

COMESA *Court of Justice*

NEWSLETTER

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COMESA Court of Justice
Ensuring Economic Integration by bringing Justice to the Common Market



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Word *from the Registrar*

As we continue to navigate the evolving landscape of regional integration and justice, the COMESA Court of Justice remains a cornerstone of our collective efforts to foster peace, stability, and prosperity in the Common Market for Eastern and Southern Africa (COMESA).

This newsletter serves as an important platform to share our achievements, reflect on our challenges, and offer insights into the pivotal role the Court plays in advancing the rule of law and justice across the COMESA region.

The COMESA Court of Justice is entrusted with ensuring that the principles of justice and equity are upheld in accordance with the provisions of the COMESA Treaty. Our work is vital not only in resolving disputes between Member States, and between Member States and private parties, but also in promoting legal harmonisation and enhancing economic cooperation.

In this edition, we highlight some of the key activities, landmark rulings, and initiatives that have shaped the Court's impact over the past year. From adjudicating on complex legal matters to building partnerships with national and regional stakeholders, the Court's work is integral to the success of the COMESA community. We also share stories of capacity-building initiatives aimed at enhancing the understanding and implementation of COMESA law, particularly at the grassroots



•Honourable Nyambura Mbatia

level.

As we move forward, it is important that we continue to strengthen the institutional capacity of the Court, ensuring it remains accessible, effective, and responsive to the needs of the region. Our commitment to justice, fairness, and the rule of law is unwavering, and through collaborative efforts, we will continue to build a more integrated, prosperous, and

peaceful Africa.

I invite you to read this edition of the COMESA Court of Justice Newsletter with a sense of pride in the strides we have made and with renewed dedication to the goals of regional integration and justice.

*Sincerely,
Honourable Nyambura Mbatia,
FCI Arb
Registrar – COMESA Court of Justice*



•Appellate Division Judges; L-R: Honourable Mr Justice David Chan Kan Cheong, Honourable Dr Justice Michael Mtambo, Honourable Lady Justice Lombe Chibesakunda-Judge President, Honourable Dr Justice Wael Rady and Honourable Lady Justice Salohy Randrianarisoa.

COMESA Court of Justice: Ensuring uniform interpretation, rule of law in regional trade

The Common Market for Eastern and Southern Africa (COMESA) is the largest Regional Economic Community (REC) in Africa, established by a Treaty in 1994. It comprises of 21 Member States. Its aim is to promote regional integration to achieve sustainable economic and social progress in all its Member States through trade and development.

In a regional trading bloc such as COMESA, disputes and conflicts are inevitable as Member States and investors seek to protect their interests in various economic sectors.

One may ask how COMESA Member States manage to trade with each other without flouting the rules and regulations of other members within the region. How do they, and investors seeking new markets in those Member States manage to operate within the confines of the law?

The solution lies in the COMESA Treaty which is the 'Constitution' of COMESA and provides the rules and regulations of engagement for, and among all COMESA Member States. The Treaty is available in three official languages of COMESA, namely, Arabic, English and French. However, there is a risk of the Treaty

being interpreted differently in the 21 Member States and this is where the COMESA Court of Justice (CCJ) comes in to ensure its uniform interpretation and the maintenance of the rule of law within the COMESA Region.

The CCJ was established as the judicial organ of COMESA in 1994 upon the adoption of the COMESA Treaty. Its mandate is derived from the Treaty which is to ensure adherence to the law in the interpretation and application of the Treaty. The Treaty also provides guidelines on the composition of the Court, appointment of Judges, their tenure of office and resignation as well as the jurisdiction of the Court.

The CCJ consists of a First Instance Division and an Appellate Division as stipulated in Article 20 of the Treaty. There are twelve Judges appointed by the Authority, of whom seven are appointed to the First Instance Division and five to the Appellate Division. The twelve Judges are drawn from different COMESA Member States.

The President of the Court who also heads the Appellate Division is Honourable Lady Justice Lombe Chibesakunda from Zambia. The First Instance Division is headed by the Principal Judge, Honourable Lady Justice Qinisile Mabuza

from Eswatini. The Registrar is Honourable Nyambura Mbatia who is the Chief Executive Officer of the Court and oversees the day-to-day administration of the business of the Court.

On its jurisdiction, Article 23 of the Treaty provides that the CCJ shall adjudicate on all matters which may be referred to it pursuant to the Treaty. Accordingly, disputes that may arise from the interpretation and application of the Treaty may be brought before the CCJ by a Member State, the Secretary General or a legal and natural person against a Member State, COMESA and any of its Institutions. The CCJ also has jurisdiction to adjudicate on arbitration matters which includes investor state disputes.

In accordance with Article 30 of the Treaty, national courts or tribunals may also request the CCJ to give a preliminary ruling, where a question concerning the application or interpretation of the Treaty or the validity of regulations, directives and decisions of the Common Market is pending before them.

The Court also renders advisory opinions on written request of the Authority, the Council or a Member State on a question of law arising from provisions of the Treaty as per Article 32 of the Treaty.



•From L – R: Honourable Mr. Ali Sulaiman Mohammed, Honourable Lady Justice Clotilde Mukamurera, Honourable Dr. Justice Léonard Gacuko, Honourable Lady Justice Qinisile Mabuza (Principal Judge), Honourable Mr. Justice Bernard Georges, Honourable Lady Justice Mary N. Kasango and Honourable Mr. Justice Chinembiri Bhunu

CCJ enhances operational effectiveness with new structure, Judges' terms of service

In its 2021-2025 Medium Term Strategic Plan, the CCJ states that its overall objective is to enhance the dispensation of justice. In the strategic plan, several activities have been outlined to help the Court meet its objectives.

The COMESA Council of Ministers in 2014 made decisions aimed at improving the Court's structural capacity, and approved the review of the organisational structure, the carrying out of a staffing gap assessment. In 2015, Council made a further decision for the review of the terms and conditions of service for judges.

To carry out these assignments, the CCJ engaged two consulting firms to undertake an assessment of its organisational structure and review of the terms and conditions of service of judges.

The HR consultant's findings revealed that the organisational structure was insufficient to meet the evolving organisational needs of the Court. To execute its mandate, the CCJ had to reorganise its structure to make it more

effective and efficient.

The previous structure of the CCJ had a lean staff complement which only consisted of six professional staff and ten general service staff. This led to uneven workload distribution and hindered operational effectiveness. The consultant recommended a revamped organisational structure,

'The CCJ also reviewed the terms and conditions of service for judges, as outlined in its strategic plan.'

comprising 32 full-time staff, from the previous 15. This expansion is aimed at enhancing operational effectiveness to enable the CCJ to fully implement its strategic plan.

The consultant also conducted a workload analysis, by benchmarking it with other organisations while applying best practice principles, after which, it designed a structure that was in line with the CCJ's mandate and strategic

objectives.

The CCJ also reviewed the terms and conditions of service for judges, as outlined in its strategic plan. This was after recognising the importance of establishing comprehensive terms and conditions of service for Judges and the need to attract the best legal minds to serve as judges of the CCJ.

Since the appointment of the first judges in June 1998, there have been no formal terms and conditions for judges. Judges only had a letter of appointment serving as the sole document that outlined their terms of service.

However, in 2023, the CCJ successfully developed and approved new terms and conditions of service for judges. This milestone ensured that the welfare of judges was well taken care of, and it provided clarity and transparency regarding their benefits and emoluments.

In conclusion, the CCJ's adoption of a new organisational structure and formalisation of the terms and conditions of service for judges signified a milestone in enhancing organisational effectiveness and ensuring the well-being of its judges and staff. These initiatives underscore the Court's commitment to operational excellence and adherence to best practices in governance and human resource management.

Court adopts SMART Performance Management System

'With the new system, clarity and specificity in goal setting and performance evaluation is guaranteed. Its emphasis is on Specific, Measurable, Achievable, Relevant, and Time-bound (SMART) objectives, to ensure that every member of staff understands their role and contributes towards achieving the CCJ's goals, objectives and mandate.'

The COMESA Court of Justice has been undertaking some staff reforms to have an effective administrative and justice delivery system.

The CCJ reviewed its organisational structure to address of some of the inefficiencies that were associated with having a lean staff complement. It also reviewed the working conditions for judges improving their terms and conditions of service.

The CCJ has now adopted the SMART Performance Management (SPM) system to foster a high-performance culture that drives excellence and innovation at every level of the CCJ.

Indeed, the new system can show the contribution of each employee at individual level and to the overall objective and mandate of the CCJ. The SPM replaced the traditional Balance Scorecard Approach (BSA), which used static annual reviews.

The decision to adopt the SPM was driven by its numerous advantages over the

traditional BSA.

With the new system, clarity and specificity in goal setting and performance evaluation is guaranteed. Its emphasis is on Specific, Measurable, Achievable, Relevant, and Time-bound (SMART) objectives, to ensure that every member of staff understands their role and contributes towards achieving the CCJ's goals, objectives and mandate.

This clarity fosters alignment and accountability, empowering staff to make meaningful contributions towards achieving the Court's strategic objectives, vision, and mission.

Furthermore, the SPM facilitates a feedback loop that promotes ongoing communication and development. It encourages regular check-ins and feedback sessions between supervisors and staff.

This approach cultivates a culture of continuous learning and improvement, where strengths are celebrated, and areas for growth are identified and addressed in real-time.

The adoption of new system reflects the CCJ's commitment to fostering a high-performance culture that drives excellence and innovation at every level of the CCJ.



•Registrar of the Court Honourable Nyambura Mbatia (Fourth from left) pose for a photo with Members of Staff during the CCJ Staff Development Programme held in Nanyuki, Kenya last year.



•Honourable Lady Justice Mary Kasango(L) and Honourable Lady Justice Qinisile Mabuza(R) during the tour of the Court of Justice of the European Union (EU) in Luxembourg last year.

Judges tour EU Court of Justice



Honourable Lady Justice Qinisile Mabuza (L) and Honourable Lady Justice Mary Kasango(R) during the tour of the Court of Justice of the European Union (EU) in Luxembourg last year.

Study tours are important for learning and gaining new skills and knowledge. This is the reason why the Court places a lot of emphasis on study tours for exposure, experience exchange, and knowledge development.

In 2022 and 2023, the CCJ undertook study tours to the Court of Justice of the European Union (EU) in Luxembourg.

The visiting teams learnt that the Court of Justice of the EU was established in 1952 to ensure that the law was observed in the interpretation and application of the EU Treaties, similar to the mandate of the COMESA Court of Justice. The EU Court is divided into

two Courts; the Court of Justice, which has 27 judges and 11 Advocates General, and the General Court comprising 54 judges. It has 2,500 members of staff and the average duration of a case in court is 16.2 months.

The visitors were told that the Court of Justice deals with requests for preliminary rulings from national courts, certain actions for annulment and appeals from the General Court. It uses 24 languages, but the decisions are translated in all the languages of the Member States.

The visiting judges also had the privilege of sitting in the Court of Justice at the Grand Chamber, before concluding their visit with the library, where the librarian did confirm that the library would be willing to offer the COMESA Court of Justice assistance with research when needed.

In July 2023, the COMESA Court of Justice (CCJ) participated at the 13th Pan-African Lawyers Union (PALU) Conference held at Avani Hotel in Livingstone, Zambia. Four Judges and Registry Staff participated at the Conference. This was to gain insight into Africa's debt crisis, and to understand diverse areas of discussions that would help the CCJ execute its mandate, as it adjudicates over matters cutting across various economic sectors.

PALU was founded in 2002 by African bar leaders and eminent lawyers, to reflect the aspirations and concerns of the African people, as well as to promote and defend their shared interests.

The theme of the Conference was: 'The Sovereign Debt Crisis in Africa: The Role of the Legal Profession.' The theme was timely because most African countries are heavily indebted and are exploring avenues of getting out of their debt crisis.

Despite Africa's debt crisis affecting various sectors of the economy, there is little input from the legal fraternity on the subject matter. The discussions around debt are usually engineered by economists, financial experts and accountants that are perceived to be more knowledgeable about the subject. The Court seized the opportunity to enhance its knowledge on Africa's debt crisis because the conference's agenda resonated with the CCJ's strategic priorities.

Participants discussed an array of topics; in the business section, deliberations focused on recent developments in Arbitration, Mediation, the Oil and Gas industry and the African Continental Free Trade Area (AfCFTA).

Other areas of discussions were Advocacy on Women, Law and Justice, International Legal Practice, and the Implications of Artificial Intelligence (AI) on the legal profession.

The Public Interest and Development Law

CCJ engages in vital discussions on Africa's debt crisis at PALU Conference

segment featured a masterclass on economic justice, discussions on the implementation of decisions from the African international courts and tribunals, and considerations regarding the protection of civic space, freedom of expression, and digital rights in Africa.

Regarding the sovereign debt crisis, attendees engaged in legal analyses and explored the intricacies of debt contracts, emphasising the importance of transparency and accountability in debt management.

Issues of tax reforms were also discussed, highlighting imbalance in the global tax architecture and harmful practices contributing to illicit financial flows.

Climate change was a significant concern, with emphasis placed on Africa's vulnerability, human rights implications, and the need for legal action to address the crisis.

The Registrar Honourable Nyambura Mbatia was on a panel discussion titled "Accelerating African Integration through Free Movement and the Single African Market: Lessons Learnt." The Registrar addressed the question of harmonisation of laws, policies, and frameworks to achieve free movement of people, labour, and services. She specifically recognised the achievements of the one-stop border posts in Africa that are promoting the free movement of people and facilitating cross-border trade.

Honourable Justice Bernard Georges also served as a panellist during the session focused on the implementation of decisions from African international courts and

tribunals, with an emphasis on the role of lawyers and lawyers' associations. During the session, Justice Georges stated that "one of the key challenges affecting the implementation of decisions from African regional courts was the reluctance of member states to cede their sovereignty."

The Judge noted this reluctance hinders the effective translation of regional decisions into concrete actions at the national level potentially undermining the overall effectiveness and impact of the regional courts and tribunals.

Recommendations were made during the meeting on the need to strengthen laws governing debt management, including the formulation of model debt contracts and clauses.

Participants at the meeting pledged to combat corruption and illicit financial flows, through strategic litigation and support for international tax reform initiatives. Capacity-building was also proposed in finance issues, public interest litigation, and judicial analysis.

In conclusion, participants affirmed their commitment to advancing legal reforms, capacity-building initiatives, and public interest litigation efforts to support Africa's development agenda.

Urgent action was called for to operationalise the African judicial architecture, emphasising the crucial role of the African Court of Justice in promoting justice and accountability across the continent.



•L-R: Deputy Registrar Honourable Philippe Ruboneza, Honourable Mr Justice Bernard Georges, Honourable Justice Qinisile Mabuza-Principal Judge, Honourable Mr Justice Chinembiri Bhunu, Registrar Honourable Nyambura Mbatia, Assistant Registrar and Honourable Mr Asiimwe Anthony pose for a photo during the PALU Annual Conference held in Livingstone, Zambia last year.



L-R: Ms Alice Wangari, Honourable Dr Justice Michael Mtambo, Honourable Lady Justice Salohy Randrianarisoa, Honourable Lady Justice Clotilde Mukamurera, Honourable Mr Asimwe Anthony and Mr Bedlu Asfaw during the 28th East Africa Law Society Annual Conference and General Meeting held in Bujumbura, Burundi, last year.

CCJ strengthens regional legal engagement at EALS Conference

The COMESA Court of Justice has continued building the capacity of its Judges for knowledge enhancement. This guarantees gainful insights into various fields of study to promote efficiency in the dispensation of justice.

The CCJ attended the Twenty-Eighth East Africa Law Society Conference and General Meeting from November 22,

to November 25, 2023 in Bujumbura, Burundi, where deliberations aligning with its commitment to continuous learning, institutional strengthening, and active engagement on regional legal issues were held.

The theme for the Conference was 'One Region, one People: The Role of the Law and the Legal Profession in defining the Future of the East African

Community'.

The theme resonates well with the CCJ's commitment to attain visibility, efficiency in the dispensation of justice, and institutional strengthening, as outlined in its 2021-2025 Medium Term Strategic Plan.

Topics discussed included: Trade and Investment in the East African Community; Environmental, Social, and Governance (ESG) framework

and other Emerging Trends in Corporate and Commercial Law; and Artificial Intelligence and the Law: Are we ready for the Future? Other issues deliberated on were Good Governance and Accountability in East Africa; the Role of the Law and the Legal Professional in the Regional Integration Process; and the Dispute Resolution under the African Free Continental Trade Area and other Regional Trade Agreements.

By actively participating in the conference, the CCJ sought to contribute to the discourse on the role of the legal profession in regional integration in Africa.

Some highlights of the conference included the need to raise awareness of the legal challenges and opportunities in judicial systems and fostering collaboration among legal professionals, strengthening the CCJ's position as a key player in the regional legal landscape.

In conclusion, the CCJ's participation in the EALS annual conference aligned with its commitment to continuous learning, institutional strengthening, and active engagement with regional legal issues.



•Ms Alice Wangari attends to former Chief Justice of the Republic of Kenya Honourable David Maraga and Honourable Dr Justice Michael Mtambo at the COMESA Court of Justice stand during the 28th East Africa Law Society annual conference and general meeting held in Bujumbura, Burundi last year.

2024 Judges retreat focuses on enhancing regional integration and justice delivery

The COMESA Court of Justice (CCJ) started the year 2024 on a high note by hosting the CCJ Judges retreat in Siavonga, Zambia. The retreat had several distinguished speakers, who deliberated on issues concerning the CCJ.

His Lordship Deputy Chief Justice of the Republic of Zambia, Honourable Justice Michael Musonda, Honourable Professor Samuel Rugege, the Chief Justice Emeritus of the Republic of Rwanda and Principal Judge Emeritus of the COMESA Court of Justice and Honourable Lady Florence Mumba Judge Emeritus of the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda participated in the retreat.

Dr Simon Ng'ona, Director of Foreign Trade in the Ministry of Commerce, Trade and Industry in Zambia, and Counsel Tewodros Getachew, then Vice-President of the Pan African Lawyers Union (PALU) and at the time Interim President of the Ethiopian Bar Association were among the other participants who attended the retreat and addressed Judges.

Topics discussed were important in the dispensation of justice and the dignified speakers gave their insight on various discussions. Topics centred on the rule of law, upholding ethical standards and promotion of economic integration within the COMESA region.

Other areas of discussion were the exhaustion of local remedies in regional courts, drawing lessons from landmark cases that shaped the jurisprudence in formulating community law. This discussion was vital for the evolution of

legal frameworks, as it addressed the intricate balance between regional and local legal remedies.

The retreat also focused on judicial ethics at regional and international courts, emphasising judicial conduct and independence. Most crucial during the retreat was the discussion on the CCJ's pivotal role in promoting regional integration. Lastly, the retreat delved into the interface between the legal fraternity and the CCJ.

In her remarks, Honourable Lady Justice Lombe Chibesakunda, President of the CCJ reminded Judges about the CCJ's mission and vision.

The President further said; "Your insights therefore will contribute to shaping a legal landscape that facilitates economic growth and cooperation."

Dr Ng'ona, emphasised the need to raise awareness on the existence of the CCJ in resolving disputes. He said that the CCJ should be publicised in the private sector, as it is a key actor in the CCJ's operations. He continued by saying that the CCJ was instrumental in the attainment of the required equity and accountability in the trading system.

"The diversified composition of the Court gives aggrieved members confidence to bring trade disputes to the COMESA Court of Justice," he said.

Dr Ng'ona, however, said the delayed dispute resolution negates any positive efforts towards the attainment of deeper regional integration. He said that unresolved cases affect the distribution of wealth and resources, a prerequisite to boosting economic activities and enhancing consumer and producer welfare.

Honourable Justice Professor Samuel Rugege focused on analysing and

understanding the application of the rule of exhaustion of local remedies, stipulated under Article 26 of the COMESA Treaty. He stated that the rule was not absolute but was subject to the qualification that local remedies must be available, effective, and sufficient.

Honourable Lady Justice Mumba touched on the issue of ethical standards expected from judges serving in regional and international courts. She said judicial officers require just more than good manners but must have confidence in adjudicating their cases.

"Only the law, procedure and evidence on record can guide the adjudicators and no influence should be entertained," she said.

Honourable Justice Michael Musonda discussed how the CCJ could enhance its pivotal role in the promotion of economic integration within the COMESA region. He observed that collaboration between the legal fraternity and the CCJ was not only beneficial but essential for integration.

Counsel Tewodros spoke about the interface between the legal fraternity and the CCJ. He stated that the CCJ needed to increase its visibility through awareness, as its services are underutilised. He also mentioned that the CCJ lacked mobilised constituencies such as a regional bar associations or Non-Governmental Organisations, (NGOs) to bring cases before it like is the case in many other regional blocs.

In conclusion, he said that the CCJ could be a vibrant regional organ which could play a pivotal role in promoting regional integration through trade and investment by providing security and predictability to the COMESA trading system.



• CCJ Judges and delegates at the Judges retreat held in Siavonga, Zambia last year.

Court extols late Honourable Justice Akiwumi Akiwumi – its second Judge President

Justice Akiwumi, who served as the second Judge President of the COMESA Court of Justice from 2000 – 2003 passed away on February 14, 2024. In February 2000, Justice Akiwumi assumed the mantle of leadership as the President of the Court, a role he held until 2003.

Justice Akiwumi was an accomplished Judge whose unwavering commitment to justice, fairness and the rule of law will be fondly missed by his colleagues in the judicial system. Justice Akiwumi's profound influence within Kenya and across the COMESA region reverberates through his legacy of judicial integrity, wisdom, and dedication to cross-border collaboration.

Born in Ghana, Justice Akiwumi embarked on a distinguished legal career that spanned decades, leaving an indelible mark on the jurisprudential fabric in Kenya and the COMESA region. He served as a Judge of the High Court of Kenya from 1987 to 1993 and later as a Judge of the Court of Appeal until his retirement in 2001.

His tenure at the helm of the COMESA Court was marked by a visionary approach to regional judicial cooperation and the advancement of legal harmonisation across Member States.

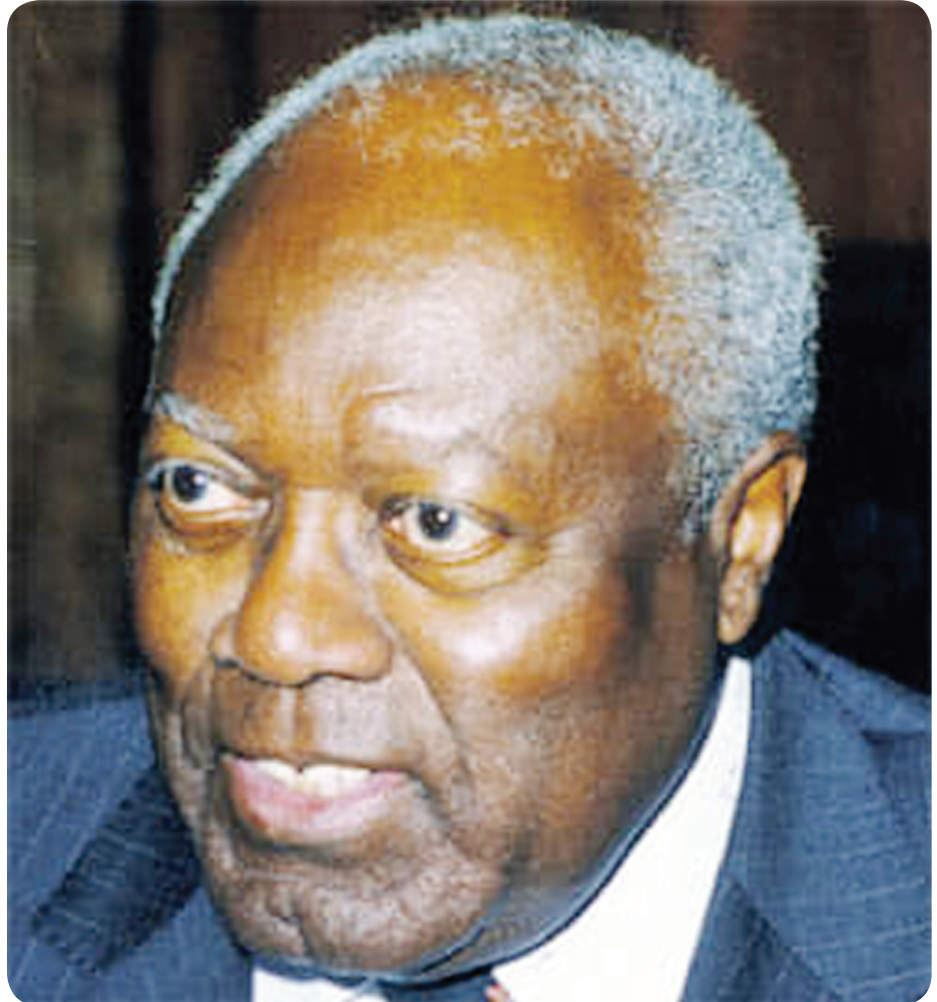
While in office, Justice Akiwumi championed cross-border judicial collaboration and comparative co-development, laying the foundation for a robust legal framework within the COMESA region.

His visionary leadership fostered a culture of legal innovation and cooperation, strengthening the foundations of economic integration and regional development.

One of the landmark cases during Justice Akiwumi's tenure at the CCJ was the Republic of Kenya and Commissioner of Lands vs. Coastal Aquaculture Limited (Reference No. 3 of 2000), decided on October 19, 2001.

In this case, the CCJ emphasised the importance of exhausting domestic remedies before seeking redress at the regional level, as provided under 26 of the COMESA Treaty.

Another notable ruling under



•Justice Akiwumi

‘While in office, Justice Akiwumi championed cross-border judicial collaboration and comparative co-development, laying the foundation for a robust legal framework within the COMESA region.’

his stewardship was in the case of COMESA vs. Kabeta Muleya (Revision Application No. 1 of 2002), delivered on October 16, 2002. The Ruling reaffirmed the CCJ's commitment to upholding the integrity of its judgments while underscoring the limited scope of revisionary powers.

As CCJ bids farewell to a towering

figure in the annals of regional justice, it honours the late Judge's enduring legacy and pledges to uphold the principles of justice, fairness, and collaboration that he so passionately championed.

May his memory serve as a guiding light for the future of the legal profession and regional integration within the COMESA region?



•By embracing technology, aligning with the COMESA Treaty, and refining its processes, the Court is now better equipped to meet the needs of Member States.

CCJ revamps rules of procedure to embrace technology and enhance efficiency

In a move aimed at streamlining judicial processes and embracing technological advancements, the COMESA Court of Justice convened its full bench of Judges in Addis Ababa, Ethiopia, to review and amend the Court's Rules of Procedure (2016).

These amendments were part of the Court's broader efforts to modernize its operations, enhance efficiency, and improve access to justice throughout the COMESA region.

Key to the amendments was aligning the Rules more closely with the COMESA Treaty, improving clarity, and ensuring the Rules reflect modern legislative drafting standards, making them clearer, more precise, and easier to interpret.

A significant focus of the amendments was the integration of technology into court procedures. The introduction of electronic

filing, virtual hearings, and digital communication channels is expected to make court processes more accessible to parties across the region. These updates are aimed to reduce delays, lower costs, and ensure that justice is delivered in a timely and transparent manner.

This revision marks a significant milestone in the Court's ongoing

efforts to promote regional integration, strengthen the rule of law, and ensure its effectiveness in resolving disputes within the COMESA region. By embracing technology, aligning with the COMESA Treaty, and refining its processes, the Court is now better equipped to meet the needs of Member States, as well as the businesses and individuals that rely on its services.

‘Key to the amendments was aligning the Rules more closely with the COMESA Treaty, improving clarity, and ensuring the Rules reflect modern legislative drafting standards, making them clearer, more precise, and easier to interpret.’



- The Evexia Commercial Complex in Lusaka, Zambia housing the Comesa Court of Justice.

Court registry relocates to Zambia

The Court's Registry Office was initially housed at the COMESA Secretariat in Lusaka, Zambia from 1998 to 2002. However, in 2003 the COMESA Authority decided that the Seat of the Court be hosted by the Republic of Sudan, in Khartoum, Sudan. The CCJ shifted to Khartoum in 2005 but faced operational challenges, forcing it to relocate to Lusaka in 2007.

Then, the CCJ's decision to move back to Zambia was prompted by the need to effectively address challenges and ensure its continued functionality. After a seven-year temporally stay in Zambia, the CCJ moved back to Khartoum in 2014, where it again continued to face operational challenges, fuelled by economic sanctions and political instability.

These factors significantly impacted the CCJ's operations, necessitating adaptive measures such as operating away from the Seat or virtually. However, this mode of operation compromised the security and welfare of Judges, staff, and litigants, hindering easy access to the CCJ's services. Moreover, the

deteriorating security situation in Khartoum, became untenable.

The COMESA Ministers of Justice and Attorney General in September 2023 granted the Court its request to temporally relocate to Lusaka, Zambia.

The Registry of the CCJ is now housed at Evexia Commercial Complex along Church Road in Lusaka. Its relocation aligns with the CCJ's commitment to ensure operational stability, security, and accessibility for all stakeholders.



- NEW Comesa Court of Justice offices at Evexia Commercial Complex in Lusaka, Zambia.

Court marks 30th anniversary with activities across the region

As the COMESA Court of Justice commemorates its 30th anniversary this year, it has lined-up several activities leading up to the event.

To commemorate its 30 years of existence, the CCJ participated in COMESA Week and the Fifth COMESA Federation of Women in Business (COMFWB) Trade Fair and Conference in Antananarivo, Madagascar held from June 24 to June 29, 2024.

The CCJ sponsored the Fifth COMFWB Trade Fair and Conference and took advantage of the event to showcase its services to the participants.

Some of the activities undertaken during COMESA Week included a multi-stakeholder's dialogue meeting, COMESA exhibition, outreach activities, the Fifth COMFWB Trade and Business Conference and Media Sensitisation.

To increase its visibility, the CCJ participated in media sensitisation to raise awareness about COMESA and the activities of the CCJ to the Journalists.

An exhibition was held, where the CCJ had an opportunity to explain its operations to participants,



•L-R: Court Registrar Honourable Nyambura Mbatia, Manager Budget and Finance, Mr Essayas Simon and Senior Administrative Assistant Ms Lubaba Sinnary during the COMESA Week held in Madagascar in June last year.

including sharing its physical and digital materials with them.

The Registrar of the Court, Honourable Nyambura Mbatia, participated in a panel of discussion titled the 'Role of Institutions in promoting Regional and Continental Economic and Trade Integration'.

During the discussion, she highlighted the role of the CCJ in promoting economic integration through dispensation of justice in trade related disputes and the

maintenance of the rule of law.

On a different occasion, Honourable Mbatia has stated that the COMESA Week held in Madagascar signified the beginning of activities lined-up to commemorate the Court's anniversary.

"The activities to commemorate our 30 years anniversary started last month. We had the COMESA Week in Antananarivo, Madagascar, where we showcased various COMESA activities, and the Court was

involved.

During the COMESA Week, we visited two universities in Antananarivo to talk about COMESA and what it does in general, the trade aspects of the bloc as well as its judicial arm," Honourable Mbatia said.

She said this year, COMESA will hold its Heads of States and Government Summit in Bujumbura, Burundi and the CCJ will take advantage of the event to explain its mandate to the stakeholders.

"This year, we are also going to go to Tunisia for another COMESA activity, there, we are going to showcase what COMESA and its Organs do," she said.

Honourable Mbatia said a Gala dinner will also be held in November this year to commemorate COMESA's 30 years of existence.

In 2024, the CCJ will also focus on increasing its visibility by conducting circuit court sittings in different Member States to talk about its activities. "We will also be talking to lawyers and university students so that they know what the Court is all about. They should know that there is another alternative dispute mechanism within the region" she said.



•CCJ Registrar Honourable Nyambura Mbatia (2nd R) during the COMESA Week held in Madagascar last year.

CCJ tackles judicial corruption at CMJA Kigali conference

In September this year, the CCJ attended the CMJA Annual Conference that was held in Kigali, Rwanda, where the Registrar Honourable Nyambura Mbatia delivered an eye-opening address on judicial corruption, calling for critical reforms across multiple areas.

Her presentation highlighted four key themes, emphasising the need for transparency, accountability, and reform to combat corruption within judicial systems.

Honourable Mbatia addressed the pervasive reluctance to expose corruption in the judiciary, pointing to the deep-rooted fear of repercussions.

"Corruption in the judiciary is not an easy topic to speak about for several reasons," she said, noting that many people fear unwarranted retaliation if they report misconduct.

This fear is particularly concerning as it creates an environment where corrupt practices thrive unchecked.

She cited the case of Kenyan editor Tony Gachoka, who in 1999, boldly accused Kenyan Court of Appeal judges of accepting bribes in connection with the notorious Goldenberg scandal. Gachoka's allegations led to contempt charges, with the Attorney General arguing that his claims attacked the integrity of the judiciary. "This case illustrates the hesitation and fear that grips people when it comes to speaking out against corruption," Honourable Mbatia noted.

During her address, the Honourable Registrar underscored the complex relationship between safeguarding judicial independence and investigating corruption within the judiciary.

She highlighted how the separation of powers essential to upholding the rule of law can be compromised when the judiciary is influenced or retaliated against by the executive arm of government.

The Honourable Registrar referenced the landmark case of *Mike Campbell (Pvt) Ltd v Republic of Zimbabwe* (2008), where the Southern African Development Community (SADC) Tribunal ruled against the Republic of Zimbabwe's compulsory acquisition of land. The Tribunal found that the applicants were denied access to courts and faced racial discrimination.

However, Zimbabwe's government refused to enforce the decision, leading to the Tribunal's eventual suspension.

In her address, she went on to expressed skepticism about the belief that better remuneration deters corruption among judicial officers. She argued that while low pay might create temptation, higher salaries alone do not eliminate corrupt practices.

Honourable Mbatia pointed out that even in jurisdictions where judicial officers are well-compensated, corruption still exists.

The root issue, she noted, lies in the values upheld at both individual and institutional levels. "Leadership plays a key role, and if those heading judiciaries fail to act against corruption, impunity can prevail," she remarked.

Honourable Mbatia also addressed the effectiveness of wealth declaration as a tool for combating judicial corruption.

She said while wealth declaration have the potential to enhance transparency and accountability, its success depends on strict enforcement and independent audits.

Honourable Mbatia, however, said in many cases, wealth declarations

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Registrar Honourable
Nyambura Mbatia***

are poorly enforced, with little follow-up unless a complaint is filed, rendering the system ineffective.

She attributed this to a lack of funding, capacity, and commitment to making the process work, calling the current system largely ineffective in achieving its intended goals.

At the same conference, Honourable Justice Mary Kasango presented a comprehensive paper on the Role of Alternative Dispute Resolution

(ADR) Mechanisms in Promoting Environmental Justice.

Her presentation highlighted the critical importance of ADR, particularly arbitration and mediation, as effective tools for resolving cross-border environmental disputes.

A key part of Justice Kasango's presentation focused on the New York Convention and the Singapore Convention, which play a vital role in ensuring the enforceability of ADR outcomes across borders. The New York Convention, ratified by 172 states as of 2023, provides a framework for the recognition and enforcement of foreign arbitral awards.

This Convention fosters certainty and predictability by ensuring that arbitral awards are recognised and enforced in contracting states, provided that the parties meet specific procedural requirements.

Similarly, the Singapore Convention, although newer and with fewer ratifications, establishes a framework for the enforcement of international settlement agreements resulting from mediation. Justice Kasango emphasised that while the Singapore Convention does not include a reciprocity reservation, it has the potential to transform cross-border mediation by providing a clear legal framework for enforcing settlement agreements globally.

Justice Kasango argued that the reciprocal enforcement of arbitral awards and mediated settlements is crucial in ensuring certainty, reducing re-litigation, and promoting equality in the treatment of disputes across jurisdictions. This is especially important in environmental disputes, which often involve parties from different countries affected by transnational environmental crises like climate change and pollution. In her conclusion, Justice Kasango called on countries to ratify the Singapore Convention and to fully embrace the reciprocity provisions of the New York Convention to enhance the enforceability of ADR outcomes. By doing so, countries can strengthen the role of ADR in addressing global environmental challenges, ensuring that vulnerable communities have access to justice and equitable solutions in environmental disputes.

This year's third COMESA Regional Judges brought together key figures in the region's legal landscape to discuss the intersection of competition, consumer protection, and economic development

The workshop held at the Labourdonnais Waterfront Hotel in Mauritius from October 1 to October 2, 2024 was organized by the COMESA Competition Commission (CCC). It explored critical issues surrounding regional integration, with a particular focus on the relationship between Community law and national legal frameworks.

One of the standout contributions came from Honourable Dr Justice Wael Rady of the COMESA Court of Justice, whose paper delved into the complexities of balancing the supremacy of COMESA's regional law with the sovereignty of its Member States. Justice Rady highlighted the ongoing resistance within many states to fully embrace the supremacy of Community law, despite its clear mandate under the COMESA Treaty.

Under Article 5 of the COMESA Treaty, Member States are required to ensure that provisions with direct effect are enforceable within their domestic legal systems. Additionally, Article 10 mandates that regulations and directives from the Council of Ministers are binding across all Member States, making regional law superior to conflicting national laws. Yet, in practice, many states have failed to establish the necessary mechanisms for enforcing Community law, leading to hesitation in ceding authority to regional bodies like the CCC.

Justice Rady noted that although some Member States explicitly recognize the supremacy of

Navigating sovereignty and integration: COMESA Judges workshop explores regional law dynamics

international law in their constitutions, the process to domesticate international law is often cumbersome. Without proper transformation processes, national courts are frequently reluctant to recognize or enforce international regulations, including those arising from COMESA.

A notable case referenced by Justice Rady was the Polytol

focused on the jurisdiction of the COMESA Competition Commission, specifically the criterion of whether an agreement impacts trade between Member States. This determination is crucial for ensuring that the CCC can exercise its authority over national competition bodies, and the interpretation of this criterion will significantly influence the effectiveness of the COMESA Competition regulations.

In conclusion, Justice Rady emphasised that the future of regional integration in COMESA depends largely on how the COMESA Court of Justice navigates the delicate balance between Community law and national sovereignty. He argued that the Court plays a pivotal role in defining the scope of regional law, and the way national courts respond to the Court's rulings will shape the future trajectory of legal

harmonisation and integration across the region.

The workshop underscored the importance of overcoming legal and institutional hurdles to foster deeper regional integration. As regional law continues to evolve, the role of the COMESA Court of Justice in clarifying and enforcing the relationship between community law and national legal systems will remain central to the success of the region's economic and legal integration.

‘Justice Rady emphasised that the future of regional integration in COMESA depends largely on how the COMESA Court of Justice navigates the delicate balance between Community law and national sovereignty.’

Case, where the COMESA Court of Justice affirmed the supremacy of the Treaty over national laws, even when the member state's legal system follows a dualist approach, requiring international law to be domesticated before it can be applied domestically. The case underscored the importance of the Treaty's supremacy, but also highlighted the limitations of enforcing community law in Member States with dualist legal systems.

Justice Rady's paper also



•Registrar of the Court Honourable Nyambura Mbatia(L) and Deputy Honourable Philippe Ruboneza(R) during a court sitting at Kenneth Kaunda International Conference Centre in Lusaka, Zambia.

A synopsis of some landmark decisions

Over the years, the COMESA Court of Justice (CCJ) has delivered several important rulings that have significantly contributed to the jurisprudence of the COMESA region. These decisions have addressed issues ranging from trade disputes to competition law and the interpretation of Treaty provisions. Below are summaries of some key cases handled by the Court that highlight its crucial role in promoting justice and regional integration.

Polytol Paints & Adhesives Manufacturers Co. Ltd Vs The Republic of Mauritius (Reference No. 1 of 2012)

This case, decided on 31 August 2013, centred on Mauritius' breach of COMESA Treaty provisions. Polytol Paints & Adhesives, a company based in Mauritius, imported paint products from Egypt, another COMESA member state. Under Article 46 of the Treaty, Mauritius was obligated to eliminate customs duties on imports from other COMESA member states by 2000. While initially complying, Mauritius reintroduced a 40% customs duty on certain products from Egypt in 2001, including the paint products in question. Polytol Paints challenged this reimposition, seeking a refund for the duties it paid and other remedies.

The CCJ ruled in favour of Polytol Paints, holding that Mauritius violated Article 46 of the Treaty by

reintroducing customs duties, thus breaching the free trade provisions within COMESA. The Court rejected Mauritius' defence that its bilateral agreements with Egypt justified the duties, stating that such agreements could not override the Treaty. This decision also confirmed that companies and individuals within COMESA member states have enforceable rights and can bring claims to the CCJ, marking a significant moment for the enforcement of regional laws.

INTELSOMAC Vs Rwanda Civil Aviation Authority (Reference No. 1 of 2009)

In this case, decided on 7 May 2010, the Court dealt with a dispute involving Intelsolmac, a Ugandan consultancy firm, and the Rwanda Civil Aviation Authority (RCAA). Intelsolmac had contracted to provide financial management services to RCAA but claimed additional charges for extra work it performed. RCAA refused to pay, asserting that the work fell under the original contract's scope and had not been completed satisfactorily. The RCAA raised a preliminary objection, arguing that Intelsolmac had failed to exhaust local remedies, as required by Article 26 of the COMESA Treaty.

The CCJ upheld RCAA's objection, agreeing that Intelsolmac had not pursued local remedies such as arbitration in Rwanda before bringing the case to the regional Court. The

Court emphasized that exhausting local remedies is a key principle under the Treaty and in international law. It ruled that unless local remedies had been denied or proved ineffective, international avenues like the CCJ should not be pursued. This case reinforced the importance of procedural compliance when bringing disputes to the regional level.

Agiliss Ltd Vs Republic of Mauritius & Others (Appeals No. 1 and 2 of 2022)

In a more recent case, decided on 14 August 2023, Agiliss Ltd, a company involved in importing and distributing staple food products, challenged the actions of the Mauritian government regarding safeguard measures and subsidies related to edible oil imports. In the first appeal, Agiliss argued that the government's imposition of safeguard measures on imports from COMESA countries violated Treaty provisions. In the second appeal, the company contested the government's decision to grant subsidies to the State Trading Corporation (STC), claiming that these subsidies distorted competition and breached COMESA's fair competition rules.

In Appeal No. 1, the CCJ ruled in favour of Agiliss Ltd, finding that exceptional circumstances in Mauritius justified Agiliss not having to exhaust local remedies. The Court concluded that, although judicial review and

injunctive relief were available under Mauritian law, they were not effective remedies in this particular case. Consequently, the Court remitted the case back to the First Instance Division to be heard on its merits.

In Appeal No. 2, however, the Court upheld the First Instance Division's decision, ruling that Agiliss Ltd had not exhausted available local remedies. The Court found that effective remedies, such as filing a complaint with the Mauritian Competition Commission, were available to Agiliss under domestic law. The CCJ determined that this issue primarily concerned national competition law and did not sufficiently raise a Treaty-related matter, thus dismissing the second appeal.

These landmark decisions illustrate the critical role that the COMESA Court of Justice plays in interpreting and enforcing the COMESA Treaty. From upholding the free trade provisions in the Polytol Paints case to ensuring procedural compliance in the INTELSOMAC and Agiliss cases, the CCJ continues to provide clarity



•The Court sitting at Kenneth Kaunda International Conference Centre in Lusaka, Zambia.

on regional law and promote legal harmonisation across Member States. These rulings not only enhance the effectiveness of the regional judicial

system but also strengthen the legal framework for economic cooperation and competition within the COMESA region.



•Judges sitting on bench during a Court sitting at Kenneth Kaunda International Conference Centre in Lusaka, Zambia. L-R: Honourable Mr Justice David Chan Kan Cheong, Honourable Dr Justice Michael Mtambo and Honourable Lady Justice Salohy Randrianarisoa.



•JUDGES sitting on Bench during a court sitting at COMESA Court of Justice Court in Khartoum, Sudan.



•Honourable Mr Justice Chinembiri Bhunu takes oath of office after his appointment as First-Instance Division Judge during the COMESA Heads of State and Government Summit held in Antananarivo, Madagascar in 2016

- 1• Honourable Lady Justice Salohy Randrianarisoa being sworn in as Judge of the Appellate Court.
- 2• Registrar of the Court Honourable Nyambura Mbatia(L) with Zambia's Republican President Hakainde Hichilema during the 22nd COMESA Heads of State and Government Summit held at Kenneth Kaunda International Conference Centre in Lusaka, Zambia last year.
- 3• Honourable Lady Justice Lombe Chibesakunda (L) chats with Zambia's former Foreign Affairs Minister Stanly Kakubo during the 22nd COMESA Heads of State and Government Summit held at Kenneth Kaunda International Conference Centre in Lusaka, Zambia last year



•CCJ Judge President Honourable Lady Justice Lombe Chibesakunda (2nd right) and Court Registrar Honourable Nyambura Mbatia shake hands with Zambia's Republican President Hakainde Hichilema(L) and Egyptian President Abdul Fattah-al-Sisi (2nd L) during the 22nd COMESA Heads of State and Government summit held at the Kenneth Kaunda International Conference in Lusaka, Zambia last year.