

APPENDIX

Chapter 3

This section comprises supplementary research material and is inspired by (Kapiszewski and Karcher 2021, 287), who advocate for a methodological appendix that provides more transparency in research.

Case Mapping: Summary of Cases

The dataset contains 264 decisions across divisions and benches. The study prioritised judicial rulings on contested issues, focusing on the discernment and analysis of judges' decisions as opposed to the administrative or procedural aspects associated with tax rulings. Thus, all references, applications, appeals, case-stated and advisory opinions were considered, but taxation claims and arbitration clauses were deliberately left out. This explains the discrepancy between the total case count by the EACJ. As of June 2022, the court is estimated to have received 639 cases – broadly perceived as all references, applications, appeals, arbitration clauses, and taxation claims, with half of them determined and the rest awaiting determination.⁷⁸⁷

Table 13: Entire Universe of Cases per Bench (July 2022)

| Bench | Case Type | Count |
|--------------------|---------------------------------|-------|
| Pioneer bench (10) | Interim Ruling | 5 |
| | Judgement | 5 |
| Second bench (62) | Advisory Opinion | 1 |
| | Interim Ruling | 26 |
| | Judgement | 35 |
| Third bench (192) | Advisory Opinion | 1 |
| | Interim Ruling | 89 |
| | Judgement | 101 |
| | Preliminary reference procedure | 1 |
| Grand Total | | 264 |

Source: Author's compilation from the EACJ Case Mapping dataset (with the author on file).

787 Speech by Hon. Justice Nestor Kayobera, *supra* note 135.

Interview Guidelines: Selected Questions

EACJ Judges

The first questions broadly explore personal experience on the EACJ bench and seek to understand appointment processes.⁷⁸⁸

1. Literature on the European Court of Justice (ECJ) has shown that REC courts have the power to influence and shape regional integration processes. Could you please share your take on regional integration efforts through your work at the EACJ?
2. During your time on the bench, how would you describe the relationship between the Regional Court and:
 - a) the regional administration at the headquarters in [Arusha]
 - b) home governments, REC ministry
 - c) major legal associations
 - d) foreign and international actors, in particular those significantly sponsoring integration processes
3. Following the SADCT's rulings against Zimbabwe, in a series of sensitive land-tenure cases, former President of Tanzania, Jakaya Kikwete, said: "*We have created a monster that will devour us all.*" Subsequently, the Tribunal faced an early demise. REC judges in the region remain vulnerable to executive interference. As such, politics *shapes* and *influences* the court's functioning, practice and performance.
 - a) Would you say you faced some undesirable pressures at the EACJ? If yes, from whom mostly? And how did you react?
 - b) In your view, what are the main challenges of the regional courts in advancing regional integration and the rule of law in EAC?
 - c) What considerations do you make when faced with a politically contentious question?
4. Parts of the literature about regional courts in Africa and elsewhere claim that stakeholders and potential users of the courts do not sufficiently know the jurisdiction and procedures of the court. Were you involved in any activities intended to increase awareness and the active participation of various stakeholders in the court? With whom did you work, and who was your target audience?

788 Part of the larger project work in which I am involved is a comparative study of appointments to the COMESA Court of Justice, the East African Court of Justice and the suspended SADC Tribunal. As such, interviews always asked specific questions on judicial appointments to actors across the board.

5. Some interviewees have told me that the court remains an “academic court” lacking an enforcement mechanism and that decisions remain ignored by member states. What is your take on that statement?

National Judges

1. How have you interfaced with the EACJ during your time on the national bench? For example, have you participated in any training that orients judges towards serving on the EAC court? Or simply training on EAC law and the role of preliminary reference procedures? Any personal interest in dialogue with the EACJ or its activities?
2. How would you broadly describe the relationship between the national judiciary and the EACJ?

Lawyers

1. You have litigated a wide range of issues, from X to Y, to mention a few. What would you say was the drive to litigate in the EACJ?
 - a) What are some considerations you have in mind for taking the types of matters you take and why?
 - b) What explains the scarcity of economic-related cases?
2. As a repeat litigant at the EACJ, what strategies do you employ to circumvent the statute of limitations and narrow jurisdiction?
3. Please identify three cases you deem fundamental in substantiating the court’s role as a powerful instrument in regional integration efforts. Why do you consider these decisions this important?
4. Aside from such training by EALS lawyers on how to litigate in the EAC, what else has the legal fraternity done to support the court?

REC & Government Officials

As a ministry (responsible government entity), your mission is to “promote country X’s interest in the pursuit of regional integration.”

1. To what extent does that pursuit involve the EACJ?
2. Additionally, you ensure timely, effective implementation of EAC decisions, policies, and programmes- do you help the EACJ enforce and comply with its rulings?
3. How do you, as a ministry, increase awareness and active participation of various stakeholders with the court?
4. Is the MEACA/ministry involved in selecting judicial officers from country X?

Journalists

1. As a reporter on the judiciary in country X, have you covered the EACJ, and what areas have you covered?
2. Would you know about the appointments of judges to Regional Court X?

Interview Transcript: Excerpt

Interviewee: EA07 [hereafter R]

Interviewer: Diana Kisakye [hereafter I].

Date: 29.09.2021. Audio Recorded (Stored as EA07_29.09.2021). Conducted in person in Kampala, Uganda.

Duration: 1hr 30 mins

I [29:00]: I have been told by some interviewees that the court remains an “academic court” lacking an enforcement mechanism and that decisions remain ignored by member states. What is your take on that statement?

R [29:59]: unfortunately, most of our decisions were declarations. The reason is partly that it is a young court, and we don't want to discourage people from coming so early in the day. Second, we did not want to be seen as an elitist court—a court of the rich. So, a poor person cannot access the court. So, that's why we avoided financial issues. However, it is in terms of enforcement, given that there are declarations. Interestingly, we did see the partner states responding. A decision we have taken against a country, and next, we hear of an amendment. I think, in a way, the court, as you say, it is goodwill. But the goodwill has worked. There's no formal enforcement process, but we have seen decisions being enforced.

I [31:01]: Do you feel you're speaking and being heard? Do you think you are growing in political relevance over time?

R: The Court is getting to a stage where it can't be ignored. This is the child who is quiet but simply will not be ignored because when he opens his mouth to say something, it's extremely relevant. The nature of cases that are coming to the court now, for instance, the case from Kenya that arose from an election – parliamentary elections. And what happened was, in that case, I think a party that was aggrieved challenged this election up to the highest court and then went to the Supreme Court. [...] That's a clear indicator to politicians back home. Some of these national courts might not be doing

as well as we think they are. The courts themselves can pull up their socks because they suddenly realise there is another watchdog somewhere. So, I think the court is a lot more relevant today than it was always, adjudicating human rights matters only. Human rights tend to be individual, and maybe the security agencies that have violated these rights will be asked to tread cautiously. But the nature of matters coming now tend to be broader- if a person says, this court did not address access to justice issues in this way, that's a broad thing because anybody who has a similar complaint, and someone comes and says "You are taxing me irregularly because the protocol on Common market and customs union like what happened in BAT case. Clearly, you're sending a message to all traders that there has to be uniformity in the taxation of goods. So, those broad implications are actually being felt in the region. Our President and the late Tanzanian President addressed that issue because today, it was cigarettes, and the next day, it would be sugar. I don't think the court is as irrelevant as it has been in the past. Depending on how it continues to do, this could be a very useful court, and in fact, a discussion has begun to make it a final appellate court. This discussion, I think, has been mooted [...]

I [44:43]: Were there any apparent attacks on you for decisions you passed or dismissed?

R: Interestingly, I have not. But I hear judges saying they receive calls from people trying to influence them. I think I am the kind of person -my background is in the Attorney General's chambers – I have always been known for being fearless. So, they just do not bother. I have never received a call. Because of that, when I get onto a case, people tend to think, "She is objective." So far in the EACJ, my biggest nightmare was Rwanda [...]

I: Did you feel shaken after what happened to the SADC Tribunal? Were you a bit on edge?

R [52:28]: The interesting thing about this region is that we don't have similar issues. You know, here, the president will tell you off thoroughly and keep quiet. And then he will call up these people and tell them whatever judge but did nothing to them. At some point, in one of the cases I handled here (*in Uganda*), I sentenced someone to life imprisonment, and the president disagreed with me. He said, "Can you imagine they sent this murderer to go and eat my food for the rest of his life? Why can't they sentence them to death? I told myself, okay, "This is a rant." It actually gets amusing. So, with us here, of course, they will be unhappy. But they respect

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the courts. At least a little bit. So that didn't shake the court. So, the only thing that shook the court was a decision they passed on elections in Kenya. The *Anyang' Nyong'o* case. That case made them divide the court, where they said, "This Court is stupid; we need to have an appellate division." You know, politicians are very interesting. So, they decided to create the appellate division. [...]

Chapter 4

Table 14: EACJ Judicial Leadership

| Duration | | EACJ Leadership | | | | Registrar |
|-------------------------------------|-----------------------|--|---|--|--|---|
| Pioneer bench (2001–2007) | Nov. 2001 – June 2008 | President: Moijo Ole Keiwa (Nov. 2001 – Nov. 2007) Vice President: Joseph Nyamihana Mulenga (Nov. 2001 – June 2008) | | | | Dr John Eudes Ruhangisa (Apr. 2001 – Apr. 2016) |
| | | Appellate Division | | First Instance Division | | |
| | June – Nov 2008 | <i>President</i> | <i>Vice President</i> | <i>Principal Judge (PJ)</i> | <i>Deputy PJ</i> | Yufnalis Okubo (Apr. 2016 – Jan. 2023) |
| Second bench (2008–2014) | Oct 2008 – June 2014 | Harold Reginald Nsekela (Oct. 2008 – June 2014) | Dr Phillip Kiptoo Tunoi (Oct. 2008 – Aug. 2014) | Johnston Busingye (October 2008 – June 2013) | Mary Stella Arach-Amoko (Oct. 2008 – June 2014) | |
| | | | | Jean Bosco Butasi (June 2013 – June 2015) | | |
| Third bench (2015–2022) | June 2014 – July 2022 | Dr Emmanuel Ugirashebuja (June 2014 – Nov. 2020) | Liboire Nkurunziza (June 2014 – June 2020) | Monica Mugenyi (July 2015 – Nov. 2020) | Isaac Lenaola (Dec. 2013 – June 2018) | |
| | | Nestor Kayobera (Feb. 2021 – X) | Geoffrey Kiryabwire (Feb. 2021 – July 2022) | Yohane Bokobora Masara (Feb. 2021 – X) | Dr Faustin Ntezilyayo (July 2019 – March 2020) Audace Ngiye (Feb. 2021 – July 2022) | |

Source: Compiled by the author according to the East African Court of Justice 20th anniversary Report (East African Court of Justice 2021). X implies still serving in this position by the time of writing (August 2025).

Chapter 5

Table 15: List of EALS Leadership

| Duration | EALS President | Country of origin | EALS CEO |
|-------------|----------------------------------|------------------------|--------------------------------------|
| 2002 – 2004 | Prof. Frederick E Ssempebwa | Uganda | |
| 2004 – 2006 | Commissioner Bahame Tom Nyanduga | Tanzania | Donald Omondi Deya 2002 – 2010 |
| 2006 – 2008 | Prof. Tom Ojiende | Kenya | |
| 2008 – 2010 | Dr. Alan M. Shonubi | Uganda | |
| 2010 – 2012 | Dr. Wilbert B. Kapinga | Tanzania | |
| 2012 – 2014 | James Aggrey Mwamu | Kenya | Tito Byenkya (2011 – 2016) |
| 2014 – 2016 | Nassor Khamis Mohammed | Zanzibar (Tanzania) | |
| 2016 – 2018 | Richard Mugisha | Rwanda | Patrick O Okoth (2016 – 2017) |
| 2018 – 2020 | Willy Rubeya | Burundi | Hannington Amol (2017 – Mar 2021) |
| 2020 – 2022 | Bernard Malingu Oundo | Uganda | David Sigano (2021 – Date) |
| 2022 – Date | Dr. Fauz Twaib | Tanzania | |

Source: The list was compiled by the author from information provided by the EALS Secretariat on March 28, 2023. The regional Law Society's first President, Solomy Bossa, is not included in the table because she served before the EACJ existed.

Chapter 6

EALS Strategic Litigation

Table 16: EALS as an Applicant

| CEO EALS | President EALS | Case Number | Respondent | Classification |
|--|--------------------------------------|------------------------------------|--|---|
| Donald Omondi Deya (2002 – 2010) | Prof. Tom Ojiende (2006 – 2008) | Reference No. 3 of 2007 | Attorney General of Kenya & others | Jurisdiction: Treaty Amendments |
| | | Application No. 9 of 2007 | | |
| | Dr. Wilbert B. Kapinga (2010 – 2012) | Reference No. 1 of 2011 | EAC Secretary-General | Jurisdiction: Customs Union and Common Market Dispute |
| | | Reference No. 3 of 2011 | Attorney General of Rwanda & Uganda | Human Rights Violation |
| Tito Byenkya (2011 – 2016) | James Aggrey Mwamu (2012 – 2014) | Reference No. 2 of 2011 | Attorney General of Uganda & other | Human Rights Violation (walk-to-work protests) |
| | | Application No. 12 of 2012 | | Process |
| | | Application No. 3 of 2014 | Attorney General of Burundi & other | Violation of Free Movement |
| | | Reference No. 1 of 2014 | | |
| Reference No. 7 of 2014 | EAC Secretary-General | Implementation of Council Decision | | |
| Hannington Amol ⁷⁸⁹ (Aug 2017 – Mar 2021) | Bernard Malingu Oundo (2020 – 2022) | Reference No. 1 of 2020 | | Council Quorum & Ad Hoc Service Commission |
| | | Reference No. 12 of 2021 | Attorney General of Uganda & EAC Secretary-General | Internet Blockage during Elections |
| | | Reference No. 1 of 2019 | Attorney General of Tanzania & EAC Secretary-General | Judicial Appointment |
| | | Appeal No. 2 of 2021 | | |

Source: Author's compilation from the EACJ Case Mapping dataset (with the author on file).

789 Appeared in all four cases during his tenure.

PALU as Litigant

Table 17: Cases involving PALU

| Case Type | Case Number | Applicant | Respondent | Representation |
|---|--|--|--|---------------------------------------|
| Elections Dispute (Burundi 2015) | Application No. 5 of 2015 | EACSOFF | Attorney General of Burundi, <i>Commission Electorale Nationale Independent (CENI)</i> & EAC Secretary General | PALU |
| | Reference No. 2 of 2015 | | | |
| | Appeal No. 4 of 2016 | | | |
| | Appeal No. 1 of 2020 | | | |
| Elections Dispute (Uganda 2021, Tanzania 2020) | 2021 | PALU & Six others | Attorney General of Uganda & Tanzania | |
| Treaty Amendments and other Dispute Settlement Mechanisms | Reference No. 9 of 2012 | The East African Center for Trade Policy and Law | EAC Secretary General | Francis Gimara (former ULS president) |
| Restrictions on Freedom of the Press | Application No. 2 of 2014 (arising from Reference No. 7 of 2013) | Burundi Journalists Union | Attorney General of Burundi & several amici curiae | PALU (As amicus) |
| Unlawful evictions & Arrests (Maasai Communities) | Reference No. 10 of 2017 | Ololosokwan Village Council and 3 others | Attorney General of Tanzania | PALU |
| | Appeal No. 13 of 2022 | | | |
| Arbitrary Arrest and Detention of EAC Citizens | Reference No. 19 of 2018 | Garang Michael Mahok | Attorney General of South Sudan | |
| | Application No. 20 of 2018 | Morris Mabior Awikjok Bak | Attorney General of South Sudan & Kenya | |
| Elections of EALA Speaker | Reference No. 2 of 2018 | Attorney General of Burundi | EAC Secretary General (Respondent) & Hon. Fred Mukasa Mbidde (Intervener) | |

Source: Author's compilation from the EACJ Case Mapping dataset (with the author on file).