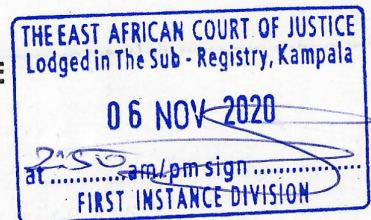


**IN THE EAST AFRICAN COURT OF JUSTICE**

**FIRST INSTANCE DIVISION**

**AT ARUSHA**

**MISC. APPLICATION NO..... OF 2020**



5

**ARISING OUT OF REFERENCE NO..... OF 2020**

**IN THE MATTER OF INTERIM ORDERS BETWEEN**

**CENTER FOR FOOD AND**

**ADEQUATE LIVING RIGHTS (CEFROHT) LIMITED ===== 1ST APPLI- 10**  
**CANT**

**AFRICA INSTITUTE FOR ENERGY GOVERNANCE (AFIEGO) == 2ND APPLICANT**

**NATURAL JUSTICE -KENYA ===== 3RD APPLICANT**

**CENTER FOR STRATEGIC LITIGATION LIMITED=====4TH APPLI- 15**  
**CANT**

**AND**

**ATTORNEY GENERAL OF THE REPUBLIC OF UGANDA === 1ST RESPONDENT**

**ATTORNEY GENERAL OF**

**THE UNITED REPUBLIC OF TANZANIA ===== 2ND RESPONDENT 20**

**THE SECRETARY GENERAL OF**

**THE EAST AFRICAN COMMUNITY ===== 3RD RESPONDENT**

**NOTICE OF MOTION**

**(MADE UNDER ARTICLES 5 (3)(a), (c) & (3) , 6 (d), 7 (1) (a), (d) & (2) , 8 25**  
**(1) (c) & (4) , 23 , 27(1) , 30 , 39 , 101(1), (2)(e) & (f), 105(1)(c), 110(d),**  
**111, 112, 114 (1) & (2), 116, 120 (a) & (c), 121(a), 130(1), 151(4) OF THE**  
**TREATY FOR THE ESTABLISHMENT OF THE EAST AFRICAN COMMUNITY**  
**AND RULE 4 , 25 (1), (2) and (3) and 27(1), 52 (1), (2),(3) (4), 53(1) AND**



**84 (1) OF THE EAST AFRICAN COURT OF JUSTICE RULES OF PROCEDURE, 2019)**

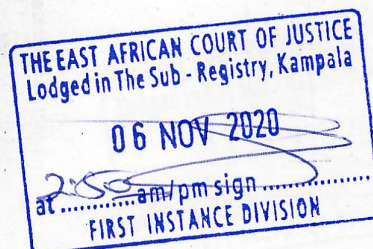
TAKE NOTICE that on the .....day of ..... 20..... at .....O'clock in the morning or soon thereafter as he can be heard **M/s Semuyaba , Iga & Co. Advocates , Plot 65 Buganda Road , P.O. Box 12387, Kampala justin-semuyaba@gmail.com. M/s Dalumba Advocates Plot 652 Jorina House Gayaza – Kalagi Road P.O BOX 16414, Wandegaya, Uganda, Kabada.cefroht@gmail.com, geoobbo13@gmail.com.** or the above- named applicants will move the Court for orders that;

1. Pending determination of the Main Reference filed in this Court, an interim order and /or a Temporary Injunction doth issue restraining THE 1<sup>ST</sup> AND 2<sup>ND</sup> RESPONDENT, their employees or agents from constructing the crude oil pipeline until the determination of the main Reference.
2. An order doth issue against the 1<sup>ST</sup> and 2<sup>ND</sup> RESPONSENT to provide the APPLICANTS with the respective country Host Government Agreements and the Inter-governmental Agreement between the 1<sup>ST</sup> and 2<sup>ND</sup> RESPONDENTS.
3. Any orders or directives the court deemed necessary.

THE GROUNDS supporting this Application are contained in the affidavit of Mr. Kamugisha Dickens who is the Executive Director of the second applicant plus any other affidavits that shall be filed from time to time and which shall be read and relied upon at the hearing of this application but briefly are that;

**THIS APPLICATION IS BASED ON THE FOLLOWING GROUNDS**

1. The instant application arises from Reference No. .... of 2020 filed in this Court by the Applicants.





2. That the applicants are Not-for profit Non-Governmental Organizations legally incorporated under their respective national laws of Uganda, Kenya and Tanzania, all Partner states in the East African Community.
3. That as natural persons and Residents in East Africa within the meaning of Article 30 of The Treaty for The Establishment of The East African Community, the Applicants have filed Reference No. .... of 2020 and the matter is still pending hearing.
4. That the crux of the complaint of the Applicant, the subject matter of the abovementioned Reference is with respect to the applicants' decision to start the construction of the East African Crude Oil Pipeline (EACOP) in the Republic of Uganda and in the United Republic of Tanzania with undue regard to East African law and international environmental and human rights law.
5. That on the 10th day of September 2020, the 1st respondent signed a Host Government Agreement (HGA) with Total E&P Limited where it was agreed that Total East Africa Midstream (TEAM) BV is to be the developer of the EACOP project.
6. The 1<sup>st</sup> and 2<sup>nd</sup> Respondent signed an intergovernmental agreement for the construction of the East African Crude Oil Pipeline (EACOP) on the 11<sup>th</sup> day of September 2020 to transport crude oil from Kabaale Pumping Station, Hoima District, Uganda to Chongoleani, Tanga District on the East African Coast of Tanzania.
7. That on **27th October, 2020, the 2nd Respondent** signed a Host Government Agreement with Total E & P to construct the EACOP in its territory.





8. This project is environmentally untenable and it will traverse protected areas in East Africa, with undue regard to livelihoods, gender, food security, children and public health of the East Africans. 5
9. That the areas through which the pipeline shall pass is comprised of several settlements, farmlands and water sources for thousands of indigenous persons and there has been no regard to their rights. 5
10. That the EACOP project will traverse many legally protected forest reserves and several rivers and lakes that are water sources for thousands of people, animals and wildlife habitats. 10
11. The Applicants have a prima facie case as the people where the EACOP project is designed and environment will suffer irreparable damage if the application is not granted since the Main reference raises issues of affecting livelihoods and the environment including; permanent loss of habitats, stress and mortality to flora and fauna, loss of primary productivity in watercourses, loss of ecological function among others. 15
12. In addition, it is the Role of the East African Court of Justice in balancing its interpretative jurisdiction against the needs of ensuring that Partner States are not unduly hindered in their developmental programs. 20
13. The People of Uganda and Tanzania that the Applicants shall suffer substantial and irreparable loss and damages to the environment; wiping out of protected animal species and forest reserves, damaging the ecosystem and loss of livelihoods if the 1st and 2nd Respondents by themselves, employees and/or agents, **TOTAL E&P** and their servants and/or employees are not stopped from constructing the East African Crude Oil Pipeline. 25





14. That the 1<sup>st</sup> and 2<sup>nd</sup> applicants have already signed Host Government Agreements and Inter-Governmental for the East African Crude Oil Pipeline and the suit will be rendered nugatory if a temporary injunction is not issued restraining the said construction.

15. That the balance of convenience would be in the favor of the applicants if the temporary injunction is granted. 5

16. This application is made by the above applicants under **Article 39 of The Treaty For The Establishment Of The East African Community Treaty** (Hereinafter referred to as The "**Treaty**" whereby the Applicant is praying for orders that Pending determination of the Reference filed in this Court, an interim order be issued against the Respondents by themselves, employees and/or agents, **TOTAL E&P** and their servants and/or employees restraining the construction of the East African Crude Oil Pipeline. 10

17. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents are The Attorney General of The Republic of Uganda and the Honorable Attorney General of the United Republic of Tanzania and were sued as such on behalf of Uganda and the United Republic of Tanzania, Partner States within the meaning of Articles 1 and 3 of The Treaty for the Establishment of the East African Community (hereinafter, "**The Treaty**" and "**The EAC**", respectively). 15 20

18. The Applicants blame the 3<sup>rd</sup> Respondent for failure to monitor the abovementioned East African Crude Oil Pipeline Project and its inaction and the loud silence is an infringement of The Treaty under Article 71 (1) (d). 25

19. The Applicants as well pray that they be granted such other orders and directions as may be appropriate in the circumstances and the costs of the application be provided for.





20. The status quo should be maintained pending the outcome of the Main Reference and It just and equitable that this Application for a Temporary Injunction (Interim Order) be granted pending the outcome of the Main Reference interparte.

DATED AT KAMPALA THIS 6th DAY OF December 2020

.....  
COUNSEL FOR THE APPLICANT

.....  
COUNSEL FOR THE APPLICANT

PRESENTED FOR FILING AT THE SUB-REGISTRY AT KAMPALA 6th THIS  
DAY OF NOV 2020.

.....  
SUB- REGISTRY CLERK

LODGED FOR FILING AT THE SUB -REGISTRY AT KAMPALA THIS .....DAY  
OF ..... 2020

.....  
REGISTRAR

DRAWN & FILED JOINTLY BY:

1. M/S SEMUYABA, IGA & CO. ADVOCATES  
(COUNSEL FOR THE APPLICANT).  
PLOT 65 BUGANDA ROAD



**P.O. BOX 12387, KAMPALA**  
**Email; justinsemuyaba@gmail.com.**

**2. Dalumba Advocates**  
**Plot 652 Gayaza, Kalagi Road**  
**P.O.BOX 16414, Wandegeya**  
**Kampala.**  
**Email; kabada.cefroht@gmail.com.**

5

10

**TO BE SERVED UPON:**

**1) Attorney General of the Republic of Uganda,**  
**Ministry of Justice and Constitutional affairs,**  
**Plot 5, Parliamentary avenue, Bauman house,**  
**P.O Box 7183, Kampala, Uganda.**

15

**2) The Honourable Attorney General of the United Republic of Tanzania,**  
**Plot 20 inkoni Road,**  
**P.O Box 9050, 11492 Dar-es-Salaam.**

20

**3) The Secretary General, EAC Headquarters,**  
**Afrika mashariki road, EAC close,**  
**P.O Box 1096, Arusha, Tanzania.**



25



**IN THE EAST AFRICAN COURT OF JUSTICE**

**FIRST INSTANCE DIVISION**

**AT ARUSHA**

**MISC. APPLICATION NO..... OF 2020**



**ARISING OUT OF REFERENCE NO..... OF 2020**

**IN THE MATTER OF INTERIM ORDERS BETWEEN**

**CENTER FOR FOOD AND**

**ADEQUATE LIVING RIGHTS (CEFROHT) LIMITED ===== 1ST APPLI- 10**

**CANT**

**AFRICA INSTITUTE FOR ENERGY GOVERNANCE (AFIEGO) == 2ND APPLICANT**

**NATURAL JUSTICE -KENYA ===== 3RD APPLICANT**

**CENTER FOR STRATEGIC LITIGATION LIMITED ===== 4TH APPLI- 15**

**CANT**

**AND**

**ATTORNEY GENERAL OF THE REPUBLIC OF UGANDA === 1ST RESPONDENT 20**

**ATTORNEY GENERAL OF**

**THE UNITED REPUBLIC OF TANZANIA ===== 2ND RESPONDENT**

**THE SECRETARY GENERAL OF**

**THE EAST AFRICAN COMMUNITY ===== 3RD RESPONDENT**

**(MADE UNDER ARTICLES 5 (3) , (c) , 6 (d) & 7 (2) , 8 (1) (c) , 23 , 27(1) , 25**

**30 , 39 , 101, 105 (2), 111 (1) (b) & (d), 112, 114 (1) & (2), 116, 120 (c)**

**OF THE TREATY FOR THE ESTABLISHMENT OF THE EAST AFRICAN COM-**

**MUNITY AND RULE 4 , 25 (1), (2) and (3) and 27(1), 52 (1), (2), (3) (4),**



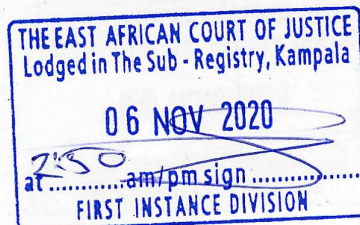
**53(1) AND 84 (1) OF THE EAST AFRICAN COURT OF JUSTICE RULES OF  
PROCEDURES, 2019)**

**AFFIDAVIT IN SUPPORT OF NOTICE OF MOTION**

I, KAMUGISHA DICKENS C/O M/s Semuyaba , Iga & Co. Advocates , Plot 65 5  
Buganda Road , P.O. Box 12387, Kampala justinsemuyaba@gmail.com. and  
Dalumba Advocates Plot 652 Jorina House Gayaza-Kalagi Road, P.O Box  
16617, Wandegaya, Uganda kabada.cefroht@gmail.com and geob-  
bo13@gmail.com, do solemnly make oath and state as follows;

1. That I am a male adult Ugandan of sound mind and the Chief Executive Officer 10  
of the Africa Institute for Energy Governance the 2<sup>st</sup> respondent in the reference  
and therefore swear this affidavit in support of the reference in that capacity.
2. That I am an advocate of the High Court of Uganda for over 10 years, I have  
been in advocacy to defend and promote environmental and human rights in  
Uganda and the Great Lakes Region. 11
3. That on 10th day of September 2020, the 1st respondent signed a Host Govern-  
ment Agreement (HGA) with Total E&P Limited where it was agreed that Total  
East Africa Midstream (TEAM) BV is to be the developer of the project. (*At-*  
*tached is a brief from the EACOP website showing of the Host govern-* 2  
*ment agreement between Uganda and Total E&P Limited collectively*  
*marked "A"*)
4. That I know that the 1<sup>st</sup> and 2<sup>nd</sup> respondents signed the East African Crude Oil  
Pipeline (EACOP) project intergovernmental agreements on the 11<sup>th</sup> day of Sep-  
tember 2020 to transport crude oil from Kabaale Pumping Station, Hoima Dis-  
trict, Uganda to Chongoleani, Tanga District on the East African Coast. (*At-*  
*tached is a brief from the EACOP website showing of the Host govern-*

9





*ment agreement between Uganda and Total E&P Limited collectively marked "A")*

5. That on 27th October, 2020, the 2nd Respondent signed a Host Government Agreement with Total E & P to construct the EACOP in its territory. (See a copy of the brief from EACOP website showing signing of the Host Government Agreement by the 2nd Respondent attached and marked "C") 5
6. That the 1<sup>st</sup> and 2<sup>nd</sup> respondent have not made the agreements available to the public although the agreements are public documents.
7. That the pipeline will originate from Kabaale Industria Park in Hoima district and go through several districts in the 1<sup>st</sup> respondent's territory including Hoima District, Mubende District, Mityana district, Masaka District, Gomba district and Sembabule district, Kyankwanzi District. 10
8. That this project is environmentally untenable and it will traverse protected areas in East Africa, with undue regard to livelihoods, gender, food security, children and public health of the East Africans. 15
9. That the areas through which the pipeline shall pass through is comprised of several settlements, farmlands and water sources for thousands of indigenous persons. (See annexure marked "D") 20
10. That the areas through which the pipelines will pass through contains many protected forest reserves like Wambabya forest reserve, Bugoma Forest Reserve, Taala Forest reserve, Kasana-Kasambya Forest Reserve. (See annexure marked "E") 25
11. That I know the pipelines will pass through and impact several rivers and lakes including River Kafu, Nabakazi River, River Katonga, Jemakunya River and Lake

10





victoria that are water sources for thousands of people, animals and this will greatly disrupt the ecological system of the area.

12. That in the north-western corner of lake Victoria the pipeline will cross a substantial zone of wetlands in a high average rainfall zone that is characterized by unbroken crop land, a substantial proportion of which is used for rice cultivation, cattle grazing land and settlement. 5
13. That at socio-economic and health levels, the project will cause permanent loss of land used for crop farming and grazing, permanent loss of natural resources, permanent loss of access to fishing grounds (rivers, Lake Albert, dams and ponds), permanent loss of private land due to project land acquisition, increased risk of vector-related diseases among the local workforce the project will also cause pollution or nuisance from noise. 10
14. That I know 14,000 households will lose land. Roughly 200 households will need to be resettled in Uganda and approximately 330 households in Tanzania. (See **OXFAM Human Rights Impact assessment titled : Empty Promises down the line: Human Rights Impact Assessment of the East African Crude Oil Pipeline**" marked annexure F). 15 20
15. I also know the EACOP Project does not show the detailed plan on ecosystem maintenance including, effect on food chains, Nutrient cycles, Aquifer recharge, areal extent of habitants, fragile ecosystems. 25
16. That I know there is no mitigation plan for food and nutrition insecurity that will be occasioned by the EACOP project, and there is likelihood that food security will be gravely disrupted. See videos and photos of residents seeking for





17. That all the above are a clear indication of the irreparable damage to environment,\* wildlife and human lives that cannot be paid for in monetary terms or otherwise.
18. That under the Treaty, the 1<sup>st</sup> and 2<sup>nd</sup> respondents have an obligation to uphold the fundamental principles of the community as enshrined under Article 6(d) and 7(2).
19. That I know that the applicants brought a suit before this Honorable court challenging the legality of the EACOP project on the above grounds.
20. That the applicants have already signed all the Host Agreements and the Inter-Governmental Agreements and if a temporary injunction is not issued restraining the said construction, the applicants' suit will be rendered nugatory.
21. The Applicants have a prima facie case and the people where the EACOP project is designed will suffer irreparable damage if the application is not granted since the Main reference raises issues of affecting livelihoods and the environment including; permanent loss of habitats, stress and mortality to flora and fauna, loss of primary productivity in watercourses, loss of ecological function among others.
22. The **status quo** should be maintained, that is the construction of the project be temporarily halted, pending the outcome of the Main Reference and It is just and equitable that this Application for a Temporary Injunction and access to Host Government Agreements and Inter-Governmental Agreements (Interim Order) be granted pending the outcome of the Main Reference inter-parte.
23. That it is in public interest, equitable and fair that a temporary injunction is granted.





22. That I swear this application in support of the application for a temporary injunction<sup>o</sup> and access to both the Host Agreements and Inter-Governmental Agreements brought before this honorable court.

VERIFICATION

I, KAMUGISHA DICKENS do hereby verify that what is stated above is true to the best of my knowledge, information and belief save for paragraphs whose source of information I have disclosed.

SWORN at Kampala by the said KAMUGISHA DICKENS this 5<sup>th</sup> Day of November 2020

Kamugisha Dickens

DEPONENT

BEFORE ME



COMMISSIONER FOR OATHS

DRAWN AND FILED BY

1. M/S SEMUYABA, IGA & CO. ADVOCATES  
(COUNSEL FOR THE APPLICANT).

PLOT 65 BUGANDA ROAD

P.O. BOX 12387, KAMPALA

Email; [justinsemuyaba@gmail.com](mailto:justinsemuyaba@gmail.com).

2. Dalumba Advocates

13





Plot 652 Gayaza, Kalagi Road  
P.O.BOX 16414, Wandegaya  
Kampala.

Email; [kabada.cefroht@gmail.com](mailto:kabada.cefroht@gmail.com).

5



10



IN THE EAST AFRICAN COURT OF JUSTICE

FIRST INSTANCE DIVISION

AT ARUSHA

REFERENCE NO. 39 OF 2020



5

CENTER FOR FOOD AND  
ADEQUATE LIVING RIGHTS (CEFROHT) LIMITED ===== 1ST APPLICANT  
AFRICA INSTITUTE FOR ENERGY GOVERNANCE (AFIEGO)=====2ND APPLICANT  
NATURAL JUSTICE -KENYA ===== 3RD APPLICANT  
CENTER FOR STRATEGIC LITIGATION LIMITED=====4TH APPLICANT

10

VERSUS

ATTORNEY GENERAL OF THE REPUBLIC OF UGANDA ===== 1ST RESPONDENT  
ATTORNEY GENERAL OF  
THE UNITED REPUBLIC OF TANZANIA =====2ND RESPONDENT  
THE SECRETARY GENERAL OF  
THE EAST AFRICAN COMMUNITY =====3RD RESPONDENT

15

STATEMENT OF REFERENCE

20

(MADE UNDER ARTICLES 5 (3)(a), (c) & (3) , 6 (d), 7 (1) (a), (d) & (2) , 8 (1)  
(c) & (4) , 23 , 27(1) , 30 , 39 , 101(1), (2)(e) & (f), 105(1)(c), 110(d), 111,  
112, 114 (1) & (2), 116, 120 (a) & (c), 121(a), 130(1), 151(4) OF THE TREATY  
FOR THE ESTABLISHMENT OF THE EAST AFRICAN COMMUNITY; ARTICLES 24,  
25, 31, OF THE PROTOCOL ON ENVIRONMENT AND NATURAL RESOURCE  
MANAGEMENT TO THE TREATY FOR THE ESTABLISHMENT OF THE EAST  
AFRICAN COMMUNITY; ARTICLES 2, 3, 4, 6, (a), (e), (c) (g) & (i), 12 and 13 OF  
THE PROTOCOL FOR SUSTAINABLE DEVELOPMENT OF LAKE VICTORIA BASIN

25



**TO THE TREATY FOR THE ESTABLISHMENT OF THE EAST AFRICAN COMMUNITY**  
**AND RULE 4<sup>o</sup>, 25 (1) ,(2) and (3), 132, 133 OF THE EAST AFRICAN COURT OF**  
**JUSTICE RULES OF PROCEDURE, 2019.**



**DESCRIPTION OF THE PARTIES**

**A. THE APPLICANTS:**

1. The first Applicant CENTER FOR FOOD AND ADEQUATE LIVING RIGHTS (CEFROHT) LTD is a not for profit civil society organization promoting the right to adequate living, right to food and trade justice, registered in Uganda. **(A copy of the certificate is here to Annexed and marked "A".)**
2. The second Applicant AFRICA INSTITUTE FOR ENERGY GOVERNANCE (AFIEGO) LTD is a not for profit company limited by guarantee incorporated in Uganda to promote environmental and human rights in Uganda and the East African region. **(A copy of the certificate is here to annexed and marked "B")**
3. The third Applicant NATURAL JUSTICE - KENYA is a not for profit civil society organisation promoting and monitoring environmental compliance and promotion of human rights of indigenous people and local communities in Kenya and East Africa. **(A copy of the certificate is here to annexed and marked "C")**
4. The fourth Applicant CENTER FOR STRATEGIC LITIGATION is a body corporate registered under the Companies Act No. 15 of 2013 of the Laws of Zanzibar Government, in the United Republic of Tanzania. Its objectives among others are the promotion of the rule of law, access to justice, good governance, social justice, democracy and human and peoples' rights. **(A copy of the Certificate is hereto attached and marked "D")**

For purposes of the suit, the Applicants' Address for Service shall be in the Care of **M/s Semuyaba , Iga & Co. Advocates , Plot 65 Buganda Road , P.O. Box 12387, Kampala** [justinsemuyaba@gmail.com](mailto:justinsemuyaba@gmail.com) and **Dalumba Advocates Plot 652 Jorina House-**



Gayaza, P.O.BOX 16414, Wandegaya, Uganda [kabada.cefroht@gmail.com](mailto:kabada.cefroht@gmail.com),  
[geoobbo13@gmail.com](mailto:geoobbo13@gmail.com).

**B. THE RESPONDENTS:**

5. The first Respondent is the Attorney General of the Republic of Uganda He is the principal legal advisor to the Government and is being sued on the behalf of the government of Uganda. Address of service for the purposes of this reference is the **Attorney General of the Republic of Uganda, Ministry of Justice and Constitutional affairs, Bauman house, Plot 5, Parliamentary avenue, P.O Box 7183, Kampala, Uganda.** 5  
10
6. The second Respondent is the Attorney General of the United Republic of Tanzania who is the principal legal advisor to the government and is being sued on the behalf of the government of Tanzania, Address of service for the purposes of this reference is **The Honourable Attorney General of the United Republic of Tanzania, 20 Kinkoni Road, P.O Box 9050, 11492 Dar-es-Salaam.** 15
7. The third respondent is Secretary General of the East African Community duly appointed under Article 67 of the Treaty for the Establishment of the East African Community, 1999 custodian of the legal instruments of the Community, its principal Executive officer, the head of its Secretariat and accounting officer of the Community. As such he is sued on the behalf of the Community, Address of service for the purposes of this reference is **the Secretary General, EAC Headquarters, Afrika mashariki road, EAC close, P.O Box 1096, Arusha, Tanzania.** 20  
25
8. The Applicants will effect service of this Reference on The Respondents as provided for in Rule 16 of The Rule of Procedure of The East African Court of Justice, 2019 (Hereinafter 'The Rules of The Court').





### **C. JURISDICTION**

9. Under Article 23(1) of The Treaty for the Establishment of the East African Community (hereinafter "EAC Treaty"), this Honourable Court has jurisdiction to ensure adherence to law in the interpretation and application of and compliance with the provisions of the EAC Treaty, Protocols and all East African Community (hereinafter "EAC" or "The Community") law subsequent to it. 5
10. Article 27 of The EAC Treaty bestows upon this Court such jurisdiction to interpret and apply the provisions of The EAC Treaty and EAC law. 10
11. The 1st and 2nd Respondents are Partner States of The East African Community, signed and ratified the EAC Treaty and are thereby bound by it, all protocols thereto and Acts of the Community.
12. The 3<sup>rd</sup> respondent is an organ of The Community established under Article 9 of The EAC treaty and as such, bound by The EAC Treaty, all protocols thereto and Acts of The Community enacted by The East African Legislative Assembly. Under Article 71 of The EAC Treaty is charged with responsibility to research, study strategic planning management and monitoring of programmes, coordination and harmonization of policies and strategies, general promotion and dissemination of information, general administration and financial management, mobilization of funds. 15 20
13. Under Article 71 (1) (d) of The EAC Treaty one of the functions of the Secretariat is undertaking either on its own initiative or otherwise of such investigations, collection of information, or verification of matters relating to any other matter affecting the Community that appears to it to merit examination. 25
14. The loud silence of The Secretary General on this matter is an infringement of Article. 29 of The EAC Treaty





15. This Statement of Reference concerns the actions of the Respondents which ultimately violate the East African Community law under the provisions of Articles 5 (3)(a)(c) , 6 (d) & 7 (2), 8 (1) (c), 71(1) (d), 101, 111 (1) (b) & (d), 114 (1) & (2), 105(2), 112, 114 ,116, 120 (c) of The EAC Treaty and Articles 2,3,4,6, (a), (e), (c), 12 and 13 of the Protocol for Sustainable Development of Lake Victoria Basin to the EAC Treaty. 5

#### **D. ADMISSIBILITY**

16. This Reference has been filed within (2) months of the actions and omissions of the Respondents that the Applicant complains about, which last occurred on the 11<sup>th</sup> September 2020 for the 1st Respondent and on 27th October, 2020 for the 2nd Respondent as elaborated below. 10

#### **E. SUBJECT MATTER OF THE REFERENCE**

17. On 10th September 2020, the 1st Respondent signed a Host Government Agreement with Total Exploration and Production Limited (Total E&P) to construct the East African Crude Oil Pipeline (hereinafter "EACOP") to transport crude oil from an inlet flange at the Kabaale pumping station (PS1) in Hoima District, Uganda to an export flange at a proposed marine storage terminal (MST) at Chongoleani in Tanga District, on the East African coast of the United Republic of Tanzania. 15

18. Immediately after, on 11th September, 2020 the 1st Respondent signed an Intergovernmental Agreement with the 2nd Respondent detailing the mode of cooperation in the development and operation of the EACOP project. 20

19. That on 27th October 2020, 2<sup>nd</sup> Respondent signed a Host Government Agreement (HGA) for the proposed East African Crude oil Pipeline (EACOP) providing for the obligations of the Government, the duties of the Investors, relevant stakeholders, applicable standards, among many others with Total (E & P) as the developer. 25





20. As a requirement by national as well as East African Community law, the project developer for EACOP project in Uganda must be issued with a Certificate of Approval of Environment and Social Impact Assessment approved by the 1st Respondent's National Environmental Management Authority but the same was not issued prior to the signing of the agreements by the 1st and 2nd Respondent.

5

21. That the agreements by the 1st and 2nd Respondents were signed without the submission of the Environmental and Social Impact Assessment to the 3rd Respondent and approval of the Council as provided under Article 12(2),(3) and (4) of the Protocol for the Sustainable Development of the Lake Victoria Basin.

10

22. Prior to the signing of the Host Government Agreement and Intergovernmental Agreement by the, the 1st Respondent ignored, did not or failed to sufficiently;

a) Consider to take into account a Human Rights Impact Assessment prior to the signing of the Host Government Agreement and project approval contrary to constitutional obligations to 1<sup>st</sup> respondent under Articles 8A, 39 & 20(2) of the 1995 Constitution of the Republic of Uganda; Sections 3(1), 3(2), & 5(2)(r) of Uganda's National Environment Act, 2019, and Articles 6(d), 7(2), & 8(1) (a) & (c) of The EAC Treaty.

15

b) Ensure that the environment costs connected with the actual or potential deterioration of natural assets are taken into account or factored into the land use change project, despite the legal requirements and provisions of Articles 8A, 39 & 20(2) of the 1995 Constitution of the Republic of Uganda; Sections 3(1), 3(2), & 5(2)(r) of Uganda's The National Environment Act, 2019, and Articles 6(d), 7(2), & 8(1) (a) & (c) of The EAC Treaty.

20

c) Undertake, facilitate, ensure or guarantee genuine meaningful and effective consultations or community participation and/or public hearings per Articles 8A, 39 & 20(2) of the 1995 Constitution of the Republic of Uganda; Sections 3(1),

25

30





3(2), & 5(2)(r) of Uganda's The National Environment Act, 2019; Regulations 12, 19, 20 & 21 of Uganda's The National Environment (Environment Impact Assessment) Regulations SI-153-1; and Articles 6(d), 7(2), & 8(1) (a) & (c) of The Treaty; Article 22 of the Protocol for sustainable development of Lake Victoria Basin and Article 13 of the African Charter on Human and People's Rights. 5

d) Observe environmental Rule of Law and environmental good governance by premising the project approval on an inadequate and not transparent ESIA essential details required by such national an internal legal regimes as Regulations 12,14,19 & 20 of Uganda's The National Environment (Environment Impact Assessment) Regulations SI-153-1; Sections 3(1), 3(2), & 5(2) & 110(1) of Uganda national Environment Act 2019; Articles 6(d), 7(2), & 8(1) (a) & (c) of The Treaty; and Article 24 of the African Charter on Human and people's Rights. 10 15

e) Assess the impact of the project on food and nutrition security, plant genetic resources, gender, vulnerability, land rights, elderly rights and livelihoods contrary to East African Community Law. 20

23. That the 3rd Respondent failed to discharge the legal obligations of undertaking, whether on his own initiative or otherwise of such investigations, collection of information or verification of matters affecting the Community that appears to merit examination contrary to Article 71(1) (d) of the EAC Treaty. 25

24. That the project is environmentally untenable and will traverse protected areas in East Africa with undue regard to livelihoods, gender, food security, public health, biodiversity and climate change impacts.





25. That in the 1st Respondent's jurisdiction, the EACOP corridor runs through Wambabya and Bugoma Forest Reserves, and traverses through Taala Forest Reserve in Kyankwanzi district, and crosses near the eastern border of Kasana-Kasambya Forest Reserve in Mubende district.

5

26. The pipeline traverses water resources of great importance including Lake Victoria that is an important water source for the EAC, the Kafu River between Hoima and districts, Nabakazi River between Mubende and Gomba districts, Katonga River between Gomba and Ssembabule districts, and Kibale and Jemakunya Rivers in Kyotera district of the 1<sup>st</sup> Respondent.

10

27. Furthermore, the project desecrates various wetlands of national and international recognition including Ramsar sites such as the Murchison Falls-Albert Delta Wetland System - a spawning ground for indigenous fish species, wetlands near lake Victoria, including Mabamba Bay, the Lake Mburo-Nakivali System, the Lake Nabugabo System, the Nabajjuzi System, and the Sango Bay-Musambwa Island.

15

28. That while approaching the Tanzania border, and the north-western corner of Lake Victoria, the East African Crude Oil Pipeline (EACOP) crosses a substantial zone unbroken crop land, a substantial proportion of which is under rice cultivation, cattle grazing land and settlement which are a source of livelihood for Ugandans. The pipeline also clips on the former Sango Bay refugee camp close to the Tanzania border and the large local settlement of Mutukula at the border as it progresses into Tanzania.

20

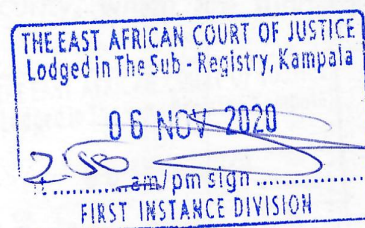
29. That in the territory of on the side of the 2nd respondent, the EACOP is meant pass through 8 regions, 24 districts, 116 wards and it is also stated that it shall pass near-close to an estimated of 231 villages and hamlets.

25





30. That the areas through which the pipeline shall pass through are comprised of several settlements, farmlands and water sources for thousands of peasants, where majority derive their livelihood from subsistence agriculture.
31. In addition, the areas through which the pipelines shall pass through contains several plants of conservation importance which have been identified, including 11 listed as vulnerable and one listed as endangered by the International Union for Conservation of Nature. Most of these plants are in the dry miombo woodlands, Itigi-like thicket and coastal vegetation areas.
32. The EACOP is set to affect animals classified as vulnerable or endangered and are of conservation importance to include African wild dog, elephant, hippopotamus and lion. Some animals native to the region or with restricted ranges are also of conservation importance, including Zanzibar galago, Masiliwa snout burrower and bubbling puddle frog. Other animals of conservation importance that are listed vulnerable are leopard, Temminck's ground pangolin, giraffe, straw-coloured fruit bat and Hildegard's tomb bat.
33. Seventeen birds of conservation importance use habitats within areas that may be affected by the project. These include hooded vulture, grey crowned crane, white-backed vulture and steppe eagle, which are classed as critically endangered or endangered by the International Union for Conservation of Nature. Several endemic and or range-restricted birds are also habitats that may be affected by the project, including papyrus yellow warbler, Karamoja apalis and orange-bellied parrot.
34. That, the pipeline will pass through and impact several of conservation of important ecosystems such as the Wembere Steppekey Biodiversity Area an important bird watching area, singida lakes, Talamani open area and the East African Coastal endemic bird area, the Kagera Pangani and Sigi Rivers, Lake Victoria. In addition, the pipeline will also affect the legally protected areas such as the Minziro Nature Forest Reserve,





the Burigi-Biharamulo and Swaga Swaga Game Reserves are legally protected within the area that may be affected by the project.

35. That the pipeline will affect several human livelihoods, land rights, health, socio-economic situation, women's lives, the environment and ecological systems yet the Respondents have not ascertained/confirmed that adequate mitigation factors have been incorporated in the Environmental and Social Impact Assessment submitted to the 2nd Respondent's National Environment Management Council before signing the agreements. 5
36. The EACOP project is a great risk to humanity as it bares evident risks of violation of human rights guaranteed in under Articles 2, 3, 4, 7(1), 9, 13(1), 14, 16, 21, 22 & 24 of the African Charter on Human and Peoples' Rights; Articles 15, 18 & 19 of the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa; Articles 2, 14, 16 & 17 of the Revised African Convention on the Conservation of Natural Resources and is inconsistent with the respondents' commitments under UN Declaration on the Rights of Peasants and Other People Working in Rural Areas in so far as they never provided or considered peasants and other people working in rural areas right to adequate food and the fundamental right to be free from hunger, as the project will permanently take away all livelihood and social cohesion tools and pathways to produce food and the right to adequate nutrition, which guarantee the possibility of enjoying the highest degree of physical, emotional and intellectual development for peasants where the project will traverse including women, children and youth. 10 15 20 25
37. The EACOP Project contravenes the EAC Treaty and UN Declaration on the Rights of Peasants and Other People Working in Rural Areas in so far as it distorts the peasants and other people working in rural areas conserving and improving biodiversity rights, which constitute the basis of food and agricultural production, and their contribution in ensuring the right to adequate food and food security, which are fundamental to 30





attaining the internationally agreed development goals, including the 2030 Agenda for Sustainable Development.

38. The 1st respondent did not ensure that these risks in terms of human rights could be mitigated before agreeing on the project, thus did not comply by the obligation to uphold the principles set out in article 6 of the Treaty (respect of Human Rights), and as the ESIA was not submitted to the 3rd respondent pursuant to the Protocol on Lake Victoria Basin and related guidelines.

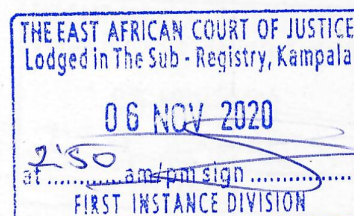
**IN THE PREMISES THE SUBJECT MATTER OF THE REFERENCE IS:**

A. The signing of the Host Government Agreement by the 1st Respondent and the Intergovernmental Agreement between the 1st and 2nd Respondent to build a pipeline that goes through protected areas and has an adverse impacts on the livelihoods, biodiversity, climate change and social economic aspects is a violation of the provisions of the EAC Treaty and Protocols therein.

B. The signing of the Host Government agreement by the 1st respondent and the intergovernmental agreement by the 1st and 2nd Respondent without a certificate of approval of the Environmental and Social Impact Assessment is a violation of the EAC Treaty and Protocols therein.

C. The signing of the Host Government Agreement by the 1st Respondent and the Intergovernmental agreement between the 1st and 2nd Respondent without notification, submission and approval of the Environmental and Social Impact Assessment by the 3rd Respondent and the Council of Ministers violates the provisions of the East African Community law as will be set out in detail below.

D. The EACOP Project have deleterious environmental and ecological effects and is likely to cause irreparable and irreversible damage to the delicate ecosystem of Minziro





Nature Forest Reserve, the Burigi-Biharamulo and Swaga Swaga Game Reserves, Wambabya forest reserve, Bugoma Forest Reserve, Taala Forest reserve, Kasana-Kasambya Forest Reserve and the lake Victoria basin. And these include:

- i) disruption in animal migration;
- ii) driving and scaring away wildlife from the game controlled areas;
- iii) fragmentation of animal habitats and weakening or disappearance ; of an entire generation of a given animal population disruption of the wildlife corridor;
- iv) loss of scenic and visual quality and pollution of water, air and soil;
- v) increased and disruptive vehicular traffic;
- vi) loss of food security and livelihoods

5

10

#### **F. POINTS OF LAW UPON WHICH THIS REFERENCE IS BASED**

39. The Reference is grounded under **Articles 5 (3)(c) , 6 (d) & 7 (2), 8 (1) (c), 23, 27(1), 30, 39, 71(1) (d) 101, 111 (1) (b) & (d), 114 (1) & (2), 105(2), 112, 114 ,116, 120 (c)** of The EAC Treaty; **Articles 2,3,4,6, (a), (e), (c), 12 and 13** of the Protocol for Sustainable Development of Lake Victoria Basin to the EAC Treaty, 2003, **Articles 24, 25, 31, 40(3)** of the Protocol on Environment and Natural Resource Management to the EAC Treaty; and **Rule 4 , 25 (1) ,(2), (3), 132, 133** of the East African Court of Justice Rules of Procedure, 2019.

15

20

40. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents are members of the East African Community, bound by the EAC Treaty which entered into force in the year 2000.

41. The treaty under **Article 5(3)(c)** provides objectives which have to be observed by every partner state wherein the 1<sup>st</sup> and 2<sup>nd</sup> respondents are members.

25

42. Under **Articles 6(d), 7 (2) and 8 (1)(c)**, the 1<sup>st</sup> and 2<sup>nd</sup> respondents must adhere to good governance including the principles of democracy, the rule of law, accountability, transparency, social justice, equal opportunities, gender equality, as well as the





recognition, promotion and protection of human and people's rights in accordance with the provisions of the African Charter on Human and Peoples' Rights.

43. This statement of reference concerns the East Africa Crude Oil Pipeline (EACOP) Project which contravenes East African Community law including the Treaty, Protocol for sustainable development of Lake Victoria basin, Protocol on Environment and Natural Resources Management, the Convention on Biological Diversity, United Nations Framework Convention on Climate Change, the African Charter on Human and people's Rights and the African Convention on Conservation of Natural Resources. 5
44. The 1<sup>st</sup> and 2<sup>nd</sup> respondents' commissioning, signing and implementation of the East Africa Crude Oil Pipeline (EACOP) Project without following East African Community law including the Treaty, Protocol for sustainable development of Lake Victoria basin, the Convention on Biological Diversity, United Nations Framework Convention on Climate Change, the African Charter on Human and people's Rights and the African Convention on Conservation of Natural Resources is illegal, against environmental law protected internationally and regionally, against rule of law and good governance. 10 15
45. Under **Articles 4, 12, 13 and 22 of the Protocol for sustainable development of Lake Victoria basin to the East African Treaty**, projects like the East Africa Crude Oil Pipeline (EACOP) must develop particular environmental impact assessment of planned activities, which are likely to have a significant impact and the significance shall be determined in accordance with the procedures and guidelines developed through a process of public participation by the Secretariat, and approved by the Council of East Africa Community which was not done by the respondents. 20 25
46. Although Total E&P, Uganda (as a developer) carried out an Environmental Impact assessment, the same has not been approved by the 1st respondents' National Environment Management Authority, and it violates **Articles 5 (3)(c), 6 (d) & 7 (2), 8 (1) (c), 101, 111 (1) (b) & (d), 114 (1) & (2), 105(2), 112, 114, 116, 120(c)** 30





of the EAC Treaty; **Article 31** of the Protocol on Environment Natural Resources Management of the EAC Treaty, **Articles 2, 3, 4, 6(a), 12 and 13** of the Protocol for sustainable development of lake Victoria Basin to the treaty for the establishment of the East African Community Treaty, the Convention on Biological Diversity, the United Nations Framework Convention on Climate Change, the East African Community guidelines on transboundary projects, the Constitution of the Republic of Uganda and The Constitution of the United Republic of Tanzania, and the National Environment (Environment Impact Assessment) Regulations of Uganda 1999 and the East African Community Law, yet both respondents have signed agreements to commence the EACOP Project.

47. That, under the Treaty, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have an obligation to uphold the fundamental principles of the community as enshrined under **Article 6(d) and 7(2) of the EAC Treaty**.

48. The EACOP Project is contravening the East African Community Treaty in as far as it is inconsistent with the respondents United Nations' commitments under the Universal Declaration of Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

49. Specifically, the EACOP Project is in contravention of **EAC Treaty Articles 5 (3) (c), 6 (d) and 7 (2)** and is inconsistent with the Respondent's commitments under UN Declarations in so far as it does not provide or consider the right of Peasants and other people working in rural areas to adequate food, adequate nutrition and the fundamental right to be free from hunger, as the project will permanently take away all livelihood and social cohesion tools and pathways to produce food which guarantee





the possibility of enjoying the highest degree of physical, emotional and intellectual development for peasants.

50. The EACOP Project contravenes the East African Community Treaty and UN Declarations in so far as it distorts the peasants and other people working in rural areas conserving and improving biodiversity rights, which constitute the basis of food and agricultural production and food security, which are fundamental to attaining the internationally agreed development goals, including the 2030 Agenda for Sustainable Development.

51. The applicant avers that the Secretary General failed to discharge his obligations of undertaking, whether on his own initiative or otherwise of such investigations, collection of information or verification of matters affecting the Community that appears to merit examination contrary to **Article 71(1) (d)** of the EAC Treaty

#### **G. NATURE OF EVIDENCE**

The Applicant shall rely on several expert documents as evidence to show that there are several Reports by Researchers, Environmental and Social Impact Assessment Experts, among others to show that the EACOP is environmentally and socially untenable as will traverse protected areas in East Africa with undue regard to livelihoods, gender, food security, public health, biodiversity and climate change impacts.

The Applicant shall rely on the following evidence in support of this Reference

- a) Photocopies of the Certificates of Incorporation of the Applicants.
- b) Affidavits
- c) Environment and Social Impact Assessment report for EACOP project
- d) Oxfam research paper entitled, "Empty Promises Down the Line? A Human Rights Impact Assessment of the East African Crude Oil Pipeline"
- e) Flash disks and videos of the impacts of the EACOP project on East Africa;





- f) Any other relevant evidence to support the case with leave of Court.

#### **H. RELIEF SOUGHT BY THE APPLICANT:**

**REASONS WHEREFORE** the Applicant prays that The Honourable Court finds the Reference merited and grants the following orders and declarations:

- i. Declaration that the actions of the 1st and 2nd Respondents in signing the EACOP Project Host Government Agreements and the Inter-governmental Agreement violates and is contrary to **Articles 5 (3)(a), (c) & (3) , 6 (d), 7 (1) (a), (d) & (2) , 8 (1) (c) & (4) , 23 , 27(1) , 30 , 39 , 101(1), (2)(e) & (f), 105(1)(c), 110(d), 111, 112, 114 (1) & (2), 116, 120 (a) & (c), 121(a), 130(1), 151(4)of the Treaty for the Establishment of the East African Community;** 10
- ii. Declaration that the actions of the 1st and 2nd respondent in signing the EACOP Project Host Government Agreements and the Inter-governmental Agreement without an approved Certificate of approval for the project of the 1<sup>st</sup> respondent violates and is 15  
contrary to **Articles 5 (3)(a), (c) & (3) , 6 (d), 7 (1) (a), (d) & (2) , 8 (1) (c) & (4), 101(1), (2)(e) & (f), 105(1)(c), 110(d), 111, 112, 114 (1) & (2), 116, 120 (a) & (c), 121(a), 130(1), 151(4) of the Treaty for the Establishment of the East African Community; and Articles 24, 25, 31, 40(3) of the Protocol on Environment and Natural Resources Management.** 20
- iii. A declaration that signing the agreements by the 1st and 2nd Respondents without the submission of the Environmental Impact Assessment to the 3rd Respondent and approval of the Council of Ministers contravenes **Articles 2, 3, 4, 6, (a), (e), (C), 12 and 13 of The Protocol for Sustainable Development of Lake Victoria Basin to the EAC Treaty.** 25
- iv. A Declaration that the execution of the East African Crude Oil Pipeline through legally protected spaces contravenes the Treaty for the Establishment of the East African





Community **Articles 5 (3)(a), (c) & (3) , 6 (d), 7 (1) (a), (d) & (2) , 8 (1) (c) & (4), 101(1), (2)(e) & (f), 105(1)(c), 110(d), 111, 112, 114 (1) & (2), 116, 120 (a) & (c), 121(a), 130(1), 151(4) of the Treaty for the Establishment of the East African Community; Article 2, 3, 4, 6, (a), (c), (e), 12 and 13 of the Protocol for Sustainable Development of the Lake Victoria Basin to the EAC Treaty.**

5

- v. An Order that the 1st & 2nd Respondents must in constructing the pipeline adhere to the obligations of the East African Community law and National laws on conservation of the environment. 10
- vi. An Order against the 1st and 2nd respondent ensures that, prior to any similar project the following are conducted. 15
  - a) Climate change impact assessment;
  - b) Human rights impact assessment; and
  - c) Meaningful, effective and transparent public consultations ensuring robust community and broad public participation.
- vii. A Declaration that the 3rd respondent failed to discharge its obligations of undertaking, whether on his own initiative or otherwise of such investigations, collection of information or verification of matters affecting the Community that appears to merit examination contrary to **Article 71(1) (d) of the EAC Treaty.** 20
- viii. An order that the 3rd Respondent directs the Lake Victoria Basin Commission to execute its duties in relation to the EACOP as provided under **Articles 2, 3, 4, 6, (a), (e), (C), 12 and 13** of The Protocol for Sustainable Development of Lake Victoria Basin to the EAC Treaty. 25
- ix. A permanent injunction against the respondents from constructing the pipeline through protected spaces in the 1st and 2nd respondent's jurisdiction.





x. An order against the respondents to ensure that, before resuming the project implementation, the mandated authorities ensure that regular environmental, human rights and social impact assessments, with meaningful public participation are conducted.

5

xi. An order that the respondents compensates all project affected persons due to loss already incurred due to restrictions issued on use of their property by the developer and violation of their right to livelihoods.

xii. The Respondents be ordered to pay costs.



10

**TAKE NOTICE** that This Reference is supported by the Affidavits of **Nkasiima Janet**, the Legal Officer of the 1st Applicant, **Dickens Kamugisha** the Chief Executive Officer of the 2nd Applicant, **Deusdedit Valentine Rweyemamu** the Executive Director of the 4th Applicant and such further Affidavits, documents oral and/ or written evidence as may be filed or adduced, as provided for in the Rules of Court, or with the leave of the Court, at the trial.

15

DATED AT KAMPALA THIS 6th DAY OF November 2020

.....  
COUNSEL FOR THE 1ST, 2ND, 3RD AND 4TH APPLICANTS

20

PRESENTED for Filing at The Sub- Registry at Kampala this 07th Day of Nov 2020.

.....  
SUB- REGISTRY CLERK

25



LODGED for Filing at The Sub -Registry at Kampala This..... Day of  
..... 2020

REGISTRAR

**DRAWN & FILED JOINTLY BY:**

**1. M/S SEMUYABA, IGA & CO. ADVOCATES**

**(COUNSEL FOR THE APPLICANT).**

**PLOT 65 BUGANDA ROAD**

**P.O. BOX 12387, KAMPALA**

**Email; justinsemuyaba@gmail.com.**

**2. Dalumba Advocates**

**Plot 652 Gayaza, Kalagi Road**

**P.O.BOX 16141, Wandegaya**

**Kampala.**

**Email; kabada.cefroht@gmail.com , geoobbo13@gmail.com**

**TO BE SERVED UPON:**

**1) Attorney General of the Republic of Uganda,  
Ministry of Justice and Constitutional affairs,  
Plot 5, Parliamentary avenue, Bauman house,  
P.O Box 7183, Kampala, Uganda.**

**2) The Honourable Attorney General of the United Republic of Tanzania,  
Plot 20 inkoni Road,  
P.O Box 9050, 11492 Dar-es-Salaam.**



3) The Secretary General, EAC Headquarters,  
Afrika mashariki road, EAC close,  
P.O Box 1096, Arusha, Tanzania.

5