

CHAPTER EIGHT

THE EAST AFRICAN COURT OF JUSTICE

ARTICLE 23

Role of the Court

1. 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.
2. *The Court shall consist of a First Instance Division and an Appellate Division.*
3. *The First Instance Division shall have jurisdiction to hear and determine, at first instance, subject to a right of appeal to the Appellate Division under Article 35A, any matter before the Court in accordance with this Treaty.*

ARTICLE 24

Judges of the Court

1. Judges of the Court shall be appointed by the Summit from among persons recommended by the Partner States who are of proven integrity, impartiality and independence and who fulfil the conditions required in their own countries for the holding of such high judicial office, or who are jurists of recognised competence, in their respective Partner States:

Provided that no more than—

(a) two Judges of the First Instance Division; or

(b) one Judge of the Appellate Division,

shall be appointed on the recommendation of the same Partner State.

2. *The Court shall be 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 shall be appointed to the Appellate Division:*

Provided that of the Judges first appointed to the Court, the terms of one third of the Judges shall expire at the end of five years, the terms of another one third of the Judges shall expire at the end of six years and the remaining one third of the Judges shall serve their full terms of seven years.

3. The Judges whose terms are to expire at the end of each of the initial periods mentioned in paragraph 2 of this Article shall be chosen by lot to be drawn by the Summit immediately after their first appointment.
4. *The Summit shall designate two of the Judges of the Appellate Division as the President and Vice-President respectively, who shall be responsible for the performance of such functions as are set out in this Treaty.*
5. *The Summit shall designate two of the Judges of the First Instance Division as the Principal Judge and Deputy Principal Judge respectively, who shall be responsible for the performance of such functions as may be set out in this Treaty.*
6. *The President and Vice-President, the Principal Judge and the Deputy Principal Judge, shall not be nationals of the same Partner State.*
7. *The President shall:*
 - (a) *be the Head of the Court and shall be responsible for the administration and supervision of the Court;*
 - (b) *direct work of the Appellate Division, represent it, regulate the disposition of the matters brought before the Court and preside over its sessions.*
8. *The Principal Judge shall direct work of the First Instance Division, represent it, regulate the disposition of the matters brought before the Court and preside over its sessions.*
9. The office of President of the Court shall be held in rotation after the completion of any one term.
10. The President of the Court shall direct the work of the Court, represent it, regulate the disposition of matters brought before the Court, and preside over its sessions.

ARTICLE 25

Tenure of Office of Judges

1. Subject to paragraph 2 of Article 24, a Judge appointed under paragraph 1 of Article 24 of this Treaty, shall hold office for a maximum period of seven years.
2. A Judge shall hold office for the full term of his or her appointment unless he or she resigns or attains seventy (70) years of age or dies or is removed from office in accordance with this Treaty.
3. Where the term of office of a Judge comes to an end by effluxion of time or on resignation before a decision or opinion of the Court with respect to a matter which has been argued before the Court of which he or she was a member is delivered, that Judge shall, only for the purpose of completing that particular matter, continue to sit as a Judge.
4. A Judge may, at any time, resign his or her office by giving three months' written notice to the Chairman of the Summit through the Secretary General.
5. The salary and other terms and conditions of service of a Judge not provided for in this Treaty shall be determined by the Summit on the recommendation of the Council.

ARTICLE 26

Removal from Office and Temporary Membership of the Court

1. *A Judge shall not be removed from office except by the Summit—*
 - (a) *for misconduct or for inability to perform the functions of his or her office due to infirmity of mind or body;*

Provided that a Judge shall only be removed from office under this sub paragraph if the question of his or her removal from office has been referred to an ad hoc independent tribunal appointed for this purpose by the Summit and the tribunal has recommended that the Judge be removed from office for misconduct or inability to perform the functions of his or her office; or
 - (b) *in the case of a Judge who also holds judicial office or other public office in a Partner State—*

- (i) *is removed from that office for misconduct or due to inability to perform the functions of the office for any reason; or*
- (ii) *resigns from that office following allegation of misconduct or of inability to perform the functions of the office for any reason;*
- (c) *if the Judge is adjudged bankrupt under any law in force in a Partner State; or*
- (d) *if the Judge is convicted of an offence involving dishonesty or fraud or moral turpitude under any law in force in a Partner State.*

2. Where–

- (a) *the question of removing a Judge has been referred to a tribunal under paragraph 1(a); or*
- (b) *a Judge is subject to investigation by a tribunal or other relevant authority of a Partner State with a view to his or her removal from an office referred to in paragraph 1(b); or*
- (c) *a Judge is charged with an offence referred to in paragraph 1(d) under any law in force in a Partner State,*

the Summit may, subject to paragraph 2B, suspend the Judge from the exercise of the functions of his or her office

2A. *Where a Judge is suspended under paragraph 2, his or her respective Partner State shall recommend a person qualified in terms of Article 24 to the Summit for appointment as a temporary Judge for the duration of such suspension.*

2B. *The suspension of a Judge under paragraph 2 may, at any time, be revoked by the Summit and shall, in any case, cease to have effect if–*

- (a) *the tribunal appointed under paragraph 1(a) recommends to the Summit that the Judge should not be removed from office; or*
- (b) *a tribunal or other relevant authority of a Partner State recommends that the Judge should not be removed from an office referred to in paragraph 1(b); or*
- (c) *the Judge is acquitted of an offence referred to in paragraph 1(d) by a court of competent jurisdiction in a Partner State.*

3. The tribunal appointed under paragraph 1(a) of this Article shall consist of three eminent Judges drawn from within the Commonwealth of Nations.
4. *At any time when the President of the Appellate Division, or the Principal Judge of the First Instance Division of the Court is for any reason unable to perform the functions of his or her office, those functions shall be performed by the Vice-President or the Deputy Principal Judge, as the case may be.*
5. The procedure for filling vacancies in the Court shall be prescribed in rules of the Court.
6. *If a Judge is directly or indirectly interested in a case before the Court, and if he or she considers that the nature of his or her interest is such that it would be prejudicial for him or her to take part in that case, such a Judge shall, if in the First Instance Division, make a report to the Principal Judge, or, if in the Appellate Division, make a report to the President, and if the President or Principal Judge considers the Judge's interest in the case prejudicial, the President or Principal Judge, as the case may be, shall make a report to the Chairperson of the Summit, and the Summit shall appoint a temporary Judge to act for that case only in place of the substantive Judge.*
7. If the President or **Principal Judge** of the Court is directly or indirectly interested in a case before the Court he or she shall, if he or she considers that the nature of his or her interest is such that it would be prejudicial for him or her to take part in that case, make a report to the Chairperson of the Summit and the Summit shall appoint a temporary President **or Principal Judge** of the Court to act as President **or Principal Judge** of the Court for that case only in place of the substantive President or **Principal Judge** of the Court.

ARTICLE 27

Jurisdiction of the Court

1. 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.

2. The Court shall have such other original, appellate, human rights and other jurisdiction as will be determined by the Council at a suitable subsequent date. To this end, the Partner States shall conclude a protocol to operationalise the extended jurisdiction.

ARTICLE 28

Reference by Partner States

1. A Partner State which considers that another Partner State or an organ or institution of the Community has failed to fulfil an obligation under this Treaty or has infringed a provision of this Treaty, may refer the matter to the Court for adjudication.
2. A Partner State may refer for determination by the Court, the legality of any Act, regulation, directive, decision or action on the ground that it is ultra vires or unlawful or an infringement of the provisions of this Treaty or any rule of law relating to its application or amounts to a misuse or abuse of power.

ARTICLE 29

Reference by the Secretary General

1. Where the Secretary General considers that a Partner State has failed to fulfil an obligation under this Treaty or has infringed a provision of this Treaty, the Secretary General shall submit his or her findings to the Partner State concerned for that Partner State to submit its observations on the findings.
2. If the Partner State concerned does not submit its observations to the Secretary General within four months, or if the observations submitted are unsatisfactory, the Secretary General shall refer the matter to the Council which shall decide whether the matter should be referred by the Secretary General to the Court immediately or be resolved by the Council.
3. Where a matter has been referred to the Council under the provisions of paragraph 2 of this Article and the Council fails to resolve the matter, the Council shall direct the Secretary General to refer the matter to the Court.

ARTICLE 30

Reference by Legal and Natural Persons

1. Subject to the provisions of Article 27 of this Treaty, 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.

2. *The proceedings provided for in this Article shall be instituted within two months of the enactment, publication, directive, decision or action complained of, or in the absence thereof, of the day in which it came to the knowledge of the complainant, as the case may be;*
3. *The Court shall have no jurisdiction under this Article where an Act, regulation, directive, decision or action has been reserved under this Treaty to an institution of a Partner State.*

ARTICLE 31

Disputes between the Community and its Employees

The Court shall have jurisdiction to hear and determine disputes between the Community and its employees that arise out of the terms and conditions of employment of the employees of the Community or the application and interpretation of the staff rules and regulations and terms and conditions of service of the Community.

ARTICLE 32

Arbitration Clauses and Special Agreements

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 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.

ARTICLE 33

Jurisdiction of National Courts

1. 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.
2. Decisions of the Court on the interpretation and application of this Treaty shall have precedence over decisions of national courts on a similar matter.

ARTICLE 34

Preliminary Rulings of National Courts

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.

ARTICLE 35

Judgment of the Court

1. The Court shall consider and determine every reference made to it pursuant to this Treaty in accordance with rules of the Court and shall deliver in public session, a reasoned judgment:

Provided that if the Court considers that in the special circumstances of the case it is undesirable that its judgment be delivered in open court, the Court may make an order to that effect and deliver its judgment before the parties privately.

2. The Court shall deliver one judgment only in respect of every reference to it, which shall be the judgment of the Court reached in private by majority verdict:

Provided that a Judge may deliver a dissenting judgment.

3. An application for review of a judgment may be made to the Court only if it is based upon the discovery of some fact which by its nature might have had a decisive influence on the judgment if it had been known to the Court at the time the judgment was given, but which fact, at that time, was unknown to both the

Court and the party making the application, and which could not, with reasonable diligence, have been discovered by that party before the judgment was made, or on account of some mistake, fraud or error on the face of the record or because an injustice has been done.

ARTICLE 35 A

Appeals

An appeal from the judgment or any order of the First Instance Division of the Court shall lie to the Appellate Division on-

- (a) points of law;*
- (b) grounds of lack of jurisdiction; or*
- (c) procedural irregularity.*

ARTICLE 36

Advisory Opinions of the Court

1. The Summit, the Council or a Partner State may request the Court to give an advisory opinion regarding a question of law arising from this Treaty which affects the Community, and the Partner State, the Secretary General or any other Partner State shall in the case of every such request have the right to be represented and take part in the proceedings.
2. A request for an advisory opinion under paragraph 1 of this Article shall contain an exact statement of the question upon which an opinion is required and shall be accompanied by all relevant documents likely to be of assistance to the Court.
3. Upon the receipt of the request under paragraph 1 of this Article, the Registrar shall immediately give notice of the request, to all the Partner States, and shall notify them that the Court shall be prepared to accept, within a time fixed by the President of the Court, written submissions, or to hear oral submissions relating to the question.
4. In the exercise of its advisory function, the Court shall be governed by this Treaty and rules of the Court relating to references of disputes to the extent that the Court considers appropriate.

ARTICLE 37

Appearance before the Court

1. Every party to a dispute or reference before the Court may be represented by an advocate entitled to appear before a superior court of any of the Partner States appointed by that party.
2. The Counsel to the Community shall be entitled to appear before the Court in any matter in which the Community or any of its institutions is a party or in respect of any matter where the Counsel to the Community thinks that such an appearance would be desirable.

ARTICLE 38

Acceptance of Judgments of the Court

1. Any dispute concerning the interpretation or application of this Treaty or any of the matters referred to the Court pursuant to this Chapter shall not be subjected to any method of settlement other than those provided for in this Treaty.
2. Where a dispute has been referred to the Council or the Court, the Partner States shall refrain from any action which might be detrimental to the resolution of the dispute or might aggravate the dispute.
3. A Partner State or the Council shall take, without delay, the measures required to implement a judgment of the Court.

ARTICLE 39

Interim Orders

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

ARTICLE 40

Intervention

A Partner State, the Secretary General or a resident of a Partner State who is not a party to a case before the Court may, with leave of the Court, intervene in that case, but the submissions of the intervening party shall be limited to evidence supporting or opposing the arguments of a party to the case.

ARTICLE 41

Proceedings

1. The quorum for deliberations of the Court shall be prescribed in rules of the Court.
2. The proceedings before the Court shall be either written or oral.
3. The record of each hearing shall be signed by the President or Vice President of the Court and shall be kept and maintained by the Registrar.

ARTICLE 42

Rules of the Court and Oaths of Office

1. The Court shall make rules of the Court which shall, subject to the provisions of this Treaty, regulate the detailed conduct of the business of the Court.
2. The Secretary General shall prepare the oath and declarations that the Judges and the Registrar of the Court shall take before the Summit upon their appointment or make upon entering into their duties.

ARTICLE 43

Immunity of the Judges and the Holding of Other Offices

1. The Judges of the Court shall be immune from legal action for any act or omission committed in the discharge of their judicial functions under this Treaty.
2. A Judge of the Court shall neither hold any political office or any office in the service of a Partner State or the Community nor engage in any trade, vocation or profession that is likely to interfere or create a conflict of interest to his or her position.

ARTICLE 44

Execution of Judgments

The execution of a judgment of the Court which imposes a pecuniary obligation on a person shall be governed by the rules of civil procedure in force in the Partner State in which execution is to take place. The order for execution shall be appended to the judgment of the Court which shall require only the verification of the authenticity of the

judgment by the Registrar whereupon, the party in whose favour execution is to take place, may proceed to execute the judgment.

ARTICLE 45

Registrar of the Court and Other Staff

1. The Council shall appoint a Registrar of the Court from among citizens of the Partner States qualified to hold such high judicial office in their respective Partner States.
2. The Court shall employ such other staff as may be required to enable it to perform its functions and who shall hold office in the service of the Court.
3. The salary and other conditions of service of the Registrar and other staff of the Court shall be determined by the Council.
4. Notwithstanding the provisions of paragraph 1 of this Article the Registrar shall be responsible to the President of the Court for the day to day administration of the business of the Court. The Registrar shall also carry out the duties imposed upon him by this Treaty and rules of the Court.

ARTICLE 46

Official Language of the Court

The official language of the Court shall be English.

ARTICLE 47

Seat of the Court

The Seat of the Court shall be determined by the Summit.