

BRIEF ON CONSTITUTIONAL PETITION 9 OF 2014 – CENTRE FOR PUBLIC INTEREST LAW (CEPIL), HUMAN RIGHTS NETWORK FOR JOURNALIST (HRNJ) & EAST AFRICAN MEDIA INSTITUTE (EAMI) versus ATTORNEY GENERAL

27th July 2021

➤ **The Petitioners:**

CEPIL: is an N.G.O focused on public interest litigation in Uganda of late mainly in the interest of the Press.

HNRJ: is also an N.G.O that purports to represent and protect the interests of journalists in Uganda.

EAMI: is said to be a media/journalism training institute based in Uganda

➤ **Background:**

In 2014 the Petitioners filed a petition in the Constitutional Court contending that sections of the Press & Journalists Act Cap. 105 of the laws of Uganda were inconsistent with the right to a fair hearing, freedom of conscience, expression, assembly and association and the right to practice one's profession or trade as enshrined in Articles 28, 29(1) and 40(2). In short, they sought to render the mandate of the Media Council null and void. Judgment given on 23rd July 2021.

➤ **The issues determined by the Court were:**

(1) 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.

(2) 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.

(3) What remedies, if any, are available to the Petitioners.

➤ **The Petitioners sought the following orders from Court, that:**

- (a) 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) of the constitution, undermines the right to freedom of expression, the press and other media and is therefore null and void.
- (b) 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.
- (c) 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.
- (d) Section 26 of the Press and Journalist Act Cap 105 is inconsistent or in contravention of Article 29(1) of the Constitution because it undermines the right to freedom of expression, the press and other media and is therefore null and void.
- (e) Section 27(5) of the Press and Journalists 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 of freedom of expression, press and other media and is therefore null and void.
- (f) 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.
- (g) 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.

- (h) 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.
- (i) 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.
- (j) 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.
- (k) 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.

➤ **The Court ruling:**

The Constitutional Court categorically declined to grant any of the declarations sought by the Petitioners (*correctly so in our view*) basically stating that the impugned sections of the Press & Journalists Act are not inconsistent with the Constitution of Uganda and stated, *inter alia*, that (*in quote*) “**...States have a right and duty to ensure the orderly regulation of communication and this can only be achieved by a licensing system, and I would add that such a duty should pertain to both the mass media and the individual players therein..**”

The judgement reaffirms the mandate of the Council but more importantly the role such an entity plays in a democratic society as espoused by our national laws and indeed by international laws. It is therefore now our collective obligation and duty to ensure the mandate of the Council and or any other such body is effected fairly and in accordance with the law.

Paul Ekochu.