

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[CIVIL DIVISION]

APPLICATION FOR JUDICIAL REVIEW

IN THE MATTER OF THE JUDICATURE (JUDICIAL REVIEW) RULES S.I 11 OF 2009

MISC. CAUSE NO. 400 OF 2020

1. EDITORS GUILD UGANDA LIMITED
2. CENTRE FOR PUBLIC INTEREST LAW
LIMITED.....APPLICANTS

VERSUS

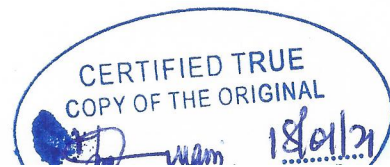
ATTORNEY GENERAL.....RESPONDENT

BEFORE: HON. JUSTICE ESTA NAMBAYO

RULING

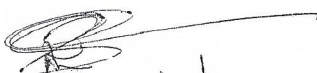
Editors Guild Uganda Ltd (the 1st Applicant) and Centre for Public Interest Law Ltd (the 2nd Applicant) brought this application against the Attorney General (Respondent) under Article 42 of the Constitution of the Republic of Uganda, S. 33 and 37 of the JA, S. 98 of the CPA and Rules 3(1)(a) and 6(1) of the Judicature (Judicial Review) Rules, 2009, seeking for: -

- (a) An order of certiorari to issue quashing the directives of the Media Council of Uganda issued in the *"Guidelines for Media Council of Uganda Accreditation of Journalists for Coverage of 2021 elections and Other State Events"* in the press statements of 10th December 2020 and 20th



December 2020 for being illegal (*ultra vires*), procedurally irregular and irrational.

- (b) An order of certiorari to issue quashing the illegal registration and accreditation of journalists to cover the 2021 general elections and other State events by the Media Council of Uganda for being illegal and irregular, for lack of a fully constituted Council and lack of quorum.
- (c) An order of prohibition to issue restraining the Media Council of Uganda and any other regulatory agents of Government and security organs from illegally and irrationally curtailing media and press freedom of journalists to cover the 2021 general elections and other State events.
- (d) A declaration that the Respondents failure to constitute, maintain and operationalize the statutory National Institute of Journalists of Uganda to enroll journalists under the Press and Journalists Act is illegal and irregular.
- (e) A declaration that the registration of journalists by the Media Council of Uganda without an operational National Institute of Journalists of Uganda to enroll journalists in accordance with the Press and Journalists Act is illegal and irregular.
- (f) An order of prohibition and permanent injunction restraining the Respondent's security agencies from implementing the illegal, irregular and irrational directives of the Media Council of Uganda, and illegally


18/1/2021

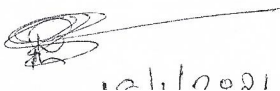


curtailing the media and press freedom of journalists in covering the 2021 general elections and other State events.

(g) Costs of the application be provided for.

The grounds upon which this application is based are set out in the affidavits of Daniel Kalinaki, the Interim Chairperson of the 1st Applicant and Francis Alphonse Obonyo the acting Executive Director of the 2nd Applicant but briefly are that: -

- (1) The 1st Applicant is a professional and umbrella body incorporated in Uganda as a company limited by guarantee comprising of Editors, Senior journalists and scholars of journalism and media studies, practicing journalism in Uganda, and fostering media professionalism, defence of media freedom and independence of the press.
- (2) The 2nd Applicant is a public interest organization incorporated in Uganda as a company limited by guarantee whose main objectives are to promote respect for human rights, constitutionalism, rule of law and good governance in Uganda; to engage in public interest litigation, and actively participates in matters of public accountability, transparency and adherence to the rule of law, and is clothed with sufficient interest in media and press freedoms and proper regulation of journalism in Uganda.
- (3) On the 10th December, 2020, the Media Council of Uganda issued directives in a press statement dubbed "*Guidelines for Media Council of*




12/1/2021

Uganda Accreditation of Journalists for Coverage of 2021 elections and Other State Events” directing all journalists in Uganda (local and foreign) to register and be accredited by Media Council of Uganda to cover the forth coming 2021 general elections.

- (4) The Media Council of Uganda in its press statement of 10th December, 2020 directed that no journalist would be allowed to cover any election and other State events without a press tag issued by the Council.
- (5) On 20th December 2020, the Media Council of Uganda issued another press statement, following its engagement with the 1st applicant in a meeting held on 15th December 2020, in which statement the Media Council ignored the concerns raised by the 1st Applicant and maintained the impugned directives to register and accredit all journalists in Uganda for them to be allowed to cover any election and other State events.
- (6) The Media Council in its press statement of 20th December 2020 extended the purported registration deadline for coverage of elections from 21st December 2020 to the 30th December 2020.
- (7) The Media Council published registration guidelines for journalists on its website, which guidelines do not state the requisite procedure documents and requirements for registration and are contrary to the requirements under Press and Journalists Act on registration of journalists.

- (8) The directives of the Media Council have been widely condemned as illegal, irregular and irrational for being contrary to the parent Act (the Press and Journalists Act, and ill intended with the intent of suppressing and illegally curtailing media and press freedom and independence, as well as constitutionally guaranteed freedoms of expression, access to information and the practice of journalism as a profession.
- (9) The directive to register all journalists before they are permitted to cover any election and other State events barely a month to the 2021 general elections is irrational.
- (10) The impugned directives will have the effect of fueling the brutality of security forces and malicious prosecutions against journalists in the guise of enforcing and implementing the impugned directive, further curtailing and unreasonably restricting constitutionally guaranteed freedoms and rights.
- (11) The Media Council of Uganda's actions of registering and licensing journalists is *ultra vires* the Press and Journalist Act in light of the Government's failure to constitute, maintain and operationalise the statutory National Institute of Journalists of Uganda to enroll journalists.
- (12) The Media Council of Uganda's actions in attempting to execute the functions of the Council under the Press and Journalists Act without a fully constituted Council and quorum is illegal and irregular.

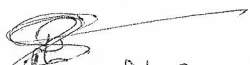

18/1/2021

(13) The directives of the Media Council of Uganda in its press statements dubbed *"Guidelines for Media Council of Uganda Accreditation of Journalists for Coverage of 2021 elections and Other State Events"* dated 10th December 2020 and 20th December 2020 should be quashed on grounds of illegality and being *ultra vires* the parent Act and existing laws, procedural irregularities, unreasonableness and irrationality.

(14) It is in the interest of justice that this application be granted with costs to the Applicants.

In reply, the Respondent filed an affidavit by Paul Ekochu, the Chairman of the Media Council and two supplementary affidavits by Linda Nabusayi Wamboka, the Presidential Press Secretary and Enanga Fred, the Commissioner and Spokesperson of the Uganda Police Force opposing the application.

The brief background to this case is that on the 10th December, 2020, the Media Council Uganda (MCU), issued a press Statement on *"Guidelines for media Council of Uganda Accreditation of Journalists for coverage of the 2021 General Elections and other State Events"*, where it made directives to all journalists in Uganda to register and be accredited by the Media Council in order to cover the 2021 general elections. According to the Press Statement, no journalist would be


18/11/2021


allowed to cover any election and other State events without a press tag issued by the Media Council.

On the 15th December, 2020, the 1st Applicant held a meeting with the Media Council in regard to the Press Statement. After the meeting, the Media Council extended the date set as deadline for registration for election coverage from the 21st December to the 30th December, 2020.

On the 30th December, 2020, the Deputy Inspector General of Police, made a statement on the enforcement of the Media Council guidelines for the 2021 general elections and other state events, stating that the Police and sister Security agencies would block journalists without Press cards from the Media Council from covering the 2021 general elections.

It is the Applicants' contention that the Media Council disregarded their concerns raised in the meeting held on the 15th December, 2020 and that they are aggrieved by the Media Council's Press Statement, hence this application.

Senior Counsel Francis Gimara together with Laston Gulume and Anite Catherine represent the Applicants while the Respondent is represented by Senior State Attorney Geoffrey Madete together with Mugisha Twinomugisha and Brian Musota (State Attorneys). Written submissions for both parties have been filed by the respective Counsel.


18/1/2021




Issues for trial are: -

1. Whether the application raises issues for judicial review
2. Whether the "Guidelines for Media Council of Uganda Accreditation of Journalists for coverage of the 2021 Elections and Other Events" are illegal, irrational and procedurally improper
3. What remedies are available to the parties

In his submissions in reply, Counsel for the Respondent raised a preliminary objection on grounds that the affidavit by Daniel Kalinaki in support of the application is fatally defective because it violates the rules of evidence by including hearsay evidence and evidence of opinion without presenting the holders of those opinions to swear affidavits. Counsel referred this Court to annexures H-1, H-2, I, J, K, L, M and N-1, N-2 to the affidavit of Kalinaki and explained that the documents are News Paper articles whose authors have not deposed affidavits in support of the application. He relied on the cases of Lukwago Elias -v- Electoral Commission HMC No. 393 of 2020, Hon. Lt. (Rtd) Kamba Saleh -v- AG, Constitutional Petition No. 38 of 2012, MK Financiers Ltd -v- Shah & Co MA No 900 of 2014 and S. 59 of the Evidence Act.

Counsel prayed that this court be pleased to strike out the affidavit of Daniel Kalinaki basing on the findings in the above cases. In the alternative Counsel prayed



18/1/2021

that the annexures and paragraphs referring to newspaper articles be struck off the Court record.

In reply, Counsel for the Applicants submitted that the newspaper articles annexed to the affidavit of Daniel Kalinaki are admissible under S. 30(h) of the Evidence Act as an exception to the hearsay rule. Counsel explained that the authorities relied on by the Respondent are distinguishable from the instant case. Counsel submitted that the affidavit is not defective as it discloses the sources of information which is not in the personal knowledge of the deponent. Counsel referred this Court to the cases of *Sir Dawda K. Jawara -v-The Gambia Communication No. 147 of 1995, Dallas County-v- Commercial Union Assurance Company ltd et al, Appelles 286, F. 2d 388 (5th Cir, 1961)* and went on to distinguish all the cases relied on by Counsel for the Respondent in his objection to affidavit evidence presented in this case. He prayed that the preliminary objection be over ruled so that the matter is heard on its merit.

Analysis

Order 19 rule 3 CPR provides that affidavits shall be confined to such matters as the deponent is of his or her own knowledge to prove, except on interlocutory application, on which statements of his or her belief may be admitted, provided that the grounds thereof are stated.


18/11/2021

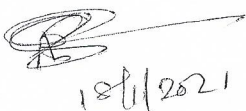
In the case of *Attorney General –v- Tinyefuza Constitutional Appeal No. 1 of 1997* Wambuzi CJ (as he then was) rejected newspaper copies for contravening the Evidence Act and as being hearsay which is generally inadmissible.

In *Col Dr. Kiiza Besigye –v-Museveni Yoweri Kaguta Election Petition No.1 of 2001* Court noted that Court can exercise its discretion and sever the inadmissible parts of the affidavit. The above rulings are binding to this Court. I find it proper to sever only the offending paragraphs and not strike out the entire affidavit. Therefore, I find merit in the preliminary objection raised by Counsel for the Respondent and I accordingly sever only those paragraphs and attachments identified as offending. I will now address the issues as set out for determination.

Issue No. 1: Whether the application raises issues for judicial review

Submissions

Counsel for the Applicant submitted that judicial review is concerned with challenging public bodies for acts which are illegal, irrational and procedurally improper. He relied on Art. 42 of the Constitution, Rule 1A of the Judicature (Judicial Review) Rules (as amended in 2019) and the cases of *Centre for Public Interest Law Limited –v- Attorney General, MC No. 91 of 2020, Petnum Pharmacy Limited –v- National Drug Authority MC No. 56 of 2018 and Ignatius Loyola Malungu –v- Inspector General of Government, MC No. 59/2016 [2017] UGHCCD 196.*



18/1/2021

Counsel submitted that in this case, the procedure through which the Media Council made and passed its guidelines for the accreditation of journalists for coverage of the 2021 elections and other State events was *ultra vires* the provisions and requirements of the Press and Journalist Act, the Electoral Commission Act and is contrary to the rights and freedoms guaranteed under the 1995 constitution of Uganda, which makes the directives illegal, irrational and tainted with procedural irregularities and therefore, amenable to judicial review.

In reply, Counsel for the Respondent submitted that the Applicants have no locus standi to file this application. He explained that the guidelines issued by the Media Council were directed to media houses and journalists and not the Applicants. That the Applicants have not demonstrated to this Court their interest in the directives and therefore, they have no locus standi to file this application for judicial review. Counsel relied on Rule 3A of the Judicature (Judicial Review) (Amendment) Rules, 2019 and the cases of Hon. Ssekikubo Theodore and 2 others -v- Attorney General, MC No. 92 of 2015 and Hon. Abdul Katuntu & Anor -v- MTN (U) Ltd & ors HCCS NO. 248 of 2012.

Analysis

Rule 3 of the Judicature (Judicial Review) (Amendment) Rules, 2019 defines Judicial Review as the process by which the High Court exercises its supervisory jurisdiction over the proceedings and decisions of subordinate courts, tribunals

and other bodies or persons who carry out quasi – judicial functions or who are charged with the performance of public acts and duties.

The purpose of judicial review is to ensure that the individual is given fair treatment by the authority to which he or she has been subjected to. (see the case of **Chief Constable of North Wales –v- Evans [1982]3ALLER) 141**

In Ignatius Loyola Malungu –v- Inspector General of Government, MC No. 59/2016 [2017] UGHCCD 196, the Court while relying on the case of Pastoli –v- Kabale District Local Government Council & Others [2008] 2 EA 300 noted that in order to succeed in an application for judicial review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality or procedural impropriety.

Under Rule 7A of the Judicature (Judicial Review) (Amendment) Rules, 2019, the Court in considering an application for judicial review must satisfy itself that:


- 1(a) the application is amenable for judicial review,
- (b) the aggrieved person has exhausted the existing remedies available within the public body or under the law and;
- (c) the matter involves an administrative public body or official among others.

A public body within the meaning of Rule 2 (a) of the Judicature (Judicial Review) (Amendment) Rules, 2019 includes the Government, any Department, Services or under taking of the Government.

Counsel for the Respondent submitted that the Applicants have no locus standi to file this application against the Respondent because the guidelines were issued to the Media houses and journalists and not the Applicants. Counsel for the Applicants relied on paragraph 2 of David Kalinaki's affidavit in support of the application and paragraph 2 of Francis Alphonse Obonyo's affidavit in support of the application and submitted that the Applicants have both a direct and sufficient interest in the lawful regulation of the press and journalists in Uganda, the respect for rule of law and human rights which gives them interest and locus to file this application.

Paragraph 2 of Daniel Kalinaki's affidavit in support of the application provides that the 1st Applicant is a professional and umbrella body incorporated in Uganda as a company limited by guarantee comprising of Editors, senior journalists and scholars of journalism and media studies, practicing journalism in Uganda and fostering media professionalism, defence of media freedom and independence of the press. A copy of the 1st Applicant's certificate of incorporation is attached as annexure "A" to Mr. Daniel Kalinaki's affidavit in support of the application.

Under paragraph 2 of the affidavit in support of the application by Francis Alphonse Obonyo, it is stated that the 2nd Applicant is a public interest organization



18/1/2021

incorporated in Uganda as a company limited by guarantee whose main objective is to promote respect for human rights, constitutionalism, rule of law and good governance in Uganda; to engage in public interest litigation and actively participate in matters of public accountability, transparency and adherence to the rule of law and clothed with sufficient interest in media and press freedoms and proper regulation of journalism in Uganda. Its certificate of incorporation is annexure "Q"

Under Rule 3A of the Judicature (Judicial Review) (Amendment) Rules, 2019, any person who has a direct or sufficient interest in a matter may apply for judicial review. By the nature of the Applicants' businesses as stated in the affidavits of Mr. Kalinaki and Mr. Francis Obonyo, it is my view that the Applicants have sufficient interest in this matter and can therefore file for judicial review.

On the other hand, the Respondent is mandated under Art. 119 (4) C of the Constitution to represent the Government in Courts or any other legal proceedings to which the Government is a party and that qualifies it to be sued on behalf of the Media Council of Uganda under Judicial Review.

In the case of **Arua Kubala Park Operators and Market Vendors' Cooperative Society Limited-v- Arua Municipal Council MC No.3 of 2016**, Stephen Mubiru, J, observed, while upholding the decision of Court in the case of *Associated Provincial Picture Houses Limited v. Wednesbury Corporation [1948] 1 K.B 223* that:



18th 2021

"judicial review is premised on allegations that a public body; - acted without powers (lack of jurisdiction); went beyond its powers (exceeded jurisdiction); failed to comply with applicable rules of natural justice; proceeded on a mistaken view of the law (error of law on the face of the record); or arrived at a decision so unreasonable that no court, tribunal or public authority properly directing itself on the relevant law and acting reasonably could have reached it"

The Applicant's contention in this case is that the Respondent's agency, the Media Council of Uganda made and passed a press statement for registration and accreditation of journalists for the coverage of the 2021 general elections and other state events which is ultra vires the provisions and requirements of the Press and Journalist Act. Daniel Kalinaki, the interim Chairperson of the 1st Applicant informed Court in paragraph 5 of his affidavit in support of the application that they held a meeting with the Media Council on the 15th December, 2020 to resolve their differences regarding the Press Statement but the Media Council ignored the concerns raised by the 1st Applicant.

In view of the above, I find that this application raises issues for judicial review and it is therefore properly before this Court.

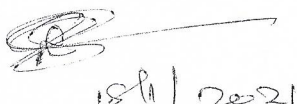
Issue No. 2: Whether the "Guidelines for Media Council of Uganda Accreditation of Journalists for coverage of the 2021 Elections and Other Events" are illegal, irrational and procedurally improper.


18/11/2021

Submissions

Counsel for the Applicants submitted that the Respondent's agency's process of making and issuing the impugned Guidelines is tainted with illegality, irrationality, and procedural impropriety. On the ground of illegality, Counsel relied on the case of *Ignatius Loyola Malungu -v- Inspector General of Government*, (supra), where court held that *illegality is when the decision-making authority commits an error of law in the process of taking or making the act, the subject of the complaint*. That acting without jurisdiction or *ultra vires*, or contrary to the provisions of a law or its principles are instances of illegality. That the Respondent's agency in this case acted contrary to clear provisions and requirements of the Press and Journalist Act Cap 105, and the Electoral Commission Act Cap 140.


Counsel explained that in attempting to register and accredit journalists under the impugned "Guidelines for Media Council of Uganda Accreditation of Journalists for Coverage of 2021 Elections and other State Events", without certificates of enrolment being issued by the National Institute of Journalists of Uganda, the Media Council contravened **S.16 and 26** of the Press and Journalist Act because the requirement for a certificate of enrolment under **S. 26** of the Press and Journalist Act is couched in mandatory terms and the Council is only mandated to issue certificates to journalists who are enrolled with the National Institute of Journalists (NIJU). That the NIJU is not functional.



18/1/2021

Counsel submitted that without a functional National Institute of Journalists of Uganda to enrol journalists, the registration and accreditation of journalists by the Media Council is ultra vires the procedure prescribed by the Press and Journalists Act and the Press Cards for which journalists are required to pay fees, is a disguised license or practising certificates for a particular thematic area of journalism which is not provided for under the Act. Counsel referred this Court to Paragraphs 7, 8 & 9 of Francis A. Obonyo's affidavit in support of the application and paragraph 6 of Daniel Kalinaki's affidavit in rejoinder. Referring to the Respondent's 1st Supplementary affidavit deposed by Lindah Nabusayi Wamboka, where she admits that she is the last president of the National Institute of Journalists of Uganda, which has been defunct for over ten (10) years, Counsel submitted that the Respondent admits that the Media Council, which cannot register journalists without being enrolled with the National Institute of Journalists of Uganda, acted illegally in attempting to register and accredit journalists without a functional Institute to enrol journalists.

Counsel further clarified that there is no fully functional regulatory institutional framework to lawfully implement the Press and Journalist Act as stated in Ms. Wamboka's affidavit and submitted that the Media Council's purported improvising to be a one stop centre body under the Press and Journalist Act is therefore, illegal.




18/1/2021

He relied on the case of ***Uganda Law Society -v- Kampala Capital City Authority & Another***, HCMA No. 243/2017 [2020] UGHCCD 82, where Court held that: -

"A delegate must exercise its jurisdiction within the four corners of its delegation and if he has acted beyond that, his/her action cannot have any legal sanction and is challengeable by way of judicial review".

Counsel emphasized that the Media Council's impugned Guidelines are therefore illegal, having been made to further an illegal registration and accreditation process contrary to the provisions and procedures of the Press and Journalist Act Cap 105 on registration of journalists for exercising powers which are not within the confines of the existing law.

In reply, Counsel for the Respondent submitted that the directives issued by the media Council are not irrational and do not unreasonably and unjustifiably restrict and or curtail the rights to practice journalism as a profession. That the directives were issued pursuant to the mandate of the Media Council to regulate the practice of journalism in Uganda, promote standards and to ensure recognition of media practitioners by state actors in order to give them a safe pass to cover events and relay information to the public. Counsel relied on the 2nd paragraph of annexure G1 and the 3rd paragraph of annexure H1 to the affidavit of Mr. Daniel Kalinaki and prayed that this Court finds that the directives issued were within the Respondents legal mandate as provided under the Act.


18/11/2020

Analysis

S.8 (1) of the Press and Journalist Act, establishes the Media Council.

S.9(1) of the Act defines the functions of the Media Council.

Under S. 16 (1) of the Press and Journalist Act, a person may apply to the executive committee for full membership or associate membership, and the committee shall, if it is satisfied that the applicant is an eligible person, inform the general assembly to approve the enrolment of the applicant as a full member or associate member of the institute on payment of the prescribed fee.

Under S.16 (2) Upon the enrolment of a person under subsection (1), the general secretary shall cause to be issued to him or her a certificate of enrolment.

Under S. 26 of the Act, the name and particulars of a person enrolled under the Act shall, on presentation of the certificate of enrolment to the council, be entered on the register of journalists of Uganda.


S. 27 of the Act mandates the Media Council to issue annual practising certificates to journalists enrolled under the Act, it provides that: -

S.27 (1) The Council shall, upon payment of the prescribed fees, issue a practising certificate to a person who is enrolled under this Act.

S.27 (2) The Practising certificate shall be valid for one year and is renewable upon payment of the prescribed fee.

Ms. Nabusayi Lindah states in paragraph 7 and 8 of her 1st supplementary affidavit in reply that the Institute has failed to deliver on its mandate. See also paragraph 6 of the affidavit in rejoinder by Mr. Daniel Kalinaki and page 15 of the submissions of Counsel for the Respondent where Counsel states that "it is not in dispute in this case that the NIJU is dysfunctional and is not operating as envisaged in the law". The above statements mean that there is no enrolment of members to the Institute under S. 16(1) of the Act. It would follow therefore, that Certificates of enrolment cannot be issued under S. 16(2). If certificates of enrolment cannot be issued, then registration of journalists under S. 26 of the Act is not achievable and therefore, practising certificates cannot be issued as provided for under S. 27 of the Act by the Council. Registration or issuance of certificates by the Media Council without following the legally provided procedure is an illegality and it would amount to a procedural irregularity.

In paragraph 11 of his affidavit, Paul Ekochu states that the Electoral commission issued a notice inviting persons to apply for accreditation for election reporting and observing in which the Commission required persons wishing to apply to first get clearance from the media Council which included registration and subsequently being issued with a press card. He referred to annexure "F" of his affidavit in reply. Paragraph 4 of annexure "F", requires applicants to the Commission to present clearance from the Media Council. The letter does not require people applying to


18/11/2021

present Certificates from the Media Council in order for them to be cleared for accreditation by the Commission.

Paragraph 1 of annexure "B" (the Press Statement of the 10th December, 2020) at page 3 states that: -

"The Media Council, therefore, hereby notifies all media houses, their staff, freelancers, and other stake holders that it is registering and accrediting journalists and media practitioners for coverage of events in Uganda in accordance with section 8(1) (d) of the Press and Journalist Act, cap 105. For avoidance of doubt, Section 8(1) (d) provides for promotion, generally, of the flow of information. The registration and accreditation exercises resumes next week".

S.8(1) of the Press and Journalist Act only establishes the Media Council. It is S. 9(1) of the Press and Journalist Act that deals with the functions of the Media Council. Even then, it does not mandate the Media Council to accredit journalists. The Media Council can only register and issue practising certificates to journalist who have enrolled with the NIJU and paid fees for practising certificates under the Act. Without the functioning of the National Institute of Journalists of Uganda the Media Council would be acting outside its mandate to register and issue practising certificates to journalists in Uganda.


18/1/2021

Accreditation of election observers is provided for under S. 16 of the Electoral Commission Act.

S.16 (1) of the ECA provides that the Commission may at any election accredit any individual, group or institution to act as an election observer.

Under S.16(4) of the ECA, no person, group or institution shall observe any election unless the person, group or institution has obtained prior accreditation from the Commission.

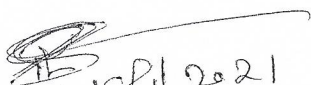
The Press and Journalist Act does not mandate the Media Council to accredit journalist as election observers.

Therefore, it was illegal and irregular for the Media Council to embark on the process of registering and accrediting journalists (both local and international) for the purposes of participating in the 2021 general elections.

Counsel for the Applicants came up with another issue on: -

The illegality of guidelines for violation of constitutionally guaranteed rights and freedoms.

Counsel submitted that the impugned guidelines have the effect of violating the constitutionally guaranteed freedom of expression, media rights and freedoms, right to access information and the right to practice one's profession under **Article 29 (1) (a), Article 41 (1) and Article 40 (2)** of the Constitution. He explained that the Press


18/11/2021



Statement by the Deputy Inspector of Police that *"the police and sister security agencies shall recognise only journalists and media practitioners who are accredited by the Media Council, during the coverage of political campaigns and other electoral events"* as stated in paragraph 8 and annexure F to Daniel Kalinaki's affidavit in support of the application will violate the above rights and freedoms which is contrary to the obligation of the State and State organs under Article 20 (2) of the Constitution to *respect, uphold and promote* the inherently constitutionally guaranteed rights and freedoms. Counsel relied on the case by the ***East African Court of Justice (EACJ) in Media Council of Tanzania v Attorney General Reference No. 2 of 2017***, where the Court relied on the decision of the African Commission on Human and People's Rights (ACHPR) in ***Scanlen & Holderness v Zimbabwe Communication No. 297/2003 (3rd April 2009)***, and held that the accreditation provisions and requirements of Tanzania's Media Services Act 2016 was contrary to the freedom of expression under the African Charter on Human and People's Rights. That the Court and the Commission respectively found that the respective impugned laws failed to meet the limitation of rights test and was in violation of freedom of expression under the Treaty and Charter.

Counsel also explained that in ***Scanlen & Holderness v Zimbabwe (supra)***, the ACHPR, relying on the Advisory Opinion of the Inter American Court of Human Rights (IACtHR) in ***Compulsory Membership in an Association Prescribed by Law***

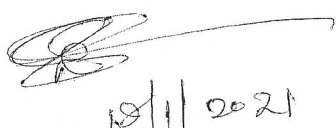

18/1/2021

for the Practice of Journalism, Advisory Opinion OC-5/85, Inter-Am. Ct. H.R. (Ser.A) No. 5 (1985), the Commission held that "the compulsory accreditation of journalists has been held at both national and international levels to be a hinderance to the effective enjoyment to the right to freedom of expression".

Counsel referred this Court to paragraph 9 of Daniel Kalinaki's affidavit in support of the application and submitted that the impugned Guidelines of the Media Council illegally curtail the independence of the press and media, contrary to the freedom of the press and other media guaranteed under **Article 29 (1) (a)** of the Constitution. Counsel explained that the curtailing of press and media freedom is well illustrated by the brutality of the security organs against journalists during the current electoral process. That the journalist who have been victims of the brutality of the security organs were well geared with press identification tags and that the security organs as deponed by Daniel Kalinaki have not taken any disciplinary actions against errant officers, despite having clear video -audio and photographic evidence of the brutalities. Counsel referred this Court to paragraphs 9 (j) of Daniel Kalinaki's affidavit in support of the application, and paragraph 4 (d) & (e) of Daniel Kalinaki's affidavit in rejoinder.

Analysis

Article 50 (1) & (2) of the Constitution. Art. 50(1) of the Constitution provides that any person who claims that a fundamental or other right or freedom



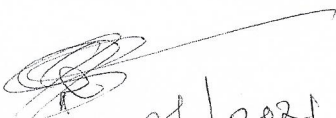
18/11/2021

guaranteed under this Constitution has been infringed or threatened, is entitled to apply to a competent court for redress which may include compensation.

Under Art. 50(2) Any person or organisation may bring an action against the violation of another person's or group's human rights"

In the case of *Interfreight Forwarders (U) Ltd. vs East African Development Bank*, SCCA No. 33 of 1992, Court held that: -

"The system of pleadings is necessary in litigating. It operates to define and deliver clarity and precision of the real matters in controversy between the parties upon which they prepare and present their respective cases and upon which court will be called upon to adjudicate between them. It thus serves the double purpose of informing each party what is the case of the opposite party and which will govern the interlocutory proceedings before the trial and what the court will have to determine at the trial. (See Bullen & Leake and Jacobos Precedents of Pleadings, 12th Edition page 3). Thus, issues are framed on the case of the parties so disclosed in the pleadings and evidence is directed at the trial to the proof of the case so set and covered by the issues framed therein. A party is expected and bound to prove the case as alleged by him and as covered in the issues framed. He will not be allowed to succeed on a case not set up by him and be not allowed at trial to change his case or set up a case inconsistent


18/1/2021

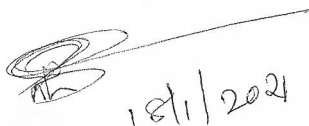
with what he alleged in his pleadings except by way of amendment of the pleadings."

In this case, only 3 issues were set out. The issue on illegality of guidelines for violation of constitutionally guaranteed rights and freedoms is not one of the issues that were set out for trial.

In any case Judicial Review is concerned with the decision making process to assess the manner in which the decision was made. See the case of Chief Constable of North Wales Police –v- Evans [1982] 3 ALL E.R. 141, where Lord Hailsham of St. Marylebone LC stated that: -

"It is trite that judicial review is concerned not with the decision in issue per se, but with the decision making process. Essentially, judicial review involves the assessment of the manner in which the decision is made, it is not an appeal and the jurisdiction is exercised in supervisory manner, not to vindicate rights as such, but to ensure that public powers are exercised in accordance with basic standards of legality, fairness and rationality."

Counsel's submissions in regard to the above issue seeks to address the effect of the Media Council on the guaranteed human rights under the constitution. My view is that the Constitutional articles and cases relied on by Counsel raise human rights issues that do not fall under judicial review remedies sought in this application. The constitutional articles relied on by Counsel would require a proper and specific


18/1/2024

application on violation of human rights under Art.50 of the Constitution. They cannot be brought as an issue under judicial review.

In the case of *Harrikisson –v-Attorney General (Trinidad and Tobago) [1980] AC 265 at 268* relied on in *Lukwago Elias –v- Electoral Commission MC No. 393 of 2020* Court noted the holding of Lord Diplock that:

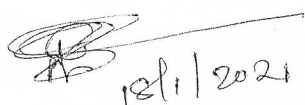
“The right to apply to the High Court for redress under S.6 of the Constitution when any human right or fundamental freedom is or is likely to be contravened, is an important safe guard of those rights and freedoms; but its value will be diminished if it is allowed to be misused as a general substitute for normal procedures for invoking judicial control of administrative action.”

The above case means that cases of violations of rights and fundamental freedoms should be filed as provided for under the constitution or the relevant law distinctly without joining them with administrative applications like it has been done in this case.

Remedies

Rule 3 of the Judicature (Judicial Review) (Amendment) Rules, 2019 defines certiorari as an order by Court to quash a decision which is ultra vires.

In the case of *Dott Services Ltd –v- Attorney General and Auditor General MC No. 125 of 2009*, Hon. Justice V.F Musoke Kibuka (as he then was) held that: -


 12/1/2021

"Certiorari issues to quash decisions made by a statutory body or by a public officer or an inferior court or tribunal.

An act of a governmental agency is illegal or ultra vires if it is beyond the express or implied powers conferred by statute. When a decision is illegal or ultra vires, the remedy is certiorari. A writ of certiorari should often freely be granted by the courts, where a prejudicial decision has been made by a public authority in the course of exercise of its statutory authority. If the decision is anticipated, then the remedy is prohibition. **(Kampala University-v- National Council for Higher Education MC No. 053 OF 2014).**

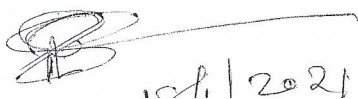
In this case, the Applicants sought orders of certiorari to issue quashing the illegal directives by the Media Council of Uganda made in the press statement of the 10th and 20th December, 2020, directing that journalists should be registered and accredited in order to cover the 2021 General Elections and other State events. The Presidential and Parliamentary General Elections were carried out on the 14th January, 2021 before the delivery of this ruling. However, the Local Government Elections which form part of the General Elections are yet to be held. Voting will take place on the 20th January, 2021. Therefore, I hereby make orders as follows: -

1. An order of certiorari is hereby issued quashing the directives of the Media Council of Uganda issued in the press statements made on the 10th and 20th December 2020 directing journalists to register and be


18/1/2021

accredited in order to cover the 2021 general elections and other State events for being illegal (*ultra vires*) and irrational.

2. An order of certiorari is issued quashing the illegal registration and accreditation of journalists to cover the 2021 general elections and other State events by the Media Council of Uganda for being illegal, irrational and procedurally irregular.
3. An order of prohibition is issued restraining the Media Council of Uganda and any other regulatory agents of Government and Security Organs from illegally and irrationally curtailing the media and the press to cover the 2021 general elections and other State events.
4. An Order of permanent injunction is hereby issued restraining the Respondent's Security agencies from implementing the illegal and irrational directives of the Media Council of Uganda restraining journalists from covering the 2021 General Election and other State events.
5. It is declared that the registration of journalists by the Media Council of Uganda without an operational National Institute of Journalists of Uganda to enrol journalists in accordance with the Press and Journalists Act is illegal, irrational and procedurally irregular.
6. It is declared that the Respondents failure to operationalize the National Institute of Journalists of Uganda established under the Press and Journalists Act is illegal and irrational.



10/1/2021

7. The Respondent pays costs of this application.

I so order

Dated, signed and delivered by mail this 18th day of January, 2021.



Esta Nambayo

JUDGE

18/01/2021

