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

(Coram: Jean Bosco Butasi, P.J., Faustin Ntezilyayo, J, Fakihi A. Jundu, J.)

APPLICATION No.17 OF 2014

(Arising from Reference No.2 of 2011)

THE ATTORNEY GENERAL OF

THE REPUBLIC OF UGANDA.....APPLICANT

VERSUS

1. THE EAST AFRICAN LAW SOCIETY.....

2. THE SECRETARY GENERAL OF THE EAST AFRICAN COMMUNITY.....

RESPONDENTS

11TH SEPTEMBER 2014

RULING OF THE COURT

1. On 11th September 2014, when this Court came for the hearing of **Reference No.2 of 2011**, Counsel for the 1st Respondent in the main Reference (hereinafter "the Applicant") stated that he was not ready for hearing of the above Reference and instead prayed the Court to hear **Application No. 17 of 2014** filed on 2nd September 2014 by the Attorney General of Uganda, who had requested that the Application be fixed on the same day as the main Reference.

2. The aforesaid Application seeks orders that:

"*1) This Honorable Court be pleased to conduct a voir Dire in respect of the admissibility of the affidavit of Mr. James Aggrey Mwamu and the electronic Digital Video Disk (DVD) evidence submitted therein filed on the 4th day of March, 2013.*

2) This Honorable Court be pleased to find that the said affidavit and electronic DVD evidence submitted by James Aggrey Mwamu is inadmissible.

3) Costs be in the cause."

3. Counsel for the Applicant averred that following the Ruling of the Appellate Division, there was a need to have clear directions on how the matter will proceed in regard with the new evidence adduced. He then asserted that the instant Application aims to determine the admissibility of the Digital Video Disk evidence

filed by the Applicant in the main Reference (hereinafter "the Respondent in the Application").

4. Counsel for the 2nd Respondent in the main Reference associated himself with Counsel for the Applicant. Recalling the definition of *Voir Dire,* to wit "*a preliminary examination to test the competency of a witness or evidence*", he submitted that the Application ought to be heard.

5. Counsel for the Respondent in the Application contended that following the Ruling of the Appellate Division on the issue at hand, the matter was remitted to this Court for substantive disposal of the Reference on the merits and that, technicalities ought not to constitute an obstacle to the achievement of justice. He then pointed out that he was ready to proceed with the hearing of the Reference. As for Application No. 17 of 2014, he submitted that he was only served on 10th September 2014 and consequently opposed the Application in as much as it is in breach of Rule 23 (1) of the EACJ Rules of Procedure (the "Rules"), since it would deny him the right to reply to the Application if it were to be heard by this Court today. Therefore, learned Counsel urged the Court to proceed with the hearing of main Reference as it was directed to do so by the Appellate Division.

6. Counsel for the Applicant conceded that he did not comply with the timeframe required for serving the Application to the Respondent. He nevertheless reiterated his submission that the Application be heard in order to determine whether or not the DVD evidence is admissible.

7. Having heard from all the parties on this matter, we first and foremost find it necessary to point out that the matter of the production of additional evidence in form of electronic format has been adequately dealt with by this Court in its Ruling delivered on 13th February, 2013. In that regard, the Court found that the evidence to be produced shall be in the form of documentation and also in electronic format and that the Respondents are at liberty to file any evidence in rebuttal to additional evidence. (see **EACJ, Ruling in Application No. 12 of 2012, The East African law Society Vs. The Attorney General of Uganda & The Secretary General of the East African Community).** The same findings were upheld by the Appellate Division (see **EACJ, Appeal No. 1 of 2013, The Attorney General of the Republic of Uganda Vs. The East African law Society & The Secretary General of the East African Community)**. Relevant to this Application are the Appellate Division's following conclusions:

"*(4) The new evidence will not occasion the Appellant any prejudice; as he will be afforded all reasonable time and opportunity to reply to and rebut that evidence.*

(5) In the interests of justice, we order that the proposed evidence be allowed to be adduced – notwithstanding any points of legal technicality that may otherwise arise. ...". The Court thus ordered that "(1) *The Appeal is dismissed.*

(2) The matter is remitted to the First Instance Division for substantive disposal of the Reference on the merits."

8. Given the foregoing, we are of the decided opinion that the Appellate Division, in its aforesaid Ruling, has given ample directions on how the matter at hand should be handled. In this regard, it is our view that the Applicant, rather than filing an application, ought to have filed any evidence in rebuttal to the DVD evidence lodged by the Applicant in the main Reference if he so wished, as it was directed by the Court.

9. In the result, Application No. 17 of 2014 cannot be entertained by this Court since it does not comply with Court Orders and Rules 22(1) and 23(1) of the Rules. Accordingly, the Application is struck out.

10. No order as to costs.

It is so ordered.

Delivered, dated and signed this 11th day of September, 2014 at Arusha.

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JEAN BOSCO BUTASI

PRINCIPAL JUDGE

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FAUSTIN NTEZILYAYO

JUDGE

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FAKIHI A. JUNDU

JUDGE