

**OFFICIAL GAZETTE**



**of the  
COMMON MARKET FOR EASTERN  
AND SOUTHERN AFRICA**

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By Order of the Council

Mr. Erastus J.O. Mwencha, MBS  
Secretary-General  
COMESA

**LEGAL NOTICE NO. 3 OF 2001**  
**RULES OF THE COURT OF JUSTICE, 1998**  
**NOTICE ON INITIATION OF PROCEEDINGS**  
**(Under Rule 10)**

It is hereby notified in terms of Rule 10 of the Rules of the Court of Justice that the following case was registered on 5<sup>th</sup> March, 2001 as IA No. 1 of 2001.

(a) Names of the parties:

The Government of the federal  
Republic of Ethiopia

**vs.**

The Government of the State of  
Eritrea

**(Applicant)**

**(Respondent)**

(b) Address of the Parties:

Applicant:

Head, Legal Services  
Ministry of Transport and Communications  
P.O. Box 1238  
Addis Ababa  
Ethiopia  
**Fax : 251-1-515665/515023**

**Respondent:**

Honourable Minister  
Ministry of Trade and Industry  
P.O. Bo 1844  
Asmara, Eritrea  
**Fax: 00291-1-120586**

(c) Subject matter of proceedings:

The subject matter of the proceedings relates to an Interlocutory Applicant for Stay of proceedings in Reference No. 1 of 1999 pursuant to an agreement between the Government of the Federal Democratic Republic of Ethiopia and the Government of the state of Eritrea, which agreement also provided for the Settlement of disputes between them by Arbitration.

(d) Form of Order sought:

The form of Order sought by the Applicant is that the proceedings of the Main Reference No. 1 of 1999 and the Preliminary Application be adjourned *since die* with leave to the Parties to apply for hearing as and when they may think fit.

Thus done at Lusaka, Zambia, this 31<sup>st</sup> day of July, 2001.

Habben Nkonkesha  
**ACTING REGISTRAR**  
**COMESA COURT OF JUSTICE**

**LEGAL NOTICE NO. 4 OF 2001**  
**RULES OF THE COURT OF JUSTICE, 1998**  
**NOTICE ON INITIATION OF PROCEEDINGS**  
**(Under Rule 10)**

It is hereby notified in terms of Rule 10 of the Rules of the Court of Justice that the following case was registered on 25<sup>th</sup> June, 2001 as Revision No. 1 of 2001.

(c) Names of the parties:

**vs.**

Eastern and Southern African  
Trade and Development Bank  
(PTA Bank) and Dr. Micheal  
Gondwe  
**(Applicants)**

AND

Martin Ogang  
**(Respondent)**

(d) Address of the Parties:

Applicant:

C/O Eastern and Southern Africa  
Trade and Development Bank  
NSSF Building 23<sup>rd</sup> Floor  
Bishops Road  
P.O. Box 488596  
Nairobi  
Kenya

Second Applicant:

C/O Honourable Justice Edward Torgbor  
Enfield House  
Mandela Road, Kileleshwa  
P.O. Box 68092  
Nairobi  
Kenya

Respondent:

C/O Mr James Ochieng Oduol  
Messrs Ochieng Oduol and Company  
Advocate  
Kenchom House, First Floor, Room 150  
City Hall Way  
P.O. Box 43170  
Nairobi  
Kenya

## (e) Subject matter of proceedings:

The subject matter of the proceedings relates to the Application for Revision of the Judgement in Preliminary Application No. 1D/2000 delivered on 29<sup>th</sup> March, 2001 is based on:

- (i) The discovery of the facts set out under paragraphs 10 and 11 of the grounds of Revision that during the hearing the Court raised and questioned the date and validity of the amendments that introduced Article 42 into the Bank's Charter upon which the Applicants immunity from every form of Legal process was founded. That the Court was not persuaded that the relevant amendments were made prior to the COMESA Treaty and stuck to the firm view that:
  - (a) The amendment of the Charter Article 42 was made by the Bank's Governors after the COMESA Treaty had come into force.
  - (b) The amendment was invalid for being in conflict with and ultra vires the COMESA Treaty
- (ii) The COMESA Court was wrong in placing decisive reliance on the defunct original Charter of the PTA Bank
- (iii) The summary dismissal of the Preliminary application on 26<sup>th</sup> March, 2001 without Judgement was in breach of Rule 56 of the Rules of the COMESA Court of Justice and the Order to proceed with the remaining References before a different composition of the Court prior to Judgement on Jurisdiction was a grave error.
- (iv) The Court's decision on costs at the commencement of proceedings without having heard the objection to jurisdiction was erroneous.
- (v) The Bank was misstated in two respects.
- (vi) To hold that Ogang was an employee in COMESA in a COMESA Civil Services for the purpose of Treaty Article is a strained interpretation and patently wrong in fact and law, as his contract was not with COMESA but with PTA bank, distinct and autonomous legal entity empowered by its Charter to conclude its own contracts.
- (vii) The *Locus Standi* was granted on wrong principles
- (viii) The COMESA Treaty enjoins the COMESA Court to act only within the limits of powers given by Treaty and to adhere to the Law.

(f) Form of Order Sought:

The Applicants seek a revision of this Honourable Court's Judgement dated 29<sup>th</sup> March, 2001 on their Preliminary Objection to Jurisdiction and Pray for a declaration and revised Order that:

- (i) The Applicants are immuned from the Legal process of the court by the combined effect of the provisions of the COMESA Treaty and the Charter of the PTA Bank; and
- (ii) The COMESA Court of Justice, therefore, declines Jurisdiction in the References filed by the Respondent.

Thus done at Lusaka, Zambia, this 31<sup>st</sup> day of July, 2001.

Habben Nkonkesha  
**ACTING REGISTRAR**  
**COMESA COURT OF JUSTICE**

**LEGAL NOTICE NO. 5 OF 2001**  
**RULES OF THE COURT OF JUSTICE, 1998**  
**NOTICE ON INITIATION OF PROCEEDINGS**  
**(Under Rule 10)**

It is hereby notified in terms of Rule 10 of the Rules of the court of Justice that the following case was registered on 13<sup>th</sup> July, 2001 as Reference No. 2 of 2001.

(e) Names of the parties:

Kabeta Muleya	vs.	Common Market for Eastern and Southern Africa and Mr. Erastus J.O. Mwencha
<b>(Applicant)</b>		<b>(Respondents)</b>

(f) Addresses of the Parties:

Applicant:

C/O Messrs Chifumu Banda and Associates  
Advocates  
3<sup>rd</sup> Floor, Godfrey House  
Corner Kabelenga Longolongo Roads  
P.O. Box 31025  
Lusaka  
Zambia

Tel: 260-1-238702/233396  
Fax : 260-1-233395  
Email: [chifumub@zamnet.zm](mailto:chifumub@zamnet.zm)

Respondent:

C/O Common Market for Eastern and Southern Africa (COMESA)  
COMESA Secretariat  
P.O. Box 30051  
Lusaka

(g) Subject matter of proceedings:

The matter of the proceedings relates to-

(ix) That the special leave granted to the Applicant by the Secretary General of COMESA was unlawful and is viewed by the Applicant as a disciplinary action taken against the Applicant contrary to Staff Rules.

(ix) The decision not to renew the Contract of Service of the Applicant was not properly before the Council of Ministers following the bottom-up approach, and that the purported non-renewal of the Applicant's contract of service is null and void.

(h) Form of Order sought:

The Applicant is seeking the following Orders from the Court-

- (iii) A declaration that the Staff Performance Appraisal Report in the Applicant's respect be invalidated;
- (iv) The Applicant should continue in his post after the expiry of service and a new Staff Performance Appraisal Report be completed for renewal of contract;
- (v) An Order that the new staff Performance Appraisal report be subjected to the usual bottom-up approach of the COMESA Policy Organs Meetings; and
- (vi) An Order that the Report of the Bureau should be invalidated because the Bureau is not part of the decision making process in the renewal of contracts; as it is the Secretary General of COMESA who should submit the Staff Appraisal Report to the council of Ministers through the Administrative and Budgetary Committee and Inter-governmental Committee.

Thus done at Lusaka, Zambia, this 31<sup>st</sup> day of July, 2001.

Habben Nkonksha  
**ACTING REGISTRAR**  
**COMESA COURT OF JUSTICE**