



**IN THE EAST AFRICAN COURT OF JUSTICE AT ARUSHA
FIRST INSTANCE DIVISION**

(Coram: Jean-Bosco Butasi PJ, John Mkwawa J, Isaac Lenaola J)

APPLICATION NO.2 OF 2013

AVOCATS SANS FRONTIER..... APPLICANT

VERSUS

MBUGUA MUREITHI WA NYAMBURA 1ST RESPONDENT

ATTORNEY GENERAL OF UGANDA 2ND RESPONDENT

ATTORNEY GENERAL OF THE REPUBLIC OF KENYA 3RD RESPONDENT

28th August, 2013

RULING

The Applicant herein is Avocats Sans Frontiers, a Non-Governmental Organization founded in Belgium in 1992 with registered presence in the Republics of Burundi and Rwanda, both Partner States in the East African Community.

By its Notice of Motion dated 3rd May, 2013, it has sought orders for leave to intervene as Amicus Curiae in **Reference No.11 of 2011** between Mbugua Mureithi wa Nyambura and the Attorneys General of the Republics of Uganda and Kenya. It also seeks that upon leave aforesaid being granted, it should be allowed to make written and oral submissions at the hearing of the Reference.

The Notice of Motion is premised on the provisions of Rule 36 of this Court's Rules of Procedure, 2013.

In the grounds in support of the Motion and in the Affidavit in support thereof, sworn by Francesca Bonniotti, its Executive Director, it states that it wishes to join the proceedings as amicus curiae for the following reasons:-

- i) that it wishes to contribute to inter-alia, the Treaty for the Establishment of the East African Community with regard to the independent of, and freedoms and fundamental rights of lawyers and Law Societies in the East African region, generally.

- ii) that it is able to make a unique contribution to the Reference without taking away the litigation of the Reference from the Parties to it.
- iii) That the reasons for the intervention far outweigh any potential opposition for the intervention by existing Parties and will instead assist the Court in its mandate of interpreting the Treaty and advancing respect for the Rule of Law in the Community.

The Attorney General of Uganda in opposition to the Motion filed an Affidavit in Reply sworn by George Kallemera, Senior State Attorney and it is his argument that the motion is frivolous and lacks merit because:-

- a) there is no exceptional or technical contribution the Applicant possesses that the Court cannot obtain from existing Parties to the Reference.
- b) the Applicant's core function is contrary to the whole purpose of amicus curiae and will not in any way assist the Court in resolving the dispute contained in the Reference.
- c) that the Applicant does not hold or execute any Constitutional or Statutory office or function to qualify as Amicus Curiae.
- d) that the Applicant's intervention is intended to revamp the case for the Applicant in the Reference and that is contrary to the spirit of an amicus curiae which is meant to be an independent Party.

The Attorney General of the Republic of Kenya has not filed any response but opposes the Application on point of Laws only.

The Applicant in the substantive Reference seems to have no objection to the Application but filed no formal response. The Submissions of his Advocate point in the former position in any event.

We have considered the Application, the responses to it and the oral submissions for the Parties and would humbly opine as follows:-

Firstly, as was held by **Fuad, J. in Dritoo vs Nile District Administration [1968] E.A. 428, “the Court has a wide discretion to ask for assistance of a curiae if it considers that the interests of justice would be served”**.

Further, Rule 36(4) of this Court’s Rules of Procedure, 2013, with regard to an application to join existing proceedings as amicus curiae provides that **“if the Application is justified”**, then it shall be allowed which is also an expression of discretion on the part of the Court. Like all discretion, however, it must be exercised judiciously.

Black’s Law Dictionary, 7th Edition, defines an amicus curiae as “a person who is not a Party to a Law suit but who petitions the Court to file a brief in the action because that person has a strong interest in the subject matter”.

Secondly, in any application as above, the Applicant is required by **Rule 36(2)(e) of the Court's Rules of Procedure to file an application which shall contain inter-alia a "statement of the intervener's or amicus curiae's interest in the result of the case "**.

While the Respondents argued forcefully that the statement of interest must be a separate document from the Motion itself, we find no justification for such a position and in our view, it is sufficient that the interest is clearly and succinctly set out in the Affidavit or body of the Application itself.

In any event, Rule 36(4) is the operative rule in terms of the substance of the amicus curiae's intervention and we see no obligation to the filing of such a statement at the time of seeking leave.

Thirdly, having so stated, one of the fundamental considerations for any amicus curiae to be admitted is that such a Party must be independent of the dispute between the Parties – see **AG of Uganda vs Silver Springs Hotel Ltd and Others SCCA No.1 of 1989.**

With the above background, we have read the Articles of Association of the Applicant and one of the purposes for which it was established was **"the promotion and the protection of human rights, particularly – but not exclusively – the right relating to a fair trial and the exercise of the rights of the defence"**.

Further, that, in the discharge of its functions, it may have access to any Court of Law, inter-alia to defend or promote the above purpose – (see Article 3 thereof).

It has also indicated that it will seek to limit its intervention to matters of law only and will not in any way descend to the arena of the dispute between the Parties.

Whereas there is strong opposition to the Motion, we have seen no bias apparent on the part of the Applicant and we are convinced that it will bring issues of law that would assist the Court in reaching a fair determination of the matters in contest.

The Court will also be vigilant and ensure that the Applicant will not overstep its amicus curiae brief and ensure that its actions do not favour any of the Parties.

This Court has previously allowed amicus curiae to appear before it, e.g. the **East African Law Society vs Secretary General, EAC and Others, Application No.1 of 2009** and benefitted greatly from the intervention.

In the present case, we see no prejudice to any Party if the application is granted and we find that the Motion is justified and in enjoining it as amicus curiae and in return for the privilege of participating in the proceedings without having to qualify as a Party, an amicus has a special duty to the Court. That duty is to provide cogent and helpful submissions that assist the Court – see **Re Certain Amicus Curiae Applications: Minister of Health and Others vs Treatment Action Campaign and Others 2002 (5) SA 713 (CC) at para.5.**

For the above reasons, the Motion is allowed and Avocats Sans Frontiers is enjoined as Amicus Curiae in **Reference No.11 of 2011.**

There shall be no order as to costs.

It is so ordered.

**DATED, DELIVERED AND SIGNED AT ARUSHA THIS.....DAY OF
..... AUGUST, 2013**

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**JEAN BOSCO BUTASI
PRINCIPAL JUDGE**

.....
**JOHN MKWAWA
JUDGE**

.....
**ISAAC LENAOLA
JUDGE**