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KENYA NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – SECOND SESSION

REPORT ON THE PETITION BY FORMER EMPLOYEES OF THE DEFUNCT EAST
AFRICAN COMMUNITY ON DELAYED PAYMENT AND OTHER BENEFITS DUE TO
THEM

BY

JOINT DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE
AND
REGIONAL INTEGRATION

PARLIAMENT BUILDINGS
NAIROBI

AUGUST, 2014

- 24.Hon. Daniel E. Nanok, MP
- 25.Hon. Eng. Shadrack Manga, MP
- 26.Hon. Abdul Rahim Dawood, MP
- 27.Hon. Sakwa John Bunyasi, MP
- 28.Hon. Alfred W. Sambu, MP
- 29.Hon. Sammy Koech, MP

1.2 Committee on Regional Integration

The Select Committee on Regional Integration is established under Standing Order No. 212 and mandated to among others inquire into and examine any other matter relating to regional integration generally requiring action by the House. The Select Committee on Regional Integration comprises of the following members:-

1. Hon. Florence Kajuju, MP (Chairperson)
2. Hon. Christopher Nakuleu, MP (Vice Chairperson)
3. Hon. David Ouma Ochieng, MP
4. Hon. Dan Kazungu, MP
5. Hon. Cyprian Kubai Iringo, MP
6. Hon. Andrew Toboso MP
7. Hon. Bady Twalib Bady, MP
8. Hon. Robert Mbui, MP
9. Hon. Florence Mwikali Mutua, MP
10. Hon. Ogendo Rose Nyamunga, MP
11. Hon. Charles Mutisya Nyamai, MP
12. Hon. Alois Lentoimaga, MP
13. Hon. Anthony Kimaru, MP
14. Hon. David Kariithi, MP
15. Hon. Wanjiku Muhia, MP
16. Hon. Murungi Kathuri, MP
17. Hon. Sarah Korere, MP
18. Hon. Ali Wario, MP
19. Hon. Joseph Kahangara, MP
- 20.Hon. Mark Lomunokol, MP
21. Hon. Mary Seneta, MP
- 22.Hon. Gideon Konchella, MP
- 23.Hon. Dido Ali Rasso, MP
- 24.Hon. Ann Nyokabi, MP
- 25.Hon. Emmanuel Wangwe, MP
- 26.Hon. Peter Shehe, MP
- 27.Hon. Alex Mwiru, MP
- 28.Hon. Timothy Bosire MP
- 29.Hon. Erick Keter MP

2.0 PRESENTATION OF THE PETITION AND HISTORICAL BACKGROUND

i. Presentation of the Petition to Parliament

The rights of an individual to present a petition to Parliament are provided for in Articles 37 and Articles 119 of the Constitution and the Standing Orders of the respective Houses of Parliament. Article 119 (1) of the Constitution, “*every person has a right to petition parliament to consider any matter within its authority, including to enact, amend or repeal any legislation*”, clearly articulates this right. Section 4 of the Petition to Parliament (procedure) Act, 2012 and Standing Order 225 provides guidelines on how a petition should be presented to Parliament and the period within which the matter should be handled (60 calendar days).

Having been approved by the Hon. Speaker, the Petition on the delayed payment of retirement benefits to former employees of the defunct East African Community was presented to the National Assembly by Hon. Gladys Wanga, MP on 2nd April, 2014 pursuant to Standing Order 225. The petition was dated 26th February, 2014 and duly signed by seven (7) citizens on behalf of over 40,000 Ex-workers of the defunct East African Community (Annex 2). The following prayers were made in the petition:

- a) *An Amount of Kshs. 14 billion be appropriated and approved to settle the claim of unpaid other benefits of the Ex-EAC (K) employees.*
- b) *The payments to Ex-EAC (K) employees to be effected within the Financial Year 2014/2015.*
- c) *Payments to be made within the first half of the Financial Year 2014/2015.*

Though the petitioner prayed that the matter be handled by the select Committee on Regional Integration, the general mood of the House was that the matter be handled jointly by the Departmental Committee on Finance, Planning & Trade since it is the Committee that has jurisdiction over financial matters. Subsequently, the Deputy Speaker therefore directed that the petition be considered by the joint Committees of Finance, Planning & Trade and Regional Integration in line with Standing Order 227.

ii. Historical Background

The Defunct East African Community collapsed on 30th June, 1977. The Community had a workforce of over 40,000 employees of Kenyan origin spread all over East Africa in the following institutions/corporations;

- a) The East African Posts and Telecommunications Corporation.
- b) The East African External Telecommunications.
- c) The East African Cargo Handling Services.
- d) East African General Fund Services.
- e) East African Railways Corporation.
- f) East African Airways Corporation.
- g) East African Harbours Corporation.

Following the collapse of the Community, the Partner States negotiated a Mediation Agreement (Annex 3) for the division of assets and liabilities, which was signed on 14th May, 1984. One of the provisions of the Agreement provided that the three Partner States should explore the areas of future cooperation. This served as a basis for the negotiation of the Treaty for the Establishment of the East African Community which was signed on the 30th November, 1999.

The Ex-EAC workers were concerned that some terminal benefits envisaged under the Mediation Agreement were not taken into consideration in the computation of retirement benefits. This led to formation of the associations with a view to petition government to address their grievances.

In 1997, a group of the former employees filed a suit in HCCC No. 1879 of 1997 Samuel Amugune and 4 others Vs the Attorney General seeking for pension payment and other benefits. This was followed by another suit that was filed by a group of Ex-EAC workers at the East African Court of Justice, Ref. No. 2 of 2010 Emmanuel Mwakisha Mjawasi and 748 others Vs Attorney General. The two cases were ruled in favour of the Government (Annex 4 and Annex 5).

The Ex-EAC workers have persistently petitioned the government for payment of other benefits which included; severance allowance, outstanding/accumulated dues, Currency and Exchange rate applicable for payment, 7% interest on benefits for the period after the Mediation Agreement was signed, inclusion of 15% of housing allowance as pensionable Emolument, loss of office benefits for Ex-EAAC employees, redundancy payment in lieu of notice to the Ex-EAAC employees, repatriation expenses and one month salary in lieu of notice.

It is worth noting that the matter had earlier been brought before the 10th Parliament by Hon. Sheikh Dor through a Parliamentary Question No. 1733 on 19th September, 2012 and to the Committee on Budget and Appropriation in May, 2013 in form of a petition. On the two occasions, Parliament did not address itself to the matter and hence the reason why it has been reintroduced in the National Assembly.

3.0 CONSIDERATION OF THE PETITION

3.1 Meeting with Ministry of East African Affairs, Commerce & Tourism and the State Law Office

On 15th July, 2014, the Committee met with Ministry of East African Affairs, Commerce and Tourism and State Law Office. In their submission, they indicated that:-

- i. The defunct East African Community collapsed on 30th June, 1977 and was subsequently dissolved due to lack of strong political will, disproportionate sharing of benefits of the community among the partner states and lack of strong participation by the private sector and civil society.
- ii. After dissolution, the East African Community Partner States negotiated a Mediation Agreement for division of assets and liabilities. This agreement was signed on 14th May, 1984.
- iii. The former employees of the defunct East African Community were concerned that some of the terminal benefits envisaged under the agreement were not considered in the computation of their retirement benefits which led to agitations and formation of associations by the employees to petition the government to address their grievances.
- iv. Consequently, a group of employees filed two suits against the Kenya Government, one in 1997 in the High Court and another one in 2010 at the East African Court of Justice in which the rulings were made in favour of the Government of Kenya.
- v. The Ex-East African Community employees have persistently petitioned the Government for payment of other benefits.
- vi. The Government through the Deputy Prime Minister and Minister for Finance directed that a task force be constituted to enquire into the issue of Ex-EAC Workers claims and make recommendations on the way forward.

- vii. The taskforce in its findings observed that the Ex-East African Community workers were paid their pension upon retirement based on their cumulative service at the Community and that provident fund refunds have continued to be paid to the relevant beneficiaries.
- viii. The taskforce report however recommended that an ex-gratia compensatory payment of Kshs. 14 billion for the suffering, inhuman treatment, disruption of career expectations and any other disturbances caused to the employees for the sudden breakup of the community and also to cater for transport expenses incurred by employees on repatriation.
- ix. The Ministry of Finance upon receiving the taskforce report subsequently recommended an ex-gratia payment of Kshs. 150,000 for each of the Ex-East African Community employees bringing the total amount to Kshs. 6 billion. The rationale of this proposal was based on the budgetary implications as well as the logistical challenges of paying the task force's recommended figure based on the years worked and one's grade since some of the employees' payrolls were missing.
- x. Before preparation of an approval to the Cabinet to authorize this payment, the Ministry of Finance sought the opinion of the Attorney General on the matter who advised as follows that:
 - a) The Ex-East African Community employees had their matter settled in court where the judge dismissed their prayers. The issue of the pension and other benefits claimed were heard and determined by the High Court in Case No. HCCC 1879 of 1977 (Samuel Amugune and 4 others – Vs – Attorney General). The Judge in this case dismissed the prayers made by the Ex-EAC employees (Annex 4).
 - b) Upon referring the matter to the East African Court of Justice vide reference No. 4 of 2010, Emmanuel Mjawasi & 748 others –Vs – Attorney General, the matter was again struck out by the Court (Annex 5).

- c) The Government had no obligation whatsoever to settle any claims for pension or other benefits made by the Ex-East African Community employees.
 - d) The Government had no legal or contractual obligation to make an ex-gratia payment to the ex-employees unless it is compelled by law to do so.
 - e) There is no legal framework within which the Government could make any payment to the Ex-East African Community employees and that any ex-gratia compensatory payment to the Ex-EAC employees is purely discretionary and dependent upon formulation of a policy by the Government or upon enactment of legislation by Parliament.
- xi. The Ministry of Finance, based on the legal opinion by the Attorney General could not therefore prepare a Cabinet Memorandum for approval of the payment of the Ex-East African Community employees.

3.2 Meeting with the petitioners

On 17th July, 2014, the Committee met with six representatives of the Ex-East Africa Community workers who submitted the following:

- i. East African Community collapsed on 30th June, 1977, affecting over 40,000 Kenyan nationals who worked for the Community.
- ii. The East African Community Heads of States in consultation with the World Bank commissioned a mediator to come up with a formula on how to share assets and liabilities. The Mediator concluded his work on 25th October, 1981.
- iii. In 1984, the three East African Community heads of states, namely; President Daniel Arap Moi, President Julius Nyerere and President Milton Obote, signed the East African Community Mediation Agreement and East African Community Agreement Cap 4. The Mediation Agreement Article 10.05 obligated the Governments to pay their nationals pensions and other benefits due to them.

- iv. The benefits that the Ex-East African Community workers have been claiming include; Pension, Transport and Baggage Allowance, Severance pay, disturbance allowance, and compensation for inhuman treatment.
- v. After several unsuccessful attempts to have the benefits paid, the Ex-East African Community Workers representative in 2009 approached Hon. Sheikh Dor who moved a Private Member's Question No. 126 of 2009 during which the Minister for Finance confirmed that the money for the Ex-East African Community workers was in Central Bank of Kenya.
- vi. The petitioners further sought audience from the Minister for Finance and the Deputy Prime Minister, Hon. Uhuru Kenyatta on 29th September, 2010 at which he instituted a Joint Taskforce of 10 Inter-Ministries personnel and 12 Ex-East African Community representatives to look into the 13 claims.
- vii. The taskforce report was concluded and proposed that Ex-gratia payment be made for compensation of the inhuman treatment for the Ex-EAC workers.
- viii. The Ex-East African Community workers representatives after a long wait through a Parliamentary Question No. 1733 of 2012 by Hon. Sheikh Dor, sought indulgence of the Minister of Finance, Hon. Njeru Githae who, while tabling the taskforce report in the House confirmed that he would initiate an Executive Cabinet Memo to approve payments. This has not been done to date.
- ix. The Ex-East African Community representatives have also sought audience from the Budget and Appropriation Committee, the Deputy President, the President, the Governor of Nairobi County which have not borne any fruits.
- x. They eventually were advised to present a Petition to the National Assembly which was tabled in the House on 2nd April, 2014.
- xi. Their prayers are that the Ex-East African Community Workers be paid their other benefits amounting to Kshs. 14 billion.

3.2.1 Members' Concerns

The Members having listened to the presentation by the Representatives of the Ex-EAC Workers raised concerns on the following issues;

- i. While the Service Regulations for General Fund Services of the East African Common Service Organization provided for benefits such as pension, disturbance allowance, transport allowance, leave allowance, baggage allowance among others, it did not provide for the ex-gratia payment.
- ii. The formula that was used to determine the amount of Kshs. 14 billion which was based on payment for mid-level officer with a family of a wife and four children with benefits was contestable.
- iii. The authentication of bona fide ex-EAC workers if payments were to be made, considering that the Representatives admitted to unavailability of data.

4.0 COMMITTEE OBSERVATIONS ON THE TASK FORCE REPORT

The Committee made the following observations from the Task Force Report (Annex 6):

1. The former Kenyan employees of defunct East Africa Community have persistently petitioned the Government of Kenya for payment of unpaid terminal benefits as per the Mediation Agreement.
2. Pursuant to the signing of the agreement, the Government received from the Crown Agents £20,592,450 as Pensions funds and £1,248,977 as Provident Fund Assets for onward transmission to the former employees.
3. According to the taskforce report, the funds received from Crown Agents are held in a deposit account at the Treasury known as 'The East African Community Fund' (the Fund) whose balance as at 31st May 2009 was Ksh. 488,931,501.65.
4. The balance in the fund was attributed to the fact that pensions due to the Ex-East African Community (K) employees were paid out from Consolidated Fund Services (CFS) while the Fund was utilized for payment of Provident Fund Contributions.
5. The Government had taken proactive steps to secure the pension and provident interests of the former employees.
6. The agitation by the ex-employees has persisted despite the fact that their pensions and provident have been duly paid.

ESTABLISHMENT OF THE JOINT TASKFORCE

7. The joint taskforce was constituted by the then Deputy Prime Minister and former Minister for Finance Hon. Uhuru Kenyatta on 29th September 2010 when the representatives of Ex-East Africa Community (EAC) from Kenya accompanied by Hon. Sheikh Dor, nominated MP presented their petition in regard to payment of unpaid terminal benefits to him.
8. The joint taskforce was chaired by Mr. Mutua Kilaka; Financial Secretary and was composed of senior government officials from Ministries of Finance, East Africa Community, State Law office and representatives of the Ex-EAC (K). The committee completed its work and handed over its report to the Hon. Minister for Finance on 20th September, 2011.
9. The representatives of the East Africa Community Ex-Workers Association (Kenya) on 13th November 2012 petitioned the Chairman, Budget Committee in regards to delayed payment of terminal dues to former Kenyan employees of the defunct East Africa Community (EAC) as was recommended by the joint task force.
10. Their prayer to the Chairman, on behalf of their members were among others:
 - (a) THAT, the committee allocates the necessary funds in the National Budget (Consolidated Fund Services) to cater for the delayed payment to the ex-EAC workers. The estimated cost of this payment was Ksh. 14 Billion as per the Taskforce Report on the defunct EX-EAC (K) Employees dues which was laid in the House by Hon. Njeru Githae, Minister for Finance on 19th September 2012.
 - (b) THAT, the Chairman help them fast track the tabling of Cabinet Memo which is precursor to the payment. The Hon. Minister for Finance had made a promise to table the memo by end of September 2012.

PARTICULARS OF CLAIMS

11. The Ex-East African Community (K) presented a total of 13 claims in their petition to the Government of Kenya. These included:
 - i) Pension and addition pension
 - ii) Gratuity
 - iii) EAC Provident Fund benefits

- iv) East Africa Airways Corporation (EAAC) provident funds
- v) Severance allowance
- vi) Outstanding/accumulated leave dues
- vii) Currency and exchange rate applicable for payment
- viii) 7% interest on benefits for the period after which the Mediation agreement was signed.
- ix) Inclusion of 15% of housing allowance as pensionable emoluments.
- x) Loss of office benefit for ex-EAAC employees.
- xi) Gratuity at 70% for East Africa Cargo handling Services'
- xii) Redundancy payment in lieu of notice to ex-EAAC employees
- xiii) Repatriation expenses
- xiv) One month salary in lieu of notice.

CATEGORIES OF CLAIMANTS

12. According to the report, the claimants were categorized in the following five groups:

- i) Those who retired on division date and were paid.
- ii) Those who retired on division date but have not been paid other benefits.
- iii) Those who were absorbed into the Kenya Civil Service and State Corporations and were paid under the Pensions Act Cap 189 upon retirement.
- iv) Those who were absorbed into the Kenya Civil service and State Corporations but left before the Mediation Agreement was signed and were not paid.
- v) Those who were absorbed into the Kenya Civil Service and State Corporation and State Corporations before the collapse of the EAC.

REVIEW OF FINDINGS AND RECOMMENDATIONS OF THE JOINT TASKFORCE

13. The following is a review of the finding and recommendations made by the joint taskforce on the claims presented by the ex-employees:

- i) Number of Ex- EAC (K) employees: - The taskforce estimated the number to be 43,300 drawn from GFS (4,200), EAP&TC (4,043), EARC (22,490), EAHC and EACHSER (1,564), EAAC 3,300 and auxiliary staff (7,703). *This number may be exaggerated due the separate inclusion of auxiliary staff which has been pegged at*

- 7,703. *The auxiliary staff should form part of the ex-employees in the five institutions of the defunct EAC.*
- ii) Pension and Additional Pensions: - The committee found out that the Ex-Employees are not entitled to payment of this claim since the government continues to pay pensions and additional pension is paid on case by case. *This finding is consistent with the court ruling in the year 2004 and therefore the ex-employees have no valid claim.*
 - iii) Gratuity: - Only the eligible Ex-EAC (K) employees who were not paid gratuity by the Government upon retirement from the community on the division date are entitled to payment of gratuity. This claim is payable and therefore any ex-employees eligible but has not been paid can claim.
 - iv) EAC Provident Fund benefits: - The payment of provident fund contributions to GFS is being undertaken by the Ministry of Finance. It is upon the eligible employees to claim. *There is need to publish in the newspapers the list of all claims paid to date to avoid further unnecessary claims.*
 - v) East Africa Airways Corporation (EAAC) provident funds: - This fund was handled by the official receiver of ex-EAAC. *The Attorney General and Ethics and Anti-Corruption Commission should provide status report of this fund and a list of Ex-EAAC paid be made public.*
 - vi) Severance Allowance: - This was only payable to Ex- EAAC employees since EAAC went under liquidation. *The Attorney General should publish a comprehensive list of all Ex-EAAC employees that were paid since there are claims that it was not paid.*
 - vii) Outstanding/ Accumulated Leave Dues: - The report recommends that these claims can be paid to eligible ex-employees who had pending leave days subject to production of authentic relevant documents. *There is a possibility that this claim may lead to fraudulent claims occasioned by forgery of documents as was the case in Tanzania and erroneous payments as was the case in Uganda.*

- viii) Salary in Lieu of notice: - The report observes that this claim was applicable to the Ex-EAAC employees since their services were formally terminated. *The Attorney General should make public all the ex-employees paid by the official receiver.*
- ix) Applicable Interest: - The 7% interest in the Mediation Agreement was applied to inter-state disbursement of the compensation benefits. The taskforce accepted to apply the 7% interest per annum on other benefits due from the division date to call date in convertible currency. *This rate is agreeable since it conforms to the mediation agreement.*
- x) Ex-Gratia: - The taskforce found that the appeal for ex-gratia merits consideration on humanitarian grounds to eligible ex-employees. The taskforce proposes that the estimated workforce of 40,000 ex-employees be considered for ex-gratia payment totalling Ksh. 14 Billion on graduated scale according to the number of years worked and terms of service. *According to the report, there were no ex-gratia payments to ex-employees of Uganda and Tanzania. This payment therefore is not in tandem with the treatment of ex-employees of the defunct EAC in other jurisdictions.*
- xi) Disturbance Allowance: - The report notes that upon dissolution of the EAC, the Ex-EAC (K) employees were accorded necessary support by the Government of Kenya. It proposes that this claim maybe considered.
- xii) Repatriation/Baggage/ Transport Allowance: The report notes that some ex- EAC employees were given concessions and others transported and settled in hotels. This claim was excluded by Uganda in their settlement of the claims. The report recommended that this claim may be considered for payment.
- xiii) Currency Applicable: - *This was provided in the Mediation Agreement.*
- xiv) Loss of Office/Redundancy: - This claim was paid by the official receiver of EAAC. *The claim is therefore not valid and should be paid by the government.*

5.0 COMMITTEE'S RECOMMENDATIONS


After careful assessment of the petition, the taskforce report, the presentation by the State Law Office and the State Department of East African Affairs, and the presentation by the petitioners, the Committee observed that the prayers sought by the petitioners had been arbitrated and dismissed by the High Court in Kenya and the East African Court of Justice in Arusha. Therefore the two court decisions are binding. Consequently, the Committee recommends that:-

- (i) Parliament cannot appropriate the Kshs. 14 billion prayed for to settle the claims of the Ex-EAC workers since there is neither a legal basis nor a policy framework to do so.
- (ii) The petitioners are at liberty to seek redress from any other avenue if they wish to.

ACKNOWLEDGEMENTS

The Joint Committee wishes to thank the Offices of the Speaker and the Clerk of the National Assembly for the support extended to it in the execution of its mandate. It also appreciates the efforts the Petitioners put to ensure that this matter is addressed by Parliament.

It is therefore my pleasant duty and privilege, on behalf of the Joint Committee on Finance, Planning & Trade and Regional Integration to table this report on the Petition by the Former Employees of the Defunct East African Community on Delayed Payments of Benefits pursuant to the provisions of Standing Order 227.

Signed  Date 6-08-2014

HON. BENJAMIN LANGAT, MP
CHAIRPERSON

DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING AND TRADE

Signed  Date 6th - 08 - 2014

HON. FLORENCE KAJUJU, MP
CHAIRPERSON

SELECT COMMITTEE ON REGIONAL INTEGRATION

ANNEX 1^o

MINUTES

MINUTES OF THE 1ST SITTING OF THE JOINT COMMITTEE ON REGIONAL INTEGRATION AND FINANCE, PLANNING AND TRADE HELD ON TUESDAY 10TH JUNE, 2014 IN THE BOARD ROOM, 4TH FLOOR, PROTECTION HOUSE, AT 12.00 PM

Present

- | | | |
|-----------------------------------|---|----------------------------------|
| 1. Hon. Benjamin Langat, MP | - | Chairperson Finance Committee |
| 2. Hon. Florence Kajuju, MP | - | Chairperson Regional Integration |
| 3. Hon. Christopher Nakuleu, MP | - | Vice-Chair Regional Integration |
| 4. Hon. Nelson Gaichuhie, MP | - | Vice-Chair Finance Committee |
| 5. Hon. Andrew Toboso, MP | | |
| 6. Hon. Timothy Bosire, MP | | |
| 7. Hon. Sarah Korere, MP | | |
| 8. Hon. Mary Seneta, MP | | |
| 9. Hon. Lati Lelelit, MP | | |
| 10. Hon. Dido Rasso, MP | | |
| 11. Hon. David Karithi, MP | | |
| 12. Hon. Cyprian Kubai Iringo, MP | | |
| 13. Hon. Mark Lemunokol, MP | | |
| 14. Hon. Daniel Nanok, MP | | |
| 15. Hon. Abdul Rahim Dawood, MP | | |
| 16. Hon. Dr. Oburu Oginga, MP | | |
| 17. Hon. Sammy Mwaita, MP | | |
| 18. Hon. Patrick Makau, MP | | |
| 19. Hon. David Ochieng, MP | | |

Absent with Apology

1. Hon. Kathuri Murungi, MP
2. Hon. Bady Twalib Bady, MP
3. Hon. Dan Kazungu, MP
4. Hon. Eric Keter, MP
5. Hon. Joseph Kahangara, MP
6. Hon. Ann Nyokabi, MP
7. Hon. Peter Shehe, MP
8. Hon. Alex Mwiru, MP
9. Hon. Florence Mwikali Mutua, MP
10. Hon. Charles Nyamai, MP
11. Hon. Anthony Kimaru, MP
12. Hon. David Kariithi, MP
13. Hon. Gideon Konchela, MP
14. Hon. Ali Wario, MP

15. Hon. Emmanuel Wangwe, MP
16. Hon. Alois Lentoimaga, MP
17. Hon. Rose Nyamunga, MP
18. Hon. Wanjiku Muhia, MP
19. Hon. Robert Mbui, MP

In Attendance

1. Mr. Robert Nyaga - Fiscal Analyst
2. Ms. Esther Nginyo - Third Clerk Assistant
3. Mr. Fredrick Otieno - Third Clerk Assistant
4. Mr. Nicodemus Maluki - Third Clerk Assistant
5. Mr. Daniel Mwanzia - Fiscal Analyst
6. Ms. Catherine Burure - Fiscal Analyst

MIN.DPTF/CRI/NO.001/2014 PRELIMINARIES

Hon. Benjamin Langat, MP, the Co-Chairperson, called the meeting to order at 12.40 pm and a word of prayer was said by Hon. Cyprian Iringo, MP.

MIN.DFPT/CRI/NO.002/2014 CONSIDERATION OF THE PETITION TO THE NATIONAL ASSEMBLY ON DELAYED PAYMENT OF OTHER BENEFITS TO FORMER EMPLOYEES OF THE DEFUNCT EAST AFRICAN COMMUNITY (KENYA)

The Parliamentary Budget Office presented the following about the petition:

I. INTRODUCTION

1. The former Kenyan employees of defunct East Africa Community have persistently petitioned the Government of Kenya for payment of unpaid terminal benefits as per the Mediation Agreement.
2. Pursuant to the signing of the agreement, the Government received from the Crown Agents Sterling Pounds 20,592,450 as Pensions funds and Sterling Pound 1,248,977 as Provident Fund Assets for onward transmission to the former employees.
3. According to the taskforce report, the funds received from Crown Agents are held in a deposit account at the Treasury known as 'The East African Community Fund' (the Fund) whose balance as at 31st May 2009 was Ksh. 488,931,501.65.

4. The balance in the fund was attributed to the fact that pensions due to the Ex-EAC (K) employees were paid out from Consolidated Fund Services (CFS) while the Fund was utilized for payment of Provident Fund Contributions.
5. It is to be noted that the Government had taken proactive steps to secure the pension and provident interests of the former employees.
6. The agitation by the ex-employees has persisted despite the fact that their pensions and provident have been duly paid.
7. They have been concerned that some terminal benefits envisaged under the Mediation Agreement were not taken into consideration in computation of pension payments upon retirement.
8. In the year 1997 a group of former employees filed a suit at the High Court (HCCC No. 1879 of 1997) against the government seeking for pensions.
9. In the year 2004, the court dismissed the case and ruled in favour of the Government.

II. ESTABLISHMENT OF THE JOINT TASKFORCE

10. The joint taskforce was constituted by the then Deputy Prime Minister and former Minister for Finance Hon. Uhuru Kenyatta on 29th September 2010 when the representatives of Ex-East Africa Community (EAC) from Kenya accompanied by Hon. Sheikh Dor, nominated MP presented their petition in regard to payment of unpaid terminal benefits to him.
11. The joint taskforce was chaired by Mr. Mutua Kilaka; Financial Secretary and was composed of senior government officials from Ministries of Finance, East Africa Community, State Law office and representatives of the Ex-EAC (K). The committee completed its work and handed over its report to the Hon. Minister for Finance on 20th September, 2011.
12. The representatives of the East Africa Community Ex-Workers Association (Kenya) on 13th November 2012 petitioned the Chairman, Budget Committee in regards to delayed payment of terminal dues to former Kenyan employees of the defunct East Africa Community (EAC) as was recommended by the joint task force.
13. Their prayer to the Chairman, on behalf of their members were among others:

(a) THAT, the committee allocates the necessary funds in the National Budget (Consolidated Fund Services) to cater for the delayed payment to the ex-EAC workers. The estimated cost of this payment was Ksh. 14 Billion as per the Taskforce Report on the defunct EX-EAC (K) Employees dues which was laid in the House by Hon. Njeru Githae, Minister for Finance on 19th September 2012.

(b) THAT, the Chairman help them fast track the tabling of Cabinet Memo which is precursor to the payment. The Hon. Minister for Finance had made a promise to table the memo by end of September 2012.

III. INSTITUTIONS IN THE DEFUNCT EAC

14. The ex-employees of the defunct EAC worked in institutions that provided common services to the partner states. These were the East Africa Railways Corporations (EAR), the East Africa Airways Corporations (EAAC), the East Africa Post and Telecommunications Corporations (EAP&TC), the East Africa Harbours Corporations (EAHC), the East Africa Cargo Handling Services (EACHSER), and the General Fund Services.

IV. PARTICULARS OF CLAIMS

15. The Ex-EAC (K) presented a total of 13 claims in their petition to the Government of Kenya. These included:

- i) Pension and addition pension
- ii) Gratuity
- iii) EAC Provident Fund benefits
- iv) East Africa Airways Corporation (EAAC) provident funds
- v) Severance allowance
- vi) Outstanding/accumulated leave dues
- vii) Currency and exchange rate applicable for payment
- viii) 7% interest on benefits for the period after which the Mediation agreement was signed.
- ix) Inclusion of 15% of housing allowance as pensionable emoluments.
- x) Loss of office benefit for ex-EAAC employees.
- xi) Gratuity at 70% for East Africa Cargo handling Services'
- xii) Redundancy payment in lieu of notice to ex-EAAC employees

- xiii) Repatriation expenses
- xiv) One month salary in lieu of notice.

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V. CATEGORIES OF CLAIMANTS

16. According to the report, the claimants were categorized in the following five groups:

- i) Those who retired on division and were paid.
- ii) Those who retired on division date but have not been paid other benefits.
- iii) Those who were absorbed into the Kenya Civil Service and State Corporations and were paid under the Pensions Act Cap 189 upon retirement.
- iv) Those who were absorbed into the Kenya Civil service and State Corporations but left before the Mediation Agreement was signed and were not paid.
- v) Those who were absorbed into the Kenya Civil Service and State Corporation and State Corporations before the collapse of the EAC.

VI. REVIEW OF FINDINGS AND RECOMMENDATIONS OF THE JOINT TASKFORCE.

17. The following is a review of the finding and recommendations made by the joint taskforce on the claims presented by the ex-employees:

- i) Number of Ex- EAC (K) employees: - The taskforce estimated the number to be 43,300 drawn from GFS (4,200), EAP&TC (4,043), EARC (22,490), EAHC and EACHSER (1,564), EAAC 3,300 and auxiliary staff (7,703). *This number may be exaggerated due the separate inclusion of auxiliary staff which has been pegged at 7,703. The auxiliary staff should form part of the ex-employees in the five institutions of the defunct EAC.*
- ii) Pension and Additional Pensions: - The committee found out that the Ex-Employees are not entitled for payment of this claim since the government continues to pay pensions and additional pension is paid on case by case. *This finding is consistent with the court ruling in the year 2004 and therefore the ex-employees have no valid claim. However, the budget committee should request the Hon. Minister to submit a comprehensive list of all ex-EAC (K) employees who are received or are still receiving pensions from the government.*
- iii) Gratuity: - Only the eligible Ex-EAC (K) employees who were not paid gratuity by the Government upon retirement from the community on the division date are

entitled to payment of gratuity. This claim is payable and therefore any ex-employees eligible but has not been paid can claim. *The government should table a list of all ex- EAC (K) employees who have been paid gratuity so far.*

- iv) EAC Provident Fund benefits: - The payment of provident fund contributions to GFS is being undertaken by the Ministry of Finance. It is upon the eligible employees to claim. *There is need to avail to parliament and publish in the newspapers the list of all claims paid to date to avoid further unnecessary claims.*
- v) East Africa Airways Corporation (EAAC) provident funds: - This fund was handled by the official receiver of ex-EAAC. *The Attorney General and Ethics and Anti-Corruption Commission should provide status report of this fund to Parliament and a list of Ex-EAAC paid be made public.*
- vi) Severance Allowance: - This was only payable to Ex- EAAC employees since EAAC went under liquidation. *The Attorney General should submit to Parliament a comprehensive list of all Ex-EAAC employees that were paid since there are claims that it was not paid.*
- vii) Outstanding/ Accumulated Leave Dues: - The report recommends that these claims can be paid to eligible ex-employees who had pending leave days subject to production of authentic relevant documents. *There is a possibility that this claim may lead to fraudulent claims occasioned by forgery of documents as was the case in Tanzania and erroneous payments as was the case in Uganda.*
- viii) Salary in Lieu of notice: - The report observes that this claim was applicable to the Ex-EAAC employees since their services were formally terminated. *The Attorney General should submit to parliament and make public all the ex-employees paid by the official receiver.*
- ix) Applicable Interest: - The 7% interest in the Mediation Agreement was applied to inter-state disbursement of the compensation benefits. The taskforce accepted to apply the 7% interest per annum on other benefits due from the division date to call date in convertible currency. *This rate is agreeable since it conform to the mediation agreement.*
- x) Ex-Gratia: - The taskforce found that the appeal for ex-gratia merits consideration on humanitarian grounds to eligible ex-employees. The taskforce proposes that

the estimated workforce of 40,000 ex-employees be considered for ex-gratia payment totalling Ksh. 14 Billion on graduated scale according to the number of years worked and terms of service. *According to the report, there were no ex-gratia payments to ex-employees of Uganda and Tanzania. This payment therefore is not in tandem with the treatment of ex-employees of the defunct EAC in other jurisdictions. However, on humanitarian grounds the Committee may consider approving payment of not exceeding a total Ksh 8,000,000,000. (Eight Billion only) for an estimated ex-employee workforce of 35,000 on a flat rate. This will give an ex-gratia payment of Ksh. 230,000/- per employee on average.*

- xi) **Disturbance Allowance:** - The report notes that upon dissolution of the EAC, the Ex-EAC (K) employees were accorded necessary support by the Government of Kenya. It proposes that this claim maybe considered.
- xii) **Repatriation/Baggage/ Transport Allowance:** The report notes that some ex- EAC employees were given concessions and others transported and settled in hotels. This claim was excluded by Uganda in their settlement of the claims. The report recommended that this claim may be considered for payment.
- xiii) **Currency Applicable:** - *This was provided in the Mediation Agreement.*
- xiv) **Loss of Office/Redundancy:** - This claim was paid by the official receiver of EAAC. *The claim is therefore not valid and should be paid by the government.*

VII. POLICY OPTIONS

- 18. The analysis of the findings and recommendations of the joint taskforce reveals that out of the 13 claims by the Ex- EAC (K) employees only ex-gratia claim which is a discretionary payment have been recommended for consideration by the Government.
- 19. The report revealed that the most of the claims raised by the Ex- EAC (K) employees are fully settled or is being settled on a case by case basis on presentation of claims by the Ex- EAC (K) employees or their beneficiaries.
- 20. The committee may consider the following policy options while making their decision on the matter:

- (i.) *Accepting/Rejecting the proposed ex-gratia payment of Ksh. 14 Billion:* - The option of rejecting the proposed ex-gratia will leave things to stand the way they are and therefore will not have any impact on the country's National budget deficit. However, despite the fact that other jurisdiction did not consider ex-gratia payments in their settlements, Kenya should consider token payment to the ex- EAC employees on humanitarian ground as recommended by the taskforce report.
- (ii.) *Forensic Audit into the Liquidation of Ex-EAAC:* - The committee should consider asking the Attorney General and the Ethics and Anti-corruption Commission to prepare and submit a forensic audit report on liquidation process of Ex-EAAC. *The report should include a comprehensive list of Ex-EAAC (K) employees who were compensated by the official receiver.*
- (iii.) *Publishing the names of Ex-EAC (K) employees:* - The committee may consider requesting the government to publish the names of Ex-EAC (K) who may not have been paid their claims to notify them or their beneficiaries to be paid.
- (iv.) *Timeline for full settlement of any pending genuine claims:* - The committee should consider requesting the government to provide a definite timeline for completion of any pending payment.
- (v.) *Consideration of Budgetary Allocation for Ex-Gratia Payment:* - The committee may as a matter of urgency based on a cabinet memo consider allocating an agreed ex-gratia payment amount in the 2014/2015 fiscal year supplementary budget. However, due consideration on the negative impact of this allocation on the national debt should be taken into consideration.
- (vi.) *Status of the Cabinet Memorandum:* - The Committee may consider asking the Cabinet Secretary for National Treasury on the status of the cabinet memorandum that was to authorize payment of ex-gratia. The former Minister for Finance had promised Parliament on 19th September 2012 that the memo will reach cabinet before the end of September 2012.

MIN.DFPT/CRI/NO.003/2014

COMMITTEE'S CONCERNS

The Members noted the following concerns that;

- i. The petitioners had three prayers: that Parliament to approve the payment of Kshs. 14 billion, payments be effected within the 2014/2015 Financial Year; and the payment be made within the first half of the Financial year. Further, the prayers were conditional as to when the payments were to be made considering Parliament was in the process of handling the budget process. It was noted that substantial part of the compensation was made and the petitioners are still asking for more benefits.
- ii. The Petition had previously been committed to the Committee on Budget and Appropriation and the Committee on Implementation and was never concluded.
- iii. The absolute figure of 40000 employees is suspect. There is need for clear database of the claimants and further clarifications, the provisions in the treaty thereof and the current treaty need to be known and clarified. Further, concerns were raised on whether the figure of 40,000 was used to compute the figure of Kshs. 14 billion.
- iv. The taskforce report recommendations were based on humanitarianism now that the petitioners had lost all their suits before the court of law.

MIN.DFPT/CRI/NO.004/2014

COMMITTEE RESOLUTIONS

The Members resolved to invite the National Treasury, Attorney General and the Ministry of East African Affairs, Commerce and Tourism for further discussion on the matter on Thursday 19th June 2014.

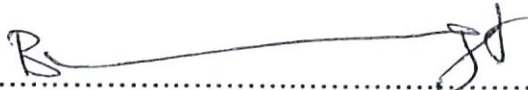
MIN.DFPT/CRI/NO.005/2014

ANY OTHER BUSINESS

The Regional Integration Committee proposed to meet on Thursday 12th June 2014.

MIN.DFPT/CRI/NO.006/2014 ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at 13.36 p.m.

Signed.....  date 6-08-2014

Chairperson (Finance, Planning and Trade Committee)

Signed.....  date 6th 08-2014

Chairperson (Regional Integration Committee)

MINUTES OF THE 2ND SITTING OF THE JOINT COMMITTEE ON REGIONAL INTEGRATION AND FINANCE, PLANNING AND TRADE HELD ON TUESDAY 15TH JULY, 2014 IN CONTINENTAL HOUSE, 5TH FLOOR, AT 9.30 AM

Present

- | | | |
|----------------------------------|---|----------------------------------|
| 1. Hon. Florence Kajuju, MP | - | Chairperson Regional Integration |
| 2. Hon. Tiras Ngahu, MP | - | Ag. Co-Chairperson |
| 3. Hon. Christopher Nakuleu, MP | - | Vice-Chair Regional Integration |
| 4. Hon. Andrew Toboso, MP | | |
| 5. Hon. Timothy Bosire, MP | | |
| 6. Hon. Lati Lelelit, MP | | |
| 7. Hon. Dido Rasso, MP | | |
| 8. Hon. David Karithi, MP | | |
| 9. Hon. Cyprian Kubai Iringo, MP | | |
| 10. Hon. Daniel Nanok, MP | | |
| 11. Hon. Abdul Rahim Dawood, MP | | |
| 12. Hon. Dr. Oburu Oginga, MP | | |
| 13. Hon. Sammy Mwaita, MP | | |
| 14. Hon. Patrick Makau, MP | | |
| 15. Hon. Peter Shehe, MP | | |
| 16. Hon. Kathuri Murungi, MP | | |
| 17. Hon. Dan Kazungu, MP | | |
| 18. Hon. Eric Keter, MP | | |
| 19. Hon. David Kariithi, MP | | |
| 20. Hon. Robert Mbui, MP | | |
| 21. Hon. Ali Wario, MP | | |
| 22. Hon. Emmanuel Wangwe, MP | | |
| 23. Hon. Jimmy Angwenyi, MP | | |
| 24. Hon. Mary Emaase, MP | | |
| 25. Hon. Alfred Sambu, MP | | |
| 26. Hon. Joseph Limo, MP | | |
| 27. Hon. Ronald Tonui, MP | | |
| 28. Hon. Irshadali Sumra, MP | | |
| 29. Hon. Abdullswamad Sheriff | | |

Absent with Apology

- | | | |
|------------------------------|---|---------------------------|
| 1. Hon. Benjamin Langat, MP | - | Chairperson, Finance |
| 2. Hon. Nelson Gaichuhie, MP | - | Vice-Chairperson, Finance |

3. Hon. Bady Twalib Bady, MP
4. Hon. Joseph Kahangara, MP
5. Hon. Ann Nyokabi, MP
6. Hon. Alex Mwiru, MP
7. Hon. Florence Mwikali Mutua, MP
8. Hon. Charles Nyamai, MP
9. Hon. Anthony Kimaru, MP
10. Hon. Gideon Konchela, MP
11. Hon. Alois Lentoimaga, MP
12. Hon. Rose Nyamunga, MP
13. Hon. Wanjiku Muhia, MP
14. Hon. Mark Lemunokol, MP
15. Hon. David Ochieng, MP
16. Hon. Mary Seneta, MP
17. Hon. Sarah Korere, MP
18. Hon. Jones Mlolwa, MP
19. Hon. Joash Olum, MP
20. Hon. Shakeel Shabbir, MP
21. Hon. Dennis Waweru, MP
22. Hon. Sakaja Johnson, MP
23. Hon. Sammy Koech, MP
24. Hon. Kirwa Stephen Bitok, MP
25. Hon. Eng. Shadrack Manga, MP
26. Hon. Sakwa John Bunyasi, MP
27. Hon. Abdul Rahim Dawood, MP

In Attendance

Kenya National Assembly

- | | | |
|-------------------------|---|-----------------------|
| 1. Mr. Evans Oanda | - | First Clerk Assistant |
| 2. Ms. Esther Nginyo | - | Third Clerk Assistant |
| 3. Mr. Fredrick Otieno | - | Third Clerk Assistant |
| 4. Mr. Nicodemus Maluki | - | Third Clerk Assistant |
| 5. Mr. Joash Kosiba | - | Fiscal Analyst |
| 6. Mr. Ali Salat | - | Fiscal Analyst |

Ministry of East African Affairs, Commerce and Tourism

- | | | |
|--------------------------|---|-------------------------|
| 1. Ms. Mwanamaka Mabruki | - | Principal Secretary |
| 2. Ms. Rose Nyakwana | - | Principal State Counsel |

State Law Office

1. Mr. Silvanus Ndisya - Senior Deputy Registra General

MIN.DPTF/CRI/NO.007/2014 PRELIMINARIES

Hon. Florence Kajuju, MP, the Chairperson called the meeting to order at 10.00 am followed by a word of prayer.

MIN.DPTF/CRI/NO.008/2014 ELECTION OF A CO-CHAIRPERSON

In absence of the substantive chair and vice chair of the Finance, Planning & Trade Committee, the Hon. Tiras Ngahu, MP was elected as the Co-Chairperson pursuant Standing Orders No. 188.

MIN.DPTF/CRI/NO.009/2014: PRESENTATION BY THE PRINCIPAL SECRETARY, STATE DEPARTMENT OF EAST AFRICAN AFFAIRS.

Ms. Mabruki Mwanamaka, the Principal Secretary, State Department of East African Affairs appeared before the Joint Committees and briefed the Members on the status of payment to the Former employees of the defunct East African Community (Kenya citizens) as follows:

- i. The defunct East African Community collapsed on 30th June, 1977 and was subsequently dissolved due to lack of strong political will, disproportionate sharing of benefits of the benefits of the community among the partner states and lack of strong participation by the private sector and civil society.
- ii. After dissolution, the EAC Partner States negotiated a Mediation Agreement for division of assets and liabilities which was signed on 14th May, 1984.
- iii. The former employees of the defunct EAC were concerned that some of the terminal benefits envisaged under the agreement were not considered in the computation of their retirement benefits which led to agitations and formation of associations by the employees to petition the government to address their grievances.
- iv. Consequently, a group of employees filed two suits, one in 1997 in the High Court and another one in 2010 at the East African Court of Justice in which the rulings were made in favour of the Government of Kenya.

- v. The Ex-EAC employees have persistently petitioned the Government for payment of other benefits.
- vi. The Government, through the Deputy Prime Minister and Minister for Finance, directed that a task force be constituted to enquire into the issue of Ex-EAC Workers claims and make recommendations on the way forward.
- vii. The taskforce in its findings observed that the Ex-EAC Workers were paid their pension upon retirement based on their cumulative service at the Community and that provident fund refunds have continued to be paid to the relevant beneficiaries.
- viii. The taskforce report however recommended that a token of appreciation and compensation of Kshs. 14 billion for the suffering, inhuman treatment, disruption of career expectations and any other disturbances caused to the employees for the sudden breakup of the community and also to cater for transport expenses incurred by employees on repatriation.
- ix. The Ministry of Finance upon receiving the taskforce report subsequently recommended an ex-gratia payment of Kshs. 150,000 for each of the Ex-EAC employees bringing the total amount to Kshs. 6 billion.
- x. The Ministry of Finance sought the opinion of the Attorney General on the matter before seeking Cabinet approval on the issue in which the Attorney General made his observations as follows;
 - a) The Ex-EAC employees had their matter settled in court where the judge dismissed their prayers.
 - b) The matter having been referred to the East African Court of Justice was struck out by the Court.
 - c) The Government had no obligation whatsoever to settle any claims for pension or other benefits made by the Ex-EAC employees.
 - d) The Government had no legal or contractual obligation to make an ex-gratia payment to the ex-employees unless it is compelled by law to do so.
 - e) There is no legal framework within which the Government could make any payment to the Ex-EAC employees and that any ex-gratia compensation to the employees is discretionary and depended upon formulation of a policy by the Government or upon enactment of legislation by Parliament.

- xi. The Ministry of Finance, based on the legal opinion by the Attorney General could not therefore prepare a Cabinet Memorandum for approval of the payment of the Ex-EAC employees.

MIN.DPTF/CRI/NO.010/2014 PRESENTATION BY THE STATE LAW OFFICE

Mr. Sylvanus Ndisya, the Senior Deputy Registrar General, State Law Office, appeared before the Joint Committees and briefed the Members on the Petition by the former Employees of the Defunct East African Community (Kenya) as follows;

- i. The East African Community comprised of the following institutions/corporations;
 - a) The East African Posts and Telecommunications Corporation.
 - b) The East African External Telecommunications.
 - c) The East African Cargo Handling Services.
 - d) East African General Fund Services.
 - e) East African Railways Corporation
 - f) East African Airways Corporation.
 - g) East African Harbours Corporation.
- ii. After the collapse of the Community in 1977, the High Court made a winding up order against East African Airways Corporation and the official Receiver/Registrar General was constituted as the Provisional Liquidator of the Corporation. The official Receiver with the sanction of the High Court appointed Murdoch MCrae and Smith Accountants to assist him in liquidating the corporation.
- iii. During the liquidation process, the official Receiver with the help of the advising accountants declared and paid out dividends seven times to all creditor of the corporation who included the employees. At the close of liquidation in 1988, claims worth Kshs. 275,118,299 had been settled.
- iv. As regards the other Corporations and the EAC in general, the ex-employees filed suits in pursuit of pension and other retirement benefits in High Court and the East African Court of Justice but lost the cases.
- v. In September, 2010 the Government through the initiative of the Ministry of Finance constituted a taskforce which recommended that an ex-gratia compensatory payment be paid to the ex-employees.
- vi. On 4th June, 2012, the State Law Office issued a legal opinion at the request of the National Treasury which stated that there was no legal framework

- ⊕ compelling the government^s to make ex-gratia payment to the Ex-employees of the EAC as such payments were purely discretionary and dependent on formulation of a policy by government or enactment of legislation by the National Assembly.

MIN.DPTF/CRI/NO.011/2014 MEMBERS' OBSERVATIONS

The Committee having listened to the presentation by the Principal Secretary made the following observations that;

- i. The taskforce report recommendation of payment of Khs. 14 billion to the Ex-EAC employees was based on humanitarian grounds since the petitioners had lost all the suits they filed against the Kenyan Government.
- ii. If there could be genuine cases of Ex-EAC employees who never got their dues, they should be allowed to come forward with evidence of non-payment and request for their compensation.
- iii. The Hon. Alfred Sambu, MP confirmed to the Committee that he was an employee in the defunct EAC and that all employees from Kenya were duly paid their benefits.

MIN.DPTF/CRI/NO.012/2014 COMMITTEES' RESOLUTIONS

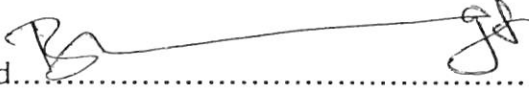
The Members resolved as follows that;

- i. Based on the taskforce recommendation, the payments recommended by the taskforce report were discretionary and had neither the legal basis nor policy framework and therefore the Government is not obligated to make such payments.
- ii. Any genuine cases from the Ex-EAC employees that were not paid for should be brought forward with evidence for compensation.
- iii. The petitioners should be invited to make their presentation before the joint before the Committee compiles its report. The Committee resolved to have them on Tuesday, 22nd July, 2014.
- iv. The Secretariat was asked to compile a report for the Committee's consideration after it meets the petitioners. The report should conclude that the petitioners have no justifiable prayers as they were duly paid and the

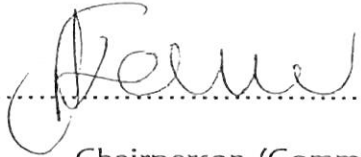
matters had been conclusively dealt with both by the government and the courts.

MIN.DPTF/CRI/NO.013/2014 ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at 11.46 a.m.

Signed..........date ..06-08-2014

Chairperson (Departmental Committee on Finance, Planning & Trade)

Signed..........date ..6th-08-2014

Chairperson (Committee on Regional Integration)

MINUTES OF THE 3RD SITTING OF THE JOINT COMMITTEE ON REGIONAL INTEGRATION AND FINANCE, PLANNING AND TRADE HELD ON TUESDAY 22ND JULY, 2014 IN MAIN CHAMBERS, PARLIAMENT BUILDINGS, AT 9.30 AM

Present

1. Hon. Benjamin Langat, MP - Chairperson, Finance
2. Hon. Florence Kajuju, MP - Chairperson Regional Integration
3. Hon. Christopher Nakuleu, MP - Vice-Chair Regional Integration
4. Hon. Lati Lelelit, MP
5. Hon. Tiras Ngahu, MP
6. Hon. Cyprian Kubai Iringo, MP
7. Hon. Daniel Nanok, MP
8. Hon. Abdul Rahim Dawood, MP
9. Hon. Dr. Oburu Oginga, MP
10. Hon. Sammy Mwaita, MP
11. Hon. Peter Shehe, MP
12. Hon. Kathuri Murungi, MP
13. Hon. Dan Kazungu, MP
14. Hon. David Kariithi, MP
15. Hon. Andrew Toboso, MP
16. Hon. Emmanuel Wangwe, MP
17. Hon. Jimmy Angwenyi, MP
18. Hon. Mary Emaase, MP
19. Hon. Ronald Tonui, MP
20. Hon. Abdullswamad Sheriff
21. Hon. Ann Nyokabi, MP
22. Hon. Alois Lentoimaga, MP
23. Hon. Sarah Korere, MP
24. Hon. Mark Lemunokol, MP
25. Hon. Bady Twalib Bady, MP
26. Hon. Wanjiku Muhia, MP

Absent with Apology

1. Hon. Nelson Gaichuhie, MP - Vice-Chairperson, Finance
2. Hon. Joseph Kahangara, MP
3. Hon. Alex Mwiru, MP
4. Hon. Florence Mwikali Mutua, MP
5. Hon. Charles Nyamai, MP

6. Hon. Anthony Kimaru, MP
7. Hon. Gideon Konchela, MP
8. Hon. Rose Nyamunga, MP
9. Hon. David Ochieng, MP
10. Hon. Mary Seneta, MP
11. Hon. Jones Mlolwa, MP
12. Hon. Joash Olum, MP
13. Hon. Shakeel Shabbir, MP
14. Hon. Dennis Waweru, MP
15. Hon. Sakaja Johnson, MP
16. Hon. Sammy Koech, MP
17. Hon. Kirwa Stephen Bitok, MP
18. Hon. Eng. Shadrack Manga, MP
19. Hon. Sakwa John Bunyasi, MP
20. Hon. Irshadali Sumra, MP
21. Hon. Alfred Sambu, MP
22. Hon. Joseph Limo, MP
23. Hon. Robert Mbui, MP
24. Hon. Ali Wario, MP
25. Hon. Timothy Bosire, MP
26. Hon. Dido Rasso, MP
27. Hon. Patrick Makau, MP
28. Hon. Eric Keter, MP

In Attendance

Kenya National Assembly

1. Ms. Esther Nginyo - Third Clerk Assistant
2. Mr. Fredrick Otieno - Third Clerk Assistant
3. Mr. Nicodemus Maluki - Third Clerk Assistant

MIN.DPTF/CRI/NO.014/2014 PRELIMINARIES

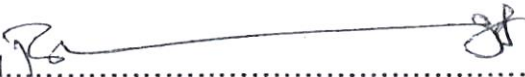
Hon. Benjamin Langat, MP, the Chairperson called the meeting to order at 10.30 am followed by a word of prayer from Hon. Abdullswamad Sheriff, MP.

MIN.DPTF/CRI/NO.015/2014 : CONSIDERATION OF THE DRAFT REPORT ON A PETITION OVER DELAYED PAYMENT OF BENEFITS TO THE EMPLOYEES OF THE DEFUNCT EAST AFRICAN COMMUNITY (KENYA)

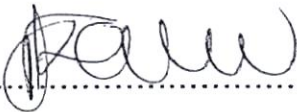
This matter was differed to later date pending meeting with the petitioners. The Hon. Addullswamad Sherif, MP undertook to bring them on 24th July, 2014.

MIN.DPTF/CRI/NO.016/2014 ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at 11.10 a.m.

Signed..........date 06-08-2014

Chairperson (Departmental Committee on Finance, Planning & Trade)

Signed..........date 06th. 08-2014

Chairperson(Committee on Regional Integration)

MINUTES OF THE 4TH SITTING OF THE JOINT COMMITTEE ON REGIONAL INTEGRATION AND FINANCE, PLANNING AND TRADE HELD ON TUESDAY 24TH JULY, 2014 IN MEDIA CENTRE, PARLIAMENT BUILDINGS, AT 12.00 NOON

Present

1. Hon. Benjamin Langat, MP - Chairperson, Finance
2. Hon. Florence Kajuju, MP - Chairperson Regional Integration
3. Hon. Christopher Nakuleu, MP - Vice-Chair Regional Integration
4. Hon. Lati Lelelit, MP
5. Hon. Cyprian Kubai Iringo, MP
6. Hon. Abdul Rahim Dawood, MP
7. Hon. Sammy Mwaita, MP
8. Hon. Peter Shehe, MP
9. Hon. Kathuri Murungi, MP
10. Hon. Dan Kazungu, MP
11. Hon. David Kariithi, MP
12. Hon. Andrew Toboso, MP
13. Hon. Jimmy Angwenyi, MP
14. Hon. Mary Emaase, MP
15. Hon. Abdullswamad Sheriff
16. Hon. Alois Lentoimaga, MP
17. Hon. Sarah Korere, MP
18. Hon. Mark Lemunokol, MP
19. Hon. Wanjiku Muhia, MP
20. Hon. Mary Seneta, MP
21. Hon. Timothy Bosire, MP
22. Hon. Shakeel Shabbir, MP
23. Hon. Sakaja Johnson, MP
24. Hon. Kirwa Stephen Bitok, MP
25. Hon. Robert Mbui, MP
26. Hon. Jones Mlolwa, MP
27. Hon. Dido Rasso, MP
28. Hon. Alex Mwiru, MP
29. Hon. Eng. Shadrack Manga, MP
30. Hon. Eric Keter, MP
31. Hon. David Ochieng, MP

Absent with Apology

1. Hon. Nelson Gaichuhie, MP - Vice-Chairperson, Finance
2. Hon. Joseph Kahangara, MP
3. Hon. Florence Mwikali Mutua, MP
4. Hon. Charles Nyamai, MP
5. Hon. Anthony Kimaru, MP
6. Hon. Gideon Konchela, MP
7. Hon. Rose Nyamunga, MP
8. Hon. Joash Olum, MP
9. Hon. Dennis Waweru, MP
10. Hon. Tiras Ngahu, MP
11. Hon. Sammy Koech, MP
12. Hon. Sakwa John Bunyasi, MP
13. Hon. Irshadali Sumra, MP
14. Hon. Alfred Sambu, MP
15. Hon. Joseph Limo, MP
16. Hon. Ali Wario, MP
17. Hon. Patrick Makau, MP
18. Hon. Daniel Nanok, MP
19. Hon. Dr. Oburu Oginga, MP
20. Hon. Emmanuel Wangwe, MP
21. Hon. Ronald Tonui, MP
22. Hon. Ann Nyokabi, MP
23. Hon. Bady Twalib Bady, MP

In Attendance

Kenya National Assembly

1. Ms. Esther Nginyo - Third Clerk Assistant
2. Mr. Fredrick Otieno - Third Clerk Assistant
3. Mr. Nicodemus Maluki - Third Clerk Assistant

Ex-EAC Employees Representatives

1. John W. Otieno Owili - EAAC
2. Paul M. Mukaria - GFS
3. John M. Nganga - GFS
4. Blasio Ondiek - EAPTC
5. Paul L. Orango Nyoturu - EAPTC
6. Joseph N. Gathu GFS - GFS

Hon. Benjamin Langat, MP, the Chairperson, called the meeting to order at 12.10 p.m followed by a word of prayer from Hon. David Ochieng', MP. The Chairperson thereafter called on all present to do self-introduction.

MIN.DPTF/CRI/NO.018/2014 PRESENTATION BY EX – EAC EMPLOYEES

The six representatives of the Ex-EAC workers informed the Joint Committee as follows:

- i. East African Community collapsed on 30th June, 1977, affecting over 40,000 Kenyan nationals who worked for the Community.
- ii. The East African Community Heads of States, in consultation with the World Bank, commissioned a Mediator on how to share Assets and Liabilities. The Mediator concluded their work on 25th October, 1981.
- iii. In 1984, the three Heads of States, namely; President Daniel Arap Moi, President Julius Nyerere and President Milton Obote, signed the East African Community Mediation Agreement and East African Community Agreement Agreement Cap 4. The Mediation Agreement Article 10.05 obligated the Governments to pay their nationals pensions and other benefits due to them.
- iv. The benefits that the EX-EAC workers have been claiming include; Pension, Transport and Baggage Allowance, Severance pay, disturbance allowance, and compensation for inhuman treatment.
- v. After several unsuccessful attempts to have the benefits paid, the Ex-EAC Workers representative in 2009 approached Hon. Sheikh Dor who moved a Private Member's Question No. 126 of 2009 during which the Minister for Finance confirmed that the money for the Ex-EAC workers was in Central Bank of Kenya.
- vi. The Representatives further sought audience with the Minister for Finance and the Deputy Prime Minister, Hon. Uhuru Kenyatta on 29th September, 2010 at which he instituted a Joint Taskforce of 10 Inter-Ministries personnel and 12 Ex-EAC Representatives to look into the 13 claims.
- vii. The Taskforce Report was concluded and proposed that Ex-gratia payment be made for compensation of the inhuman treatment for the Ex-EAC workers.
- viii. The Ex-EAC Workers Representatives after a long wait through a Parliamentary Question No. 1733 of 2012 by Hon. Sheikh Dor, sought indulgence of the Minister of Finance, Hon. Njeru Githae who while tabling the Taskforce Report in the House confirmed that he would initiate an Executive Cabinet Memo which has not been done to date.

- ix. The Ex-EAC Representatives have also sought audience with the Budget and Appropriation Committee, the Deputy President, the President, the Governor of Nairobi County which have not borne fruits.
- x. They were eventually advised to present a Petition to the National Assembly. This was done on 2nd April, 2014.
- xi. The Ex-EAC Workers' prayer is to be paid their other benefits amounting to Kshs. 14 billion.

MIN.DPTF/CRI/NO.019/2014 MEMBERS CONCERNS

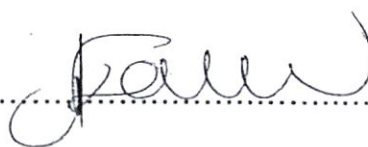
The Members having listened to the presentation by the representatives of the Ex-EAC Workers raised following concerns:

- i. While the Service Regulations for General Fund Services of the East African Common Service Organization provided for benefits such as pension, disturbance allowance, transport allowance, leave allowance, baggage allowance among others, it did not provide for the ex-gratia payment.
- ii. The formula that was used to determine the amount of Kshs. 14 billion which was based on payment for mid-level officer with a family of a wife and four children with benefits was contestable.
- iii. The bona fide ex-EAC workers are not known considering that there is no data available as of now. Therefore even if payments were to be made, the exact beneficiaries may not be known.

MIN.DPTF/CRI/NO.020/2014 ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at 1.37 p.m. until the next meeting where Members will consider the draft report on the petition.

Signed..........date 06-08-2014
 Chairperson (Departmental Committee on Finance, Planning & Trade)

Signed..........date 06th-08-2014
 Chairperson (Committee on Regional Integration)

MINUTES OF THE 5TH SITTING OF THE JOINT COMMITTEE ON REGIONAL INTEGRATION AND FINANCE, PLANNING AND TRADE HELD ON TUESDAY 6TH AUGUST, 2014 IN CONTINENTAL HOUSE, 4TH FLOOR, PARLIAMENT BUILDINGS, AT 11.00 AM

Present

- | | | | |
|-----|-------------------------------|---|----------------------------------|
| 1. | Hon. Benjamin Langat, MP | - | Chairperson, Finance |
| 2. | Hon. Florence Kajuju, MP | - | Chairperson Regional Integration |
| 3. | Hon. Christopher Nakuleu, MP | - | Vice-Chair Regional Integration |
| 4. | Hon. Nelson Gaichuhie, MP | - | Vice-Chairperson, Finance |
| 5. | Hon. Dr. Oburu Oginga, MP | | |
| 6. | Hon. Cyprian Kubai Iringo, MP | | |
| 7. | Hon. Abdul Rahim Dawood, MP | | |
| 8. | Hon. Sammy Mwaita, MP | | |
| 9. | Hon. Kathuri Murungi, MP | | |
| 10. | Hon. Dan Kazungu, MP | | |
| 11. | Hon. David Kariithi, MP | | |
| 12. | Hon. Jimmy Angwenyi, MP | | |
| 13. | Hon. Mary Emaase, MP | | |
| 14. | Hon. Abdullswamad Sheriff | | |
| 15. | Hon. Wanjiku Muhia, MP | | |
| 16. | Hon. Mary Seneta, MP | | |
| 17. | Hon. Shakeel Shabbir, MP | | |
| 18. | Hon. Kirwa Stephen Bitok, MP | | |
| 19. | Hon. Robert Mbui, MP | | |
| 20. | Hon. Jones Mlolwa, MP | | |
| 21. | Hon. Dido Rasso, MP | | |
| 22. | Hon. Eng. Shadrack Manga, MP | | |
| 23. | Hon. David Ochieng, MP | | |
| 24. | Hon. Bady Twalib Bady, MP | | |
| 25. | Hon. Rose Nyamunga, MP | | |
| 26. | Hon. Joseph Limo, MP | | |
| 27. | Hon. Ronald Tonui, MP | | |
| 28. | Hon. Ali Wario, MP | | |
| 29. | Hon. Irshadali Sumra, MP | | |

Absent with Apology

1. Hon. Joseph Kahangara, MP
2. Hon. Florence Mwikali Mutua, MP
3. Hon. Charles Nyamai, MP
4. Hon. Anthony Kimaru, MP
5. Hon. Gideon Konchela, MP
6. Hon. Joash Olum, MP
7. Hon. Dennis Waweru, MP
8. Hon. Tiras Ngahu, MP
9. Hon. Sammy Koech, MP
10. Hon. Sakwa John Bunyasi, MP
11. Hon. Alfred Sambu, MP
12. Hon. Patrick Makau, MP
13. Hon. Daniel Nanok, MP
14. Hon. Emmanuel Wangwe, MP
15. Hon. Ann Nyokabi, MP
16. Hon. Lati Lelelit, MP
17. Hon. Peter Shehe, MP
18. Hon. Andrew Toboso, MP
19. Hon. Alois Lentoimaga, MP
20. Hon. Sarah Korere, MP
21. Hon. Mark Lemunokol, MP
22. Hon. Timothy Bosire, MP
23. Hon. Sakaja Johnson, MP
24. Hon. Alex Mwiru, MP
25. Hon. Eric Keter, MP

In Attendance

Kenya National Assembly

- | | | |
|-------------------------|---|-----------------------|
| 1. Mr. Evans Oanda | - | First Clerk Assistant |
| 2. Ms. Esther Nginyo | - | Third Clerk Assistant |
| 3. Mr. Fredrick Otieno | - | Third Clerk Assistant |
| 4. Mr. Nicodemus Maluki | - | Third Clerk Assistant |

MIN.NO. CRI/020/2014

PRELIMINARIES

The Chairperson Hon. Benjamin Langat, MP, called the meeting to order at 11.34 a.m followed by a word of prayer.

MIN.NO. CRI/021/2014 ADOPTION OF THE COMMITTEE REPORT ON
PETITION BY FORMER EMPLOYEES OF THE DEFUNCT EAST AFRICA COMMUNITY
ON DELAYED PAYMENTS

After going through the report, the Committee unanimously adopted the report. The secretariat was asked to prepare the report for tabling.

MIN.NO. CRI/022/2014 ADJOURNMENT

There being no Other Business, the Chairperson adjourned the meeting at 2.40 p.m.

Signed.....

Chairperson

Date.....

ANNEX 2

6

PETITION

NATIONAL ASSEMBLY

Directorate of Legislative and Procedural Services

MEMO


TO : DIRECTOR, COMMITTEE SERVICES
FROM : PRINCIPAL CLERK ASSISTANT
DATE : APRIL 2ND, 2014
SUBJECT : PUBLIC PETITIONS

Pursuant to *Standing Order 220*, a Petition was presented to the House and the Hon. Speaker conveyed a Petition on Wednesday, April 2nd, 2014 as follows: -

1. Petition by Hon. Gladys Wanga, MP, on behalf of former employees of the defunct East African Community on delay payment of benefits; and → REGIONAL INTEGRATION
2. Petition by Enoosupukia Evicted Persons on resettlement conveyed by the Hon. Deputy Speaker of the National Assembly. → LANDS

Cannot
on Time

Please find the enclosed Petitions for your action.


Lucy Wanjohi

Encl.

MIRUNGU/ev AWS ✓
pls deal
FA
03/4

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT

PETITION

BY THE FORMER EMPLOYEES OF THE DEFUNCT EAST AFRICAN COMMUNITY (EAC)
ON DELAYED PAYMENT AND OTHER BENEFITS DUE TO THEM

WE, THE UNDERSIGNED who are residents of the Republic of Kenya

DRAW the attention of the House to the following;

THAT on 29th May 2013, we presented a petition to the Chairperson of the Budget and Appropriations Committee on the above matter.

THAT WHEREAS regrettably, we have not received any communication from the Said Committee.

THAT WHEREAS, that the sudden collapse of the EAC on 30th June, 1977 left over four thousand (4000) former employees of Kenyan origin jobless and with no payment made to them.

THAT WHEREAS, following an agreement by the three partner states (Kenya, Uganda and Tanzania) to share the assets and liabilities of the collapsed community, a mediator was appointed to spearhead the equitable division of these assets and liabilities. The mediator completed and submitted his report on 28th October, 1981.

THAT WHEREAS, on 29th September, 2010, the then Deputy Prime Minister and Minister for Finance constituted a Taskforce to inquire into the claims by the staff. The Taskforce came up with many findings; key among them was the settlement on payment of other benefits due to staff.

THAT WHEREAS the pensions and benefits have been paid to the entitled, the other benefits due to them by virtue of their employment with defunct Community have remained unpaid since its break-up on 30th June, 1977 to date.

THEREFORE your humble petitioners PRAY that;

paper laid by
Hon. Gladys Wanyaga
on 2/4/14
Bunubi

Approved
1/4/14

1. The National Assembly appropriate and approve the settlement of an amount of kshs. 14 billion (fourteen billion shillings) to settle the claim of unpaid payment and other benefits to the employees of the defunct East African Community.
2. The payments to the employees to be effected within the 2014/2015 Financial year
3. The payments to be made within the first half of the 2014/2015 Financial Year

And your PETITIONERS will ever pray.
PRESENTED BY,



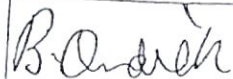


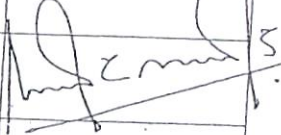
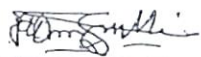
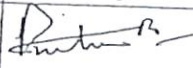
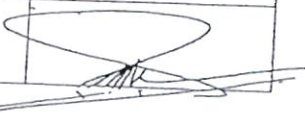
HON. Gladys Wanga, MP
Member for Homabay County

Date.....

THE EAST AFRICAN COMMUNITY EX-WORKERS ASSOCIATION (KENYA)

P.O. Box 53827-00200, NAIROBI. Mobile 0720 324 011

Email: wilyso@yahoo.com

No	Name of petitioner	Full address	ID/Passport No.	Signature
	Blasio Ondiek, EAPTC	P.O.Box58438-00200, Nairobi.	0517194	
	Paul O. L.Orango Nyoturu EAPTC	P.O. Box 9178-00100 Nairobi	0516230	
	Joseph N. Gathu GFS	P.O. Box 2915-00200 Nairobi	0984788	
	Isaac D. Amuma EARC	P.O. Box 9178-00100 Nairobi	1183947	
	John W. O. Owili EAAC	P.O. Box 53827-00200 Nairobi	1808113	
	Paul Mukuria GFS	P.O. Box 28590-00200 Nairobi.	0987435	
	John M. Nganga GFS	P.O. Box 49892-00100 Nairobi.	0977674	

Paper (copy)
Hon. Gladys Wanga
on 2/4/14
Columbini

The Clerk to the National Assembly,
Parliament Buildings,
NAIROBI

26th February, 2014

Dear Sir,

**RE: PETITION TO THE NATIONAL ASSEMBLY ON DELAYED
PAYMENT OF OTHER BENEFITS TO FORMER EMPLOYEES
OF THE DEFUNCT EAST AFRICAN COMMUNITY (KENYA)**

We, the undersigned, who are citizens of the Republic of Kenya, and who were formerly employees of the defunct East African Community (EAC), and registered under East African Community Ex-Workers Association wish to petition Parliament on the matter of delayed payment of other benefits on behalf of all Ex-employees.

At this juncture, we wish to draw the attention of the House to an earlier petition to the Chairman, Parliamentary Budget and Appropriation Committee of the National Assembly dated 29th May, 2013 and received in the National Assembly on 30th May, 2013. In that petition, we sought the intervention of the Parliamentary Budget and Appropriation Committee, and by extension, the National Assembly, on the matter of a Taskforce Report tabled before the Assembly on 19th September, 2012. We have had no communication on the matter from the Committee so far, hence the reason for petitioning the House.

This petition, therefore, is with regard to the sudden collapse of the EAC on 30th June, 1977. The EAC (Community) had a workforce of over 40,000 Ex-employees of Kenyan origin spread all over East Africa and drawn from the following institutions/corporations:-

- a) The East African Posts and Telecommunication Corporation, (EAPTC)
- b) The East African External Telecommunications, (EAET)
- c) The East African Cargo Handling Services, (EACHSER)
- d) East African General Fund Services, (GFS)
- e) East African Railways Corporation, (EARC)
- f) East African Airways Corporation, (EAAC)
- g) East African Harbours Corporation. (EAHC)

THE EAST AFRICAN COMMUNITY EX-WORKERS ASSOCIATION (KENYA)

P.O. Box 53827-00200, NAIROBI Mobile 0720 324 011

Email: wilyso@yahoo.com

Following an agreement by the three partner states (Kenya, Uganda and Tanzania) to share the assets and liabilities of the collapsed Community, a mediator was appointed to spearhead the equitable division of these assets and liabilities. The mediator completed and submitted his report on 28th October, 1981. A Mediation Agreement (Agreement) was thereafter drawn and signed by the three heads of partner states on 14th May, 1984. This Agreement detailed how each partner state was to share and meet its obligations in relation to the assets and liabilities of the defunct Community. Consequent upon the need for each partner state to control assets and disburse its liabilities, the Agreement had to be domesticated in Kenya under the East African Community Mediation Agreement Act, Cap 4 of 1984 of the laws of Kenya. Both the Agreement and the Act provided how Kenya was to pay the pensions and other benefits to its nationals who worked in the defunct Community.

This petition seeks to draw the attention of the august House to the fact that, on 5th August, 2009, Hon. Sheikh Dor, under private members' question No. 126 raised the matter of unpaid other benefits for the Kenyan Ex-workers of defunct Community in Parliament and thereafter the Ex-Community workers (Kenya) representatives teamed up to pursue their claims. On 29th September, 2010, Hon. Uhuru Kenyatta, the then Deputy Prime Minister (DPM) and Minister for Finance met the leaders of the Ex-Community employees Kenya representatives and after listening to their claims, he constituted a Taskforce headed by the Financial Secretary, Mr. Mutua Kilaka. The Taskforce was to comprise of 10 inter-ministerial officers drawn from the Ministries of Finance, East African Community and the State Law Office and 12 representatives from the Ex-Community Kenya employees.

The Taskforce was to enquire into these claims and report its findings to the then DPM and Minister for Finance within two (2) weeks. However, this was not to be as there was need to travel to Tanzania, Uganda and United Kingdom for verification of records. During the writing of the report, the Taskforce came up with many findings and after in-depth discussions, they settled on payment of other benefits as per article 10.05 (a) & (b) of the Mediation Agreement which provided that each state shall:-

THE EAST AFRICAN COMMUNITY EX-WORKERS ASSOCIATION (KENYA)

P.O. Box 53827-00200, NAIROBI. Mobile 0720 324 011

Email: wilyso@yahoo.com

- a) Pay its nationals, employed by the corporations or the General Fund Services and retired from active service by the division date, the pensions and other benefits due to them on account of such employment.
- b) Make provisions for pension rights and entitlements to other benefits accrued as of the division date in favour of its nationals in active service with such corporations and General Fund Services as at that date.

The Taskforce completed its Report and submitted it to the Ministry of Finance on 20th September, 2011.

Whereas pensions have been paid to the entitled nationals, the other benefits due to them by virtue of their employment with the defunct Community have remained unpaid since its break-up on 30th June, 1977, (the division date) to date.

In Chapter 5 of the report, item 12, the Taskforce deliberated at length and concluded as follows:-

“To compensate for suffering, inhuman treatment, disruption of career expectations and any other disturbances of Ex-Community (K) employees as outlined above, occasioned by the sudden break-up of the Community and also to cater for transport/baggage expenses incurred by the Ex-Community (K) employees on repatriation and all other claims that are payable to Ex-Community (K) employees, the Taskforce, after lengthy deliberations unanimously proposed that a total of (fourteen billion) Kshs.14 billion be considered for payment to eligible Ex-Community (K) employees graduated according to the number of years worked and terms of service. This figure was arrived at as a compromise on the basis of an estimated workforce of 40,000 Ex-Community (K) employees as shown below”:-

Category	Estimated No. of Employees	Rate (Kshs.)	Total (Kshs.)
Permanent and Pensionable			
5 years and above	20,000	425,000	8,500,000,000
Below 5 years	7,000	300,000	2,100,000,000
Non pensionable			
5 years and above	12,000	200,000	2,400,000,000
Below 5 years	1,000	100,000	1,000,000,000
Total	40,000		14,000,000,000

Source: Taskforce report 2011

Once again, the petitioners wish to draw the attention of the House to the fact that, through a private member's question No. 1733 by Hon. Sheikh Dor, the then Minister for Finance, Hon. Robinson Njeru Githae tabled the Taskforce Report before Parliament on 19th September, 2012, one year after the report was handed over to the Ministry of Finance. In his communication to the House, the Minister promised that by the end of September, 2012, he would have presented a cabinet memo to Cabinet for direction. Regrettably, by the time we wrote to the Parliamentary Budget and Appropriation Committee at the end of May, 2013, no communication had been received from the Ministry of Finance.

In May, 2013 during the public hearings at Kenyatta International Convention Centre conducted by the Parliamentary Budget and Appropriation Committee, the representatives of Ex-Community (K) employees once again made a presentation on their long outstanding claim for other benefits due to them from the government. After the presentation, we handed over all the relevant documents to the Committee which undertook to look into the matter and get back to us. Up to the date of writing this petition, we have not heard any communication from the Committee. We have, therefore, been compelled by the long silence and inaction by the Committee to have the matter settled without further delay. All Ex-Community (K) employees have patiently been waiting for settlement of this matter for the last (38) years in vain. Most of these Ex-employees have died in destitution after a long period of waiting.

We confirm that the Ex-Community (K) employees have not entered into any litigation on this matter. The Ex-Community (K) employees have continued to engage and pursue the matter with the Government.

Prayer

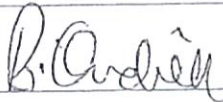
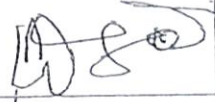
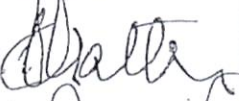
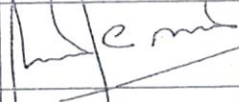
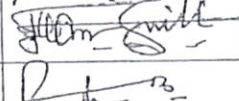

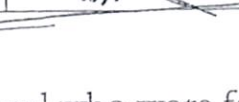
We the Ex-Community (K) employees make our prayer to the National Assembly that:-

- a) An amount of Kshs.14 billion (fourteen billion shillings) be appropriated and approved to settle this claim of unpaid other benefits to the Ex-Community (K) employees.
- b) The payments to Ex-Community (K) employees to be effected within the Financial Year 2014/15.
- c) Payments to be made within the first half of the financial year 2014/15.

THE EAST AFRICAN COMMUNITY EX-WORKERS ASSOCIATION (KENYA)
P.O. Box 53827-00200, NAIROBI. Mobile 0720 324 011
Email: wilyso@yahoo.com

Yours faithfully,

For and On behalf of EAC (K) employees,

S/No	Name of petitioner	Full address	ID/Passport No.	Signature
1	Blasio Ondiek, EAPTC	P.O.Box58438-00200, Nairobi.	0517194	
2	Paul L.Orango Nyoturu EAPTC	P.O. Box 9178-00100 Nairobi.	0516230	
3	Joseph N. Gathu GFS	P.O. Box 2915-00200 Nairobi	0984788	
4	Isaac D. Amuma EARC	P.O. Box 9178-00100 Nairobi	1183947	
5	John W. O. Owili EAAC	P.O. Box 53827-00200 Nairobi	1808113	
6	Paul Mukuria GFS	P.O. Box 28590-00200 Nairobi.	0987435	
7	John M. Nganga GFS	P.O. Box 49892-00100 Nairobi.	0977674	

We, the undersigned, who are citizens of the Republic of Kenya, and who were formerly employees of the defunct East African Community (EAC), and registered under East African Community Ex-Workers Association wish to petition Parliament on the matter of delayed payment of other benefits on behalf of all Ex-employees.

0720/77723

THE EAST AFRICAN COMMUNITY EX-WORKERS ASSOCIATION (KENYA)

PERMANENT SECRETARY / TREASURER
MINISTRY OF BOX 53827-00200 NAIROBI, MOBILE 0720 324011
Email: otienoowilis@yahoo.com

30 MAY 2013

*paper last by
Hon. Gladys Wanga
on 2/4/2013
Blumh*

29th May 2013
RECEIVED
P.O. BOX 30007, NAIROBI
THE CHAIRMAN



PARLIAMENTARY BUDGET & APPROPRIATION COMMITTEE
KENYA NATIONAL ASSEMBLY
PARLIAMENT BUILDING
P.O. BOX 41842
NAIROBI

Dear Sir,

APPEAL TO OUR PETITION LETTER TO THE CHAIRMAN FOR THE DELAYED PAYMENT
FORMER EMPLOYEES OF THE DEFUNCT EAST AFRICAN COMMUNITY (KENYA)
DATED 13TH NOVEMBER 2013.

The Taskforce members of the Ex-East African Community Workers wish to register
petition to you as the Chairman of the Budget committee for the delayed payment
former employees of the defunct East African Community (Kenya).

East African Community collapsed on 30th June 1977 and had a workforce of over
10 Ex-employees of Kenyan origin spread all over East Africa and drawn from the
following institutions/corporations :-

- African Cargo and Handling Services.
- African External Communications.
- African Posts and Telecommunications Corporation.
- African General Funds Services.
- African Airways Corporation
- African Railways Corporation
- African Harbours Corporation

At the collapse of EAC, the Partner States agreed to share the assets of the
Community. In this regard A mediator was appointed to spearhead the equitable
division of the EAC Assets. The mediator did the work and completed and submitted the
mediation report on 28th October 1981. On receipt of the mediation report the three Partner
States signed the mediation agreement on 14th May 1984 detailing how each Partner

State was to share and meet its obligations in relation to Assets and liabilities of the defunct East African Community.

According to the EAC mediation Agreement of 1984 which was signed by the three Head of State each State domesticated the agreement and in Kenya this was done through the EA Community Mediation agreement Act Cap. 4 of the laws of Kenya. Both the agreement and the Act provided how Kenya was to pay the pensions and other benefits to its nationals who worked in the defunct EAC.

On 5th August 2009, Hon. Sheikh Dor under private members question No. 126 raised the matter of unpaid benefits in parliament copy attached, and thereafter Ex EAC Representatives teamed up to pursue their claims.

On 29th September 2010, Hon. Uhuru Kenyatta the then DPM and Minister for Finance met leaders of the Ex-East African Community Kenya Employees Representatives during which he constituted a Taskforce, headed by Financial Secretary Mr. Mutua Kilaka composed of 8 inter-Ministerial staff and 12 Representatives from the Ex-EA Community Corporations.

Article 10.05 a & b of the mediation agreement provided that:

- (a) Each state shall: pay its nationals, employed by the Corporations or General Fund Services and retired from active service by the division date the pensions and other benefits due to them on account of such employment.
- (b) Make provisions for the pension rights and entitlements to other benefits accrued as of the division date in favour of its nationals in active service with such Corporations and General Fund Services at that date.

Whereas pensions have been paid to the entitled nationals, the other benefits due to them by virtues of their employment with the defunct community have remained unpaid since its breakup on 30th June 1977 to date.

It is contended the Article above imposed an obligation on Partner States (in this case Kenya) to pay to their nationals' other terminals benefits arising out of the employment with the defunct Community.

During the deliberations and the final reports the task force noted that the Ex-EAC (K) employees have all been paid their pensions and continued to receive the same where entitled in accordance with (K) Pensions regulations.

It is against this background that in 1997, a group of former employees filed a suit (HCCC No. 1879 of 1997) against the Government seeking for pension. They argued that the Government was statutorily obligated to pay pensions on account of their employment

at the Community in accordance with the laws of the defunct EAC. In 2004, the court dismissed the case; and ruled in favour of the Government on the following grounds:

- i. The former employees were Bound by the terms and conditions in their Letters of Appointment stating that; pension would be paid for the service in the Community and the Government in accordance with the Kenyan Pensions Act Cap 189.
- ii. The Pension Act Cap 189 had been amended to accommodate pension for the accumulated service to the community and the Government. In accordance with the law, the Government had paid pension to former employees based on their full service from the time they joined the EAC to the retirement date.

The Taskforce noted that the subject matter of the 1997 case filed in court by the Ex-EAC employees related to payment of pension benefits only. The court did not make findings on the payment of other terminal benefits that are under consideration by the Taskforce. In this regard, it was agreed that the outcome of the court case does not limit the Taskforce from considering the basis for claims by Ex - EAC (K) employees.

The Taskforce further noted and clearly indicated in the report that the Ex-EAC (K) employees were entitled to payments of other benefits due to them by virtue of their employment with the defunct EAC as referred to item number 12 of page 46 of the report.

"12 To compensate for the suffering, inhuman treatment, disruption of career expectations and any other disturbances of the Ex - EAC (K) employees outlined above, occasioned by the sudden breakup of the Community and also to cater for Transport/Baggage Expenses incurred by the Ex-EAC (K) employees on repatriation and all other claims that are payable to Ex-EAC (K) employees, the Taskforce after lengthy deliberations unanimously proposed that a total of Kshs 14 billion be considered for payment to eligible Ex-EAC(K) employees graduated according to the number of years worked and the terms of service. This figure was arrived at as a compromise on the basis of the estimated workforce of 40,000 employees as shown in table below"

ATEGORY	NO. OF STAFF ESTIMATED	RATE (Kshs)	TOTAL (Kshs)
ermanent and pensionable			
years and above	20,000	425,000	8,500,000,000
elow 5 years	7,000	300,000	2,100,000,000
on Pensionable			
years and above	12,000	200,000	2,400,000,000
elow 5 years	1,000	100,000	1,000,000,000
TAL	40,000	-	14,000,000,000

The Taskforce completed the report on 20th September 2011 and subsequently handed over to the Ministry of Finance. Since then several correspondences have been written by the Ex-EAC (K) employees representatives to the Minister for finance and to Parliament enquiring about the status of the report and payments of Ex-EAC (K) employees who have continued to languish in want for 37 years.

Following a private member question No. 1733 by Hon Dor, the Minister for finance then Hon. Robinson Njeru Githae tabled the Taskforce Report before Parliament on 19th September 2012 and promised that by the end of September 2012 he would have presented a Cabinet Memo to cabinet for direction. To date we have not been advised on any other progress on the matter. We therefore have been compelled by the long silence and inaction to petition your committee to have the matter settled without further delay and payments be done to the employees who have patiently been waiting in vain. Most of the members have died in destitution after long period of waiting.

PRAYERS

We are praying to the Chairman of the Budget Committee:

- a) That, you provide the necessary fund to cater for payment of the delayed Kshs. 14 billions to the Ex-Community Workers (K) who have waited for the last 37 years while their counterparts in Uganda and Tanzania were paid in the year 2000 and 2005 respectively.
- b) That Nairobi based Taskforce members are ready to provide any guidance regarding the Taskforce report should it be necessary and can be contacted through group secretary on mobile No. 0720-324011.
- c) That finally we have attached the copies of the documents of past and current communications and copy of our group Registration Certificate.

Yours faithfully,

- | | | | |
|----|----------------------|-------|-------|
| 1) | Enock Sabwa | EAAC | _____ |
| 2) | Blasio Ondiek | EAPTC | _____ |
| 3) | Paul Mukuria | GFS | _____ |
| 4) | John M. Nganga | GFS | _____ |
| 5) | Paul L.O. Nyoturu | EAPTC | _____ |
| 6) | Joseph Gathu | GFS | _____ |
| 7) | Isaac D. Amuma | EARC | _____ |
| 8) | John W. Otieno Owili | EAAC | _____ |

CC : Clerk of National Assembly
Treasury

John W. Otieno Owili

For and in behalf of Ex-EAC members-

ANNEX 3

THE EAC MEDIATION AGREEMENT 1984

N-2

The East African Community

Mediation Agreement

1984

AGREEMENT FOR THE DIVISION OF ASSETS AND LIABILITIES
OF THE FORMER EAST AFRICAN COMMUNITY

Agreement between the Governments of the United Republic of Tanzania, the Republic of Uganda and the Republic of Kenya (hereinafter collectively referred to as the "States").

WHEREAS:

The States by the Treaty for East African Co-operation, dated 6th June, 1967, established the East African Community (hereinafter referred to as "the Community"), and, as institutions thereof, certain Corporations (hereinafter collectively referred to as "the Corporations") and provided for certain services to be administered by the Community (hereinafter referred to as "the General Fund Services");

The Community and the Corporations ceased to perform their functions in 1977 and the General Fund Services can no longer be administered;

Conscious of the need to achieve a rational settlement of the Community's affairs, the States engaged the services of a Mediator (hereinafter referred to as "the Mediator");

The Mediator, on the basis of the findings presented in his Consolidated Report dated 28th October, 1981 (hereinafter referred to as the "Consolidated Report"), and in subsequent documents has made proposals for the permanent and equitable division of the assets and liabilities of the Corporations and the General Fund Services;

NOW THEREFORE, the States, having considered the proposals of the Mediator, hereby agree as follows:

ARTICLE I

DEFINITIONS

In this Agreement, unless the context otherwise requires, the following terms and letters have the following meanings:

- (a) "EA Railways" means the East African Railways Corporation;
- (b) "EA P & T" means the East African Posts and Telecommunications Corporation;
- (c) "EA Harbours" means the East African Harbours Corporation;
- (d) "EA Airways" means the East African Airways Corporation;
- (e) "EA Extelcoms" means the East African External Telecommunications Company Limited, a subsidiary of the East African Posts and Telecommunications Corporation;
- (f) "EA Cargo Handling" means the East African Cargo Handling Services Limited, a subsidiary of the East African Harbours Corporation;
- (g) "GFS" means the General Fund Services;
- (h) "Corporations" means the EA Railways, EA P & T, EA Harbours, EA Airways, and their subsidiaries, collectively, and the term "Corporation" means any one of the Corporations individually;

- (i) "Division date" means in the case of:
- EA Railways 30th June, 1977;
 - EA P & T 31st December, 1976;
 - EA Harbours 30th June, 1977;
 - EA Airways 15th February, 1977;
 - EA Exelcoms 31st March, 1977;
 - EA Cargo Handling 31st December, 1976; and
 - GFS 30th June, 1977;
- (j) "Long-term liabilities" means all those liabilities which are listed in Annex "A" to this Agreement;
- (k) "Current liabilities" means those liabilities expected to be settled within a limited period not exceeding one year;
- (l) "Net assets" means in the case of each Corporation and the GFS all the assets less current liabilities of such Corporation and of the GFS other than the assets and liabilities of the pension and provident funds and those which have been defined as long-term liabilities;
- (m) "Rolling Stock Report" means the report on the identification and allocation of rolling stock between Kenya and Uganda dated 1st and 2nd December, 1982; hereto attached as Annex "B" to this Agreement together with the list of rolling stock and three Annexes thereto, submitted on 7th December, 1982, agreed to by Kenya and Uganda and hereby deemed part of Annex "B" of this Agreement;
- (n) "Shs.m" means millions of shillings of Kenya, Tanzania or Uganda, as the case may be, at the rate of 8.31542 shillings to 1 US Dollar in effect on 30th June, 1977;
- (o) "\$m" means millions of United States Dollars;
- (p) "Convertible currency" means the following currencies:
- the Canadian Dollar;
 - the Deutsche Mark;
 - the Italian Lira;
 - the Pound Sterling;
 - the Japanese Yen;
 - the United States Dollar;
- (q) "Tribunal" means the Arbitration Tribunal as provided for in Article 12 hereof;
- (r) "Board" means the Board of Trustees as provided for in Article 10 hereof;
- (s) "Mediation ratio" or "Mediation formula" means the division in the proportion of forty-two per cent (42%) for Kenya, thirty-two per cent (32%) for Tanzania and twenty-six per cent (26%) for Uganda.

ARTICLE 2

ASSETS AND LIABILITIES COVERED

2.00 This Agreement covers the assets and liabilities of the Corporations and the GFS at the division date of each Corporation and of the GFS.

RULES OF PROCEDURE OF THE BOARD OF TRUSTEES

ARTICLE 1

ESTABLISHMENT OF THE BOARD

- 1.01 The Board shall be established as provided for in Sub-Article 10.03 (b) (i) of the Mediation Agreement and shall consist of three members who shall be the Governors of the Central Banks of Tanzania, Uganda, and Kenya.
- 1.02 In the event of the absence or incapacity of a member at a meeting, he may be represented by a Deputy Governor.
- 1.03 Each Central Bank shall be responsible for the allowances, remuneration and expenses payable to its member.
- 1.04 The Governor of the host Central Bank shall provide secretarial services to the Board. The Board shall maintain records of all proceedings and documents of the Board.

ARTICLE 2

FUNCTIONS OF THE BOARD

- 2.01 The Board shall manage and administer, in the best interest of the States, all the assets of the Community vested in it by virtue of Articles 10 and 11 of the Mediation Agreement.
- 2.02 The Board shall determine the investment policy for all the assets under its control and may invest all or part of the assets in such a way as it shall deem fit at such interest rates and terms as shall be beneficial to the States.
- 2.03 The report of the Auditors to be established in accordance with Sub-Article 10.02 of the Mediation Agreement shall be submitted to the Board of Trustees who in turn shall forward it to the Ministers responsible for Finance in each State.
- 2.04 The Board shall cease to exist upon a final division of the Pension and Provident Fund assets and other assets and liabilities as provided for in Articles 10 and 11 of the Mediation Agreement.

ARTICLE 3

MEETINGS OF THE BOARD

- 3.01 The Board shall hold its first meeting in Tanzania within one month of the signing of the Mediation Agreement and shall thereafter meet at least quarterly in the States in rotation.
- 3.02 The date and time of the first meeting of the Board shall be fixed by the States. At that meeting and at subsequent meetings, the Board shall fix the date, time and venue of the next meeting.
- 3.03 The meetings will be chaired by the Governor of the Central Bank in the host country.
- 3.05 The Board shall produce a quarterly report, duly signed by the members, certified copies of which shall be dispatched to the Minister responsible for Finance in each State.
- 3.06 Save as provided for in the Mediation Agreement and these Rules, the Board may regulate its own procedure.

ARTICLE 4

OTHER EXPENSES

- 4.01 Costs and expenses incurred by the Board, such as telephones, telexes, transport at meetings and other administrative services shall be a charge on the income from Pension Funds.
- 4.02 The Board shall keep and maintain a proper record of accounts of the costs and expenses charged on the income from the Pension Funds and shall submit a half-yearly report thereon to the Minister responsible for Finance in each State.

9. The Tanzania Railways, as observers, submitted a list of wages that were scrapped, or have been condemned, in Tanzania, since 1981. This is submitted for record and adjustment to para. 61 of the Mediated Report of October, 1981.

S. M. K
for Uganda Railway.

J. K.
for Kenya Railways.

S. M. KA
for Tanzania Railways Corporation (C

D. M. S. FAIRWEATH
Chairman, Working

ARTICLE 3

NET ASSETS; EQUITY SHARES; EXCESS AND SHORTFALL

3.00 The amount of the net assets of the Corporations and of the GFS held in each of the States, the allocation of such amount as equity shares among the States, taking into account the geographic location of such assets and the common ownership interests by the States in such assets, and the resulting excess or shortfall of net assets are:

	EQUITY SHARE							
			KENYA 42%		TANZANIA 32%		UGANDA 26%	
	Shs. m	Sm	Shs. m	Sm	Shs. m	Sm	Shs. m	Sm
Assets held	11,913	1,432,640	6,207.00	746,445	4,195.00	504,845	1,508.00	181,350
Equity Shares			5,001.46	601,709 (42%)	3,512.16	434,445 (32%)	3,097.38	372,416 (26%)
Excess (Shortfall)			1,205.54	144,736	682.84	74,400	(1,589.38)	(191,066)

ARTICLE 4

COMPENSATION TO UGANDA FOR SHORTFALL OF NET ASSETS; INTEREST PAYMENTS

4.01 Kenya and Tanzania shall compensate Uganda for its shortfall of net assets as set forth in Article 3 hereinabove by one or more of the following methods:

- (a) payments in convertible currencies;
- (b) the provision of goods;
- (c) the provision of services;
- (d) the financing of existing or new productive facilities;
- (e) the set-off, or compensation for mutually recognized claims; or
- (f) a combination of any of these modes;

all on terms and conditions agreed between Kenya and Uganda, and between Tanzania and Uganda, as set forth in Annexes "C" and "D", respectively, to this Agreement.

4.02 Kenya and Tanzania shall pay interest at the rate of seven per cent (7%) per annum from the date of signing of this Agreement on the outstanding amounts of compensation due to Uganda from time to time under this Article.

ARTICLE 5

COMPENSATION FOR EQUIPMENT AND ALLOCATION
OF ROLLING STOCK TO UGANDA

5.01 Kenya shall pay to Uganda the amount of shillings one million (Shs. 1m) equivalent to United States dollars one hundred and twenty thousand (US\$120,000) being compensation for certain GFS equipment.

5.02 Kenya shall transfer to Uganda the number of coaches and wagons of the quality, size and specifications as set forth in the Rolling Stock Report.

ARTICLE 6

VALUATION OF LONG-TERM LIABILITIES

6.00 The long-term liabilities of the Corporations and of the GFS at the division date of each Corporation and of the GFS amount to shillings two thousand eight hundred and sixty-three million, eight hundred thousand (Shs. 2,863,800,000).

ARTICLE 7

ALLOCATION OF LONG-TERM LIABILITIES: INTERIM PAYMENTS

7.01 The long-term liabilities of the Corporations and of the GFS as at the division dates, set out in Annex "A", are allocated to the States in the proportion of forty-two per cent (42%) to Kenya, thirty-two per cent (32%) to Tanzania, and twenty-six per cent (26%) to Uganda.

TABLE OF DIVISION

	TOTAL		KENYA 42%		TANZANIA 32%		UGANDA 26%	
	Shs.m	Shs.	Shs.m	Shs.	Shs.m	Shs.	Shs.m	Shs.
Long-Term Liabilities	2,863,800	2,863,800,000	1,203,196	120,319,600	918,416	91,841,600	742,188	74,218,800

7.02 Payments made by each State in respect of the long-term liabilities from the division dates to 30th June, 1984, shared either in excess or short of the proportion allocated to a State in Sub-Article 7.01 are to be taken into account in calculating the amount of compensation due by or to that State under Article 4.

ARTICLE 8

LIABILITY TOWARDS CREDITORS

8.01 The creditors of the long-term liabilities and the States having agreed to the division of the liabilities pursuant to Article 7 and, where applicable, to the elimination of joint and several guarantees in respect of such liabilities, each State shall solely be responsible for such balance of liabilities allocated to it and as reflected in the separate Agreements between each State and each Creditor.

8.02 The repayment to local holders of loan stocks issued by the Corporations, shall be the responsibility of the Government of the State in which the stockholders reside.

8.03 Each State hereby indemnifies the other States against all responsibilities for the liabilities it has assumed as provided in Sub-Articles 8.01 and 8.02 above.

8.04 Notwithstanding any other provision in this Agreement to the contrary, the effective date of Sub-Article 8.01 shall be 1st July, 1984.

ARTICLE 9

CLAIMS

9.01 Claims, registered prior to 31st December, 1978, other than claims for pensions by former members of staff of the Community institutions, claims against EA Airways and long-term liabilities, shall be dealt with as follows:

- (a) Claims for amounts due in the currency of one of the States are assigned to, and shall be dealt with by such State in accordance with its existing procedures;
- (b) Claims for amounts due in foreign currency, not covered by Article 8, may be dealt with by *ad hoc* agreement between the States or, failing such agreement, by the Arbitration Tribunal referred to in Article 12 of this Agreement.

9.02 Claims against EA Airways registered prior to 31st December, 1978, not allocated as part of the long-term liabilities pursuant to Article 7, shall be dealt with by the State in which they were registered in accordance with that State's existing procedures.

ARTICLE 10

PENSION AND PROVIDENT FUNDS

10.01 The assets of the Pension and Provident Funds of the Corporations and GFS consist of the value of the Pension and Provident Funds assets located in the States and those currently held and managed by the Crown Agents.

10.02 The Pension assets and liabilities of the Corporations and GFS shall be subject to an actuarial exercise which shall determine the value of the Pension assets and liabilities in each State and abroad for a decision by the States on the final division of the assets and the liabilities.

10.03 Pending the determination of the Pension assets and liabilities for each State:

- (a) Pension and Provident Funds assets located in the States shall continue to be vested and managed by the States where they are so located;
- (b) (i) Pension and Provident Funds assets of the Community currently held and administered by the Crown Agents shall vest in and be managed and administered by a Board of Trustees consisting of the Governors of the Central Banks of the States.

- (ii) The Board shall sit not later than one month after the signing of the Mediation Agreement and shall thereafter meet quarterly and submit its reports to the Ministers responsible for Finance in the States.
 - (iii) The Board shall function in accordance with the rules of procedure set forth in Annex "F" to this Agreement. If any question of procedure arises which is not covered by the said Annex, the Board shall decide the question.
 - (iv) The Board shall cease to exist upon a final division of the Pension and Provident Funds assets and other assets and liabilities as provided for in Sub-Articles 10.01, 10.02 and 11.03 of this Agreement.
- (c) The Pension and Provident Funds Assets of the Community now held and managed by the Crown Agents consisted of the following as at 31st March, 1984:
- (i) Pension Fund assets amounting to Pounds Sterling twenty million, five hundred and ninety-two thousand, four hundred and fifty (£20,592,450).
 - (ii) Provident Fund assets amounting to Pounds Sterling one million, two hundred forty-eight thousand, nine hundred and seventy-seven (£1,248,977).

10.04 The value of the assets of the Pension Fund of EA P & T other than those covered in Sub-Article 10.01 above, located in Uganda shall be ascertained and a decision made thereon by the States in the light of actuarial and other findings.

~~10.05~~ Each State shall:

- (a) Pay its nationals, employed by the Corporations or GFS and retired from active service by the division date the pensions and other benefits due to them on account of such employment.
- (b) Make provision for the pension rights and entitlements to other benefits accrued as of the division date in favour of its nationals in active service with such Corporations and GFS at that date.

10.06 (a) Each State shall pay to members of staff formerly employed by the Corporations or GFS, other than its nationals and other than those covered by the Pensions Take-over Agreement with the United Kingdom whose last duty station was within its territory, and to their widows and orphans the pensions and other benefits lawfully due to them on account of such employment.

(b) The obligation referred to in paragraph (a) of this Sub-Article covers both members of staff retired from active service and those in active service at the division date.

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ARTICLE 11

OTHER ASSETS

11.01 Other assets of the Community held by the Crown Agents consist of:

(a) Sinking Funds which amounted, as at 31st March, 1984, to Pounds Sterling four million, five hundred thirty-eight thousand, six hundred eighty-two (£4,538,682):

(i) Out of this amount, a sum of Pounds Sterling five hundred thousand, seven hundred and sixty-seven (£500,767) is distributed to the States in the proportion of forty-two per cent (42%) to Kenya, thirty-two per cent (32%) to Tanzania and twenty-six per cent (26%) to Uganda;

(ii) The balance of Pounds Sterling four million, and thirty-seven thousand, nine hundred and fifteen (£4,037,915) shall be used to redeem the following two loan stocks:

—1957 East African High Commission (Railways and Harbours) 5½% 1977-83.

—1956 East African High Commission (Railways and Harbours) 5½% 1980-84.

Any surplus will be divided among the States in accordance with the Mediation formula.

(b) (i) Cash balances, which amounted to Pounds Sterling one million, one hundred and twenty thousand, five hundred ninety (£1,120,590) at 31st March, 1984, are distributed to the States in proportion of forty-two per cent (42%) to Kenya, thirty-two (32%) to Tanzania and twenty-six per cent (26%) to Uganda.

(ii) Out of this amount, the sum of £5,400 may be transferred to Pensions Fund.

11.02 The amount due from the United Kingdom to the Community arising out of the Pensions Take-over Agreement which is currently estimated at Pounds Sterling five hundred and sixty-four thousand (£564,000) shall be distributed to the States in the proportion of forty-two per cent (42%) to Kenya, thirty-two per cent (32%) to Tanzania and twenty-six per cent (26%) to Uganda.

11.03 Any other assets not particularly provided for in this Agreement, which after the signature of this Agreement are ascertained by the States, the Board of Trustees or any other person or body, as belonging to the Community, shall automatically vest in the Board of Trustees which shall manage and administer the same until a decision is made by the States for the final disposal thereof.

ARTICLE 12

SETTLEMENT OF DISPUTES

12.01 Any dispute between two or more of the States and/or any claim by any one or more of them against any other of the States arising under this Agreement, including any question concerning its interpretation or implementation, which cannot be determined by agreement between the parties, shall be submitted for decision to an Arbitration Tribunal.

12.02 (a) The Tribunal shall consist of four members appointed as follows: each State shall appoint one member, the fourth member, who shall be the Chairman of the Tribunal and who shall not be a national of any of the States, shall be appointed by agreement of the States.

(b) Notwithstanding the foregoing, in the event that one State shall fail to make an appointment within three months from the date of this Agreement the Tribunal shall be deemed to be properly constituted.

(c) In case the States fail to agree on the appointment of a Chairman within three months from the date of this Agreement, the President of the World Bank shall make such appointment.

12.03 The Tribunal shall function in accordance with the Rules of Procedure set forth in Annex "E" to this Agreement. If any question of procedure arises which is not covered by the said Annex, the Tribunal shall decide the question.

12.04 Every decision of the Tribunal shall be taken by the majority of the members present at a sitting, and where the members are equally divided in their opinions, that of the Chairman shall prevail.

12.05 The decisions of the Tribunal shall be in writing and shall be signed by each member present at the sitting.

12.06 The States shall by mutual agreement determine the terms and conditions of service of the Chairman of the Tribunal.

12.07 Each State shall pay the member of the Tribunal representing it allowances and other remuneration for attendance at sessions of the Tribunal. In addition, each member will be reimbursed by the State which appointed him for expenses reasonably incurred by him in the course of his duties as a member of the Tribunal.

12.08 (a) There shall be a Registrar who shall be appointed by agreement of the States.

(b) Until the States exercise their powers under Sub-Article 12.08 (a) above, the Secretary of the East African Development Bank shall be the Registrar of the Tribunal.

(c) The States shall make equal advance payments for the setting up of the Registry, and thereafter make appropriate financial arrangements for the running thereof.

12.09 The Registry of the Tribunal shall be situated in Kampala, Uganda.

12.10 The Tribunal may in any particular case meet and exercise its jurisdiction at any place, within the States, it considers desirable.

12.11 The Tribunal shall cease to exist upon the full and final payment and settlement of all compensation, claims and disputes under this Agreement.

ARTICLE 13

LAW GOVERNING THIS AGREEMENT

13.00 The Tribunal shall apply legal principles common to the contracting States and recognized principles and rules of International Law.

ARTICLE 14

CONTINUATION OF CERTAIN INSTITUTIONS AND SERVICES; FUTURE CO-OPERATION

14.01 The States agree that the Soroti Civil Flying School, the East African Development Bank, the East African Inter-University Committee, the Eastern and Southern African Management Institute, and the East African Community Library Services shall continue to function as joint East African institutions or common services, as the case may be, and agree to make appropriate arrangements for the financing and operation thereof.

14.02 The States agree to explore and identify further areas for future co-operation and to work out concrete arrangements for such co-operation.

ARTICLE 15

ABROGATION OF THE TREATY FOR EAST AFRICAN CO-OPERATION

15.00 The Treaty for East African Co-operation, dated 6th June, 1967, is hereby abrogated.

ARTICLE 16

ENTRY INTO FORCE

16.00 This Agreement shall enter into force upon its signature.

ARTICLE 17

CITATION

17.00 This Agreement shall be cited as "the East African Community Mediation Agreement 1984".

ARTICLE 18

SCOPE OF THIS AGREEMENT

18.00 This Agreement consists of 18 Articles and 6 Annexes, each of which forms an integral part hereof. The Agreement is made and signed in five originals, all in English and all of them being equally authentic. Each State shall retain one original and the fourth and fifth originals shall be deposited with the Secretaries-General of the United Nations and the Organization of African Unity.

DONE at Arusha, Tanzania, on the fourteenth day of May in the year one thousand nine hundred and eighty-four.

IN FAITH WHEREOF the undersigned have placed their signatures
at the end of this Agreement.

For the Government of
the United Republic of
Tanzania

For the Government of
the Republic of
Uganda

For the Government of
the Republic of
Kenya

Julius Nyerere

JULIUS K. NYERERE
President

Robert Danford Moi

ROBERT DANFORD MOI
President

COMPENSATION AGREEMENT BETWEEN THE GOVERNMENTS OF THE
REPUBLIC OF UGANDA AND THE REPUBLIC OF KENYA IN RESPECT OF
THE SHORTFALL OF NET ASSETS UNDER THE MEDIATION AGREEMENT

AGREEMENT between the Governments of the Republic of Uganda (hereinafter referred to as "Uganda") of the one part and the Republic of Kenya (hereinafter referred to as "Kenya") of the other part:

WHEREAS:

By virtue of the Agreement for the division of the Assets and Liabilities of the former East African Community (hereinafter referred to as the "Mediation Agreement") Kenya shall compensate Uganda for her shortfall of net assets the amount of shillings one billion, two hundred and three million, five hundred and forty thousand (Sh. 1,203.54 million) equivalent to United States of America dollars one hundred and forty-four million, seven hundred and thirty-six thousand (US \$144.736 million) calculated at the rate of Sh. 8.31542 per 1 US dollar as at 30th June, 1977. The amount shall be paid in convertible currencies.

Pursuant to Article 5.01 of the Mediation Agreement, Kenya shall further compensate Uganda for the General Fund Services Equipment, the amount of shillings one million (Sh. 1 million) equivalent to United States of America dollars one hundred and twenty thousand (US \$0.12 million) calculated at the rate of Sh. 8.31542 per 1 US dollar as at 30th June, 1977. The amount shall be paid in convertible currencies.

By virtue of Article 4 of the Mediation Agreement and the Memorandum of Understanding between Kenya and Uganda dated 3rd March, 1984, the compensation to Uganda shall consist of the following methods:

- (i) convertible cash;
- (ii) set-off of monies Uganda owes Kenya;
- (iii) payment for services rendered to Uganda by Kenya;
- (iv) payment for raw materials and manufactured goods obtained by Uganda from Kenya;
- (v) payment for any fixed assets acquired by Uganda in Kenya;
or a Combination of any one of these methods.

Uganda will, after due consultation with Kenya, and taking into account proposals and views submitted by Kenya at such consultation, decide on the extent and combination of modes of payment.

The parties hereto acknowledge the fact that there exist claims due to Kenya payable by Uganda Government arising out of the Inter Central Banks' Credit Facility Agreement of 1981 between Kenya and Uganda and the current indebtedness of the Uganda Government and her parastatal bodies to the Kenya Government, Kenya parastatal bodies and Kenya private sector.

NOW THEREFORE Kenya and Uganda agree on the methods of payment of compensation as hereunder:

ARTICLE I

AMOUNT OF COMPENSATION

The compensation amount is the sum of United States of America dollars one hundred forty-four million, seven hundred and thirty-six thousand (US \$144.736 million) and a further sum of United States of America dollars one hundred and twenty thousand (US \$0.12 million) amounting to a total sum of United States of America dollars one hundred forty-four million, eight hundred and fifty-six thousand (US \$144.856 million).

ARTICLE II

PAYMENT OF COMPENSATION

The amount hereinabove stated in Article I shall be paid over a period of eight (8) years with interest at the rate of seven per cent (7%) per annum on outstanding balances from the date of signature of the Mediation Agreement as follows:

- (i) For the first five years, the annual sum of United States of America dollars twenty-nine million, four hundred and twelve thousand (US \$29,412 million) inclusive of interest shall be paid by Kenya to Uganda in ten (10) half-yearly instalments of United States of America dollars fourteen million, seven hundred and six thousand (US \$14,706 million) each, commencing on 1st July, 1984 or three months after the signing of the Mediation Agreement whichever is the earliest and ending on 1st January, 1989 inclusive as set out in Schedule "A" to this Agreement.
- (ii) The balance outstanding as at 1st July, 1989 or such subsequent date subject to the due date of the first instalment in Article II (i) above, shall be paid in three (3) years in six equal half-yearly instalments inclusive of interest, commencing six months after the last instalment in Article II (i) above and ending on the 1st day of July, 1992, or such subsequent date depending on the date of the first instalment herein.

Provided that after working out and adjusting Schedule "A", Schedule "B" shall be worked out and shall form part of this Article and shall be read and interpreted together with this Agreement.

ARTICLE III

PAYMENT IN CONVERTIBLE CASH

The compensation amount payable by Kenya to Uganda in convertible cash shall be paid into the Bank of Uganda's account with the Federal Reserve Bank in New York.

ARTICLE IV

SET-OFF

- (i) Upon the coming into effect of the Mediation Agreement, there shall be set-off against the compensation amount payable by Kenya Government to the Uganda Government the amount payable by Uganda Government to Kenya Government arising out of the Inter Central Banks' Credit Facility Agreement of 1981 and such other debts owed by Uganda Government and her parastatals to the Kenya Government, Kenya parastatals and Kenya Private sector, as shall have been verified by 1st July, 1984.
- (ii) Any debts which shall not have been verified by 1st July, 1984 shall be verified by 30th September, 1984 and off-set from the instalment next following. 30th September, 1984 shall be the cut-off date for all current indebtedness.

ARTICLE V

PAYMENT BY OFF-SETTING CASH PAYMENT FOR SERVICES RENDERED:

GOODS OBTAINED AND ASSETS ACQUIRED

For the first five years Uganda shall at any time within any instalment, consult Kenya and, taking into account proposals and views submitted by Kenya at such consultation, decide the amount to be off-set for:

- (a) any services rendered by Kenya to Uganda,
- (b) any goods obtained from Kenya by Uganda,
- (c) any fixed assets Uganda may acquire in Kenya.

ARTICLE VI

INTEREST

Kenya shall pay interest under Article 4.02 of the Mediation Agreement only on any outstanding amounts of the compensation amount.

ARTICLE VII

WAIVER

Kenya shall waive all claims against Uganda arising out of the set-off specified in Article IV to the extent of the amounts found due to Kenya and set-off against Uganda as at 30th September, 1984.

ARTICLE VIII

AMENDMENTS

This Agreement may be amended by mutual consent of the parties and such amendment shall be in writing and signed by duly authorized representatives of the two Governments and shall form an integral part of this Agreement.

ARTICLE IX

SCOPE OF AGREEMENT

This Agreement shall be attached to and form an annex to the Mediation Agreement and constitute an integral part thereof.

ARTICLE X

COMING INTO FORCE

This Agreement shall come into force upon the date of signature of the Mediation Agreement.

DONE AT ARUSHA this 31st day of March, 1984.

.....
SAM TEWUNGWA

*Minister of Regional Co-operation
for the Government of the
Republic of Uganda*

..... PETER C.-J. O'NYAKIAMO

*Minister of State Office of the
President for the Government of
the Republic of Kenya*

Schedule "

PROPOSED PAYMENT SCHEDULE BY KENYA TO UGANDA IN U.S. DOLLARS (MILLION)

Date	Outstanding US \$	Interest US \$	Total Due US \$	Payment Due US \$
1st July, 1984	141.856	2.535	147.391	14.706
1st January 1985	132.685	4.644	137.329	14.706
1st July, 1985	122.623	4.292	126.915	14.706
1st January, 1986	112.209	3.927	116.136	14.706
1st July, 1986	101.430	3.550	104.980	14.706
1st January, 1987	90.274	3.160	93.434	14.706
1st July, 1987	78.728	2.755	81.483	14.706
1st January, 1988	66.777	2.337	69.114	14.706
1st July, 1988	54.408	1.905	56.313	14.706
1st January, 1989	41.607	1.456	43.063	14.706

*Note: The figures in Column 1, 2 and 3 will be adjusted.

subject to: (i) The date of the signature of the Mediation Agreement.

(ii) The verified debts to be set-off on the date of the signature of the Mediation Agreement.

SCHEDULE OF COMPENSATION PAYMENTS BETWEEN UGANDA AND TANZANIA

Institution/Loan	Uganda to Pay Tanzania	Tanzania to Pay Uganda
<i>A. Railways</i>		
1. 1956 ESig. 3.5m 1980/84 (overseas)	£ 96,580.74	—
2. 1957 ESig. 8.5m 1977/83	£ 242,360.20	—
3. 1965 ESig.	£ 606.00	—
4. 1970 ESig. 1.0m Comm. Credit	£ 30,026.93	—
5. 1970 KE 1.0m (1990)	—	Sh. 383,575.50
6. 1965 I.B.R.D. Loan 428-1 E.A.	\$ 951,592.60	—
7. 1970 I.B.R.D. Loan 674 E.A.	\$ 1,344,556.00	—
8. 1971 KE 3.4m 61% (1986)	—	Sh. 498,304.24
<i>B. Posts & Telecommunications</i>		
1. Std. Chartered Bank	\$ 216,589.00	—
2. Tanzania Investment Bank	\$ 523,869.00	—
3. Zanzibar Government Loan	\$ 617,329.00	—
4. Consortium Loan	—	\$ 901,075.00
5. Grindlays Bank	—	\$ 835,974.09
6. Initial Conversion Loan	\$ 150.69	—
<i>C. Harbours</i>		
1. I.B.R.D. Loan 428-2 E.A.	\$ 670,328.50	—
2. I.B.R.D. Loan 638 E.A.	\$ 3,871,663.00	—
3. I.B.R.D. Loan 865 E.A.	\$ 3,066,876.00	—
4. I.C.A. (1978)	£ 18,548.65	—
<i>D. GFS Liabilities</i>		
Montreal House	\$ 34,636.00	—
<i>SUMMARY</i>		
Totals	ESig. 388,122.52 US\$ 11,297,389.79	K.Sh. 881,879.74 U.S.\$ 1,757,049.00

* This net-off figure of U.S. \$ 10,207,794.23 excludes K.Shs. 881,879.74 which is a future stock obligation.

Conversion to US \$

(a) ESig. 388,122.52	US \$	667,453.44
(b)	US \$	11,297,389.79
		11,964,843.23
	US \$	1,757,049.00
NET POSITION	US \$	10,207,794.23

ANNEXURE 'B'

	Kenya to pay Tanzania	Tanzania to pay Kenya
<i>Railways and Harbours:</i>		
1954 £Stg. 5m 4%—1973/76		£Stg. 81,665.32
1957 £Stg. 8.5m 5½%—1977/83		£Stg. 36,800.80
E.A. Government Loan		
1961 £Stg. 7.5m 6½—1986 Exchequer Loan	US\$240,529.16	£Stg. 2,968
1970 £Stg. 1.0m—1995		£Stg. 9,454
1975 £Stg. 5.9m 9%—1977 Stock		£Stg. 53,280.58
<i>Posts and Telecommunications:</i>		
C. Itoh Credit		
Zanzibar Government Loan		JY. 338,689.165
Marconi Communications	US\$997.224	
Standard and Chartered Bank		£Stg. 34,809
Tanzania Investment	US\$349.675	
Depreciation Loan	US\$846,251	
1957 E.A.H.C. £Stg. 3m 5½%—1977/83		US\$43,452.17
Cable and Wireless		£Stg. 53,240
Crown Agents Overdraft		£Stg. 12,473.76
I.B.R.D. 483 E.A.		£Stg. 116,360
I.B.R.D. 675 E.A.		US\$379,860
I.B.R.D. 914 E.A.		US\$311,103
6½% British Exchequer Loan		US\$805,163
5½% British Exchequer Loan		£Stg. 18,360
		£Stg. 5,040
TOTALS	US\$2,433,879.16	US\$1,544,578.17 JY. 336,689,165 £Stg. 424,451.46

KENYA-TANZANIA SETTLEMENT ANALYSIS

	Tanzania to pay Kenya	US\$
US\$		
2,433,879.16—1,544,578.17 US\$	(-) 889,301	(-) 889,301
£Stg. 424,451.46	424,451.46	+ 729,965
Japanese Yen		
338,689,165	JY. 338,689,165	+1,262,702
		1,103,366

SCHEDULE OF COMPENSATION PAYMENTS BETWEEN KENYA AND UGANDA

Institution/Loan	Uganda to pay Kenya	Kenya to pay Uganda
A. Railways		
1. 1956 Estg. 3.5m 1980/84	£ 92,537.17	—
2. 1957 Estg. 8.5m 1977/83	£ 238,925.80	—
3. 1961 Estg. 7.5m 1986 Exchequer	£ 703,504.00	—
4. 1965 Estg. 3.15m 1970/84 7.1% E.C.G.D.	£ 295,025.00	—
5. 1970 Estg. 1.0m Comm. credit	£ 35,939.33	—
6. 1970 Estg. 1.0m Interest Free	£ 46,199.00	—
7. 1965 I.B.R.D. Loan 428—E.A.	\$ 1,141,671.00	—
8. 1970 I.B.R.D. Loan 674—E.A.	\$ 1,613,433.00	—
9. E.A. Government Loan	—	\$ 1,322,910.40
10. 1954 Estg. 5.0m—4% 1973/76	£ 114,771.85	—
11. 1957 Estg. 8.5m—5½% 1977/83	£ 26,795.65	—
B. Posts and Telecommunications		
1. Standard Chartered Bank	—	—
2. Tanzania Investment Bank	—	—
3. Zanzibar Govt. Loan	—	\$ 1,182,661.00
4. Consortium Loan	—	\$ 1,123,466.00
5. Citicorps Bank Loan	—	—
6. Initial Conversion Loan	\$ 37,712.00	—
7. Depreciation Loan	\$ 29,386.00	—
8. C. Itoh Credit	Y 275,184,947.00	—
9. Marconi Communications	£ 28,282.00	—
10. Cable and Wireless Loan	£ 3,118.00	—
11. Crown Agents Overdraft	£ 13,980.00	—
12. I.B.R.D. Loan No. 433—E.A.	\$ 94,965.00	—
13. I.B.R.D. Loan No. 675—E.A.	\$ 77,776.00	—
14. I.B.R.D. Loan No. 914—E.A.	\$ 201,291.00	—
15. British Exchequer Loan 1961/86 Estg. 0.75m 6½%	£ 39,980.00	—
16. British Exchequer Loan 1963/88 Estg. 0.25m 5½%	£ 15,220.00	—
17. 1957 E.A.H.C. Estg. 3.0m 5½% 1977/83	£ 13,320.00	—
C. Harbours		
1. I.B.R.D. Loan 428—E.A.	\$ 354,880.00	—
2. I.B.R.D. Loan 638—E.A.	\$ 2,049,704.00	—
3. I.B.R.D. Loan 865—E.A.	\$ 1,623,641.00	—
4. International Co-operation Administration (1978)	£ 9,812.86	—
D. GFS Liabilities		
1. Building in Montreal	\$ 45,460.00	—
E. Stocks—Local Register (Non-Sterling)		
1. 1975 Estg. 5.9m—9% 1977	£ 43,290.47	—
SUMMARY		
	£ 1,720,708.13	—
	\$ 7,269,919.00	\$ 3,629,037.40
	Y 275,184,947.00	—
Conversion to U.S. \$		
£ 1,720,708.13	U.S. \$ 2,959,100.04	
Y 275,184,947.00	\$ 7,269,919.00	
	\$ 1,027,547.93	
	\$ 11,256,566.97	
Less	\$ 3,629,037.40	
NET POSITION	\$ 7,627,529.57	

ANNEXTURE 'B'

	Kenya to pay Tanzania	Tanzania to pay Kenya
<i>Railways and Harbours:</i>		
1954 £Stg. 5m 4%—1973/76		£Stg. 81,665.32
1957 £Stg. 8.5m 5½%—1977/83		£Stg. 36,800.80
E.A. Government Loan		
1961 £Stg. 7.5m 6½%—1986 Exchequer Loan	US\$240,529.16	£Stg. 2,968.
1970 £Stg. 1.0m—1995		£Stg. 9,454
1975 £Stg. 5.9m 9%—1977 Stock		£Stg. 53,280.50
<i>Posts and Telecommunications:</i>		
C. Itoli Credit		
Zanzibar Government Loan		JY. 338,689,165
Marconi Communications	US\$997,224	£Stg. 34,809
Standard and Chartered Bank		
Tanzania Investment	US\$349,875	
Depreciation Loan	US\$846,251	
1957 E.A.H.C. £Stg. 3m 5½%—1977/83		US\$48,452.17
Cable and Wireless		£Stg. 53,240
Crown Agents Overdraft		£Stg. 12,473.76
I.B.R.D. 483 E.A.		£Stg. 116,360
I.B.R.D. 675 E.A.		US\$379,860
I.B.R.D. 914 E.A.		US\$311,103
6½% British Exchequer Loan		US\$805,163
5½% British Exchequer Loan		£Stg. 18,360
		£Stg. 5,040
TOTALS	US\$2,433,879.16	US\$1,544,578.17 JY. 338,689,165 £Stg. 424,451.46

KENYA-TANZANIA SETTLEMENT ANALYSIS

	Tanzania to pay Kenya	US\$
US\$ 2,433,879.16—1,544,578.17 US\$		
£Stg. 424,451.46	(-) 889,301	(-) 889,301
Japanese Yen 338,689,165	£Stg. 424,451.46	+ 729,965
	JY. 338,689,165	+ 1,262,702
		1,103,366

COMPENSATION AGREEMENT
UNITED REPUBLIC OF TANZANIA
RESPECT OF THE SHORTFALL
THE MEDIATION

AGREEMENT between the Government of Tanzania (hereinafter referred to as "Tanzania") and the Government of Uganda (hereinafter referred to as "Uganda")

WHEREAS:

By virtue of the proposed Liabilities of the former (the "Mediation Agreement") between the Governments of Tanzania, the Republic of Uganda and the Republic of Kenya, Tanzania has agreed to compensate Uganda for its shortfall of net assets the amount of US\$46.4m.

Under Article 4 of the said Mediation Agreement the payment of compensation to Uganda shall be made by several methods amongst which is the set-off of mutually recognized claims.

The parties hereto recognize that there are outstanding claims due to Tanzania payable by Uganda arising out of the Loan Agreement dated 12th December, 1979, as amended by the Supplementary Agreement dated 26th June, 1981 and the Inter-Central Bank Commodity Loan Credit Agreement dated 18th May, 1979, as amended by the Supplementary Agreement dated 18th December, 1979.

After the reconciliation of actual figures of the Loans specified in the Long-term Liabilities schedule of the said Mediation Agreement under Article 7 thereof, there may arise claims between Tanzania and Uganda.

NOW THEREFORE IT IS AGREED AND DECLARED AS FOLLOWS:
That Tanzania hereby offers to compensate Uganda and Uganda hereby accepts to be compensated by way of set-off from the balance of Tanzania's outstanding claims as hereunder:

1. That 88.6 per cent of the compensation amount shall be paid by way of set-off from Tanzania's claims against Uganda arising out of the Loan Agreement dated 12th December, 1979, as amended on 26th June, 1981.
2. That 11.4 per cent of the compensation amount shall be paid by way of set-off from Tanzania's net claims against Uganda arising out of the Uganda/Tanzania set-off of loans under Categories I and II of the Long-term Liabilities schedule of the Mediation Agreement.
3. That any balance of the compensation amount remaining after the set-off in Clause 2 hereinabove shall be paid by way of set-off from Tanzania's claims against Uganda arising out of the Inter-Central Bank Commodity Credit Agreement dated 18th May, 1979, as amended on 18th December, 1979.
4. That any balance of the compensation amount remaining after the set-off in Clause 3 hereinabove shall be paid by way of set-off from any further claims by Tanzania against Uganda arising out of the Loan Agreement specified in Clause 1 hereinabove.
5. That the amounts in clauses 1 to 4 shall be appropriately quantified after reconciliation of the actual figures of the loans in the Long-term Liabilities schedule of the Mediation Agreement. The said quantified figures shall be agreed upon by exchange of letters between the two Governments.

6. That Uganda hereby waives claims against Tanzania under the Mediation Agreement to the extent of Shs. 385.84m (US\$46.4m) being the compensation payable to Uganda by Tanzania under the said Agreement and Tanzania hereby waives claims against Uganda under the Agreement in clauses 1 and 3 and the set-off in Clause 2 above to the extent of the amounts set-off therein and further agree as follows:
 - (i) That the set-off in clauses 1 to 4 hereinabove agreed, constitute a full and final payment of the compensation payable to Uganda by Tanzania;
 - (ii) That Tanzania shall be obliged to pay interest under Article 4.02 of the Mediation Agreement only on any outstanding amounts that may remain due to Uganda after the settlements stipulated in clauses 1 to 4;
 - (iii) That the Agreements referred to in clauses 1 and 3 hereinabove shall be appropriately amended in respect of the amounts set-off therein.
7. That this Agreement shall be attached to and form an annex to the Mediation Agreement.
8. That this Agreement shall come into force upon the date of signature of the Mediation Agreement.

DONE AT KAMPALA this 24th day of February, 1984.

G. D. MSUYA (M.P.)
Minister of Finance for the
Government of the
United Republic of Tanzania

SI TBWUNGWA (M.P.)
Minister of Regional Co-operation
for the Government of the
Republic of Uganda

ANNEX "D" (II)

THE UNITED REPUBLIC OF TANZANIA
THE MINISTER FOR FINANCE

THE TREASURY,
P.O. Box 9111,
DAR ES SALAAM.

Our Ref: TYC/E/640/85
Your Ref: EA 43

27th April, 1984

Hon. S. Tewungwa (M.P.),
Minister for Regional Co-operation for the Government
of the Republic of Uganda,
P.O. Box 4411, Kampala,
UGANDA.

RE: EXCHANGE OF LETTERS BETWEEN THE GOVERNMENTS OF THE
REPUBLIC OF UGANDA AND THE UNITED REPUBLIC OF TANZANIA ON
THE SET-OFF ARRANGEMENTS ARISING OUT OF THE DIVISION OF THE
LONG-TERM LIABILITIES OF THE FORMER COMMUNITY

I acknowledge receipt of your letter of 27th April, 1984, regarding the set-off arrangements arising out of the Division of the Long-term Liabilities of the former Community which reads as follows:

"I refer to the Compensation Agreement between the Governments of the Republic of Uganda (hereinafter referred to as 'Uganda') and the United Republic of Tanzania (hereinafter referred to as 'Tanzania') dated 24th February, 1984, and to the subsequent bilateral negotiations concerning the reconciliation of repayments and the ensuing set-off arrangements arising out of the Division of the Long-term Liabilities of the former East African Community in the mediation ratio and confirm the agreed set-off arrangements between Uganda and Tanzania as hereunder:

1. That the amount of United States Dollars ten million, two hundred and seven thousand, seven hundred ninety-four only (US\$10,207,794) being Tanzania's net overpayment and Uganda's underpayment of the Long-term Liabilities of the Community as a result of the division of the said Liabilities of the Community in the mediation ratio. These are more fully set out and summarized in a schedule hereto attached and marked "A". The sum shall be settled between Uganda and Tanzania by way of set-off from the compensation amount of United States Dollars forty-six million and four hundred thousand (US\$46.4m) payable by Tanzania to Uganda.
2. That after the set-off in paragraph 1 above, the balance of the compensation amount payable by Tanzania to Uganda shall be paid by way of set-off from Tanzania's claim against Uganda arising out of the Loan Agreement dated 12th December, 1979, as amended on 26th June, 1981, thereby reducing Uganda's indebtedness to Tanzania thereunder.
3. That clause 3 of the Compensation Agreement dated 24th February, 1984, is deleted and shall not be included in the set-off arrangements.
4. (a) That Uganda accepts Tanzania's proposals under their letter dated 27th April, 1984, and agree to pay the Government of Kenya on behalf of Tanzania through the Uganda/Kenya bilateral arrangements the sum of United States Dollars one million, one hundred and three thousand, three hundred sixty-six only (US\$1,103,366) being Kenya's net overpayment and Tanzania's underpayment of the Long-term Liabilities of the Community as a result of the division of the said Liabilities in the Mediation ratio. These are more fully set out in a schedule hereto attached and marked "B" and in the schedule to the Agreement between Tanzania and Kenya dated 27th April, 1984.

- (b) The amount referred to in paragraph 4 (a) above shall be settled between Uganda and Tanzania by way of set-off from Tanzania's claim against Uganda arising out of the Loan Agreement referred to in paragraph 2 above thereby further reducing Uganda's indebtedness to Tanzania thereunder.
5. That in the event of any changes in the amount referred to in paragraphs 1 and 4 above, the same shall be settled between Uganda and Tanzania by way of a further set-off from Uganda's indebtedness to Tanzania arising out of the Loan Agreement referred to in paragraph 2 above.
 6. Any amendments shall be mutually agreed on by exchange of letters between the two Governments.
 7. That Uganda waives claims against Tanzania under the Mediation Agreement to the extent of Shs. 385.84 million (shillings three hundred and eighty-five million and eighty-four thousand) equivalent to United States Dollars forty-six million and four hundred thousand (US\$46.4m) as at 30th June, 1977, being the compensation amount payable by Tanzania to Uganda and fully settled in paragraphs 1, 2 and 5 above.
 8. (a) That Tanzania waives all claims against Uganda arising out of the net overpayments by Tanzania in respect of the Long-term Liabilities of the Community to the extent of the amounts set-off under paragraphs 1 and 3 above.
(b) That Tanzania waives claims against Uganda arising out of the Loan Agreement referred to in paragraph 2 above, to the extent of the amounts set-off in paragraphs 2, 4 (b) and 5 above.
(c) That Tanzania shall be obliged to pay interest under Article 4.02 of the Mediation Agreement only on any outstanding amounts that may remain due to Uganda after the settlements in paragraphs 1, 2 and 5.
(d) That the Agreement referred to in paragraph 2 above shall be appropriately amended to reflect the amount set-off in paragraphs 2, 4 (b) and 5.
(e) That Uganda indemnifies Tanzania against all responsibilities for the Liabilities it has assumed under paragraph 4 (a) above.

This letter correctly sets out the agreed terms of the set-off arrangements between our Governments and I propose that this letter and your reply thereto shall form an Agreement between our two Governments in respect of the set-off arrangements and shall constitute an amendment to clauses 1 to 6 inclusive of the Compensation Agreement dated 24th February, 1984, and shall be construed, interpreted and read together with and shall form an integral part thereof and shall likewise enter into force on the day of signature of the Mediation Agreement."

I am pleased to inform you that the understanding therein is acceptable to the Government of the United Republic of Tanzania and therefore agree that your said letter and this reply shall form an Agreement between our two Governments in respect of the set-off arrangements and shall constitute an amendment to the Compensation Agreement dated 24th February, 1984 and shall be construed, interpreted and read together with and form an integral part thereof and shall likewise enter into force on the day of signature of the Mediation Agreement.

Hon S. A. Kibona (M.P.),
Deputy Minister for Finance
for the Government of the
United Republic of Tanzania.

c.c. Hon. P. C. J. O. Nyakimo (M.P.),
Minister of State,
Office of the President of
the Republic of Kenya.

AMENDMENT

(NUMBER ONE)

WHEREAS on the 31st of March, 1984 the Governments of the Republic of Uganda and the Republic of Kenya signed a Compensation Agreement in respect of the Compensation amount of United States dollars one hundred forty-four million, eight hundred fifty-six thousand (US\$144.856 m) payable by Kenya to Uganda;

And Whereas Article VIII permits the two Governments to amend the aforementioned Agreement;

And Whereas after mutual consultations and discussions it has become necessary to amend some Articles thereof.

NOW THEREFORE it is agreed as follows:

ARTICLE I

SUBSTITUTIONS AND AMENDMENTS

1. (A) Article IV (set-off) of the Agreement dated 31st March, 1984, is deleted and substituted with the following provisions:

ARTICLE IV

SET-OFF

- (i) Upon the coming into effect of the Mediation Agreement, there shall be a set-off against the Compensation amount payable by the Government of Kenya to the Government of Uganda in the sum of United States dollars eight million, seven hundred thirty thousand, eight hundred and ninety-five cents fifty-seven only (US\$8,730,895.57) being:
 - (a) Kenya's net claim arising out of Kenya's overpayment of the Long-term Liabilities of the Community as a result of the division of the said Liabilities in the mediation ratio of a sum of United States dollars seven million, six hundred twenty-seven thousand, five hundred and twenty-nine cents fifty-seven only (US\$7,627,529.57) as more fully set out and summarized in a schedule hereto attached and marked Annexure "A".
 - (b) Tanzania's obligation to pay Kenya a sum of United States dollars one million, one hundred and three thousand, three hundred and sixty-six only (US\$1,103,366) as a result of the division of the Long-term Liabilities of the Community in the mediation ratio. The said obligation is assumed by Uganda as per exchange of letters between Uganda and Tanzania copied to Kenya dated 27th April, 1984 and as more particularly set out and summarized in a schedule hereto attached and marked Annexure "B".
- (ii) Upon the coming into effect of the Mediation Agreement, there shall be a further set-off against the Compensation amount payable by the Government of Kenya to the Government of Uganda, the amount representing the current indebtedness of the Government of Uganda and her parastatals to the Government of Kenya, Kenya parastatals and Kenya private sector as shall have been verified by the effective date of the Mediation Agreement. The verified figure to be off-set shall be agreed upon by exchange of letters between the two Governments.
- (iii) Any Government debts which shall not have been verified by the effective date of the Mediation Agreement shall be verified by 30th September, 1984 and off-set from the instalment next following, 30th September, 1984, shall be the cut-off date for all current indebtedness."

I. (B) Article VI (Interest) of the Agreement mentioned in I (A) above is amended to make the present provision (i) and introduce (ii) as hereunder:

"(ii) After the set-off in Article IV (i) and (ii) the balance of the Compensation amount shall be subject to interest under Article 4.02 of the Mediation Agreement."

I. (C) Article VII (Waiver) of the Compensation Agreement shall be amended by substituting the reference:

"... Article II ..."

in the second line with the reference:

"... Article IV ..."

ARTICLE 11

INTERPRETATION

11 This Amendment shall be construed, interpreted and read together with and shall form an integral part of the Agreement dated 31st March, 1984.

DONE AT NAIROBI this 28th day of April, 1984.

SAM TEWUNGWA
Minister for Regional Co-operation,
For the Government of the
Republic of Uganda

PETER G. J. O. NYAKIAMU
Minister of State, Office of the President,
For the Government of the
Republic of Kenya

RULES OF PROCEDURE OF THE ARBITRATION TRIBUNAL

ARTICLE 1

ESTABLISHMENT OF THE TRIBUNAL

1.01 The Tribunal shall be established as provided for in Sub-Article 12.02 of the Mediation Agreement. The Chairman of the Tribunal shall not be a national of any of the States.

1.02 A vacancy occurring among the members of the Tribunal shall be filled within three months by the same method by which the appointment was made.

ARTICLE 2

PROCEDURES

2.01 A State wishing to institute a proceeding under the Mediation Agreement shall lodge a claim in writing to the Registrar. The claim shall name the party or parties to the proceedings, state the nature of the dispute or claim and the nature of the remedy or relief sought.

2.02 The Registrar shall upon receipt of the claim:

- (a) Register the same;
- (b) Notify the aggrieved party or parties of the registration of the claim;
- (c) Send copies of the claim to:
 - (i) the party or parties named as respondents; and
 - (ii) the Chairman and Members of the Tribunal.

2.03 Any party named as respondent shall within 90 days acknowledge and file with the Registrar a Written reply to the claim.

2.04 The Registrar shall upon receipt of the Written reply to the claim promptly send copies thereof to:

- (i) the aggrieved Party or Parties; and
- (ii) the Chairman and members of the Tribunal.

2.05 Every claim, pleading, application or other written instrument or document to be filed with the Registrar shall be accompanied by seven copies.

2.06 Every document prepared for use in the Tribunal shall be on foolscap paper of durable quality; only one side of the paper shall be used and a margin of not less than four centimetres shall be left on the left side of the sheet.

2.07 All documents prepared for use in the Tribunal shall be clear and easily legible and may be produced by printing, type lithography, stencil duplicating, photography, xerography, type-writing or writing or any combination of these media.

2.08 For the purposes of these Rules, the Registrar may, in consultation with the Chairman, designate any offices in Kenya and Tanzania as Sub-Registries of the Tribunal.

ARTICLE 3

SESSIONS OF THE TRIBUNAL

3.01 The Registrar shall, in consultation with the Chairman, fix the date, time and venue of the sittings of the Tribunal.

3.02 The Chairman shall preside at all sittings of the Tribunal.

AGREEMENT FOR THE DIVISION OF ASSETS AND LIABILITIES
OF THE FORMER EAST AFRICAN COMMUNITY

Agreement between the Governments of the United Republic of Tanzania,
the Republic of Uganda and the Republic of Kenya (hereinafter
collectively referred to as the "States").

WHEREAS:

The States by the Treaty for East African Co-operation, dated 6th June,
1967, established the East African Community (hereinafter referred to as
"the Community"), and, as institutions thereof, certain Corporations (here-
inafter collectively referred to as "the Corporations") and provided for certain
services to be administered by the Community (hereinafter referred to as
"the General Fund Services");

The Community and the Corporations ceased to perform their functions
in 1977 and the General Fund Services can no longer be administered;

Conscious of the need to achieve a rational settlement of the Community's
affairs, the States engaged the services of a Mediator (hereinafter referred to
as "the Mediator");

The Mediator, on the basis of the findings presented in his Consolidated
Report dated 28th October, 1981 (hereinafter referred to as the "Consolidated
Report"), and in subsequent documents has made proposals for the permanent
and equitable division of the assets and liabilities of the Corporations and
the General Fund Services;

NOW THEREFORE, the States, having considered the proposals of
the Mediator, hereby agree as follows:

ARTICLE I

DEFINITIONS

In this Agreement, unless the context otherwise requires, the following
words and letters have the following meanings:

- (a) "EA Railways" means the East African Railways Corporation;
- (b) "EA P & T" means the East African Posts and Telecommunications
Corporation;
- (c) "EA Harbours" means the East African Harbours Corporation;
- (d) "EA Airways" means the East African Airways Corporation;
- (e) "EA Extelecoms" means the East African External Telecommunica-
tions Company Limited, a subsidiary of the East African Posts and
Telecommunications Corporation;
- (f) "EA Cargo Handling" means the East African Cargo Handling
Services Limited, a subsidiary of the East African Harbours
Corporation;
- (g) "GFS" means the General Fund Services;
- (h) "Corporations" means the EA Railways, EA P & T, EA Harbours,
EA Airways, and their subsidiaries, collectively, and the term
"Corporation" means any one of the Corporations individually;

ARTICLE 3

NET ASSETS; EQUITY SHARES; EXCESS AND SHORTFALL

3.00 The amount of the net assets of the Corporations and of the GFS held in each of the States, the allocation of such amount as equity shares among the States, taking into account the geographic location of such assets and the common ownership interests by the States in such assets, and the resulting excess or shortfall of net assets are:

EQUITY SHARE

			KENYA 42%		TANZANIA 32%		UGANDA 26%	
	Shs. m.	\$m.	Shs. m.	\$m.	Shs. m.	\$m.	Shs. m.	\$m.
Assets held	11,913	1,432,610	6,207.00	746,445	4,198.00	504,345	1,504.00	181,350
Equity Shares			5,001.46	601,709 (12%)	3,812.16	458,445 (32%)	3,097.38	372,486 (26%)
Excess (Shortfall)			1,205.54	144,736	385.84	46,400	(1,589.38)	(191,136)

ARTICLE 4

COMPENSATION TO UGANDA FOR SHORTFALL OF NET ASSETS; INTEREST PAYMENTS

4.01 Kenya and Tanzania shall compensate Uganda for its shortfall of net assets as set forth in Article 3 hereinaabove by one or more of the following methods:

- (a) payments in convertible currencies;
- (b) the provision of goods;
- (c) the provision of services;
- (d) the financing of existing or new productive facilities;
- (e) the set-off, or compensation for mutually recognized claims; or
- (f) a combination of any of these modes;

all on terms and conditions agreed between Kenya and Uganda, and between Tanzania and Uganda, as set forth in Annexes "C" and "D", respectively, to this Agreement.

4.02 Kenya and Tanzania shall pay interest at the rate of seven per cent (7%) per annum from the date of signing of this Agreement on the outstanding amounts of compensation due to Uganda from time to time under this Article.

8.03 Each State hereby indemnifies the other States against all responsibilities for the liabilities it has assumed as provided in Sub-Articles 8.01 and 8.02 above.

8.04 Notwithstanding any other provision in this Agreement to the contrary, the effective date of Sub-Article 8.01 shall be 1st July, 1984.

ARTICLE 9

CLAIMS

9.01 Claims, registered prior to 31st December, 1978, other than claims for pensions by former members of staff of the Community institutions, claims against EA Airways and long-term liabilities, shall be dealt with as follows:

(a) Claims for amounts due in the currency of one of the States are assigned to, and shall be dealt with by such State in accordance with its existing procedures;

(b) Claims for amounts due in foreign currency, not covered by Article 8, may be dealt with by *ad hoc* agreement between the States or, failing such agreement, by the Arbitration Tribunal referred to in Article 12 of this Agreement.

9.02 Claims against EA Airways registered prior to 31st December, 1978, not allocated as part of the long-term liabilities pursuant to Article 7, shall be dealt with by the State in which they were registered in accordance with that State's existing procedures.

ARTICLE 10

PENSION AND PROVIDENT FUNDS

10.01 The assets of the Pension and Provident Funds of the Corporations and GFS consist of the value of the Pension and Provident Funds assets located in the States and those currently held and managed by the Crown Agents.

10.02 The Pension assets and liabilities of the Corporations and GFS shall be subject to an actuarial exercise which shall determine the value of the Pension assets and liabilities in each State and abroad for a decision by the States on the final division of the assets and the liabilities.

10.03 Pending the determination of the Pension assets and liabilities for each State:

(a) Pension and Provident Funds assets located in the States shall continue to be vested and managed by the States where they are so located.

(b) (i) Pension and Provident Funds assets of the Community currently held and administered by the Crown Agents shall vest in and be managed and administered by a Board of Trustees consisting of the Governors of the Central Banks of the States.

ANNEX 4

JUDGEMENT OF
CIVIL SUIT NO. 1879
OF 1997 IN THE
HIGH COURT OF
KENYA



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. 1879 OF 1997

SAMUEL AMUGUNE.....1ST PLAINTIFF
WILLIAM MWANGI KAIBERE.....2ND PLAINTIFF
MICHAEL NDUNGU KIBUKU3RD PLAINTIFF
PAUL MUTHEE4TH PLAINTIFF
WILLIAM MAJANI5TH PLAINTIFF
(Suing on behalf of themselves and other former employees of the former East African Community numbering 105 persons)

VERSUS

THE ATTORNEY GENERAL.....DEFENDANT

J U D G M E N T

Introduction

1. The suit herein was filed by the named Plaintiffs on their own behalf and on behalf of other members of the former East African Community. The claim relates to payment of pensions and other benefits said to be due to them from the Government of Kenya since the disbandment of the Community.

Facts

2. As is generally a known historical fact, the East African Community collapsed in 1977 for reasons that are irrelevant to this suit. The Plaintiffs in their Plaint aver that contend that upon the collapse of the Community, the East African Community

Mediation Agreement, Cap 4 Laws of Kenya was enacted whereby the Defendant was statutorily obligated under Article 10.05 of the Schedule to the Mediation Agreement Act to pay the Plaintiffs formerly employed by the community, pensions and other benefits due to them on account of their employment. It is further contended that the Government of Kenya sued through the Attorney General as Defendant failed to comply with the provisions of the Mediation Agreement Act aforesaid and the particulars of non-compliance are given at paragraph 6 of the Plaint and these are: -

- a) Failing to make such amendments to any written law as are necessary to bring the written law in conformity with the provisions of the Mediation Agreement Act especially Section 9 thereof.
- b) Failing to pay the Plaintiffs employed by Corporations or the Community and retired from active service by the division date contrary to Article 10.05(a) of the Schedule to the Mediation Agreement Act.

3. The Plaintiffs therefore seek the following orders: -

1. A declaration that the Defendant has failed to effect amendments to any written law to bring it into conformity with the East African Mediation Agreement Act.
2. An account for all the pensions, interest and other benefits due and payable to them as from the Division dates in ~~Article 1 of the East African Community Mediation~~ Agreement Act and orders for payment thereof.

3. The pensions, interest and other benefits due and payable to the Plaintiffs be calculated using the former East African Community Formula and an order for payment thereof.

4. Costs and interest.

4. The Defendant's Defence filed on 11th March 1988 raises the defence firstly, that Kenya had a singular obligation with regard to its nationals employed by the Community. This obligation was to the extent that those nationals who would continue in service and were not retiring, voluntarily or otherwise, would be absorbed into the Kenyan Civil Service and would thereafter be treated in accordance with existing employment laws. Secondly, that there was no breach of the Mediation Agreement as those who retired were paid properly and in accordance with the Mediation Agreement. Thirdly, that in fact the suit is statute time barred.

Plaintiff's Evidence

5. The hearing of this suit was started by Waki, J. (as he then was) and continued under Order XVII Rule 10 by myself. From the record, I notice that PW1 was William Luvisia Majani. He testified that he joined the East African Community on 12th

January 1968 and he worked thereat until 30th June 1977. He stated that up to that date and having worked for 9 years, he was entitled to a pension for services rendered to the Community. He was not paid the pension but continued employment in the Kenyan Civil Service specifically within the Meteorological Department. At the time of his testimony he was still in service but when he was re-called on 22nd January 2004 he had retired. In any event by the latter date he had received his pension from the Government of Kenya and the pension covered the period 1968 to the date of retirement. The pension was however paid and calculated on a formulae worked out by the Government of Kenya to cover the entire period while he would have preferred that each period be calculated using a different formulae. The reason for this, he stated is that the formulae adopted by the Government would mean that the Pensioner would get that much less pension.

6. PW2 was Santo Alima, a Ugandan national and former employee of the Community aforesaid. In circumstances similar to those obtaining in this suit, he, together with his colleagues who served the Community filed HCCC No. 1010/1996 in the High Court at Kampala, Uganda seeking similar orders and declarations

as are now being sought in this suit. The Plaintiff in that suit was produced as P. Exhibit 9. The suit as is the suit herein was based on an interpretation of Article 10.05 (b) of the East African Community Mediation Agreement. The suit did not go to trial on its merits as the Government of Uganda conceded the claim and settled the matter out of court. A consent judgment was eventually recorded (P. exhibit 11) and the gist of it and of relevance to the matters at hand is that "*pensionable former employees [would be paid] pension arrears effective 1st July 1977 to date of payment and thereafter monthly pensions, paid in accordance with the Pension Act of the East African Community and the Pension Act 281 as amended by Decree 6/1978*".

PW3 Francis Fredday Okwachy also a former employee of the Community produced a routine order (P. exhibit 15) dated 14th October 1977 from the Commissioner-General of Customs and Excise of the Government of Kenya ordering transfer of the witness to the service of the Government of Kenya. Of relevance to this suit is paragraph 2 thereof which states as follows: -

"In this connection it is desired to clarify one point which is not spelt out clearly in the Letter of Appointment to the Permanent and Pensionable Service. This point is that all Pensionable Service rendered to the defunct East African Community will be transferred to the Kenya Government so that all pensionable officers will be eligible for pension with effect from their dates of appointment to the service of the East African Community Officers are therefore advised to read paragraph 5 of the Letter of Offer with this fact in mind and should not feel that their pensionable service will be counted from 1st July 1977. the Kenya Pensions Act (Cap. 189) will be amended to fit in with this position."

8. The witness was not paid pension because he was dismissed from the service of the Government of Kenya in 1989 but still believes that he is entitled to pension for services rendered to the East African Community.

9. PW4 Noah Okulo, a retired Ambassador of the Republic of Kenya to the State of Israel and former employee of the Community testified that once the Community collapsed there could not have been transfer of pension to the Government of Kenya and he did not accept the terms of transfer. Nevertheless

on retirement he was paid pension based on his cumulative service to the Community and the Government of Kenya. He continues to draw his monthly pension. He, however, wants to be paid a separation pension for the separate services he rendered to the Community.

The Defendant's Evidence

10. The Defence called only one witness; Peter Kabuti Njuguna, the Chief Pensions Officer in the Department of Pensions. He testified that the Plaintiffs have taken a wrong interpretation of the East African Community Mediation Agreement, Cap 4 Laws of Kenya. In his evidence, he stated that employees of the Community were either pensionable or non-pensionable. Under Article 10.05(a) of the Agreement, each of the States was to pay its nationals pensions and benefits after the division date. The division date for all purposes hereinafter shall be as defined in Article 1(i) of the Agreement and it differs from Corporation to Corporation and it relates to the date when the division of assets was completed and employees taken over by the respective Country Corporations.

11. The witness testified that of relevance to the Plaintiffs' case is Article 10.05(a) which is with regard to the employees of the Community who remained in active service after 30th June 1977. All the Plaintiffs, it was confirmed, fell into this category and were also in the category entitled to pension even after the collapse of the Community. The witness testified that the Government of Kenya complied with the Agreement and paid the pensions of its nationals once they became entitled to the pension. He gave the examples of pensioner Stanley Mwangudza who on retirement received his pension for the period he served the Community from the Government of Kenya. This is also true of one J.N. Kiarie who continues to receive his pension from the same Government for services rendered to the Community. He denied therefore, that there was non-compliance as alleged at paragraph 6 of the Plaint as amended.

12. Turning to the evidence of PW2, and the Ugandan suit, the witness testified that the circumstances in Uganda were quite different as the payment of pension had been discontinued and the

Trustees consisting of the Governors of the States. The Boards were to submit quarterly reports to the Minister for Finance. The Boards would only cease to exist once the assets were divided. Counsel argued that since no evidence was tendered to show that such a Board was constituted and no report shown to have ever been made, the Government is truly in non-compliance!

8. As regards Article 10.05(b) of the Agreement, counsel argued that the Article obligated the Government to "make provision" for the pension rights "accrued" as of the division dates and submits that this was not done. The accrual was up to that date only and thereafter the Plaintiffs were entitled to payment. It is now sought that the amounts that had accrued up to the division date should be computed and duly paid to the Plaintiffs.

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of inclusion
of Cop 12

Counsel for the Defendant in Submission

19. Learned counsel for the Defendant identified a number of issues which would require determination, particulars of which I shall get to when framing the issues that I see would guide the court in reaching the end of this matter.

20. Counsel attacked the suit as hopelessly out of time and statute time-barred by dint of Section 3(2) of the Public Authorities Limitation Act. The reason for this argument is that since the claim is founded on non-compliance with the Mediation Agreement, then the cause of action arose on 14th May 1984 when the Act was enacted (Cap. 4). That since the suit was instituted in 1987, the claim was hopelessly out of time. I was referred to Thuranira Karauri vs. Agnes Ncheche C.A. No. 192/1996 (Nyeri) in that regard.

21. In interpreting Article 10.05 counsel conceded that the Government was under obligation to pay its nationals any pensions and benefits due to them. In effecting its obligation under 10.05(b), it is argued that the Government "*made provision*" by Act No. 10 of 1979 which amended the Pensions Act, Cap. 189 to incorporate the right to pension for services rendered to the Community by Kenya Nationals.

22. Counsel attacked the credibility of the Plaintiffs' witnesses and in a nutshell said that their claim is mistaken as they all, at

those who have retired, received their pensions based on accumulated service to the Community and the Government are now trying "to use the court process to unjustly enrich themselves" and that any further "payment would amount to a double payment".

I am lastly asked to dismiss the suit as on a balance of probability, the claim has not been proved to a level that entitles Plaintiffs to a judgment in their favour.

Issues for Determination

Having carefully read the pleadings, listened to the witnesses and heard submissions by counsel, there is no dispute that the Plaintiffs were employees up to at the latest 30th June 1977 when the Community collapsed. There is also no contention that they are all entitled to pension for services rendered to the Community and that the Government was obligated to pay them such pension. The point of departure is firstly, when was such pension payable? That is only one of the issues to be determined.

Secondly, had the Government complied with the Mediation Agreement?

Thirdly, should the declarations and orders sought be granted?

Fourthly, and in any event, is the suit statute time-barred?

Fifthly, who should pay the costs of this suit?

When was pension payable?

25. Taking the position as is clearly pleaded at paragraph 6 of the Plaintiff that the cause of action herein arises from non-compliance with the provisions of the Mediation Agreement Act, it is to it that we must defer.

26. Parties have relied extensively on Article 10 of the Schedule to the Mediation Act but have not addressed their minds to the question as to when pension is payable. Pension is payable generally in circumstances enumerated in Section 6 of the Pensions Act. I did hear counsel for the Plaintiffs to argue that the offices of the Plaintiffs were abolished and therefore pension was payable at that time i.e. at the division date. What the Plaintiffs

fail and failed to appreciate is that they all received an Offer of Appointment to the Kenya Government Service (P. exhibit 2) and they all took up the offer subject to terms and conditions detailed therein. One of those conditions was;

"Your appointment is to a pensionable office and if you have already been confirmed and admitted to the permanent and pensionable establishment, you will on absorption into the Kenya Civil Service retain your eligibility for a pension or other retiring benefits in accordance with the provisions of the Kenya Pensions Act (Cap. 189)".

27. Each of them was also required to signify "acceptance not later than 31st August 1977 failing which it will be assumed that you do not wish to be appointed to the Kenya Government Service and you will be deemed to have retired from the service of the former East African Community on abolition of office".

8. Each of the Plaintiffs it is not denied, took up the offer, joined the Kenyan Civil Service and were not entitled to pension at the vision date on abolition of office. They bound themselves to the

terms of that offer and retained their right to a pension on reaching retirement age.

29. Suppose they had not taken up the offer and retired on abolition of office? Article 10.05(a) of the Mediation would have applied to them. It states thus: -

*"Each state shall;
a) pay its nationals, employed by the corporation or GFS and retired from active service by the division date the pension and other benefits due to them on account of such employment."*

Those who retired

30. They chose to stay on in employment and thereby putting themselves in the category of employees of the Community covered by Article 10.05(b) which states;

*"Each state shall;
b) Make provision for the pension rights and entitlements to other benefits accrued as of the division date in favour of its nationals in active service with such Corporations and GFS at that date."*

Those who remained

31. The Agreement is crystal clear that for those employees retiring by the division date, the State shall pay! For those continuing in service, the States shall make provision for the

pension rights. It does not say, "pay them on the division rate". Has the Kenya Government made such provision? I have just referred to the Letter of Offer accepted by the Plaintiffs in which they also accepted the offer that they would retain their eligibility for pension and other retiring benefits in accordance with the Pensions Act Cap. 189. That is to my mind is provision enough because once accepted, it is binding on the Plaintiffs and the Government. In any event, the Mediation Agreement in Section 3 thereof states;

"Subject to this Act, the provisions of Articles 3, 4, 5, 7, 8, 9, 10, 11, 12, 14 and 15 of the Agreement shall have the force of law in Kenya."

Articles 10.05(b) has the force of law and had they been denied pension they would then enforce their right directly.

32. The point is that to my mind, the Plaintiffs have not been denied pension which was in any event already secured by the Pensions Act, Cap 189. I heard counsel to argue that the Amendment by way of Act No. 10 of 1979 could not have been intended for the Plaintiffs as it was done prior to the Mediation Agreement. With respect, the process of Mediation was ongoing

and that the Plaintiffs' pension was secured prior to the Mediation Agreement should be seen in a positive light and indicative of the Defendant's good faith. I therefore, agree with counsel for the Defendant to the extent that *inter alia* the Plaintiffs' pension was secured by their inclusion in Section 2 of the Pensions Act ^{Cap 189} so that service to the Community would be considered in computing pensions payable to public servants, the Plaintiffs inclusive.

Has the Government complied with the Mediation Agreement

33. The Plaintiffs' witnesses were categorical that the Government from the date of division has continued to make provision for their pension rights. PW1 and PW4 both confirmed that upon retirement, their pensions were calculated inclusive of their service to the East African Community. I heard them to say that the East African Community Pension Act, Cap. 11 should have been used to calculate their pension but I also heard them to say nothing could come out of the East African Community as it had ceased to exist. Mr. Okulo was emphatic for example that he could not be transferred from what had ceased to exist. How then does he fall back on the East African Community if it had no capacity

ending of payment. The obligation was as is admitted transferred to the Kenya Government which as I have held more than adequately took care of the Plaintiffs. That way the purpose of the enactment of the East African Community Mediation Agreement.

Juxtapose this position of compliance with that in Uganda. In the Plaintiff in HCCC No. 1010/1999 (Kampala), it is averred that;

"in accordance with the law, all former Community employees who had retired and were already receiving pension as at 30th June 1977 which became discontinued as from that date are entitled to have their pension reinstated."

3. Further and on a point I have just ruled on, that those who continued in active service became entitled to payment of terminal benefits on that date. Clearly there was non-compliance and the suit was triggered by a Government proposal to pay a much lower figure than was actually due. This is not the scenario obtaining in Kenya and the Uganda suit is of no benefit to the Plaintiffs.

are the declarations and orders sought tenable?

I have shown that there is nothing to declare and the declarations sought are in vain. The Plaintiffs are not entitled to any of their prayers for reasons that I have given.

Conclusion

I have to come to the conclusion that the Plaintiffs have not made out a case worthy of this court's consideration, in spite of their spirited attempts and good representations.

Accordingly, the suit is dismissed but I shall in the circumstances of this case make no order as to costs.

dated and delivered at Nairobi this 8th day of October 2004:

I. LENAOLA
Ag. JUDGE

8/10/2004

Coram: Lenaola Ag. J.-

Amos CC

Judgment read in the presence of:

ANNEX 5

JUDGEMENT OF
APPEAL CASE NO. 4
OF 2011 IN THE EAST
AFRICAN COURT OF
JUSTICE APPELLATE
DIVISION AT
ARUSHA



IN THE EAST AFRICAN COURT OF JUSTICE
APPELLATE DIVISION
AT ARUSHA



APPEAL NO.4 OF 2011

[Coram: H. R. Nsekela P; P. K. Tunoi VP; E. R. Kayitesi; L. Nzosaba
and J. M. Ogoola, JJA]

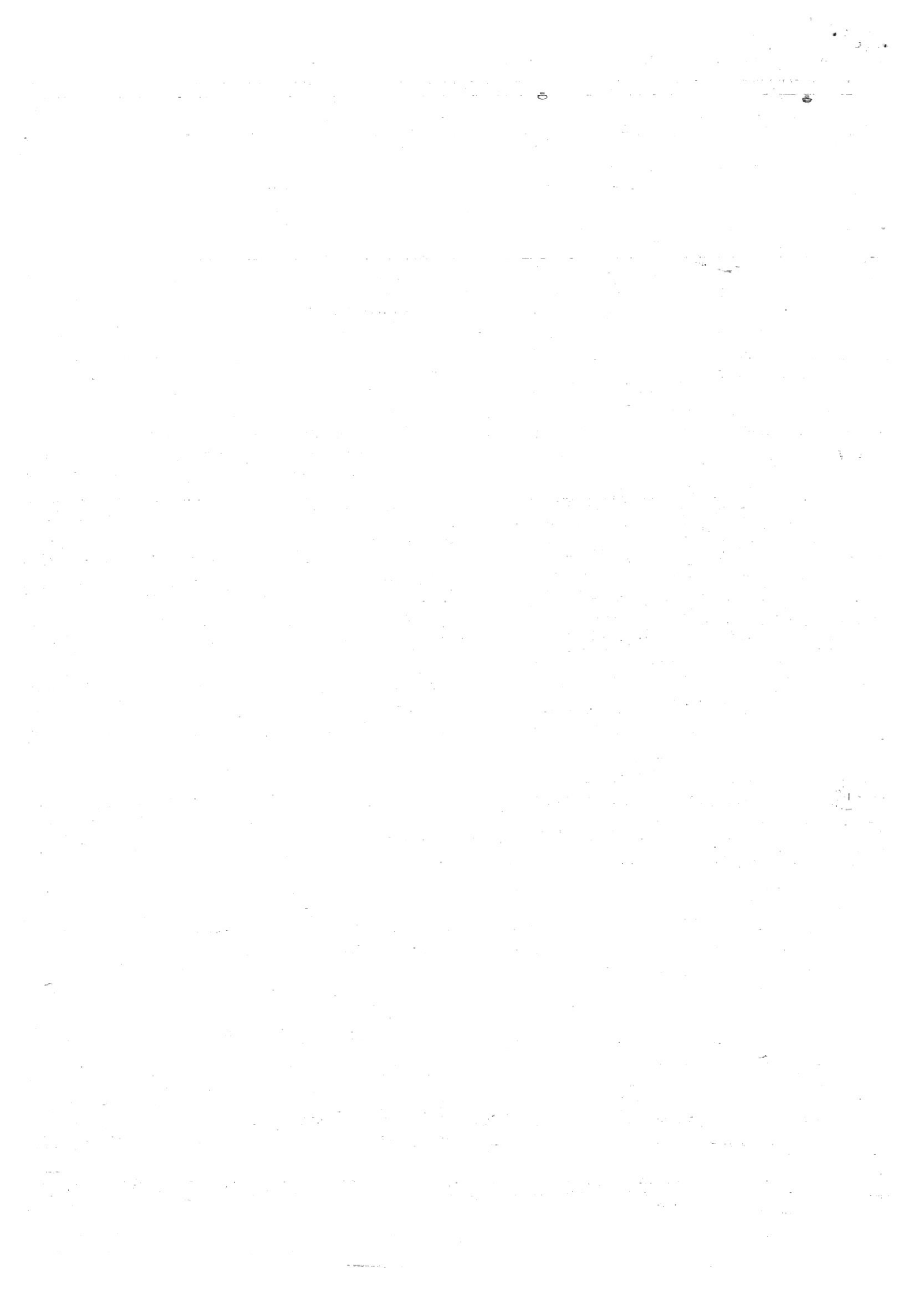
BETWEEN

EMMANUEL MWAKISHA MJAWASI AND 748 OTHERS..... APPELLANTS

AND

THE ATTORNEY GENERAL OF THE REPUBLIC OF KENYA..... RESPONDENT

[Appeal from the Ruling of the First Instance Division of the East African Court
of Justice at Arusha by J. Busingye, PJ; M. S. Arach-Amoko, DPJ; and J. J.
Mkwawa, J. dated 29th September, 2011 in Reference No.2 of 2010]



JUDGMENT OF THE COURT (27 April 2012)

Introduction

This is an appeal by EMMANUEL MWAKISHA MJAWASI and 748 others ("the Appellants"), represented by Mr. Mutembei of Gichuru & Co. Advocates, against the Ruling of the First Instance Division of the Court in Reference No.2 of 2010.

The Respondent is the REPUBLIC OF KENYA, represented by the Honourable Attorney General of the REPUBLIC OF KENYA.

I. Background to the Case

The Appellants are Kenyan citizens and former employees of the defunct East African Community (EAC) that collapsed in 1977.

Subsequent to the dissolution of the defunct EAC in 1977, the Partner States executed a Mediation Agreement on 14 May, 1984, for the division of the assets and liabilities of the defunct Community. Under that Mediation Agreement, each Partner State undertook the responsibility to pay out of its share of the defunct Community's assets, the pensions and other terminal benefits of its respective nationals who had been employed by the EAC and its institutions prior to the division date of the assets. The division dates were different for each of the existing institutions as

indicated in article 1 (i) of the Mediation Agreement. However, the latest such division date was 30 June 1977.

Article 10.05 of the Mediation Agreement provided as follows:

“Each State shall:-

(a) Pay its nationals employed by Corporations or GFS and retired from active services by the division date the pensions and other benefits due to them on account of such employment.

(b) Make provision for the pension rights and entitlement to other benefit accrued as of the division date in favour of its nationals in active service with such Corporations or GFS at that date.”

Interestingly, the Kenyan Government devised a somewhat novel way of dealing with the situation which arose as the consequence of the Mediation Agreement. In this regard, the ex-employees who were still in active service on the division date were given the option to take their EAC pension directly; or to join the Kenyan Public Service, including its Parastatals and State corporations. Through this latter option, many ex-employees of the defunct EAC were absorbed into the employ of the Kenyan Public Service. Conversely, those who took the option to retire were paid at once all their benefits, including additional pensions on the basis that their offices had been abolished in the EAC.

It was the Appellants' case before us and in the Court below that even

though they were absorbed into the Kenyan Public Service and other State agencies and were eventually paid their terminal dues by those organizations, they have not, however, been paid their corresponding dues for the services they rendered to the East African Community; yet they lost their employment at the EAC pursuant to the abolition of their offices.

The Appellants, therefore, averred that they are entitled to be paid by the Kenyan Government for the services they rendered to the defunct East African Community before the division date – including their pensions, additional pensions, provident fund, severance allowances, gratuity, redundancy, payment in lieu of notice, repatriation expenses, loss of office, benefits outstanding, accumulated leave, salary in lieu of notice, real value and compound interest until full payment.

It is common knowledge that the Appellants instituted two suits in the High Court of Kenya, which were later consolidated. The Appellants later petitioned the Kenya National Assembly, but also, in vain. It is on the basis of this background that the Appellants filed the Reference No. 2 of 2010, before the First Instance Division of the East African Court of Justice (EACJ).

II. The Reference

It is to be recalled that in their Reference in the Court below, the Appellants (now Appellants) had prayed for declarations that the Respondents' refusal, neglect and/or failure to pay the Applicants their EAC terminal

benefits constitutes a breach of Article 6(d) and Article 7(2) of the EAC Treaty.

They also prayed for an order to compel the Respondent to pay their EAC terminal benefits including, but not limited to, one month's salary in lieu of notice, loss of office benefits, pension emoluments, outstanding/accumulated leave, repatriation expenses, real value and 7% compound interest until payment in full.

III. Respondent's Response

The Respondent opposed the Reference in the Court below. He raised the following objections which were agreed as issues by both parties during the Scheduling Conference, namely:

- (1) The Court lacks the jurisdiction to hear and determine the Reference;
- (2) The matter is *res judicata*;
- (3) The Reference is inadmissible in this Court since local remedies have not been exhausted.

Subsequently, however, the Respondent unilaterally added the following Respondent's written submissions after the hearing:

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- and
- h
- (1) The East African Community Treaty of 2000 cannot be applied retroactively;
 - (2) The Claimants' statements are mere allegations without any proof of how the Treaty or the various Conventions listed therein have been infringed by the Respondent or that the Respondent is a signatory to them;
 - (3) The objectives of the Treaty under its Article 5 do not provide for the redress of previous injustices, if any, to entitle the Claimants to rely on Articles 6 and 7 of the EAC Treaty.

IV. Ruling of the First Instance Division

The First Instance Division considered all the above six preliminary objections; including those which had not been agreed upon by the Parties at the Scheduling Conference, and concluded with the decision that:

- (1) The Court has jurisdiction to hear the Reference;
- (2) The Reference is not barred by the doctrine of *res judicata* nor by the rule of exhaustion of local remedies;
- (3) The Court cannot entertain the Reference on account of no retrospective application of the Treaty;

(4) The Reference is accordingly struck out with costs to the Respondent.

V. The Grounds of Appeal

Aggrieved by the above decision of the First Instance Division, the Appellants lodged an appeal to this Appellate Division based on 8 grounds; but at its Scheduling Conference held on 16 March, 2012, this Appellate Division agreed with the Parties to reduce the grounds of appeal from eight to only three, namely:

- (1) Whether the learned Judges of the First Instance Division erred in law in finding that the East African Community did not have retroactive application in respect of the present case;
- (2) Whether the learned Judges of the First Instance Division erred in law when they made findings of fact with finality at the preliminary stage without a full trial;
- (3) Whether there was procedural irregularity in entertaining and determining the issue of retroactivity with finality without affording the Appellants notice for and an opportunity to present their submissions.

2) of the

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Round 1: Whether the EAC Treaty has retroactive application for the instant case?

On this point, the Court below made the following finding:

"it is clear that the Claimants became aware of the acts/omissions of the Respondent complained of by 1998, when they filed the suit in the Kenya High Court. That was well before the Treaty entered into force in 2000. There is no contrary intention from the reading of the Treaty that it was to apply retrospectively and none has been established by the Claimants."

That finding was contested by the Appellants with the argument that their case was within the scope of the EAC Treaty, since the time of their cause of action was not in the year 1998 as the Court below found. Counsel for the Appellants contended that the issue of non retroactivity of the EAC Treaty was not relevant to the circumstances of this case. He added that the Court below did not give the reasons why it chose the year 1998 as its reference point, in lieu of the years 2004 or 2009. He affirmed that the issue of non-

payment of terminal benefits by the Respondent to the ex-employees for services they rendered to the defunct Community, was raised in Kenya's National Assembly on 5 August, 2009, and that the Respondent admitted to holding monies for payment to the Appellants and that non-payment was due to the fact that the beneficiaries could not be found or traced.

Learned Counsel concluded that the admission of debt by Kenya, constituted an acknowledgement of the Applicants' debt and reactivated

to its cause of action in this matter.

The Respondent contended the opposite position. He averred that the EAC Treaty 2000 was not applicable to the instant case by virtue of the principle of non retroactivity. He recalled the collapse of the former EAC (as it is briefly narrated in the background of this case). He stated that the employment of the Appellants ceased to exist on the division date of each institution and that no contrary intention by the founders of the new Community, has been shown by the Appellants. He concluded that, in the absence of any such contrary intention for its continuance, the current Treaty cannot operate retrospectively. Moreover, since this Court is a creation of the EAC Treaty of 2000, it cannot be seen to interpret and apply the EAC Treaty of 2000 to acts or facts that took place in 1977.

The principle of non retroactivity is a well known doctrine. It is generally applied in the jurisprudence of Public International Law. It constitutes a limit on the scope of a Treaty *ratione temporis* [see O. DORR and K SCHMALENHACK (eds)], Vienna Convention on the Law of Treaties, Springer — Verlag Berlin Heidelberg 2012; A. BUYSE: "A Lifeline in Time-Non-retroactivity and Continuing Violations *under the ECHR*" In *Nordic Journal of International Law*, 75: 63-88, 2006, Pr Dr J. WOUTERS, Dr D. COPPENS, D. GERAETS: "The Influence of General Principles of International Law" <http://www.kuleuven.be>.

When a treaty is not retroactive, the consequence is that it cannot apply to any act or fact which took place or any situation which ceased to exist before the date of its entry into force.

Retroactivity of a treaty may derive either explicitly from the provisions of the treaty itself, or it may implicitly be deduced from its interpretation.

Upon closely and carefully reading the EAC Treaty, we did not find any provisions explicitly stating that the Treaty may be applied retroactively. We, then, turned to its interpretation in a bid to determine whether the framers of the Treaty had any intention to make the EAC Treaty retroactive.

The performance of this Court's duty in this regard, is guided by the Vienna Convention on the Law of Treaties. Article 2 (1) (a) of that Convention defines the instruments/treaties to which the Convention applies. The Article states as follows:

"For the purposes of the present Convention:

(a) 'treaty' means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation;"

On the specific issue of non retroactivity, Article 28 of the Vienna Convention provides as follows:

"Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or, any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party."

at Article helps in establishing the intention of the parties where this intention is not explicitly expressed in a particular Treaty. Such is the case with the EAC Treaty in the instant case.

This Court, therefore, needed to interpret the Treaty in order to establish whether the EAC founders manifested any intention to make their Treaty retroactive. Moreover, further guidance in this lies in Article 31 of the Vienna Convention which provides, *inter alia*, as follows:

1. *A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.*
2. *The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:*

(1) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;

(2) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by other parties as an instrument related to the treaty..."

Consistent with the above guidelines, this Court interpreted the provisions of the EAC Treaty: it placed them against the objectives and purposes of the Treaty. We find that the intention of the framers of the new EAC Treaty of 2000 was to turn the page of the past and to build a new project for the future.

The context of the creation of the new EAC Community confirms this finding. The Preamble to the EAC Treaty leaves no doubt about the objective of putting a definite end to the defunct Community. The fourth paragraph of the Preamble clearly states that:

"AND WHEREAS in 1977 the Treaty for East African Co-operation establishing the East African Community was officially dissolved,..." [emphasis added]

The fifth paragraph of the same Preamble likewise underscores the fact of that "dissolution", thus:

"AND WHEREAS upon the dissolution of the East African Community the said countries signed ... the Community Mediation Agreement 1984 for the division of the assets and liabilities of the former East African Community." [emphasis added]

From the preambular paragraphs quoted above, it is patently clear that far from manifesting any intention to resurrect the old Community or its Treaty, the framers of the new Treaty made their intention abundantly obvious: namely, to officially dissolve the defunct Community and then, to divide and share out the assets and liabilities of the defunct Community among the three Partner States of the old Community. Accordingly, this Court agrees with the finding of the Court below that the EAC Treaty 2000 cannot be applied retrospectively. This particular point is put beyond any shadow of a doubt by Article 15.00 of the Mediation Agreement 1984, which stipulates that:

*"The Treaty for East African Co-operation, dated
6th June, 1967, is hereby abrogated."*

The above finding leads the Court to examine yet another question: Was the application of non retroactivity relevant to the instant case?

The conditions specified by O. DORR and K. SCHMALENHACK (*supra*) for fulfilling the test of "relevant application" of the principle of non retroactivity, are as follows:

1. *Existence of a Treaty to which the Respondent is a party.* In the instant case, there exists the EAC Treaty.
2. *The absence of any intention of the parties to apply their Treaty retroactively.* In the instant case such absence has been amply demonstrated in the above Court analysis concerning the EAC Treaty.
3. *An act or fact which took place, or a situation which ceased to exist, before the entry into force of the Treaty concerned.* In the instant case, we have the alleged refusal by the Republic of Kenya to pay the terminal benefits of the former employees of the defunct Community in execution of the Mediation Agreement signed in 1984 after the dissolution of the Community in 1977.
4. *The entry into force of the Treaty is posterior to the act; fact or situation which constitutes the cause of action against the Respondent.* In the

present case, the EAC Treaty entered into force for Kenya on 7 July 2000, after the Appellants' claim which was already before the Kenyan High Court at Nairobi.

5. *The Claimant asks the Court for the application of the Treaty to the Party in respect of the act/fact which took place or situation which ceased to exist before the coming into force of the Treaty.* In the instant case, the Appellants prayed this Court to apply the EAC Treaty to their case.

From all the above, this Court finds that the instant case meets the necessary conditions for the principle of non retroactivity to be applied. In this regard, the Court considers the situation of the ex-employees of the defunct Community to have ceased to exist at the Community level from 14 May, 1984. That date was obviously way before the entry into force of the EAC Treaty in July

2000. We, therefore, agree with the Court below that the principle of non retroactivity is relevant to the instant case.

Consequently, the first ground of this appeal fails.

Ground 2: Whether the First Instance Division made findings of fact with finality at the preliminary stage without a full trial?

Learned Counsel for the Appellants contended that the question of non retroactivity was an issue of fact. From this stand point, he contended that the Court below could not, therefore, determine this point at the preliminary stage, without full trial.

The Respondent postulated a totally opposite understanding of the issue of non retroactivity of a Treaty. He averred that non retroactivity is a pure point of law, intertwined with jurisdiction, which the Court can even consider on its own motion.

We are of the view that the Court below applied the correct law. The objection of non retroactivity of a Treaty is a fundamental issue, one that goes to the root of the case. The court cannot avoid that question. It must determine it at the outset, before dealing with any other issues. True, it is not possible to deal with the objection of non retroactivity without considering the cause of action of the particular case. However, such consideration helps only to situate the objection in a certain period; and it does not transform the principle of non retroactivity into a matter of facts. We agree with the Respondent that objection of non retroactivity is interconnected with the question of jurisdiction. The Court must consider the question even where the Parties themselves fail to raise it. Indeed, it is incomprehensible that the Respondent omitted to bring it up at the Scheduling Conference in the Court below. Nonetheless, it is recognized, in our jurisprudence that for the attainment of substantive justice, a point of

law can and should be raised at any time during the course of the proceedings, preferably at the earliest available opportunity.

For these reasons, the second ground of appeal also fails.

Ground 3: Whether there was procedural irregularity for the Court below to entertain and determine the issue of retroactivity without the Appellants' submissions?

Under this ground the Appellants raised three distinct sub issues, which could be summarized as:

- (i) smuggling into the case the issue of non retroactivity, when the Parties had not agreed any such issue during the Scheduling Conference;
- (ii) denying the Appellants sufficient notice to respond to, and a fair opportunity to be heard on, the smuggled issue of non retroactivity (all in contravention of natural justice);
- (iii) raising non retroactivity as a preliminary point of objection, when it was not a point of pure law.

Counsel for the Appellants contended that the issue of non retroactivity of the EAC Treaty was not among those which were agreed upon by the Parties during the Scheduling Conference.

He averred that the point was introduced only subsequently in the

Respondent's written submissions after the hearing; but that, nonetheless, the Court proceeded to consider and determine that point with finality, without affording the Appellants effective notice to respond, or an opportunity to present their submissions thereon. He prayed this Court to find that all this amounted to a procedural irregularity; and to reinstate the case in order to enable the Appellants to present their submissions.

He averred that in determining the point and making a finding on it without full trial, the Court below contravened the well established principle of natural justice.

On the third sub issue, Counsel contended that non retroactivity is an issue of fact, not of law, which should not have been entertained by the Court below by way of a preliminary objection.

This Court considers that, even if it was not agreed upon during the hearing, the issue of non retroactivity was totally unavoidable. It fundamentally determines the applicability of the new Treaty to the Reference. Without prior determination of this point, the Court could not proceed even one step further. Nonetheless, the Court below should have afforded the Appellants the opportunity for effective notice to make their submissions on that point. The failure to do so constituted an irregularity. Nevertheless, the injustice occasioned has now been duly cured, in as much as the Appellants have been given the opportunity to submit on the point in this appeal.

Given our finding that non retroactivity is a fundamental point of law, we need not delve into or tarry long on the Appellants' sub issue of whether non retroactivity is a point of fact, which the Court below should not have entertained by way of a preliminary point of objection. It is evident from our analysis of the issue elsewhere in this judgment, that retroactivity is eminently a point of pure law, which this Court is not only entitled to raise on its own motion, but also to entertain as a point of objection that is capable of disposing of the entire case.

Therefore, the third and last ground of this appeal also fails.

VI. Effects of non Retroactivity to the Question of Jurisdiction

While recognizing the jurisdiction of this Court over the interpretation and application of the EAC Treaty, as provided for by Article 27(1), the Respondent argued that the instant Reference does not deal with the interpretation nor the application of the Treaty.

The Court below, considering the submissions of the parties, held that it had jurisdiction on the basis of Articles 27(1) and 23 of the Treaty, but that the EAC Treaty was not applicable to this Reference on account of the non retroactive application of the Treaty to that particular Reference.

Where then, one may ask, did the Court derive its jurisdiction, since the Treaty which normally confers the jurisdiction on the Court did not apply? Non retroactivity is a strong objection. When it is upheld, it disposes of the case there and then. As non retroactivity renders the Treaty inapplicable

forthwith, what else can confer jurisdiction on the Court? Non retroactivity leads the Court to the lack of jurisdiction.

This is the first time that this Court has been confronted with the issue of non retroactivity. The jurisprudence of other International Courts would help to illustrate the effects of non retroactivity; particularly so, concerning the consequential, but all-critical question of jurisdiction. In this connection, three cases come to mind:

- (1) The *Ambatielos* case (jurisdiction), judgement of July 1st 1952; I.C.J. reports 1952, p.28;
- (2) *Mavrommatis Palestine Concessions* (Greece v U. K.), 1924, P.C.I.J.; (SER. B) No.3 (Aug.30) Publications of the Permanent Court of International Justice Series A – No.2; collection of judgements A.W. Sijthoff'n Publishing Company; Leyden, p. 194; and
- (3) *W. T.O., Brazil – Measures Affecting Desiccated Coconut*, AB 1996 – 4, Report of the Appellate Body, page 15.

In all the three cases quoted above, the consequences of a finding of non retroactivity of a treaty, invariably led to a finding of lack of jurisdiction; and that was the end of the proceedings.

This Court has repeatedly underlined the effect of lack of jurisdiction. Without it, "a Court cannot take even the proverbial first Chinese step in its

judicial journey to hear and dispose of the case” – (see Appeal No.3 of 2011: Attorney General of the United Republic of the Tanzania vs. African Network for Animal Welfare, EACJ, Appellate Division, Judgment of 15 March, 2012, p.7).

Having in mind the effect of non retroactivity of a Treaty, the point should have been determined before any other issues in order to avoid the ambiguity contained in the final conclusion of the Ruling of the Court below, which held as follows:

“In conclusion, we rule that although the Court has the jurisdiction to hear the Reference and that it is not barred by the doctrine of res judicata or the rule of exhaustion of local remedies, nonetheless, it cannot entertain the Reference on account of the non retrospective application of the Treaty”.

For the above reasons, this Court finds that the EAC Treaty is non retroactive. It is not applicable to the present Reference. Consequently, the East African Court of Justice is not clothed with the jurisdiction to entertain it.

Before departing from this matter altogether, this Court is constrained to make the following observations. The framers of the new EAC Treaty of 2000 saw it fit--indeed desirable -- to interpose in the new Treaty the fact of the Mediation Agreement of 1984, which the three former Partner States of Kenya, Uganda and Tanzania had agreed a formula for dividing and sharing the assets and liabilities of the defunct Community, including the

settling of terminal benefits and pensions of the former employees of the defunct Community. The interposition of all these factors into the new Treaty was, thus, a deliberate and express action on the part of the Partner States. In our view, beyond mere recording of history, the interposition was done for a reason and a purpose - namely, to "revisit" or to "keep alive" the nexus between the Old and the New order of the East African integration (paragraph 2 of the Preamble); cooperation, former and future (paragraph 6 of the Preamble); and upgrading into a Treaty the Region's Tripartite efforts of 1997-2000 (paragraph 9 of the Preamble); as well as breathing a fresh breath of oxygen into the important issue of the sharing and the management of the assets and liabilities - including the welfare of the former employees of the defunct Community (paragraph 5 and 6 of the Preamble). The interposition of these factors was, thus, a clear statement by the new Community expressing its profound interest in the continued management of the assets and liabilities of its predecessor Community, and the welfare of the former employees of that defunct Community.

By analogy to municipal law, the Mediation Agreement on the sharing of assets and liabilities was the equivalent of drawing a Will and appointing Administrators/Executors to oversee and administer the Estate of the defunct Community. Conversely, the Mediation Agreement was the equivalent of the creation of a Trust and appointment of Trustees to oversee and manage the residue of the affairs of the defunct Community (see in particular Article 10 and Annex "F" of the Mediation Agreement). In either case, the Administrators/Executors or Trustees owe a duty of care to manage the Estate or Trust for the benefit of the beneficiaries (in this case former Community employees), in accordance with the well known and

DATED, AT ARUSHA
THIS 27TH DAY OF APRIL, 2012

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PRESIDENT

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Phillip K. Tunoi
VICE PRESIDENT

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Justice of Appeal

.....
Laurent Nzosaba
Justice of Appeal

.....
James Ogoola,
Justice of Appeal

generally accepted norms and standards that govern Administrators, Executors and Trustees. In the event of any "audit" queries concerning the exercise of their duty, the Administrators, Executors or Trustees of the Estate or Trust must be held responsible and accountable.

From all this, Kenya's former Community employees (who are the Applicants/Appellants before this Court), appear to have a genuine and legitimate basis for their grievance of injustice against the Kenyan State concerning the issue of their Community pensions.

Nonetheless, notwithstanding our being a court of justice, the jurisdiction for interrogating the merits (or demerits) of Appellants' grievance lies not in this Court, on account of the non retrospective application of the new EAC Treaty of 2000. That jurisdiction properly lies with the national Courts and allied for a, in as much as the Mediation Agreement of 1984 effectively and definitively moved the management of the assets and liabilities of the defunct Community from the remit of the East African Community, to the realm of the various National States.

Conclusion

In the result, this Court dismisses all the grounds of the Appeal. Each Party shall bear their own costs of this appeal, and of the Reference in the Court below.

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