IN THE EAST AFRICAN COURT OF JUSTICE

AT ARUSHA

FIRST INSTANCE DIVISION

*(**Coram**: Richard Wabwire Wejuli, DPJ; Richard Muhumuza, & Kayembe Ignace Rene Kasanda; JJ)*

APPLICATION NO. 44 OF 2022

(Arising from **Reference No. 43 of 2022)**

MALE H. MABIRIZI K. KIWANUKA ..... APPLICANT

VERSUS

THE ATTORNEY GENERAL OF

THE REPUBLIC OF UGANDA ..... RESPONDENT

28TH NOVEMBER 2025

RULING OF THE COURT

A. INTRODUCTION & BACKGROUND

1. This Application was brought by a Notice of Motion on 24th November 2022 under Article 42(1) of the Treaty for the Establishment of the East African Community ("the Treaty") and Rules 32(1), 47(1)(a) & (b) and 52(1) of the East African Court of Justice Rules of the Court, 2019 ("the Rules"), seeking orders that the Respondent's Response to **Reference No. 43 of 2022** together with its Supporting Affidavit be struck out for having been served out of time, and that costs be awarded to the Applicant.

2. The grounds of the Application are stated in the Affidavit in support thereof, deponed by the Applicant and expounded in oral submissions in Court.

3. The Respondent filed an Affidavit in Reply deponed by Anthony Otto contesting the Application. The averments in the Affidavit in Reply notwithstanding, it is common ground that the Respondent was served with the Statement of Reference on 1st September 2022. The Respondent filed its Response on 14th October 2022 but only effected service on the Applicant, who at that time was incarcerated at Luzira Upper Maximum-Security Prison, on 18th October 2022. No prior application for enlargement of time was made by the Respondent.

4. The Respondent concedes that service was effected on 18th October 2022, two days after the expiry of the 45-day period, taking into account that 15th and 16th October 2022 were weekend days of Saturday and Sunday. That, the delay was occasioned by genuine difficulty in locating and gaining access to the Applicant in a maximum-security prison. The Respondent further submits that no prejudice has

been suffered by the Applicant and urges the Court to adopt a substantive rather than overly technical approach. He sought to rely on a persuasive decision of the Uganda Court of Appeal in **Tiberio Okeny vs Attorney General of Uganda, Civil Appeal No. 51 of 2001.**

B. REPRESENTATION

5. At the hearing of **Application No. 44 of 2022**, the Applicant appeared in person, unrepresented. The Respondent was represented by Mr Allan Mukama, learned Senior State Attorney, and Ms Lydia Mugisa and Mr Ochol Kiwanuka Sahid, learned State Attorneys.

C. ISSUES FOR DETERMINATION

i. **Whether the Respondent's service of the Response on 18th October 2022 was out of time, if so;**

ii. **Whether the Response ought to be struck out or whether the Court should exercise its discretion to regularise the pleading;** and

iii. **Costs of the Application.**

D. THE COURT'S DETERMINATION

6. The prescribed period to file and serve the Response to a Statement of Reference is governed by Rule 32(1) of the Rules which reads:

> **"the Respondent shall within forty-five 45 days after being served with a notification of Reference file and serve upon the applicant a Response..."**

7. In the Affidavit and submissions, the Respondent did not seek the extension of time to serve the Response to the Reference. The

Respondent acknowledged that it filed its Response on 14th October 2022, within the prescribed period of 45 days from the date of service of the Reference. That, the duration of 45 days from the date of service lapsed on 16th October 2022, which was a Sunday and that the next working day was 17th October, 2022.

8. The Respondent is in agreement with the Applicant that the Respondent did not file any application for the extension of the time limit prescribed by Rule 32 (1) of the Rules.

9. The question that arises is whether the Respondent served the Response to the Statement of Reference out of the time prescribed by Rule 32(1) of the Rules.

10. It is not in dispute that the Respondent filed its Response on 14th October 2022, within the prescribed time to file and serve and that the 45th day within which the Respondent ought to have served the Applicant fell on the 16th October 2022, which was a Sunday.

11. At the very latest, service should have therefore been properly effected on Monday, 17th October 2022. The Response was served on Tuesday 18th October 2022, which was one day out of the time limit prescribed by the Rules.

12. The core issue for determination is therefore whether the Court should, in the exercise of its discretion under Rules 4 and 5, excuse the one-day delay in service and validate the Response, or strike it out as time-barred.

13. Regarding the computation of time, Rule 3(1)(a), (b) and (d) of the Rules provides that:

"Any period of time fixed by the Treaty, these Rules or by any Order of the Court for doing any act shall be reckoned as follows:

a) where a period is to be calculated from the moment at which an event occurs or action takes place, the day during which that event occurs or that action takes place shall not be counted as falling within the period in question; and the period shall end with the last day of the period;

b) periods shall include official holidays, Saturdays and Sundays; and

c) if a period would otherwise end on a Saturday, Sunday or an official holiday, it shall be extended until the end of the first following working day."

14. And the extension of time after lapse of any prescribed period is governed by Rule 5 of the Rules, which states:

> **"The Court may, <u>for sufficient reason</u>, extend the time limited by these Rules or by any decision of itself for the doing of any act authorized or required by these Rules, whether before or after the expiration of such time and whether before or after doing of the act, and any reference in these Rules to any such time shall be construed as a reference to such time as extended."**

15. Rule 5 empowers the Court to extend time limits set either by the Rules or by a Court order "for sufficient cause", reflecting a discretionary authority to balance procedural compliance with the

interests of justice.

16. Rule 4 further allows the Court to issue directions as necessary to ensure fairness and efficiency, providing a broad framework for handling delays. It provides that:

> "***Nothing in this Rules shall be deemed to limit or otherwise affect the inherent powers of the court to take such orders or give such directions as maybe necessary for the ends of justice to prevent abuse of the process of the Court."***

17. In **Male H. Mabirizi K. Kiwanuka vs Attorney General of Uganda, EACJ Consolidated Applications Nos. 4 & 6 of 2019**, this Court granted an extension to file a Response, exercising discretion under Rule 4, when the Attorney General demonstrated efforts to compile evidence despite delays, indicating that good faith attempts to meet deadlines can sway the Court.

18. Further, the decision in **Independent Medico Legal Unit vs Attorney General of Kenya, EACJ Application No. 2 of 2012** shows the Court's willingness to prioritize substantive justice over strict procedural adherence in matters of wider public significance.

19. We also considered if there is a risk of possible prejudice that could potentially be occasioned if the Application is dismissed with costs. We note that the Applicant did not object to nor receive "with protest" the Respondent's Response and its Affidavit in support. He actually went ahead to file a Reply to the Response.

20. The Applicant's filing of a Response and Rejoinder without protest mitigates claims of prejudice. The Applicant acquiesced to the belated

service and in doing so implicitly waived the right to later object to the delay.

21. There is, therefore, in our opinion, no enforceable prejudice that the Applicant may suffer if the Application is dismissed. Indeed, validating the Respondent's Response to the Statement of **Reference No. 43 of 2022** would serve justice by allowing the Court to consider the evidence from both sides fully, without causing prejudice to the Applicant.

22. In **Godfrey Magezi vs National Medical Stores, EACJ Appeal No. 2 of 2016**, the Court echoed and articulated the jurisprudence on time enlargement in the following terms:

> ***"It was settled law that the Court had discretion according to Rule 4 to extend time if sufficient reason was shown by the Applicant."***

23. In our considered opinion, the fact that the Applicant filed the Response on time militates against the accusations of prejudice made. We believe that the delay was due to sufficient cause as demonstrated in the Affidavit in support of reply and submissions for the Respondent.

24. This Court is also mindful of the ramifications of the issues contained in the Statement of Reference. To do justice to both parties, it is necessary that the Respondent be allowed to respond to the claims made regarding the impugned acts or omissions of its judicial and other officers and institutions.

25. In the circumstances, and in exercise of its powers under Rules 4 and 5, the Court finds sufficient reason to excuse the one-day delay in service. The Court denies the Applicant's Application to strike out or

deem the Response improperly on record, and validates the Respondent's Response to **Reference No. 43 of 2022** as properly before the Court.

26. The Application is accordingly dismissed; costs shall be in the cause.

27. It is so ordered.

Dated, signed and delivered at Arusha this 28th day of November 2025.

Hon. Justice Richard Wabwire Wejuli
DEPUTY PRINCIPAL JUDGE

Hon. Justice Richard Muhumuza
JUDGE

Hon. Kayembe Ignace Rene Kasanda
JUDGE