



An Examination of the Jurisdiction of the East Africa Court of Justice (EACJ)

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Abstract: This article analyse the jurisdiction of the East Africa Court of Justice and thereby determine its link with national courts to work together. The Treaty establishing East Africa Court of Justice requires member states to extend the jurisdiction of the court to cover human rights issues which is yet to be implemented. It is submitted that member states should take quick measures to extend its jurisdiction as required by the Treaty. The Court is a very important institution regarding the development of community law and the whole process of political integration. It is an institution which must strive to ensure that in performing its role, help to create a legal uniformity among member states furthering development of the community law. Therefore, Article 34 of the Treaty establishing East Africa Community is very important in respect of preliminary reference process that allows national courts to send questions pertaining to East Africa Community law to the East Africa Court of Justice where it is necessary to do so.

Key words: Jurisdiction of East Africa Court of Justice

Introduction

The new East Africa Community (EAC) was created in November 1999. This was after the collapse of the former East Africa Community in 1977. The EAC comprises Uganda, Kenya, Tanzania, Rwanda and Burundi. Its headquarters is in Arusha, Tanzania. The treaty re-establishing the East Africa Community in 1999, establishes East Africa Court of Justice as among the organs of the community.¹ The EAC court of justice was effectively inaugurated in 2001.

One of the objectives of EAC is to establish co-operation among partner states in legal and judicial affairs.

According to EAC Treaty;

“The objectives of the community shall be to develop policies and programmes aimed at widening and deepening co-operation among

partner states in political, economic, social and cultural fields, research and technology, defence, security and **legal and judicial affairs**, for their mutual benefit.”² (Emphasis mine)

Therefore with reference to the EAC objectives, the community to achieve its aim of increasing the social welfare of East African citizens must establish strong and efficient judicial system to support the integration process which is divided into three phases: Custom Union, Common Market and Monetary Union, and finally, Political Union.³ This article examines the jurisdiction of the East African Court of Justice and its link with domestic courts. For the purpose of this article East Africa Court of Justice will be referred as (EACJ).

1. Historical development of East Africa Court of Justice

The development of the East Africa Court of Justice can be traced back to establishment of the

¹ Art. 9 (1) (e) of the Treaty of the Establishment of the East African Community (as Amended on 14th December 2006 and 20th August 2007

² Ibid, Art. 5 (1)

³ Ibid, Art. 5 (2)

former East Africa Court of Appeal 1909.⁴ The current East Africa Court of Justice was established in 2001.⁵ As mentioned above the East Africa Court of Justice is one of the organs of the Community established under the treaty establishing the Community.⁶ The EACJ differs from the former East Africa Court of Appeal⁷ which existed in East Africa Community before the collapse of the former East Africa Community, 1977. The current EACJ is more responsible to ensure that Community member states adhere to community law.⁸ Since the Community is constituted by five member states subject to accommodation of new members in future, there is a potential possibility for occurrence of the disputes among member states. It is of this essence makes the establishment of the Court important. The EACJ is said to be an international court because it serves all members of East Africa Community.⁹ The EAC court is composed of a maximum of fifteen judges of whom not more than ten shall be appointed to the First Instance Division and not more than five to the Appellate Division. Judges for the EAC court of justice hold office for a maximum period of seven years.¹⁰

The disputes may be referred to the community courts by member states, specific community institutions, legal and natural persons, and national courts. When there is an allegation that a member state has committed a breach of its obligation under

the treaty the other member states may make a reference to the courts on the same matter. The secretary of the EAC may also make a similar reference to the courts. The community law allows natural and legal person to bring claims before the courts subject to the condition that he must be a resident in a partner state.¹¹ However, we need to note that individuals should not bypass national courts and run to the EAC court of justice unnecessary because it may lead the same case be taken back to national courts. It should be noted that reference to the court may also be made by the Summit or Authority of Heads of State and Government, the Council of Ministers or a member state seeking an advisory opinion regarding a question of law arising under their community treaty from their respective community courts.

2. The jurisdiction of the East Africa Court of Justice (EACJ)

The legal basis of the jurisdiction of EACJ is found under the provisions of Articles 23 read together with the original Article 27 (1) of the Treaty establishing the East Africa Community. In the case of *The Honourable Attorney General of the United Republic of Tanzania v. African Network for Animal Welfare (Anaw)*,¹² it was observed that

⁴ Harold R. Nsekela, Overview Of The East African Court Of Justice, A Paper for Presentation During the Sensitisation Workshop on the Role of the EACJ in the EAC Integration, Imperial Royale Hotel, Kampala, Uganda, 1st – 2nd November, 2011.

⁵ <http://www.eacj.org/establishment.php> (accessed on 18/12/2013)

⁶ Ibid, Article 9

⁷ This court was concerned with appeal from decisions of the National Courts on both civil and criminal matters save for constitutional matters and the offence of treason for Tanzania.

⁸ Ibid, Art. 23 (1)

⁹ Harold R. Nsekela, Overview Of The East African Court Of Justice, A Paper for Presentation During the Sensitisation Workshop on the Role of the EACJ in the EAC Integration, Imperial Royale Hotel, Kampala, Uganda, 1st – 2nd November, 2011.

¹⁰ Art. 25 (1) of the Treaty of the Establishment of the East African Community (as Amended on 14th December 2006 and 20th August 2007).

¹¹ Article 30 of the EAC Treaty provides that ‘any person who is resident in a Partner State may refer for determination by the Court, the legality of any Act, regulation, directive, decision or action of a Partner State or an institution of the Community on the grounds that such Act, regulation, directive, decision or action is unlawful or is an infringement of the provisions of this Treaty’. In the case of *Anyang’ Nyongo v. AG of the Republic of Kenya* [2008] 3 KLR 397, the court observed that article 30 created a special cause of action that did not require the claimant to show a right or interest that was infringed, damaged or suffered as a result of the matter complained of; an allegation of infringement was enough. Article 30 granted the individual the right of direct access to the court. There was no requirement to exhaust local remedies.

¹² Appeal NO. 3 OF 2011. In the case of *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd* [1989] KLR1 at 14, it was stated that “Without jurisdiction, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other

“Jurisdiction is a most, if not the most, fundamental issue that a court faces in any trial. It is the very foundation upon which the judicial edifice is constructed; the fountain from which springs the flow of the judicial process. Without jurisdiction, a court cannot take even the proverbial first Chinese step in its judicial journey to hear and dispose of the case.”

The EACJ has jurisdiction to make interpretation of all matters relating to the application of treaty among member states. In the case of *Professor Anyang' Nyong'o and Others Vs The Attorney General of Kenya and Others*, the EACJ stated as follows:

“The Treaty describes the role and jurisdiction of this Court in two distinct but clearly related provisions. In Article 23, the Treaty provides. The Court shall be a judicial body which shall ensure the adherence to law in the interpretation and application of and compliance with this Treaty. And according to Article 27(1)- “The Court shall initially have jurisdiction over the interpretation and application of this Treaty”.¹³

2.1 Jurisdiction over matters reserved for the organs of any member states

The EACJ has no jurisdiction to interpret the rights and powers expressly mentioned by the treaty to fall under the powers of the organs of any member countries of the Community.¹⁴

Article 27 (2) provides;

The Court shall have such other original, appellate, human rights and other jurisdiction as will be determined by the Council at a suitable subsequent

evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.

¹³ Reference No 1 of 2006, at p.10.

¹⁴ Art.27 (1) of the Treaty of the Establishment of the East African Community (as Amended on 14th December 2006 and 20th August 2007) states that *the Court shall initially have jurisdiction over the interpretation and application of this Treaty, provided that the Court's jurisdiction to interpret under this paragraph shall not include the application of any such interpretation to jurisdiction conferred by the Treaty on organs of Partner States.*

date. To this end, the Partner States shall conclude a protocol to operationalise the extended jurisdiction.¹⁵

From the above provision the EACJ has neither jurisdiction to entertain appeals from domestic courts of member states nor jurisdiction to deal with human rights cases right now. Therefore, member states are required to conclude a protocol in order to extend the powers of the court to deal with human rights cases and appeals from domestic courts of member states. The delay in adopting and extending the jurisdiction of the court has been argued to be the violation of the Treaty establishing the East Africa Community.

In *Sitenda Sebalu v The Secretary General of the East African Community*,¹⁶ it was noted that

“the extended jurisdiction did not come as an afterthought and it held inter alia, that, the delay in extending the jurisdiction of the EACJ not only holds back and frustrates the conclusion of the Protocol but also jeopardizes the achievement of the objectives and implementation of the Treaty and amounts to an infringement of Article 8 (1) (c) and contravenes the principles of good governance as stipulated by Article 6 of the Treaty. This is due to the fact that for any court to discharge its function properly must have first jurisdiction as it was observed by Nyarangi J.A in the case of *Owners of Motor Vessel "Lillian" Vs Caltex oil (Kenya)*¹⁷ that “.....jurisdiction is everything. Without it a Court has no power to make one more step....”

Therefore, the EACJ invited member states quickly to conclude the protocol with the purpose of extending the jurisdiction of the court. This was observed by EACJ that *“quick action should be taken by the East African Community in order to conclude the protocol to operationalise the extended jurisdiction of the East African Court of Justice.”*¹⁸

¹⁵ Treaty the Establishment of the East African Community (as Amended on 14th December 2006 and 20th August 2007

¹⁶ Reference No. 1 of 2010

¹⁷ [1989] KLR 1, at p.14

¹⁸ *Sitenda Sebalu v The Secretary General of the East African Community*, Reference No. 1 of 2010. This is in reflection of Article 38 (1) of the Treaty:

However, we need to note that the matters relating to human rights have been mandated to African Human Rights Court of Justices. Therefore, extending the jurisdiction to the court might come into conflicting with the power of African Court of Justice.

2.2 Jurisdiction over state conducts

There is a possibility for the EACJ to entertain a dispute where the member state makes regulation or provides directive violating the community treaty. The individual or legal person has been given the right to access the court to challenge the legality of actions of the partner states deemed to violate the treaty.¹⁹ If member states take any measures in their domestic affairs which appears to be contrary to the provision of the treaty, the court has the jurisdiction to entertain such dispute.²⁰ However, this is subject to the limitation that such matter must have been reserved for an institution of a partner state.²¹ Excluding the jurisdiction of the EACJ under Article 30 (3) of the Treaty, undermines the performance of the court to ensure adherence to law in the interpretation of the Treaty.²²

Also the EACJ has jurisdiction over disputes relating to failure by members states to fulfil its Treaty obligations, or the violation of the

“(3) A Partner State or the Council shall take, without delay, the measures required to implement a judgment of the Court.”

¹⁹ Art. 30 (1) of the Treaty

²⁰ Art. 28 (2) of the Treaty the Establishment of the East African Community (as Amended on 14th December 2006 and 20th August 2007

²¹ Ibid, Art. 30 (3) provides that “where an Act, regulation, directive, decision or action has been reserved under this Treaty to an institution of a Partner State.”

²² In the *East African Centre for Trade Policy and Law v The Secretary General of the East African Community*, Reference NO. 9 OF 2012, the EACJ, observed that “although the impugned amendments did not take away or oust the jurisdiction of the EACJ, they undermined the supremacy of the EACJ as the judicial body whose responsibility is to ensure adherence to law in the interpretation of the Treaty as per Article 23.”

provisions of the Treaty.²³ Thus, if there is any breach by member states of their obligations in the treaty, the court will enjoy the powers to settle such dispute when other member states decide to take the dispute to the court for adjudication.

However, the jurisdiction of the EACJ here is not absolute; the dispute must first be referred to the partner states²⁴ concerned, by the Secretary General for consideration before being referred to council²⁵ and thereafter if it fails before the council is referred to the EACJ by the Secretary General under the directive of the Council after it remains unresolved.²⁶

2.3 Jurisdiction over disputes between the Community and its employees

The EACJ has jurisdiction to deal with disputes between the Community, and its employees arising from the terms and conditions of employment or the interpretation and application of the staff rules and regulations governing the employees of the Community or its Institutions.²⁷

2.4 Jurisdiction over commercial disputes

The EACJ has jurisdiction to deal with commercial disputes involving the Community and the Partner States, if the dispute is submitted to the Court under a special arbitration agreement or arises out of an arbitration clause contained in a contract or agreement conferring such jurisdiction on the Court. It must be noted therefore that for the EACJ to enjoy the jurisdiction in respect of commercial dispute, the court must be request the parties in dispute.

Article 32 provides;

- (a) *The Court shall have jurisdiction to hear and determine any matter:*
 - (a) *arising from an arbitration clause contained in a contract or agreement which confers such jurisdiction to which the*

²³ Art.28 (1) of the Treaty the Establishment of the East African Community (as Amended on 14th December 2006 and 20th August 2007

²⁴ Ibid, Art. 29 (1)

²⁵ Ibid, Art. 29 (2)

²⁶ Ibid, Art. 29 (3)

²⁷ Ibid, Art. 31

Community or any of its institutions is a party; or

- (b) arising from a dispute between the Partner States regarding this Treaty if the dispute is submitted to it under a special agreement between the Partner States concerned; or*
- (c) arising from an arbitration clause contained in a commercial contract or agreement in which the parties have conferred jurisdiction on the Court.*

Therefore, from the above provision, the jurisdiction of the EACJ is extended to deal with disputes outside the interpretation and application as well as adherence of the treaty. Thus, it has unlimited jurisdiction with respect of commercial disputes when asked by the parties to do so.

2.5 Appellate jurisdiction

The appellate jurisdiction of the EACJ is limited as comparable to the former East Africa Court of Appeal, the later one appears had wide powers. The former East Africa Court of Appeal had the power to deal with appeals from the courts of Member states save for constitutional and treason disputes which was reserved only for high courts of member states. In the case of the *East African Centre for Trade Policy and Law v The Secretary General of the East African Community*,²⁸ the East Africa Court of Justice found that after the introduction of the amendments, the jurisdiction of the EACJ is limited because, one, by virtual of the proviso to Article 27(1), the Court's jurisdiction now excludes matters: "...where jurisdiction is conferred by the Treaty on organs of Partner States." And that "under the Treaty, jurisdiction can now be conferred on organs of the Partner States, yet the "organs" of Partner States are not defined in the Treaty. The proviso is therefore vague and inconsistent with the provisions of the Treaty. It also means that, Community law can be applied in the Partner States without any supervision by the judicial organ of the Community, namely, the EACJ. Therefore, this act alone flies in the face of Articles 23 and 27."

²⁸ Reference NO. 9 OF 2012

In the beginning decisions of the East Africa Court of justice were not subject to appeal. However, with the amendment of the Treaty establishing it in 2006 and 2007, the amendment introduced the First Instance Division and the Appellate Division. It is provided under Article 23 (2) of the Treaty²⁹ that 'the Court shall consist of a First Instance Division and an Appellate Division.' Therefore, it is possible today to appeal against the decision of the First Instance Division to the Appellate Division. The appeals for the purpose of Article 23 (2) of the Treaty refer to the appeal filed from the First Instance Division in the interpretation and application of the treaty establishing the community but not the appeals from the Courts of member states.

3. The link between the East Africa Court of Justice and other Institutions

(a) Domestic Courts

The jurisdiction of the EACJ as mentioned above is much limited to ensure the adherence to law in the interpretation, application of and compliance with the rules and norms of the EAC Treaty. Therefore, the decisions of the Court on the matter of interpretation of the treaty establishing the community take precedence over decisions of national courts on a similar matter.³⁰

It may be argued that the EACJ has concurrent jurisdiction with national Courts on the interpretation of the Treaty. This is clearly provided under Article 33 (1) of the Treaty which states that:

"Except where jurisdiction is conferred on the Court by this Treaty, disputes to which the Community is a party shall **not on that ground alone**, be excluded from the **jurisdiction of the national courts of the Partner States**." (Emphasis is mine).

²⁹ Treaty of the Establishment of the East African Community (as Amended on 14th December 2006 and 20th August 2007

³⁰ Art.33 (2) of the Treaty the Establishment of the East African Community (as Amended on 14th December 2006 and 20th August 2007

It was observed in the *East African Centre for Trade Policy and Law v. The Secretary General of the East African Community*,³¹ that

“although the EACJ had the primacy and supremacy over the interpretation of the Treaty, Article 33 of the Treaty, which is entitled “*Jurisdiction of National Courts*”, indicates that national courts also had some form of jurisdiction in interpretation of the Treaty even before the impugned amendments.”

It is submitted that the act of granting concurrent jurisdiction to the organs of the Partner States takes away the supremacy of the EACJ with regard to the interpretation of the EAC Treaty. Also this makes the EACJ to compete with domestic courts in interpretation of the Treaty establishing the Community. However, since the EACJ is the judicial arm of EAC, the decisions concerning the application of community law and its judgment take precedence over decision of national courts in respect of the same matters. Thus, this makes the East Africa Community law supreme over national law.

In the case *the East African Law Society and 4 Others v. The Attorney General of Kenya and 3 Others*,³² the East Africa Court of Justice observed that-

“By the provisions under Articles 23,33(2) and 34, the Treaty established the principle of overall supremacy of the Court over the interpretation and application of the Treaty, to ensure harmony and certainty. The new

(a) proviso to Article 27; and

(b) paragraph (3) of Article 30, have the effect of compromising that principle and/or of contradicting the main provision. It should be appreciated that the question of what “the Treaty reserves for an institution of a Partner State” is a provision of the Treaty and a matter that ought to be

In the case of *Prof. Peter Anyang' Nyongo and 10 others and the Attorney General of Kenya and 2*

others and Abdirahim Haitha Abdi and 11 others, the Court had this to say-

“The purpose of these provisions is obviously to ensure uniform interpretation and avoid possible conflicting decisions and uncertainty in the interpretation of the same provisions of the Treaty. Article 33(2) appears to envisage that in the course of determining a case before it a national court may interpret and apply a Treaty provision. Such envisaged interpretation however, can only be incidental. The article neither provides for nor envisages a litigant directly referring a question as to the interpretation of a Treaty provision to a national Court. Nor is there any other provision directly conferring on the national Court jurisdiction to interpret the Treaty”

This means that without clear interpretation these provisions cause confusion and therefore it is submitted that they should be amended in order to reflect the objective of Article 27 (1) of the same treaty establishing the East Africa Court of Justice. It is also submitted that the establishment of the East Africa Court of Appeal is necessary.

The court has been granted mandate to receive any referral from the domestic courts of member states on preliminary rulings on the interpretation of the Treaty where even necessary to do so.³³ Therefore, under Article 34 of the Treaty, the East Africa Court of Justice has the jurisdiction to give preliminary rulings concerning:-

- (a) the interpretation or application of the provisions of this Treaty
- (b) the validity of the regulations, directives, decisions or actions of the Community.

³³ Art. 34 of the Treaty the Establishment of the East African Community (as Amended on 14th December 2006 and 20th August 2007), We should note that reference for preliminary ruling is a request from a national court of a member state to the EACJ to give authoritative interpretation of a community act or a decision on the validity of such act. Here the EACJ does not act as a court of appeal which rules on the outcome of the main proceedings before the referring court. The ruling is addressed to the court not parties to the main proceedings. The purpose is to ensure uniform interpretation of the community law throughout the community. It help to facilitate in political integration of the community.

³¹ Reference NO. 9 OF 2012,

³² No. 3 of 2007

The purpose of preliminary ruling here is to ensure that there is uniformity in the interpretation of the community law and facilitates the application of Community law by assisting the national courts in overcoming the difficulties they encounter when applying Community law. Again preliminary ruling should be taken as an important tool which helps to ensure Member States obligations under Community law. This was observed by the European Court of Justice in Case of *Firma Foto Frost v. Hauptzollamt Lübeck-Ost*,³⁴ the Court affirmed that ‘requests for preliminary rulings, like actions for annulment, constitute means for reviewing the legality of acts of the Community institutions’. When a German court asked whether it could declare a Commission decision in the field of external trade invalid, the ECJ rejected this idea insisting on its own exclusive right of invalidating Community law. The Court reasoned that it was one of the main purposes of Article 234 TEC:

“to ensure that Community law is applied uniformly by national law. That requirement of uniformity is particularly imperative when the validity of a Community act is in question. Divergences between courts in the Member States as to the validity of Community acts would be liable to place in jeopardy the very unity of the Community legal order and detract from the fundamental requirements of legal certainty.”

The practice from the European Court of Justice shows that the decision to refer the matter for preliminary ruling may be mandatory or discretionary. In the case of *Arsenal Football Club plc v Reed*,³⁵ it was observed that

“It is clear that it is for the national court and not the individual parties concerned to make the reference. Where the national court or tribunal is not the ‘final’ court or tribunal, the reference to the ECJ is discretionary. Where the national court or tribunal is the ‘final’ court, then reference is obligatory. That there are however, circumstances under which a ‘final’ court need not make a reference under Art 234. These are: where the question of Community law is not truly relevant to the decision to be made by the national court; where there has been a previous interpretation of the provision in question by the ECJ so that its

meaning has been clearly determined; where the interpretation of the provision is so obvious as to leave no scope for any reasonable doubt as to its meaning.”

From the above ruling in the *Arsenal Football Club Plc’* case, reference for preliminary ruling from the High Court of Tanzania for instance to East Africa Court of Justice is discretionary while decision from the Court of Appeal of Tanzania being the final court in Tanzania reference is compulsory. The treaty establishing the Community is silent as to which the referral from the domestic courts for preliminary ruling has to be submitted. However, this has been covered by the East Africa Court of Justice Rules of Procedure that a referral has to be submitted to Appellate Division.³⁶

However, it is submitted that the freedom to submit the matter to the EACJ for preliminary ruling by any court or tribunal of a Partner State concerning the interpretation or application of the provisions of this Treaty or the validity of the regulations, directives, decisions or actions of the Community must be restricted only to the relevant matters.

Article 34 of the Treaty states

“Where a question is raised before any court or tribunal of a Partner State concerning the interpretation or application of the provisions of this Treaty or the validity of the regulations, directives, decisions or actions of the Community, that court or tribunal shall, if it considers that a ruling on the question is **necessary to enable it to give judgment**, request the Court to give a **preliminary ruling** on the question.” (Emphasis is mine).

This will help to reduce the case-load of references before the EACJ. Lord Denning in the case of

³⁴ [1987] ECR 4199

³⁵ [2003] 1 All ER137

³⁶ Art. 34 of the Treaty the Establishment of the East African Community (as Amended on 14th December 2006 and 20th August 2007. This has to be considered under Rule 76 (1) the East African Court of Justice Rules of Procedure, which states “A request by a national Court or tribunal of a Partner State concerning the interpretation or application of the provisions of the Treaty or validity of any regulations directives, decisions or actions of the Community pursuant to Article 34 of the Treaty shall be lodged in the Appellate Division by way of a case stated.”

*Bulmer v. Bollinger*³⁷, laid down the following guidelines as to whether a decision is 'necessary': (a) the point must be conclusive; (b) previous rulings are relevant and, as a rule, they should be followed by national courts, and only if they think that a previous ruling may have been wrong should they re-submit the point to the ECJ; and (c) if a point is 'reasonably clear and free from doubt' it constitutes an 'acte clair' and 'there is no need to interpret the Treaty but only to apply it'.

It should be borne in our mind that the Treaty does not define the term tribunal which creates doubts as to what really constitutes tribunal in respect of the application of Article 34 of the Treaty. It is better the term should be given a clear interpretation. What is not clear here is whether the term includes arbitration tribunal or not.³⁸

Again the domestic courts have the jurisdiction under Article 54(2) of the Common Market Protocol, to deal with common markets issues. By Article 33 (2) of the Treaty the decision of the EACJ must surpass the decision of the domestic courts. However, we need to note that any law made for the purpose of implementation of the Treaty including the Customs Union Protocol and the Common Market Protocols are integral parts of the Treaty. Therefore the Customs Union Protocol cannot be taken in isolation of the Treaty. If there is a conflict then the Treaty must prevail.³⁹ Note that under Article 9 of the Treaty, the EACJ is one of the organs of the Community. Thus, the EACJ takes precedence over national courts or institutions

³⁷ [1974] 2 WLR 202

³⁸ Whether arbitration qualify to submit dispute for preliminary ruling to EACJ under article 34 of the East Africa Treaty which is similar to Article 234 of the European Union Treaty was considered in Case 102/81 *Nordsee Deutsche Hochseefi scherei* [1982] ECR 1095, where the ECJ qualified 'commercial arbitration as a form of private and not state dispute settlement'. Therefore does not qualify to submit the dispute for preliminary ruling.

³⁹ Art. 8 (4) of the Treaty the Establishment of the East African Community (as Amended on 14th December 2006 and 20th August 2007), states "Community organs, institutions and laws shall take precedence over similar national ones on matters pertaining to the implementation of this Treaty."

on matters pertaining to the implementation of the Treaty.

The application of the doctrine of precedent in the East Africa Court of Justice is an area which requires attention. This is due to the fact that East Africa member states differ in their legal system. The legal system of some member states is based on common law such as Tanzania, Kenya and Uganda, the doctrine of precedent apply subject to the condition that the supreme courts are free to depart from their previous decisions where they consider it appropriate to do so.⁴⁰ However, East Africa Court of Justice must endeavour to maintain consistency of its decisions. Thus, it has to be bound by its own decisions.

(c) EAC Customs Union Committee

The committee established under the EAC Customs Union Protocol enjoys more powers than the East Africa Court of Justice.⁴¹ This is to the fact that the decision of the committee is final even though the East Africa Customs Union is one of the objectives of the establishment of the community, the fact which mandates the court to have jurisdiction over the protocol since it is an integral part of the Treaty.⁴²

4. Conclusion

The East Africa Court of Justice is a very important institution which must play a critical role in the regional integration process. It must be given an absolute power with respect to the determination of

⁴⁰ *Jumuiya ya Wafanyakazi Tanzania V Kiwanda cha Uchapishaji cha Taifa* [1988] TLR 146 (CA), it was observed that "all courts and tribunals below the Court of Appeal are bound by decisions of the Court regardless of their correctness and that the Court of Appeal should be free in both civil and criminal cases to depart from such previous decisions when it appears right to it do so."

⁴¹ Art. 24 (5) of the Protocol on the Establishment of the East African Customs Union.

⁴² Art. 2 (2) of the Treaty the Establishment of the East African Community (as Amended on 14th December 2006 and 20th August 2007), states "in furtherance of the provisions of paragraph 1 of this Article and in accordance with the protocols to be concluded in this regard, the Contracting Parties shall establish an East African Customs Union and a Common Market as transitional stages to and integral parts of the Community."

community disputes in the region. To achieve its objective the EACJ needs support from the EAC Policy Organs. It is necessary that the member states must take some quick initiatives to extend the jurisdiction of the EACJ as provided by the Treaty establishing the Community. Also it is important for the member states to establish East Africa Court of Appeal in order enhance the process of integration which is the ultimate end objective of the union. The application of Article 34 of the Treaty is important to ensure uniformity in terms of decision of EACJ in respect of Community law.

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