of the Appeal.

IT IS SO ORDERED.

DATED, SIGNED and DELIVERED at Arusha this 19th Day of January, 2026.

19.1.2026

.....

Nestor KAYOBERA
PRESIDENT

Certified as a True Copy of the Original

.....
Deputy Registrar

.....

Anita MUGENI
VICE-PRESIDENT

.....

Kathurima M'INOTI
JUSTICE OF APPEAL

.....

Cheborion BARISHAKI
JUSTICE OF APPEAL

.....

Omar MAKUNGU
JUSTICE OF APPEAL

Certified as a True Copy of the Original

.....

Deputy Registrar
East African Court of Justice

IN THE EAST AFRICAN COURT OF JUSTICE

AT ARUSHA, TANZANIA

APPELLATE DIVISION

APPLICATION NO. 3 OF 2025

BETWEEN

THE ATTORNEY GENERAL OF THE FEDERAL REPUBLIC OF SOMALIA.....APPLICANT

AND

AMB. MOHAMED AHMED AWIL.....1ST RESPONDENT

ALI ABDULNUR OSMAN.....2ND RESPONDENT

ABDULLAHI MOHAMED AHMED.....3RD RESPONDENT

AND

THE SECRETARY GENERAL OF THE EAST AFRICAN COMMUNITY.....4TH RESPONDENT

ORDER

In Court on the 14th & 19th January, 2026

(Before Honourable Justices; Nestor Kayobera, P; Anita Mugeni, VP; Kathurima M'Inoti; Cheborion Barishaki & Omar Othman Makungu JJ.A)

UPON READING an Application dated 26th November, 2025 and lodged in this Court on 27th November, 2025 Under Rule 87 of the East African Court of Justice, Rules of procedure, 2019 seeking for Orders that:

1. **THAT** the Application herein be certified urgent and be heard *ex parte* in the first instance.
2. **THAT** pending the *inter partes* hearing and determination of the Application, an order do issue under Rule 87(4) of the Court's Rules staying the order of the First Instance Division of 21st November 2025 restraining the swearing in, taking of oath and assumption of office

of the nine (9) Members of Parliament elected by the Federal Parliament of the Republic of Somalia to represent it at the East African Legislative Assembly.

3. **THAT** pending the hearing and determination of the Appeal herein, an order do issue staying the order of the First Instance Division of 21st November 2025 restraining the swearing in, taking of oath and assumption of office of the nine (9) Members of Parliament elected by the Federal Parliament of the Republic of Somalia to represent it at the East African Legislative Assembly.
4. **THAT** the Application and the Appeal be determined on expedited basis.
5. **THAT** the Honourable Court does issue any other order it deems just and fair in the circumstances.
   AND FOR AN ORDER THAT the costs of and incidental to this Application abide the result of the said appeal.

AND UPON HEARING submissions by counsels for the Applicant and for the Respondents;

IT IS HEREBY ORDERED THAT:

1. The Applicant's Application dated 26th November 2025 is hereby allowed;
2. The Ruling and Orders of the Trial Court of 21st November 2025 restraining the swearing in, taking of oath and assumption of office of the nine (9) Members of Parliament elected on 15th October 2025 by the Federal Parliament of Somalia to the East African Legislative Assembly are hereby stayed pending the hearing and determination of Appeal No. 2 of 2025; and
3. The costs of this Application shall abide the outcome of the Appeal.

GIVEN under my hand and Seal of this Honourable Court this 19th day of January, 2026.

EAST AFRICAN COMMUNITY
JUMUIYA YA AFRIKA MASHARIKI
APPELATE DIVISION
THE EAST AFRICAN COURT OF JUSTICE

ACTING REGISTRAR