



**IN THE EAST AFRICAN COURT OF JUSTICE**

**AT ARUSHA**

**Application No. 4 of 2011**

**(Arising from Reference No. 4 of 2011)**

(Coram: Honorable Mr. Justice Johnston Busingye Principal Judge, Honorable Mr. Justice John Mkwawa and Honorable Mr. Justice Jean Bosco Butasi)

Omar Awadh Omar.....1<sup>st</sup> Applicant  
Hussein Hassan Agade.....2<sup>nd</sup> Applicant  
Mohammed Adan Abdow.....3<sup>rd</sup> Applicant  
Idris Magondu.....4<sup>th</sup> Applicant  
Mohammed Hamid Sulaiman.....5<sup>th</sup> Applicant  
Yahya Suleiman Mbuthia.....6<sup>th</sup> Applicant  
Habib Suleiman Njoroge.....7<sup>th</sup> Applicant

**VERSUS**

The Attorney General, Republic of Kenya.....1<sup>st</sup> Respondent  
The Attorney General, Republic of Uganda.....2<sup>nd</sup> Respondent  
The Secretary General, East African Community.....3<sup>rd</sup> Respondent

**DATE: 28<sup>TH</sup> FEBRUARY, 2012**

**RULING OF THE COURT**

When the matter came up for hearing this morning namely the 28<sup>th</sup> day of February, 2012, Counsel for the Second Respondent, Ms. Patricia Mutesi, made an oral application for stay of

further proceedings pending an intended appeal against the ruling of this court dated 1<sup>st</sup> December, 2011.

The ground for the intended Appeal as contained in a Notice of Appeal filed in this Court on the 1<sup>st</sup> day of December, 2011, namely, on the very day that this Court gave its decision, is against the whole decision of this Court as decided that Reference No. 4 of 2011 is not time-barred.

The learned Counsel informed the Court that the Notice in question was served upon all the parties a long period before today. She argued with great force and pertinacity that if today's hearing proceeds as scheduled the intended Appeal would in essence be rendered nugatory. She further argued that what is now before this Court is provided by the Rules of this Court, namely, Rule 21(7) (a) of the Rules.

Learned Counsel for the Applicant, namely, Mr. Amuga strenuously opposed the application. In support of his stance, he essentially contended that:

- (a) The intended Appeal has no chance of success.
- (b) The 1<sup>st</sup> Respondent's counsel was aware of today's hearing but took no steps to let the Claimant's/Applicant's Counsel know of the intended prayer for stay of proceedings in order to avoid the inconvenience so caused as a result thereof.
- (c) The stay would be prejudicial to the Applicant as it would result in criminal proceedings against his client's in the Ugandan Criminal Courts hence defeat the very purpose of the Reference now before the Court.

He further submitted that if the prayers are granted then this Court should issue the interim orders sought in the Reference, namely that, proceedings before the National Court in Uganda should be stayed pending the hearing of the instant application now before this Court.

In rejoinder it was counter-submitted by Counsel for the Respondent that whether the Appeal has a chance of success is a matter to be determined by the Appellate Division and not this Court

whose decision is subject matter before the Appellate Division. In other words, she submitted that the submissions made by the learned Counsel for the Applicant were speculative.

As regards the other limbs pursued in the Reference she submitted that, that cannot be talked at this juncture as the intended Appeal is in respect of the very basis of the claim in the Reference in question.

In sum, she urged the Court to allow her prayer for stay.

Mr. Agaba Steven Counsel for the 3<sup>rd</sup> Respondent associated himself entirely with the stance of the Counsel for the 1<sup>st</sup> Respondent; and associated himself with the arguments advanced thereof.

We have given due consideration to the rival submissions and we have the following to say:

This Court has discretion to hear an oral application as provided under the Rules of the Court and proceed to stay the proceedings for sufficient cause.

We do, however, agree with the Counsel for the Applicant/Claimant that the Counsel for the Respondent should have in one way or another indicated that she was going to ask for stay of proceedings as filing an intended Appeal by itself is not sufficient.

We are of the candid view that in order for the Applicant to succeed in an application for stay of proceedings in a pending appeal it is not required by this Court to go into the merits of the pending appeal as that is the sole domain of the Appellate Division.

We are further of the view that the prayers made by the Counsel of the Applicant/Claimant which appear as a “trade off” cannot be granted by this Court as the prayer sought by the Counsel is not within our domain at this stage.

Accordingly, we grant the application and do hereby stay any further proceedings before us until the determination of the intended appeal.

We do however strongly feel that the Claimant/Applicant is entitled to to-day's costs in any event.

It is so ordered.

**DATED, DELIVERED AND SIGNED AT ARUSHA**

**THIS.....DAY OF.....2012**

.....

**JOHNSTON BUSINGYE  
PRINCIPAL JUDGE**

.....

**JOHN MKWAWA  
JUDGE**

.....

**JEAN BOSCO BUTASI  
JUDGE**