

**IN THE HIGH COURT OF TANZANIA**

**DAR ES SALAAM MAIN REGISTRY**

**AT DAR ES SALAAM**

**MISCELLANEOUS CIVIL CAUSE NO. 26 OF 2021**

**IN THE MATTER OF THE**

**CONSTITUTION OF THE UNITED REPUBLIC OF TANZANIA 1977**

**AS AMENDED FROM TIME TO TIME [CAP. 2 R.E. 2002]**

**AND**

**IN THE MATTER OF BASIC RIGHTS AND DUTIES ENFORCEMENT**

**ACT [CAP. 3 R.E. 2019]**

**AND**

**IN THE MATTER OF A CONSTITUTION PETITION TO CHALLENGE**

**THE CONSTITUTIONALITY OF SECTIONS 9 (b) OF THE MEDIA**

**SERVICES ACT NO. 12 OF 2016**

**BETWEEN**

**PRISCA NYANG'UBA CHOGERO.....APPLICANT**

**VERSUS**

**THE ATTORNEY GENERAL OF THE UNITED**

**REPUBLIC OF TANZANIA.....RESPONDENT**

## **JUDGMENT**

***Date of Last Oder: 10/03/2022***

***Date of Ruling: 26/04/2022***

**MARUMA, J.**

The petitioner, Prisca Nyang'uba Chongera by way of chamber summons instituted the application under the provisions of Articles 26 (2) and 30 (3) of the Constitution of the United Republic of Tanzania, Sections 4 and 5 of the Basic Rights and Duties Enforcement Act, [Cap 3 R.E 2019] and Rule 4 of the Basic Rights and Duties Enforcement (Practice and Procedure) Rules, 2014 and prayed for the following orders:

- (a) The provisions of sections 9 (b) of the Media Services Act No. 12 of 2016 are unconstitutional for offending the provisions of Article 18 of the Constitution of the United Republic of Tanzania of 1977 as amended.
- (b) The provisions of sections 9 (b) of the Media Services Act No 12 of 2016 are unconstitutional for offending the

provisions of Article 13 (6)(a) of the Constitution of the United Republic of Tanzania of 1977 as amended.

- (c) That the provisions of sections 9 (b) of the Media Services Act No. 12 of 2016 be declared null and void, and expunged from the statute.
- (d) Each party bear its own costs.

The originating summons was accompanied by the affidavits of the petitioner herein stating the reasons why the intended prayers should be granted. While on the other side the respondent filed the respective counter affidavit stating the reasons why the prayers contained in the chamber summons should not be granted.

This petition was heard by way of written submissions whereby Mr. Mpale Kaba Mpoki, Advocate represented the petitioner and the respondent was represented by Ms. Lucy L. Kimaryo, State Attorney.

The brief genesis of this petition is from the facts that the Petitioner herein who is a Lawyer by profession is a regular reader of a newspaper in the name and style of Uhuru Newspaper. It is alleged that on the 11<sup>th</sup> day of August 2021 the Director of Information Services suspended the license for printing, publishing and circulating the said

Uhuru newspaper for 14 days, for publishing an article titled "**Sina wazo kuwania Urais 2025- Samia**". The public was informed that, the Article was reckless and falsified, with information which was maliciously or fraudulently fabricated and that the news was knowingly false or without reasonable ground believing it to be true. Further, the said piece of news was seditious in that, it rose discontent or disaffection amongst the people. And lastly, that the news article promoted feelings of ill-will and hostility between different categories of people in the United Republic. Based on that order the petitioner alleged that, the suspension of publication, printing and circulation of the newspaper violated her right guaranteed under Article 18 of the Constitution of the URT. Hence this petition.

Submitting in support of the petition Mr. Mpoki, the learned advocate established that, the Petitioner has brought this petition before of suspending the publication and distribution of Uhuru Newspaper for 14 days. He stated that, the Director did so by virtue of power conferred upon him under section 9 (b) of the Media Services Act (henceforth the Act) without due process of law as a result the fundamental rights guaranteed under Articles 18, 13 (6) (a) and 15 of the Constitution were violated.



Submitting on the unjust violation Mr. Mpoki argued that, the petitioner's right to receive information was curtailed and further to that her right to seek, receive and disseminate information as provided in the Constitution was violated. He also stated that the act of not calling the owners to defend themselves was a violation of the principle of natural justice and that, the said act of cancellation of license to print newspapers has a chilling effect on the exercise of the Constitutional right to seek, receive and impart information which is contrary to the principle of natural justice.

He further alleged that, there is a right for a person aggrieved to appeal to against the Order, but in the section which provides for the right to appeal, provide only three grounds of appeal which is a curtailment and violation of fair hearing and the right to be heard, as provided for in the constitution. He added further that, there is a room for a person aggrieved to seek redress to the Minister, whatever the term means, which is another violation as the Constitution allows a person aggrieved to appeal and not to seek redress as indicated under section 10(1) and (3) of the Media.

Clarifying the petitioner's claims, he suggested four issues to assist the Court in determination of the petition. One whether the

provisions of section 9 (b) of the Media Services Act is violates Article 18 of the Constitution of URT. Secondly, whether section 10 (1) and (3) of the Media Services Act violate Article 13 (6) (c) of the Constitution of the United Republic of Tanzania. Thirdly, if the answers to issues 1 and 2 are in the affirmative, what remedies are available to the parties and fourthly to what reliefs are the parties entitled.

To support his arguments, he referred this Court to international instruments including the Universal Declaration of Human Rights' UDHR reference to Article 19, the International Covenant on Civil and Political Rights (ICCPR) reference to Article 19. Also, Article 9 of the African Charter of Human and Peoples Right and the United Nations Committee of Human Rights vide General Comment No 34 (CCPR/C/GC/34) and Article 19 of International Covenant on Civil and Political Rights. He also made reference to judicial authorities in several jurisdictions such as the Kenyan case of **Cord vs. The Republic of Kenya & Others H.C Petition No. 628 of 2014**, The Ugandan case of **Charles Onyango Obbo & Another vs Attorney General (Constitutional Appeal No. 2 of 2002)** and the case of **Indian Express Newspaper Vs Union of India & Another 1986 AIR.515**. Also, the cases of the East Africa Court of Justice in the case of **Burundi Journalist Union**

**vs Attorney General of Burundi Reference No. 7 of 2013** and the South African case of **Print Media South African and Another vs. Minister of Home Affairs & Another 2012 ZACC 22** were referred, all of these emphasizing on the importance of freedom of expression as the lifeblood of an open and democratic society.

Clarifying further, he submitted that section 9 (b) of the Media Services Act, limits the enjoyment of the applicant's freedom of expression contrary to the principle of proportionality tests and referred this Court to the cases of **Kukutia Ole Pumbuni & Another vs. AG & Another (1993) TLR 159 of page 161, DPP vs Daudi Pete (1993,) TLR 22** at page 35 and **Maneka Gandhi vs. Union of India of India (1978) 2 SCR 621.**

In reply to the petition, Ms. Lucy Kimaryo, the learned State Attorney adopting the Respondent's reply to the petition and counter affidavit to the petition. She started by pointing out that, the Petition seeks to challenge the provision of section 9(b) of the Media Services Act and not section 10(1) and (3) of the Act, making reference to the cause of action for this petition from paragraph (e), (f), (g) and facts relied upon and paragraph 6, 7 and 8 of the Petitioner's Affidavit in support of the Originating Summon. She also drew attention of this

court on the proposed issues by the petitioner and made reference to the case of **Juma Issa Ramadhan vs Mkurugenzi Mkuu Shirika la Bandari Zanzibar, Civil Appeal No. 47 of 2018 (TZCA Unreported)** at page 12 and the case of **Ex- B.S356 S/Sgt Sylvester S. Nyanda vs. The Inspector General of Police & Another** at page 11. Also, the case of **James Burchard Rugemalira vs the Republic**, Criminal Appeal No. 391 Of 2017 CAT Dar es Salaam (unreported) page 16 and that of **Tina & Co Limited & 2 Others vs Eurafrican Bank (T) Ltd, Civil Application No.86 of 2015 (CAT Unreported)** at page 5 and 6 were referred to the Court.

Addressing the issue on whether Section 9(b) of the Media Service Act violates the provisions of Article 13 (6) (a) of the Constitution. Her stance was that, the Applicant's allegation is without merit. She based on the principle that, there is presumption of constitutionality of statute until that presumption is rebutted by the Petitioner. She said this can be done by adducing to the Court evidence to the standard required under the constitutional petition. Supporting her stand with the settled position of the law she echoed that, a mere possibility that the law will be abused in its operation will not render the provision of the law unconstitutional as held in the case of **Attorney**

**General & 2 Others Vs. Bob Chacha Wangwe, Civil Appeal No. 138 of 2019 [2019] TZCA 346** (16 October 2019) citing with approval the case of **Rev. Christopher Mtikila vs Attorney General [1995] TLR 31** at page 55.

She argued therefore, that under the instant case, the media houses have rights and obligations under the Constitution and other laws of the land including the Media Services Act as reflected under Section 7 of the Act to observe the terms and condition for which the licence to operate was granted. That is why, the Director under the Media Services Act has been given power to reject applications of licences which do not comply with the requirements as stated under Section 9(a) of the Media Act and to suspend or cancel licence for those who breach the terms and conditions under the licence. She further pointed out that like any other fundamental rights, the right to information is not absolute. She argued that, that right is subjected to limitations enshrined under Article 29, 30(2) of the Constitution and Section 7(3) of the Media Services Act, to ensure that the right is experienced with due regard to the rights and freedoms of others, collective security, morality, public interests, and common interest of the concerned society. In support of her argument she referred the



Court to the case of **Julius Ishengoma Francis Ndyanabo vs. Attorney General 12004] TLR 16**. Finally, she convinced this Court that, this is not a moment to invoke its power to declare the impugned provision as unconstitutional guided by the warning of the Court of Appeal in **Attorney General vs W. K. Butambala [1993] TLR 46**.

She also invited this Court to seek inspiration of the Court of Appeal of Tanzania when addressing the remedy on the abuse of power by the Director of Public Prosecutions, as settled in the case of **Attorney General Vs. Dickson Paul Sanga, (Civil Appeal 175 of 2020) [2020] TZCA 371** (05 August 2020) at page 68-69 where it was held;

*"Apart from agreeing with the Solicitor General, it is our firm view that the Constitution which is the supreme law of the land frowns on the abuse or misuse of procedures in dispensing criminal justice. Thus, in case of any abuse by the DPP the safeguard and remedy is to seek judicial review before the High Court by invoking the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, [CAP 310 R.E.2002] as correctly asserted by the Solicitor General"*

In determination of this petition, it is better for us to be very clear from the beginning that, the genesis of this application is the breach of constitutional right guaranteed under the Article 18 of the Constitutional of the United Republic of Tanzania of 1977 (**referred herein URT**) as amended. It is the petitioner's claim that her constitutional right has been violated by the act of suspension of Uhuru newspaper for 14 days, the order given by the director of information on 11<sup>th</sup> August 2021 while exercising powers conferred to him under section 9 (b) of the Media Service Act No. 12 of 2016.

The petitioner's claim is that being a reader of Uhuru News Paper, its suspension has violated her rights of receiving and seeking information which she used to enjoy from the said newspaper. As a result, the alleged act of suspension violated her rights under Article 18 of the Constitution.

Looking at the petition itself, it has been brought under the originating summons through the provisions of Articles of Article 26 (2) and 30 (3) of the URT, section 4 and 5 of the Basic Rights and Duties Enforcement Act, Cap 3 RE 2019 (referred herein as BRADEA) and Rule 4 of the Basic Rights and Duties Enforcement ( Practice and Procedures) Rules of 2014.

Why this petition was brought under the above cited provisions? The answer is at the preamble of the BRADEA which states the purpose of the Act that, it is

*“an act to provide for the procedures for enforcement of constitutional basic rights and duties and related matters”.*

Therefore, as the petitioner’s claim is based on the violation or infringement of Article 18 of the Constitution (URT) this is the right forum for her to have an effective remedy she sought for. This is provided under article 30 (3) of the Constitution (URT) that,

*“ Any person alleging that any provision of this part of this chapter or in any law concerning his rights or duty owed to him has been, is being or is likely to be violated by any person within the URT may bring a proceeding for redress in the High Court.”*

As alluded to above this petition has been preferred by originating summons as per the requirement of section 4 of BRADEA, reads that,

*“Where any person alleged that any provision of article 12-29 has been, is being or is likely to be contravened with him, he may, **“without prejudice”** to any other action to the same matter that is lawful available apply to the High Court for redress”.*

Basing on the above position, the petitioner **“without being prejudice”** with any other action is rightly before this Constitutional



Court to challenge the provision of section 9 of the Media Service Act to be unconstitutional, so that the act under section 9 (b) of the Media Service Act be declared by this Court to be null and void.

Coming to the contents and reliefs in the originating summons which was filed 1<sup>st</sup> October, 2021. Starting with the reliefs sought therein as produce hereunder include:

- a) The provision of section 9 (b) of the Media Services Act No.12 of 2016 are unconstitutional for offending the provisions of Article 18 of the Constitution of the United Republic of Tanzania of 1977 as amended.*
- b) The provision of section 9(b) of the Media Services Act No. 12 of 2016 are unconstitutional for offending the provision of Article 13(6) (a) of the Constitution of the United Republic of Tanzania of 1977 as amended.*
- c) That the provisions of section 9 (b) of the Media Act No. 12 of 2016 be declared null and void, and expunged from the Statute.*

Moreover, these reliefs sought were supported by the facts in the affidavit of the petitioner, Prisca Nyang'uba Chogero. Among them establishing the violation of the claimed right under Article 18 of the Constitution are in paragraphs 6, 7, and 8, as reproduced hereunder:

*6) That, on 11<sup>th</sup> August 2021, the Director of Information Services Department acting on the power conferred upon him under the Act suspended a daily newspaper operating under the name and style of Uhuru Newspaper for 14 days.*

*7) That, the order dated 11<sup>th</sup> August 2021 which subsequently led to the suspension of the newspaper, as I was not able to get the news from the said newspaper which is in violation of the Constitution of the United Republic of Tanzania.*

*8) That, the order dated 11<sup>th</sup> August 2021 and subsequent suspension violated the applicant's right to seek and receive information as stipulated in the constitution of the United Republic of Tanzania.*

Gathered from the pleadings in this petition, the gist and the center of the petitioner's claim in my opinion is based on the violation of Article 18 of the Constitution (URT) by the provision of section 9 of the Media Act No.12 of 2015 which deals with suspension or cancellation of the license of the media. Allegedly, the said provision gives powers to the Director of Information to suspend or cancel the license of Media. Now what are the issues to be determined in dissolving the petitioner's complaint. Mr. Mpoki seems to suggest four issues in determination by this Court.

It is a trite law that it is the duty of the Court to determine the real issue on the matter brought to Court as stated in the case of **Mwalimu Paul John Mhozya vs. Attorney General**, (1996) TLR.13 that,

*"It is the function of a court of justice to try to get the bottom of the real dispute and determine what are the real issues in the matter before it provided, of course, no party can be prejudiced."*

At this juncture also, I have to remind the counsel for the petitioner that the duty to frame issues to be determined the matter is dispute is within the Court's domain and not the counsel as pointed out by the State Attorney for the respondent when referring us to the case of **Juma Issa Ramadhan (Supra)**.

Considering the petition at hand, this Court will direct itself to determine the issues raised in the pleadings and not wishes of the parties to choose what to be determined by the Court. In that line the issue to be determined by this Court is whether the provision of section 9 of the Media Service Act, should be declared null and void for violating the petitioner's right guaranteed under article 18 of the constitution of URT, and therefore be expunged from the Act.



Taking into consideration the arguments raised by both counsels regarding to section 9(b) of Media Act. We start with the arguments by Mr. Mpoki, the counsel for the petitioner that, the act of the Director of Information and Culture (The Director) conferred upon him under section 9 (b) of the Media Services Act of suspending the publication and distribution of Uhuru Newspaper for 14 days is unjust violation of and curtails the petitioner's right under Article 18 to receive information and disseminate information as provided in the Constitution, section 9 (c) of the Media Service Act is couched in the following words;

*"Section 9, The Director of Information Services Department or such other person acting on his behalf shall have powers to;*

*(b) Suspend or cancel the License in the event of failure of license to comply with the person see conditions of a license"*

It is the principle of law that, there is presumption of constitutionality of statute until that presumption is rebutted by the Petitioner by adducing to the Court evidence to the standard required under the constitutional petition as also highlighted by Ms. Kimaryo, State Attorney. It is the duty of the petitioner to establish to the Court's satisfaction on how the act performed under section 9 of the Media Act becomes unconstitutional. The proof therefore is beyond reasonable

doubt as stated in the case of **Rev. Christopher Mtikila vs. Attorney General [1995] TLR 31** at page 34 where the Court held that;

*"A breach of the Constitution is such a grave and serious matter that cannot be established by mere inference but by proof beyond reasonable doubt"*

Going through the alleged breach of the right to receive information through suspension order given to Uhuru Newspaper on 11<sup>th</sup> August, 2021 by the Director when exercising his power under Section 9 (b) of the Media Services Act, it is our finding that its purpose was to ensure the media service providers are exercising their right of freedom of expression within the ambit of their duty and professionalism and not otherwise.

As argued by the learned State Attorney that the media houses have rights and obligation under the Constitution and other laws of the land including the Media Services Act as reflected under Section 7 of the Act. It is our consulted view that, like any other bodies which are regulated by the laws, the media industry is of no exception. It is regulated by the law, to ensure that every member is observing the terms and conditions for which the licence to operate was granted.

The act of the director under section 9(b) of the Act as to Uhuru Newspaper on 11<sup>th</sup> August 2021, is an outcome or reaction for noncompliance of the terms under the licence of the respective media service provider. As submitted by the counsel for the respondent that apart from the law, this is also a constitutional obligation enshrined under Article 26 (1) and (2) of the Constitution that;

*"26.- (1) Every person has the duty to observe and to abide by this*

*Constitution and the laws of the United Republic.*

*(2) Every person has the right, in accordance with the procedure provided by law, to take legal action to ensure the protection of this Constitution and the laws of the land."*

Therefore, based on Article 26 of the Constitution the act by the Director under section 9(b) of the Media Act was exercised to protect the right of the community including of the petitioner to ensure the entire public get the right information.

The argument that the said law is arbitrary as it failed to meet "*proportionality text*" set in the case of **Kukutia Ole Pumbuni (Supra)** that the law must not be arbitrary. Also, the argument that it

should provide adequate safeguards against arbitrary decisions and effective controls against abuse by those in authority when excising the law and, it must not be more than is reasonably necessary to achieve the legitimate object and added a test from the case of **Daudi Pete (supra)** that it should be a corollary of the reality of co-existence of rights and duties of the individual on the one hand and the collective or communitarian rights and duties of the society on the other as also stated again in **Kukutia's case** (Supra) at page 166. Also the case of India of **Maneka Gandhi (Supra)** and a test in the decision of Eastern African Court of Justice in Civil Reference No. 2 of 2017 between **Media Council of Tanzania & 2 others vs Attorney General of United Republic of Tanzania** at page 27.

In determining whether the argument raised above falls within the parameters set in the above authorities. We are in agreement with the position laid down in the above cases especially of **Kukutia Ole Pumbuni (Supra)** and it is our finding that the alleged law does meet the said criteria. First of all, the law giving power to the Director under section 9 (b) is one of the safeguards that when one individual enjoys his rights and freedoms. Such exercise should be with due regard to the rights and freedoms of others, collective security, morality, public



interests, and common interest of the concerned society as guaranteed under article 26 of the Constitution of URT. Moreover, to ensure that power is not arbitrary it provides for other safeguards under section 10 of the Act to ensure that the power given under section 9 (b) is not abused by the one who is authorised to exercise it.

To some extent, we agree with the State Attorney that like any other fundamental rights, the right to information is not absolute as it is subject to the limitations enshrined under Article 29, 30 (1) of the Constitution and Section 7(3) of the Media Services Act. However, we take note that, it is fundamental rights which are fundamental and not their restrictions. Thus, by virtue of Article 18 and 26 of the Constitution, we are of the settled mind that the Media Act is to safeguard the purpose to ensure a corollary of the reality of co-existence of rights and duties of the individual on the one hand and the collective or communitarian rights and duties of the society on the other as the principles established in the case of **Kukutia Ole Pumbuni** and **Daudi Pete** (supra).

On the basis of the above observation, the argument that this law has failed to meet test of "*proportionality text*" as argued by the counsel for the Petitioner is baseless.



Besides the argument that the banning a newspaper for a sole reason that it interfered with the right of another was harsh as there were some other measures that could have been resorted to which are not as harsh as banning a newspaper which at the end would affect the rights of thousand other readers in the country.

It is unfortunately that going through the pleadings and submissions made thereon, we have never found any alternative remedy provided by the petitioner which could be taken in lieu of the act provided under section 9 (b) of the Act.

As stipulated under Article 30 (2) of the Constitution, the power exercised under section 9(1) is one to safeguard the rights and freedoms of other people or of the interests of the public as in the case of **Julius Ishengoma (supra)**. Whereby the Court of Appeal of Tanzania held at page 38 that:

*"Fundamental rights are subject to limitation. To treat them as absolute is to invite anarchy in the society. Those rights can be limited but the limitation must not be arbitrary, unreasonable and disproportionate to any claim of state interest [...] under the constitution an individual's fundamental right may have to yield to the common weal of the society (Emphasis supplied).*

Therefore, powers under section 9(b) of the Act and the remedies provided thereafter are sufficient safeguards of the right guaranteed under Article 18 of the constitution of URT as well as Article 26 of the Constitution. Based on the findings above we find no basis for invoking this Court's to declare otherwise as to the warning of the Court of Appeal in **Attorney General vs W. K. Butambala [1993] TLR 46** in which the Court stated:

*"We need hardly say that our Constitution is a serious and solemn document. We think that invoking it and knocking down laws or portions of them should be reserved for appropriate and really momentous occasions. Things which can easily be taken up by administration initiative are best pursued in that manner."*

Also, the allegation that section 9 (b) of the Media Service Act, violates Article 13 (6) (a) of the Constitution is of unfounded until that presumption is rebutted by the petitioner by adducing evidence to the Court. A mere possibility that the law will be abused in its operation will not render the provision of law unconstitutional as held by the Court of Appeal of Tanzania in the case of **Christopher Mtikila Vs Attorney General [1995] TLR 31** at page 55 that;

*"The constitutionality of a statutory provision is not found in what could happen in its operation but in what it actually provides for; the mere possibility of a statutory provision being abused in actual operation will not make it invalid"*

This goes together with Mr. Mpoki's argument that the order of the director was done without due process of law as the UHURU newspaper was not given adequate time to defend itself before the Director suspends or cancels a newspaper so to limit enjoyment of individual's right violates 13 (6) (a) and Article 15 (1) of the Constitution such as:

- The right to be informed of the violations- the charge
- Right on the Newspaper to defend itself- express mention in the charge
- Reasonable time to defend itself- to be in the charge
- Right to Representation- to be provided in the charge
- Right to give reasons to the affected-after cancellation of license or suspension.
- First right to appeal to a Court of Law and not to an Administrator or Policy Maker.

We agree with Mr. Mpoki that the right enshrined under Article 13 (6) (a) of the Constitution is unchallenged as never disputed by the State Attorney. However, analysing his argument that this right was violated, we have directed ourselves to the facts given in the pleadings and failed to see any fact therein proving that the UHURU media was not accorded with the said right before the suspension of the Article so to violates Article 13(6)(a) of the Constitution. Besides, the learned State Attorney clarified that when Media service providers violate the terms of the licence, they are given the right to be heard and state their case before licence is cancelled by the Director.

Therefore, as the law requires that the one who alleges must prove as held in several authorities such as that of **Barelia Karangirangi vs Asteria Nyalwambwa**, Civil Appeal No. 237 of 2017. The Court of Appeal at page 7,8,9,10 and 11 it was held that;

*“The burden of proof in a suit lies on that person who would fail if no evidence at all were given on either side”.*

Also, the case of **Paulina Samson Ndawavya vs Theresia Thomas Madaha**, Civil Appeal No. 45 of 2017. Which one of its held was that,



*"... the burden of proving a fact rest on the party who substantially assert the affirmative of the issue and not upon the party who denies it: for the negative is usually incapable of proof."*

Hence, a mere possibility that the UHURU newspaper was not provided with the right to be heard as alleged by the petitioner will not render the provision of law unconstitutional as held by the Court of Appeal of Tanzania in the case of **Christopher Mtikila Vs Attorney General [1995] TLR 31** at page 55 that;

*"The constitutionality of a statutory provision is not found in what could happen but in what it actually provides for; the mere possibility of a statutory provision being abused in actual operation will not make it invalid".*

Therefore, in the absence of such fact we find no basis to claim the violation of Article 13 (a) of the Constitution. We also wish to remind the petitioner that she should be bound by her pleadings and thus she is here to challenge the provision of section 9 of the Media Act for being unconstitutional. Probably that might be different if the UHURU Newspaper was a party to this petition.

We also do agree with the argument by Mr. Mpoki that no democracy can be meaningful where the people cannot seek, receive

and impart information and this is the true spirit of article 18 of Constitution referring this Court to several international instruments which Tanzania is a party such as 'The Universal Declaration of Human Rights' UDHR (Article 19), Article 19 of the International Covenant on Civil and Political Rights (ICCPR) and African Charter of Human and Peoples Right Article 9.

These were also not disputed by the State Attorney save her argument that, that like any other fundamental rights, the right to information is not absolute as it is subject to the limitations enshrined under Article 29, 30(2) of the Constitution and Section 7(3) of the Media Services Act. As also such limitation is permissible even under International Human Rights Law contrary to what the petitioner has submitted on the practice under international law as if the international law guarantees absolute rights and freedoms.

On our side, we are also of the view that, the Constitution provides for permissible limitations of basic rights, freedoms and duties of the individuals guaranteed under Articles 12-29 of the Constitution as indicated in Article 30(2) ensuring that when one individual enjoys his rights and freedoms. However, such exercise is subject to the rights

and freedoms of others, collective security, morality, public interests, and common interest of the concerned society.

On the practice in media house in other jurisdictions as referred to this court by Mr. Mpoki and also on judicial authorities in several jurisdictions which recognized freedom of expression in regard to the right of free media as an integral part of the freedom of expression such as India in Section 5 of the Press and Registration of Books Act, 1867. Section 8 B (v) which gives power to the to authenticate the declaration under the Act, the power to cancel a declaration of a newspaper where the said newspaper contravenes the provisions of the Act or rules made thereunder. Also, Kenya's Media Council Act 2013 which establishes the Media Council of Kenya as the body that sets media standards and regulates and monitors compliance with the required standards. Further to that, the Kenyan Media law, requires Journalists and media enterprises to keep and maintain professional and ethical standards and shall, at all times, comply with the code of conduct set out in the Second Schedule.

Also, the legal authorities like such of the Kenyan case of **Cord vs. The Republic of Kenya & Others H.C Petition No. 628 of 2014**, the Ugandan case of **Charles. Onyango Obbo & Another vs**



**Attorney General (Constitutional Appeal No. 2 of 2002)**, The Supreme Court of India in the case of **Indian Express Newspaper vs Union of India & Another 1986 AIR.515**. The European Court of Human and Peoples Rights (ECHR) in the case of **Handyside vs. United Kingdom IEHRN 733**. The East Africa Court of Justice in the case of **Burundi Journalist Union vs Attorney General of Burundi Reference No. 7 of 2013**. Also, the South African case of **Print Media South African and Another Versus Minister of Home Affairs & Another 2012 ZACC 22**.

It is true that all legal principles established therein are basically to ensure protection of the right of freedom of expression which is also guaranteed in the constitution of the United Republic of Tanzania under Article 18.

However, we insisted that such right must be exercised or enjoyed within the parameters of the obligation to those who have been guaranteed with among them are the media service providers. At this juncture we agree with Ms. Kimaryo that the practice of regulating the media as we have seen the experiences from other jurisdictions which have enacted laws, rules and regulations that govern the media. It is an evident that media houses are expected to conduct in way that



enhance media professionalism and there are set of terms and conditions which media service providers are obliged to abide with. It is not a wonder in every jurisdiction to have an established body to oversee the functioning of the media industry with the law to safeguards against the abuse of power.

Having experiences of other jurisdictions in our mind. It is our view that all these shows that a media industry like other professional industries should be regulated to ensure adherence of journalism professionalism, ethics and code of conduct so to protect the public at large against false and misleading information from the media.

In line with the observations made, looking at the provisions of law and regulations from other jurisdictions in comparison with the alleged provisions subject to be expunged from the statute. We have seen no difference in terms of purpose so to warrant the prayers sought. Reading the said provisions of section 9 (b) we find the same is for the purpose to ensure compliance of the professional etiquettes of the media industry and to safeguard the rights of others in accessing information in case there is an abuse of power invested to the Director of Information as provided in the followed sections. All these show the existence of mechanism of check and balance to ensure enjoyment of

basic right guaranteed under article 18 of the Constitution and not to curtail or violate the such right by the exercise of power by those authorities when applying the law.

Moreover, looking on allegations made in respect section 10 (1) and (3) of the Act that are violative of article 18 of the Constitution in contravening the right and fair hearing enshrined under article 13 (6) (a) of the Constitution so to be declared null and void and be struck out from the law.

Our attention is on the petition and its supported pleadings with a view of the facts and prayers therein. We again have to remind the petitioner that, the claims before this Court is to challenge the provision of section 9(b) of the Media Act to be unconstitutional so to be expunged from the Act. Nothing has been pleaded in respect to the issues concerning with section 10 (1) and (3) of the Media Act.

This has also argued by Ms. Lucy Kimaryo, State Attorney for the respondent that this petition is to challenge the act of the Director of Suspending the Publication and Distribution of Uhuru Newspaper for 14 days, as indicated in paragraphs (e), (f) and (g) of the particular of facts in the Originating Summons and paragraph 6, 7 and 8 of the Applicant's Affidavit in support of the originating summons. Insisting

this she referred this court to the case of **James Funke Gwagilo vs. The Attorney General, [2004] TLR 161; Peter Karanti & 48 Others vs. Attorney General & 3 Other Civil Appeal No. 3 of 1994, (Unreported)**" and the case of **Tina & Co Limited & 2 Others vs Eurafrican Bank (T) Ltd, Civil Application No.86 of 2015 (CAT Unreported)**

Consequently, we are on the same angle that, this court to entertain issues which are not before it is to contravene the principle laid down in the case of **Melchiades John Mwenda vs Gizelle Mbagu (Administrix of the Estate of John Japhet Mbagu - deceased) and 2 Others**, Civil Appeal No. 57 of 2018 (unreported) stated as follows:

*"It is elementary law which is settled in our jurisdiction that the Court will grant only a relief which has been prayed for, several decisions that parties are bound by their own pleadings."*

Going by the above principles, it is our view that we must limit ourselves to the issues raised in the pleadings as it is an elementary and fundamental principle of determination of disputes between the parties that courts of law should observe so to guarantee parties' right

to fair hearing. Thus, anything falling outside of the pleadings cannot be entertained by this Court.

On the above basis and the findings made on the issue in regard to unconstitutionality of section 9 (b) of the Media Act. Taking into consideration of the standard of proof in Constitutional matter as stated in the cases of **Attorney General Vs Dickson Sanga**, Misc. Civil Cause 29 of 2019) [2020] TZHC 653 and the case of **Julius Ishengoma Ndyanabo Vs. AG** (2004) TLR 14. We are of the settled mind that the petitioner has failed to establish her case as per required standards in constitutional petition. In the event, we find the petition with no merits and it is accordingly dismissed with costs.

It so ordered.

Dated at Dar es Salaam this 24<sup>th</sup> day of June 2022.



A handwritten signature in blue ink, appearing to be "J. Mgetta".

**J. Mgetta**

**JUDGE**



A handwritten signature in blue ink, appearing to be "E. E. Kakolaki".

**E. E. KAKOLAKI**

**JUDGE**





A handwritten signature in black ink, consisting of several overlapping loops and lines.

**Z. MARUMA**

**JUDGE**