



IN THE EAST AFRICAN COURT OF JUSTICE AT ARUSHA
FIRST INSTANCE DIVISION



(Coram: Yohane B. Masara, PJ; Audace Ngiye, DPJ; Charles O. Nyawello; Richard Muhumuza & Richard W. Wejuli, JJ)

APPLICATION NO.10 OF 2019
(Arising from Reference No.11 of 2019)

**THE ATTORNEY GENERAL OF THE
REPUBLIC OF UGANDA APPLICANT**

VERSUS

HOKOLIMANA VENNANT MUSONI RESPONDENT



8TH OCTOBER, 2021

RULING OF THE COURT

A. INTRODUCTION

1. The Applicant brought this Application under Article 30 of the Treaty for Establishment of the East African Community (“the Treaty”) and Rules 1(2), 4, 21 and 30 of the East African Court of Justice Rules, 2019 (“the Rules”).
2. The Application seeks for Orders to:
 - i. **enlarge time within which to file and serve the Respondent (Applicant in the Reference) with a Response out of time and or;**
 - ii. **in the alternative, have the Response to the Reference filed in this Court validated and,**
 - iii. **that the costs of the Application be in the cause.**

B. REPRESENTATION

3. The Applicant was represented by M/s Maureen Ijang, learned advocate, while the Respondents were represented by Angel Ampurire, learned State Attorney.

C. APPLICANT’S CASE

4. The grounds of the Application are as stated in the Affidavit in support of the Application deposed by Allan Mukama, a State Attorney at the Attorney General’s Chambers, Uganda. Briefly, the Applicant state that whereas the Applicant was served with the Notification of a Statement of Reference on the 17th June 2019, the Applicant only received instructions and relevant information from the relevant government agencies of the Government of Uganda on 16th September 2019,



whereupon he filed his Response to the Reference on the 19th September 2019.

5. That the Applicant was, therefore, unable to file the Response within the prescribed 45 days for reasons beyond his control, that the Respondent will not suffer any prejudice if the orders sought are granted and further that it is just and equitable and in the interest of justice that this Court grants the said Orders.
6. The Counsel for the Applicant expounded on the grounds stated in the Application and in the Affidavit in support and similarly, Learned Counsel for the Respondent reiterated the grounds for contestation of the Application as stated in both the Response and the Affidavit in reply.

D. RESPONDENT'S CASE

7. In an Affidavit deponed by Remy Niyibizi, it is averred that the Applicant breached the Rules, that the Applicant deliberately dragged the process in order to delay justice and that he did not request Court for extension of time pursuant to Rule 5 of the Rules when he realized that it would not be able to respond within the statutory 45 days. .
8. The Respondent further contend that the Application for extension of time was brought under the 2013 Rules of Procedure which are no longer in force having been repealed by the EACJ Rules of Procedure, 2019.



E. COURT'S DETERMINATION

9. We had the opportunity to examine Rule 5 of the Rules which provides:

"In determining whether 'sufficient reason' for the extension of time under Rule 4 exists, the court seized of the matter should take into account not only the considerations relevant to the applicant's inability or failure to take the essential procedural step in time, but also any other considerations that might impel a Court of Justice to excuse a procedural lapse and incline to a hearing on the merits. In our considered opinion, will depend on the circumstances of individual cases and include, but are not limited to, such matters as the promptitude with which the remedial application is brought, the public importance of the said matter, and of course, the prejudice that may be occasioned to either party by the grant or refusal of the application for extension of time."

10. Our interpretation of the Rule is that it does not avail an Applicant an opportunity to apply for extension of time in anticipation of a delayed filing but rather, the Rule is intended to cure an omission where a party, for sufficient cause, has not been able to file a response within the stipulated time allowed by the Rules. In such circumstances, Rule 5 is then invoked to enable the Court, in exercise of its discretion, to enlarge time within which an action or activity is supposed to have been done or to validate such belated action

11. This Court has taken into consideration the Pleadings and Affidavit evidence filed by the Parties and adopted the Submissions by Counsel for the respective Parties. In our view, the first issue for determination is:



Whether Application No.10 of 2019 Was Properly Brought Before This Court, Having Been Filed Under Revoked Rules Of Procedure:

12. The Respondent contends that the Application was filed under the 2013 Rules and that this amounts to an abuse of this Court's Rules and that, premised on the foregoing, the Application should be dismissed with costs.
13. The Application was filed on the 19th September, 2019 under the East African Court of Justice Rules of Procedure 2013. This was after the EACJ Rules 2019 had been published.
14. Rule 1 of the East African Court of Justice Rules of Procedure, 2019 provides that; *"the Rules shall come into force on a date appointed by the President by Notice in the Gazette."*
15. Whereas the East African Court of Justice Rules 2019 were published in the EAC Gazette on the 15th February 2019, they came into force on the 1st February 2020, vide **Legal Notice No. EAC/23/2020 in the EAC Gazette of 27th January 2020**. From the Court Record, **Application No.10 of 2019** was filed on the 19th September 2019. It, therefore, follows that both the Reply to the Reference and the instant Application are properly before this Court, having been brought under the applicable Laws at the time of filing.
16. Having so determined, the next issue is:

Whether The Application Discloses Sufficient Reasons For This Court To Grant Extension Of Time Within Which The Applicant Should File His Answer To The Reference:



17. The Respondents contend that the Applicants contravened Rule 32(1) of the Rules which requires them to file and serve their Response within 45 days of being served with the Reference. That the delay to file and serve a Response to the Reference was inordinate, unjustifiable, and inconsistent with the Rules and simply a ploy to delay justice to the Respondent.
18. The Court's record indicates that the Reference was filed on 17th June 2019 and served on the Respondent on the 25th June 2019. The Applicant filed his Response and the instant Application on the 19th September 2019.
19. It is discerned from the Affidavit in support of the Application that in the events following service of the Notification of Reference on the Respondent, within 6 days of receipt of the Notice of reference, the Respondent put the Notice to the attention of the relevant government agencies, on whose behalf he acts. It is also discerned from the said Affidavit in support of the Application that within 3 days of receipt of instructions and requisite information from the said agencies, the Respondent filed his Response and the instant, **Application 10 of 2019**, on the 19th September 2019.
20. Rule 4 of the EACJ Rules of Procedure 2019 mandates this Court with inherent powers to make such orders as may be necessary for the ends of justice. Rule 4 provides that:



“Nothing in these Rules shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders or give such directions as may be necessary for the ends of justice or to prevent abuse of the process of the Court.”

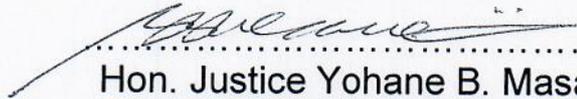
21. Rule 5 of the Rules of Procedure, 2019, which is *in pari materia* with Rule 4 of the repealed East African Court of Justice Rules 2013 mandates this Court, for **“sufficient reason”**, to extend the time limited by these Rules or by any decision of itself for the doing of any act authorized or required by these Rules, whether before or after the expiration of such time and whether before or after the doing of the act, and any reference in these Rules to any such time shall be construed as a reference to such time as so extended.
22. The considerations that Court should make when determining whether or not to grant extension of time, were well stated and settled by this Court in the case of **Prof. Anyang’ Nyong’o & 10 Others vs. The AG of the Republic of Kenya, Application No. 1 of 2010** and in **Godfrey Magezi vs. National Medical Stores, EACJ Appeal No. 2 of 2016.**
23. In cited cases, it was held that there must be **“sufficient reason”**, and that what constitutes **“sufficient reason”** is left to the discretion of Court. The Learned Judges considered that Court would accept either a reason that prevented an applicant from taking the essential step in time or other reasons why the intended appeal (application, in this case) should be allowed to proceed though out of time. The Court further held that an application that is brought promptly would be considered more sympathetically than one that is brought after unexplained in-ordinate delay.



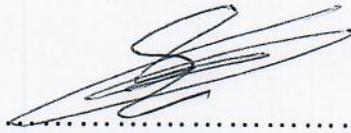
24. In the instant case, the averment by the Respondents that the chronology of events shown in the Applicant's Notice of Motion is proof that the Respondent intentionally dragged the process in order to delay justice is not supported by any cogent evidence. It is, with due respect, contrary to conventional rationale because the Applicant's impugned actions evidence efforts to obtain information that would constitute the necessary input to craft a Response to the Reference.
25. The Affidavit evidence proffered by the Applicant, supports the notion that whereas the Applicant (Respondent in the Reference) acted diligently to try and put together a Response to the Reference, the delay to avail the requisite information for input in the Response which, believably, was in the domain of other government institutions and largely out of the control of the Applicant, evidently precipitated the delay.
26. In the event, this Court finds that the Applicant (Respondent in the Reference) was for sufficient reason prevented from filing their Response within the time limit stipulated by the Rules and that the instant Application to enlarge time was brought without undue delay.
27. The Application accordingly succeeds and the time within which to file and serve the Response in **Reference No.11 of 2019** is enlarged and the said Response, which was filed in this Court and served on the Applicant on the 10th June 2021, is accordingly validated.
28. Costs of the Application shall abide the outcome of the Reference.
29. It is so ordered.



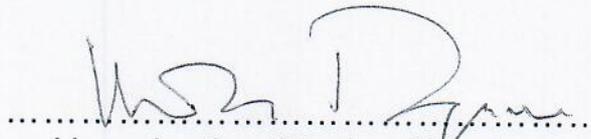
Dated and signed at Arusha this 6th day of October 2021.



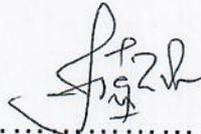
Hon. Justice Yohane B. Masara
PRINCIPAL JUDGE



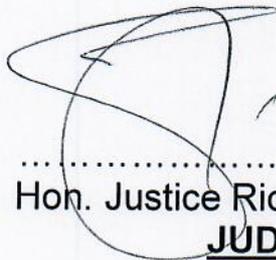
Hon. Justice Audace Ngiye
DEPUTY PRINCIPAL JUDGE



Hon. Justice Charles Nyachae
JUDGE



Hon. Justice Richard Muhumuza
JUDGE



Hon. Justice Richard W. Wejuli
JUDGE

