

Application No. 1 of 2023 Male Mabirizi Kiwanuka v The Attorney General of Uganda

Coming up for Hearing: 15th November 2023.

Application filed: on 18th January 2023

Treaty Article, Rules: Articles 23 (1), 24(1), 27(1), of the Treaty for the Establishment for the East African Community 1999 & Rules 4 & 52(1) of the east African Court of Justice Rules of Procedure 2019.

Subject matter: Application for Stay

The Application arises from the pending *Appeal no. 7 of 2020 Male Mabirizi Kiwanuka v The Attorney General of Uganda* where the Applicant/Appellant seeks, among others, orders for a reversal of the decision of the First Instance Division in Reference no.6 of 2019 *Male Mabirizi Kiwanuka v The Attorney General of Uganda*. In that Reference the Applicant wanted declarations that a number of actions by the Organs and the various Institutions of the Respondent State culminating into the Amendment of the Constitution of Uganda, were in breach of Uganda's obligations under Articles 6(d) & 7(2) of the Treaty for the Establishment of the East African Community.

The First Instance Division dismissed that Reference with costs. Before the Appeal could proceed however, the Applicant was incarcerated in Uganda and he filed *Application 11 of 2022 Male Mabirizi Kiwanuka v The Attorney General of Uganda* seeking, for among orders, that he be produced by the Respondent State to attend his Court proceeding in his Appeal in Arusha.

The Applicant was eventually produced before the Court in Kampala in November 2022 when the Court held its rotational there. He challenged the presence on the bench of Honourable Justice Cheborion Barishaki. The matter however eventually proceeded to a hearing and was slated for a Ruling in the next Court session in February 2023.

The Applicant then filed *Application no 1 of 2023 Male Mabirizi Kiwanuka v The Attorney General of Uganda*, seeking for a stay of the Ruling in *Application no 11 of 2022 Male Mabirizi Kiwanuka v The Attorney General of Uganda*. In this latter Application he sought for an order of recusal of Honourable Justice Cheborion Barishaki and the nullification of the s of Application of 11 of 2022 and a further order that the Honourable Justice Cheborion Barishaki recuses himself from participating in *Appeal no 7 of 2020 Male Mabirizi Kiwanuka v The Attorney of Uganda* or any matter originating from it.

His main contention in the Application is that, there is pending formal application before the Court which raises serious matters relating to impartiality of that particular Judge. Further that the delivery of a Ruling in which he orally sought a Judge to recuse himself, and was refused because it was not a formal application will render his pending formal application for recusal an academic exercise.

The Respondent on his part opposes the Application in its entirety, prays for it to be dismissed with costs. The Respondent's main line of argument being that first and foremost there is no provision in the Rules allowing for an Application to stay a Ruling.

Secondly the Respondent contends that the Applicant had already made the application for recusal which was not granted by the Court on 21st November 2022. Further, the Respondent argues that the Application as it stands is bad in law and is made in bad faith and an attempt at subverting timely administration of justice.

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