



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



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

APPLICATION NO.16 OF 2020

(Arising from Reference No.16 of 2020)

1. ADAM KYOMUHENDO..... 1ST APPLICANT
2. INDIGENOUS PEOPLES STRATEGY FORUM 2ND APPLICANT

VERSUS

THE ATTORNEY GENERAL OF
THE REPUBLIC OF UGANDA RESPONDENT

25th NOVEMBER, 2021



RULING OF THE COURT

A. INTRODUCTION

1. This is an Application arising from Reference No.16 of 2020 and was filed by Mr. Adam Kyomuhendo (“the 1st Applicant”) and a non-profit organisation called Indigenous Peoples Strategy Forum (“the 2nd Applicant”) also represented by Adam Kyomuhendo. The Applicants seek an Interim Order from this Court to provisionally restrain the Republic of Uganda (“the Respondent”) from proceeding with or conducting geological activities, including surveying, mining and or exploration at the Kibiro Hot Springs village and ancient salt manufacturing works, including for geothermal energy and natural resources, until the hearing and determination of **Reference No.16 of 2020.**

B. REPRESENTATION

2. At the hearing of the Application, Mr. Kyomuhendo, represented himself as the 1st Applicant and also represented the 2nd Applicant, while the Respondent was represented by Mr. Wanyama Kodoli, Principal State Attorney and Kokunda Clare, Senior State Attorney.

C. APPLICANT’S CASE

3. The Application was filed under Articles 5 (1), (3) (a) and (d), 6 (d), 7 (1) (a) and (2), 8 (1) (a) and (c), 23,27, 30, 38 (2), 39, 111, 114, 119(c) and (f), 123 (3) (c), 130 (1) and (4) of the Treaty for the Establishment of the East African Community (“the Treaty”) and Rules 4, 25 and 27 of the East African Court of Justice Rules of 2019 (“the Rules”).
4. The Applicants seek an interim injunction restraining the Respondent’s authorities from evicting the people of Kibiro, the Kingdom and people of Bunyoro Kitara, from their ancestral lands, including conducting any



activity that has the implicit effect of achieving the above objective, until the hearing and determination of **Reference No.16 of 2020**.

5. The grounds for the Application are set out in the Notice of Motion, and are supported by the Affidavit deposed by the 1st Applicant on behalf of both himself and the 2nd Applicant and filed in this Court on 25th day of June 2020.
6. In brief, the Applicants' complaint is that the Respondent began conducting preliminary geological activities within Kibiro village to establish a geothermal electricity plant, sometimes in late 2019. In that regard, the Respondent retained the services of a private contractor identified as Messrs Royal Techno Services which began drilling Temperature Gradient Holes in Kibiro.
7. The Applicants further stated that, as a result of the drilling actions or geological activities around the Kibiro Salt Village, on 28th March 2020 a dangerous blow-out happened and there was also hydrocarbon discharge which affected and destroyed the properties of the Kibiro community.
8. The Applicants argue that the impugned preliminary geological activities have wrought far-reaching environmental and human rights threats and hazards to the wider Kibiro population and or are threatening the integrity of the Kibiro hot springs and ancient Salt Works.
9. The Applicant submitted that in accordance with the precedent established by this Court for the granting of interim injunctions, the Court should give the Orders prayed for, against the Respondent, pending the determination of **Reference No.16 of 2020**.



D. RESPONDENT'S CASE

10. The Respondent relied on its Affidavit in Reply and contended that matters raised by the Applicant in their Affidavit did not warrant the granting of the reliefs sought. It invited the Court to dismiss the Application with costs to the Respondent.
11. The Respondent submitted that the Applicants did not meet any of the criteria established by the Court for the granting of an *interlocutory* injunction sought by the Applicants. The sequential tests applied by the Court in, *inter alia*, **Timothy Alvin Kahoho vs. The Secretary General of the East African Community, EACJ Application No.5 of 2012** are not met and the Application must fail.
12. According to the Respondent, the Applicants allegations of an oil spillage and the number of people affected were fallacious and exaggerated. The Respondent further submitted that it had filed before the Court affidavit evidence to disprove the Applicants' allegations and this evidence had not been rebutted by the Applicant in rejoinder.
13. The Respondent further submitted that in this matter, considering in particular the amount of tax payers funds spent by the Respondent state on the geological activities and the investments on baseline studies, public outreach and community engagements, the balance of convenience was in favour of disallowing the Application.
14. The Respondent therefore prayed that the Application should be dismissed with costs.

E. COURT'S DETERMINATION

15. In the course of proceedings, the Court raised *suo motu*, the question of Mr. Kyomuhendo's authority to bring the matter before Court, on behalf of the 2nd Applicant, and to swear an Affidavit in that regard,



jointly on his behalf and on behalf of the 2nd Applicant. Did the first Applicant have the requisite *locus standi* to represent the second Applicant in the matter? The Court invited each of the Parties to submit on this issue.

16. Mr. Kyomuhendo stated that he had authority from the 2nd Applicant, both to bring the proceedings on its behalf as well as to swear the Affidavit in that regard. Conceding that he had not placed the resolution before the court, he invited the Court to exercise discretion to allow him to belatedly file the resolution from the 2nd Applicant, granting him such authority.
17. Mr. Kyomuhendo contended that in any event because he is the Director of the 2nd Applicant, he had *locus standi* under the Rules, despite a lack of a written authorization to do so filed with this Court.
18. Mr. Kyomuhendo further relied on paragraph 2 of his sworn Affidavit in support of the Notice of Motion which states that “*he is team leader as well as litigation director of the 2nd applicant, a non-profit think tank organization.*”
19. On his part, Counsel for the Respondent submitted that the absence of a resolution demonstrating the 1st Applicant’s authority to represent the 2nd Applicant and to swear the Affidavit was fatal, and that any purported representation should be struck off the Court’s record.
20. Counsel for the Respondent contended that Rule 19(5) of the Rules is very clear and instructive that as the 1st Applicant had not filed any evidence that he had a resolution from 2nd Applicant authorizing him to represent the latter he had no *locus standi* to so represent the 2nd Applicant.



21. We consider it appropriate that the Court considers this preliminary legal issue antecedent to addressing the substantive merits of the Application before us, if the need so arises.

22. It is not in contention that the 2nd Applicant is a limited liability company incorporated in the Republic of Uganda. A certificate of incorporation was attached in the Pleadings.

23. Rule 19(5) of the Rules provides as follows:

“A corporation or company may appear by its director, manager or Company Secretary, who is appointed by a resolution under the seal of the corporation or the company, or may be represented by an advocate.”

24. In our considered view, the clear import of Rule 19 (5) is to provide *locus standi* to a director, manager or Company Secretary of a company or corporation to appear and represent the company or corporation before this Court, where such a corporation is a party. Further, and most importantly, such director, manager or company secretary must be appointed by a resolution under the seal of the corporation in question.

25. It is also not in contention that at the time of filing the Reference and also the instant Application, the 1st Applicant had not filed any such resolution or other documentation evidencing authority to act on behalf of the 2nd Applicant including swearing an affidavit in that respect.

26. The question that arises is; what is the 1st Applicant’s position as regard *locus standi* to represent the 2nd Applicant?

27. Having listened to both Parties and carefully considered the applicable law, we are persuaded by the Respondent’s argument that the absence



of evidence of authority is fatal to the Applicants *locus standi* to represent the 2nd Applicant in this matter.

28. While not binding on us, we are persuaded by the decision of the High Court of Namibia in Kalenga and Others vs. Minister of Urban and Rural Development and Others (HC-MD-CIV-MOT-REV 219 of 2019) where the Court stated:

“In circumstances where a person purports to initiate or to defend proceedings on behalf of a legal persona, that person invariably requires authority to initiate, oppose, and to prosecute those proceedings on behalf of the legal persona.”

29. In Application No.1 of 2015, (Arising from Reference No.6 of 2014), Dr. Ally Possi and Center for Human Rights, University of Pretoria, this Court had no difficulty in holding, in similar circumstances, that in the absence of authority from the 1st Applicant therein to represent the 2nd Applicant the said 2nd Applicant must be struck off as a party to the Application. So too, in the instant Application we have no difficulty in striking out the 2nd Applicant. We hereby do so.

30. As stated above, the 1st Applicant purported to swear an affidavit both on his own behalf and on behalf of the 2nd Applicant. That is the affidavit that supports the Application. Rule 52(5) of the Rules, provides as follows:

“Every formal application to the Court shall be supported by one or more affidavits of the Applicant or of some other person or persons having knowledge of the facts, in accordance with Form 3 of the Second Schedule.”

31. We are persuaded that the Affidavit sworn by the 1st Applicant herein cannot survive the striking off of the 2nd Applicant. In the Affidavit at paragraph 4 the 1st Applicant depones:

Application No.16 of 2020



“THAT I affirm to the Affidavit on my behalf and that of the 2nd Applicant.”

32. It is a joint affidavit with the 2nd Applicant, now struck off. The affidavit must of necessity, collapse. It is our considered opinion that an affidavit jointly sworn with a now, non-existent party cannot be severed or in any way salvaged. It is incurable. We therefore strike out the said Affidavit.

33. In the absence of an affidavit, we find that the Application cannot survive, by reasons both of the express provision of Rule 52(5) of the Rules, but also that there is no longer any evidence to support the Application. This Court stated in EACJ Taxation Reference No.3 of 2016, Angela Amudo vs. the Secretary General of the East African Community:

“This Court should not permit admission of documents that do not strictly comply with procedural rules.”

34. In the Zimbabwean case of William Baron vs. Theresa Baron and Thomas William Baron and The Registrar of Deeds, HC 1665/20, applying a provision similar to Rule 52(5) of the Rules, the High Court of Zimbabwe struck out the Applicant’s Affidavit and concluded:

“Thus, there is no founding affidavit and therefore, no application before Court to consider.”

We find that case, of persuasive value to this Court, to be on all fours with the current Application.

35. There being no affidavit to support the Application, we are constrained to strike out the Application. We hereby do so.



F. CONCLUSION

36. In the premises, the Court finds the Application to be incompetent by reasons of being supported by an incurably defective affidavit. The Application is thus dismissed in its entirety.

37. Regarding costs, Rule 127(1) of the Rules provides; “**costs in any proceedings shall follow the event unless the Court for good reasons shown so orders.**” We see no reason to deviate from this Rule, and accordingly award costs to the Respondent.

38. It is so ordered.

Dated, signed and delivered at Bujumbura this 25th day of November, 2021.

.....
Hon. Justice Yohane B. Masara
PRINCIPAL JUDGE

.....
Hon. Justice Audace Ngiye
DEPUTY PRINCIPAL JUDGE

.....
Hon. Justice Charles A. Nyachae
JUDGE

.....
Hon. Justice Richard Muhumuza
JUDGE

.....
Hon. Justice Richard W. Wejuli
JUDGE

