



IN THE EAST AFRICAN COURT OF JUSTICE AT ARUSHA

FIRST INSTANCE DIVISION

*(Coram: Monica K. Mugenyi, PJ; Faustin Ntezilyayo, DPJ, Audace Ngiye, Charles Nyawello
& Charles Nyachae, JJ)*

CONSOLIDATED APPLICATIONS NO. 4 & 6 OF 2019

(Arising from Reference No. 6 of 2019)

MALE H. MABIRIZI KIWANUKA APPLICANT/ RESPONDENT

VERSUS

**THE ATTORNEY GENERAL OF
THE REPUBLIC OF UGANDA RESPONDENT/ APPLICANT**

29TH OCTOBER 2019

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RULING OF THE COURT

BACKGROUND

1. On 3rd May 2019, Mr. Male Mabirizi ('the Applicant/ Respondent) filed **Reference No. 6 of 2019** before this Court, challenging the validity of the Uganda Constitutional (Amendment) Act of 2017. He subsequently served the Reference upon the office of the Attorney General of Uganda ('the Respondent/ Applicant) on 6th May 2019. On 20th June 2019, the office of the Attorney General filed its 'Answer to the Reference', and filed an 'Affidavit in Reply' in respect of the same Reference on 21st June 2019. Both pleadings were served on the Applicant/ Respondent on 24th June 2019, whereupon he filed **Application No. 4 of 2019** in this Court.
2. **Application No. 4 of 2019** was brought under Article 30 of the Treaty for the Establishment of the East African Community ('the Treaty'), as well as Rules 21(1), 30(1), 43 and 47 of this Court's Rules of Procedure. It *inter alia* seeks to have the Answer to the Reference and Affidavit in Reply struck off the court record, and judgment on admission entered in favour of the Applicant/ Respondent. It is premised on the following grounds:
 - I. The Respondent/ Applicant did not file and serve its Answer to the Reference and Affidavit in Reply within forty five (45) days as by law prescribed.
 - II. The Respondent/ Applicant's 'Answer to the Reference and 'Affidavit of Reply' are alien to the Rules of this Court.

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III. The documents in support of the impugned Answer to the Reference were not filed together with it.

IV. The Answer to the Reference and Affidavit on Reply contain general and evasive denials; are frivolous and/ or vexatious, and the Affidavit in Reply specifically contains irrelevant and scandalous material.

3. In turn, the Respondent/ Applicant filed **Application No. 6 of 2019** that essentially moves this Court to enlarge the time within which the Answer/ Response to the Reference may be served or, in the alternative, the Answer/ Response to the Reference that was previously served upon the Applicant/ Respondent be validated. The Application is premised on the inability of the Respondent/ Applicant to serve the said pleading upon the Applicant/ Respondent on account of reasons beyond that party's control, to wit, the indisposition of one Moses Opio, a Records Assistant in the Attorney General of Uganda's Chambers who was responsible for that process service function.
4. At the hearing of the foregoing Applications, the Parties did concede to their consolidation. It was also a conceded fact that the impugned Answer to the Reference had been filed within time but was served upon the Applicant/ Respondent out of time. The Applicant/ Respondent did represent himself at the hearing, while the Respondent/ Applicant was represented by a team of State Attorneys led by the Hon. Attorney General and Deputy Attorney General, and the Solicitor General, all of the Republic of Uganda.

COURT'S DECISION

5. Article 68(3) empowers this Court to render its decision in a matter and not the reasons therefore which reasons would thereafter be delivered on notice. We reproduce it below for ease of reference.

(3)The Court may, in any particular case, direct that only the decision of the court and not the reasons for it shall be delivered in Court. The reasons for judgment shall be given on a date to be notified by the Registrar to the parties.

6. Having carefully listened to the parties in this mater, we do render the following decision:

- I. We decline to strike out the Answer to the Reference.
- II. We decline to strike down the Affidavit in Reply in its entirety but do hereby expunge paragraph 17 thereof.
- III. We disallow the prayer sought in **Application No. 4 of 2019** for judgment on admission in **Reference No. 6 of 2019**.
- IV. We do exercise our discretion under Rule 4 of the Court's Rules of Procedure to enlarge the time within which the Answer to the Reference may be served, and do hereby deem the said Answer to the Reference as previously served upon the Applicant/ Respondent – Mr. Male Mabirizi, to have been validly served.

Conclusion

7. In the result, we do hereby allow **Application No. 6 of 2019** and dismiss **Application No. 4 of 2019**, save as decided in paragraph 7(b) hereof. We make no order as to costs.

It is so ordered.

Dated, signed and delivered at Arusha this 29th day of October 2019.



HON. LADY JUSTICE MONICA K. MUGENYI
PRINCIPAL JUDGE



HON. DR. JUSTICE FAUSTIN NTEZILYAYO
DEPUTY PRINCIPAL JUDGE



HON. JUSTICE AUDACE NGIYE
JUDGE



HON. DR. JUSTICE CHARLES NYAWELLO
JUDGE



HON. JUSTICE CHARLES NYACHAE
JUDGE