

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO.90 OF 2017

HALI HALISI PUBLISHERS LTD.....APPLICANT

VERSUS

THE DEPUTY MINISTER FOR INFORMATION

CULTURE ARTS & SPORTS & OTHERSRESPONDENT

30/1/2018 & 2/2/2018

RULING

I.P.KITUSI, J.

This is an application by HALI HALISI PUBLISHERS LIMITED hence forth the applicant for leave of this court to file an application for prerogative orders of certiorari mandamus and prohibition. The application is made against THE DEPUTY MINISTER FOR INFORMATION, CULTURE ARTS AND SPORTS, whose decision dated September, 2017 to ban publication of Mwanahalisi Newspaper for 24 months it is intended to challenge, is the first respondent. The Director of information Services Department and the Hon. the Attorney General are the second and third respondents respectively.

The application has been made under Rule 5(1) - (2) (a) - (d), (3) - (6) of the Law Reform (Fatal Accidents and Miscellaneous Provisions Judicial Review Procedure and Fees) Rules, 2014 GN No . 314

of 2014 and section 18(1) & 19 (3) of the Law Reform(Fatal Accidents and Miscellaneous Provisions) Act Cap 310, R.E 2002, and any other enabling Provisions of the Law. It is supported by an affidavit of one Saed Kubenea and submissions made by Dr. Lugemeleza Nshallah and Mr Nashon Nkungu learned counsel for the applicant.

The respondents filed a joint counter affidavit taken by one Patrick Kipangula making out a case which was supported by submissions of Mr. Haruni Matagane, learned Senior State Attorney.

There is also a statement by the applicant and a Reply to that statement both filed in terms of the governing law.

The background of the matter is that the applicant owns Mwanahalisi Newspaper which is alleged to have published three offending stories before it published the September 18 – 24,th 2017, the last straw, that earned them the ban. There is no dispute that a ban was issued against publication of the Newspaper on 18th September 2017. The applicant's contention is that the first respondent who issued the ban had no authority to act as he did and that no charges against the said applicant were preferred let alone affording it the right to be heard.

Dr .Nshallah submitted that the first respondent purported to act under section 58 of the Media Services Act No. 12 of 2016 but the learned counsel submitted that the Deputy Minister has no such powers under that provision.

It is further submitted that the second respondent's letters to the applicant purporting to demand from the latter apologies were issued without the authority to do so. The cumulative effect, it is submitted, is that the applicant was not given the right to be heard as the letters requiring it to offer explanation or apology were written by an unauthorized person.

The other ground raised under paragraph 13 of the affidavit but disputed in the counter affidavit (paragraph 10) is that this court (Bongole J) has previously issued an order restraining the Minister for Information Culture Sports and Arts and the Registrar of Newspapers from interfering with the activities of the applicant.

Mr. Matagane learned Senior State Attorney countered the submissions of the applicant's counsel by submitting that the first respondent has the authority to ban the Newspaper because section 4 of the interpretation of Laws Act, Cap 1 defines a Minister to include a Deputy Minister. The learned Senior State Attorney invited the court to find no merits in the applicant's argument that the Deputy Minister (first respondent) acted ultra vires.

As for the second ground that the applicant was denied a hearing, Mr. Matagane submitted that he was given one and indeed wrote a letter of apology as stated under paragraph 3 of the counter affidavit. On the submission that the second respondent had no authority to demand explanation or apology from the applicant, it is submitted that the said second respondent being the secretariate of the

Ministry had the requisite mandate to write to the applicants. The learned Senior State Attorney referred to paragraphs 7 and 8 of the counter affidavit which state that under the Media Services Act and the Regulations thereof the second respondent is deemed to be the Secretariat of the Minister.

In rejoinder Mr. Nkungu submitted that at this stage all that is needed is to address whether or not leave should be granted, cautioning against going into the merits of the main application. He cited the book of Administrative Law by B.D Chipeta at page 1 (which he promised to provide a copy later), but never did.

With respect I entirely agree with Mr. Nkungu learned advocate because what he submitted on is the position of the law. The provisions of Rule 5 of the Law Reform (Fatal Accidents Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014, under which this application has been made does not set conditions for granting leave.

In opposing this application the respondents have put up a case intended to show that the alleged administrative act was valid. As submitted by Mr. Nkungu, that is not the scope of the matter at this stage. My reading of Rule 5 (supra) shows that an application as this one may even be made ex- parte.

Consequently I grant the application for leave to file for judicial review, the same to be filed within thirty (30) days of this order.

There was also an application for stay of the ban pending the filing of the application but nothing much was submitted on this. As there is no enough material from which to decide this point I shall not pronounce myself on it.

This application is granted to the extent shown, with costs.



I.P. KITUSI

JUDGE

2/2/2018

2/2/2018

Coram : Hon . Massam . DR

For the Applicant : Mr. Nashon Nkundu and Zaituni Abdin

For the 1st Respondent

For the 2nd Respondent

For the 3rd

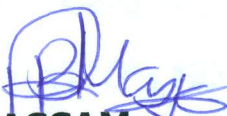
Cc: Raymond

Mr. Benson Holea State Attorney

The matter is coming for ruling, we are ready for it.

Order - Ruling delivered today on 2.2.2018, in the presence of Mr. Nashon Nkungu and Zaiton Abdin for applicant, and Mr. Nashon State Attorney for all respondent.




MASSAM

DR

2.2.2018.