IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MAIN REGISTRY)
AT DAR-ES-SALAAM
MISC. CAUSE NO. 11 OF 2022

IN THE MATTER OF THE CONSTITUTION OF THE UNITED REPUBLIC OF TANZANIA 1977 (AS AMENDED)

AND

IN THE MATTER OF BASIC RIGHTS AND DUTIES ENFORCEMENT ACT, CAP.3 [R.E 2019]

AND

IN THE MATTER OF BASIC RIGHTS AND DUTIES ENFORCEMENT (PRACTICE AND PROCEDURE) RULES 2014

AND

IN THE MATTER OF LAW SCHOOL OF TANZANIA ACT, CAP.425

AND

IN THE MATTER OF LAW SCHOOL OF TANZANIA (STUDENTS' PERFORMANCE ASSESSMENT AND AWARDS) BY-LAWS 2011

AND

IN THE MATTER OF A PETITION TO CHALLENGE THE ACTS AND OMMISSIONS OF THE 1ST AND 2ND RESPONDENTS AS BEING UNCONSTITUTIONAL

BETWEEN

ALEXANDER J. BARUNGUZA .....PETITIONER

VERSUS

THE LAW SCHOOL OF TANZANIA.....1stRESPONDENT

HON.JUDGE BENHAJJ S. MASOUD .....2nd RESPONDENT

THE ATTORNEY GENERAL..... .....3RD RESPONDENT

RULING

07th October 2022
24th October 2022

NANGELA, J:.,

When this Petition was called on for necessary orders on the 7th October 2022, the Petitioner, who appeared in person (unrepresented), raised two preliminary matters of concern. In those preliminary matters, the Petitioner called upon this Court to consider them and issue directives prior to the hearing. Besides, the Petitioner raised a number of preliminary objections against the Respondents' Reply to the Originating Summons and Joint Counter-Affidavit.

The two preliminary matters of concern raised by the Petitioner were as follows, that:

1. The whole of the proceedings of this Constitutional Petition he has filed in this Court be publicly broadcasted in a live-streaming mode using various available technological media.

2. That, this Court be pleased to issue a temporary injunction to stop/suspend all on-going training sessions which are being conducted by the 1st Respondent to protect or stop the squandering of public resources until this matter is heard and determined by this Court.

On the other hand, we, as well, had our own matter of concern and, as such, we raised it, **suo moto**, regarding:

> "Whether, in light of what section 8 (2) of the Basic Rights and Duties Enforcement Act provides, it is apposite for us to hear and determine the merits of this Petition while the Petitioner herein is also pursuing an appeal against the ruling of this Court, arising from Misc. Cause No.12of 2022.

This ruling, therefore, arises from those preliminary matters. However, before we delve on those preliminary issues, we find it

apposite to set out the facts that gave rise to this Petition, albeit in a nutshell.

The Petitioner herein is a holder of bachelor of laws degree (LLB) which he obtained from University of Tumaini- Makumira, Arusha. On the 20th November 2019, he applied for and, was admitted at the Law School of Tanzania (herein after referred to as **"The Law School" or "LST"**), for Practical Legal Training Programme, a programme offered by the 1st Respondent to all LLB graduates intending to be enrolled as legal practitioners.

Upon acceptance, registration and payment of a sum equal to **TZS 1,570,000** as the requisite fees for the programme, the Petitioner commenced his practical legal training programme as a 2019 December-Intake LST Student, with a Registration No. LST/2019/30/104. Later, the Petitioner sat for his year 2020/2021 examinations 1st and 2nd semesters.

The results of his 1st and 2nd Semesters Exam he had sat for were released sometimes in April 2021, whereupon he discovered that he had failed two courses, namely: **Course Code No. LS-101- Advocacy Skills**, and **Course Code No.LS 110- Legal Aid and Human Rights Advocacy**.

Unsatisfied with the results, he requested to be availed with provisional results and, in accordance with the laws and procedures applicable to the school, on the 27th April 2021 he filed an appeal alleging that the marking of his two exam-answer scripts was unfairly done. He also applied from the school to be availed with a copy of the rules and procedures governing/regulating appeals at the Law School.

Although the Petitioner preferred an appeal at the school, he, nevertheless, proceeded and sat for supplementary examinations in May/June 2021 in respect of the two earlier mentioned Courses which he had poorly performed. Sometimes in September 2021, his appeal at the school was determined and got dismissed on the ground that, the Independent Reviewer of his examination scripts were satisfied that, the marking by the Internal Examiner, was fair and, that, there was no computational errors.

Unsatisfied by the procedures and the manner in which his appeal was heard, on the 7th October 2021, the Petitioner herein requested the 1st Respondent to avail him with the answer scripts, marking schemes for both **LS 101** and **LS 110** (for his 1st sitting

and supplementary exams), as well as, details of the persons who acted as Independent Reviewers. The requested documents and details were for his own verification regarding whether the marking in appeal and supplementary was fair and, that, there were no computational errors. According to the Petitioner, his request was, however, denied by the 1st Respondent.

Further aggrieved and convinced that the 1st Respondent's appellate procedures relied upon in determining his appeal, and which he alleges to be unaware of are arbitrary, unreasonable and unconstitutional and violate the principles of natural justice, he issued a 90 days-notice with an intent to sue. Indeed, later on, the Petitioner did sue the Respondents in **Misc. Cause No.12 of 2022**, seeking for leave to apply for judicial review of the decision of the 1st Respondent. The matter was, however, dismissed by this Court and he, subsequently, resorted to the filing of this Petition.

However, even though the Petitioner claims, in his Affidavit of admissibility, to have exhausted all available remedies, there are some facts undisclosed to the Court by the Petitioner in his affidavit, but which this Court is privy to, given that they involve matters pending before it and before the Court of Appeal.

In particular, such undisclosed facts are that, apart from filing this Petition, the Petitioner did file as well, a Notice of Appeal to the Court of Appeal of Tanzania, intending to challenge the ruling which this Court issued in **Misc. Cause No.12 of 2022**. Moreover, the Petitioner has also commenced a process of seeking the leave of this Court for him to appeal to the Court of Appeal, which leave he is seeking through **Misc. Civil Application No.19 of 2022**. The intended appeal and the application for leave are matters still pending in Court.

All information contained hereabove, therefore, constitute, albeit in a nutshell, the factual background of this Petition.

Having stated the brief facts, there are at least three issues which we are bound to address in this ruling. These are as follows:

1. Whether this Court should grant the Petitioner's prayer to have the whole of the proceedings of this Constitutional Petition be publicly broadcasted in a live-streaming mode, using various available technological media.

2. Whether this Court should issue a temporary injunction to stop /suspend all on-going training sessions which are being conducted by the 1st Respondent, until this matter is heard and determined by this Court.
3. Whether, in light of what section 8 (2) of the Basic Rights and Duties Enforcement Act provides, it is apposite to hear and determine the merits of this Petition while the Petitioner herein is also pursuing an appeal against the ruling of this Court arising from Misc. Cause No.12 of 2022.

To begin with, we could have addressed only the last issue, but given the importance of this matter, we shall religiously address all three issues hereabove, starting with the first issue to the last issue. Let it be pointed out as well, that, this Court gave the parties right to submit on those three issues, and, as we

address the three issues pointed out here above, we also took into account their submissions.

The first issue for our consideration, therefore, is:

> 'Whether this Court should grant the Petitioner's prayer to have the whole of the proceedings of this Constitutional Petition be publicly broadcasted in a live-streaming mode using various available technological media.

Essentially, the above-named issue is premised, not on a new but on an old principle which has always been, and, remains to be, at the core of delivery of judicial services: i.e., the **"principle of open justice"**. This principle was expressed by Lord Hewart CJ., (as he then was) in the case of **R vs. Sussex Justices; Ex parte McCarthy** [1924] KB 256, 259 in the often-quoted statement, that:

> 'Justice should not only be done, but should manifestly and undoubtedly be seen to be done'.

The above-named principle, is one of constituent elements of the rule of law. The epitome of it is a demand for publicity of legal proceedings, including the publication of judgments and, for that matter, it has long-established itself as a central feature in the administration of justice.

However, since that principle has been given such a primacy in the administration of justice, it is not left without operational guides or rules. Over a period of time, therefore, it has distilled from its creamery three specific rules of general application which vents freshness to its application. Such rules are as follows:

(1) That, Court proceedings must be conducted, and decisions pronounced, in an 'open court' to which members of the public have access; (See **Scott vs. Scott** [1913] AC 417, 434–5 (Viscount Haldane LC); **Dickason vs. Dickason** (1913) 17 CLR 50, 51 (Barton ACJ); **John Fairfax & Sons Ltd vs. Police Tribunal (NSW)** (1986) 5 NSWLR 465, 476–7 (McHugh JA);

(2) That, evidence must be communicated publicly to those present in the court; (see **A-G (UK) vs. Leveller Magazine Ltd** [1979] AC 440, 450 (Lord Diplock));

(3) That, nothing should be done to discourage the making of fair and accurate reports of judicial proceedings, including by the media. (**A-G (UK) vs. Leveller Magazine Ltd** (supra); **Hogan vs. Hinch (2011)** 243 CLR 506, 532.

It is worth noting, however, that, the above noted rules which support the open justice principle, are not absolute. That is a settled legal position persuasively reiterated by the Australian High Court, (French, CJ) in the case of **Hogan vs. Hinch** (2011) 243 CLR 506, 530, at para 20; 22. In that case, the Court stated as follows, that:

"It has long been accepted at common law that, the application

> of the open justice principle may be limited in the exercise of a superior court's inherent jurisdiction or an inferior court's implied powers....This may be done where it is necessary to secure the proper administration of justice...It is a common law corollary of the open-court principle that, absent any restriction ordered by the court, anybody may publish a fair and accurate report of the proceedings, including the names of the parties and witnesses, and the evidence, testimonial, documentary or physical, that has been given in the proceedings."

From the above excerpts, it is clear, therefore, that, circumstances of a given case, may invite an exceptional limited application of the open justice principle, say, for instance, in a situation where, as stated by Viscount Haldane LC in **Scott vs. Scott** [1913] AC, at pages 436–37, a need arises in particular

proceedings, to avoid prejudice to the administration of justice or to avoid undue distress or embarrassment to a victim of an injustice like rape of a minor, and/or avoiding threat to national security and other matters of the like nature as the Court deems necessary.

In such kind of situations, Courts will not hesitate to derogate from the open justice rules by ordering that, certain proceedings be heard **'in camera'** or that, certain evidence be concealed from the public (by issuing 'concealment' orders), or that, the publicity given to particular proceedings be restricted by way of issuing 'suppression' or 'non-publication' orders.

In this present Petition, however, the kind of scenarios elucidated herein above, are not exhibited. Even so, it worth noting that, the present Petition is, by all standards, still being pursued as a matter for an "open court", with no restricted access to the Court room or to its proceedings.

However, the only factor which seems to have given the prayer made by the Petitioner some peculiarity from the ordinary environment of "open court proceedings", is the added advantage brought about by the current technological advancements in the

form of Internet-Aided-Live-streaming of events, including events or activities such as recording of Court proceedings.

It is indeed common knowledge that, technology is evolving with an increasing swiftness that out paces the law and the Court's measured pace of reforms meant to catch up. That fact, notwithstanding, and, as this Court once demonstrated in the case of **Trust Bank Tanzania Ltd vs. Le-Marsh Enterprises Ltd** [2002] TLR 144, our jurisdiction is well aware of the role which technology can play in supports of the reinvention of the role of law itself and access to justice.

In the present day's changing technological landscape, the widespread use of social media platforms, such as *Facebook, Instagram, Tik-Tok, WhatsApp, You-Tube* and the like, together with the live-streaming of events on their real-time-basis have altogether been quite transformative.

By definition, live-streaming refers to a situation where the streaming media is recorded and broadcasted simultaneously in real-time. There is no delay or gap between the recording and broadcasting or relaying of the information to the audience. This

is currently the most easy and effective way to reach out to the public audience in real time.

Since technology continues to evolve for the benefit of mankind, this Court cannot, with all that in mind, be oblivious to such realities and the available potentials to perfect the objectives and wishes of the many stakeholders of justice, and litigants in particular, which potentials include the need to open the panorama of the Court rooms beyond their four walls so as to accommodate a large number of viewers who should witness live Court proceedings.

In our correct understanding, that was, indeed, the context under which the Petitioner's prayer for live-streaming and recording of the proceedings was given. In real sense, however, the Petitioner's prayer is not inimitable. The fact is that, due to increased reliance on information and communication technologies to facilitate electronic modes of delivery of Court's services, on-line access to live court proceedings is, therefore, presently considered as part of the right to access to justice.

With that in mind, the art of live-streaming and recording of Courts' proceedings in some jurisdictions, has been actualised into

a reality and is applied, mostly in respect of cases of wide public significance, such as constitutional cases of a landmark nature.

In India, for instance, following the decision of the Indian Supreme Court in the case of **Swapnil Tripathi vs. Supreme Court of India** (2018) 10 SCC 639, the Petitioners and interventionists who were interested in the case, sought a declaration from the Court that, the Supreme Court case proceedings of constitutional importance and having an impact on a wider section of the public or a large number of people, should be live-streamed in a manner that is easily accessible for public viewing.

Since there were no guidelines to follow, and a prayer was also made before the full Court, the Court, citing the case of **Naresh Shridhar Mirajkar and Ors. vs. State of Maharashtra and Ors** (1966) 3 SCR 744, had the following to say:

> "It is well-settled that in general, all cases brought before the Courts, whether civil, criminal, or others, must be heard in open Court. Public trial in open court is

undoubtedly essential for the healthy, objective and fair administration of justice. Trial held subject to the public scrutiny and gaze naturally acts as a check against judicial caprice or vagaries, and serves as a powerful instrument for creating confidence of the public in the fairness, objectivity, and impartiality of the administration of justice. Public confidence in the administration of justice is of such great significance that there can be no two opinions on the broad proposition that in discharging their functions as judicial Tribunals, courts must generally hear causes in open and must permit the public admission to the court room. As Bentham has observed: In the darkness of secrecy sinister interest, and evil in every shape, have full swing.

> Only in proportion as publicity has place can any of the checks applicable to judicial injustice operate. Where there is no publicity there is no justice. Publicity is the very soul of justice. It is the keenest spur to exertion, and surest of all guards against improbity. It keeps the Judge himself while trying under trial (in the sense that) the security of securities is publicity. (Scott v. Scott [(1911) All. E.R. 1, 30]."

Having observed as herein above, the Court went ahead stating that:

> "Indeed, the right of access to justice flowing from ... the Constitution or be it the concept of justice at the doorstep, would be meaningful only if the public gets access to the proceedings as it would unfold before the Courts and in particular, opportunity to

witness live proceedings in respect of matters having an impact on the public at large or on section of people. This would educate them about the issues which come up for consideration before the Court on real time basis.... Indubitably, live-streaming of Court proceedings has the potential of throwing up an option to the public to witness live court proceedings which they otherwise could not have due to logistical issues and infrastructural restrictions of Courts; and would also provide them with a more direct sense of what has transpired. Thus, technological solutions can be a tool to facilitate actualization of the right of access to justice bestowed on all and the litigants in particular, to provide them virtual entry in the Court

> precincts and more particularly in Court rooms. In the process, a large segment of persons, be it entrants in the legal profession, journalists, civil society activists, academicians or students of law will be able to view live proceedings in propria persona on real time basis."

However, much as these current technological developments are meant to imbue greater transparency, inclusivity and foster access to justice, they have, even so, not been left unregulated. In a situation where no guidelines exist to provide safety valves meant to assist in eliminating the risks of abuse, observations were made, in **Swapnil Tripathi vs. Supreme Court of India** (supra) that:

> "consultation ... may become essential for framing of rules for live-streaming of Court proceedings so as to ensure that the dignity and majesty of the Court is preserved, and, at the

same time, address the concerns of privacy and confidentiality of the litigants or witnesses, matters relating to business confidentiality in commercial disputes including prohibition or restriction of access of proceedings or trials stipulated by the Central or State legislations, and, in some cases to preserve the larger public interest owing to the sensitivity of the case having potential to spring law and order situation or social unrest. These are matters which may require closer scrutiny."

The Indian Supreme Court did traverse through developments in a number of other jurisdictions outside India such as Australia, Brazil, England, China, Canada, Germany, The ICC & ICTY, Northern Ireland, Ireland Republic, New Zealand and South Africa, noting that all these jurisdictions have in one way or the other permitted broadcasting of court proceedings but they have in place rules to provide guidelines or guiding principles.

The Indian Court surmised its deliberations by stating that:

> "For lawyers and judges familiar with the cocoon of a physical court room, live-streaming would require attitudinal changes. They include the maintenance of order and sequencing of oral arguments. Judges in charge of their courts would have to devote attention to case management. But these demands are necessary incidents of the challenges of our time. Slow as we have been to adapt to the complexities of our age, it is nonetheless necessary for the judiciary to move apace with technology. By embracing technology, we would only promote a greater degree of confidence in the judicial process. Hence, the Chief Justices of the High Courts should be commended to consider the

adoption of live-streaming both in the High Courts and in the district judiciaries in phases, commensurate with available resources and technical support. **The High Courts ... would have to determine the modalities for doing so by framing appropriate rules.**" (Emphasis added).

Bringing that discussion into the context of our case at hand, it is our findings that, without there being appropriate rules to govern the entire aspects of live-streaming and recording of Court proceedings in the manner the Petitioner herein would prefer, the whole thing cannot be undertaken at the moment, even if he is ready to make it possible at his own initiatives.

However, taking into the account the current on-going judiciary reforms which are meant to deploy modern Information and Communication Technology (ICT) infrastructures to enhance access to justice and expeditiousness, as envisaged in the Judiciary Strategic Plan 2020/21 to 2024/25, it is our strong and

resolute conviction that, live-streaming of Court's proceedings is not a far-fetched but a soon-to-happen event and the appropriate Rules Committee of the Judiciary in our jurisdiction must be and we trust that they are, putting in place appropriate rules to guide its roll-out.

It is until when such rules are put in place and promulgated, for use, therefore, that, live-streaming and recording of Court proceedings will be made possible. As for now, the Petitioner or any other interested party, is not restricted or prohibited from proceedings with the conventional means of recording and reporting Court proceedings provided that, such recording and reporting provides the accurate of the events that took place in the course of the hearing, these proceedings being the kind of proceedings governed by the ordinary open justice principles stated or referred to earlier herein above.

Having stated as here above, it follows that, the first issue cannot be granted in the manner and form the Petitioner prayed that it be granted, owing to the reasons which we have laboured to explain herein above.

Having so stated, we now turn to the second issue which was:

> 'Whether this Court should issue a temporary injunction to stop /suspend all on-going training sessions which are being conducted by the 1st Respondent, until this matter is heard and determined by this Court.'

Ordinarily, a prayer for temporary injunctive orders of the Court is made in a formal application supported by an affidavit loaded with facts demonstrating how the Applicant is likely to suffer and why the Court should not withhold the granting of his prayer. Nonetheless, when the Petitioner herein floated his request orally and at the very preliminary state of the hearing of this Petition, this Court gave him audience ignoring the need for him to pursue that long, though a necessary process.

Now, to respond to the above issue derived from his plea, we find it apposite to reiterate the guiding premise upon which a temporary injunctive relief, as the one sought by the Petitioner herein, should rest. In the first place, it is worth noting that, an

injunction is an equitable relief. Being an equitable relief, it means, therefore, that, equitable principles are of very much relevance when seeking to grant or reject injunction. The principle in equity is that, he who seeks equity must come with clean hands.

Secondly, a temporary injunction is granted at the discretion of the Court. See the case of **Philemon Joseph Chacha and Three Others vs. South African Airways and Three Others (Number 2)** [2002] TLR 362. And, the Court will grant it upon being satisfied that the requisite conditions for its grant do exist and, thus, compel that the Court should grant the relief sought.

Essentially, for such a relief to be granted, three factors have to be satisfied, which are: existence of a **prima facie case**, **balance of convenience** and **irreparable loss**. By prima facie case, we mean that, the contention raised, requires consideration in merit and are not liable to be rejected summarily. This means, therefore, that, the issue to be considered must be a serious question to be tried on the facts alleged, and a likelihood that the plaintiff will be given the relief prayed.

See the cases of **Atilio vs. Mbowe** [1969] HCD no. 284, **Abdi Ally Salehe vs. Asac Care Unit Limited,** Civil Revision No. 3 of 2012 and **Asteria Augustine Mokwe vs. NMB & 3 others**, Misc. Civil Application No. 148 of 2020.

As regards irreparable loss, sometime the term refers to the difficulty of measuring the extent of damages inflicted. As such, the party who seeks for the injunctive relief must show that the court's intervention is necessary to protect him/her from the kind of injury which may be irreparable before his legal right is established. See: **Atilio vs. Mbowe** (supra), **Abdi Ally Salehe** (supra) and **Asteria Augustine** (supra).

Finally, as regards balance of convenience, it is necessary to weigh out the comparative mischief or inconvenience which is likely to ensue from withholding the injunction, and which will be greater than that which is likely to happen from granting it. Put differently, there must be shown, on the balance, that a greater hardship and mischief will be suffered by the party seeking the relief if such relief is withheld compared to the other party against whom it is sought.

Taking the cue from above considerations and looking at the Petitioner's prayer for an injunctive order of this Court against the 1st Respondent, we do not think that, the Petitioner has been able to sufficiently demonstrate all the requisite factors which would have convinced us to grant his prayer. In our view, while the first factor is always easy to demonstrate, the two other factors are not as easy as the first one.

In his submission, for instance, the Petitioner told this Court that his prayer was based on Rule 2 (3) of the **Basic Rights and Duties Enforcement (Practice and Procedure) Rules**, 2014, GN. No. 304 of 2014. That provision states as hereunder:

> "The provisions of these Rules shall not limit or affect the inherent powers of the Court to make necessary orders for the ends of justice or to prevent abuse of the process of the Court."

He contended that, the kind of justice he is striving for is justice of all Tanzanians including himself and that his prayer is premised on Article 27 of the Constitution, on the ground that, the 1st Respondent is in total misuse of public funds amounting to

three billion Tanzania shillings annually in its budget. As regards the abuse, he argued that, his prayer is meant to avoid filing of yet another petition under Article 27.

In our view, however, even on the basis of the above cited rule 2 (3) of the GN. No. 304 of 2014, we do not think that the granting a temporary injunctive relief as prayed by the Petitioner would be warranted. We hold it to be so because, evidentiary proof of the kind of wastefulness of public resources alleged and how such is hindering or interfering with the Petitioner's realization of his rights, should have been established. That has not been established.

Essentially, ensuring that ends of justice are properly meted out is the noble duty of the Court. The provision relied upon by the Petitioner allows the Court to invoke its inherent powers for the sake of ensuring ends of justice and prevent abuse of its process. However, the inherent powers of the Court cannot be lightly invoked to discharge such a noble duty based on bare words or be exercised on a vacuum but rather upon solid considerations of evidentiary materials laid before the Court.

By the way, what does ends of justice means? To elaborate on that concept, we find that, the words of Mukharji, J., in the Indian case of **Debendra Nath Dutt v. Satyabala Dasi and Ors**. AIR 1950 cal. 217 has aptly given it an elaborate meaning by stating as hereunder:

> ""Ends of justice" are solemn words and no mere polite expression in juristic methodology and here secreted in the solemn words is the aspiration that justice is the pursuit and end of all law. But the words "ends of justice" wide as they are do not, however, mean vague and indeterminate notions of justice, but justice according to the statutes and laws of the land. They cannot mean that express provisions of the statute can be overridden at the dictates of what one might by private emotion or arbitrary

preference call or conceive to be

justice between the parties...."

Meeting the ends of justice, as envisaged in Rule 2(3) of the GN.304 of 2014, therefore, do not mean application of vague and indiscriminate notions of justice but rather justice meted out in accordance with the law of the land. The words 'ends of justice' do not, therefore, permit this Court to take a step or procedure which defeats the established legal requirements for the grant of an injunctive relief as the one sought by the Petitioner herein.

Likewise, determining whether the process of the Court is likely to be abused in the course of hearing and determination of a matter like the one present before us, depends on what is laid before the Court in proof of the allegation. Essentially, an abuse of the process of the Court may refer to improper use of the judicial process in litigation to the irritation and annoyance of the his/her opponent, and/or with a view to hinder the Court from embarking on an efficient and effective administration of justice.

For instance, instituting a multiplicity of actions on the same subject matter against the same opponent on the same issues, or embarking on acts meant to pre-empty what is already laid before

the Court for its determination would amount to an abuse. However, all such will be established upon laying before the Court evidentiary materials upon which it will be enticed to act.

That is why at the beginning of our deliberation of this prayer we intimated that, if all such were to be aptly demonstrated to the Court, there ought to have been an application properly filed and supported with evidentiary materials upon which the Court would, taking into account the rest of the principles discussed hereabove, peg its decision. Currently, there is nothing except the bare words from the Petitioner. Unfortunately, this Court cannot just be moved to act on them.

But, even if the Court was to act on them, the balance of convenience would not have tilted in favour of the Petitioner. The granting of the prayer for temporary closure of all the programmes run or administered by the 1st Respondent means paralysing its statutory operations at the expense of the rights of other students as well. As such, it is the 1st Respondent who will stand out to be greatly inconvenienced if this Court was to grant the prayer.

For the reasons stated herein above, the second issue is responded to in the negative and we decline the preliminary prayer for the issuance of a temporary injunctive orders as well.

The last issue is even more pertinent as it has a more overriding effect to the entire Petition before us. As we indicated earlier, this Court raised, in the course of preliminary assessment of this matter, an issue regarding:

> "Whether, in light of what section 8 (2) of the Basic Rights and Duties Enforcement Act provides, it is apposite to hear and determine the merits of this Petition while the Petitioner herein is also pursuing an appeal against the ruling of this Court arising from Misc. Civil Cause No.12 of 2022."

The parties were invited to submit on that issue as well since we thought it stands out as a paramount issue able to determine the fate of this Petition even before we go to its merits. In the course of the day, we asked the Petitioner whether there is any

pending matter in this Court or any other Court which relates in some way to the remedies he is seeking and if so, whether, taking into account such a fact, the provisions of Section 8 (2) of the Basic Rights and Duties Enforcement Act has any effect to the Petition at hand.

In his submission, the Petition conceded that, there is currently pending before this Court and before the Court of Appeal, a leave to appeal against the decision of this Court, (Moshi, J) in **Misc. Cause No.12 of 2022**, which denied him leave to apply for judicial review of the decisions of the 1st Respondent. He also conceded that, a Notice of Appeal was filed in the Court of Appeal. He urged this Court to still proceed with this matter.

In our view, section 8 (2) of the Basic Rights and Duties Enforcement Act, Cap.3 R.E 2019 is very categorical. It provides as follows:

> "The High Court shall not exercise its powers under this section **if it is satisfied that adequate means of redress for the contravention alleged are** or

> have been **available to the person concerned under any other law,** or that the application is merely frivolous or vexatious."
> (Emphasis added).

We subscribe to a view, aptly stated by this Court in the case of **Tanzania Cigarette Company Ltd vs. The Fair Competition Commission & Another** (Misc. Civil Cause 31 of 2010) [2012] TZHC 31, that, remedies under the Basic Rights and Duties Enforcement Act, Cap.3 R.E 2019, cannot be granted if the Petitioner has not exhausted the available remedies before him or her.

To be precise, in the above cited case of **Tanzania Cigarette Company Ltd vs. The Fair Competition Commission** (supra) this Court stated as follows:

> "Apart from the principle of constitutionality of Acts of Parliament, we think, law in Tanzania is also settled on the principle that litigants should first exhaust other lawfully available remedies under statutory or case

law, before they can seek remedies under the Basic Rights and Duties Enforcement Act. This principle of resorting to lawfully available remedies before seeking basic rights remedies complements the principle of constitutionality of Acts of Parliament. The duty to exhaust other lawfully available remedies before resorting to basic rights and duties remedies is borne out from our reading of sections 4 and 8 (2) of Basic Rights and Duties Enforcement Act. Section 4 of the Basic Rights and Duties Enforcement Act in essence restates the position of law that is also articulated under subsection (2) of section 8. We think that these provisions exhort litigants to first exhaust other lawfully available remedies before seeking

remedies under the Basic Rights

and Duties Enforcement Act."

In our considered view, an opportunity to appeal against a decision of this Court is a remedy provided for to a litigant who is dissatisfied by such a decision. Since the decision of this Court in **Misc. Cause No.12 of 2022** is amenable to appeal to the Court of Appeal, and since the Petitioner has rightly taken the liberty of exercising his lawful and constitutional right to appeal, that being a remedy provided for under the law, that process must have been fully exhausted before he resorts to the remedies provided for under the Basic Rights and Duties Enforcement Act, Cap.3 R.E 2019.

In view of the above, and as this Court held in the case of **Tanzania Cigarette Company Ltd vs. The Fair Competition Commission** (supra), subsection (2) of section 8 of the Basic Rights and Duties Enforcement Act bars this Court from exercising its jurisdiction if it is satisfied that adequate means of redress are available to the person concerned under any other law.

Further, it was also noted in that case, that, the existence of the **Basic Rights and Duties Enforcement Act** does not

remedies under the Basic Rights

and Duties Enforcement Act."

In our considered view, an opportunity to appeal against a decision of this Court is a remedy provided for to a litigant who is dissatisfied by such a decision. Since the decision of this Court in **Misc. Civil Cause No.12 of 2022** is amenable to appeal to the Court of Appeal, and since the Petitioner has rightly taken the liberty of exercising his lawful and constitutional right to appeal, that being a remedy provided for under the law, that process must have been fully exhausted before he resorts to the remedies provided for under the Basic Rights and Duties Enforcement Act, Cap.3 R.E 2019.

In view of the above, and as this Court held in the case of **Tanzania Cigarette Company Ltd vs. The Fair Competition Commission** (supra), subsection (2) of section 8 of the Basic Rights and Duties Enforcement Act bars this Court from exercising its jurisdiction if it is satisfied that adequate means of redress are available to the person concerned under any other law.

Further, it was also noted in that case, that, the existence of the **Basic Rights and Duties Enforcement Act** does not

make other statutory remedies nugatory. The **Tanzania Cigarette Company Ltd vs. The Fair Competition Commission's** Petition was found incompetent and, was thereby struck out with costs.

In our view, the similar approach ought to be followed here as the same findings apply to this Petition, though we do not find it appropriate in the circumstance of this case to make orders as to costs. In the upshot of all that, this Petition is found to be incompetent and we hereby struck it out without costs.

It is so ordered.

DATED at DAR-ES-SALAAM, THIS 24TH DAY OF OCTOBER 2022

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D.J. NANGELA
JUDGE
24/10/2022

.....

E S. KISANYA
JUDGE
24/10/2022

.....

I N. MWENEGOHA
JUDGE
24/10/2022