IN THE EAST AFRICAN COURT OF JUSTICE
AT ARUSHA
FIRST INSTANCE DIVISION

(***Coram:*** *Yohane B. Masara, PJ; Richard Wabwire Wejuli, DPJ; Richard Muhumuza, Gacuko Leonard & Kayembe Ignace Rene Kasanda; JJ*)

REFERENCE NO. 30 OF 2020

LEGAL AND HUMAN RIGHTS CENTRE ..... 1st APPLICANT

TANZANIA HUMAN RIGHTS DEFENDERS COALITION (THRDC) ..... 2nd APPLICANT

MEDIA COUNCIL OF TANZANIA ..... 3rd APPLICANT

CENTRE FOR STRATEGIC LITIGATION LIMITED (CSL) ..... 4th APPLICANT

VERSUS

THE ATTORNEY GENERAL OF THE UNITED REPUBLIC OF TANZANIA..... RESPONDENT

31ST MARCH 2026

JUDGMENT OF THE COURT

A. INTRODUCTION

1. This Reference was brought before the East African Court of Justice ("The Court") on 15th September 2020 under Articles 4, 6(d), 7(1)(a) and (2), 8(1)(c), 27(1) and 30(1) of the Treaty for the Establishment of the East African Community ("the Treaty") and Rule 1 and 25 of the East African Court of Justice Rules of the Court, 2019 ("the Rules").

2. The 1st Applicant, Legal and Human Rights Centre, is an independent, non-partisan and non-profit human rights organization that seeks to promote internationally recognized human rights norms and standards. The organization was registered on 26th September 1995, under the laws of Tanzania and with the compliance under the Non-Governmental Organization Act, No. 24 of 2002 as amended.

3. The 2nd Applicant, Tanzania Human Rights Defenders Coalition (THRDC), is a non-governmental entity registered in Tanzania in 2012. It describes itself as a membership organization with over 150 members across the country, representing nine thematic groups of human rights, such as pastoralists, minority groups, women human rights defenders and disabled groups. It is also interested in freedom of expression, democracy and digital rights.

4. The 3rd Applicant is Media Council of Tanzania; a statutory body registered in Tanzania on 22nd May 1997. It describes itself as a media society with an experience in mainstream, local and social media issues in Tanzania.

5. The 4th Applicant is the Centre for Strategic Litigation Limited (CSL), a partnership organization based in Zanzibar and incorporated under the Companies Act on 2nd September 2019. It seeks to advance the vision of a just, tolerant, vibrant and inclusive democracy grounded on respect for the rule of law and justice for all. It deploys an innovative approach to litigation and advocacy that seeks to promote access to justice and public debate and education on key democratic principles and values.

6. The Applicants Address of service c/o *Melchizedek Joachim, (Advocate), Legal and Human Rights Centre, Legal Aid Clinic Kinondoni, Justice Mwalusanya House, Isere Street, P.O. Box 79633, Dar es Salaam.*

7. The Respondent is the Attorney General of the United Republic of Tanzania. He is sued in his official capacity as the Chief Legal Advisor to the Government. For the purpose of this Reference, address of service of the Respondent is: c/o *Office of the Solicitor General, 10 Kivukoni Road, P.O. Box 71554, 11405 Dar es Salaam.*

B. REPRESENTATION

8. At hearing, the Applicants were represented by Mr Jeremiah Mtobesya and Mr Peter Majanjara, Advocates; while the Respondent was represented by Mr Stanley Kalokola and Mr Daniel Nyakiha, Senior State Attorneys, and Mr Steven Noe and Ms Karen Masonda, both learned State Attorneys.

C. THE APPLICANTS' CASE

9. The Applicant's case is stated in the Statement of Reference dated 15th September 2020, in the Affidavits sworn respectively by Anna

Aloys Henga, director of the 1st Applicant, Onesmo Olengurumwa, director of 2nd Applicant and Kajubi D. Mukajanga, director of the 3rd Applicant all dated 14th September 2020. The Applicant also lodged another Affidavit deponed on 9th September 2020 by Deusdedit Valentine Rweyemamu, the Chief Executive Officer of the 4th Applicant, filed on the time of filing of the Reference.

10. The Applicants case is also set out in the Supplementary Affidavit deposed by Fulgence Masawe on 12th March 2025 and in the Rejoinder to the Respondent's Affidavit in Reply to the Supplementary Affidavit. The Applicants also filed Written Submissions on 2nd May 2025. The same were highlighted in Court on 13th November 2025.

11. The gravamen of the Applicants' complaints in the instant Reference is the enactment of the **Electronic and Postal Communications (Online Content) Regulations, 2020** ("the Regulations") which in the Applicant's eyes violate freedom of expression and, consequently, the fundamental and operational principles codified in Articles 6(d), 7(2) and 8(1)(c) of the Treaty.

12. More specifically the Applicants impugn the provisions of Regulations 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20 and 21 of the Regulations for violating the Treaty.

13. The Applicants faults the Respondent for various failures in making Regulations. The Applicants allege:

    i. **That, Regulation 3 violates the right to freedom of expression by containing unclear, subjective and ambiguous definitions of several words, including the**

purported meaning "Application service licensee", "blogger", "Content", "hate material", "hate speech", "indecent material", "internet café", "licensee", "news related content", "online", "online content host", "online content service", "online content service provider", "online radio, web radio, net radio, streaming radio, e-radio, or webcasting", "online television", "social media" and "user" thus interfering with freedom of expression which is the corner stone of any democratic society and rule of law as provided under Art 6(d), 7(2) and 8 (1)(c) of the Treaty;

ii. That, Regulations introduce mandatory registration and licensing of online radio, online television, bloggers and every user of social media, further it provides for heavy registration fees in Regulations 4, 5, 6 and 1st Schedule and 2nd schedule of the Regulations thus interfering with freedom of expression which is the corner stone of any democratic society and rule of law as provided under Art 6(d), 7(2) and 8(1)(c) of the Treaty;

iii. That, Regulations 7 and 8 of Regulations gives unfettered and wide powers, without safeguards against abuse as far as the issuance of licences and suspension or revocation of licenses is concerned, to the Tanzania Communications Regulatory Authority in violation Art 6(d), 7(2) and 8(1)(c) of the Treaty;

iv. That, Regulations 9(a), 9(b), 9(c), 9(d), 9(e), 9(f), 9(j), 9(k), 9(l), 10, 11, 12(a) and 13 give wide, ambiguous, general, unreasonable and impracticable obligations to online

content service provider, content service provider with district or regional license, applicant service licensee, online news and current affairs licensee and Internet café service providers as against freedom of expression which is the corner stone of a democratic society and rule of law and thus violation Art 6(d), 7(2) and 8(1)(c) of the Treaty;

v. That, Regulation 15 provides for obligations to online content host which is too wide and unclear and thus violates freedom of expression and it is against Art 6(d), 7(2) and 8(1)(c) of the Treaty;

vi. That Regulation contains what is termed as prohibited contents under Regulations 16, 18 and 3rd Schedule which is too wide, ambiguous and prone to subjective interpretation and thus violates freedom of expression which is corner stone of any democratic society, violates rule of law, democracy as provided under Art 6(d), 7(2) and 8(1)(c) of the Treaty;

vii. That, Regulation 17 provides for the mandate for disclosure of third-party information by the Authority or its officers without safeguard against abuse thus violating freedom of expression which is corner stone of any democratic society, violates rule of law, democracy as provided under Art 6(d), 7(2) and 8(1)(c) of the Treaty;

viii. That, Regulations 19(a), (b) and 20 provides for the powers to Tanzania Communication Regulatory Authority to take action against non-compliance, licencing and complaint handling which is too wide and capable of being abuse without any safeguards against abuse which is likely to

violate freedom of expression which is corner stone of any democratic society, violates rule of law, democracy as provided under Art 6(d), 7(2) and 8(1)(c) of the Treaty;

ix. **That, Regulation 21 provides for criminal penalties for a person who contravenes the provisions of the Regulations which are excessive and unjustifiable thereby restricting freedom of expression and the right to access information;**

x. **That, the provisions of Regulation 21 create a general offence for contravention of the whole Regulations with an effect of a subjective general application thereby restricting freedom of expression and the right to access information;**

xi. **That, the provision of Regulation 21 provides for a general offence without *mens rea* (mental element) which is likely to cause a chilling effect on the media and freedom of expression in general which is the corner stone of democratic society and further violates articles of the Treaty as mentioned above;**

xii. **That the Minister for Information, Culture, Arts and Sports of the United Republic of Tanzania when making these regulations did go beyond the power imposed to him by statute (*ultra vires*) and thus is in violation of the principles of democracy and rule of law as provided under the Treaty."**

14. The Applicants ground their case on *the Constitution of the United Republic of Tanzania, 1977* and a number of legally binding and non-binding instruments; namely, the *Universal Declaration of Human*

Rights; African Charter on Human and Peoples' Rights; *International Covenant on Civil and Political Rights; Declaration on Principles of Freedom of Expression; Declaration on Principles of Freedom of Expression in Africa and Amsterdam Recommendations*; Freedom of the Media and the *Internet and Organization for Security and Co-operation in Europe (OSCE)*.

15. The Applicants seek the following remedies, as reproduced verbatim:

(i) A DECLARATION that the provisions of Regulations 3, 4, 5, 6, 7, 8, 9(a), 9(b), 9(c), 9(d), 9(e), 9(f), 9(j), 9(k), 9(l), 10, 11, 12(a), 13, 15, 16, 17, 18, 19, 20 and 21 of the Regulations violate the aforementioned provisions of the Treaty in that they restrict freedom of expression, democracy and other fundamental principles and objective of Partner States;

(ii) AN ORDER to the RESPONDENT State to cease the application and implementation of the Regulation and repeal or amend the Regulations to bring it in conformity with the fundamental and operational principles codified in Articles 6(d) and 7(2) of the Treaty;

(iii) An ORDER to the RESPONDENT state to guarantee non-repetition of enacting laws and regulations which violates the principles of fundamental human rights;

(iv) An ORDER to the RESPONDENT state to educate public servants including, law enforcement, members of parliament and judicial officers to observe human rights standards in executing their respective duties;

(v) An ORDER to the RESPONDENT state to review and reform laws and regulations violating principles and standards of human rights with respect to Freedom of Expression; and

(vi) AN ORDER that the costs of and incidental to this Reference be met by the Respondent.

D. THE RESPONDENT'S CASE

16. The Respondent's case is laid out in the Reply to the statement of Reference deponed on 15th October 2020, four Affidavits in support of the Reply to the Statement of Reference deponed by Dr Philip Haule Filikunjombe, Principal Officer in the Tanzania Communication Regulatory Authority in Response to the Applicants' Affidavits. Furthermore, the Respondent filed on 1st October 2025 a Respondent's Reply Submissions controverting the Applicant's Submissions. The same was highlighted during the oral submissions held on 13th November 2025.

17. The Respondent strongly opposed the Application on the grounds that the impugned Regulations are in compliance with the Treaty and the restrictions imposed are aimed at addressing the misuse of the Online Content Platforms in accordance with the Constitution and other international instruments to which the United Republic of Tanzania is a party.

18. The Respondent averred that the Regulations aim at protecting the rights of persons susceptible to being affected by the unregulated exercise of freedom of expression, through an online platform and are consistent with national laws and the Treaty. In that regard, the Respondent avers that the impugned Regulations aim at protecting

children owing to their vulnerability to content that may harm their moral or social wellbeing.

19. Thus, the Respondent prayed for dismissal of the Reference for want of merits with costs.

E. ISSUES FOR DETERMINATION

20. At the Scheduling Conference held in Kigali on 26th February 2025, the following issues for determination were agreed:

    (i) Whether the provisions of Regulations 3, 4, 5, 6, 7, 8, 9(a), 9(b), 9(c), 9(d), 9(e), 9(f), 9(j), 9(k), 9(l), 10, 11, 12(a), 13, 15, 16, 17, 18, 19, 20 and 21 of the Electronic and Postal Communications (Online Content) Regulations are in violation of Articles 6(d), 7(2) and 8(1)(c) of the Treaty;

    (ii) Whether the parties are entitled to the remedies sought.

F. THE COURT'S DETERMINATION

ISSUE 1: Whether the provisions of Regulations 3, 4, 5, 6, 7, 8, 9(a), 9(b), 9(c), 9(d), 9(e), 9(f), 9(j), 9(k), 9(l), 10, 11, 12(a), 13, 15, 16, 17, 18, 19, 20 and 21 of the Electronic and Postal Communications (Online Content) Regulations are in violation of Articles 6(d), 7(2) and 8(1)(c) of the Treaty

Applicants' Submissions

21. Counsel for the Applicant submitted that the essence of the Applicants' complaints in the instant Reference is that the impugned Regulations do not comply with the Constitution of the Respondent and by extension, the Treaty.

22. With regard to Regulation 3 Counsel Majanjara submitted that the provisions of the impugned Regulation contain vague terms and therefore is subject to multiple interpretations.

23. It is Counsel's view that the Regulation in question does not meet the three-part tier test, specifically, the test of clarity. That, the words such as "indecent materials", "hate speech" and "hate material", are unclear and, consequently, do not allow the subject to understand what they actually mean and to act in conformity.

24. To reinforce his stance, Counsel relied on the cases of **Lohé Issa Konaté vs Burkina Faso, App No.004/2013/(2014)** and **Mark Chavunduka and Ray Choto vs Republic of Zimbabwe** (citation not provided).

25. With respect to Regulations 4 and 5 and the First Schedule of the impugned Regulations, Counsel Majanjara submitted that Regulation 4 was amended in the year 2022 through GN No. 136 by including 2 sub-sections within it. It is Counsel's assertion that Sub-regulation 1 restricts the provision of online media services without obtaining a license from the Authority; namely, the Tanzania Communication Regulatory Authority (TCRA).

26. In that regard, Counsel finds that the word "resemblance" used in the definition is vague and individuals cannot understand whether a license will be required even for social media users who do not intend to provide services commercially.

27. Regarding Regulation 5, Mr Majanjara stated that it categorizes media users into two groups: category A, which includes those who

are providing online content services and category B, relating to those who provide content aggregation.

28. Canvassing Regulation 6 as amended by GN No. 136 of the year 2022, Counsel for Applicants stated that it restricts the right of access to information even to individuals who do not provide such information commercially, in light with the definition of the words "online media services".

29. To reinforce his stance, Counsel Majanjara relied on the cases of **Burundi Journalists Union vs The Attorney General of the Republic of Burundi, EACJ Reference No. 7 of 2013** and **Media Council of Tanzania & 2 Others vs The Attorney General of the United Republic of Tanzania, EACJ Reference No. 2 of 2017**.

30. Impugning Regulations 7 and 8, Mr Majanjara was of the view that the Authority can under the impugned Regulations give individuals licenses upon meeting all criteria, but it can also revoke or suspend the license. It is Counsel's argument that the impugned Regulations do not provide for the right or avenue to appeal within the law itself.

31. Thus, according to Counsel for Applicants, the legislation is silent on the right to appeal against such a decision, which restricts the right of access to justice and, in consequence, offends Articles 6(d), 7(2) and 8(1)(c) of the Treaty.

32. With respect to Regulation 9, Mr Majanjara submitted that the impugned provision is vague in the sense that it obliges a licensee to identify sources of content that requires them to monitor and moderate user generated content.

33. Counsel for the Applicants argued that the terms 'the prohibited content' and 'cultural sensitiveness of the public' are vague and ambiguous, owing to the variability of culture.

34. As to Regulations 10, 12(a) and 13, Counsel for the Applicants conceded that they were both repealed by Government Notice No. 136 of 2025, which he considered to be an admission to their fallibility because the Reference was filed in 2020 and the amendments were made afterwards.

35. On Regulation 15 which obliges licensees to adopt a Code of Conduct ensuring that 'prohibited contents' are removed, Counsel Majanjara argued that the terms "prohibited contents" are vague and do not enable the licensee to appreciate what the prohibited contents are.

36. Coming to Regulations 16 and 18 and the Third Schedule, Counsel Majanjara submitted that Regulation 16 also refers to 'prohibited content' which, according to him, is not certain.

37. As to Regulation 18 as amended, that, it requires licensees or users to take measures to ensure that children are protected against accessing any content which is harmful to their well-being. Although Counsel for Applicants did not dispute the necessity of the law to protect children, he avowed that the contested Regulation does not describe which kind of contents are harmful to the children.

38. Counsel for the Applicant further pointed out that the third Schedule to the impugned regulations contains a list of prohibited contents which are vague and, thus, do not meet the three-part test.

39. In the same vein, Mr Majanjara impugned Regulation 17 for wanting clarity on some terms like 'proper performance' and 'necessary performance', which he argued presents risk to privacy of the information of the users and the licenses.

40. Similarly, Counsel Majanjara faulted Regulation 19, paragraphs A and B and Regulation 20, for containing the terms 'prohibited content', which, according to him, are too wide and, hence, susceptible to multiple and arbitrary interpretations.

41. Furthermore, Counsel for Applicants impugned Regulation 21 as it provides for penalties for contravention of the online content Regulations on the ground that it is not necessary to criminalize the enjoyment of the freedom of expression, opining in the same time that the said Regulation does not provide for *mens rea*. On the other hand, Counsel was of the view that the Minister acted ultra vires as he has no power to impose punishment under the disputed Regulations.

42. At this juncture, it is worth to note that in his oral submissions, Counsel for the Applicants abandoned prayer (iii) and acknowledged that prayers (iv) and (v) are "overzealous." Thus, only prayers (i), (ii) and (vi) are still live.

The Respondent's Submissions

43. In his reaction to the Applicants' Submissions, Mr Kalokola submitted on each Regulation as impugned by the Applicants.

44. Starting with Regulation 3, Mr Kalokola contended that the said Regulation deals with definitions of the key terms used in the Regulations. That, the law cannot be exhaustive on each and

everything; that, the definition section helps to understand a term used in the body of the text of the law read as a whole.

45. Consequently, Counsel Kalokola asserted that Regulation 3 cannot be subjected to the three - tier test for the reason that it is not a substantive but an interpretation section, which provides for the definitions of the terms used.

46. Submitting on Regulation 4, 5 and 6 combinedly, Counsel Kalokola was of the contention that they have since been amended, thus, there is no live dispute on them.

47. As to Regulation 7 and 8 of the impugned Regulations, Counsel for the Respondent urged that Regulation 7 relates to the power of the TCRA and Regulation 8 deals with the power of the Authority to suspend and revoke the license.

48. To the issue relating to the remedy in case the Applicant is aggrieved by the Authority's decision to refuse, suspend or revoke the license, Counsel Kalokola referred to Section 39(1) of the Tanzania Communication Regulatory Authority Act, Cap.172 revised edition of the year 2023.

49. Concerning the right of Appeal, Counsel for the Respondent referred to the Act establishing the Fair Competition Tribunal, specifically, Section 86(1)(c) and Rule 3 of the Rules of the Tribunal.

50. Coming to Regulation 9, Mr Kalokola contended that the obligations contained in the Regulations are clear and referred the Applicant to the third Schedule list (which was amended and is currently the Second Schedule) where all the prohibited contents are highlighted.

51. In connection with Regulations 10 and 13, Counsel Kalokola submitted that they were deleted by GN No. 136 of 2022 and are consequently moot.

52. On the alleged vagueness of Regulation 15, Mr Nyakiha argued that the said Regulation, which imposes the Code of Conduct and accountability to any person who is hosting an online content, is clear.

53. With respect to Regulation 16 and 18, Counsel Nyakiha reiterated submissions as elaborated by Mr Kalokola and submitted that the meaning of "prohibited content" is clearly elaborated under the relevant Schedule. Counsel Nyakiha referred again to the Second Schedule which, according to him, clearly defines the impugned terms with respect to sexuality and decency, personal privacy, public security, criminal activities and illegal trade activities.

54. On Regulation 17, Counsel Nyakiha upheld that the impugned Regulation provides for a safeguard obliging an authorized person not to disclose information except to the relevant Authorities and when needed.

55. On Regulations 19 and 20, Mr Nyakiha conferred that the words "prohibited content" are clearly identified in the Second Schedule to the Regulations.

56. Additionally, Mr Nyakiha rebutted vigorously the Applicants' submissions with regard to Regulation 21. He argued that the Applicants' submissions that the Regulation provided excessive and unjustifiable criminal penalty and that the Minister acted *ultra vires* are unjustified.

57. In Mr Nyakiha's view, Section 103(1) of the Electronic and Postal Communications Act, empowered the Minister to make such Regulations and at the same time empowered the Minister to create the above offences and penalties thereto. Thus, that, the Minister acted in compliance with the law.

58. Finally, regarding the Applicants' submissions that Regulation 21 does not provide for the element of *mens rea*, Counsel Nyakiha referred to the wording of the contested Regulation and contended that it is upon conviction that the guilty person will be subjected to penalties.

The Court's determination of the Issue

59. We have considered the rival submissions of both Counsel and have taken into account the pleadings, evidence on record and authorities cited. We now proceed to consider the issue.

60. At the outset we deem it is essential to mention that the issue as agreed revolve around one major theme; namely, "Whether the provisions of Regulations 3, 4, 5, 6, 7, 8, 9(a), 9(b), 9(c), 9(d), 9(e), 9(f), 9(j), 9(k), 9(l), 10, 11, 12(a), 13, 15, 16, 17, 18, 19, 20 and 21 of the Electronic and Postal Communications (Online Content) are in violation of Articles 6(d), 7(2) and 8(1)(c) of the Treaty."

61. Thus, the matter herein relates to a Regulation touching on freedom of expression which is a cornerstone of democracy.

62. In the case of **Burundi Journalists Union vs The Attorney General of the Republic of Burundi** (*supra*), this Court stated as follows:

"It is difficult to imagine a guaranteed right more important to a democratic society than freedom of expression..."

63. Furthermore, in **Media Council of Tanzania & 2 Others vs The Attorney General of the United Republic of Tanzania** (*supra*), the Court formulated the test to be applied in determining whether a National law is consistent with the Treaty. This test is set out as follows:

    a) **Is the limitation 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;**
    b) **Is the objective of the law pressing and substantial? It must be important to the society; and**
    c) **Has the State, in seeking to achieve its objectives chosen a proportionate way to do so? (see also Pan African Lawyers Union and 4 others vs Attorney General of The Republic of Tanzania, EACJ Reference Nos 25 &27 of 2020)**

64. In the instant Reference, the Court has to assess if the impugned provisions of the Regulation meet the above three - tier test. Failure on one of them constitutes the violation of the right of freedom of expression and, consequently, a violation of Articles 6 and 7 of the Treaty.

65. We now apply the said three-part test on each of impugned Regulation and assess whether the provisions of the said Regulations comply with the standards.

a) Regulation 3

66. Applicants fault Regulation 3 for containing unclear definitions and thus violates the right to freedom of expression. On his part, the Respondent urged the Court to, interpret Regulation 3 as whole and referred to the Schedule to the Regulations that provides for a list of prohibited content.

67. In legal drafting, the definition section provides for the meaning of the concepts used and its application within the legal framework. It is some kind of a "mini-dictionary" in which the legislator gives a list of words and phrases used in an act or regulation.

68. Contrary to the substantive law that defines and provides the rights and duties of parties, the interpretation section limits itself to state what a term is to mean in the context of the law.

69. As such, the interpretation section cannot in principle jeopardize the enjoyment of the rights enshrined in the law and, thus, it cannot be subjected to be to the three-tier test.

b) Regulations 4, 5 and 6

70. As noted in the submissions and evidence before us, these Regulations have since been amended. Regulations 4 and 5 require the mandatory application for registration and fees payment as a condition precedent to operate as online radio, online television and bloggers.

71. The Applicants, both in their pleadings and submissions, did not question the clarity of the above Regulations. Thus, even if they were unamended, they would succeed the test of clarity.

72. On the second test regarding their importance to society, we note that the requirement for registration and fees payment pursue necessary requirements relevant to regulate and monitor a sensitive sector such as online media, enhance responsible online environment and serve as a means to verify credibility and reliability of media outlets, which is vital for maintaining public trust and confidence.

73. Therefore, regulation of a critical and delicate sector is a need for any society. Consequently, Regulations 4 and 5 meet the test under analysis.

74. Having succeed the first and second test, it behoves the Court to evaluate if the Respondent in seeking to achieve the above objectives chose a proportionate way to do so. In other words, is the mean adopted by the Respondent proportionate?

75. In the case of **Burundi Journalists Union** (*supra*), this Court stated as follows:

> ***"Articles 5-7 of the Press Law provide for accreditation of journalists but the main complaint made is that whereas accreditation per se is not objectionable, it is the manner of implementation of the law that is problematic."***

76. The mandatory licence is in our view a purely technical and administrative registration procedure that cannot amount to a violation of the freedom of the press.

77. In addition, for comparative purposes only, under Article 10(1) of the *European Convention on Human Rights*, it is provided that:

"Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by a public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises."

78. Consequently, the Regulations would succeed the test of proportionality.

c) <u>Regulations 7 and 8</u>

79. Applicants' Counsel submitted that the impugned Regulations fail to provide for remedies in case of suspension, refusal or revocation of the licence and are silent on that particular issue.

80. On his part, Mr Kalokola contended that the aggrieved party can proceed under another Act, the *Anti-Competition Act*. Indeed, *the Tanzania Communication Regulatory Authority Act, Cap. 172* provides under Section 39(1) that:

"A person aggrieved by the decision of the Authority or any other decision made in connection to the purposes of this Act may appeal to the Fair Competition Tribunal."

81. The first and second tier tests are met in that the Regulation are embedded in the law, its language is clear and its relevance is impeccable.

82. On proportionality, it is our considered view that the laws of the Respondent are complementary and aim at governing the society.

The Applicant cannot therefore sustain successfully that the impugned Regulations fail to provide for remedies while the same are provided under another law of the Respondent. Therefore, the impugned Regulations succeed the three - tier test required for each law and are in consonance with the Treaty.

d) <u>Regulations 9(a), 9(b), 9(c), 9(d), 9(e), 9(f), 9(j), 9(k), 9(l)</u>

83. Regulations 9(a), 9(b), 9(c), 9(d), 9(e), 9(f), 9(j), 9(k), 9(l) deal with the obligations of an online content service provider.

84. The impugned Regulation reads:

> **"A licensee shall comply with all the terms and conditions of the licence and observe the following**:
>
> **a) ensure that online content is safe, secure and does not contravene the provisions of any written law;**
> **b) take into account trends and cultural sensitivities of the general public;**
> **c) establish policy or guideline on online content safe use and make it available to online content users;**
> **d) use moderating tools to filter prohibited content;**
> **e) have in place mechanisms to identify source of content;**
> **f) take corrective measures for objectionable or prohibited content;**
> **g) ensure that prohibited content as set out in the Third Schedule to these Regulations is removed immediately upon being ordered by the Authority;**

h) be responsible and accountable for the information he publishes;

i) use password to protect any user equipment, access equipment or hardware to prevent unauthorized access or use by unintended persons;

j) pay regulatory fees;

k) not access, store, keep, publish, circulate or broadcast prohibited content; and

l) cooperate with law enforcement officers in pursuing functions under these Regulations."

85. The Regulation is impugned for the reason that it imposes a licensee, internet service provider and social media platform a wide, vague and ambiguous obligations unnecessary in a democratic society and, as it is, cannot enable the subjects of the law to actually know which content they can moderate or which content they should monitor.

86. Counsel for the Respondent rebutted the Applicants averment and maintained that the impugned Regulation provides for general obligations. For the Respondent, the obligations imposed are clear.

87. Regulation 9(a) relates to an obligation to "ensure that online content is safe, secure and does not contravene the provisions of any written law."

88. This Sub-Regulation has not been elaborated and nowhere do the Applicants show how the obligation under Regulation 9(a) is wide, vague and ambiguous.

89. The rationale behind that obligation is rooted in the need to protect individuals and community from harmful content. For the Court, such an obligation is necessary as it promotes media's accountability and serves the public interest.

90. To ensure that online content is safe and secure, there are several software tools available which can help users to detect unsafe content and mitigate potential risks.

91. In our view, Regulation 9 (a) meets the test of clarity, importance and proportionality.

92. In consequence, Regulation 9(a) is perfectly in compliance with Articles 6(d), 7(2) and 8(1)(c) of the Treaty.

Regulation 9(b): Obligation to take into account trends and cultural sensitivities of the general public.

93. Does Regulation 9(b) meet objectively the test of clarity and certainty?

94. The interpretation section of the Regulations does not provide for a definition of "trends and cultural sensitivities."

95. The Applicant submits that culture varies from one place to another. In the case of **Kaos GL vs Turkey, 2016, § 49**, the European Court of Human Rights (ECHR) held that:

> **"The view taken by their respective laws of the requirements of morals varies from time to time and from place to place, and often requires that, within a single State, the existence of various cultural, religious, civil or philosophical communities be taken into consideration."**

See *Guide on Article 10 of the European Convention on Human Rights Freedom of expression, 31 August 2025, § 649.*

96. In a country with different cultures, the lawmaker cannot close and ignore such a reality. It has to take into consideration the existence of various cultural communities.

97. In assessing whether the media has or not infringed the Regulation, consideration should be in *concreto*, taking into account particular circumstance of each case.

98. For the foregoing reason, Regulation 9(b) meets all the tests and thus comply with the Treaty.

Regulation 9(c): Obligation to establish policy or guideline on online content safe use and make it available to online content users

99. On Regulation 9(c), the Applicants did submit or otherwise seek to demonstrate to Court that the impugned sub-regulation is vague, ambiguous and imposes impracticable obligations.

100. The same reasoning applies to Regulation 9(j), 9(k) and 9(l), which relate respectively to the obligation to pay regulatory fees; to not access, store, keep, publish, circulate or broadcast prohibited content; and to cooperate with law enforcement officers in pursuing functions under the Regulations.

101. The Applicants failed to discharge the onus to prove that the obligations imposed under the above sub regulations fail to pass the test of clarity and proportionality.

102. Consequently, we found in above sub-regulations no ambiguity in their formulation, no uncertainty in their meaning and no vagueness in their content.

Regulation 9(d), 9(e) and 9(f) pertaining respectively to the obligation to use moderating tools to filter prohibited content, to have in place mechanisms to identify source of content and the obligation to take corrective measures for objectionable or prohibited content

103. The issue on these provisions centres on the terms "prohibited content." The terms 'prohibited content' appear in Regulations 9, 15, 16, 18, 19(a), 19(b), 20 and in the Third Schedule (now 2nd Schedule). Given their similarity, we address them simultaneously.

104. Counsel for the Applicants avers that the expression "prohibited contents" is too wide, vague, ambiguous and therefore violates 6(d), 7(2) and 8(1)(c) of the Treaty.

105. On his part, the Respondent, argued that the meaning of 'prohibited content' is clearly elaborated in the relevant Schedule; namely, the Second Schedule. Counsel for the Respondent invited the Court to go through the 2nd Schedule where the notion of "prohibited content" is defined with respect to sexuality and decency, personal privacy, public securities, criminal activities and illegal trade activities.

106. Upon reading the Schedule, it appears that it gives a wide range of acts that "shall be considered as 'prohibited content' for the purposes of these regulations."

107. For clarity, it is useful to reproduce here, the paragraphs of the Second Schedule clearly impugned by the Applicant.

Paragraph 1: Sexuality and Decency

108. This paragraph has to be read jointly with Regulation 18 relating to children protection.

109. Are the impugned words defined with clarity?

110. The Schedule largely provides for the prohibited behaviour with regard to Sexuality and Decency. In our considered view, the terms used must be understood in their ordinary meaning. Thus, the words 'sexuality and decency' are perfectly clear and comprehensible.

Hate speech and Content that would threaten the security

111. The words "hate speech" appear in Regulation 3 and in Paragraphs 7(c) and 9 of the Second Schedule.

112. The Second Schedule provides unambiguous definitions of those words. It states that hate speech relates to *"any portrayal in words, speech, pictures, etc., which denigrates, defames or otherwise devalues a person or group on the basis of race, ethnicity, religion or disability".* We find this definition to be both clear and certain. Unlike in the case of **Media Council** (*supra*) where it was found that the same words were not defined, in the impugned Regulations the definition is provided.

113. Regarding the words "threaten the security", we are of the view that the words are clear and unambiguous if the plain meaning is ascribed to them. This reasoning applies *mutatis mutandis* to the words: "bad languages", "Disparaging Words", "False, Untrue, Misleading Content". Those words as applied in the Regulations bear no other meaning than their plain meaning and within the context they have been applied.

114. Subjecting the sub-regulations 9(d), 9(e) and 9(f) to the three-part test, the Court has to evaluate first if their formulation is clear.

115. While the Applicants' Counsel is of the view that the above sub-Regulations contains vague and ambiguous terms, Counsel for the Respondent's contention is that the impugned words are clear, referring to the 2nd Schedule which provide for a long list of "*prohibited content.*"

116. The Court finds that Regulations 9(d), 9(e) and 9(f) as formulated, is clear and unambiguous considering the meaning ascribed to the same in the Second Schedule.

117. Having found that Regulation 9(d), 9(e) and 9(f) are clearly formulated, we now proceed to assess whether the Respondent in seeking to achieve its objectives chose a proportionate mean.

118. It is common ground that freedom of expression is not absolute and is susceptible to some limitations.

119. Article 19(2) of the *International Covenant on Civil and Political Rights* (ICCPR December 16,1966), recognizes that:

> **"...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."**

120. Similarly, the Constitution of the United Republic of Tanzania guarantees the freedom of expression under Article 18(a). It provides that:

> **"Every person:**

a) **has a freedom of opinion and expression of his ideas;**
b) **has a right to seek, receive and, or disseminate information regardless of national boundaries;**
c) **has the freedom to communicate and a freedom with protection from interference from his communication;**
d) **..."**

121. It is common ground that although freedom of expression is a fundamental right enshrined both in international and nation laws, the exercise of this right is subject to derogation or limitation justified by legitimate aim.

122. Article 19(3) of ICCPR provides that:

> **"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 (order public), or of public health or morals;**
> c) **In the same vein, the Constitution of the United Republic of Tanzania prescribes some restrictions to the freedom of expression's exercise. The limitations to the right to freedom of expression are provided for under Article 30(2) of the said Constitution of Tanzania in the following terms:**
>
> > **"It is hereby declared that the provisions contained in this Part of this Constitution which set out the**

principles of rights, freedom and duties, does not render unlawful any existing law or prohibit the enactment of any law or the doing of any lawful act in accordance with such law for the purposes of:

(i) ensuring that the rights and freedoms of other people or of the interests of the public are not prejudiced by the wrongful exercise of the freedoms and rights of individuals;

(ii) ensuring the defence, public safety, public peace, public morality, public health, rural and urban development planning, the exploitation and utilization of minerals or the increase and development of property of any other interests for the purposes of enhancing the public benefit;

(iii) ensuring the execution of a judgment or order of a court given or made in any civil or criminal matter;

(iv) protecting the reputation, rights and freedoms of others or the privacy of persons involved in any court proceedings, prohibiting disclosure of confidential information, or safeguarding the dignity, authority and independence of the courts;

(v) imposing restrictions, supervising and controlling the formation, management and activities of private societies and organizations in

(vi) the country; or

(vii) enabling any other thing to be done which promotes, or preserves the national interest in general."

123. By prohibiting media not to access, store, keep, publish, circulate or broadcast prohibited content and the duty to filter prohibited content, identify source of content and to take corrective measures for objectionable or prohibited content, the Respondent pursues a legitimate interest to the society.

124. Having succeeded in the first and second test, it behoves the Court to evaluate if the Respondent in seeking to achieve the above objectives chosen a proportionate way to do so.

125. The proportionality of the duties and limitations imposed in Regulation 9 are not in contention. We hold that the way chosen by the Respondent to achieve the objectives is quite proportionate.

e) <u>Regulations 10 and 13</u>

126. Parties converge on the fact that Regulations 10 and 13 were subsequently deleted by the amendments to the Regulations. However, the Applicants urges this Court to make a determination even by way of *obiter dictum*. Conversely, Counsel for the Respondent contends that as the Regulations have been deleted, allegations thereof are moot and academic.

127. The question to address is whether the test of mootness is met?

128. As defined by *Black's Law Dictionary, 10th Edition, p .1161*, a moot case is *"a matter in which a controversy no longer exists; a case that presents only an abstract question that does not arise from existing facts or rights*."

129. Applied to the impugned Regulations, it is our view that they are no longer in existence as they were deleted. Thus, there is no live dispute for resolution before the Court. The issue is moot.

130. In the case of **Human Rights Awareness & Promotion Forum (HRAPF) vs The Attorney General of Uganda and The Secretariat of the Joint United Nations Program on HIV/AIDS, EACJ Reference No. 6 of 2014,** citing with approval the decision in **Justice Okumu Wengi vs Attorney General of Uganda (2007) 600 KaLR,** this Court noted that:

> ***"Courts of law do not decide cases where no live dispute exists between the parties. Courts do not decide cases or issue orders for academic purposes only. Courts cannot issue orders where the issues in dispute have been removed or merely no longer exist. It is now a mere moot case."***

131. Further, in the case of **Legal Brains Trust (LBT) Ltd vs Attorney General of the Republic of Uganda, EACJ Appeal No. 4 of 2012**, the Court held that:

> ***"In this regard, it is a cardinal doctrine of our jurisprudence that a court of law will not adjudicate hypothetical questions namely, those concerning which no real, live dispute exists. A court will not hear a case in the abstract, or one which is purely academic or speculative in nature about which there exists no underlying facts in contention. The reason for this doctrine is to avoid the hollow and futile scenario of a***

court engaging its efforts in applying a specific law to a set of mere speculative facts."

132. Thus, in accordance with the jurisprudence of this Court, we decline to determine an issue where the decision would have no practical effect.

f) <u>Regulation 17</u>

133. Regulation 17 related to the obligation to disclose information. The impugned Regulation reads:

> **"(1) The Authority or any person employed by the Authority shall not disclose any information received or obtained during the exercise of its powers or performing its duties under the provisions of these Regulations, except where the information is required by relevant authorities according to the law;**
> **(2) Notwithstanding sub regulation (1), an authorised person who executes a directive or assists with execution of such directive and obtains knowledge of any information shall not use or disclose such information to another person unless such use or disclosure is necessary for the proper performance of the official duties of the authorised person."**

134. The Applicants' averments on this Regulation are grounded on the potential risk of intrusion to privacy of the users and licensees, in the sense that Officials can disclose the information where it is necessary for the proper performance of the official duties.

135. On his part, Counsel for the Respondent argued that the information will not be disclosed to any person, except to the relevant Authorities as provide for by the law.

136. In principle, privacy and human dignity are fundamental values in every society. It is these values which form the basis of the existence of professional secrecy. Professional secrecy is the cornerstone of the trust between the Authority and its personnel and individuals or licensees allowed or mandated to provide them with the relevant information. Thus, the Authority and its officials cannot disclose confidential information entrusted to them as that amounts to a breach of trust and renders the credibility of the Authority questionable.

137. Subjected to the three-tier test, as drafted, the Regulation is quite clear and has no ambiguity.

138. The impugned Regulation allows disclosure of information obtained when such a "*disclosure is necessary for the proper performance of the official duties of the authorised person.*" This exception to the general principle aims at a legitimate interest; namely the performance of official duties. The second test is met.

139. The last question is: Has the Respondent in seeking to achieve the above objectives chosen a proportionate way to do so?

140. The Regulation sets out a general principle that "*The Authority or any person employed by the Authority shall not disclose any information received or obtained during the exercise of its powers or performing its duties…*" Nevertheless, it provides for an exception where it is necessary to disclose such information in the absolute

interest of the society through the "performance of the official duties of the authorised person."

141. In terms of safeguard, the Regulation prescribes that a person whose professional secrecy has been disclosed according to the law, has a duty to preserve it unless the use or disclosure is necessary. The infraction to Regulation 17 constitutes an offence under Regulation 21, which is an important safeguard.

142. In our view, the Regulation succeed the test of proportionality.

g) <u>Regulation 18</u>

143. The impugned Regulation 18 reads as follows:

> **a) "A person who provides, has access to, hosts, uses online contents or operates an internet cafe shall take all possible measures to ensure that;**
> **b) children do not register, access or contribute to prohibited content;** and
> **c) users are provided with content filtering mechanism and parental control."**

144. Counsel for the Applicants agree with the Respondent on the necessity for the law to protect children. The only divergence is, for the Applicants, the law does not describe which kind of contents are harmful to children.

145. The Respondent on his part, refers the Applicants to the Second Schedule, which, according to him, has clearly defined what a prohibited content is, relating to, *inter alia*, sexuality and decency, personal privacy etc.

146. In our view, the language of the Regulation is clear. Its vagueness is not in question.

Is the objective of the law pressing and substantial? In other words, is it important to the society?

147. The impugned Regulations deals with a critical issue of protection of children from harmful online content broadcast.

148. The UN Declaration on the Rights of the Child (1959) states in its preamble that:

> "***Whereas the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, (...)"***

149. The impugned Regulation pursues a legitimate aim for the protection of children.

150. Article 3 of the United Nation Convention of the Rights of the Child (CRC) provides that:

> **"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."**

151. In the same line, Article 18 of the *African Charter on Human and Peoples' Rights* states:

> **"The State shall ensure ...the protection of the rights of ... the child as stipulated in international declarations and conventions."**

152. By the enactment of the impugned Regulation, the Respondent discharged his obligation to protect children against the risk of harm caused by misuse of new technology, including Electronic and Postal Communication.

153. Consequently, the impugned Regulation succeed the test under analysis.

154. On the third test, we note that the impugned Regulation impose an obligation to a person who provides, has access to, hosts, uses online contents or operates an internet café, to take measures to protect children. These measures are to ensure that "children do not register, access or contribute to prohibited content"; and to "provide content filtering mechanism and parental control."

155. In respect with the first duty, the provider has only to ensure that a person who applies for registering or access is not a minor. Regarding the second obligation, the provider shall provide for software tools that shall detect and filter unsafe content for the children. The third test is also met.

h) <u>Regulation 21</u>

156. As submitted earlier, the Applicants affirm that the contested Regulation does not provide for *men rea*; that, the Minister acted *ultra vires* as he has no power to impose punishment under the Regulation as penalties are also included within *the Electronic and Postal Communications Act*. Further, the Applicants maintain that the punishment provided for is severe and, in consequence, does not meet the test of proportionality.

157. Against the Applicant's submissions, the Respondent contends that a person cannot be convicted unless *mens rea* is met.

158. Regarding the power of the Minister to create offences and penalties, Counsel for the Respondent made reference to section 103(1) of the parent Act, *The Electronic and Postal Communication Act* (EPOCA).

159. Subjected to the three-tier test, we are satisfied that the Regulation is drafted in clear terms and is not ambiguous.

160. Regulation 21 reads:

> **"(1) A person who contravenes the provisions of these Regulations commits an offence and shall, upon conviction, where no specific punishment has been provided, be liable to a fine of not less than five million shillings or to imprisonment for a term of not less than twelve months or both;**
>
> **(2) Where a breach under these Regulations is committed by a licensee, the Authority may subject the licensee to the Content Committee.**
>
> **(3) Upon determination, and pursuant to subregulation (2), the Content Committee may take one or more of the following actions:**
> **(a) issue a warning to the licensee;**
> **(b) require the licensee to issue an apology to the public and the victim of complained content;**
> **(c) order removal of the content; or**
> **(d) impose a fine in accordance with the Act."**

161. As above stated, the Regulation meets the test of clarity.

162. On the second test, the *Electronic and Postal Communications (Online Content) Regulations* are critical for the society. To ensure that the subject of the law comply with Regulations, it is necessary to provide for a penalty in case of infraction of the Regulations. In creating offence and penalties, the Respondent took into account the fact that the Regulations touch on freedom of expression.

163. It would be harmful for the society if the violation of its law were not sanctioned. Thus, the impugned Regulation satisfies the test under discussion.

164. Assessing the third test, we evaluate whether the Respondent in seeking to achieve the above objectives chose a proportionate way to do so.

165. The Regulation prescribes for a wide range of punishments. It is not in doubt that the penalties are proportional to the gravity of the offence. In consequence, the test of proportionality is fully met.

166. As to the contention that the Minister acted *ultra vires*, Section103(1) of the *Electronic and Postal Communications Act, Chapter 306*, provides that "The Minister may make regulations upon recommendation of the committee on content related matters."

167. In light of the foregoing, it is our view that the Minister acted within the limits of the power vested on him by the law.

168. On the issue of *mens rea* of the offences under Regulation 21, we agree with the Respondent's Counsel that a person can only be held

liable upon conviction by a competent court. Thus, the Applicants' claims fail.

169. On the severity of the punishment, this Court finds that the role of a penal judge or magistrate is to weigh facts and assess the penalties to be imposed on the gravity of the offence. Although the provision provides for 5 million shillings as the minimum amount, we have not been persuaded by the Applicants that the minimum amount set is against any national legislation or the Treaty.

170. As stated by ICC in the case of **Mucic et al., (IT-96-21), Trial Chamber, 16 November 1998, § 1192; and Rutaganda (ICTR-96-3), Appeals Chamber, 26 May 2006, § 591**, the gravity of the offence was "*by far the most important consideration, which may be regarded as the litmus test for the appropriate sentence.*" See also **Barbora Hola, Alette Smeulers and Catrien Bijleveld, "International Sentencing Facts and Figures Sentencing: Practice at the ICTY and ICTR" in Journal of International Criminal Justice 9 (2011), 411-439**, www.legal-tools.org/doc.

171. The jurisprudence of the African Court on Human and Peoples' Rights is immensely instructive in this regard. In **Lohé Issa Konaté vs Burkina Faso** (*supra*), the Court stated:

> **"Apart from serious and very exceptional circumstances for example, incitement to international crimes, public incitement to hatred, discrimination or violence or threats against a person or a group of people, because of specific criteria such as race, colour, religion or nationality, the Court is of the view that the violations of laws on freedom of speech and the press cannot be sanctioned by**

custodial sentences, without going contrary to the above provisions."

172. Consequently, Regulation 21 is in conformity with the Treaty.

ISSUE 2: Whether the parties are entitled to the remedies sought

173. The Applicant prayed for declarations and orders as reproduced hereinabove in the Applicant's Case.

174. On the other hand, the Respondent opposed the prayers and sought for the dismissal of the Reference with costs for want of merits.

175. Considering our findings on Issue 1 that the Respondent did not violate the principles enshrined in Articles 6(d), 7(2), and 8(1)(c), remedies sought in the Reference lack basis and cannot be granted.

176. Regarding costs, Rule 127(1) of the Court's Rules provides that "**Costs in any proceedings shall follow the event unless the Court for good reasons otherwise orders**."

177. After considering the subject matter of this Reference, it appears to the Court that the same is of public importance.

178. Consequently, we would depart from the general rule on costs and exercise our discretion to order that each Party shall bear its own costs.

G. CONCLUSION

179. For reasons set out above, we see no merit in the Reference. It is hereby dismissed.

180. Parties shall bear their own costs.

181. It is so ordered.

Dated, signed and delivered at Arusha this 31st Day of March 2026.

Hon. Justice Yohane B. Masara
PRINCIPAL JUDGE

Hon. Justice Richard Wabwire Wejuli
DEPUTY PRINCIPAL JUDGE

Hon. Justice Richard Muhumuza
JUDGE

Hon. Justice Dr Leonard Gacuko
JUDGE

Hon. Kayembe Ignace Rene Kasanda
JUDGE