IN THE UNITED REPUBLIC OF TANZANIA
(MAIN REGISTRY)
AT DAR ES SALAAM

MISCELLANEOUS CAUSE NO. 2 OF 2018
IN THE MATTER OF AN APPLICATION FOR ORDERS OF CERTIORARI MANDAMUS AND PROHIBITION;
IN THE MATTER OF LAW REFORM (FATAL ACCIDENTS AND MISCELLANEOUS PROVISIONS) ACT CAP 310 R. E. 2002;
IN THE MATTER OF THE BANNING OF MWANAHALISI NEWSPAPER ORDER ISSUED BY THE DEPUTY MINISTER FOR INFORMATION, CULTURE, ARTS AND SPORTS ON THE 19TH SEPTEMBER 2017 (TITLED IN KISWAHILI YAH: KULIFUNGIA GAZETI LA MWANAHALISI KWA MUDA WA MIEZI ISHIRINI NA MINNE (24);
IN THE MATTER OF THE MEDIA SERVICES ACT NO 12 OF 2016;

BETWEEN

HALI HALISI PUBLISHERS LIMITED..... APPLICANT

AND

THE DEPUTY MINISTER FOR INFORMATION, CULTURE, ARTS AND SPORTS.....1ST RESPONDENT
THE DIRECTOR OF INFORMATION SERVICES DEPARTMENT.....2NDRESPONDENT
THE ATTORNEY GENERAL.....3RD RESPONDENT

RULING

MUTUNGI, J.

The applicant herein has filed the instant application seeking for orders of certiorari to remove and quash the order of the

1st respondent that banned the publication of the Mwanahalisi Newspaper for 24 months on 19th September, 2017. Further, that certiorari should be issued for the non – observance of principles of natural justice by the first Respondent and that certiorari should issue as the 1st respondent was not and is not clothed with such powers under the Media Services Act, No 12 of 2016 and the Electronic and Postal Communication Act No 3 of 2010.

The orders of Mandamus to issue to require the respondents to scrupulously respect the legal rights of the Applicant and to re – register it under the Media Services Act No 12 of 2016 as an existing Newspaper and not a Newspaper as intimated by the 1st respondent in her banning letter.

Further, the order of Mandamus should issue to compel the respondents to respect this court's Ruling in Misc. Cause No 27 of 2013 that barred them from suspending or banning the Mwanahalisi in any manner whatsoever.

Lastly for an order of prohibition to ban the Respondents from ever interfering with smooth operation and publication of Mwanahalisi Newspaper be it in prints or online and never banning it in any manner whatsoever.

The afore stated application is dully supported by a corresponding Affidavit deponed by Mr. Saed Kubenea, the Managing Director of Hali Halisi Publishers. The application in view thereof has been brought under *section 17 (2 – 4) of the Law Reform (Fatal Accidents and Miscellaneous Provision) Act Cap 310 RE: 2002 and Rules 4 and 8 (1) (a) – (b), 8 (2) – (3) and 8 (5) of the Law Reform (Fatal Accidents and Miscellaneous Provision) (Judicial Review procedure and Fees) Rules, G. N No 324 of 2014.*

In the corresponding Affidavit, the deponent averred that on 19th September 2017 the second respondent had written to the Editor of Mwanahalisi Newspaper vide letter with ***Ref. IH/RM/750/10/ titled YAH: KUWASILISHA MAELEZO YA UTETEZI NA KUOMBA RADHI KWA UMMA***. The reason being that, his office had reviewed the conduct and style of writing stories in Mwanahalisi Newspaper and found there is a violation of journalism ethics. The 2nd respondent had gone further and pointed out specific instances found in issue No 407 of 4th September, no 408 of 11 – 17 September, 2017, issue No 403 of September 7 – 13 and issue No 409 of 18 – 24 September, 2017**(annexure MWANAHALISI-2)**.

The deponent further stated, since the above articles were allegedly in breach of the journalism ethics and the law, the second respondent demanded the editor of Mwanahalisi Newspaper to avail explanations by 12: 00 PM of the same day in his office stressing reasons as to why appropriate measures should not be taken against the said paper. Pressed by time due to the short notice, a journalist at the Mwanahalisi Newspaper (one Yusuf Aboud) on behalf of the deponent did reply and quarried the short notice but proceeded to apologize for any inconvenience caused.

The foregoing notwithstanding the first respondent did issue an order banning the publication of Mwanahalisi Newspaper on 19th September 2017. The same was to be within 24 months, despite the fact that prior to the said notice the applicant had not received any complaint or communication from the 1st respondent. There were neither disciplinary proceedings against the applicant nor pending charges. Further, it was outlined in the said banning letter that, after the expiry of 24 months ban the applicant will be required to apply afresh for a new license and follow conditions thereto.

In their reply statement the respondents stated (in the Counter Affidavit sworn by Baraka Nyambita learned State Attorney) that, events took place after the article written on the 30th January 2017 to 5th February, 2017 Newspaper in a story headed ***"Ufisadi ndani ya Ofisi ya JPM"*** after which the applicant was called upon by the Government to apologize to his excellency the president.

As requested the Applicant vide a letter with reference No HHPL/ADM/03/17 dated 31st January, 2017 did apologize hence was reprimanded and ordered to apologize on the front page of the next issue of the said paper of 6th February, 2017. Things did not stop here since in her Newspaper (Applicant) of 17th to 23rd April, 2017 did publish another annoying article ***"Mwakyembe maisha yangu yako hatarini"*** and once again was summoned by the Registrar of Newspapers to justify the story. The applicant did concede to have published a fabricated story and hence was reprimanded. They proceeded and apologized in the 7th May, 2017 issue No 389.

The learned State Attorney proceeded to state the truth of the matter is that, following the sequence of events the

applicant was given a fair and adequate opportunity to demonstrate convincing explanations, an opportunity that was well utilized by the Applicant. The applicant never did ask for extension of time but went on to respond to the various allegations raised against them. What is evident is that they did not provide sufficient explanation or defense as to why legal steps should not be taken against them, this time around.

Once the matter was set for hearing the application was accordingly ordered to be deposed of by way of written submissions. On one side Dr. Rugemeliza Nshalla learned counsel represented the applicant, whereas on the other Baraka Nyambita learned State Attorney advocated for the respondents.

First and foremost, the applicant's counsel in his introductory remark prayed the corresponding Affidavit be read to form part of his submission. He went on to explain that, the banning order of the Mwanahalisi Newspaper by the 1st respondent had no legs to stand on. In his own words he deemed, *"it came from the blues"*. His opinion emanates from the fact that, the applicant had prior to this incidence not received

any framed charges against her. In doing so, the 1st respondent had failed to observe one of the crucial cardinal principle of law that **"nobody should be condemned unheard".** The decision was laden with breach of tenents of natural justice. To this, the learned counsel invited the court to the case of the court of Appeal, **MIC TANZANIA LIMITED VS MINISTER FOR LABOUR AND YOUTH DEVELOPMENT AND ATTORNEY GENERAL CIVIL APPEAL NO. 103 OF 2014 (CAT – DSM) (UNREPORTED).**

The applicant's counsel further submitted that, the response by the applicant was in view of the letter written by the second respondent dated 18/September, 2017 which was served on the applicant at 11:00 am and the response to be made within an hour. In view of this scenario, this is the reason why the applicant's counsel opined that, the applicant was condemned unheard. To cement his argument, the learned counsel cited the case of **SADICK ATHUMANI VS THE REPUBLIC [1986] TLR 235** and the famous divine doctrine of the garden of Eden by Byles – J in the case of **COOPER VS WANDS WORTH BOARD OF WORKS (1861 – 73). ALL ER REP 1554.**

The applicant's counsel further argued that *section 52 and 54 of the Media Service Act* do not in any way empower the

second respondent to require the Editor of the Newspaper to give an explanation let alone a defense. He went on to explain that, the letter written by the second respondent was not at all at the instance of the 1st respondent but of himself. It is obvious the 1st respondent failed to prefer any charges against the applicant. Put in his own words "this was a monumental error". It is an error in the sense that preferring charges against anybody subject to an inquiry is an essential pre requisite. To this he cited the case of **IN THE MATTER OF EXECUTION COMMITTEE AND COUNCIL OF THE INSTITUTE OF FINANCE MANAGEMENT.**

The learned counsel was baffled by the allegations brought forward by the respondents that, the 1st respondent had acted on behalf of the Minister since the Minister for Information, Culture, Arts and Sports was outside the country. He pressed that, there is no evidence whatsoever to this effect hence these allegations were an after – thought. Be as it may, the law does not confer powers to the Minister to ban a Newspaper in this Republic. The learned counsel referred to section 59 of the Media Act No 2016 which was cited by the 1st respondent when banning the said Newspaper. In that regard, he was of a firm view that the minister under the cited

provision is only empowered to ban a publication of the "content" that jeopardizes national security. This being a serious transgression of law, the order should be removed by this court through the issuance of the order of certiorari.

The learned counsel submitted that, once it is established that the letters of 18th September, 2017 and 19th September, 2017 were written without authority to cause a newspaper editor to explain to him any publication in his/her newspaper and further found that the Deputy Minister acted on the purported charges, then the 1st and 2nd respondents should be held responsible for acting contrary to the law. An order of Mandamus is apt, a strict observation of the law in their dealings with the applicant should be adhered to.

The counsel went on to submit that, there is yet another scenario why an order of Mandamus should issue to the 2nd respondent. He stated, while banning the Mwanahalisi newspaper the Deputy Minister did clearly state that after serving the two-year ban, should then re - register. In his firm opinion this act of the Deputy Minister amounted to de – registering the said newspaper, the powers she definitely did

not have. The second respondent should be compelled to re – register without any equivocation.

The learned counsel went on to comment on the 1st and second respondent's sheer disregard to the clear and unambiguous order of this court issued on 4th of September 2015 by Hon. Bongole, J in Miscellaneous Cause No. 27 of 2013 (annexures Mwanahalisi, J" and Mwanahalisi 5 – 5). He was of the opinion that; an order of prohibition should issue against them. According to the learned counsel, the past habit forewarns of the future actions they may take against the applicant. He invited the court to peruse through the book titled "**Judicial Review Law Procedure and practice, 2nd Edition Law Africa, Nairobi (2009)** by Peter Kaluma at page 119. The learned counsel was convinced in the given circumstances (behavior of 1st and 2nd respondent) that this court can still issue an order of prohibition even where there is an alternative remedy available. The 1st and 2nd respondents if given an opportunity will once again ban or suspend the publication of Mwanahalisi Newspaper.

In his concluding remarks the applicant's counsel called upon the court to take note of the fact that, the action of the 1st respondent has caused huge losses to the Applicant. The

Applicant has been forced to lay off its journalists, losing not less than Tshs 50,650,000/= per week, and the families of the affected journalists consequently stand to suffer. This is the very reason that, this court is obligated to correct the wrong done by the public authority who has total disregard of the precepts of law. The same is by issuing the orders of certiorari, Mandamus and prohibition as prayed in the chamber summons with costs.

On the other side of the coin in reply thereof, Mr. Baraka Nyambita State Attorney on the offset prayed the court to adapt their Counter – Affidavit and statement in reply to this application to form part of their submission. He then proceeded to highlight the broad grounds to be proved in issuance of prerogative orders to wit, illegality, irrationality and procedural impropriety. In support of his words, the state counsel referred to the case of **COUNCIL OF CIVIL SERVICE UNIONS VERSUS THE MINISTER OF STATE FOR CIVIL SERVICE (1985) AC 374** and the case of **LAUSA ALFAN SALUM AND 116 OTHERS VERSUS MINISTER FOR LANDS HOUSING AND URBAN DEVELOPMENT AND NATIONAL HOUSING CORPORATION [1992] TLR 293** and **JOHN MWOMBEKI BYOMBALIRWA VERSUS**

THE REGIONAL COMMISSIONER AND REGIONAL POLICE COMMANDER, BUKOBA [1986] TLR PAGE 73.

The learned State Attorney argued that in his settled views, the applicant had two major points of complainant: -

(i) *That the 1st respondent did not observe the principle of natural justice as she did not accord the applicant with the right to be heard before banning the Applicant's newspaper.*

(ii) *That the first respondent under the Media service Act No 12 of 2016 and the Electronic and postal communication Act No 3 of 2010 has no power to ban the online publication of any newspaper.*

The learned Attorney made very brief answers to these points. First and foremost, he contended that, the applicant had admitted in principal that she had been required by the second respondent to defend herself as to why appropriate measures should not be taken against her paper. The applicant did respond to the accusations leveled against her and categorically wrote a letter of apology. In view thereof the learned Attorney was of a settled opinion that, the

applicant's claim of not being accorded a right of hearing is devoid of merit and the court should disregard the same.

Secondly, it was the learned Attorney's submission that, the 1st respondent had the authority to ban the said newspaper in line with the provisions of section 4 of the interpretation of the laws Act, (Cap 1 RE: 2002). In the said act it has been interpreted, a **Minister** to include a **Deputy Minister**. Once section 59 of the Media Service Act, no 12 of 2016 confers powers to the minister to prohibit or otherwise sanction the publication of any content that jeopardizes national security or public safety, then the Deputy Minister is seen to have same powers as those of the Minister.

On the same footing the second respondent being the secretariat of the Minister of information, culture, arts and sports had the requisite mandate to write to the applicant as she did under the auspicious of the Media Service Act and Regulation thereof. It was the prayer of the learned state counsel that the instant application is devoid of merit, hence should be dismissed with costs.

In rejoinder the applicant's counsel submitted by retaliating as to what he had elaborated in his submission in chief. The

bottom line being that the second respondent had and has no authority to do all that he did. Having been vested with no authority to write the letters in controversy demanding explanations/defense from the applicant he acted outside his Mandate and thus his actions were ultra vires the laws of this land. This is the very reason the remedy of the writs of certiorari, Mandamus and prohibition should be issued by this court. Further that section 59 of the Media Service Act Cap 12 of 2016 only empowers the Minister to ban the publication of "content" in the newspaper and not the newspaper itself. In that regard the Deputy Minister acted with no authority. The same arguments stand when the Deputy Minister required the Applicant to seek fresh registration after the expiration of the 24 months' punishment. The learned counsel prayed the applicant be given back its license since the 1st respondent had acted and banned the newspaper without authority.

Lastly he prayed the respondents' transgression of the law has caused the Applicant unleashed calumny hence they should suffer the inescapable consequences as prayed for in the chamber summons and statement with costs.

I now turn to the merits of the application. When considering the same, I am mindful of the seriousness of the issues involved. I therefore accord it equal weight when deciding the same. As to what has prompted the applicant to come before this court ostensibly in my settled opinion, is the belief that her right has been taken away. The material before the court is thus that on 18th September, 2017 the second respondent wrote to the Editor of Mwanahalisi Newspaper vide letter with reference No IH/RM/750/10 that his office had reviewed the conduct and style of writing stories in Mwanahalisi Newspaper and had found it had violated journalism ethics. After these observations the second respondent went forth and pointed out instances such as **"Makinikia yakwama"** and **"Mkuu wa Wilaya ana chafua kazi ya MAGUFULI"** in issue No. 407 of 4th – 11th September 2017, **"Tulichagua Viongozi sasa tunaongozwa na vyombo"** issue No. 408 of 11th -17th September, 2017, **"siri 30 Lipumba NEC zafichuka"** issue No. 407 of 7th - 13th and **"Tumuombee Magufuli au Tundu Lissu"** of 18th -24th September 2017.

Having so elaborated as above, the second respondent demanded that, the editor of the Mwanahalisi Newspaper should present an explanation by 12 pm on the same day to

his office as to why appropriate measures or steps should not be taken against the said newspaper. One Yusuf Aboud on behalf of the Editor did respond by stating very clearly as per annexure "mwanahalisi – 4" that, they had acknowledged receipt of the second respondent's letter at 11a.m and lamented that the time given was too short. For sake of clarity the response was: -

> ***"imepokelewa saa tano kamili asubuhi na ukatutaka tukujibu kabla ya saa sita kamili kwa maelezo yoyote yale, huu ni muda mfupi sana kwa mawasiliano ya kiofisi ya aina hii na inatufanya tuhisi kuna nia iliyofichika ya ofisi yako dhidi ya gazeti letu".***

Mr. Yusuf Aboud further elaborated;

> ***"hata hivyo licha ya changamoto hii ya muda, tumeona ni busara kujibu barua yako kwa haraka. Baada ya kupitia tuhuma zilizoelekezwa kwetu, tumeona kwamba nyingi zishajibiwa, isipokuwa moja mpya inayohusu Makala isemayo, "Tumuombee Magufuli au Tundu Lissu?"***

In lieu of the explanation given by the Applicant's journalist the verdict was as follows: -

"kwa mamlaka aliyopewa Waziri wa Habari, utamaduni, Sanaa na michezo chini ya kifungu 59 cha sheria ya Huduma za Habari Na. 12 ya mwaka 2016, nimeamua kulifungia Gazeti lako kuchapishwa (iwe Makala ngumu au mtandaoni) na kusambazwa kwa kipindi cha muda wa miezi ishirini na minne (24) tangu tarehe ya barua hii kutokana na kutoridhishwa na utetezi wako uliotolewa kupitia barua yako yenye kumb. Na. HHPL/04/02/24 ya tarehe 18 Septemba, 2017".

The author of the letter ANASTAZIA.J. WAMBURA (Mb), the Deputy Minister of Information, Culture, Art and Sports written on 19th September, 2017 did conclude as hereunder: -

"HIVYO BASI, nimechukua hatua hizi nikiwa na nia njema kwako kwamba utatumia kipindi hiki kutafakari upya wajibu wako katika kutii misingi ya taaluma ya habari, sheria za nchi na za kimataifa ili adhabu hii itakapo malizika, na iwapo utataka kuendelea na kazi hii, basi gazeti lako lifuate taratibu za kisheria za kupewa leseni upya na kuendesha kwa masharti ya leseni hiyo".

Now the pertinent question or issue is whether the applicant was given an opportunity to be heard. This issue falls within one of the most respected cardinal principle of Natural justice. The same was observed in the case of **RUKWA AUTOPARTS AND TRANSPORT LTD VERSUS JESTINA GEORGE MWAKYOMA [2003] TLR 251** where the supreme court of this land held;

> ***"it is a cardinal principle of natural justice that a person should not be condemned unheard but fair procedure demands that both sides should be heard, 'audi alteram partem".***

The same was emphasized in the case of **BALCO EMPLOYER'S UNION V UNION OF INDIA (2002) 2 SCC 333** that;

> ***"The principle of 'audi alteram partem' is the basic principle of natural justice. The omnipotence inherent in the doctrine is that no one should be condemned unheard".***

I would further associate myself with the words of Byles, J. in the case of **COOPER VERSUS WANDWORTHS BOARD OF WORKS (supra)** that: -

"The law of God and man both give a party an opportunity to make his defense, if he has any..... even God himself did not pass sentence upon Adam before he was called upon to make his defense".

Considering the scenario in this application, the applicant was called upon to give an explanation on 18th September 2017 within a few hours. The time given should have been adequate so that the applicant would prepare an effective defense. For any stretch of imagination, half a day can in no way be termed as adequate time in the circumstances of the matter. That being not enough, the letter sent to the applicant did not contain precise charges, it was full of narratives of various newspaper extracts. It was supposed to be clear and precise so as to give the applicant adequate information of the case she was facing.

The learned state counsel reacted that the applicant was given an opportunity of hearing and in actual fact did respond by apologizing. With due respect to the state counsel, the non-observance of natural justice is in itself a prejudice caused, merely because the facts are admitted or

are indisputable it does not follow that the principles of natural justice should not be observed.

The foregoing notwithstanding, there is yet another crisp issue, whether the second defendant was vested with powers to act as he did. In my respectful opinion this is where the borne of contention was between the two conflicting sides.

The relevant part from the letter dated 18/9/2017 that sparked off the controversy, the one written by the Director of Information services department reads: -

> ***"ofisi ya mkurugenzi wa Idara ya Habari imetafakari kwa kina juu ya mwenendo na mtindo wa uandishi wa Habari na Makala katika Gazeti lako na kuwa kwa ujumla kuna ukiukwaji mkubwa sana wa misingi ya maadili ya taaluma ya Habari. Habari na Makala nyingi zinazochpishwa katika gazeti lako ni za uongo, upotoshaji, uchochezi na zinalenga kuwafanya wananchi waichukie serikali yao au uongozi wao huku zikikiuka kwa kiasi kikubwa maadili ya uandishi wa habari".***

Another striking part of the letter which forms the conclusion is coached in the following words: -

> **"hivyo kukiuka vifungu vya 52(1)(a), (c), (d) na (e) na 54 (1) vya sheria ya huduma za Habari Na.12 ya mwaka 2016, Ofisi ya mkurugenzi wa Idara ya Habari (MAELEZO) inakutaka kuwasilisha maelezo yako leo jumatatu septemba 18, 2017 kabla ya saa 6.00 mchana kwanini Gazeti lako lisichukuliwe HATUA STAHIKI ZA KISHERIA".**
>
> **Dkt. Hassan Abbasi.**
> **MKURUGENZI WA IDARA YA HABARI- MAELEZO**

It does not take magic to find that the above letter was written by the second respondent in his personal capacity and not at the instance of the first respondent. One will then ask what are the functions of the Director of Information and media services as envisaged by the law. Section 5(a)-(n) of the media services Act delineates the functions of the Director of information and media services Department which shall include to: -

a. *Coordinate all Government communications unit in the ministries, local Government Authorities, independent departments and Agencies.*

b. *Advice the Government on all matters relating to strategic communication.*

c. *Develop and review information and government communication policies regulations, standards and guidelines.*

d. *Monitor and evaluate the implementation of information and government policies, regulations, standards and guidelines.*

e. *License print media.*

f. *Coordinate press conferences for government officials*

g. *Develop and coordinate capacity building of government communication officers in collaboration with immediate employers.*

h. *Coordinate press coverage of national festivals and visiting Heads of state and Dignitaries and other issues of national importance.*

i. *Coordinate Government video photographic activities.*

j. *Prepare official portrait of the president, vice president and the prime minister.*

k. *Manage the national portal in collaboration with relevant government agencies, websites and other Government communication platforms.*

l. *Coordinate Government advertisements.*

m. *Undertake the collection, processing, packaging and distribution of information, news and news material to newspapers, broadcasting services, news agencies, members of the public and other persons whether in their individual capacity or in a representative capacity and: -*

n. *Carry out such other activities associated with strategic communication collection, processing, packaging of information and distribution of news or news material as the Government may from time to time direct.*

In light of the above listed functions, it is vividly clear that the second respondent had no iota of right nor authority to

cause any newspaper editor to explain to him any news extracts or articles published in his/her newspaper as was the case in this matter.

On the same footing, the applicant's right to present her case was not observed since the second respondent was not a person mandated with disciplinary authority, as it was found by this court in a panel of three judges and equally pointed out by the Applicant's counsel in the case of **MANAGING EDITOR OF MAWIO NEWSPAPER AND VICTORIA MEDIA SERVICES VERSUS THE MINISTER FOR INFORMATION, CULTURE, ARTS AND SPORTS, MISC. CAUSE NO. 15 OF 2016- HC OF TANZANIA** at page 18 that;

> ***"we are equally satisfied that the correspondences between the second respondent and the petitioners did not constitute a hearing in law because the said second respondent is not the disciplinary authority under section 25 (1) of cap 229".***

I am likewise persuaded and convinced by the stated findings of which I wish to borrow and proceed to state that, sections 54 and 52 of the media services Act cited in this letter do not in any way empower the second respondent to

do that which he did. To put it simply, the second respondent did not only have no powers to require the editor to give him an explanation but even the defense as was stated by the applicant's counsel.

The learned state attorney to the contrary did not make any submission on this aspect. The court is hence of a settled view that the letter of 18th September 2017 remains to be a valueless piece of paper void of any binding effect, in that regard the first respondent had acted literally on nothing whatsoever. It follows that the subsequent decision which was finally arrived at by the Deputy Minister was in utter disregard of natural justice and therefore was in kind no decision at all, it is illegal and hence a nullity. The foregoing was held by the Apex court in the case of **MIC TANZANIA LIMITED (supra)**.

In view of the above analysis made, I proceed to grant the certiorari order by quashing and removing the first respondent's order that banned the publication of Mwanahalisi newspaper for 24 months vide letter titled, **"Kulifungia Gazeti la Mwanahalisi muda wa miezi ishirini na minne (24) of 19th September, 2017".**

As already stated earlier in the ruling the banning order was also pegged with an order of re- registration. This order was made following a letter of 18/9/2017 which has already been found was a nullity. The court thus proceeds to grant an order of Mandamus compelling the second respondent to re-register the Mwanahalisi newspaper which was an existing newspaper.

Lastly on the prohibition prayer which the applicant's counsel had invited the court to consider, the same was in line with the judgement of this court by my brother judge Bongole. J. in miscellaneous cause No. 27 of 2013. It is a principal of law and procedure that the said decision being a decision metted out by a judge with concurrent jurisdiction does not in any way bind me, at most it will only serve as a persuasive decision or authority. Further, it is a common practice that each case is to be decided on its own merits.

I further find that the order of prohibition is rather wide and speculative. The first and second respondents are public/institution offices which operate and abide by law. These are tasked with statutory undertakings therefore, an order of prohibition will have no justification if granted herein.

All said and done, I hereby grant the application to the extent explained in the ruling with costs.

B. R. Mutungi

JUDGE

24/07/2018

Date: **24/07/2018**

Coram: Hon. Magutu, DR

For the Applicant: Mr. Nashoni Nkungu, Advocate

For the 1st Respondent:
For the 2nd Respondent: } Ms. Pauline Mdendeme,
For the 3rd Respondent: } State Attorney

CC: Placidia

Ms. Pauline Mdendeme, State Attorney: Your honour, the matter is coming up today for ruling. We are ready to receive judgment.

Mr. Nashon Nkungu: Your honour, it is true the matter is coming up today for ruling. We are also ready to receive it.

Court: The ruling delivered on 24th/07/2018 in presence of Pauline Mdendeme, State Attorney for the respondents and Mr. Nashon Nkungu for the applicant.

THE HIGH COURT OF TANZANIA

A. Magutu

DEPUTY REGISTRAR

24/07/2018

Right of appeal fully explained.

A. Magutu

DEPUTY REGISTRAR

24/07/2018