

Application No. 16 of 2022 Male Mabirizi Kiwanuka v The Attorney General of Uganda

Coming up for Hearing: 15th November 2023.

Application filed: on 13th December 2022

Treaty, 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: Recusal Application

This application originates from 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 the 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 the 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 others, 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 session 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 the current Application *Application no 16 of 2022 Male Mabirizi Kiwanuka v The Attorney General of Uganda* seeking for a recusal of Honourable Justice Cheborion Barishaki and the nullification of the proceeding of *Application of 11 of 2022 Male Mabirizi Kiwanuka v The Attorney General of Uganda* and a further order that the Honourable Justice Cheborion Barishaki recuses himself from participating in the pending Appeal or any matter originating from it.

The Applicants main argument is that the said Judge participated in Ugandan Constitutional Appeal no 49 of 2017 whose decision the Applicant was dissatisfied with leading him to file a Reference in the East African Court of Justice the resulting Judgment which *Appeal no 7 of 2020 Male Mabirizi Kiwanuka v The Attorney General of Uganda* intends to impugn.

The Respondent opposes the Application in its entirety, prays for it to be dismissed with costs. His contention being 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 in an attempt to subvert timely administration of justice. The Respondent further contends that the said Judge took an oath prior to the assumption of his duties to administer justice in an impartial manner regardless

of the person appearing before him and that the matters relating to Constitutional Appeal no 49 of 2017 were not matters regarding interpretation and application of the Treaty for the Establishment of the East African Community.

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