



**IN THE EAST AFRICAN COURT OF JUSTICE
APPELLATE DIVISION, AT KAMPALA**

(Coram: Nestor Kayobera, JP; Sauda Mjasiri, VP; Anita Mugeni, JA)

APPLICATION NO. 2 OF 2022

BETWEEN

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

VERSUS

ERIC KABALISA MAKALA.....RESPONDENT

[Application arising from Appeal No. 4 of 2020 from the Judgment of the First Instance Division of the East African Court of Justice at Arusha in Reference No.1 of 2017 by Hon. Lady Justice Monica Mugenyi, PJ; Faustin Nteziryayo, DPJ; Audace Ngiye and Charles Nyawello, JJ.]

RULING OF THE COURT

A. Introduction

1. This Application has been filed by the Attorney General of the Republic of Rwanda (hereinafter referred to as “the Applicant”) by way of Notice of Motion against Mr. Eric Kabalisa Makala, (hereinafter referred to as “the Respondent”). The Notice of Motion is supported by the Affidavit of Mr. Patrick Nyirishema. The Respondent has also filed an Affidavit in Reply.
2. This Application challenges the institution of Record and Memorandum of Appeal in Appeal No.4 of 2020 by the Respondent without paying Five Hundred United States Dollars (500 USD) as security for costs of the appeal contrary to the provision of Rule 96(1)(c) of the East African Court of Justice Rules of the Court, 2019 (“the Court Rules”), which is one of the essential steps in instituting an appeal.
3. At the hearing of the Application, the Applicant was represented by Mr. Ntwali Emile, Principal State Attorney and Mr. Nicolas Ntarugera, Senior State Attorney whereas the Respondent represented himself.

B. BACKGROUND

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1. THE REFERENCE

4. Mr. Eric Kabalisa Makala filed in the First Instance Division of the East African Court of Justice (“the Trial Court”) Reference No. 1 of 2017 (“the Reference”). In the Reference before the Trial Court, the then Applicant challenged the Respondent State that its organs (national courts) did not comply with its internal laws and its Treaty obligations in handling the Applicant’s dismissal by Rwanda Utilities Rural Authority (RURA), where the Respondent was an employee.
5. During the scheduling conference in the Trial Court, the following issues for determination were agreed upon by parties and were considered:-
 - i. Whether this Court has jurisdiction over the matter before it for determination.
 - ii. Whether or not the acts complained of by the Applicant are in contravention of Article 6 of the Treaty.
 - iii. Whether or not the Applicant is entitled to remedies.
6. On 18th January, 2020, in its judgement, the Trial Court dismissed the Reference and awarded one third (1/3) of the costs to the Applicant.

THE APPEAL

7. Being dissatisfied with the Judgment of the Trial Court, the Respondent lodged in this Court a Notice of Appeal dated 25th June, 2020 against the said Judgment based on the following grounds: -
 - “i. The First Instance Division was biased in the manner to be both judge and judged.



- ii. That, the First Instance Division made the final verdict before receiving substantial evidence composed of a case No. RADA 0034/13/CS because the evidence they did not see could not have helped them to make a fair conclusion without bias.
- iii. The First Instance Division by rendering the Judgment they did change his lawsuit where in the article copy of the Judgment copy of Court REFERENCE NO.1 of 2017 stated that: "I filed a lawsuit of being dismissed from my Job by RURA" The case I submitted to the Honorable Court is: On the 11th November 2016, the government of Rwanda, flouted the laws and ignored the EAC of which it is the signatory and as a citizen I bear the brunt"
- iv. In entering the Judgment, the First Instance Division favored the Respondent in a very obvious manner, where I explained that the laws were flouted by the Government of Rwanda, they said that the laws were not flouted while it is very visible to everyone.
- v. The First Instance Division relied on the document, Respondent's document that he submitted in the manner that did not comply with the legal procedures (Affidavit), even the judge raised the same question on the hearing day on 12/11/2019, if the defendant should explain the procedure they used while preparing that document if it is an affidavit".

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3. THE CROSS APPEAL

8. Under Rule 102 (3) of the Court Rules, the Respondent State contended that part of the discussed decision ought to be varied or reversed on the following grounds:
 - i. The decision of the First Instance Division of the Reference be affirmed.
 - ii. The decision of the First Instance Division of awarding the Appellant on third (1/3) of the costs be reversed.

C. THE APPLICATION

9. On 28th August 2020, the Applicant lodged to this Court a Notice of Motion in Application No. 2 of 2020 under Rules 4,9,94(1) of the Court Rules challenging the institution of Record and Memorandum of Appeal in Appeal No.4 of 2020 by the Respondent without paying Five Hundred United States Dollars (500 USD) as security for costs of the appeal contrary to the provision of Rule 96(1)(c) of the Court Rules” which is one of the essential steps in instituting an appeal.
10. At the scheduling Conference, three issues were agreed upon for determination as follows: -
 - a. Whether the Respondent complied with the Rules of the Court in instituting Appeal No. 4 of 2020.
 - b. Whether the Registrar has powers to dispense with the requirements of Rule 96(1)(c).
 - c. What are the remedies entitled to parties.



PARTIES SUBMISSIONS.

ISSUE NO.1: WHETHER THE RESPONDENT COMPLIED WITH THE RULES OF THE COURT IN INSTITUTING APPEAL NO. 4 OF 2020.

I. Applicant's case.

11. The Applicant submitted that the Record and Memorandum of Appeal in Appeal No.4 of 2020 were instituted in violation of Rule 96(1)(c) of the Court Rules, on grounds that some essential steps in the proceedings had not been taken to the extent that the Respondent instituted an Appeal without paying security for costs which is a fundamental requirement when instituting an appeal.
12. The Applicant adduced that the Respondent instituted the Appeal by lodging the Memorandum and Record of Appeal on 17th July 2020, without payment of Five Hundred United States Dollars (500 USD) as security for costs.
13. The Applicant saw a letter signed by his Worship the Registrar of the Court dated 20th July 2020, addressed to the Respondent in reply to the Respondent's letter of 17th July 2020, the date when the Appeal was instituted which shows that the payment for security for costs was waived by the Registrar.
14. Thus, the Applicant wishes to challenge the notice of Appeal and the Record of Appeal filed by the Respondent as being defective.

II. Respondent's case.

15. The Respondent submitted that he instituted the disputed Notice and Record of appeal upon permission and acceptance by the



Registrar of the Court. The Respondent prior to the institution of the Appeal, requested (to the Registrar) for exemption from payment of Five Hundred United States Dollars (500 USD) as security for costs. In his letter dated 17th July, 2020 the Respondent explained that he was not in a position to pay such amount, and so he applied to be exempted.

16. The Respondent further indicated that following his request the Registrar granted him exemption by allowing him to file the Notice and Record of Appeal without payment of the Five Hundred United States Dollars (500 USD) as security for costs.

17. Based on the exemption by the Registrar, the Respondent submitted that the Notice of Appeal and Record of Appeal were legally filed at the Court registry and in compliance with Rule 96(1)(a)(b) of the Court Rules. He further contended that he complied with the provision of Rule 96 (1)(c) of the Court Rules given that the exemption was granted by the Court through the office of the Registrar,

II. Decision of the court

18. Having carefully considered the submissions of both parties, it is now the duty of this Court to assess whether it is procedurally right for the Respondent to institute the Notice of Appeal and the Record of Appeal without payment of Security for Costs as provided for under Rule 96(1)(c) of the Court Rules.

19. The Applicant referred this Court to Rule 96(1) of the Court Rules which provides as follows: -

(1) Subject to the provisions of Rule 131, an appeal shall be instituted by lodging in the appropriate registry, within thirty



(30) days of the date when the notice of appeal was lodged:

-

(a) A memorandum of appeal, in eight (8) copies;

(b) The record of appeal, in eight (8) copies; and

(c) Payment of Five Hundred United States Dollars (500 USD) as security for costs of the appeal. [Emphasis ours]

20. Based on the above provision, indeed Rule 96(1)(c) requires an Appellant to pay Five Hundred United States Dollars (500 USD) as security for costs. The only exception to Rule 96(1)(c) is where the claimant is a Partner State, the Secretary General, or any of the institution of the Community as provided for under Rule 131(1) of the Court Rules.
21. This Court finds that there is no evidence on record showing that the Respondent paid Five Hundred United States Dollars (500 USD) as security for costs of the appeal as required under Rule 96 (1)(c) of the Court Rules.
22. However, on the other hand, this Court finds that Respondent in his letter dated 17th July, 2020, addressed to his Worship the Registrar of the Court, requested for exemption from payment of Five Hundred United States Dollars (500 USD) as security for costs.
23. This Court further notes that on 20th July, 2020, the Registrar of the Court to whom the letter had been addressed, replied to the Respondent's Letter, accepting the Respondent's request for



exemption from payment of Five Hundred United States Dollars (500 USD) as security for costs.

24. The Registrar's reply dated 20th July, 2020, to the Respondent's request for exemption is reproduced as under: -

"...RE: YOUR REQUEST FOR EXEMPTION TO PAY SECURITY FOR COSTS ON APPEAL.

Reference is made to the above and your request date 17th July 2020.

I have considered your position and even the stand taken by the FID in its judgement in your case and I find it prudent in the interest of justice to allow you file and proceed with your appeal without depositing security for costs of USD 500

Please prosecute your appeal accordingly".

25. Therefore, given the above circumstances, this Court finds that it is procedurally incorrect under the Court Rules to institute an Appeal without payment of the required security for costs, except when the appeal is instituted by a Partner State, the Secretary General or any of the institution of the Community as provided for under Rule 131(1) of the Court Rules.

26. However, this Court finds that the Respondent was aware of this requirement and he wrote to the Court seeking for an exemption from payment of the security for costs which the Court's Registrar granted. The Respondent therefore relied on the Registrar's acceptance to file his appeal without depositing the security for costs on the belief that he had been exempted.



27. Therefore, and in the interest of justice, it would be unfair for this Court to fault the Respondent for having instituted an Appeal without payment of the Five Hundred United States Dollars (500 USD) as security for costs because he was allowed by the Registrar who is an officer of the Court, irrespective of whether the decision of the Registrar was wrong or right. This situation should not be blamed on the Respondent who believed to have been exempted by the Court.
28. In the matter of **Attorney General of the Republic of Uganda v. Johnson Akol Omunyokol, Application No. 10 of 2015**, at page 5 (June 29, 2016) it was held as follows: -
- "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".*
29. Therefore, this Court finds that it is for the interest of justice to hold that the appeal be deemed to have been filed in accordance with the Rules of this Court based on the provision of Rule 4 of the Court Rules which provides that: -
- "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"*
30. Accordingly, this Court declines to strike out the Notice of Appeal and the Record of Appeal filed by the Respondent in Appeal No. 4 of 2020 for no payment of security for costs.
31. Consequently, issue number one is answered in the affirmative.

**ISSUE NO. 2: WHETHER THE REGISTRAR HAS POWERS TO
DISPENSE WITH THE REQUIREMENTS OF RULE
96(1)(c).**

I. Applicant's Submissions

32. The Applicant submitted that the Registrar has no powers to dispense with the Requirements of Rule 96(1) (a) and (c) of the Court Rules and that he is not vested with the powers to change the Court Rules like exempting any party from fulfilling the fundamental requirements under Rule 96(1) (c) of the Court Rules.
33. The Applicant avers that the acts of the Registrar to exempt the Respondent from payment of the security for costs of Five Hundred United States Dollars (500 USD) on filing an appeal violates the Court Rules. He further submitted that the act of the Registrar was without any legal basis, and an abuse of his powers and office.
34. Based on the above, the Applicant seeks for orders from the Court that Registrar has no powers to dispense with the requirements of Rule 96 (1)(c) of the Court Rules to exempt parties from payment of security for costs in instituting an appeal.

II. Respondent's submissions.

35. The Respondent submitted that the act of the Registrar of the Court to exempt him from payment of Five Hundred United States Dollars (500 USD) as security for costs was done in the interest of justice and in good faith.
36. The Respondent further averred that Rule 7(1) & (4) of the Court Rules gives powers to the Registrar to perform duties of the Court,



among others to grant exemption from payment of security for costs as requested by the Appellant. He also indicated that what the Registrar did was within his powers.

37. The Respondent reproduced the content of Rule 7(1) of the Court Rules which, provides that: -

"The Registrar shall be responsible for the acceptance and custody of all court documents and for effecting service as provided for by these Rules..."

38. He also supported his submissions on the content of Rule 7(4) of the Court Rules which provides that: -

"The Registrar shall be responsible for all administrative work, management of staff and for the accounts and financial administration in accordance with the applicable Financial Rules and Regulations."

39. The Respondent further submitted that based on his letter dated 17th July, 2020 addressed to the Registrar of the Court requesting for exemption from payment of security for costs, which was followed by the Registrar's letter dated 20th July, 2020 informing him that he can institute his Appeal without payment of security for costs of Five hundred United States Dollars (500 USD), he was convinced that the Registrar was doing it in accordance with the powers conferred on him under the Rules of the Court.

40. On the other hand, the Respondent submitted that given that the Registrar is the head of the Court's financial issues and due to his position, he used his discretionary powers to waive payment of security for costs required in instituting an appeal.



41. Finally, the Respondent submitted that he did not write to an individual but to the Court and that the decision was taken on behalf of the Court. Therefore, even if the Registrar's act may appear to be a mistake, such a mistake cannot be attributed to the Respondent but rather to the Court without having any negative impact on the Respondent. On this premise, he requested the Court not to uphold the Attorney General's objection.

35 Decision of the court.

42. We have carefully reviewed and considered both the Applicant's and Respondent's submissions on this issue.

43. This Court needs to assess whether the Registrar has powers to exempt a party to a case from payment of security for costs as required under the Court Rules and also whether the action of the Court's Registrar should prejudice the Respondent?

44. The duties and powers of the Registrar are provided for under Rule 7 of the Court Rules which provides as follows: -

"(1) The Registrar shall be responsible for the acceptance and custody of all Court documents and for effecting service as provided for by these Rules.

(2) The Registrar shall have custody of the seal of the Court and shall be responsible for the records and the publications of the Court.

(3) The Registrar shall assist the Judges in all their official functions.

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(4) The Registrar shall be responsible for all administrative work, management of staff and for the accounts and financial administration in accordance with the applicable Financial Rules and Regulations”.

45. Whereas Rule 96 (1) (c) of the Court Rules provides that: -
- a. *Subject to the provisions of Rule 131, an appeal shall be instituted by lodging in the appropriate registry, within thirty (30) days of the date when the notice of appeal was lodged: -*
 - i. *A memorandum of appeal, in eight (8) copies;*
 - ii. *The record of appeal, in eight (8) copies; and*
 - iii. ***Payment of Five Hundred United States Dollars (500 USD) as security for costs of the appeal. (Emphasis ours)***
46. From the above provisions or from the Treaty on the responsibilities and powers of the Registrar, this Court is not in any way persuaded that the Registrar of the Court is endowed with powers to unilaterally exempt the Respondent to pay security for costs of Five Hundred United States Dollars (500 USD) for instituting an appeal.
47. We note that in the letter dated 17th July, 2020 from the Respondent to the Registrar of the Court requesting to be exempted from payment of security for costs of Five Hundred United States Dollars (500 USD), the Registrar in his letter dated 20th July, 2020, granted the Respondent an exemption from payment of the same.
48. This Court finds that the unilateral decision of the Registrar of the Court of allowing the Respondent to institute a Notice and Record of Appeal without payment of security for costs of Five Hundred United



States Dollars (500 USD) of the Appeal was not within his mandate and lacks any legal basis under the Treaty and the Court Rules.

49. This Court finds that whatever the goodwill on the part of the Registrar of the Court to assist the Respondent without complying with the applicable Rules, this amounted to a violation of the Rules of the Court. However, the Respondent who considered the Registrar's decision to be the Court's decision should not be faulted.

50. It is from the findings of the Court that exemption from payment of security for costs provided under Rule 96(1)(c) of the Court's Rule should have been a matter to be decided and assessed by the Court and not by the Registrar.

51. Rule 131(1) of the Court Rules, provides that: -

"The Court may, either on the application of any respondent or on its own motion, order the claimant or claimants within time fixed by it to give security for the payment of all costs incurred or likely to be incurred by the respondent".

52. In view of Rule 131 supra and Rule 2 of the Court Rules, only the Court has the powers to decide on exemption from payment of security for costs. Therefore, neither the Registrar nor any other employee whatever his position in the Court have such powers.

53. In the premises, the Court concurs with the Applicant that the Registrar does not have any powers to waive the requirements of Rule 96(1)(c) of the Court Rules.

54. Given the fact that the Respondent did not comply with Rule 96(1)(c) of the Court Rules on the understanding that he was given exemption by the Registrar of the Court, he cannot be penalized for



relying on the exemption granted by the Registrar even though the Registrar had no such powers under the Treaty and the Court Rules.

55. Therefore, issue number two is answered in the negative.

ISSUE No. 3: WHAT ARE THE REMEDIES ENTITLED TO PARTIES.

56. As for remedies, we have shown that though the Registrar does not have powers of exempting the Respondent from the payment of security for costs in instituting the Appeal as provided for under Rule 96(1)(c) of the Court Rules, in the interest of justice the Appeal was deemed to have been instituted in accordance with the above Rule.

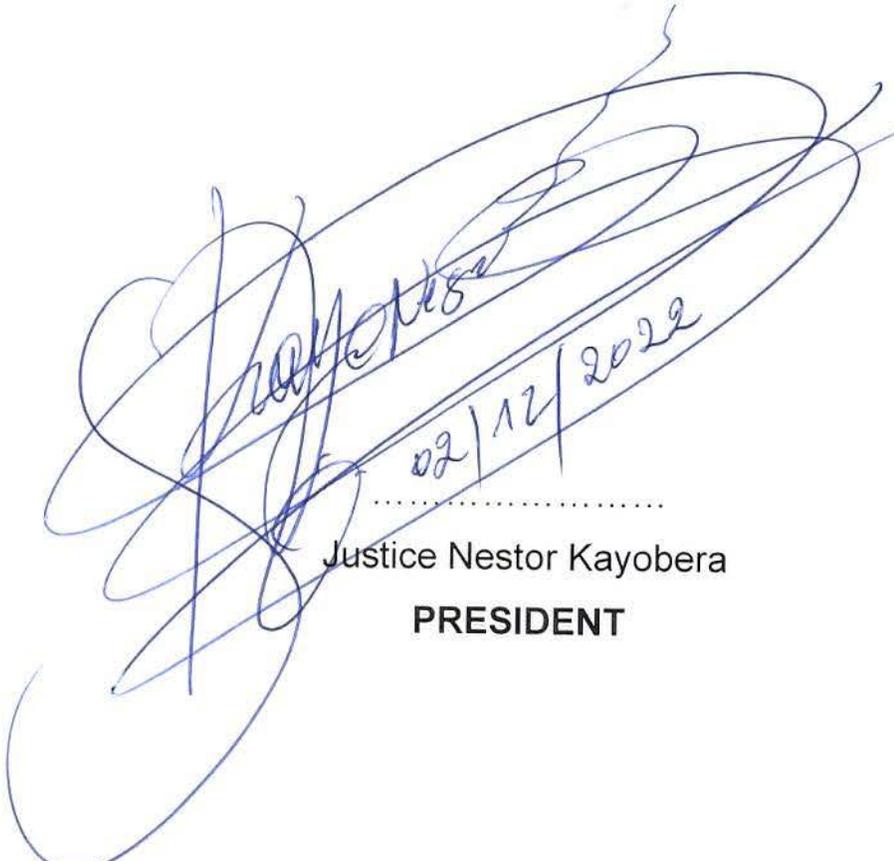
57. In relation to costs, both parties asked for it. In fact, Rule 127(1) of the Court Rules provides that costs in any proceedings shall follow the event unless the Court for good reasons otherwise order.

58. Given the nature of this Application, we order that each party bears its own costs.

ORDER ACCORDINGLY

Dated, Signed and Delivered at Kampala this 2nd December, 2022.

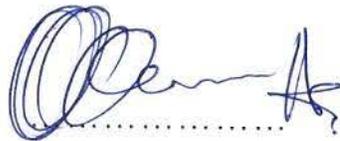
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02/12/2022

Justice Nestor Kayobera
PRESIDENT



Lady Justice Sauda Mjasiri.
VICE PRESIDENT



Lady Justice Anita Mugeni
JUSTICE OF APPEAL