

Application No. 6 of 2021 (Arising from Reference No. 11 of 2021) Male H. Mbirizi K. Kiwanuka vs The Attorney General of Kenya

Coming up for hearing: on 7th June, 2022.

Application filed: on 8th June, 2021.

Articles: 30 of the Treaty for the Establishment of the East Africa Community

Rules: 4, 32 (1), 47 of the East African Court of Justice Rules of Procedure, 2019.

Subject matter: Application to strike out Respondent's Response

The Applicant, Male H. Mbirizi K. Kiwanuka seeks court orders that the Respondent's response to the reference be struck out. The grounds of the Applicant are based on the fact that the Respondent did not serve the response to the reference within forty-five (45) days as required by the law. The Respondent did not apply for and obtain leave of Court to serve his response out of time and the Applicant states that the respondents prejudiced him for serving out of time.

The Applicant states that on 11th March he received the email address of the Respondent and he served them the Reference No.11 of 2021 accompanied by an affidavit in support together with a Notification of Reference. The Respondent was required to file and serve his response by 25th April, 2021 and by this date the Respondent had not filed their response. The Respondent served the Applicant on 3rd May, 2021 long after time for service had elapsed and he did so without applying to the Court for an extension of time, hence it is the wish of the Applicant that the response is struck out since the late service disorganised his plans to re-join thereby interrupting his other programs.

The Respondent in his replying affidavit states that the delay was caused by the Covid-19 Pandemic since their offices had to be evacuated for fumigation in order to curb the spread of the Covid-19 and therefore the office clerk could not access the filed documents on time to effect service. The office had also switched to rotation basis and it took time before the officers settled back into the new routine. The Respondent states that Rule 47 of the East African Court of Justice, 2019 gives the grounds on which the court may on application strike out or expunge all or part of a pleading or other documents, with or without leave, to amend and the grounds the Applicant is relying on does not meet the threshold set under Rule 47. He further states that the Applicant has

already filed and served upon the Respondent a reply to the Respondent's response and as such the Applicant is estopped from seeking to strike out the Respondent's response on the ground that the applicant waived his right to challenge the same upon filing of the Reply to the Response.

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