

Application No. 14 of 2022 Rugofarm Company v The Attorney General of Burundi

Coming up for Ruling: 23rd November 2023.

Application filed: on 16th August 2022

Rules: Rule 88,89,91 &109 of The East African Court of Justice Rules of Procedure 2019.

Subject matter: Application to Strike Out Notice of Appeal or Appeal

This Application originates from *Appeal no 7 of 2022 Rugo Farm Company v The Attorney General of the Republic of Burundi*, where the Respondent being dissatisfied with the Judgment and orders of the First Instance Division appealed to the Appellate Division of the Court on 25th May 2022.

The main issues that the Applicant advances are that the appeal should be struck out for not complying with the East African Court of Justice Rules of Procedure on the institution of Appeals. In advancing his arguments further the Applicant elaborates that the Notice of Appeal was not filed in Court within the time stipulated by Rule 88(2), and further that the Respondent offended Rule 89 by not serving the other party on time or filing the Affidavit of proof of Service.

The Applicant finally implored the Court to strike out the Appeal with costs for non-compliance with the Rules.

The Respondent counters the Application on the ground that, while it is true that there was no proof of service either by an affixation of a signature on the Notice or by filing an Affidavit of Service, the Applicant acquiesced the existence of the Appeal by filing a Cross Appeal in the Court's sub registry in Bujumbura. He further contends that the Application is misconceived and an afterthought attempt by the Applicant to frustrate the prosecution of the main Appeal. The Respondent reasons that in the circumstances, the most proper thing would have been to file a Notice of Preliminary objection under Rule 109 of the East African Court of Justice Rules of Procedure, seven (7) days before the Appeal was called for hearing which the Applicant did not do.

The Respondent thus prayed to the Court that the Application ought to be struck out for being void of merit and for the Appeal to be heard and determined on its merits.

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