THE REPUBLIC OF UGANDA

THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

CORAM: KIRYABWIRE; MUSOKE; OBURA; MUGENYI, JJCC AND KASULE, AG. JCC

CONSTITUTIONAL PETITION NO. 9 OF 2014

1. **CENTRE FOR PUBLIC INTEREST LAW (CEPIL)**
2. **HUMAN RIGHTS NETWORK FOR JOURNALISTS (HRNJ)**
3. **EAST AFRICA MEDIA INSTITUTE (EAMI) ..... PETITIONERS**

VERSUS

ATTORNEY GENERAL ..... RESPONDENT

JUDGMENT OF MONICA K. MUGENYI, JCC

A. **Introduction**

1. Centre for Public Interest in Law Limited (CEPIL), Human Rights Network for Journalists (HRNJ) and the East Africa Media Institute (EAMI) ('the Petitioners'), all non-governmental organizations registered in Uganda, lodged a Constitutional Petition in this Court challenging sections of the Press and Journalist Act, Cap. 105 (as amended) for being inconsistent with Articles 29(1)(a), (b) and (e), 22, 26, 28, 40(2) and 42 of the Constitution. It was supported by the affidavit of Ms. Sheila Gloria Atim that was deposed on 14th March 2014.

2. An Amended Petition was subsequently filed on 26th February 2015, in which the Petitioners dropped their invocation of Article 42 of the Constitution, restricting their challenge of the Press and Journalists Act to its purported non-compliance with Articles 29(1)(a), (b) and (e), 22, 26, 28 and 40(2) of the Constitution. It is supported by the affidavit of Ms. Annet Namugosa deposed on 26th February 2015, as well as Ms. Atim's earlier affidavit as highlighted above. It is also supported by two supplementary affidavits of Messrs. Robert Ssempala.and Haruna Kanaabi, both of which were deposed on 15th May 2014.

3. The Petition is opposed by the office of the Attorney General ('the Respondent') which, in its Answer to the Petition filed on 27th March 2015, denies the inconsistency of any section of the Press and Journalists Act with the cited Constitutional provisions. The Answer to the Petition is supported by the affidavit of Mr. Dennis Bireije that was deposed on 27th March 2015.

4. At the hearing, Mr. Francis Gimara (SC) assisted by Mr. Lastone Gulume appeared for the Petitioners, while the Respondent was represented by Mr. Geoffrey Madete, Senior State Attorney. Learned Counsel for the Petitioners did further amend the Petition at the hearing by dropping the Petitioners' invocation of Articles 22, 26 and 29(1)(b) of the Constitution, as well as their challenge to section 9(1)(c) and 2 of the Act.

B. **Petitioners' Case**

5. The Petitioners contend that sections of the Press and Journalist Act are inconsistent with the right to a fair hearing; freedom of conscience, expression, assembly and association,

and right to practice one's profession or trade as enshrined in Articles 28, 29(1) and 40(2) of the Constitution. It is averred that the right to a fair hearing espoused in Article 28 is compromised in section 5(1)(d) by the ambiguity in terms of particulars that should be registered, the unfettered Council and ministerial discretion to set additional particulars, the section's failure to protect anonymous publications and the lack of clarity on the prohibited conduct that would give rise to criminal liability thereunder. The right to a fair hearing is also allegedly compromised by the unduly wide definition of the practice of journalism in section 27(5) of the Act that supposedly lacks any connection with the notion of mass media.

6. Meanwhile, sections 34(3), 40(3) and 42(2)(d) of the Act are challenged for, on the one hand, denying journalists the right to practice pending the determination of a disciplinary appeal and, on the other, providing a standard-less sweep of powers on the responsible Minister to make amendments to journalists' code of ethics under which journalists could be criminally culpable and lose their license to practice journalism. The same provisions are also alleged to be inconsistent with freedom of expression as espoused in Article 29(1)(a) of the Constitution.

7. In addition, the freedoms of expression enshrined in Article 29(1)(a) is alleged to be unduly restricted by section 6(a) in so far as it vaguely requires proprietors and editors of mass media organizations to ensure that what is published is not contrary to public morality. Sections 8 and 11 as read along with sections 9, 10(2) and 40(3) are also impugned for granting the Minister wide powers to intervene in the Media Council and Disciplinary Committee, bodies whose powers supposedly curtail freedom of the press that is inherent in Article 29(1)(a). In the same vein, sections 16, 26, 27(1) and (2), 28(b), 29(2) and 42, all of which pertain to the regulation of the journalism profession by qualification, licensing, accreditation or otherwise, are impugned for being inconsistent with the freedoms of expression, conscience and association outlined in Article 29(1)(a) and (e) of the Constitution. Clauses 1 and 2 of the Professional Code of Ethics in Fourth Schedule to the Act are similarly impugned for denying journalists their right to freedom of expression.

8. It is further averred that the mandatory enrolment and stringent licensing preconditions delineated in sections 16(2) and (3), and 26 of the Act curtail journalists' right to practice their trade as provided in Article 40(2) of the Constitution. Furthermore, the stringent

requirements in sections 16, 27, 28 and 42 are alleged to contravene Article 40(2) in so far as they deny other individuals without a qualification in journalism and who do not necessarily meet or subscribe to the prescribed criteria the right to gather, process, publish or disseminate information.

C. **Respondent's Case**

9. On its part, the Respondent invokes the legislative objective of the Press and Journalist Act – to ensure freedom of the press, provide a Council that is responsible for the regulation of mass media and establish the Uganda Institute of Journalists – to counter the allegations of its inconsistency with Articles 29(1)(a) and (e), or 40(2) of the Constitution. The Respondent thus denies that section 5(1) of the impugned Act, which enjoins a proprietor of a mass media organization to register such particulars as may be prescribed by the Media Council, can be inconsistent with the provisions of Article 28(12) of the Constitution, as alleged by the Petitioners.

10. It is further opined that section 6(a) of the Act, which requires a proprietor or editor of a mass media organization to ensure that what is published is not contrary to public morality, cannot be inconsistent with Article 29(1)(a) given that the constitutional freedoms of speech and expression are not absolute or non-derogable rights but, rather, are subject to in-built constitutional limitations. In that regard, it is the contention that section 34(3) of the Act provides justifiable restrictions on the practice of journalism (without necessarily violating Articles 28 or 29(1) of the Constitution) when a journalist is suspended pending the hearing of his/ her appeal from a decision of the Disciplinary Committee.

11. It is averred that sections 8 and 11, read alongside sections 9, 10(2) and 40(3) of the Act, simply provide for the establishment of a Media Council – the body responsible for the regulation of mass media in Uganda (including the promotion of good ethical standards) – and cannot therefore be inconsistent with Article 29(1) of the Constitution. To that end, far from being inconsistent with Articles 28(12), 29(1)(a) and (e) or 40(2) of the Constitution, it is averred that sections 16, 27, 28 and 29 support the regulation of journalism in Uganda by defining the practice of journalism; delineate the requirements for the grant of practicing certificates to local journalists, accreditation of employees of foreign media organizations and membership to the National Institute of Journalists, and the applicable fees payable.

12. Thus, sections 16(2) and (3), read together with section 26 of the Act are postulated to be consistent with Articles 29(1)(a) and 40(2) of the Constitution in so far as they provide for the protection of the public by licensing only eligible professionals to practice journalism. Section 26 is opined to particularly support the right to one's trade or profession by providing for the registration of duly qualified persons in the register of journalists. Paragraphs 1 and 2 of the fourth Schedule to the Act are also opined to support the industry's regulation by providing for a code of ethics to guide the practice of journalism. That provision in itself, as well as the powers entrusted to the responsible Minister under sections 40(3) and 42(2) of the Act, are considered not to violate Articles 28(12), 29(1)(a) and (e), 40(2) or 42 of the Constitution but, rather, simply provide the subsidiary legislative framework for the effective implementation of the Act.

D. **Issues for Determination**

13. Pursuant to a Scheduling Conference held in the matter, as well as the subsequent oral amendment of the Petitioner's case, the Parties framed the following issues for determination:

I. **Whether sections 5(1)(d), 6(a), 8, 10(2), 11, 16(2) and (3), 26, 27(1) and (2), 28(b), 29(2), 34(3), 40(3), 42(2)(d) and paragraphs 1 and 2 of the Fourth Schedule of the Press and Journalist Act Cap 105 (as amended) are inconsistent with and/ or in contravention of Articles 28(12), 29(1)(a) and (e), and 40(2) of the Constitution.**

II. **Whether sections 5(1)(d)), 6(a), 8, 10(2), 11, 16(2) and (3), 26, 27(1) and (2), 28(b), 29(2), 34(3), 40(3), 42(2)(d) and paragraphs 1 and 2 of the Fourth Schedule of the Press and Journalist Act Cap 105 (as amended) are acceptable and demonstrably justifiable under Article 43(2)(c) of the Constitution.**

III. **What remedies, if any, are available to the Petitioners.**

E. **Determination**

Issue No. 1: *Whether sections 5(1)(d) [formerly 6(a)], 8, 10(2), 11, 16(2) and (3), 26, 27(1) and (2), 28(b), 29(2), 34(3), 40(3), 42(2)(d) and paragraphs 1 and 2 of the Fourth Schedule of the Press and Journalist Act Cap 105 (as amended) are inconsistent with and/ or in contravention of Articles 28(12), 29(1)(a) and (e) and 40(2) of the Constitution.*

14. In submissions, learned Counsel for the Petitioners proposes that that in determining the constitutionality of legislation courts should be guided by its object, purpose and effect as expressed in the case of **R vs. Big M Drug Mart Ltd (1985) 1 SCR 295** as follows:

> **Both purpose and effect are relevant in determining constitutionality; either an unconstitutional purpose or an unconstitutional effect can invalidate legislation.**

15. Learned Counsel did also cite the following observation in **Attorney General v. Salvatori Abuki, Constitutional Appeal No. 1 of 1998** in support of the Petitioners' case:

> **Should the purpose of legislation be inconsistent with a provision of the Constitution, the provision or a section of that legislation should be declared unconstitutional. Similarly, should the effect of implementing any provision of the Constitution, the provision should be declared unconstitutional as well.**

16. It is the contention that whereas Chapter 4 of the Constitution is designed to maximize individual freedoms within the framework of *ordered liberty*, the impugned provisions of the Press and Journalist Act are at cross-purposes with its long title, violate the cited constitutional provisions and impose various restrictions to freedom of expression. Section 5(1)(d) is challenged for permitting arbitrary changes by the Media Council to the scope of particulars of editors to be registered with it by proprietors of mass media organizations, thus permitting the Council to vary the particulars of an offence under

section 5(3), the effect of which would be to impose criminal liability for an offence the particulars of which are not clearly stated in the statute. To that extent, section 5(1)(d) is alleged to contravene the prohibition in Article 28(12) of the Constitution against the conviction of any person for an offence that is not defined and the penalty therefor prescribed by law.

17. The Petitioners relate the supposed ambiguity in section 5(1)(d) to the *'void-for-vagueness'* doctrine that is espoused in the case of **Kolender v. Lawson (1983), United States Supreme Court, No. 81-1320** (per Justice O'Connor) as follows:

> **As generally stated, the void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement. ... Although the doctrine focuses ... both on actual notice to citizens and arbitrary enforcement, we have recognized recently that the more important aspect of the vagueness doctrine 'is not actual notice, but the other principal element of the doctrine – the requirement that a legislature establish minimal guidelines to govern law enforcement.' ... Where the legislature fails to provide such minimal guidelines, a criminal statute may permit 'a standard-less sweep (that) allows policemen, prosecutors and juries to pursue their personal predilections.**

18. In the same vein, the Petitioners fault section 6(a) of the Act for prescribing a duty upon proprietors and editors of mass media organizations to ensure due regard to public morality in their publications without a definition of the notion of public morality anywhere in the statute. It is the contention that, given the relativity associated with that concept, section 6(a) creates an ambiguous and vague duty that necessitates self-censorship of mass media and thus infringes on the constitutional right to freedom of expression (including freedom of the press and other media) that is enshrined in Article 29(1)(a) of the Uganda Constitution and Article 9 of the African Charter on Human and Peoples' Rights (African Charter). The Petitioners further rely upon Article 2(1) of the *Declaration*

of Principles on Freedom of Expression, 2002 ('the *Banjul Declaration, 2002*')[1], which prohibits arbitrary interference with anyone's freedom of expression.

19. Furthermore, the purportedly wide powers granted to the responsible Minister in sections 10(2), 11 40(3) and 42(2)(d) to appoint, control and remunerate the Media Council established under section 8, as well as the overall regulatory authority granted to that Council under section 9, are opined to depict a media regulatory body that acts at the behest of the Minister. It is argued that the subjecting journalists and the mass media to a regulatory body that is so controlled by the Government (through the Minister) encourages politically motivated infringement of the right to freedom of expression and is objectionable. Reference in that regard was made to the decision in **Media Council of Tanzania & 2 Others v. Attorney General of the United Republic of Tanzania, EACJ Reference No. 2 of 2017**, as well as Article 7 of the *Banjul Declaration, 2002* that provides as follows:

> 1. **Any public authority that exercises powers in the areas of broadcast or telecommunications regulation should be independent and adequately protected against interference, particularly or a political or economic nature.**
> 2. **The appointments process for members of a regulatory body should be open and transparent, involve the participation of civil society, and shall not be controlled by any particular political party.**
> 3. **Any public authority that exercises powers in the areas of broadcast or telecommunications should be formally accountable to the public through a multi-party body.**

20. With regard to sections 16(2) and (3), 26, 27, 28 and 29 of the Act, which purportedly restrict the practice of journalism in Uganda to persons that are enrolled, licensed or accredited thereunder; it is argued that journalism should enable all persons to convey and receive views on a wide range of matters and not be restricted to the educated that express lofty, noble or inoffensive sentiments. The Court was referred to the decision in **Scanlem and Holderness v. Zimbabwe (2009) AHRLR 289** where, in response to the

[1] This Declaration was made at the 32nd Session of the African Commission of Human and Peoples Rights held between 17th – 23rd October, 2002.

proposition that the accreditation of journalists under the Zimbabwean Access to Information and Protection of Privacy Act sought to prohibit falsehoods, maintain public order and safety, and protect the rights and reputations of others; it was held:

> **The African Commission finds further that while accurate reporting is the goal to which all journalists should aspire, there will be circumstances under which journalists will publish or disseminate information, opinion or ideas which will contravene other persons' reputations or interests, national security, public order, health or morals. Such circumstances cannot be foreseen during accreditation. In such circumstances, it is sufficient if journalists have made a reasonable effort to be accurate and have not acted in bad faith.**

21. The Court was further referred to the Inter-American Court of Human Rights' Advisory Opinion to the Government of Costa Rica on *Compulsory Membership in an Association prescribed by law for the Practice of Journalism*.[2] Of the correlation between freedom of expression and journalism, it was observed:

> **It** (freedom of expression) **represents, in short, the means that enable the community, when exercising its options, to be sufficiently informed. Consequently, it can be said that a society that is not well informed is not a society that is free. Within this context, journalism is the primary and principal manifestation of freedom of expression of thought. For that reason, because it is linked with freedom of expression, which is an inherent right of each individual, journalism cannot be equated to a profession that is merely granting a service to the public through the application of some knowledge or training acquired in a university or through those who are enrolled in a certain professional 'colegio'.**

22. On that basis, it is opined that restricting the practice of journalism to only a few educated persons is an infringement of the right to freedom of expression. On the authority of **Scanlem and Holderness v. Zimbabwe** (supra), the Petitioners urge as follows:

[2] OC-5/85 of 14th November, 1985.

There are no good grounds for official involvement in the registration of journalists. It creates considerable scope for politically motivated action by the authorities. The regulation of the media should be a matter for self-regulation by journalists themselves through their professional organizations or associations. A regulatory body such as the MIC whose regulations are drawn up by government cannot claim to be self-regulatory. Any act of establishing a regulatory body by law brings the body under the control of the State.

23. Finally, on this issue, it is argued that the suspension of journalists under the Media Council's contested regulatory function would be unconstitutional in so far as it tramples on the right to freedom of expression that is inherent to the practice of journalism. It is proposed that if the suspension were to be found permissible, then justice and democracy would dictate that so grave a penalty result from a free and fair court process, rather than the Media Council's intervention.

24. Conversely, the Respondent contests the Petitioners' construction of section 5(1)(d) of the Press and Journalist Act, arguing that the impugned provision neither permits arbitrary changes by the Media Council to the scope of editors' particulars to be registered by mass media organizations nor does it authorize the Council to vary the particulars of the offence prescribed under section 5(3) in the event of default in registration by the media organizations. It is the contention that section 5(1)(d) does not contravene Article 28(12) of the Constitution given that the offence outlined in that provision is properly defined and the penalty in respect thereof is duly prescribed. To that extent, it is argued, section 5(1)(d) obviates the '*void-for-vagueness*' doctrine as it unequivocally informs the public of what amounts to prohibited conduct, does not provide for arbitrary or discriminatory enforcement and minimum guidelines are clearly established therein.

25. On the other hand, on the basis of his definition of the term morality, learned Counsel for the Respondent urges that the requirement in section 6(a) of the Act for publications by media organizations not to be contrary to public morality is neither ambiguous nor amorphous as alleged by the Appellants. In his view, it is trite law that the right to freedom of speech and expression is not an absolute or non-derogable right, it being subject to limitations under Article 43(1) of the Constitution. The decision of the Zimbabwe Supreme

Court in **Capital Radio (Private) Ltd v. The Broadcasting Authority of Zimbabwe & 2 Others, Civil Application No. 162 of 2001** was cited in support of this position. In that case it was held:

> **Freedom of expression is not, however, absolute. Every system of international and domestic rights recognizes carefully drawn and limited restrictions on freedom of expression to take into account the values of individual dignity and democracy. Under international human rights law, national laws that restrict freedom of expression must comply with the provisions of Article 19(3) of the International Covenant on Civil and Political Rights. Article 19(3) of the ICCPR provides:**
>
> > **'The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:**
> >
> > i. **For respect of rights or reputations of others**
> > ii. **For the protection of national security or of public order (ordre public), or of public health or morals.**

26. The Respondent thus contends that section 6(a) is not ambiguous, vague or in any way inconsistent with Article 29(1)(a) of the Constitution. Furthermore, it is the Respondent's contention that section 8 makes no provision for the composition of the Media Council on the whims of the Minister but, rather, elaborates how the Council should be constituted. It is thus proposed that sections 8, 9, 10(2), 11, 40(3) and 42(2)(d) of the Act do not interfere with the right to freedom of expression but, should the Court be otherwise inclined, it be pleased to find that they are a necessary limitation to freedom of expression that are demonstrably justifiable in a democratic society.

27. With regard to sections 16(2) and (3), 26, 27, 28 and 29 of the Act, the decision in **Capital Radio (Private) Ltd v. The Broadcasting Authority of Zimbabwe & 2 Others** (supra) – that it is common cause that the setting up of a regulatory authority is a permissible derogation from the right of freedom of expression – was cited to buttress the argument that States have a right and duty to ensure the orderly regulation of communications,

which can only be achieved by a licensing mechanism. It is thus argued that, far from being unconstitutional, the cited legal provisions are permissible under Article 43 of the Constitution. In like vein, it is the Respondent's contention that in so far as the suspension of a journalist under section 34(3) is only temporary, that legal provision serves a legitimate purpose and is necessary, acceptable and demonstrably justifiable under Article 43 of the Constitution.

28. I deem it necessary to retrace the rules of constitutional interpretation as have been severally laid down by the courts. I will, nonetheless restrict myself to the rules of interpretation in so far as they pertain to the constitutionality of a legislation, which is the matter before the Court presently. As observed earlier in this judgment, in **Attorney General v. Salvatori Abuki** (supra), a statute's purpose and effect are both relevant to the determination of its constitutionality. Reference is also made to the case of **Uganda Law Society v. Attorney General, Constitutional Petition No. 52 of 2017**, where the following additional rules of interpretation were espoused:

> 1. .....
> 2. .....
> 3. .....
> 4. **All provisions bearing on a particular issue should be considered together to give effect to the purpose of the instrument.**
> 5. **Where the words or phrases are clear and unambiguous, they must be given their primary, plain, ordinary or natural meaning. The language used must be construed in its natural and ordinary sense.**
> 6. **Where the language of the constitution or statute sought to be interpreted is imprecise or ambiguous a liberal, general or purposeful interpretation should be given to it.**

29. The duty upon this Court in performance of its interpretative function is well articulated in the case of **US v. Butler, 297 US 1 (1936)** as follows:

> **There should be no misunderstanding as to the function of this court in such a case. It is sometimes said that the court assumes a power to overrule or control the action of the people's representatives. This is a misconception. The Constitution is the supreme law of the land ordained**

and established by the people. All legislation must conform to the principles it lays down. When an act of Congress is appropriately challenged in the courts as not conforming to the constitutional mandate, the judicial branch of the government has only one duty; to lay the article of the Constitution which is invoked beside the statute which is challenged and to decide whether the latter squares with the former. All the court does, or can do, is to announce its considered judgment upon the question. The only power it has, if such it may be called, is the power of judgment. This court neither approves nor condemns any legislative policy.

30. In the matter before the Court, the Petitioners invoked Articles 28(12); 29(1)(a) and (e), and 40(2) of the Constitution. For ease of reference, I reproduce them below:

Article 28(12)

Except for contempt of court, no person shall be convicted of a criminal offence unless the offence is defined and the penalty for it prescribed by law.

Article 29(1)(a) and (e)

(1) Every person shall have the right to –

a. Freedom of speech and expression which shall include freedom of the press and other media;

b. .....

c. .....

d. .....

e. Freedom of association which shall include the freedom to form and join associations or unions, including trade unions and political and other civic organisations.

Article 40(2)

Every person in Uganda has the right to practice his or her profession and to carry on any lawful occupation, trade or business.

31. A literal interpretation of Article 28(12) would be that, save for the offence of contempt of court, every criminal offence for which a person may be convicted must be defined and the penalty therefor prescribed. In this case it has been invoked with regard to section 5(1)(d) of the Press and Journalist Act, the contention being that the latter provision negates the requirement in Article 28(12) for all criminalized offences to be sufficiently defined and a penalty therefore duly prescribed.

32. Section 5(1) encapsulates the duty upon proprietors of mass media organisations to register designated particulars with the Media Council created under section 8 of the Act. The editors' particulars to be so registered are clearly stated as follows:

    1. **His or her name and address**
    2. **Certified copies of the relevant testimonials as proof of his or her qualifications and experience**
    3. **The name and address of the newspaper.**

33. Clause (d) of that sub-section, which is in contention presently, then makes provision for '**such other particulars as may be prescribed by the Council**.' Meanwhile, sub-section (3) criminalizes the contravention of section 5 and prescribes the penalty therefore as '**a fine not exceeding three hundred thousand shillings**' or, in case of failure to pay the fine, '**imprisonment for a term not exceeding three months**.'

34. The wording of section 5(1)(d) is quite clear and unambiguous. It simply means that a proprietor (or owner) of a mass media organisation (such as a newspaper) must, on appointing an editor, register with the Media Council the editor's name and address, and certified copies of his or her testimonials, as well as register the name and address of the appointing newspaper. In addition, the proprietor must register such other particulars of the editor as may be prescribed by the Media Council. That is the plain, ordinary or natural meaning of section 5(1)(d) of the Act. However, that plain construction is not adequate to answer the question now before the Court as to whether the impugned legal provision permits arbitrary changes to the range of particulars registerable with the Council and thus varies them, rendering undefined and inconclusive the ingredients of the offence encapsulated in section 5(3) of the Act for purposes of Article 28(12) of the Constitution. In that regard, therefore, section 5(1)(d) is not as unambiguous as it appears, necessitating a '**liberal, general and purposeful interpretation**' thereof as proposed in

Uganda Law Society v. Attorney General (supra). Such recourse to the purpose and effect of the legislation is the import of **Attorney General v. Salvatori Abuki** (supra), to which the Court was referred by learned Counsel for the Petitioners. It bespeaks a purposive interpretation of section 5(1)(d) of the Act, followed by the determination of whether such construction of the impugned section renders it squarely in tandem with Article 28(12) of the Constitution.

35. As quite correctly proposed by both parties, the long title to the Press and Journalist Act is indicative of the purpose of the legislation. In addition, I might add, the long title to the Act provides the necessary contextual framework within which its provisions may be interpreted. The long title *inter alia* describes the Press and Journalist Act as an Act to '**ensure there is freedom of the press**', as well as provide for a Media Council to oversee the '**regulation of mass media**' in Uganda. One aspect of such regulation is to be found in section 5(1)(a), (b) and (c) of the Act in so far as it demarcates the particulars of editors that must be registered with the Media Council, failure of which would constitute an offence attracting the penalties prescribed under section 5(3). To that extent, the offence created in section 5(3) is complete and clearly in tandem with the dictates of Article 28(12) of the Constitution. Stated differently, the provisions of section 5(1)(d) do not constitute an additional ingredient of the offence created in section 5(3) of the Act. That offence is complete, defined and a penalty therefore prescribed with the current formulation of section 5(1)(a), (b) and (c). Section 5(1)(d) simply makes provision for the eventuality of any other particular being formulated by regulations, should the need arise.

36. In the *void-for-vagueness* that is espoused in **Kolender v. Lawson** (supra) and relied upon by the Petitioners, it was noted that the more important or principle element of the doctrine is '**the requirement that a legislature establish *minimal* guidelines to govern law enforcement**' in order to forestall a 'standardless sweep' by law enforcers. Quite clearly, the focus in that doctrine is not on the formulation of a statute that exhaustively provides for the necessary guidelines but, rather, one that provides clear, minimal standards without necessarily obviating room for their supplementation, should the need present itself. In the context of the present case, whereas clauses 5(1)(a), (b) and (c) provide such minimal standards, clause (d) of the same sub-section leaves room for their formal supplementation should the need so arise. It seems to me that whereas the list of particulars for the registration of editors clearly depicts the nature of default that would

constitute an offence under section 5(3) of the Act, it is quite conceivable that not all necessary particulars would have been anticipated when the Act was promulgated, yet they could become necessary for the regulation of mass media in due course.

37. Far from being undertaken on arbitrary or case-by-case basis, as proposed by the Petitioners, the supplementation of editors' registerable particulars is formally governed by section 42(1) and (2)(a) of the Act in the following terms:

> 1. **The Minister may, on the advice of the council, make regulations for better carrying into effect the provisions of this Act.**
> 2. **Without prejudice to the general effect of subsection (1), regulations may be made under it prescribing –**
>   a. **The particulars and other matters to be entered in the register.**

38. It thus becomes abundantly clear that the subsidiary legislation by way of Regulations formulated would, like any other law, be available to inform all persons of what amounts to prohibited conduct. Consequently, I find no inconsistency between section 5(1)(d) of the Act and Article 28(12) of the Constitution.

39. The Petitioners similarly argue that section 6(a) is unconstitutionally ambiguous and vague; an unjustifiable infringement of Article 29(1)(a) of the Constitution. Also impugned under Article 29(1)(a) and (e) are sections 8, 9, 10(2), 11, 16(2) and (3), 26, 27, 28, 29, 34(3), 40(3) and 42(2)(d) of the Act. It becomes necessary to interrogate the broad legal framework within which the freedoms of expression and association encapsulated in Article 29(1)(a) and (e) are enjoyed, prior to a determination of the matters specifically in contention in this case.

40. Article 9 of the African Charter, which was invoked by the Petitioners, provides as follows:

> 1. **Every individual shall have the right to receive information.**
> 2. **Every individual shall have the right to express and disseminate his opinions within the law.**

41. However, that Charter provision operates alongside Article 27(2) of the African charter that provides as follows:

The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.

42. Articles 9 and 27(2) resonate with the provisions of Article 19 (2) and (3) of the International Covenant on Civil and Political Rights (ICCPR), which are also instructive on the right to freedom of expression. They provide:

> 1. .....
> 2. **Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.**
> 3. **The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:**
>
> **a. For respect of the rights or reputations of others;**
>
> b. **For the protection of national security or of public order (ordre public), or of public health or morals.**

43. The limitation on the individual right to freedom of expression outlined in Article 19(3)(a) of the ICCPR is echoed in Article 27(2) of the African Charter, and duly reflected in Article 43(1) of the Ugandan Constitution as follows:

> **In the enjoyment of the rights and freedoms prescribed in this Chapter, no person shall prejudice the fundamental or other human rights and freedoms of others .....**

44. On the other hand, Article 19(3)(b) of the ICCPR is indicative of the parameters of '*public interest*' as also provided for in Article 43(1) of the Constitution. It is against that background, therefore, that I now revert to an interrogation of the constitutional credentials of the impugned sections of the Press and Journalist Act.

45. The domestication of States' international obligations (as Article 43(1) of the Constitution seeks to do) was approbated in **Capital Radio (Private) Ltd v. The Broadcasting Authority of Zimbabwe & 2 Others** (supra), where it was held that '**under international human rights law, national laws that restrict freedom of expression must comply with the provisions of Article 19(3) of the International Covenant on Civil and Political Rights**.' To the extent that section 6(a) imposes a duty upon proprietors and editors of mass media organisations to '**ensure that what is published is not contrary to public morality**,' it does conform to the standard prescribed in Article 19(3)(b) of the ICCPR and Article 27(2) of the African Charter, which Uganda is obligated to uphold. Accordingly, the duty inherent therein cannot be equated to arbitrary interference with the right to freedom of expression as proposed by the Petitioners. Moreover, the meaning attributable to the term '*public morality*' in section 6(a) is not entirely incomprehensible given the provisions of clause 8(1) of the Fourth Schedule to the Act. That clause prohibits journalists and editors from publishing '**obscene material including writings, drawings, prints, paintings, printed matter, pictures, posters, emblems, photographs, cinematograph films or any other obscene objects, or any other object tending to corrupt morals**.' I am therefore satisfied that section 6(a) is not inconsistent with Article 29(1)(a) of the Constitution.

46. Sections 8, 9, 10(2), 11, 40(3) and 42(2)(d) are similarly opined to subject the media to government interference in so far as the media is regulated by a Media Council that is supposedly under the control and acts at the behest of a Government Minister. Section 8, the linchpin on which the above allegations hinge, provides as follows:

> **1. There is established a council to be known as the Media Council.**
> **2. The council shall consist of—**
> **a. the director of information or a senior officer from the Ministry responsible for information, who shall be the secretary to the council;**
> **b. two distinguished scholars in mass communication appointed by the Minister in consultation with the National Institute of Journalists of Uganda;**
> **c. a representative nominated by the Uganda Newspapers Editors and Proprietors Association;**

d. **four representatives of whom —**
    i. **two shall represent electronic media; and**
    ii. **two shall represent the National Institute of Journalists of Uganda;**
e. **four members of the public not being journalists, who shall be persons of proven integrity and good repute of whom —**
    i. **two shall be nominated by the Minister; and**
    ii. **one shall be nominated by the Uganda Newspapers Editors and Proprietors Association;**
    iii. **one shall be nominated by the journalists; and**
f. **a distinguished practising lawyer nominated by the Uganda Law Society.**

3. **The persons referred to in paragraphs (c), (d), (e) and (f) shall be appointed by the Minister.**
4. **The chairperson of the council shall be elected by the members from among their number.**

47. Principle 7 of the *Banjul Declaration, 2002* as invoked by the Petitioners states:

Regulatory Bodies for Broadcast and Telecommunications

1. **Any public authority that exercises powers in the areas of broadcast or telecommunications regulation should be independent and adequately protected against interference, particularly of a political or economic nature.**
2. **The appointments process for members of a regulatory body should be open and transparent, involve the participation of civil society, and shall not be controlled by any particular political party.**
3. **Any public authority that exercises powers in the areas of broadcast or telecommunications should be formally accountable to the public through a multi-party body.**

48. Declarations such as the *Banjul Declaration, 2002* amount to soft law in international law, behavioural guidelines that '**are not binding in themselves but are more than mere statements of political aspiration**.' See the Oxford Dictionary of Law, 2009, 7th Ed., p.

515. Although hard law would undoubtedly take precedence over soft law in the courts, in so far as soft law is iindicative of the broad consensus on a given subject, I will consider Principle 7 of the *Banjul Declaration, 2002* for what it is worth within the context of this case. It essentially calls for minimum standards for regulatory bodies in the broadcast sector. These include independence from partisan interests (particularly political and economic in nature); an open and transparent appointment process to presumably underscore such independence; the participation of civil society in that appointment process, and formal accountability to the public through a multi-party body. These standards are aptly addressed in the Act itself as highlighted below.

49. Section 8 provides for the appointment of by the Minister of two distinguished scholars in consultation with the National Institute of Journalists of Uganda (NIJU); a member nominated by and representative of the Uganda Newspapers Editors and Proprietors Association; two members representing the electronic media and another two members representing NIJU; four members of the public not being journalists , two being direct nominees of his (the Minister), together with another two nominees of the Uganda Newspapers Editors and Proprietors Association and the journalists respectively, and a practicing lawyer nominated by the Uganda Law Society. Only the secretary the Council would be appointed on secondment to the Council by virtue of the office held in the Ministry responsible for Information. The Council would thus be comprised of seven journalism professionals, an eighth being a public official with demonstrable experience in the information sector; with five members only being strangers to the journalism profession but of proven integrity, good repute, and distinguished service.

50. I find no reason whatsoever to believe that such a Council would not be independent as required by Principle 7(1), neither has any evidence to that effect been placed before the Court. Given that only two of the Council members are direct nominees of the Minister albeit also being persons of proven integrity and good repute, on the balance of probabilities, I would find any connotations of interference under that Principle fairly misplaced. The likelihood of it being controlled by any political party as posited in Principle 7.2 is even more far-fetched in so far as it is dominated by nominees from the journalism industry that prides itself in reporting objectively with no partisan inclinations and the nominations of which would presumably be preceded by open and transparent processes. Furthermore, in my considered view, the representation of the Uganda Newspapers

Editors and Proprietors Association and the Uganda Law Society in the appointments process is duly indicative of civil society participation.

51. On the other hand, section 12 of the Act does categorically make provision for the requirement in Principle 7(3) above for formal accountability to a multi-party body in so far as it enjoins the Media Council to furnish annual accountability to the Ugandan Parliament. The section reads as follows:

> **The Council shall, within three months after the end of each year, submit to the Minister an annual report on all its activities; and the Minister shall lay the report before Parliament within three months after receiving it.**

52. I find no evidence on record that this provision has not been complied with by the Council. On the contrary, to the extent that section 8 of the Act represents the Respondent State's effort to give practical effect to Principle 7 of the Declaration as urged by Principle 16 thereof, the regulatory regime established under that statutory provision would defy connotations of conflict with the freedom of expression enshrined in Article 29(1)(a) of the Constitution. The case of **Media Council of Tanzania & 2 Others v. Attorney General of the United Republic of Tanzania** (supra) that was cited by learned Counsel for the Petitioners is distinguishable from the present scenario in so far as the Minister in that case enjoyed absolute discretion in the performance of his regulatory functions, with no clarity as to the circumstances under which he could impose a prohibition. I am satisfied, therefore, that sections 8, 9, 10(2), 11, 40(3) and 42(2)(d), all of which pertain to regulation by the Media Council, are not inconsistent with Article 29(1)(a) of the Constitution.

53. In their contestation of sections 16(2) and (3), 26, 27, 28 and 29 of the Act, and on the authority of **Scanlem and Holderness v. Zimbabwe** (supra), the Petitioners raise the issues of open journalism that is not subject to qualification, licensing or accreditation, as well as the self-regulation of the industry. It is argued that to the extent of its correlation with the right to freedom of expression, journalism is not a typical profession like the legal and medical professions that it should be subject to statutory regulation. This contention is supported in paragraph 14 of the affidavit evidence of Ms. Annet Namugosa. Conversely, the Respondent relies upon **Capital Radio (Private) Ltd v. The Broadcasting Authority of Zimbabwe & 2 Others** (supra) to portend that it is common

cause that the setting up of a regulatory body is a permissible derogation from the right to freedom of expression.

54. I am constrained to observe forthwith that the argument that journalism is so inter-linked with the right to freedom of speech as to negate the need for statutory regulation is self-defeating. It seems to me that the legal profession similarly hinges on the right to freedom of expression to the extent of lawyer-client representation. That profession, nonetheless, is regulated by ethical standards not least of which is lawyers' commitment to legal accuracy as officers of court. Further, that profession is regulated by statute in terms of the Advocates Act of Uganda (as amended) and the subsidiary legislation enacted thereunder. Furthermore, it must be noted that no profession is as inextricably intertwined with the universal human rights as the medical profession is with the fundamental right to life. Nonetheless, the decisions that may be taken in preservation of that non-derogable right do not negate the need for statutory regulation of the profession.

55. Secondly, the Petitioners' contestations on journalists' self-regulation and qualifications are not borne out either by the impugned law or by their own evidence. To begin with, the fact that the membership of the Media Council is predominantly comprised of persons with a journalism background or nominees by journalists and journalists' groups or associations does represent a degree of self-regulation by that industry. Meanwhile, the Petitioners make a case for non-statutory regulation, arguing on the authority of the **Scanlem and Holderness** case that **'any act of establishing a regulatory body by law brings the body under the control of the State.'** However, in paragraph 11 of her affidavit, Ms. Gloria Sheila Atim avers that the Press and Journalist Act cannot guarantee the freedom of the media '*unless there is an independent body created by a specific stand-alone legislation....*' She thus seemingly advocates for a regulatory body created by statute, contrary to the misgivings set out in the Petitioners' submissions, albeit without clarifying what would make a stand-alone legislation preferable to a regulatory body embedded within a sectoral law as is the case with the current Act.

56. Furthermore (in terms of the evidence), attached to the affidavit of Mr. Haruna Kanaabi is a report of consultative meetings that were *inter alia* held '*to solicit journalists' views on the establishment of a non-statutory Media Council, and to suggest the way forward on how press freedom can be attained plus the improvement of journalism standards.*' In that

report, in a meeting held in Lira on 26th July 2002, the question of mistakes by inexperienced journalists was raised; in Kabale on 14th August 2002, concerns were raised about the employment of people without any basics in journalism, the publication of misleading information and false media reports about media colleagues; while in Masaka on 17th August 2002, it was specifically proposed that '*the embarrassment to the journalism profession is caused by people practicing without prior training. ... there was need to define who is a journalist, and education should be considered.*' Certainly, Annex C does not reflect any sort of consensus on the Petitioners' misgivings about minimum qualifications for journalists. Further, it is apparent in the same report that the Committee responsible for media law reforms had initially proposed a merger of the Act in contention presently and the Electronic Media Statute of 1996, together with a code of ethics, but this position was subsequently reversed in 2001.

57. In any event, it seems to me that the decision in the **Scanlem and Holderness** case did not outrightly negate the practice of accreditation, simply questioning its efficacy to control inaccurate reporting in deference to reasonable effort by journalists to report accurately and in good faith. Perhaps more importantly, given that the welfare of an individual in the modern State depends on a balance between his or her rights and the rights of the society to which s/he belongs; I am inclined to abide the decision in **Capital Radio (Private) Ltd v. The Broadcasting Authority of Zimbabwe & 2 Others** (supra) that **states have the right and duty to ensure the orderly regulation of communications, and this can only be achieved by a licensing system.'** *See also* ***Groppera Radio AG V. Switzerland (A/173) (1990) 12 EHRR 321 at 350***. I would add that such a duty should pertain to both the mass media industry and the individual players therein. As was correctly observed in that case, '**absolute and unrestricted individual rights do not and cannot exist in a modern State**.' Indeed, the *Banjul Declaration, 2002* did recognise the need for regulation, only seeking to ensure it was subject to specific standards.

58. With respect, therefore, I am unable to appreciate how the regulation provided under the impugned sections under review, to wit ensuring that persons engaged in the practice of journalism have received adequate instruction and/ or experience in journalism; their registration upon enrolment and subsequent issuance with a practicing certificate, or the accreditation of employees of foreign mass media organisations, would compromise the journalism industry or the members thereof. The question of the fees payable in that

regard is an entirely different sectoral matter. I therefore find that sections 16(2) and (3), 26, 27, 28 and 29 of the Act are not inconsistent with the right to freedom of expression encapsulated in Article 29(1)(a) of the Constitution.

59. The question of accreditation is again raised by the Petitioners in respect of the alleged inconsistency of section 34(3) of the Act with Article 29(1)(a) and (e) of the Constitution, the contention being that the suspension of a journalist on account of unconstitutional regulation is objectionable. In addition, it is opined that even if suspension were found to be permissible, the dictates of justice and democracy would require that so grave a penalty accrue from the decision of a free and fair court of law and not the Media Council as regulator, prosecutor and judge of journalists. On its part, the Respondent denies any constitutional infringement by section 34(3), arguing that the temporal suspension of the right to practice one's trade under Article 40(2) is acceptable and demonstrably justifiable under Article 43(2) of the Constitution. The Respondent's position on this issue delves into the merits of *Issue No. 2* hereof and shall therefore be considered in my determination of that *Issue*. It will suffice to point out here that the requirement of accreditation that is delineated in section 29 of the Act pertains solely to employees of and freelance journalists associated with foreign mass media organisations, and not to all journalists in Uganda. Having held as I have with regard to the immediately preceding sections of the Act, the constitutionality of the practice of accreditation is no longer in contention.

60. On the other hand, suspension as a penalty arises from the provisions of section 33(b) of the Act. That legal provision prescribes a maximum of six months' suspension. Section 34(1) then makes provision for appeals to the High Court against any decision or order, by implication, including an order of suspension, while section 34(3) disentitles a suspended journalist from practising his/ her trade while the appeal is pending. In so far as they relate to temporary discontinuation of one's occupation, the penalty of suspension, appeal therefrom and prohibition on journalism practice pending the determination of the appeal are all quite commonplace in disciplinary proceedings. Comparable provisions are to be found in the Advocates Act that regulates the legal provision, which as has been observed earlier in this judgment, is comparable to the journalism profession. *See sections 20(4)(b) and 22(3) of the Advocates Act as amended, as well as section 18 of Act 27 of 2002.* I am disinclined, therefore, to agree with the Petitioners that section 34(3) represents a constitutional infringement. In the result, I do not construe any of the

impugned sections of the Press and Journalist Act to operate at cross-purposes with its objective of ensuring freedom of the press. I accordingly resolve *Issue No. 1* in the negative.

Issue No. 2: *Whether sections 5(1)(d) [formerly 6(a)], 8, 10(2), 11, 16(2) and (3), 26, 27(1) and (2), 28(b), 29(2), 34(3), 40(3), 42(2)(d) and paragraphs 1 and 2 of the Fourth Schedule of the Press and Journalist Act Cap 105 (as amended) are acceptable and demonstrably justifiable under Article 43(2)(c) of the Constitution.*

61. The Petitioners limited their submissions on this issue to sections 6(a) and 34(3) of the Act. I would therefore resist the temptation to speculate as to the thrust of their arguments on the statutory provisions that have not been addressed. In any case, having held as I have on those provisions, they would not constitute limitations to the right to freedom of expression so as to necessitate the interrogation of their justifiability. *See* ***S vs. Zuma & Others (1995) 2 SA 642(CC)[A3]***.

62. Be that as it may, addressing sections 6(a) and 34(3) together, the Petitioners question the Respondent's proposition that the rights inherent therein are susceptible to justifiable limitations without demonstrating how justifiable such a derogation would be in free and democratic society, as is required by Article 43(1) of the Constitution. It is their contention that the limitations imposed by the two legal provisions are not justifiable given that Ugandan law makes sufficient provision for redress in the event that the infringement of private rights ensues from the exercise of freedom of expression or the publication of material that compromises public morality. They cite the decision in **Constitutional Rights Project & Others v. Nigeria (2000) AHRLR** where, having considered the legitimate limitation of rights prescribed in Article 27(2) of the African Charter, the African Commission on Human and Peoples Rights observed that '**the justification of limitations must be strictly proportionate with and absolutely necessary for the advantages which follow. Most important, a limitation may not erode a right such that the right itself becomes illusory.**'

63. The Commission then concluded:

The government has provided no concrete evidence that the proscription was for any of the above reasons given in Article 27(2). It has failed to prove that proscription of the newspapers was for any reason but simple criticism of government. If the newspapers had been found guilty of libel, for example, they could have individually been sued and called upon to defend themselves. There was no substantial evidence that the newspapers were threatening national security or public order.

64. The foregoing authority postulates limitations to fundamental human rights only being justifiable, first, where they do not erode a right such that the right itself becomes illusory and, secondly, if strictly proportionate with and absolutely necessary for the advantages that follow. On the other hand, Article 43(2)(c) of the Constitution provides:

> **(2) Public interest under this article shall not permit –**
>
> **a. .....**
>
> **b. .....**
>
> **c. Any limitation of the enjoyment of the rights and freedoms prescribed by this Chapter beyond what is acceptable and demonstrably justifiable in a free and democratic society, or what is provided in this Constitution.**

65. Article 43(2) is grounded in Article 43(1) that *inter alia* prohibits the enjoyment of the rights and freedoms prescribed in Chapter 4 of the Constitution to the prejudice of '*the public interest.*' In the instant case the Respondent sought to justify section 34(3) on the pretext of maintenance of law and order. It seems to me that 'public morality' as invoked under section 6(a) would also fall within the ambit of *public interest* for purposes of Article 43(2)(c) of the Constitution.

66. In **Coalition for Reform and Democracy (CORD) & 2 Others v. Republic of Kenya & 10 Others, Consolidated Petition No. 628 & 630 of 2014 & 12 of 2015**, the Constitutional Court of Kenya was similarly faced with the question of the constitutionality of rights limitation as encompassed in Article 24(1) of the Constitution of Kenya. For ease of reference, Article 24(1) is reproduced below.

> **A right or fundamental freedom in the Bill of Rights shall not be limited except *by law* and then only to the extent that the limitation is *reasonable and justifiable* in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors ....**

67. The court relied upon the US Supreme Court decisions in **R VS Oakes (1986) ICSR 103** and **R vs Big Drug Mart Ltd (1985) ISCR 295** to observe as follows:

> **We are also guided by the test for determining justifiability of a rights limitation enunciated by the Supreme Court of Canada in the case of** R VS Oakes (1986) ICSR 103 **to which CIC has referred the Court. The first test requires that the limitation be one that is prescribed by law. It must be part of a statute, and must be clear and accessible to citizens so that they are clear on what is prohibited. Secondly, the objective of the law must be pressing and substantial, that is it must be important to society: see** R vs Big Drug Mart Ltd (1985) ISCR 295**. The third principle is the principle of proportionality. It asks the question whether the State, in seeking to achieve its objectives, has chosen a proportionate way to achieve the objectives that it seeks to achieve.**

68. Drawing on the convergences between Article 24(1) of the Kenyan Constitution and Article 43(2)(c) of the Ugandan Constitution, I find reference to limitations prescribed *by law* in the cited provision of the Kenyan Constitution synonymous with what would be *acceptable* in the context of Article 43(2)(c) of the Ugandan Constitution. Undoubtedly, what is *reasonable and justifiable in an open and democratic society* under the Kenyan Constitution would be akin to the standard of demonstrable justifiability in a free and democratic society in Article 43(2)(c). To that extent, the tripartite test enunciated in **CORD & 2 Others v. Republic of Kenya & 10 Others** (supra) is most compelling.

69. In the instant case, the limitations delineated in sections 6(a) and 34(3) are indeed prescribed by law – the Press and Journalist Act, which is certainly accessible to the Ugandan Public. The objective of that law was to ensure freedom of expression, make provision for a body responsible for the regulation of mass media in Uganda and establish an institute of journalists of Uganda. In my judgment, given the vitality of a free press to a free and democratic society, as well as the attendant regulation that would inevitably

accrue therefrom, the Press and Journalist Act was of critical importance to the Ugandan society. Finally, as illustrated earlier in this judgment, the requirement for media publications or broadcasts to abide basic tenets of public morality derives from international human rights instruments to which Uganda is obligated. On the other hand, the disciplinary measures reflected in section 34(3) are a conventional and thus proportionate way to achieve compliance with the mass media regulatory regime prescribed in the Act. Indeed, the limitations in both statutory provisions do not erode or otherwise render the right to freedom of expression illusory.

70. In the result, I find no violation either of the Ugandan Constitution or of the country's international obligations under Article 19 of the Universal Declaration of Human Rights; Article 19 of the International Covenant on Civil and Political Rights or Article 9 of the African Charter on Human and Peoples' Rights. I would resolve *Issue No. 2* in the affirmative.

Issue No. 3: *What remedies, if any, are available to the Petitioners?*

71. The Petitioners sought the following declarations and orders (reproduced verbatim):

I. **Sections 5(1) (d) and 11 of the Uganda Press and Journalist Act are inconsistent and/ in contravention of Articles 28(12) and 29(1)(a) of the constitution, undermines the right to freedom of expression, the press and other media and is therefore null and void.**

II. **Section 6(a) of the Press and Journalist Act Cap 105 is inconsistent with/ or in contravention of Article 29(1)(a) and (b) of the Constitution, undermines freedom of the press and media, and is therefore null and void.**

III. **Sections 8 and 11 of the Uganda Press and Journalist Act are inconsistent and/ in contravention of Article 29(1)(a) of the Constitution as they undermine the right to freedom of expression, the press and other media and is therefore null and void.**

IV. **Section 26 of the Press and Journalist Act Cap 105 is inconsistent/ or in contravention of Article 29(1)(a) of the Constitution because it undermines**

the right to freedom of expression, the press and other media and is therefore null and void.

V. Section 27(5) of the Press and Journalist Act Cap 105 is inconsistent with/ or in contravention of Articles 29(1)(a), 40(2) and 28(12) of the Constitution because it undermines the right to freedom of expression, press and other media and is therefore null and void.

VI. Sections 28 and 29 of the Press and Journalist Act Cap 105 are inconsistent with and/ or in contravention of Article 29(1) and (e) of the Constitution because the sections undermine the right to freedom of expression, the press, to join or not to join associations, and are therefore null and void.

VII. Section 34(3) of the Press and Journalist Act Cap 105 is inconsistent with and/ or in contravention of Articles 29(1)(a), 26, 28 and 42 of the Constitution because they undermine the right to freedom of expression, press, and other media and is therefore null and void.

VIII. Section 40(3) of the Press and Journalist Act is inconsistent with and/ or in contravention of Articles 29(1)(a), 40(2) and 42 of the constitution because the sections undermine the right to freedom of expression and are therefore null and void.

IX. Sections 16, 27 and 28 of the Press and Journalist Act are inconsistent with and/ in contravention of Article 29(1)(a) and (b) of the Constitution because they undermine the right to freedom of expression and therefore null and void.

X. Section 28(b) of the Press and Journalist Act Cap 105 is inconsistent with and/ in contravention of Article 29(1)(a) of the Constitution because it undermines the right to freedom of expression under and therefore null and void.

XI. Section 16(3) of the Press and Journalist Act is inconsistent with and/ in contravention of Article 29(1)(a) of the Constitution because it undermines the right to freedom of expression and therefore null and void.

XII. Paragraphs 1 and 2 of the Fourth Schedule of the Press and Journalist Act are inconsistent with and/ in contravention of Article 29(1)(a) of the Constitution because it undermines the right to freedom of expression and therefore null and void.

XIII. Sections 27(2), 16(1), 28(b) and 29(2) of the Press and Journalist Act are inconsistent with and/ in contravention of Article 29 of the Constitution because the stated sections undermine the right to freedom of expression and are therefore null and void.

XIV. Section 27(1) of the Press and Journalist Act is inconsistent with and/ in contravention of Article 29(1)(a) and (e) of the Constitution because it undermines the right to freedom of expression, press and media and is therefore null and void.

XV. Paragraphs 1 and 2 of the Fourth Schedule of the Press and Journalist Act are inconsistent or in contravention of Article 29(1)(a) and are therefore null and void.

XVI. And any other remedies as the Court may deem fit to the Petitioners apart from the costs for or against the Petitioners this being a public interest matter.

72. Having held as I have on the two substantive issues hereof, I would decline to grant any of the declarations sought under paragraphs 73(I) to (XV) above.

F. **Conclusion**

73. In terms of Paragraph 73(XVI), it is now well established law that costs should follow the event unless a court for good reason decides otherwise. *See section 27(2) of the CPA*. However, as quite correctly stated by learned Counsel for the Petitioners, the matter before the Court being a matter of public interest litigation, I find this a befitting case for departure from that general rule. The upshot of my consideration hereof is that the Petition is hereby dismissed with no order as to costs.

It is so ordered.

Dated and delivered at Kampala this ..... 23rd ..... **day of** ..... July ....., **2021.**

.....

Hon. Lady Justice Monica K. Mugenyi

JUSTICE OF THE CONSTITUTIONAL COURT

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA
AT KAMPALA

CORAM: KIRYABWIRE; MUSOKE; OBURA; MUGENYI, JJCC AND KASULE, AG. JCC

CONSTITUTIONAL PETITION NO. 9 OF 2014

1. **CENTRE FOR PUBLIC INTEREST LAW (CEPIL)**
2. **HUMAN RIGHTS NETWORK FOR JOURNALISTS (HRNJ)**
3. **EAST AFRICA MEDIA INSTITUTE (EAMI) ..... PETITIONERS**

VERSUS

ATTORNEY GENERAL ..... RESPONDENT

JUDGMENT OF THE HON. MR. JUSTICE GEOFFREY KIRYABWIRE, JCC

I have the opportunity of reading the Judgment of my sister the Hon. Lady Justice Monica Mugenyi JCC and I agree with her reasoning, findings and decision and have nothing more useful to add. Since The Hon. Lady Justice Elisabeth Musoke, JCC; The Hon. Lady Justice Helen Obura, JCC and The Hon. Mr. Justice Remmy Kasule, Ag. JJC also agree I make the following final Orders: -

1. This Petition stands dismissed
2. Being a public interest action all parties are to bear their own costs.

IT IS SO ORDERED

Dated at Kampala this ..23rd.....day of .....July.....2021

Hon. Mr. Justice Geoffrey Kiryabwire, JCC

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

CONSTITUTIONAL PETITION NO. 9 OF 2014

(Coram: Kiryabwire, Musoke, Obura, Mugenyi, JJA/JCC & Kasule, Ag. JA/JCC)

1. **CENTRE FOR PUBLIC INTEREST LAW (CEPIL)}**
2. **HUMAN RIGHTS NETWORK FOR JOURNALISTS (HRNJ)}**
3. **EAST AFRICA MEDIA INSTITUTE (EAMI)}:::::::::::::::::::::::::::: PETITIONERS**

VERSUS

ATTORNEY GENERAL :: RESPONDENT

JUDGMENT OF HELLEN OBURA, JA/JCC

I have read in draft the judgment of my learned sister Monica K. Mugenyi, JA/JCC in the above Constitutional Petition. I concur with her conclusion that the petition be dismissed with no order as to costs.

Dated at Kampala this.....23rd.....day of.....July.....2021.

.....

Hellen Obura

JUSTICE OF APPEAL/CONSTITUTIONAL COURT

THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA
CONSTITUTIONAL PETITION NO. 9 OF 2014

1. CENTRE FOR PUBLIC INTEREST LAW (CEPIL)
2. HUMAN RIGHTS NETWORK FOR JOURNALISTS
3. EAST AFRICA MEDIA INSTITUTE::::::::::::::::::::::::::PETITIONERS

VERSUS

ATTORNEY GENERAL::RESPONDENT

CORAM: HON. MR. JUSTICE GEOFFREY KIRYABWIRE, JCC
HON. LADY JUSTICE ELIZABETH MUSOKE, JCC
HON. LADY JUSTICE HELLEN OBURA, JCC
HON. LADY JUSTICE MONICA MUGENYI, JCC
HON. MR. JUSTICE REMMY KASULE, AG. JCC

JUDGMENT OF ELIZABETH MUSOKE, JCC

I have had the advantage of reading in draft the judgment of my learned sister Mugenyi, JCC. I agree with it, and for the reasons given by my learned sister, I too would dismiss the Petition, but make no order as to costs.

Dated at Kampala this ..... 22nd ..... day of ..... July .....2021.

.....

Elizabeth Musoke

Justice of the Constitutional Court

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA

AT KAMPALA

CONSTITUTIONAL PETITION NO. 9 OF 2014

1. Centre for Public Interest (CEPIL)
2. Human Rights Network for Journalists (HRNJ) } **: Petitioners**
3. East Africa Media Institute

Versus

Attorney General :: Respondent

Coram: Hon. Mr. Justice Geoffrey Kiryabwire, JCC
Hon. Lady Justice Elizabeth Musoke, JCC
Hon. Lady Justice Hellen Obura, JCC
Hon. Lady Justice Monica Mugenyi, JCC
Hon. Mr. Justice Remmy Kasule, Ag. JCC

Judgment of Remmy Kasule, Ag. JA

I have had the benefit of reading through the lead Judgment of Hon. Lady Justice Monica K. Mugenyi, JCC.

I am in agreement with the Honourable Lady Justice's analysis of the facts, the law and the conclusions she has reached on the issues raised in the Constitutional Petition. There is nothing useful I can add.

As to costs, I too concur with the Honourable Lady Justice that the Petition, being one of public interest litigation, no order be made as to costs.

Dated at Kampala this 23rd **day** of July **2021.**

Remmy Kasule

Ag. Justice of Constitutional Court