CHAPTER 7

Judicial Protection under EAC Law: Direct Actions

John Eudes Ruhangisa

7.1 Introduction

Judicial protection entails the guarantees offered by a legal order to the people as they individually or collectively enforce their rights or seek redress through litigation in the courts of law. In any country, rights on paper conferred by various legislation have little meaning if they cannot be claimed by individuals and be enforced via available legal remedies.

The concept of judicial protection at national level as well as at international level encompasses various elements such as access to justice, the right to an effective remedy and principles of fair trial and due process of law.¹

The common place where redress or legal remedies can be sought in a national legal order is the court of law. Democratic States therefore are under obligation to provide to the citizens adequate procedural tools for the realization of this mechanism. The East African Community (EAC) as a democratic regional organization which aspires to become a political federation is no exception and therefore, the EAC has developed mechanisms to enable individuals to realize their rights afforded to them under the Treaty for the Establishment of the East African Community (Treaty).

7.2 An Overview

In any active partnership, differences, disagreements or disputes are bound to happen in the course of realizing the agreed terms by the partners. Inevitably, partners in the integration agenda just like partners in a business venture may find themselves disagreeing on some matters and such disagreement necessitates the intervention of a neutral person as an arbiter. The dispute requiring settlement may be between the member countries inter se, or the institutions of the organization against a member country or an individual citizen. In many

cases the disputes involve the citizens of the member countries and their governments or citizens among themselves in the course of interacting and enjoying the benefits of integration as provided by the Treaty.

Since disagreements among active partners cannot be avoided, it is important that the contracting partners put in place a mechanism to deal with this eventuality when circumstance deems it necessary.

Being mindful of the above stated possibility and in anticipation of there being disagreements, the founding fathers of the EAC made a provision for the arbiter in the Treaty. The East African Court of Justice (EACJ) was specifically created as one of the ten organs of the Community, and was charged with settlement of disputes arising out of the Treaty. Its major responsibility is to ensure the adherence to law in the interpretation and application of and compliance with the Treaty. The EACJ therefore, as the judicial organ of the Community, provides judicial protection to the citizens of East Africa through judicial pronouncements on matters that are brought before it by anyone seeking judicial protection on a point of EAC law and within the EAC framework.

Indeed the crucial role that both the laws and the courts play in the daily lives of citizens, and the crucial role that legal norms play in managing relationships that exist between sovereign states that intend to deepen or widen their relationship in the form of regional integration, cannot be overemphasized. Undoubtedly, the Court plays a crucial role in the process towards integration of the EAC. This role can be effectively realized through the Court’s effective and efficient execution of its mandate as an arbiter in dispute resolution, thereby contributing to confidence building in the region. Invariably the Court by playing its role effectively is expected to enhance the observance and upholding of human rights through good governance and democratic institutions in the region. All these aspirations and objectives must be reflected in the ways the Court conducts its activities including the quality of its judgments and the arbitration awards.

The concept of judicial protection is reflected in the Treaty where it creates legal actions in order that the Partner States, Secretary General, Council of

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2 Chapter Eight of the Treaty for the Establishment of the East African Community (The Treaty) is dedicated to the East African Court of Justice.
3 Articles 9 (1) (e) of the Treaty op. cit.
4 Article 23 (1) and 27 (1) of the Treaty op. cit.