



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



**APPLICATION No. 1 OF 2012
(ARISING FROM APPEAL No.2 OF 2012)**

**[Coram: H. R. Nsekela P; P. K. Tunoi VP; E. R. Kayitesi, L. Nzosaba
and J. M. Ogoola, JJA]**

BETWEEN

OMAR AWADH OMAR AND 6 OTHERSAPPLICANTS

AND

THE ATTORNEY-GENERAL OF UGANDA..... RESPONDENT

RULING OF THE COURT

By their Application No.1 of 2012 (arising from Appeal No.2 of 2012), the Applicants; **Omar Awadh Omar and 6 Others** sought Orders of this Court to the effect that:

- “1. The above Appeal lodged herein on 17th February, 2012 be struck out.*
- 2. The costs of and incidental to this Application be paid by the Appellant”.*

For their grounds of the Application, the Applicants recited the following:

- “(a) The Appeal herein was lodged out of time.*
- (b) There is not Certification lodged herein exempting time vide Rule 86(1) [of this Court’s Rules].”*

On 25th April, 2012, the above Application was heard in this Court. On that occasion, all the Parties were duly represented by their respective Counsel. However, the hearing could not proceed further; as the Court found that neither the Applicants nor the Respondent in this Application had provided the Court with the requisite Certificate of the Registrar of this Court under Rule 86 of this Court’s Rules of Procedure. In these circumstances, the Court issued the following Order:

“ Accordingly, for the purposes of meeting the ends of justice and preventing abuse of the process of this Court, the Court upon hearing both Parties and acting pursuant to its inherent powers under Rule 1(2) of its Rules of Procedure, hereby orders the Registrar of this Court to avail the Court and both Parties within fifteen (15) days of

the date hereof, the relevant Certificate required under Rule 86 of this Court's Rules of Procedure in order to enable the Court to proceed with further consideration of this Application".

The matter was subsequently adjourned to today's date (27th June, 2012), when both the Application and the underlying Appeal would be heard.

On this adjourned date, learned Counsel: "Ms Patricia Mutesi (Principal State Attorney) and Mr. Elison Karuhanga (State Attorney) from Uganda, together with Mr. Muiruri Ngugi (Principal Litigation Counsel) from Kenya – all appearing for the Respondent to the Application - attended the hearing. They confirmed that they had been duly served by the Registrar of the Court: first by electronic mail, followed by physical service on or about 25th May, 2012. On the other hand, neither the Applicants, nor their Counsel attended today's hearing; nor did they, or any of them, profer any communication whatsoever (either with the Registry or their learned colleagues for the Respondent) concerning their non-attendance. From information and documents availed by the Registry, the Court is satisfied that indeed the Appellants – just like the Respondents - were duly served with the notice of today's hearing date. In the case of the Applicants, service was effected by courier on or about 22nd May, 2012.

Given the absence of the Applicants and of their Counsel to prosecute their own Application, the Respondent prayed this Court to dismiss the Application (No.1 of 2012) – consistent with Rule 61(2) of this Court's Rules of Procedure, which provides in relevant part, that:

“(2) If on the day fixed for hearing the claimant or applicant does not appear and the respondent appears, the claim or application may be dismissed and any counterclaim may proceed, unless the Court sees fit to adjourn the hearing”.

Accordingly, the Respondents, who are the Appellants in Appeal No.2 of 2012, prayed the Court to proceed today with the Appeal (in the absence of the Respondents to the Appeal).

We have considered the Respondent’s dual prayers with great deliberation. Given the rather involved history of this matter, we find inexplicable the Applicants’ failure to attend today’s hearing to prosecute their own Application. Indeed, it smacks of abuse of the Court’s process (under Rule 1(2) of the Court’s Rules) for the Applicants not only to fail to attend to the prosecution of their own claim; but also to fail to communicate with the Registry at all (let alone with their own professional colleagues) concerning whatever predicament may have befallen the Applicants. For these reasons, the Court is prepared to exercise its discretion under Rule 61(2) of its Court’s Rules to dismiss Application No.1 of 2012.

As regards the second prayer: to proceed, *ex parte*, with the substantive hearing of the Appeal, however, the Court is of the view that, given the enormity and gravity of the underlying matters contained in this Appeal - touching as they do on the Partner State’s obligations under the EAC Treaty, on the one hand, and of the liberty of the East African Community

citizens, on the other – substantive justice requires that this Appeal be heard *inter partes*.

In light of all the above, therefore, the Court Orders that:

1. Application No.1 of 2012 be and is hereby dismissed.
2. Appeal No.2 of 2012 be and is hereby adjourned for hearing to a date to be notified to the Parties in due course.
3. The costs of this Application are to be in the cause.

It is so ordered.

**DATED, AT ARUSHA
THIS 27TH DAY OF JUNE, 2012**

.....
Harold R. Nsekela
PRESIDENT

.....
Philip K. Tunoi
VICE PRESIDENT

.....
Emily R. Kayitesi
JUSTICE OF APPEAL

.....
Laurent Nzosaba
JUSTICE OF APPEAL

.....
James Ogoola
JUSTICE OF APPEAL