



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



*(Coram: Johnston Busingye, Mary Stella Arach-Amoko, DPJ, John Mkwawa, J,
Jean-Bosco Butasi Isaac Lenaola, J.)*

REFERENCE 9 NO. OF 2010

BETWEEN

AFRICAN NETWORK FOR ANIMAL WELFARE

(ANAW).....APPLICANT

AND

THE ATTORNEY GENERAL OF THE REPUBLIC OF

TANZANIA.....RESPONDENT

DATE: 25th APRIL 2013

RULING

1. On 23.1.2013, during the Scheduling Conference in this matter, the Applicant prayed for, and was granted an order to file an expert's Report, on or before 22.3.2013.

2. The Report was only lodged in the Nairobi sub-registry of the Court on 25.3.2013 and today, the date set for hearing of the Reference, the Applicant's Counsel has indicated that the Report was lodged two days outside time because the expert had to visit the area where the Mugumu-Tabora B- Klein's Gate-Loliondo Road(the subject of the Reference) is situated, prepared and submitted the report on 25.3.2013 and it was thereafter lodged on the same day. That in fact since 22.3.2013 was a Friday and 25.3.2013 was a Monday, then it was promptly lodged in the circumstances. He now seeks leave to have the Report admitted out of time although he did not mention any Rule pursuant to which he was making the application for leave aforesaid.

3.The Respondent's Counsel strongly opposes any attempt at admitting the Report out of time ,arguing that the reasons given for delay coupled with a clear reading of Rule 46 of the Court's Rules of Procedure would preclude any discretion in favour of the Applicant.

4. During submissions, three other issues were raised viz:

- i) Whether the Applicant was obligated to serve the expert's Report upon filing it.

- ii) Whether the Respondent was obligated to file and serve witness statements before the hearing of the Reference.
- iii) Whether the hearing of the Reference should be adjourned.

5. We have considered the submissions on all the issues above and our opinion is as follows:

A concise and clear reading of Rules 4, 10 and 46(1) and (3) of the Court's Rules of Procedure would show that the discretion to extend time and/or grant leave to file a document is discretionary. In the present instance, the expert's Report was filed on a Monday after time had lapsed on the previous Friday. The reasons given that the expert had to visit the disputed road, and thereafter compile the report, are neither outlandish nor unreasonable, contrary to the strong position taken by Counsel for the Respondent. It is normal in the conduct of the affairs of human beings that strict deadlines may not be met, depending on prevailing circumstances, and that is why Rule 4 of the Rules of Procedure was crafted. However, the rider in both rules 4 and 46(1) and (3) is that the reasons given must be

sufficient and in the case of documents ,such as the expert's report in question, its production in the eyes of the Court, is necessary.

6. We are satisfied that both criteria outlined above have been met in the matter before us as a weekend's delay is not inordinate and certainly the Report is necessary and would greatly assist the Court to reach a fair and just decision in the Reference.

7. Regarding service of the Report, the matter is premature because without it being admitted, service is a non-issue and we shall at the end of this Ruling make the necessary orders in that regard.

8. As to the Respondent's obligation, or lack thereof, to file and serve witness statements before the hearing of the Reference, while there is no express obligation imposed on a party to do so, the record would bear us out that Counsel for the Respondent specifically sought an order, during the Scheduling Conference, to prepare and serve those statements. Today, he has decided to waive his right to do so and whilst that right still exists, the Court is not precluded from giving directions as to how each case should be heard. This is a

discretion granted to it under its inherent jurisdiction to do justice without undue regard to technicalities under Rule 55(3)(d) of the Rules of Procedure. The facts and circumstances of this case would necessitate that this Court should invoke that jurisdiction.

9. In the event, and for the above reasons, invoking Rules 4, 10, 46(1) and (3) of the Court's Rules of Procedure, we shall order and direct as follows:

- i) The expert's Report lodged in the Nairobi sub-registry on 25.3.2013 by the Applicant is admitted into the record and shall be deemed as filed within time.
- ii) The Report shall be served forthwith upon the Respondent, by the Applicant and in any event, within the next 7 days.
- iii) The Respondent shall, within 14 days of today's date, file and serve written statements for its three (3) proposed witnesses.
- iv) The hearing of the Reference shall be adjourned to a date to be given by notice to the parties and as to costs; we deem it fit in the circumstances, to order that each party should bear its own costs.

It is so ordered.

**DATED, DELIVERED AND SIGNED AT ARUSHA THIS.....DAY OF
.....2013**

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JOHNSTON BUSINGYE
PRINCIPAL JUDGE

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MARY STELLA ARACH-AMOKO
DEPUTY PRINCIPAL JUDGE

.....
JOHN MKWAWA
JUDGE

.....
JEAN BOSCO BUTASI
JUDGE

.....
ISAAC LENAOLA
JUDGE