



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



*(Coram: Faustin Ntezilyayo, DPJ; Fakihi A. Jundu, J; and
Charles Nyawello)*

REFERENCE NO. 8 OF 2016

CASTRO PIUS SHIRIMA APPLICANT

VERSUS

**THE ATTORNEY GENERAL OF
THE REPUBLIC OF BURUNDI..... 1ST RESPONDENT
THE ATTORNEY GENERAL OF
THE REPUBLIC OF KENYA.....2ND RESPONDENT
THE ATTORNEY GENERAL OF
THE REPUBLIC OF RWANDA.....3RD RESPONDENT
THE ATTORNEY GENERAL OF
THE REPUBLIC OF SOUTH SUDAN.....4TH RESPONDENT
THE ATTORNEY GENERAL OF
THE UNITED REPUBLIC OF TANZANIA.....5TH RESPONDENT
THE ATTOERNEY GENERAL OF
THE REPUBLIC OF UGANDA.....6TH RESPONDENT
THE SECRETARY GENERAL OF
THE EAST AFRICAN COMMUNITY.....7TH RESPONDENT**

20TH MARCH 2019

RULING OF THE COURT

A. INTRODUCTION

1. Following a Notice of Withdrawal of **Reference No. 8 of 2018** filed in this Court on 20th April 2018 by Mr. Moto M. Mabanga, Agent of the Applicant, the 1st, 5th and 6th Respondents in their respective responses to the said Notice stated that they had no objection to the withdrawal, but that they were praying for costs, while the 3rd Respondent stated that he had no objection to the withdrawal with no costs. Other Respondents did not react to the Notice of withdrawal.
2. The matter was fixed for hearing on 20th March 2019 and representatives of the 1st, 2nd, 5th and 6th Respondents appeared while the Applicant and the 3rd, 4th and 7th Respondents did not appear in Court.

II. Submissions of Parties

3. Counsel for the 1st Respondent stated that he had no objection to the withdrawal, but prayed for costs relying on Rule 51(2) and Rule 1(2) of the Court's Rules insisting that they had incurred considerable costs while pursuing the matter.
4. Counsel for the 2nd Respondent submitted that he had no objection to the withdrawal of the Reference with no costs, since he considered that there were not appropriate given the fact that the Applicant was not in Court and that it would therefore be futile to issue an order that might not be enforceable.
5. The 5th Respondent's Counsel reiterated their position that they had no objection to the withdrawal with costs.

6. As for the 6th Respondent's Counsel, she submitted that important costs had been incurred which, in accordance with Rule 111(1) of the Court's Rules, must be borne by the Applicant. She also contended, as did Counsel for the 1st and 5th Respondents, that the instant case is not one of public interest where parties might be ordered to bear their own costs.

III. Court's determination

7. We have carefully listened to Parties' submissions on the matter at hand. We note that Counsel for the 2nd Respondent in Court and Counsel for the 3rd Respondent through his response to the Notice of withdrawal sent on 23rd July 2019, stated that they had no objection to the withdrawal of the Reference with no costs.
8. We also note that Counsel for the 1st, 5th and 6th Respondents stated that they had no objection to the withdrawal of the Reference, but insisted that costs had to be granted to them, in accordance with Rule 111(1) of the Court's Rules since they had incurred important costs while pursuing this matter, both in the First Instance Division and the Appellate Division of this Court.
9. When asked whether this matter is not one of public interest litigation warranting that each party bears its own costs, Learned Counsel for the 1st, 5th and 6th Respondent contended that the instant Reference did not have the nature of a matter of public interest litigation.
10. Public interest litigation is understood as litigation filed in a court of law, for the protection of the public interest or in order to raise issues of public concern.
11. Considering that when the Applicant filed **Reference No. 8 of 2016**, he was seeking among others, an order restraining the signing and/or ratification of the Economic Partnership Agreement between the East African Community and the European Union, we are of the firm view that by doing that, he wanted to raise awareness on an important matter that might have had an impact not only on his own interest, but also on the

interest of citizens of the East African Community as a whole, which therefore qualifies this case as one of public interest.

12. It is settled law in this Court that when a case was brought in the public interest, parties had been ordered to bear their own costs (see for example, **East African Law Society Vs. The Secretary General of East African Community, EACJ Reference No. 7 of 2014; The East African Centre for Trade Policy and Law Vs. The Secretary General of the East African Community, EACJ Reference No. 9 of 2012**). We find no good reasons to depart from this position in the instant Reference.

13. Given the foregoing, therefore, we hereby decide that **Reference No. 8 of 2016** is withdrawn and that each party shall bear its own costs.

14. It is so order

Dated, Signed and Delivered at Arusha this 20th March 2019



.....
FAUSTIN NTEZILYAYO
DEPUTY PRINCIPAL JUDGE



.....
FAKIHI A. JUNDU
JUDGE



.....
CHARLES NYAWELLO
JUDGE