

**EAST AFRICAN COURT OF JUSTICE  
AT ARUSHA-FIRST INSTANCE DIVISION**

**APPLICATION NO 1 OF 2012**

**(Arising from Reference No. 1 of 2010)**

**Hon. Sam Njuba.....Applicant**

**Versus**

**Hon. Sitenda Sebalu.....Respondent**

**AND**

**APPLICATION NO 2 OF 2012**

**(Arising from Reference No. 1 of 2010)**

**Electoral Commission of Uganda.....Applicant**

**Versus**

**Hon. Sitenda Sebalu.....Respondent**

**RULING**

**DATE: 12<sup>TH</sup> FEBRUARY 2013**

**PROF. DR. JOHN EUDES RUHANGISA, TAXING OFFICER**

Victoria Advocates and Legal Consultants representing Hon. Sam Njuba the applicant filed a Notice of Motion Application No. 1 of 2012 supported by an Affidavit of Dan Wandera Ogalo on 24<sup>th</sup> February, 2012 while the Legal Department Electoral Commission for the Electoral Commission of Uganda filed its Notice of Motion Application No. 2 of 2012 supported by an

Affidavit of Eric Sabiiti on 29<sup>th</sup> February, 2012. Both applications are seeking leave for extension of time for filing bills of costs by the applicants. The applications have been brought under Rule 2(2) of the Taxation of Costs Rules, Second Schedule of the East African Court of Justice Rules of Procedure.

The genesis of these two Applications goes back to Reference No. 1 of 2010 where in its judgment dated 30<sup>th</sup> June, 2011 the court struck off the 3<sup>rd</sup> and 4<sup>th</sup> Respondents, who are the Applicants herein, and directed that the Applicant in that reference, who is the Respondent in these two applications pay their costs. The Applicant, who is the Respondent in these two applications, was as well awarded costs to be paid by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in the Reference, whose bill was filed and taxed by the Registrar.

In the Reference the Applicant was represented by M/s Bakiza & Co. Advocates and M/s Semuyaba, Iga & Co. Advocates. The 1<sup>st</sup> Respondent was represented by Counsel to the Community; the 2<sup>nd</sup> and 4<sup>th</sup> Respondents were represented jointly by The Attorney General of Uganda and the Electoral Commission of Uganda who filed a Response to the Reference jointly while the 3<sup>rd</sup> Respondent was represented by Victoria Advocates and Legal Consultants.

By letters dated 4<sup>th</sup> October and 3<sup>rd</sup> November 2012, Semuyaba, Iga & Company Advocates, Counsel for the Respondent herein, informed the Registrar that his client Hon. Sam Njuba had written letters to the Applicants herein as provided under Rule 2(2) of the Rules on Taxation and that the 21 days had lapsed after sending the request in writing to the parties liable to pay the bills. The Applicants advocates herein came to file their bills of costs and found that the Respondent's advocates had filed letters asking the Registrar not to accept bills of costs from them as the 21 days the time prescribed by Rule 2(2) had elapsed. Counsels for the Applicants herein then filed applications for extension of time within which to file their bills of costs. Hence this ruling.

The two applications above were fixed for hearing on 29<sup>th</sup> of March 2012 and all the parties in the applications were served on the 15<sup>th</sup> day of March, 2012, which was thirteen (13) days before

the hearing date. On 28<sup>th</sup> of March, 2012 a day before the date set for hearing, the Respondent herein filed affidavits headed Affidavit in Support although he was replying to the Applicants Affidavits in support of their applications. The Registrar under Rule 10 of the Provisions of The East African Court of Justice Rules of Procedure accepted the documents but marked them “lodged out time” and informed the advocate lodging them that the affidavits were lodged out of time.

On the date the applications came up for hearing, due to unavoidable circumstances, the Registrar was not available for the hearing and for that reason the hearing of the applications was adjourned. The applications were again fixed for hearing on the 4<sup>th</sup> of May, 2012.

At the hearing, counsel for the Respondent made an application to have the affidavits filed on 28<sup>th</sup> March, 2012 in both applications and marked “lodged out of time” properly constituted in Court file and also be allowed to file a supplementary affidavit before the court could proceed with the hearing of the application. Counsel for the Applicants opposed the application.

At the end of the submissions I made a preliminary ruling consolidating the two applications since the two are interrelated. The two applications arise from the same matter, involved the same respondent, raised same issues and sought for same orders from the Court. I found it necessary, on the strength of the foregoing, to consolidate the two applications. By my ruling delivered on 8<sup>th</sup> June, 2012 the application for leave to file the affidavits out of time and allow filing of supplementary affidavits was dismissed. I further ordered that Applications number 1 and 2 of 2012 proceed for hearing without the affidavits on record and that costs out of the oral application should be borne by the oral applicant/respondent.

At the hearing of the substantive applications Mr. Komakech representing Hon. Sam Njuba argued that the letter written under Rule 2(2) of the Courts Rules was a personal letter written by Applicant Hon. Sitenda Sebalu himself to Hon. Wandera Ogalo and therefore needed his personal attention. He further argued that Hon. Wandera Ogalo was out of Uganda at the time the letter was served and that he returned to Uganda from Southern Sudan on 4<sup>th</sup> November 2011.

He thereafter travelled to India on 25<sup>th</sup> November 2011 for treatment and came back in December 2011. Mr. Komakech could not get the exact date that Mr. Ogalo came back as the passport he was referring to did not have that information because it had been replaced with a new passport. He submitted that as such Mr. Ogalo could not respond to the letter which was addressed to him until such he returned from India for treatment. Mr. Komakech attempted to produce the passport as evidence to support this allegation but this could not be admissible as he had omitted it in his affidavit in support of the application therefore it could only be admitted by making a formal application. He submitted that the letter was brought to the attention of Mr. Ogalo in late December 2011 upon him resuming his chamber work.

Mr. Komakech contended that the letter should have been written by the firms representing Hon. Sitenda Sebalu the Respondent herein and not himself. He further contended that the letter should have been addressed to the firm representing Hon. Sam Njuba M/s Victoria Advocates and Legal Consultants but in this case it was addressed to Hon. Wandera Ogalo personally. Mr. Komakech submitted that “Had it been that the letter was from Semuyaba or Bakiza Advocates Addressed to Victoria Advocates, we totally agree that there is a breach of the rules of this court which provide that once there is a request for a bill by opposite party, then practically within 21 days, the bill should have been forwarded.” He submitted that there was no formal request as envisaged under Rule 2(2) of the EACJ Second Schedule Taxation of Costs Rules

Mr. Komakech further submitted that Rule 2(2) is very clear and does not provide for a sanction that in the event that the party liable to file the bill fails to furnish the bill within 21 days, he shall forfeit the bill, but rather goes ahead and gives the Registrar powers to exercise his or her discretion in such matters so as to have the matter concluded.

Mr. Komakech also relied on the case of *Prof Anyang Nyongo & Others Vs The Attorney General of Kenya Applications No. 1 & 2 of 2010 (EACJ Registry)*, that this Court has unvetted jurisdiction to extend time depending on the circumstances of the case. He also relied on *Fredrick Njebi Arodi & Another Vs I. W. Waweru Trading as Watimoro Safaris, Civil Application No. 127 of 1997 (High Court Kenya)* where the delay was not sufficiently explained

but as it was not inordinate it did not prevent the judge from exercising his discretion in favor of the Applicants.

Mr. Komakech concluded by submitting that this court be pleased to grant the applicant time to file their bill of costs and have the same taxed given the fact that the 21 days would only have been there had it been that Bakiza and Company Advocates, Semuyaba and Company Advocates had written personally to Victoria Advocates and Legal Consultants that is on record as appearing for the Applicant in this matter. He lastly submitted that Rule 2(2) does not imply that if one fails to file the bill within 21 days he or she forfeits the bill.

Counsel for the Applicant in Application Number 2 of 2012 Mr. Jude Mwaswa submitted that the application is supported by an Affidavit of Eric Sabiit which states that the Respondent in this matter did not effectively demand that the Applicant file his bill of costs and have it taxed within time. He submitted that the letter written by the Respondent was addressed to the Secretary of the Applicant and therefore was a personal letter. He further submitted that this letter did not originate from the lawyers of the Respondent and was therefore taken as a personal letter. It had also not been brought to the attention of the lawyer who had personal conduct of the original reference. When I asked Counsel to whom should any official communication to the Commission be addressed he answered “Official communication are addressed to the Chief Secretary but when it comes to matters before a Court, they are addressed to the legal chambers and that has been the practice. In this case the Applicant has been represented by the Attorney General of Uganda and Legal Chambers of the first Respondent”. He submitted that both the Attorney General and the Election Commission Legal Chambers were not informed at all about the demand notices prepared by the Respondent and his lawyers.

Mr. Mwaswa submitted that during the period when the Respondent purportedly wrote a letter and served the Applicant herein, that was the period when the High Court of Uganda had fixed a special session for hearing election petitions arising out of the 2011 general elections. During that period which started in June, 2011 to November 2011, the Applicants lawyer who had personal conduct of the original reference was engaged in handling these election petitions that

were all over the courts of Uganda. Counsel submitted that the Applicant herein being a subtle Respondent to all the election petitions, all the lawyers in its legal chambers were engaged in several courts in upcountry Uganda and there was no lawyer in its chambers who would attend to any matters that would arise until the session ended.

Mr. Mwasa submitted that the letter was not received by the lawyers and that the applicant came to learn of the letter when he came to file the bill of costs. He further submitted that it is not known whether the letter was received officially or not and he cannot tell because they do not know the origin of the person who stamped on it. He submitted that upon perusal of the record he learned that the lawyers filed another letter to this court without serving the same to the Applicant's lawyers. Upon the Applicant learning about both of the letters from this Court, it filed this application seeking extension of time for the reasons given.

Mr. Mwasa concluded by submitting that the facts alluded to amount to sufficient cause for this Court to under Rule 4 of its rules to grant the Applicant extension of time to have their bills filed and taxed. He also submitted that Rule 2(2) of the Second Schedule of the Rules as submitted by his colleague do not provide or bar successful parties in this Court from lodging their bills of costs having failed to prepare to lodge them in time, it does not bar them to seek extension of time to have their bills filed and taxed. He prayed that the court considers the circumstances and facts at hand to invoke its inherent powers under Rule 4 and Rule 2(2) of the Second Schedule of the rules to extend time and allow the applicants to file their bills and have them taxed out of time.

In response Mr. Bakiza Counsel for the Respondent submitted that no sufficient reasons have been advanced in Application No. 1 justifying the delay and the court should therefore, not be invoked to exercise its discretion to regularize what the Applicant failed to do within the prescribed rules. He submitted that even if the Court was to exercise its discretion to extend time, the Court should reject reasons advanced for the delay as being insufficient in the circumstances and dismiss this Application with costs.

Mr. Bakiza emphasized the words “party liable” in Rule 2(2) and submitted that since Sitenda Sebalu was party to the proceedings it is reasonably conceived in this rule that the party liable to pay was Sitenda Sebalu who should originate the demand or request for the bill of costs and should not be faulted for doing so. He further submitted that in as much as Victoria and Company Advocates received the letter addressed to Hon. Wandera Ogalo an advocate within the law firm and stamped it without a comment they had undertaken to pass it over to him as he had personal conduct of this matter.

In response to the explanation why Hon. Ogalo did not act in time upon his return, Counsel submitted that no explanation has been given for that failure and that Hon. Ogalo chose to travel on a trip for which no evidence has been adduced. He averred that Hon. Ogalo simply travelled and abandoned his responsibility not only to the Respondent but to the Court itself and even to his client. He further submitted that Hon. Ogalo in his affidavit does not explain why for the three days before he again travelled from Uganda he did not attend to chamber work. He submitted that those three days were enough for him either to act personally or to instruct anybody within the law firm in the same way he instructed somebody who represented him in this application to take the necessary step. He also submitted that Hon. Ogalo did not obtain an affidavit from the secretary or the clerk of his firm to show what transpired.

Mr. Bakiza also submitted that for Counsel Ogalo to submit the bill of costs on 3<sup>rd</sup> January, 2012, close to about four months constitutes inordinate delay and is inexcusable. Counsel relied on the case of *Jane Bugiriza Versus John Nathan Osapil, Uganda Supreme Court, Application No. 7 of 2005* where the Supreme Court was faced with a similar situation of extension of time and it held that a delay for two years and 19 days before filing a bill of costs constituted inordinate delay and was inexcusable. The court observed that the essence for requesting for the bill of costs is that the party paying must know his or her liability without delay and that when a bill of costs causes unquantified date which may cause imprisonment of the party liable, the bill continues to hang on the respondent’s head and that there must be an end to litigation.

In regard to Application No. 2 Mr. Bakiza submitted that once the letter was received as it was by the Electoral Commission on 11<sup>th</sup> October, 2011 the Respondent was not concerned with the goings on at the Electoral Commission. He submitted that the attempts to explain the failure by stating that all the lawyers were involved in election petitions is not reasonable excuse and that no evidence was adduced from the secretary of the Electoral Commission. He submitted that the duty for placing the necessary evidence before the court lies on the Applicant and that duty has not been discharged.

Mr. Bakiza concluded by praying that the application be dismissed with costs on ground that the delay was inordinate and inexcusable and no sufficient reasons have been advanced for grant of extension of time within which to file a bill of costs. He also prayed that in the event that the application is allowed, the cost be payable by counsel who was in default for lodging the application for the bill of costs late.

Mr. Semuyaba also for the Respondent in both applications in his additional submissions to Mr. Bakizas averred that the mere fact that Hon. Ogalo is on court record as the lawyer who represented the party and the mere fact that his law firm is the one that filed the court papers and received and got receiving stamp is a clear testimony that his law firm received the communication.

With regard to Application No. 2 Mr. Semuyaba submitted that the Electoral Commission is an institution which receives communication through its Secretary and that the letter was duly received by their registry on 11<sup>th</sup> October 2011 and duly stamped. He averred that the affidavit of Eric Sabiit was full of false hoods by stating that their organization was not served and cannot come to court and advance any reasonable cause as to why they sat on their right after a request was made under a mandatory requirement for them to file their bill of costs within 21days. He also submitted that Mr. Eric Sabiit could not have been an advocate of the party as required under Rule 2(1) because he was an employee of the Electoral Commission. He submitted that there is no evidence that the Electoral Commission Law Chambers is a registered law chambers.

He also added that in the case of *John Bagiriza*, once the party does not as soon as practicable file their bill of costs, then they are deemed to lose that bill of costs. Also relying on the authority of the case of *Anyang Nyongo* he submitted that no sufficient reason has been advanced and the application should be denied. He prayed that the Application be dismissed with costs.

In rejoinder Mr. Komakech for the Applicant in the first application submitted that it is not in dispute a letter was written and received by Victoria Advocates but what is in dispute is that it was to the attention of Hon. Ogalo thus making it personal. He also submitted that Hon. Ogalo acted with diligence by writing a letter dated 2<sup>nd</sup> January to Counsel for the Respondent enclosing a draft bill of costs seeking views and indicating his intention of filing it. He acted upon the letter from Sitenda Sebalu having been brought to his attention.

Mr. Mwasa in rejoinder submitted that the Electoral Commission Law Chambers is one of the registered firms in Uganda and therefore it was duly representing the Applicant. He further contended that Mr. Eric Sabiit had personal conduct of this matter because he is the one who handled the original reference and he was among the lawyers who were handling election petitions in Uganda during that period and according to the Uganda laws, all the election petitions take precedence over all matters pending in court.

Having considered submissions by counsels for the parties in both applications I have come up with five issues that I need to make findings on as follows:

1. Whether a party represented by an advocate in a case can act in person without formally withdrawing instructions or filing a notice of change of advocate.
2. Whether the letters in contention served on the applicants by the respondents, constituted proper service as envisaged under Rule 2 (2) of the Taxation of Costs Rules.
3. Whether, under Rule 2(2) Second Schedule: Taxation of Costs of the East African Court of Justice Rules of Procedure, a party who fails to lodge a bill of costs within 21 days of receiving a request from the party liable forfeits his right to file a bill.
4. Whether the delay was inordinate

5. Whether sufficient reasons have been established, as provided under Rule 4 of the East African Court of Justice Rules of Procedure, to warrant an extension of time to file bills of costs.

**1. Whether a party represented by an advocate in a case can act in person without formally withdrawing instructions or filing a notice of change of advocate.**

The Respondent was represented by the firms of Bakiza & Company Advocates and Semuyaba Iga & Company Advocates in Reference No. 1 of 2010. In its judgment dated 30<sup>th</sup> June, 2011 the court struck off the 3<sup>rd</sup> and 4<sup>th</sup> Respondents, who are the Applicants herein, and directed that the Applicant, who is the Respondent in these two applications pay their costs. The Applicant, who is the Respondent in these two applications, was as well awarded costs to be paid by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in the Reference. The bill was filed by the firms of Bakiza & Company Advocates and Semuyaba Iga & Company Advocates. The bill was taxed by the Registrar at the sum of USD 105, 068.20 payable to Hon. Sitenda Sebalu by The Attorney General of Uganda and The Secretary General of the East African Community.

From the background above, the applicants herein, who were the 3<sup>rd</sup> and 4<sup>th</sup> Respondents in the reference and were awarded costs, wish to have their bills of costs in Reference No. 1 of 2010 taxed. Under Rule 17(1) on representation a party to any proceedings in the Court may appear in person or by an agent and may be represented by an advocate. Hon. Sitenda Sebalu is Represented in Reference No. 1 of 2010 by the firms mentioned above and has never withdrawn instructions from being represented by the said firms. The mere mention of the word party in the rules does not mean that, where there is an advocate on record representing a party, the party can act in person without formally notifying the court and the other parties of its intention to withdraw instructions or withdrawal of instructions. Rule 18 provides that a party may, change its advocate but shall within 7 days of the change, lodge with the Registrar notice of the change and shall serve a copy of such notice on each party. This was not done.

Hon. Sitenda Sebalu personally wrote letters dated 27<sup>th</sup> July, 2011 to Counsel Ogalo and 10<sup>th</sup> October, 2011 to the Secretary, Electoral Commission requesting for bills in this matter and

thereafter his advocates proceeded to inform the court of the written request by its client. This shows that at one stage, in the cause of proceedings in this matter, the party purports to act in person then thereafter the advocates representing continue acting on his behalf. Any change of representation in a matter must be brought to the attention of the court and parties by notification otherwise it may lead to confusion in a matter as is the case here. In my view the letters by Hon. Sitenda Sebalu are procedurally improper and not binding in view of the fact that he instructed firms of advocates to represent him in this matter and has not withdrawn instructions or formally notified this court and parties of withdrawal of instructions. I therefore answer issue number one in the negative.

**2 Whether the letters in contention served on the applicants by the respondents, constituted proper service as envisaged under Rule 2 (2) of the Taxation of Costs Rules.**

I will again refer to the rule on representation above and say that the firm of advocates representing Hon. Sam Njuba is Victoria Advocates and Legal Consultants while the Electoral Commission is being represented by the Attorney General of Uganda and the Electoral Commission Legal Department. This is evidenced by their Response drawn and filed jointly in the Reference and the representation at the hearing of proceedings in the Reference. Hon. Sitenda Sebalu wrote a letter to Hon. Ogalo care of Victoria Advocates and Legal Consultants, and to The Secretary Electoral Commission of Uganda. The letters ought to have been addressed to the firms on record as representing the parties and possibly for the attention of Hon. Ogalo of Victoria Advocates and Legal Consultants or Eric Sabiit of Legal Department Electoral Commission of Uganda or Christine Kaahwa of The Attorney Generals Chambers. I therefore answer issue number two in the negative for the reasons stated hereunder.

Taking into consideration all the submissions given by both counsel for the applicants and respondent and the position of the law, I am of the opinion that there was no proper service of the demand letters dated 27<sup>th</sup> July, 2011 and 4<sup>th</sup> October, 2011 on the 1<sup>st</sup> applicant nor was there proper service of the letters dated 11<sup>th</sup> October and 4<sup>th</sup> November 2011 on the 2<sup>nd</sup> applicant for the following reasons/findings.

The law under Rule 8 (6) of the East African Court of Justice Rules of Procedure provides that, **“Every pleading lodged in Court shall indicate the address of service of the party making it and be signed by that party or by the party’s advocate or a person entitled under Rule 17 to represent the party.”** And whereas Rule 14 provides that, **“Where by these Rules a document is required to be served on any person service of that document shall be made by tendering to that person a duplicate thereof and requiring him or her to endorse the original acknowledging service.”**

Referring back to the documents/pleadings lodged in this honourable court with regard to the original Reference No.1 of 2010 which gave rise to this bill of cost, the address for the 3<sup>rd</sup> respondent for purposes of service as provided in the 3<sup>rd</sup> Respondent’s Response to the Reference was Sam K. Juba, C/o Victoria Advocates & Legal Consultants. And so far there is neither change of address nor any new address that has been furnished in this court for purposes of service in so far as the bill of costs is concerned; the procedure therefore was to use the same address in addressing the notice/request. Moreover it’s the rule of practice that when a person employs the services of an advocate/firm for a particular matter then every correspondence regarding that matter will have to go through the advocate/firm. The respondent henceforth erred in fact and Law by addressing the letter dated 27<sup>th</sup> July, 2011 to Counsel Wandera Ogalo, MP, EALA, as if it was a letter relating to him as a member of EALA instead of addressing it to Victoria Advocates & Legal Consultants for the attention of Counsel Wandera Ogalo who had conduct of the case.

For ease of reference and understanding, the contents of the said letter are here below reproduced:

*To: Ogalo  
EALA (MP)  
Counsel for 3<sup>rd</sup> Respondent  
Hon. Sam K. Njuba*

*Dear Sir,  
First and foremost, I write to thank you for the spirited fight you exhibited without bias throughout the whole trial that has enabled the people of East African Community acquire the appellant extended Jurisdiction of the East African Court of Justice.*

*I also write to kindly request you for a copy of your bills of costs as ordered by the court of Justice in Arusha.*

*Lastly, accept my sincere appreciation for your legal prowess and maturity that you and my two sets of lawyers exhibited that has earned me great respect in this region as a seasoned litigant. This clout might compel me to stand for the EALA (MP) slot in order to foresee the quick operationalize of the 2005 protocol by Counsel of Ministers.*

*Yours faithfully,*

*HON. SITENDA SEBALU  
Applicant”*

I am strongly convinced that the failure of the applicant to act promptly was possibly because there was no proper service effected upon the firm as the letter was more of a personal letter than official referring to things that have nothing to do with requests for bill of costs. I am inclined to hold that the notice served on the 1<sup>st</sup> applicant did not constitute proper service under Rule 2(2).

Again with regard to the 2<sup>nd</sup> applicant, being an independent body and a registered law firm in Uganda, the address of service as furnished in this court in the original Reference ought to have been used by the respondent in addressing the notice. The respondent addressed the letter to the Secretary of the Commission rather than addressing it to the Legal Department of the Electoral Commission, as it was provided in the pleadings in relation to the original Reference. That is; Legal Department, Electoral Commission, Plot 55 Jinja Road, Kampala. And because of such error, the 2<sup>nd</sup> Applicant claims that it is unclear whether the letter was received by the Commission or the Attorney General, Uganda but is certain that it never reached the legal chambers and therefore never reached the lawyer who had personal conduct of the case.

Also for ease of reference and understanding, the contents of the said letter are here below reproduced:

To:  
“The Secretary,  
Electoral Commission,  
Kampala-Uganda

Dear Sir,  
As you are aware, Judgment of the above mentioned case was delivered on 30<sup>th</sup> June, 2011 in the East African Court of Justice-Arusha.

In this judgment, the Electoral Commission of Uganda as the 4<sup>th</sup> Respondent was awarded some costs.

The Purpose of this letter therefore, is to request you avail to me copies of your bills of costs to this effect and also other bills of costs as awarded to you in Supreme Court of Uganda in earlier dismissed Election Petition Appeal. This will enable me get quick intervention of Chairman of NRM party and H.E the President of Uganda for a quick bail out.

I am considering standing as a member of EALA in order to participate in the quick operationalization of the protocol 2005 in extending the appellant jurisdiction of the East African court of justice without any encumbrances on my head.

Yours faithfully,

HON. SITENDA SSEBALU WILLIAM  
APPLICANT  
NRM FLAG BEARER”

The contents of such a letter which had nothing to do with bill of costs could in effect mislead or confuse any prudent mind at the registry and be the cause for his/her failure to place it to the appropriate department or section

I find that the notice served on the 2<sup>nd</sup> Applicant by the Respondent failed to satisfy Rule 2(2) as it was required to be sent by the Respondent or his advocates and addressed to the Legal Department as the practice had been during the pendency of Reference No.1 of 2010.

**3. Whether, under Rule 2(2) Second Schedule: Taxation of Costs of the East African Court of Justice Rules of Procedure, a party who fails to lodge a bill of costs within 21 days of receiving a request from the party liable forfeits his right to file a bill.**

To begin with I will cite a decision relied on by counsel in these applications, that is, this courts Appellate Division ruling in *Application No 1 and 2 of 2010 Professor Anyang Nyongo & 10 Others Vs The Attorney General of Kenya* where the Court referred to the Katatumba case and said:

**“In Boney M Katatumba vs Waheed Karim, Civil Application No. 27 of 2007 (unreported),** Mulenga JSC (as he then was) while construing rule 5 of the Uganda Supreme Court Rules stated

*‘Under r 5 of the Supreme Court Rules, the Court may, for sufficient reason, extend the time prescribed by the Rules. What constitutes “sufficient reason” is left to the Court’s unfettered discretion. In this context, the Court will accept either a reason that prevented an applicant taking the essential step in time or other reasons why the intended appeal should be allowed to proceed though out of time. For example, an application that is brought promptly will be considered more sympathetically than one that is brought after unexplained inordinate delay. But even where the application is unduly delayed, the Court may grant the extension if shutting out the appeal may appear to cause injustice.’*

This Court appreciates the reference to the Court’s “unfettered discretion” indicated in the **Katatumba** case above. Nonetheless, as a matter of practical application and good jurisprudence, the Court’s “unfettered” discretion arises only after “sufficient reason” for extension of time, has been established. Therefore, to that extent, the Court’s discretion in an application to extend time is not unlimited.”

I have considered submissions by counsels for all parties and find that a party who does not file a bill of costs within the prescribed time under Rule 2(2) does not forfeit his right to file his or her bill. This is because the Registrar has discretion under the same rule to allow such further time for filing the bill. The Rule reads that “A bill of costs shall be lodged as soon as practicable after the making of the order for costs and not later than twenty-one (21) days after a request in writing therefore by the party liable, **or such further time as the Registrar may allow.**” The emphasis is mine and this is the particular line that gives the Registrar discretion to extend time

within which a bill will be filed. This means that **a party who fails to lodge a bill of costs within 21 days of receiving a request from the party liable does not forfeit his right to file a bill as** the Registrar can still exercise his discretion to extend such time upon the party showing reasonable cause and the delay should not be inordinate. Issue No three is therefore answered in the negative .

#### **4 Whether the delay was inordinate**

I reiterate my findings hereinabove on issue No. 1 that the letter did not satisfy proper notice as envisaged under Rule 2(2) and if it had satisfied the said rule, then time would have started running on the 27<sup>th</sup> July 2011. In my view this cannot be said to constitute inordinate delay due to the fact that it is still difficult to say with certainty specific period of delay that would be considered inordinate. This depends on the circumstances of the case and the effects of the delay to the other party. The point to consider here is whether the delay claimed by the respondent as inordinate and inexcusable, prejudices the interest of the respondent and whether the delay gives rise to a substantial risk. In the case of *Carroll Shipping Ltd V Mathews Mulcahy and Sutherland Ltd, Unreported, High Court Kenya, 18 December 1996*, a delay of 15 years since the issue of the plenary summons was held to be “undoubtedly inordinate”, while in the case of *Byrne V ITGWU, Unreported, High Court Kenya, 30 November 1995*, a delay of 4 years was held to be ordinate. In this matter if we count the time from the date when Hon. Ogalo claimed to have seen the letter according to his affidavit, to the time he came to file the Notice of Motion, there was a two months delay. In my observation therefore I do not think this amount to an inexcusable or inordinate delay and I disagree with counsel for the respondent’s submission that this was inordinate delay.

With regard to the 2<sup>nd</sup> Applicant, the reasons provided for not filing their bill of Costs within the prescribed time is simple and straight forward. They claim that they did not receive the notice or the copy of the letter they were copied by the Respondent addressed to the Registrar requiring him to take notice of the fact that the 2<sup>nd</sup> Applicant had been given notice to file their bill of costs and that the twenty one days required for them to do so had lapsed.

The 2<sup>nd</sup> Applicant's argument on why they did not receive the said letter is that it was addressed to the Secretary of the Commission instead of having the notice addressed to the legal department.

**5. Whether sufficient reasons have been established, as provided under Rule 4 of the East African Court of Justice Rules of Procedure, to warrant an extension of time to file bills of costs.**

Having considered submissions by counsels for all parties I am of the view that since the letters being relied upon as written requests for the bills as provided under Rule 2(2) of the East African Court of Justice Rules of Procedure do not in themselves constitute requests as provided for in the Rules of the Court, there was no proper service. Although the applicants have not adduced supplementary evidence other than Hon. Ogalo's affidavit to support the assertion that Hon. Ogalo had travelled during the period, I do not have reasons to doubt that affidavit. The 2<sup>nd</sup> applicant's lawyer's argument that all advocates in the legal department of the Electoral Commission were involved in election petitions during that period cannot be sustained as this court has its own rules and election petitions in Uganda cannot take precedence over matters of the East African Court of Justice. It should be understood that the legal department of the Electoral Commission is not constituted of one lawyer and this Court cannot condone personalization of official matters like the one under consideration. However, the effect of this finding is diluted by my earlier finding on the letters as written requests envisaged under Rule 2 (2) which is in negative.

I should point out as I conclude that the respondent messed up the procedure for service when he decided to unceremoniously take over from his lawyers and acted contrary to the law. He should not be made to benefit from his own messy intervention that made others to suffer.

It is in the strength of the foregoing that I find the applicants having established **sufficient reasons, as provided under Rule 4 of the East African Court of Justice Rules of Procedure, to warrant me exercise my discretion and extend time to file bills of costs as applied by the applicants.** Holding otherwise in these circumstances may amount to shutting out the applicants from filing their bill of costs for taxation and this would cause injustice. The applicants are

ordered to file their respective bills of costs within the next 14 days from the date of this ruling. I also order that each party should bear its own costs.

It is so ordered.

Delivered at Arusha this.....day of.....2013

**Prof. Dr. John Eudes Ruhangisa**