



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



(Coram: Monica K. Mugenyi, PJ; Isaac Lenaola, DPJ; Faustin Ntezilyayo, J;
Fakihi A. Jundu, J & Audace Ngiye, J)

APPLICATION NO.10 OF 2015

(Arising from Reference No.1 of 2015)

ATTORNEY GENERAL OF UGANDA..... APPLICANT

VERSUS

JOHNSON AKOL OMUNYOKOL RESPONDENT

29TH JUNE, 2016

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RULING OF THE COURT

INTRODUCTION

1. This Application arose from Reference No.1 of 2015 and has been brought under Rules 1(2), 45, 46, 47(1)(c), (2) and 48 of the East African Court of Justice Rules of Procedure, 2013 (“the Rules”).
2. The Application is supported by an Affidavit deposed by one Bafirawala Elisha, a Senior State Attorney in the Applicant’s Chambers.
3. At the hearing thereof, the Applicant was represented by Ms. Goretti Arinaitwe and Ms. Charity Nabaasa, both of whom are Attorneys in the Applicant’s Chambers, while the Respondent was represented by Mr. Fitz Patrick Furah.

APPLICANT’S CASE

4. The main thrust of the Applicant’s Notice of Motion, Supporting Affidavit and Submissions is that the Respondent amended the above Reference out of time and without leave of this Court contrary to Rules 4, 46, 48, 49 and 50 of this Court’s Rules.
5. The Applicant contended that the Respondent had filed his original Reference on 8th June, 2015 and notification of the same was served on the Applicant on 29th June, 2015. The Applicant filed a Response thereto on 7th August, 2015 and served the same on the Respondent on 17th August, 2015. In terms of Rule 45 of the Rules, the pleadings thus closed on 1st September, 2015.
6. The Applicant therefore seeks to have the Amended Reference struck out with costs.

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RESPONDENT'S CASE

7. Conversely, it was the Respondent's contention that in filing the Amended Reference, he relied on Rule 1(2) of the Rules, which mandates the Court to invoke its inherent powers to make necessary orders for the ends of justice. It was argued on his behalf that although the Amended Reference had been filed 24 days out of time, the failure to seek and obtain leave as required under Rules 4 and 48 of the Rules was a mere oversight on his part.
8. Mr. Furah strongly denied that the Amended Reference was an abuse of court process and/or prejudicial to the Applicant, arguing that nowhere in the Notice of Motion or Supporting Affidavit did the Applicant allege prejudice in relation thereto. He insisted that the amendments in the Amended Reference sought to resolve all the controversies between the Parties once and for all. He further argued that the filing of an Amended Reference in the manner adopted by the Respondent was in the interest of speedy trial and if struck out by this Court, would necessitate the filing of a formal application thus causing unnecessary delay in the matter.
9. Mr. Furah denied any scandalous drafting in the Amended Reference, contending that the highlighted paragraphs depicted new and amended averments as by law required. He reiterated his prayer for this Court to invoke its inherent powers under Rule 1(2) of the Rules to allow the Amended Reference and disallow the Application with costs.

COURT'S DETERMINATION

10. In our view, the Application raises the following issues:

- i. **Whether the Amended Reference filed without leave of the Court and out of the prescribed time is properly on the court record; and**
- ii. **Whether the Applicant is entitled to the Orders sought from this Court.**

Issue No. i: Whether the Amended Reference filed without leave of the Court and out of the prescribed time is properly on the court record

11. The amendment of pleadings before this court is governed by Rules 48, 49 and 50 of the Rules, while applications for extension of time are addressed by Rule 4 thereof. Parties are at liberty to amend their pleadings without the leave of court 'before the close of pleadings.' See *Rule 48(a)*. That option was not available to the present Respondent as the Amended Reference was filed after closure of pleadings. Indeed, that fact is not contested herein.

12. Consequently, the only legal avenues that were available to the Respondent were such as are provided in Rule 48(b) or (c) of the Rules. We reproduce the said Rule below for ease of reference:

Rule 48

"For the purpose of determining the real question in controversy between the parties, or of correcting any defect or error in the pleading, a party may amend its pleading –

(a)

- (b) with the consent of all parties, and where a person is to be added or substituted as a party, that person's consent; or
- (c) with leave of the Court.”

13. The Respondent explored neither options but simply purported to file an Amended Reference. He did not move the Court in any application whatsoever, but when arguing the present Application, sought to invoke the inherent powers of the Court under Rule 1(2) of the Rules after the event.
14. It is trite law that the inherent powers of a court may only be invoked where there is no express provision that addresses a matter for adjudication. Inherent powers certainly cannot be exercised in contravention of, conflict with or ignoring express legal provisions. See *Saldanha and Others vs. Bhailand & Co. and Others [1968] EA 28* and *Ram Prakash Agarwal & Anr vs. Gopi Krishan (Dead through LRS) & Ors Civil Appeal No.2798 of 2013*, (Supreme Court of India).
15. In our considered view, therefore, the Respondent could not invoke the provisions of Rule 1(2) of the Rules to justify his filing of the Amended Reference without leave of the Court given the express provisions of Rule 48 (b) and (c).
16. The question then would be whether or not such course of action amounts to an abuse of court process within the precincts of Rule 47(1)(c), upon which this Application is premised. That Rule provides as follows:

“The Court may, on application of any party, strike out or expunge all or part of a pleading or other document, with or without leave to amend, on the ground that the pleading or other document –

(a)

(b)

(c) is an abuse of the process of the Court.”

17. This Court has had occasion to address the function of rules of procedure in due court process in **The Secretary General of the East African Community vs. Margaret Zziwa EACJ Application No. 12 of 2015**, where it was held:

“Rules of Procedure must be meticulously adhered to so as to entrench their intended purpose – the seamless administration of justice by fostering the integrity, rationality and objectivity of the judicial process. ... we are also cognizant of the role of courts as stewards of the judicial processes that deliver justice. These processes operate most justly and judiciously when rules of procedure are applied with the seriousness, conscientiousness and dignity that is due to them.’

18. We reiterate our holding above, and take the view that procedural rules are intended to guard against anarchy and indiscipline in the courts, which is tantamount to abuse of court process. Indeed, Rule 1(2) of the Rules, which the Respondent would have us invoke in the present Application, enjoins this Court to exercise its inherent power

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in such a manner as would **'prevent the abuse of the process of the Court'**.

19. We do, therefore, answer the first issue in the negative and find that the Amended Reference is improperly on the Court record, having been filed without leave of the Court as prescribed by Rule 48(c) of the Rules.

20. In the result, we do hereby allow the Application.

Issue No. ii: Whether the Applicant is entitled to the Orders sought

21. The Applicant sought the following orders from this Court:

i) **An Order to strike out or expunge all the pleadings in the Reference amended without leave of this Honourable Court; and**

ii) **An Order that the costs incidental to this Application awarded to the Applicant.**

22. Having allowed the Application, we do hereby strike out the Amended Reference under Rule 47(1)(c) of the Rules.

23. On the question of costs, on the other hand, we are guided by the provisions of Rule 111, which postulate that costs should follow the event unless the Court for good reasons orders otherwise. We find no reason to deny the Applicant costs in a matter where the rules of procedure were as clear and unambiguous as this. We do, therefore, grant the costs of this application to the Applicant.

24. It is so ordered.

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Monica K. Mugenyi

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MONICA K. MUGENYI
PRINCIPAL JUDGE

Isaac Lenaola

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ISAAC LENAOLA
DEPUTY PRINCIPAL JUDGE

Faustin Ntezilyayo

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FAUSTIN NTEZILYAYO
JUDGE

Fakihi A. Jundu

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Audace Ngiye

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AUDACE NGIYE
JUDGE