



IN THE EAST AFRICAN COURT OF JUSTICE
APPELLATE DIVISION AT ARUSHA

APPLICATION NO. 3 OF 2018

IN THE MATTER OF REINSTATEMENT OF APPEAL NO. 3 OF 2017

BETWEEN

CASTRO PIUS SHIRIMA APPLICANT

VERSUS

**THE ATTORNEY GENERAL OF THE REPUBLIC
OF BURUNDI 1ST RESPONDENT**

**THE ATTORNEY GENERAL OF THE REPUBLIC
OF KENYA 2ND RESPONDENT**

**THE ATTORNEY GENERAL OF THE REPUBLIC
OF RWANDA 3RD RESPONDENT**

**THE ATTORNEY GENERAL OF THE UNITED
REPUBLIC OF TANZANIA 4TH RESPONDENT**

**THE ATTORNEY GENERAL OF THE REPUBLIC
OF UGANDA 5TH RESPONDENT**

**THE SECRETARY GENERAL OF EAST AFRICAN
COMMUNITY 7TH RESPONDENT**

ORDER OF THE COURT

On 15th February, 2018, the Court dismissed Appeal No. 3 of 2017 for the reason that the conduct of the Agent for the Appellant amounted to abuse of Court process within the contemplation of Rule 1(2) of the Rules of the Court.

On 5th March 2018, the Advocate for the Appellant filed a Notice of Motion seeking an order for Appeal No. 3 of 2017 to be reinstated and heard on the merits. The Motion was expressed to be made under Rules 107(2) and 1(2) of the Rules of the Court.

The said Motion was fixed for Scheduling Conference on 9th May 2018 and all the Parties were notified of the Scheduling Conference.

At the Scheduling Conference, neither Appellant nor his Advocate appeared. All the Respondents, save the Republic of South Sudan, appeared at the Scheduling Conference and were represented by Counsel. All Counsel, save from the Republic of Uganda complained that they had not been served with the Application subject matter of the Scheduling Conference. Further, all Counsel, without exception, prayed the Court to dismiss the Application with costs.

The Court has taken note of the Application, the absence of the Applicant and/or his Advocate, and the submissions of the learned Advocates for the Parties. Having done so, we are of the persuasion that the Application dated 5th March 2018 and lodged in the Registry on the same date should be dismissed with costs as being an abuse of the Court process for the following reasons.

First, the Application for reinstatement of the Appeal is misconceived as the Appeal was not dismissed for non appearance under Rule 107(1) but

for abuse of Court process under Rules 1 (2). It was not in the premises open to the Appellant to make an Application for it to be restored for hearing on the merits under Rule 107 (2).

Secondly, the conduct of the Applicant in filing an Application but failing to serve it on all the Respondents, save Uganda, and also failing to appear personally or by his Advocate at the Scheduling Conference amounts to further abuse of the Court process.

Thirdly, as regards costs, although this Court would not ordinarily award costs against a person litigating in the public interest, the repeated abuse of the Court process by the Applicant in this matter impels us to exercise our discretion otherwise.

Last, but not least, the Court desires to put a stop to any other possible abuse of its process by directing that no further Application relating to this matter shall be entertained at the Registry.

It is so ordered.

Dated this 9th day of May, 2018 at ARUSHA

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Emmanuel Ugirashebuja
PRESIDENT



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Liboire Nkurunziza
VICE PRESIDENT



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Edward Rutakangwa
JUSTICE OF APPEAL



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Aaron Ringera
JUSTICE OF APPEAL



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Geoffrey Kiryabwire
JUSTICE OF APPEAL