

## **Court Orders Tanzania Minister to Annul the Order Banning Publication of the Local Newspaper 'Mseto' and Allow the Newspaper Resume Publication**

June 21, 2018

The East African Court of Justice, First Instance Division on 21st June 2018 delivered Judgment in the matter between The Managing Editor Mseto & Hali Halisi Publishers Limited and the Attorney General of the United Republic of Tanzania (Reference No. 7 of 2016).

It was the Applicants case that, on 4th August, 2016, Mseto published an article entitled "Waziri amchafua JPM" ("Minister soils JPM"). The news item was to the effect that one Engineer Edwin Ngonyani, an Assistant Minister in President John Pombe Magufuli's (JPM's) government had taken bribes from certain persons and entities in a bid to raise funds for President Magufuli's election campaigns. Following the publication, on 8th August, 2016 Mseto was served with a notice from Mr. Nape Nnauye, the former Tanzania Minister of Information, Youth, Culture and Sports demanding explanations regarding the published article by 9th August 2016 on specified hours.

On 9th August, 2016, the Applicants responded to the letter by stating that the news item was published to safeguard the image of the President of the United Republic of Tanzania and that of his office and that in the Applicants view, they had committed no illegality. However, on 10th August 2016 the Applicants were issued with an order banning Mseto publication. That, on 11th August 2016 a press conference was held by the Minister where he announced the Order banning Mseto publication. Among other reasons given verbally during the press were that Mseto has been publishing incitements and false news and it has been cautioned several times. That, on the same day, the Applicants were served with a letter from the Office of the Registrar of newspapers informing them of the above mentioned order that Mseto publishing was banned from 11th August 2016 onwards for a period of 36 months.

The Applicants therefore instituted the Reference challenging the aforesaid Order for being in contravention of the Treaty for the Establishment of the East African Community (EAC). It was the Applicants case that, the order restricts press freedom and the right to freedom of expression, which in turn violates the Respondent State's obligation to uphold and protect the fundamental and operational principles of the EAC and the universally accepted human rights standards.

Further alleged that the Order made by the Minister pursuant to Section 25 of Tanzania Newspapers Act (repealed) did not specify reasons for making the Order. The Applicants sought among other reliefs a declaration that the Order constitutes a violation of Tanzania's obligation under the Treaty and a violation of Mseto's right to freedom of expression.

The Respondent alleged that the right to freedom of expression is not absolute and the Order complies with the Respondent's obligations under the Treaty, the African Charter and the International Covenant on Civil and Political Rights (ICCPR). Further contended that the reasons for the order were set out under Section 25 of the Newspaper Act (repealed) and submits that the Order was made against the Applicant's newspaper because it was publishing incitements and false news. Further that, the punishment inflicted under Section 25 of the Newspapers Act is reasonable and in conformity with Articles 6(d), 7(2) & 8(1)(c) of the Treaty.

The Court in its Judgment found that the Respondent having failed to establish how the publication in the Mseto newspaper violated the public interest, or the interest of peace and good order of the people, lead to the conclusion that the impugned order was made in violation of the right of freedom of expression provided in Article 18(1) of the Constitution of Tanzania, or as provided for in Articles 19(3) of the ICCPR and 27(2) of the African Charter as a measure of universally accepted human rights standards.

Further, the order derogates from the principles of democracy and adherence to the principles of good governance, the rule of law and social justice. Court also found the order failed to conform with and adhere to the principles of accountability and transparency. By issuing orders whimsically and which were merely his “opinions” and by failing to recognize the right to freedom of expression and press freedom as a basic human right which should be protected, recognized and promoted in accordance with the provisions of the African Charter, the Minister acted unlawfully.

The Court in making the findings noted that, the provisions of Articles 6(2) and 7(d) as well as 8(1) the Treaty, are binding and not merely aspirational. The provisions are justiciable and create an obligation to every Partner State to respect those sacrosanct principles of good governance, and rule of law which include accountability, transparency and the promotion and protection of democracy. That these principles were violated in this case and further found that whereas the rights to press freedom, to receive and impart information are not absolute, in the present case, the restrictions were unlawful, disproportionate and did not serve any legitimate or lawful purpose.

The Court having held that the Minister acted in breach of the Treaty, it ordered that an unlawful action must be followed by an order taking the parties to the state of affair that existed previously as of 9th August, 2016 by ordering the resumption of the publication of Mseto as prayed.

The Court finally emphasised that, according to Article 38(3) of the Treaty, the United Republic of Tanzania is expected to take measures without delay, to implement this Judgment within its internal legal mechanisms.

The Judgment was delivered by the following Honourable Judges: Lady Justice Monica Mugenyi (Principal Judge), Mr Justice Isaac Lenaola (Deputy Principal Judge), Justice Dr. Faustin Ntezilyayo, Mr Justice Fakihi A. Jundu and Mr Justice Audace Ngiye.

Notice for editors:

Articles 6(d) provides on; Fundamental Principles of the Community

The fundamental principles that shall govern the achievement of the objectives of the Community by the Partner States shall include:

(d) good governance including adherence to the principles of democracy, the rule of law, accountability, transparency, social justice, equal opportunities, gender equality, as well as the recognition, promotion and protection of human and peoples rights in accordance with the provisions of the African Charter on Human and Peoples’ Rights;

Article 7 : Operational Principles of the Community

2. The Partner States undertake to abide by the principles of good governance, including adherence to the principles of democracy, the rule of law, social justice and the maintenance of universally accepted standards of human rights.

Article 8: General Undertaking as to Implementation

1. The Partner States shall: (c) abstain from any measures likely to jeopardise the achievement of those objectives or the implementation of the provisions of this Treaty.

About the EACJ

The East African Court of Justice (EACJ or ‘the Court’), is one of the organs of the East African Community established under Article 9 of the Treaty for the Establishment of the East African Community. Established in November 2001, the Court’s major responsibility is to ensure the

adherence to law in the interpretation and application of and compliance with the EAC Treaty. Arusha is the temporary seat of the Court until the Summit determines its permanent seat. The Court's sub-registries are located in the respective National Courts in the Partner States.