



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



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

APPLICATION NO. 9 OF 2021
(Arising from Reference No. 17 of 2021)

**THE ATTORNEY GENERAL OF
THE REPUBLIC OF UGANDA APPLICANT**

VERSUS

MALE H. MABIRIZI K. KIWANUKA RESPONDENT

27TH SEPTEMBER 2022

RULING OF THE COURT

A. INTRODUCTION

1. On 13th April 2021, Mr Male H. Mbirizi K. Kiwanuka (hereinafter "**the Respondent**"), filed before this Court Reference No.17 of 2021, challenging the legality of certain acts and decisions of the executive, legislature and judiciary of the Republic of Uganda. He served the Reference upon the Attorney General of the Republic of Uganda (hereinafter "**the Applicant**"), but the latter was unable to file and serve the Response to the Reference within the prescribed time frame; hence, the Application before us.
2. The Application was instituted under Rules 4, 5, and 52 of the East African Court of Justice Rules of Procedure, 2019 (hereinafter "**the Rules**"). The Application seeks enlargement of time to file and serve the Response to the Reference or the validation of late service in the following terms:
 - a) **The time be enlarged within which to file and serve the Respondent to the Reference;**
 - b) **And/or alternatively, that the Response to the Reference filed and served on the Respondent be validated; and**
 - c) **Costs of the Application be in the cause.**
3. The Application is supported by the Affidavit of **Hillary Nathan Ebila**, a State Attorney in the Applicant's Office, deponed in Kampala on 9th July 2021. The Respondent opposed the Application and filed an Affidavit in Reply deponed by himself in Kampala on 2nd August 2021.

B. REPRESENTATION

4. The Applicant was represented by Mr Richard Adrole, learned Principal State Attorney, assisted by Mr Geoffrey Madette, learned Senior State Attorney. On the other hand, the Respondent appeared in person.

C. APPLICANT'S SUBMISSIONS

5. The essence of the Affidavit filed on behalf of the Applicant is that the late filing and serving of the Response to the Reference are attributable to both the mistake of the staff of the Applicant's Registry and circumstances beyond their control, emanating from the lockdown imposed from 18th June 2021 to 30th July 2021 by the Government of Uganda in order to mitigate the spread of the second wave of Covid-19.
6. In support of that position, Mr Adrole submitted that when the Statement of Reference was filed in their Registry, the Registry staff inadvertently placed the file containing the Reference among the files that were due for the payment of various Courts awards and compensation. That the file was discovered by the Accounts Department at a later date. It was then referred back to the Registry. It is learned Counsel's submission that at the time the file containing the Statement of Reference was discovered and returned to the Civil Registry of the Applicant, the time within which to file and serve the Response had since elapsed. It is his further submission that upon the receipt of the misplaced file on 15th June 2021, he brought the matter of the recovery of the file to the attention of their clients to furnish information and instruction to enable him to respond to the Reference.

7. Mr Adrole urged the Court to note that the late filing and service of the Response to the Reference are attributable to circumstances beyond their control. That, other than the mistake stated above, on 18th June 2021, the Government of Uganda imposed a lockdown to mitigate the spread of the second wave of Covid-19 virus. It was his submission that the lockdown entailed restrictions in the movement of both private and public means of transportation from 18th June to 30 July 2021. He maintains that due to the lockdown and the consequential restriction imposed on the movement in the Republic of Uganda, the Applicant was unable to take up instruction and file the Response to the Reference without further delay.

8. The learned Counsel for the Applicant then urged the Court to grant the Application on six grounds:

a) despite the challenges of the inadvertence and the lockdown, the Applicant managed to file the Response on 30th June 2021 and served it upon the Respondent on 8th July 2021;

b) the subject-matter of the Reference is of great public importance to the Republic of Uganda, since it touches on the judicial and executive arms of the State;

c) that the administration of justice requires that the substance of all disputes should be investigated and decided on merit;

d) the error on the part of counsel should not prejudice the Applicant, so that the lapse of the requisite time in the

instant case should not debar the Applicant from the pursuit of their right;

e) the Respondent will not suffer any prejudice if the orders sought are granted; whereas the Applicant will suffer grave prejudice if the orders sought are not granted; and

f) this Application has been filed without undue or unnecessary delay, in light of the fact that this filing and service took place within the lockdown period.

9. In Mr Adrole's view, the Applicant has demonstrated sufficient reasons of his inability to file and serve the Response to the Reference within the time prescribe and, hence, it is just, equitable and fair that the Court grants the Application.

10. The learned Counsel for the Applicant grounded his arguments in the following four decisions: **Male H. Mabirizi K. Kiwanuka vs the Attorney General of the Republic of Uganda, Consolidated Applications No. 4 & 6 of 2019**; **Anthony Calist Komu vs The Attorney General of the Republic of Tanzania, Reference No. 7 of 2012**; **Managing Editor MSETO & Hali Halisi Publishers Ltd vs the Attorney General of the Republic of Uganda, Applications No. 3 & 4 of 2019** and **Kananura Andrew Kansiime vs Richard Henry Kaijuka, Civil Reference No. 15 of 2016**. In his view, these cases illustrate what constitutes sufficient reasons for the granting of the application for the extension of time, especially where matters of public importance sufficiently warrant the exercise of Court's discretion.

D. THE RESPONDENT'S SUBMISSIONS

11. As earlier stated, the Respondent, in his Affidavit in Reply, opposed the Application. At the time of the hearing of the Application he referred us to **Rule 5 of the Rules** to advance the argument that sufficient reason is the precondition for granting the extension of time. In that regard, Mr Mafirizi argued that there is no sufficient reason for the enlargement of time since, in his view, the Applicant's pleadings exhibit sheer incompetence. In conclusion, it was his contention that incompetence cannot amount to sufficient reason as envisaged by the Rules.
12. To support his averments that incompetence cannot amount to sufficient ground for granting the extension of time, the Respondent made reference to the case of the **Media Council of Tanzania & 2 Others vs Attorney General of the United Republic of Tanzania, EACJ Application No. 05 of 2019**, where the Appellate Division of this Court declined the invitation to grant the application premised on the argument that time could not be complied with because the files had been mixed up when the Attorney General Chambers of the Republic of Tanzania were shifting from Dar es Salaam to Dodoma. In addition, Mr Mabarizi relied on the case of **Kasasa vs Bwogi (Civil Appeal No. 42/2008, Court of Appeal of Uganda)**, where it was held that it would be absurd to allow the Respondent to flout the strict law of limitation on ground that his counsel acted negligently or incompetently, because a client is bound by the actions of his counsel. Thus, he has sought to delineate Court's jurisprudence on the extension of time.

13. In conclusion, the Respondent maintained that the Applicant failed to illustrate sufficient reasons for the enlargement of time. Hence, he urged the Court to disallow the Application with costs.

E. COURT'S DETERMINATION

14. We have considered the rival submissions of the parties, as well as the authorities referred and supplied to us. The thrust of the Application is **whether or not the extension of time should be granted**. The extension of time after lapse of the prescribed period is governed by Rules 4 and 5 of the Rules. Rule 5 reads:

“The Court may, for sufficient reason, extend the time limited by these Rules or by any decision of itself for the doing of any act authorised or required by these Rules, whether before or after the expiration of such time and whether before or after the doing of the act, and any reference in these Rules to any such time shall be construed as a reference to such time as so extended.”

15. Hence, the granting of the extension of time is a matter of judicial discretion. Indeed, the Court has a wide discretion to grant the extension of time if it considers that the interest of justice would be served by such extension. However, the discretion must be exercised judiciously, based on facts placed before the Court. (See **FORSC, FOCODE, PEN Kenya Centre, PALU, PEN International, Reporters Sans Frontiers and World Association of News Papers and News Publishers vs Burundian Journalists' Union and The Attorney General of the Republic of Burundi, Application No.2 of 2014**, paragraph 13).

16. In this Court, this discretion is codified by Rule 4 of the Rules, which provides:

“Nothing in these Rules shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders or give such directions as may be necessary for the ends of justice or to prevent abuse of the process of the Court.”

17. In a nutshell, meeting the ends of justice is the prime consideration for the exercise of the discretion envisaged by Rules 4 and 5 of the Rules.

18. This Court had the occasion to make joint interpretation of Rules 4 and 5 at paragraph 23 of the case of **Attorney General of Kenya vs Prof. Anyang' Nyong'o & 10 Others, EACJ Application No. 4 of 2009**, where it stated:

“Rule 4 of the Rules of this Court empowers this Court, for sufficient reasons, to extend the time prescribed by these 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 from 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 an 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.”

19. From the preceding quote, it is evident that in order to prevent an injustice the Court will accept either a reason that prevented the applicant from acting in time or other reasons why the intended application should succeed.

20. In **Godfrey Magezi vs National Medical Stores, EACJ Appeal No. 2 of 2016**, the Appellate Division of this Court echoed and articulated the jurisprudence on time enlargement in the following terms:

“It was settled law that the Court had discretion according to Rule 4 to extend time if sufficient reason was shown by the Applicant. The Court distilled from the case of Attorney General of Kenya vs Prof. Peter Anyang' Nyong'o [Appeal No. 1 of 2009] and the Secretary General of the East African Community vs Hon. Sitenda Sebalu [Application No. 9 of 2012] the following propositions of law:

- a) Rule 4 requires a qualitatively higher standard to extend time (namely, sufficient reason), than the case with the standard of "any reason" which is prescribed under the corresponding rules in some member States; and
- b) The Court's discretion to extend time under Rule 4 only comes into existence after sufficient reason for extending time has been established and that it is only then that the other considerations such as the absence of any prejudice and prospects or otherwise of the success in a reference or appeal can be considered.”

21. From the preceding two decisions, it is clear that there must be sufficient reason for the Court to grant the extension of time. In

addition, what constitutes "sufficient reason" is left to the Court's discretion, which is exercised in favour of the applicant if:

- a) a reason has prevented an applicant from taking the essential step in time;**
- b) there is no prejudice to the other party;**
- c) the shutting out of the applicant would cause injustice;**
- d) there are prospects for the success of the reference from which the application arises; and**
- e) the application is brought promptly.**

22. In the instant Application, the Applicant pleads both the inadvertence of its member of staff and the circumstances of the lockdown imposed by the Government of Uganda, as reasons that prevented him from taking essential steps in time. Further, the Applicant pleads the prompt submission of the application for the extension of time, as well as the absence of prejudice to the Respondent if the Application is granted. In our considered opinion, the argument of the Applicant falls squarely within the parameters spelt out in the preceding paragraph.

23. The Court takes judicial notice of the fact that Covid 19 was a difficult period for most people, public servants included. The lock downs actually happened. We also do not see how the Respondent will be prejudiced if the Applicant was to be allowed to file a Response to the matter which we have no doubt is of great public importance. We are convinced that the Applicant has demonstrated sufficient reasons to warrant the grant of the Application.

F. CONCLUSION

24. In the result, we find that the Applicant was, for sufficient reasons, prevented from filing and serving the Response to the Reference within the time limits stipulated by the Rules; and that the instant Application to enlarge time was brought without undue delay.
25. Accordingly, the Applicant succeeds and the time within which to file and serve the Response to Reference No. 17 of 2021 is enlarged.
26. As the Applicant had prepared the Response to the Reference and filed it in this Court; and as service to the Respondent was duly made, we hereby validate the Response to the Reference.
27. The Respondent, if he so wishes, is at liberty to file a Reply thereto within the time prescribed in the Rules and serve the same upon the Applicant.
28. Costs of the Application shall abide the outcome of the Reference.
- G. It is so ordered.

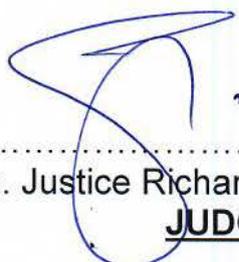
Dated, signed and delivered at Arusha this 27th day of September, 2022.


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Hon. Justice Yohane B. Masara
PRINCIPAL JUDGE


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*Hon. Justice Audace Ngiye
DEPUTY PRINCIPAL JUDGE


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Hon. Justice Dr Charles O. Nyawello
JUDGE


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Hon. Justice Charles A. Nyachae
JUDGE


.....
Hon. Justice Richard Wabwire Wejuli
JUDGE

***[Hon. Justice Audace Ngiye retired from the Court in the end of June 2022 but signed this Judgment in terms of Article 25(3) of the Treaty.]**