

IN THE EAST AFRICAN COURT OF JUSTICE

FIRST INSTANCE DIVISION

AT ARUSHA

MISC. APPLICATION NO 20 OF 2022

ARISING OUT OF REFERENCE NO 28 OF 2022

IN THE MATTER OF INTERIM ORDERS

BETWEEN

ELARIO ADAM CHOLONG..... APPLICANT

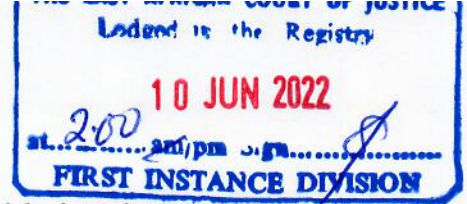
VERSUS

ATTORNEY GENERAL OF THE REPUBLIC OF SOUTH SUDAN..... RESPONDENT -10

NOTICE OF MOTION

(MADE UNDER ARTICLE 39 OF THE TREATY FOR THE ESTABLISHMENT OF THE EAST AFRICAN COMMUNITY AND RULE 52 (1), (2), (4) & (5) OF THE EAST AFRICAN COURT OF JUSTICE OF PROCEDURES, 2019)





TAKE NOTICE that on the day of 20 at o'clock in the morning or soon thereafter as Counsel for the Applicant may be heard the applicant will move the court of 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 RESPONDENT, their employee or agents from dredging the River Nile until the determination of the main reference.
2. An order doth issue against the RESPONDENT to provide the APPLICANT with Dredging Project Agreement between the RESPONDENTS and the Egyptian Government. -10
3. Any orders or directives the court deemed necessary.

THE GROUNDS supporting this application are contained in the affidavit of Mr. Elario Adam Cholong who is the Applicant plus any other affidavits that shall be filed from time and which shall be read and relied upon at the hearing of this application but briefly are that;

THE APPLICATION IS BASED ON THE FOLLOWING GROUNDS

1. The instant application arises from Reference No. of 2022 filed in this court by the applicants.
2. The Applicant is a public-spirited person and a citizen of the Republic of South Sudan resides in Juba South Sudan and a practicing advocate in the Republic of South Sudan. -20
3. That as natural persons and Residents in East African Community, the Applicant have filed Reference No. of 2022 and the matter is still pending hearing.
4. That the crux of the complaint of the Applicant, the subject matter of the abovementioned is with respect to the Respondent to start dredging the River Nile with undue regard to East African law and international environmental and human right law.
5. That **On 3rd June 2022**, the Respondent received the Egyptian water dredging machines meant to aid the flow of water along the Naam River in Unity State and Bahr el Ghazal basin. The project, to be carried out by the Egyptian Government in partnership with the Respondent. -30
6. This project is environmentally untenable and it will traverse protected area in East Africa, with undue regard to livelihoods, gender, food, children and public health of the East Africans.
7. That the area through which the dredging project 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.





8. That the Egyptian dredging project will traverse many legally protected forest reserves and several rivers and lakes that water sources for thousands of people, animals and wildlife habitats.
9. The Applicants have a prime facie case as the people where the Egyptian dredging 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.
10. In addition, it is the Role of East Africa Court of Justice in balancing its interpretative jurisdiction against the needs of ensuring that Partner States are not unduly hindered in their development programs. -10
11. The people of South Sudan that the Applicants shall suffer substantial and irreparable loss and damages to the environment; wiping out of protected animals' species and forest reserves, damaging the ecosystem and loss of livelihoods if the Respondents by themselves, employee and/or agents and their servants and/or employees are not stopped from dredging the River Nile.
12. That the Respondent already received the dredging machine from the Egyptian government and the suit will be rendered nugatory if a temporary injunction is not issued restraining the said project. -20
13. That the balance of convenience would be in the favor of the applicant if the temporary injunction is granted.
14. This application is made under by the above Applicant under **Article 39 of the Treaty For the Establishment of the East Africa Community Treaty** (Hereinafter referred 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 respondent by themselves, employees and/or agents, and their servants and/or employees restraining the dredging of the River Nile.
15. The Respondent is the Attorney General of the Republic of South Sudan and sued as such on behalf of The Republic of South Sudan, Partner state 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). -30
16. The Applicant as well pray that he be granted such other orders and directions as may be appropriate in the circumstances and the cost of the application be provided.
17. The status quo should be maintained pending the outcome of the Main Reference and it just and equitable that this Application for Temporary injunction (Interim Order) be granted pending the outcome of the Main Reference inter-prate.



THE EAST AFRICAN COURT OF JUSTICE
Lodged in the Registry
10 JUN 2022
at 2:00 pm
FIRST INSTANCE DIVISION

DATED AT JUBA THIS 10 DAY OF JUNE, 2022


APPLICANT
C/o Legalline Law Chambers



LODGED VIA THE EAST AFRICAN COURT OF JUSTICE ONLINE SERVICE AT JUBA
THIS 10th DAY OF JUNE, 2022.




REGISTERAR

DRAWN AND FILED BY:
Legalline Law Chambers
Chan House 2nd Floor,
Juba-South Sudan
Email: legallinechamberssss@gmail.com

-10

TO BE SERVED UPON:
Attorney General of the Republic of South Sudan,
Ministry of Justice and Constitutional Affairs,
Juba-South Sudan



IN THE EAST AFREICAN COURT OF JUSTICE

FIRST INSTANCE DIVISION

AT ARUSHA

MISC. APPLICATION NO 20 OF 2022

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VERSUS

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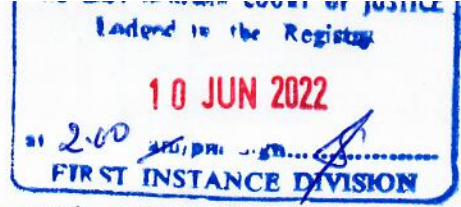
(MADE UNDER ARTICLE 39 OF THE TREATY FOR THE ESTABLISHMENT OF THE EAST AFRICAN COMMUNITY AND RULE 52 (1),(2),(3),(4)& (5) of the EAST AFRICA COURT OF JUSTICE RULES OF PROCEDURES, 2019)

AFFIDAVIT IN SUPPORT OF NOTICE OF MOTION

I, ATHIANGBIAR DENG AWUR WENYIN C/o JUBA LAW CHAMBERS, UNITY STREET, ATLA-BARA C, JUBA-SOUTH SUDAN do solemnly make oath and state as follows;

- 1- That I am a male adult South Sudanese of sound mine and therefore swear this affidavit in support of the reference in that capacity.
- 2- That I am an advocate of the High Court of South Sudan for over 7 years, I have been in advocacy to defend and promote environmental and human rights in South Sudan and beyond. -20





- 3- That on 3rd of June 2022, South Sudanese woke up with a news that the Respondent receives equipment and machines for dredging of the River Nile from the Egyptian Government.
- 4- The Respondent have not made the agreements available to the public although such agreements are public documents.
- 5- That this project is environmentally untenable and it will traverse protected areas in the region, with undue regard to livelihood, gender, food security, children and public health of the south Sudanese.
- 6- That the areas through which the dredging will pass through is comprised of several settlements, farmlands and water sources for thousands of indigenous persons. -10
- 7- That the socio-economic and health level, the project will cause permanent loss of land used for crop farming and grazing, permanent loss of natural resources, permanent loss for access of fishing grounds, permanent loss of private land due to the project land acquisition.
- 8- I also know the Dredging of the River Nile project does not show the detailed plan on ecosystem maintenance including effect of food chains, Nutrient cycles etc.
- 9- That I know there is no mitigation plan for food and nutrition insecurity that will be occasioned by the project, and there is likelihood that food security will be gravely disrupted. -20
- 10- That all the above are a clear indication of the irreparable to environment, wildlife and human lives that cannot be paid for in monetary terms or otherwise.
- 11- That under the Treaty, the Respondent have an obligation to uphold the fundamental principles of the community as enshrined under Article 6 (d) and 7 (2).
- 12- That I know that the Applicant brought a suit before this Honorable court challenging the legality of the Dredging Project in the River Nile on the above grounds.
- 13- That the Respondent has already received the machines and equipment for dredging the River Nile and if a temporary injunction is not issued restraining the said project, the Applicant suit will be rendered nugatory. -30
- 14- The Applicant have a prima facie case and the people where the project is designed will suffer irreparable damages if the application is not granted since the Main Reference raises issues of affecting livelihoods and environment including; permanent loss of habitats, stress and morality, loss of primary productive in watercourses, loss of ecological functions among others.




- 15- Status quo should be maintained, that is the Dredging of the Nile Project be temporarily halted, pending the outcome of the Main Reference and it is just and equitable that the Application for a Temporary Injunction and access to Host Government agreements (Interim Order) be granted pending the outcome of the main reference inter-parte.
- 16- That it is in public interest, equitable and fair that a temporary injunction is granted.
- 17- That I swear this application in support of the application for a temporary injunction and access to the Government agreement brought before this court.

VERIFICATION

- 10

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

SWORN at Juba by the **ATHIANGBIAR DENG AWUR WENYIN** this 10 Day of June 2022.



DEPONENT

BEFORE ME



COMMISSIONER FOR OATHS



- 20

DRAWN AND FILED BY:
Legalline Law Chambers
Chan House 2nd Floor,
Juba-South Sudan
Email: legallinechamberssss@gmail.com

Applicant Annexure marked ("A")



REPUBLIC OF SOUTH SUDAN
MINISTRY OF WATER RESOURCES & IRRIGATION
MINISTER'S OFFICE

8th June 2022

PRESS STATEMENT ON THE ARRIVAL OF EQUIPMENT TO UNITY STATE, BENTIU

The Ministry of Water Resources and Irrigation has learned that there is an on-going public misconception about the recent imported equipment that were received by Unity State Government last week for clearing out weeds and sediments impeding the movement of water in Naam River.

Therefore, it is crucial to give you brief backdrop on bilateral cooperation between South Sudan and Arab Republic of Egypt in the field of water.

The cooperation between two countries dated back to the pre-colonial era where Egypt and Britain on behalf of the downstream countries signed the 1929 Nile water agreement which was renewed in 1959. This was subsequently followed by Egypt and Sudan forming the Joint Permanent Technical Committee on the River Nile. This allowed Egypt to setup their stations along the River Nile commonly known as "Rej El Masri" – Egyptian Irrigation station which were established in the former three regional capitals of Juba, Wau and Malakal and other former provincial towns. The main aim is to monitor the flow of the River Nile by recording the water levels and discharges of the main Nile and its tributaries.

After the Comprehensive Peace Agreement (CPA) of 2005 followed by the establishment of the Ministry of Water Resources and Irrigation in 2005, in August 2006 both Ministries of Water Resources and Irrigation of South Sudan and Egypt established a cooperation through signing a Memorandum of Understanding (MoU) by then Ministers of Water Resources and Irrigation (South Sudan and Egypt). The MoU sets out key areas of cooperation namely:

- 10

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Applicant Annexure marked ("A")

1. Capacity building of water cadres in Egyptian institutions
2. Dredging and clearance of aquatic weeds in the Bahr el Ghazal Basin and construction of landing sites
3. Provision of safe drinking water through drilling of boreholes and motorized solar systems
4. Carryout feasibility study for Sue Multi-purpose dam in Western Bahr el Ghazal State.

The work on these aforementioned activities started but were halted by the conflict of 2013 and repeated in 2016 where all the equipment and tools mobilized for dredging and clearance of aquatic weeds were vandalized in Bentiu, however, the construction of two landing sites in Kuajok and Wau were completed and the borehole drilling are ongoing while the Sue feasibility study is being finalized.

→ 10

During the 1st session of the Joint High Level Commission between Egypt and South Sudan led by the H.E Dr. James Wani Igga Vice President and Chair of the Economic Cluster to Egypt in July 2021, the Ministry of Water Resources and Irrigation renewed and signed the MoU with the Egyptian Ministry of Water Resources and Irrigation on dredging of Bahr el Ghazal river system and construction of four (4) haffirs and urgent resumption of the dredging of the 30kms stretch of Bahr el Ghazal from Unity State capital Bentiu to Lake No which is currently blocked by aquatic weeds. The opening up of this stretch of river is to allow smooth navigation of Petroleum products and other economic activities along rivers from the refinery to Juba.

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In this regards the Ministry of Water Resources and Irrigation has been following closely with its counterparts in Egypt and facilitating the process in Sudan to ensure that the equipment and tools for dredging and clearance of aquatic weeds arrives in Bentiu safely.

Therefore, I would like to inform you that (21) trucks loaded with equipment and tools arrived in Bentiu on 1st June 2022 from Egypt via Sudan. However, there is a negative propaganda being circulated on social media and other media outlets by prominent personalities against this initiative and went further by calling for actions to stop the ongoing project.

→ 30

However, it is worth noting that dredging and clearance of aquatic weeds have been done routinely when we were under Sudan and also after Independence since

Applicant Annexure marked ("A")

this river-maintenance exercises have not been taking place for years, sediments have accumulated and aquatic vegetation have overgrown and therefore both needs to be cleared for the health of the river system.

To conclude, I am hereby bringing this to your attention as it may jeopardize the government efforts for ensuring that the rivers are navigable to transport Petroleum products from the refinery to address the local consumption in this current global-fuel crisis. In line with national response to devastating floods, dredging will also help to mitigate flooding in Unity State and other parts of the country whose population has been negatively affected by natural disaster since 2019.





Gattiek Gatkuoth Wichar
Press Secretary,
Minister's Office,
Ministry of Water Resources and Irrigation,
RSS-JUBA

Cc: All Media Houses
Cc: File

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Applicant Annexure marked ("A")

 **REPUBLIC OF SOUTH SUDAN
UNITY STATE- BENTIU
Ministry of Culture, Youth and Sports
Minister's Office** 


Date: 3rd/June/2022

Public Note

The Government of Unity State has received the machinaries from the Republic of Egypt, the purpose of these machinaries is for River Nam dredging as to mitigate the suffering of people of Unity State from devastated floods which submerged almost the whole State into water and most importantly would help to facilitate the transportation of Goods through River.

The State Government would like to ensure the public that dredging of the Nam River is the implementation policy from National Ministry of water and Irrigation. I therefore would like to assure the general public that the core aims of machinaries will be utilization of Nam River dredging (opening) will positively contributes towards floods mitigation in the State.

Hon. David Gai Jiejor Ngueny
Minister for Culture, Youths and Sports
Acting Minister for information



The Minister

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Applicant Annexure marked ("A")

9:33 LTE


Like Comment Share

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← Tweet

 **Mohamed Kadah**
@Egypt_Kadah


Awesome finale for a fruitful visit by #Egypt's Minister of Water Resources to #SouthSudan. The visit involved meeting 3 VP's and 12 other VVIP's. Focus was on bilateral coop. and regional coord., with a water station inaugurated and an agreement signed on dredging Bahr el Jebel.



8:34 pm · 27 Jun 21 · Twitter for iPhone

14 Retweets 1 Quote Tweet 72 Likes


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Tweet your reply 

Hot in Juba
3 d · 🌐


Dredging machines arrive in Unity State from Egypt

Fleet of vehicles carry dredging machines fro... See more












👍 😄 😊 412 142 comments 49 shares 🌐

Like Comment Share

 **Lisok Lo-Nyaing**
Unity ,upper Nile ,Jonglei doesn't have leadership for its people.

Like Reply

 Write a comment...  

Annexure marked ("B")



Radio Tamazuj

6 h · 🌐



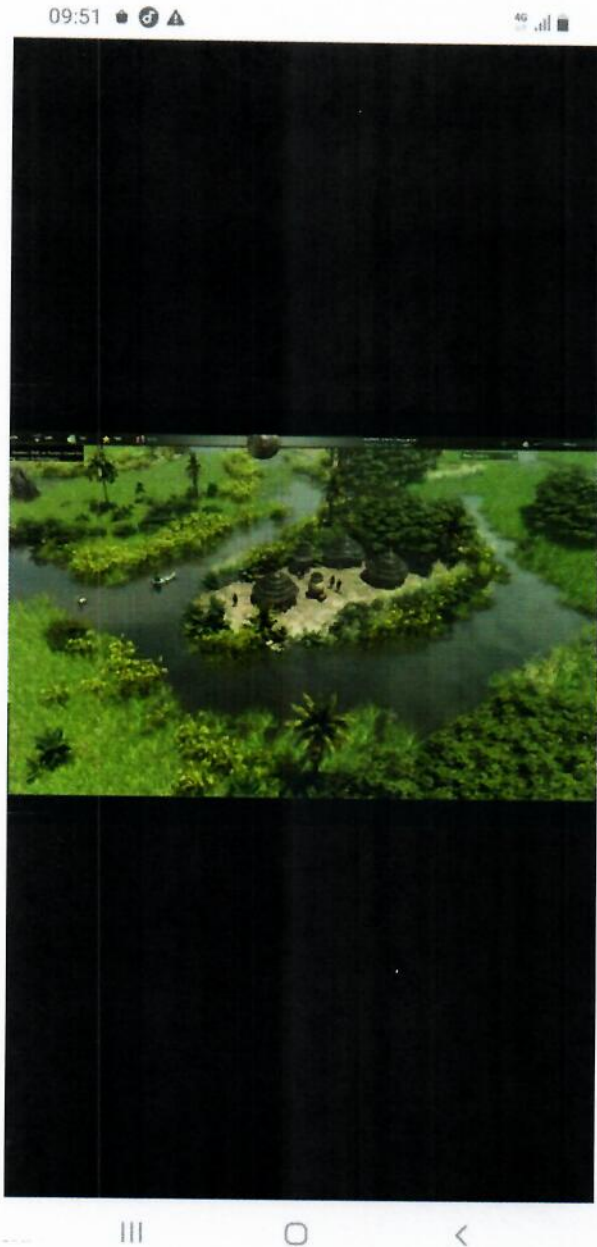
The minister of physical infrastructure, lands, housing, and public utilities in Unity State has said that the arrival of machinery from Egypt to dredge and open River Naam was blessed by the national ministry of irrigation and water resources in Juba.



radiotamazuj.org

'River Naam dredging blessed by Juba'- Unity State minister

Annexure marked ("B")



Annexure marked ("B")

This is the Exhibit Marke "B" given by the

Lam Tungwar Kueigwong
February 3, 2017
Pick of the week.....On a fishing boat along River Naam and off to tour Tong on the opposite side of Bentiu town . wonderful places indeed and we will bring its beauty back one way or the other !



Phillips, Reech Malual and 271 others · 29 Comments

Like Comment Share

Annexure marked ("B")

09:29



The effects of Jonglei Canal operation scenarios on the Sudd swamps in Southern Sudan



Twente University
Erwin Lamberts
August 2009


Universiteit Twente
de ondernemende universiteit

III

