



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



(Coram: Monica K. Mugenyi, PJ; Isaac Lenaola, DPJ, & Fakihi A. Jundu, J)

APPLICATION NO. 9 OF 2018
(Arising from **Reference No. 8 of 2018**)

1. HASSAN BASAJJABALABA
2. BASAJJABALABA MUZAMIRU } APPLICANTS

AND

THE ATTORNEY GENERAL OF
THE REPUBLIC OF UGANDA..... RESPONDENT

24TH APRIL, 2018

nee;

RULING OF THE COURT

1. Before us is a Notice of Motion Application dated 16th April, 2018 and filed on 17th April, 2018 under certificate of urgency. It is premised principally on the provisions of Article 39 of the Treaty for the Establishment of the East African Community as well as Rule 21(1) and (2) of this Court's Rules of Procedure.
2. The Applicants seek *ex-parte* restraining orders directed at the Respondent and his agents, specifically, the Ugandan Police, and any other security agency or department of the Government of the Republic of Uganda. The orders aforesaid include an order that the summons issued on 9th April 2018, requiring attendance by the Applicants before the Criminal Investigation Department to be interrogated or questioned in relation to **Criminal Case No.003 of 2018**, in which the Applicants are accused persons, should not be implemented until the hearing of **Reference No.8 of 2018** pending before this Court.
3. Other orders sought are in respect of restraining orders to stop the arrest of the Applicants, their being charged in any court and the re-constitution of any bench of the Constitutional Court of Uganda to refix for hearing *de Novo* or otherwise of **Petition No.12 of 2013** pending delivery of Judgment by that Court. These orders arise from circumstances detailed out in the Reference and the supporting Affidavit of the 1st Applicant sworn on 16th April, 2018.
4. We have heard Counsel appearing for the Applicants and taken their elaborate submissions into account. We have also perused Rule 21(2) of our Rules of Procedure and specifically the edict that "*no motion*

shall be heard without notice to the parties affected by the application”.

The affected party in this case is the Respondent.

5. We have further noted that the proviso to Rule 21(2) grants this Division of the Court discretion to entertain an application for *ex-parte* orders if it is “*satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable injustice*” and that any *ex-parte* orders granted may attract “*such terms as to costs or otherwise. and subject to such undertaking, if any, as the Division deems just.*”
6. In the above context, we note that the Applicants, on 8th May, 2013, obtained orders in **Petition No.12 of 2013** before the Constitutional Court of Uganda, the import of which was *inter alia* that:
 - (I) The Respondent therein (the present Respondent as well) was prohibited from using the processes of ‘*any court so as to initiate and prosecute [the Applicants] for any charges arising out of or in connection with...*’ the issues forming the subject matter of **Criminal Case No.003 of 2013.**
 - (II) All pending Criminal charges and proceedings against the Applicants in **Criminal case No.003** be stayed.
7. In that regard, what triggered the present Application was the letter dated 9th April, 2018 requiring the Applicants to appear before the Criminal Investigations Directorate at Kibuli on 24th April, 2018 “*to provide further information in the matter under investigation*” and “*to facilitated all the on-going preparations for the hearing of the Criminal case ...*” against the Applicants, being **Criminal Case No.003 of 2013** aforesaid. To our minds the orders issued by the Constitutional

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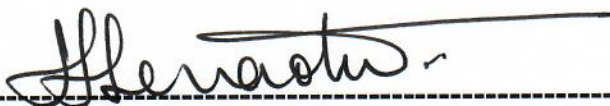
Court are broad enough to cover the Applicants' complaints before us at this *ex-parte* stage and it is their enforcement that the Applicants should pursue in the interim rather than seek a re-issuing of the same orders by this Court without hearing the Respondent. We say so guardedly and without in any way making a determinate finding on the merits of the Applicants' case at the *inter-partes* stage. We also say so to make the point that we see no irreparable injustice that the Applications may suffer if we do not grant any *ex-parte* orders as they are already the beneficiaries of protective orders issued by the Constitutional Court of Uganda. For avoidance of doubt it matters not that the said court is partly the subject of the Reference before us.

8. Having therefore looked at the Reference, the Motion before us and our Rules, we are not satisfied that the Applicants have made out a case to warrant the grant of any *ex-parte* orders in their favour and consequently, we decline the invitation to do so.
9. In the circumstances, our orders and directions are that the Notice of Motion dated 16th April 2018 and filed on 17th April, 2018 shall be served for hearing on 5th June, 2018. Parties are at liberty to file and exchange skeletal written submissions before that date.
10. As to costs, we make no orders to costs.
11. Orders accordingly.

Dated, signed and delivered at Arusha this 24th day of April, 2018.



HON. LADY JUSTICE MONICA K. MUGENYI
PRINCIPAL JUDGE



HON. ISAAC LENAOLA
DEPUTY PRINCIPAL JUDGE



HON. JUSTICE FAKIHI A. JUNDU
JUDGE