



**IN THE EAST AFRICAN COURT OF JUSTICE AT  
ARUSHA**



**FIRST INSTANCE DIVISION**

*(Coram: Monica K. Mugenyi, PJ; Charles Nyawello & Charles Nyachae, JJ)*

**APPLICATION NO. 24 OF 2020**

**(Arising from Reference No. 10 of 2013)**

**THE ATTORNEY GENERAL OF  
THE REPUBLIC OF RWANDA ..... APPLICANT**

**AND**

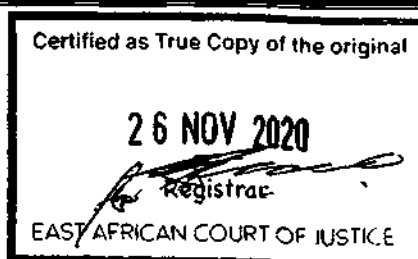
**1. SUCCESSION MAKUZA DESIRE  
2. SUCCESSION NKURUNZIZA GERARD  
3. NGOFERO THARCISSE ..... INTERVENERS**

**VERSUS**

**UNION TRADE CENTRE  
(UTC) ..... RESPONDENT**

**26<sup>TH</sup> NOVEMBER 2020**

Application No. 24 of 2020

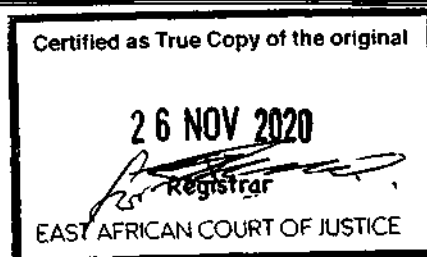


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## RULING OF THE COURT

### A. Introduction

1. On 20<sup>th</sup> May 1997, the Union Trade Centre (UTC) ('the Respondent') was incorporated under the Companies Act of the Republic of Rwanda as a company limited by shares, the main object of which was to manage a private mall located in Nyarugenge District, Kigali, Rwanda. At its incorporation, UTC was comprised of the following shareholding: Tribert Rujugiro (1933 shares); Theoneste Mutambuka (41 shares); Tharcisse Ngofero (3 shares); Succession Makuza Desire (3 shares), and Succession Nkurunziza Gerald (20 shares).
2. On or about 1<sup>st</sup> October 2013, Nyarugenge District Property Management Commission ('the District Commission'), through its Committee in Charge of Unclaimed Properties ('the Committee'), allegedly took over the management of the UTC mall. The Respondent thereupon lodged **Reference No. 10 of 2013** in this Court challenging the legality of the said action.
3. Following the Court's direction on the filing of written submissions by the Parties, and indeed after the filing of UTC's submissions in the Reference, the present Applicant filed this Application seeking to stay further hearing of the Reference pending the determination of Case No. RCOM01304/2020/TC in the Commercial Court of Rwanda. Interestingly, the Applicant did contemporaneously file its written submissions in the Reference.
4. The Commercial Court case seeks the liquidation of UTC and it was the Respondent's contention that the decision of the domestic court



therein would guide the determination of the Reference, failure of which, the Respondent State would suffer irreparable prejudice in the Reference. The Application was opposed by UTC vide its oral submissions at the hearing thereof.

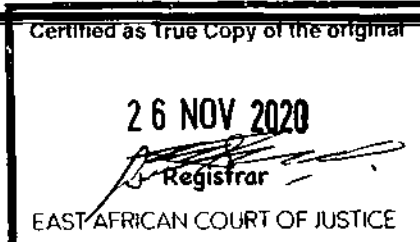
5. The Court did entertain the Application prior to hearing the Parties in submission highlights in the Reference. It dismissed the Application but reserved its reasons therefor to be delivered alongside its determination of the Reference.
6. At the hearing, the Applicant was represented by Mr. Nicholas Ntarugera and Ms. Specioza Kabibi, Ms. Molly Rwigamba appearing for the Interveners; while Mssrs. Francis Gimara, Hannington Amol and Lastone Gulume represented the Respondent.

#### **B. Applicant's Submissions**

7. UTC shareholders filed a case in the Commercial Court of Rwanda which was registered under *No.RCOM01304/2020/TC*, and this matter had been scheduled for hearing on the 1<sup>st</sup> of October 2020. The said case seeks the liquidation of UTC at the prompting of its (minority) shareholders. It was argued that the case was of great importance and in direct connection with the matters before this Court for purposes of determining who exactly UTC is, the end of UTC and the way forward therefor.

#### **C. Respondent's Submissions**

8. It was proposed that in so far as the Application had been brought under Rules 4 and 52 of the East African Court of Justice Rules of



Procedure (‘the Court’s Rules of Procedure’), the Court’s inherent powers must be exercised judiciously as maybe necessary for the ends of justice, or to prevent abuse of the process of the Court. To that end, it was opined that the Application was nothing short of an abuse of court process, premised as it is on a domestic adjudication that has no bearing whatsoever on the Reference.

9. Mr. Gimara argued that the Reference sought to challenge purported Treaty violations, matters that were well within the Court’s jurisdiction, unlike the liquidation of companies that were not. It was his contention that although lodged under a Rule that seeks to prevent the abuse of court process, the Application was in itself an abuse of such process as defined in **Union Trade Centre vs. The Attorney General of the Republic of Rwanda, EACJ Appeal No. 1 of 2015.** In that case, citing with approval Black’s Law Dictionary, the Court defined an abuse of court process as **‘the improper and tortious use of a legitimately issued court process to obtain a result that is either unlawful or beyond the process’s scope.’**
10. Learned Counsel asserted that the Reference had gone beyond scheduling, witnesses had been called and dates fixed for closing submissions; all interlocutory matters having been dealt with and disposed of. Consequently, to entertain an interlocutory application that was not related to the Reference so late in the proceedings was, in his view, tantamount to an abuse of court process.
11. In addition, it was the contention that it was the interveners (who are already represented in the Reference) that had filed the case in the Applicant State. They thus cannot claim to have been unaware of

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the proceedings in the Reference when they filed the matter. In learned Counsel's view, that was a blatant abuse of court process as the Applicant could not purport to stay proceedings in which pleadings and hearing of evidence had been closed, and written submissions filed.

12. The averments attested to in the affidavit in reply to the Application were invoked in support of the Respondent's case.

**D. Submissions in Reply**

13. In a brief reply, it was contended that the Application was not an abuse of court process given that it had not violated any Rule. Rather, it was brought under Rule 4 and Rule 51(1) of the 2019 Rules of Procedure, supported by the affidavit of an intervener that highlights the prejudice the interveners were likely to suffer. Learned State Counsel maintained that the matter in the domestic court was linked to the Reference and, the domestic case having been lodged on 20<sup>th</sup> August 2020, the said Party thereafter filed this Application for stay of proceedings.

**E. Intervener's Submission**

14. On her part, Ms. Rwigamba supported the Respondent's position, intimating that the interveners' concern was the impact of a possible liquidation of UTC would have on the applicant. She advanced that concern as a consideration to be noted in the interests of a fair and equitable process.

15. By way of response, Mr. Gimara reiterated that the Reference challenged Treaty violations: first, the misappropriation of the UTC mall, and later, its sale by the Rwanda Revenue Authority. He opined that what the interveners did with the 'corpse' of the company did not concern his client, his interest being in establishing the Treaty violations attendant to the foregoing actions, if any.

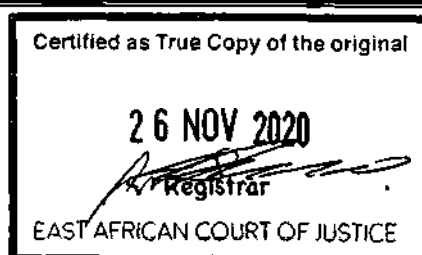
**F. Reserved Reasons**

16. This Court did, upon hearing the Parties in the Application, render the following decision.

*Rule 65(2)(a) of the Court's Rules of 2019 provides for the continuation of proceedings of this Court without unnecessary delay. Against that background, we exercise our discretion under Rule 4 and Rule 79(2) of the Court's Rules to deliver our ruling and reserve our reasons to be delivered with the judgment of **Reference No.10 of 2013** and our decision in **Application No. 24 of 2020** is that the application is disallowed. The reasons shall be advanced with the judgment in **Reference No. 10 of 2013**. That is the ruling of the Court.*

17. We do now furnish the reasons for our decision above.

18. This Application was rightly brought under the general provisions of Rule 4 of the Court's Rules of Procedure for the simple reason that the Court's Rules do not provide for stay of proceedings pending the determination of matters before the domestic courts of EAC Partner States. The only provision made in the Rules for stay of proceedings



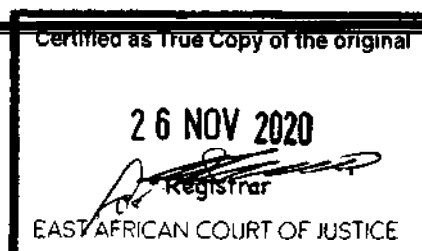
is in Rule 87 but only pertains to the stay of proceedings pending an appeal. That is not the scenario before us. This Court is thus enjoined to exercise the inherent powers granted it under Rule 4 only **'as may be necessary for the ends of justice or to prevent abuse of the process of the Court.'**

19. The Court undoubtedly enjoys the exclusive jurisdiction of Treaty interpretation, its decisions taking precedence over decisions of national courts on matters of Treaty interpretation. See *Articles 23 and 33(2) of the Treaty, as well as case of The Attorney General of the Republic of Uganda vs. Tom Kyahurwenda, EACJ Case Stated No. 1 of 2014*. Against that background, we find no justiciable reason to stay the proceedings in a Reference before us on account of domestic proceedings that accrue to an entirely different jurisdiction. Whereas indeed the domestic proceedings might have a bearing on the present Respondent's legal status, we think the declaratory reliefs sought in the Reference would accrue to it even in liquidation.

20. Be that as it may, both learned State Counsel and Counsel for the Interveners did in the course of this Application raise concern as to what would remain of UTC's interest in the Reference should the liquidation sought in the Commercial Court of Rwanda be granted. This brings to the fore the bonafides of the present Application. In Black's Law Dictionary,<sup>1</sup> the term 'bonafide' is defined to include

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<sup>1</sup> 8<sup>th</sup> Edition, 2004, p.186.



actions, decisions or interventions 'made in good faith', the malafides of a matter being considered to represent bad faith.<sup>2</sup>

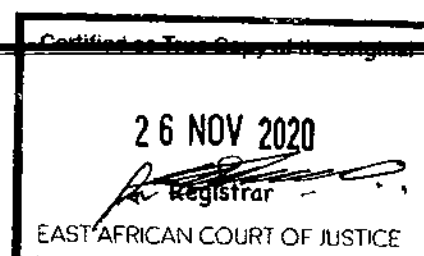
21. It is common ground herein that the domestic proceedings in the Applicant State were lodged well after this Court had issued directions on the filing of closing submissions in the Reference, and after the filing of UTC's written submissions. The interveners that initiated the domestic proceedings in question are indeed represented in the Reference, and the directions in reference were issued in the presence of their advocate, Ms. Molly Rwigamba. It therefore smirks of bad faith that the same interveners could apply for the liquidation of a company that is a party to proceedings in which they emphatically sought to be joined.

22. The central question in the Reference is UTC's alleged deprivation of the management, use and ownership of its mall by the Applicant State. For the interveners, minority shareholders in the company, to seek to circumvent the legal status of the Applicant therein is a clear aversion of due process and is disrespectful of the rule of law. As if that were not distasteful enough, they initiated the liquidation proceedings at the tail end of a protracted litigation process in the Reference, and after the filing (and presumed receipt) of UTC's written submissions. It is astounding then that they purport to support the present Application in the interests of justice.

23. To compound matters, the present Applicant, well aware of the dictates of the rule of law that it is obligated to under the Treaty, would appear to perpetuate the malafides of this situation by seeking

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<sup>2</sup> Ibid. at p. 976.





to stay proceedings initiated by a company faced with liquidation. With utmost respect, we ponder, what greater injustice or disregard for due process could there be?

24. Rule 4 of the Court's Rules of Procedure does place discretionary powers upon the Court, which authority it is enjoined to exercise judiciously and not in a manner that would cause injustice to a party. See **Mbogo vs. Shah (1968) EA 93 at 96**. It is indeed trite law that procedural rules are intended to be handmaidens of justice, not to be used to defeat it. See **Iron & Steelwares Ltd vs. C. W. Martyr & Co. (1956) 23 EACA 175 (CA-U)**. In that regard, we do agree with learned Respondent Counsel that for a court to entertain an interlocutory application after opposite party has filed and served its final submissions in a matter would be to endorse the abuse of court process and a gross miscarriage of justice.

25. Secondly, drawing from the doctrine of equity, '*s/he who comes into equity must come with clean hands*'. That maxim bars relief for anyone guilty of improper conduct. Equity further dictates that '*s/he who seeks equity must do equity*', whereby courts will decline to assist any person whose cause of action is grounded in his or her own misconduct towards the other party. In the instant case even if perchance the Applicant herein was not aware of the course of action adopted by the interveners, as an officer of court no less than the Honourable high office of Attorney General of a Partner State, it cannot be seen to endorse the obviation of due process in this Court.

26. Consequently, we take the view that it would not promote the ends of justice, which do include procedural justice, to grant the present Application in the terms sought. It is so held.

**G. Conclusion**

27. As enjoined by Rule 65(2)(a) of the Court's Rules of Procedure, we find no reason to delay the disposal of **Reference No. 10 of 2013**. In the result, we hereby dismiss this Application with costs to the Respondent. It is so ordered.


**Dated and delivered by Video Conference this 26<sup>th</sup> Day of November, 2020.**



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**Hon. Lady Justice Monica K. Mugenyi**  
**PRINCIPAL JUDGE**



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**Hon. Justice Dr. Charles Nyawello**  
**JUDGE**



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