



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

(Coram: Isaac Lenaola, DPJ; John Mkwawa, J (Rtd); Faustin Ntezilyayo J.)

APPLICATION NO. 3 OF 2014

(Arising from Reference No. 1 of 2014)

THE EAST AFRICAN LAW SOCIETY.....APPLICANT

VERSUS

**THE ATTORNEY GENERAL OF
THE REPUBLIC OF BURUNDI.....1ST RESPONDENT**

**THE SECRETARY GENERAL OF
THE EAST AFRICAN COMMUNITY.....2ND RESPONDENT**

15TH AUGUST 2014

RULING OF THE COURT

INTRODUCTION

1. This is an application by way of Notice of Motion dated 17th February 2014 and premised on the provisions of Article 39 of the Treaty for the Establishment of the East African Community (hereinafter referred to as “**the Treaty**”) and Rule 73(1) and (2) of the East African Court of Justice Rules of Procedure (hereinafter referred to as “**the Rules**”). It arises out of **Reference No. 1 of 2014** wherein the Applicant seeks among others a declaration that the decision and order of the Court of Appeal of Burundi of 28th January 2014; and the travel ban imposed on Mr. Isidore Rufyikiri by the Prosecutor of the Anti-Corruption Court of the Republic of Burundi infringe upon and are in contravention of Articles 6(d) and 7(1) and (2) of the Treaty.
2. In the aforesaid Notice of Motion, the Applicant seeks the following orders:
 - “1. Pending the hearing and determination of the Reference, this Honorable Court be pleased to grant an order of stay of the decision of the Court of Appeal of Bujumbura made on the 28th January, 2014 in case No. RA 10 between the Public Prosecutor vs. Mr. Isidore Rufyikiri.**
 - 2. Pending the hearing and determination of this Reference, an order directing the Court of Appeal of Bujumbura and the Government of the Republic of Burundi to immediately and forthwith reinstate Mr. Isidore Rufyikiri to the Table of Barristers of the Court of Appeal of Bujumbura.**

3. An Order immediately and forthwith quashing, setting aside and or lifting the decision and orders of the Public Prosecutor to the Anti-Corruption Court of Burundi prohibiting Mr. Isidore Rufyikiri from travelling beyond the national borders of Burundi pending the hearing and determination of this Reference.

4. An Order that pending the hearing and determination of the matter Inter-Parties, this Honorable Court be pleased to grant Interim Ex-parte Orders to stay the Disbarment of Mr. Isidore Rufyikiri from the Roll of Advocates of the Republic of Burundi; and staying the Directive of the Prosecutor of the Anti-Corruption Court of Burundi that prohibits Mr. Isidore Rufyikiri from leaving Burundi.

5. The costs of this application be borne by the Respondents.

6. This Honorable Court be pleased to order such further or other orders as it deems fit and just in the circumstances.”

THE PARTIES' RESPECTIVE CASES AND SUBMISSIONS

A. THE APPLICANT

3. The Applicant filed a Supporting Affidavit and a supplementary Affidavit sworn on 17th February 2014 and 31st March 2014, respectively, by one James Aggrey Mwamu, President of the East African Law Society.

4. Mr. Richard Onsongo appeared for the Applicant and made elaborate submissions on its behalf when the Application came for hearing on 17th June 2014.

5. As can be gleaned from the Notice of Motion under consideration and **Reference No. 01 of 2014**, the gist of the Applicant's contention is that the disbarment of Mr. Isidore Rufyikiri, then Batonnier of the Burundi Bar Association by the Court of Appeal of Bujumbura without due regard to proper laid down procedures and the travel prohibition imposed on him by the Public Prosecutor to the Anti-Corruption Court of Burundi, were in transgression of the provisions of the Treaty and international best practices. Thus, in the instant Application, the Applicant requests, *inter alia*, an order of stay of the aforesaid decisions pending the determination of the Reference.
6. Counsel for the Applicant, first of all, argued that since the disbarment of Mr. Isidore Rufyikiri from the Roll of the Burundi Advocates and his restriction of travelling out the national borders of the Republic of Burundi are not disputed, all that has to be found out is the propriety of those actions.
7. It is Counsel's contention that ***"the procedure used by the 1st respondent to arrive at a decision to disbar Mr. Isidore Rufyikiri runs afoul of the very explicit provisions of the Burundi Advocates Act as to the limit within which the disciplinary committee of the Bar Council can render a decision on a complaint lodged before it; the Respondent lodged a case in the Court of Appeal at Bujumbura before the 60 days within which the disciplinary committee could decide on the complaint lodged against Mr. Isidore Rufyikiri."*** In this regard, learned Counsel further argued that by filing the Court of Appeal case and subsequently determining to disbar Mr. Isidore Rufyikiri, the 1st Respondent not only denied him a chance at a fair

trial but also unlawfully interfered with the very independence of the legal profession since the Burundi Bar Association was thus denied its lawful right to a democratically elected President and representative.

8. Counsel also submitted that the decision to disbar Mr. Isidore Rufyikiri, President of the Burundi Bar Association taken by the Court of Appeal of Bujumbura, after flouting explicit provisions of the law and the arbitrary prohibition to travel beyond the national borders of the Republic of Burundi imposed to Mr. Rufyikiri by the Public Prosecutor to the Anti-Corruption Court of Burundi without a lawful Court order speak to the lack of independence of the judiciary within the Republic of Burundi and the interference of the Executive in judicial affairs.
9. In addition, Counsel submitted that as a consequence of the unlawful disbarment of Mr. Isidore Rufyikiri, his clients continue to suffer lack of proper legal representation by their voluntarily appointed lawyer before various judicial forums in and outside Burundi, including the East African Court of Justice. Furthermore, Counsel argued that following the impugned decisions, Mr. Isidore Rufyikiri is denied and continues to be denied an opportunity to earn an honest living having been unfairly deprived of his source of livelihood. Counsel then urged the Court to allow Mr. Isidore Rufyikiri to practice so as to enable him to earn a decent living pending the decision in **Reference No.01 of 2014.**
10. Arguing that the sum effect of the Respondent's unwarranted acts above is a violation of the provisions of the Treaty, Counsel further submitted that it is imperative that the interim orders

sought should be granted as the Reference raises serious and fair questions for trial, that the loss that the Bar Association and its President continue to suffer cannot be quantified or appeased by damages and that the balance of convenience lies in favour of allowing the Application. It is Counsel's final submission that no prejudice will befall the Respondent Government or its case by the grant of interim orders and directions and that it is in the best interest of justice that the orders sought be granted.

11. As for the 2nd Respondent, learned Counsel conceded that he was only concerned by the main reference as no interim orders are sought against him.

B. THE 1ST RESPONDENT

12. The 1st Respondent, the Attorney General of the Republic of Burundi, opposed the Application and filed a Replying Affidavit sworn on 14th March 2014 by one Elisha Mwansasu, Senior Public Prosecutor, Office of the Prosecutor General, Ministry of Justice of the Republic of Burundi. Mr. Nestor Kayobera, Director, Judicial Organization in the Ministry of Justice argued its case, which in essence, is that prayers sought cannot be granted since they have been overtaken by events as the matter was then pending before the Supreme Court and that a decision was to be delivered within a few days.
13. Counsel also argued that Mr. Isidore Ruffyikiri as an advocate, violated his oath contained in Article 11 of the Law regulating the profession of lawyers in his correspondence No.0427/2013 of 24th July 2013 to the Governor of Bubanza Province by making injurious and defamatory declarations and in organizing and

conducting a press conference on 29th July 2013 in which he made injurious declarations and which are against the rules, state security and public peace.

14. He also submitted that following the failure by the Council of Advocates of Bujumbura to take disciplinary measures against Isidore Rufyikiri within the required time as was requested by the Prosecutor General to the Court of Appeal of Bujumbura, the latter filed a case in the Court aforesaid requesting the disbarment of Mr. Isidore Rufyikiri from the Bujumbura Table of Barristers. The said case was registered in the abovementioned Court under Reference RA 10.
15. Counsel also averred that the Court of Appeal of Bujumbura, exercising its competence, decided to disbar Mr. Rufyikiri and that the latter, considering that he was aggrieved by that decision, applied for its review to the review Chamber of the Supreme Court and that the case was still pending determination.
16. In addition, learned Counsel stated that even before the decision of the Court of Appeal of Bujumbura to disbar Mr. Isidore Rufyikiri from the Table of Barristers, Mr. Rufyikiri had been ordered not to leave the country pending closure of proceedings in matter No. RMPCAC 2066 KI opened in the Office of the Prosecutor General to the Anti-Corruption Court of Burundi against him, and that the said decision was taken in accordance with Article 10 of Law No.1/12 of 18th April 2006 on Measures of preventing and combating corruption and related offences as Mr. Rufyikiri is being prosecuted for acts of corruption committed when he was President of the Burundi Centre for Arbitration and Conciliation (CEBAC).

17. It is Counsel's submission that an order of stay of the decision of the Court of Appeal of Bujumbura as sought by the Applicant and another one sought to reinstate Mr. Ruffyikiri to the Table of Barristers of Bujumbura are both unfounded as this matter falls outside the jurisdiction conferred on this Court by the Treaty, especially under Articles 27(2) and 30(3) thereof. He then argued that the Court should not grant the orders sought in this Application since they have been overtaken by events as the case is following due process of law before the Supreme Court of Burundi.

C. 2nd RESPONDENT

18. The 2nd Respondent filed a Replying Affidavit sworn on 26th February 2014 by one Jean Claude Nsengiyumva, Deputy Secretary General in charge of Finance and Administration of the East African Community. Mr. Wilbert Kaahwa represented the 2nd Respondent.

19. Counsel for the 2nd Respondent started his submissions by saying that the Applicant has been ill-advised to pursue this Application against the 2nd Respondent. In that regard, he argued that neither in the Application, nor in its supporting affidavits, did the Applicant make allegations against the 2nd Respondent warranting the grant of any orders. He then contended that the only prayer is that the Applicant, without providing any evidence, seeks costs against the 2nd Respondent, but hastened to add that the prayers and orders sought against the 2nd Respondent do not arise at all.

20. Counsel also submitted on the principles to be considered when a Court of law addresses the need or the possibility of granting interim orders. The Applicant has thus to show, firstly, that it has a

prima facie case with a probability of success. In other words, the main case must not be frivolous. Secondly, that if the interim order is not granted, it will suffer irreparable damage or injury which cannot be adequately compensated by an award of damages. Thirdly, that if the Court is in doubt, the Applicant must show that the balance of convenience lies in its favour.

DETERMINATION

21. From the outset, it should be recalled that at the hearing of the Application on 17th June 2014, after going through the prayers sought by the Applicant, a question arose as to know which prayers should be granted at the interlocutory stage (i.e. *interlocutory or interim orders*) as is the case in the present Application and which ones should wait the determination of the main Reference (i.e. *final orders*). Counsel for the Applicant agreed to abandon prayer No.2 of the Application in that regard, but this did not solve the question as regards the nature of other prayers.

22. Given the prayers sought both in the main Reference and the present Application, we deem it necessary to start by clarifying the terms “*interlocutory orders*” and “*final orders*”. **Black’s Law Dictionary (9th Edition)** defines an “*interlocutory order*” as “*an order that relates to some intermediate matter in the case; any order other than a final order*”. The same Dictionary defines a “*final order*” as “*an order that is dispositive of the entire case.*”

23. In the same vein, in ***Republic of Philippines v. Sandiganbayan (Fourth Division – G.R. No. 152375***, December 16, 2011), the Supreme Court of Philippines laid down the rules to

determine whether a court's disposition is already a final order or merely an interlocutory order in the following holding:

“As distinguished from a final order which disposes of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing else to be done but to enforce by execution what has been determined by the court, an interlocutory order does not dispose of a case completely, but leaves something more to be adjudicated upon. The term “final” judgment or order signifies a judgment or an order which disposes of the case as to all the parties, reserving no further questions or directions for future determination.

On the other hand, a court order is merely interlocutory in character if it leaves substantial proceedings yet to be had in connection with the controversy. It does not end the task of the court in adjudicating the parties' contentions and determining their rights and liabilities as against each other. In this sense, it is basically provisional in its application.”

We agree with both the definitions and the jurisprudence of the Court provided above and the same will guide us in determining whether or not this Court will grant the prayers as framed in the present Application.

24. Turning to the matter herein, therefore, we must point out that at this interlocutory stage, the Court is not asked to determine the very issues which will be canvassed when we consider the Reference at a certain point in time. What should be addressed here

is whether or not the granting of interim orders is justified having regard to the nature of matters in respect of which the interim orders are sought.

25. After perusing the grounds in support of the Application, and hearing the submissions of Counsel for the Applicant, it is clear that the aim of the prayers sought in the present Application is to get from this Court an order of stay of the decision taken by the Court of Appeal of Bujumbura regarding the disbarment of Mr. Isidore Rufyikiri on one hand and on the other hand, setting aside or lifting the decision and orders of the Public Prosecutor to the Anti-Corruption Court of Burundi prohibiting Mr. Rufyikiri from travelling beyond the national borders of Burundi pending the determination of the main reference. It should be noted that those prayers contained therein are identical to prayers (v) and (vi) in the main Reference.

26. Given the foregoing, a question that arises is whether it would be just and convenient to grant the said prayers as interim orders. If the Court acceded to the Applicant's request, would this leave something to be adjudicated upon in the main Reference or this will dispose of the subject matter? In the latter case, would it be proper to go that route at this stage without deciding on the merits of the whole case?

27. Upon considering the Application and the prayers as framed and argued and bearing in mind the main reasons that triggered the main Reference, it is clear to us that the orders sought by the Applicant are final in nature and cannot be issued at this interlocutory stage. The Applicant has to wait for the determination

of the main Reference since it is there that arguments regarding freedom of movement, right to practice, right to association that were prematurely presented in this Application by Counsel for the Applicant will be properly addressed. For us to delve into these issues at this stage would be akin to pre-judging the merits or demerits of **Reference No. 1 of 2014** and we politely decline the invitation to do so.

28. For all these reasons, we hereby dismiss this Application. Costs shall be in the cause.

It is so ordered.

Dated, Delivered and Signed at Arusha this 15th day of August, 2014.

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ISAAC LENAOLA

DEPUTY PRINCIPAL JUDGE

.....

JOHN MKWAWA

***JUDGE (RTD)**

.....

FAUSTIN NTEZILYAYO

JUDGE

**NB: Hon. Justice John Mkwawa participated in the hearing and deliberations leading to the above Ruling. He retired from the Court on 26th June 2014.*