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Press Release

East African Court of Justice' Appellate Division Dismisses Tanzanian Government Appeal on Planned Serengeti Road

The Appellate Division of the East African Court of Justice has dismissed an appeal by the Tanzanian government against a ruling made by the lower regional court that it not have jurisdiction to preside over an application made by a Kenyan animal welfare organization against Dar es Salaam's plans to build a road across the world famous Serengeti National Park.

Making the ruling in Arusha, the four-judge bench of EACJ's Appellate Division dismissed all the grounds raised by the Tanzanian Attorney General and ruled that the regional Court did indeed have jurisdiction to determine such environmental disputes in the region.

Following this, the court directed that the matter can now go before the lower court for a full trial. "We dismiss all the grounds of appeal and order the matter to be taken back to the court of First Division for a substantial trial" said Justice James Ogolla who read the ruling. Other judges were the President of the EACJ's Appellate Division, Justice Harold Reginald Nsekela, Philip K. Tonui and Lady Justice Emilie Kayitesi Rusera.

"The ruling was very detailed, analytical and dealt exhaustively with the issues raised in the appeal" said Saitabao ole Kanchory who represented the Africa Network for Animal Welfare (ANAW) in the court.

The judges were ruling over a case filed by ANAW which had challenged the Tanzanian government's decision to build a road across the Serengeti. ANAW, a Kenya-based NGO dealing with animal welfare and ecosystems' well-being, filed the case on December 10, 2010, asking the Court to "permanently restrain" Tanzania from upgrading or tarmacking what is called the North Road –or the road from Natta-Mugumu-Klein's Gate-Loliondo Road. Dar es Salaam plans to build a 452 km road as part of its Transport Sector Improvement Program (2002-2012). Initially, it was set to start in early 2012, and was set to become a major transit route between Rwanda, Burundi and Eastern Congo of which a 54.9 km section is meant to pass through the northern part of the Serengeti National Park.

The Kenyan organization had opposed the road on the grounds that if constructed, it would have far-reaching consequences on the Serengeti-Mara ecosystem which is shared between Kenya and Tanzania. But before the matter could be heard and determined by EACJ's First Instance Court, the Tanzanian government filed an application challenging the jurisdiction of the Court to preside over the matter. However, EACJ ruled that it did indeed have such jurisdiction, a thing that Tanzania later contested in the regional Appeal Court on October 19, 2011.

Now, the Tanzanian government has lost again.

“What is of fundamental importance is that the Appeal Court ruled that EACJ does indeed have jurisdiction to determine disputes of an environmental nature in the region” said ole Kanchory.

One-by-one, the Regional Appeal Court dealt a mortal blow to the arguments raised by the Tanzanian Attorney General. The latter had raised four grounds of appeal. Besides arguing that EACJ did not have jurisdiction to preside over the matter, the AG had also posed the Court lacked powers to grant a permanent injunction barring Tanzania from ever putting up the road. Tanzania government had also asked the Appeal Court to dismiss the case on the bases that it was confusing and not properly filed in that ANAW’s court documents claimed it was both a ‘reference’ as well as a ‘notice of motion.’

On Tanzania’s contention that EACJ did not have jurisdiction to entertain regional environmental disputes, Justice Ogola dismissed this saying that the East African community Treaty actually confers such jurisdiction to the regional court. “It is immensely evident that this court has jurisdiction to entertain environmental disputes brought to it...accordingly, we have no reservations at all that the Treaty (does) allows the court to preside over such disputes. In this regard, the first ground of appeal fails.”

On whether EACJ can permanently stop Tanzania from ever constructing the road, EACJ Appellate division ruled that this was an issue that will need to be addressed at the end of the trial and not during the initial stages. “This ground of appeal is premature.” It appeared that the Court was rather harsh to Tanzania on this. For instance, it said that there was ‘no way’ the Court of First Instance could have given such a relief because the case had not even gone through a full trial and termed Tanzania’s application, in this regard, as speculative academic and abstract.

The Appeal court also considered whether ANAW’s application was either a “reference” or a “notice of Motion.” Tanzania had used this as a ground of appeal stating that the case needed to be dismissed as the application documents used the two terms concurrently -which was confusing. But when reading the ruling, justice Ogola cited Mr. Saitabao’s argument that the documents ANAW had filed in court only used the two terms because it was not clear in the regulations governing the operations of the regional court on whether such an applications ought to be “Reference” or “Notice of motions.” The Appeal Judges had concurred with Saitabao’s argument saying that the confusion emanated from the drafting of the EAC Treaty particularly in regard to how the Court ought to operate. “We are of the view that the irregularity is not a fatal one...it can be cured by the lower (regional) court,” said Justice Ogolla.

Further, the Tanzanian government had argued that the First Instance Court had failed to consider the arguments it made before making the earlier ruling. But even this was dismissed by the Appeal Court which ruled that it (the Appeal Court) did not have a role in determining this since such a role was conferred to the First Instance court. “We find that the Appellate Division has no role in determining this” said Justice Ogola.

From this, it appears that Tanzania has no recourse than face ANAW in a full trial. The matter has attracted local and international attention owing to the importance the Serengeti-Mara ecosystem is

to the wider world. Among other things, the ecosystem offers the world a unique annual spectacle in which over a million herds of herbivores (wildebeest, gazelles and zebras), followed by their predators, migrate in a most awe-inspiring 'natural' sight unsurpassed anywhere on earth. It would be interesting to see how Tanzania will react to the ruling bearing in mind that President Jakaya Kikwete had ruled out any negotiation on the matter and was reported to have rebuffed proposals for alternatives including funding offered by the German Development Minister, Dirk Niebel, for a study that would explore an alternative route to connect the relevant communities to the existing road network in Tanzania. On its part, the World Bank had offered to fund the construction of an alternative route.