THE JUDICIARY OF TANZANIA

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA MAIN REGISTRY AT DODOMA

CONSTITUTIONAL CASE NO. 000031115 OF 2025

CASE REFERENCE NO. 202512081000031115

FORTUNATUS BONIPHACE BUYOBE ....PETITIONER

VERSUS

VAPPER TECH LIMITED [JAMII FORUMS] .....1ST RESPONDENT

TANZANIA COMMUNICATIONS REGULATORY AUTHORITY .....2ND RESPONDENT .

ATTORNEY GENERAL ..... 3RD RESPONDENT

RULING

The Petitioner is a verified user of the first Respondent; a social networking and discussion forum known “Jamii Forums”. The forum provides user?generated content, sharing news and opinions related to social and political aspects. On 6th September 2025, the second Respondent suspended the first Respondent for ninety days, the reason for suspension is alleged to be publication of the content which was contrary to laws regulating the first Respondent, repugnant to the culture and customs of the country thus affecting national unity, peace, tranquillity and disparaging the United Republic of Tanzania.

Leaving the details of the suspension behind, what is worth in this petition is that, the Petitioner as user of the first Respondent ’s forum is aggrieved with the second Respondent

’s action. His grievance is that, the suspension contravened and interfered with his fundamental rights to seek, receive, and impart information and affected his freedom of communication and right to hold opinions and express ideas.

He thus challenges the second Respondent ’s action among other grounds that, the suspension deprives fundamental rights, including the right to work, the right to freedom of opinion, the right to seek, receive and disseminate information, the right to communicate without interference, the right to be informed on matters of public importance, and the right to freely associate and assemble to express views.

He also challenges regulations 9(a), (c) , (e), (g) and (j) (12(a) (i) 15A and 16(1), together with Paragraphs 3(a), 9, and 10 of the Schedule to the *Electronic and Postal Communications (Online Content) Regulations, 2020 [as amended]*, as being unconstitutional for being overly broad and ambiguous, thereby preventing subjects from effectively exercising their rights under Articles 18 (a), 18 (b), 18(c), 18 (d), 20(1), and 29 (1) of the Constitution of the United Republic of Tanzania. It is also his cause that the second Respondent ’s action was in contravention of Tanzania’s international and regional obligations instruments which guarantee right to freedom of expression.

By originating summons, he has come to this Court under Article 26 [2] and 30 [3] of the Constitution of United Republic of Tanzania read together with Section 4 and 5 of the *Basic Rights and Duties [Enforcement] Act Cap 3 R.E [2023]* and Rule 4 of the *Basic Rights and Duties Enforcement [Practice and Procedure] Rules G.N No. 304 of 2014]* seeking redress on the following reliefs;

1. *A declaration that the suspension of the 1st Respondent ’s license for provision of media services by the 2nd Respondent contravenes the Petitioners’ fundamental rights and freedoms under Articles 18 (a), 18 (b), 18(c), 18 (d), 20(1), and 29 (1) of the Constitution of the United Republic of Tanzania, 1977 [as amended].*



2. *A declaration that the suspension of the 1st Respondent 's license for provision of media services by the 2nd Respondent contravenes the 1st Respondent 's fundamental rights and freedoms under Articles 18[a], 18[b], 18[c], 18[d], 20[1], and 29[1] of the Constitution of the United Republic of Tanzania.*

1. *A declaration that Regulations 9(a), (c) , (e), (g) and (j) (12(a) (i) 15A and 16(1), together with Paragraphs 3[a], 9, and 10 of the Schedule to the Electronic and Postal Communications [Online Content] Regulations, 2020 [G.N. 538 of 2020, as amended], are unconstitutional for being overly broad and ambiguous, and for violating Articles 18 (a), 18 (b), 18(c), 18 (d), 20(1), and 29 (1) of the Constitution of the United Republic of Tanzania.*

4. *A declaration that the suspension of the 1st Respondent 's license for provision of media services by the 2nd Respondent contravenes Article 19 of the International Covenant on Civil and Political Rights [ICCPR], Article 9 of the African Charter on Human and Peoples' Rights, and Article 19 of the Universal Declaration of Human Rights.*

1. *An order waiving costs for all parties, as this petition seeks to uphold the rule of law, constitutional supremacy, and the* advancement of human rights jurisprudence.
2. *Any further orders or remedies that this Honourable Court deems just and equitable.*

The Respondent s filed their respective replies to the petition and counter affidavits. As such the second and third Respondent s posed preliminary points of law on three points, to wit:

1. *The Petition is incompetent and bad in law for failure to exhaust alternative remedies contrary to the provisions of Section 8 (2) of the Basic Rights and Duties Enforcement Act, CAP 3 R. E 2023.*



2. *The Petition is Res Judicata in respect of the impugned provisions of the Electronic and Postal Communications [Online Content] Regulations, 2020, [G.N. 538 of 2020], as amended for having been determined by this Hon. Court.*

1. *The Petitioner lacks locus standi.*

The Petitioner has service of Mr John Seka Learned advocate while the first Respondent is represented by Mr. Peter Majanjala, learned advocate. The second and third Respondents are represented by Miss Vivian Method, learned Principal State Attorney. Hearing on the objections was done by way of written submissions. It is noted here that the counsel for the first Respondent was accorded hearing but chose to remain passive. We appreciate the timely and detailed submissions by the Mr. Seka and Miss Method.

Addressing the first point of objection, Miss Method's line of argument is that, the Constitution is the Grund norm, thus challenging its contravention should only be entertained as a final resort in the sense that where other remedies are available, they must be pursued by the Petitioner instead of treating the constitution petition as a substitute for a normal civil suit.

Miss Method took us through the decisions in **Tanzania Cigarette Company Ltd vs. Fair Competition Commission and Another (Miscellaneous Civil Application No. 31 of 2010) [2012] TZHC 31 (28 September 2012; TANZLII Lahara Joelson Mpina vs Hon. Minister for Agriculture and 7 Others (Misc. Civil Cause no. 18385 of 2024) [2024] TZHC 8929 (25 October 2024 and Attorney General vs. W. K. Butambala [1993] TLR 46** to emphasise her point that constitutional petitions should be reserved for appropriate and really momentous occasions where no other remedy is available.

With that legal position, it was her stance that the Petitioner had alternative remedy to pursue his cause under Section 36 the *Tanzania Communications Regulatory Authority Act No. 12 of 2003 (TCRA Act).* The section provides to the effect that **"**any person" aggrieved by the decision of the 2nd Respondent may appeal to the Fair Competition Tribunal. She thus urged us to find that, this petition does not comply with Section 8 (2) of the *Basic Rights and Duties Enforcement Act, CAP 3* [R. E 2023] since the Petitioner has an alternative remedy to address his grievance.

Arguing on the second limb on *res judicata*, she narrated the applicability of the doctrine and more significantly, made a point that the doctrine also applies to public interest litigations. In support of this argument, she cited, among others, the decision in **Boniface Muhoro and 4 Others v. The Attorney General Miscellaneous Civil Cause No. 3 of 2019, High Court of Tanzania, at Dar es Salaam (unreported**). In addition, Miss Method made reference to the Court of Appeal decision in the case of ***Jebra Kambole vs The Attorney General (Civil Appeal 236 of 2019) [2022] TZCA 377 (15 June 2022)*** making a point that in public interest litigations the Petitioner is not only agitating his individual rights but represents the public at large. Thus, as long as the litigation is bona fide, a judgment in a previous public interest litigation would be a judgment in rem.

In this petition therefore, she said, the regulations being challenged in this petition were determined by this court in **Deus Valentine Rweyemamu v Attorney General and Another,** Constitutional Case No. 9085 of 2024. In that case regulations 3, 4, 5, 6, 8, 9, 11, 12, 15, 19, 20, and 21 of Electronic and Postal Communications [Online Content] *Regulations, 2020 [G.N. 538 of 2020* were found to be in line with the Constitution and regulation 8 only was declared unconstitutional.

According to her, since constitutionality of the cited provisions of *Electronic and Postal Communications [Online Content] Regulations, 2020 [G.N. 538 of 2020] were* addressed in the case of **Deus Valentine Rweyemamu**, this Court should find the petition *res judicata*

including other sections which could have been challenged to uphold the principle of finality.

In support of the doctrine, she cited to us the decision in **Stephen Masato Wassira vs Joseph Sinde Warioba and AG [1999] TLR 332** at Page 342 and US Supreme Court decision in **Jeter v. Hewitt,63 US 22 How 352 352 (1859),** to the effect that what has been definitely determined by competent tribunals shall be accepted as legal truth.

With respect to the third limb of objection, she said, under Section 4 (1) of the *Basic Rights and Duties Enforcement Act [Cap. 3 R.E 2019] (BRADEA*) the Petitioner is not entitled to bring this matter, instead it can only be pursued by the 1st Respondent herself. She argued that, this petition was brought in disguise of a public interest litigation while it is not. She added, what is alleged to be unconstitutional is the suspension of the 1st Respondent 's license to provide media services and Regulations 9 (a), (c), (e), (g), and (j); 12(a) (i); 15A; and 16(1), along with Paragraphs 3 (a) 9, and 10 12 of the Schedule to the *Electronic and Postal Communications [Online Content] Regulations, 2020*.

It was Miss Method's stance that, the Petitioner was duty-bound to file an affidavit of admissibility showing how the alleged violation has personally affected him. She made reference to the decision in **Peter Michael Madeleka vs Minister of Home Affairs and 7 Others (Constitutional Case No. 2729 of 2025) [2025] TZHC 1445 (9 April 2025; Tanzilii** to the effect that the Petitioner did not only need to attach an affidavit, but ought to indicate the extent to which the alleged contravention has affected him personally.

On his part, responding to the first point, Mr. Seka for the Petitioner, took a view that the appeal remedy under section 36 of the **TCRA Act** is available to licensees like the 1st Respondent with contractual or quasi-contractual relationship with the 2nd Respondent, but not the Petitioner who is a user. That, the same is not available to the Petitioner.

On other angle of argument, he said, the Petitioner seeks to address specific breaches of his fundamental right of expression under Article 18 and his right to participate in public

affairs under Article 21 of the Constitution. Thus, he argued, the remedy available under section 36 of the **TCRA Act No** cannot address complaints of violation of constitutional rights. In support of his position, he cited the decision in **Legal and Human Rights Centre & 2 Others v. Attorney General, Misc. Civil Cause No. 2 of 2017.**

In addition, he cited the decision in **Abdul Ali Issa vs Republic [1989] TLR 16**, beseeching us to find that the phrase "any person" aggrieved by decision of the second Respondent means that the person ought and should have been a party to the dispute in the first place.

It was Mr. Seka's position that the decision in Tanzania **Cigarette Company Ltd vs The Fair Competition Commission & Another, Misc. Civil Cause No. 31 of 2010 [2012] TZHC 31** and **Attorney General v. W.K. Butambala [1993] TLR 46** are materially distinguishable since in this petition the alternative remedy does not exist to the Petitioner. He contended that this court **in Tanzania Cigarette Company Ltd,** determined the existence of an alternative remedy after full hearing and evaluation of the factual issues. To wrap it up, Mr Seka beseeched us to consider that deciding otherwise would deny the Petitioner access to justice.

In response to the second point on *res judicata*, Mr Seka noted that the decision in **Deus Rweyemamu** dealt with constitutionality of part of the provisions in the *Online Content Regulations* against Article 13[6], 16 and 18 of the Constitution. According to him this petition concerns the application of those regulations to the Petitioner specifically and the violation of his constitutional rights under Article 18, 20 and 29 through the suspension of the platform.

His line of argument is that, in this petition the question is not merely whether the Online Content Regulations are constitutional in the abstract, but whether the 2nd Respondent violated the Petitioner's constitutional rights. While acknowledging the decision in **Jebra**



Kambole vs The Attorney General (Civil Appeal No. 236 of 2019) [2022] TZCA 377, that *res judicata* can apply to public interest litigation, he rebuts Miss Method's contention that this matter falls under public interest litigation under Article 26 (2). Rather, he claims that this petition deals with the rights of the Petitioner personally, thus *res judicata* cannot extinguish the Petitioner from vindicating his own rights. Mr Seka once again urged us to consider that the 2nd and 3rd Respondent 's expansive interpretation of the doctrine could lead to denial of access to justice.

He further implored us to consider that in all decisions cited, including the decision in **Jebra Kambole vs The Attorney General**, that have been heavily relied upon by the 2nd and Respondent s, the issue of *res judicata* was addressed and resolved as a substantive matter. This is because, the determination and assessment of factual issues in the doctrine at his stage will fail the true test of a preliminary objection laid down in **Mukisa Biscuits Manufacturing Co. Ltd vs. West End Distributors Ltd [1969] EA 696.**

On the third point, Mr Seka responds that the Petitioner's affidavit of admissibility has met the requirement of section 4(2) of BRADEA demonstrating how the alleged violation of Articles 12 to 29 has affected him personally by the suspension of the platform. He said, since the Petitioner is complaining on violation of his specific constitutional rights in his specific circumstances, the 2nd and 3rd Respondent s' counsel has not identified any requirement of Section 4 [2] of BRADEA which is not met.

He distinguished the decision in **Tanzania Epilepsy Organisation vs Attorney General,** Misc. Civil Cause No. 5 of 2022 [2022] TZHC 1042 arguing that in that decision, this court considered from the affidavit that a juristic person is incapable of being affected by the alleged violation, which is not the case here**.**

In her rejoinder on the first point on exhaustion of other remedies, Miss Method maintained her stance that the right to appeal available under Section 39 of the ***TCRA ACT,*** permits

appeals to challenge decisions, including those tainted with an error in law. According to her, the phrase “any person” includes the Petitioner who is aggrieved by the decision to suspend the license of the 1st Respondent.

Rejoining on the second point on *res judicata,* she expressed her disagreement on Mr. Seka’s distinction between general challenges to legislation and claims based on personal rights. According to her, this petition qualifies as public interest litigation, as it is filed under Article 26 (2) of the Constitution, a point confirmed by the Court in the case of **Rev. Mtikila vs the Attorney General, [1995] TLR 31**. In that respect, she is of the view that, even if the aspect of the parties is not met, in view of the decision in **Jebra Kambole vs The Attorney General (Civil Appeal 236 of 2019) [2022] TZCA 377 (15 June 2022**, if the subject matter is the same, then the *res judicata* principle applies and binds the public at large from coming forward before the Court and raise any connected issue.

She argued further that since regulation 8, which provides for suspension, and other provisions being, regulations 18 (a), 18 (b), 18 (c), 18 (d) or other provision which could have been raised were dealt with in **Deus Rweyemamu** case, this petition is *res judicata*.

With respect to the third point, she reiterated her arguments in her submission in chief.

Upon reading the petition and the replies thereto, the points of objection and the rival submissions by the parties’ counsels, it now befits us to deliberate on the same.

With respect to the first point, we wish to indicate at the outset that we accede to the position that the Constitution is a Grund norm, thus engaging this Court for constitutional review should be employed as a last resort and where no other remedy is available. This is as held in the decisions cited to us, including **Tanzania Cigarette Company Ltd** (supra) and **Attorney General vs. W. K. Butambala.**

In this petition, the claim is grounded in two folds, **one** allegation that the first Respondent 's suspension has deprived the Petitioner his personal rights, to wit, freedom of expression and the right to participate in public affairs, and **two;** the constitutionality of the named provisions *of Electronic and Postal Communications [Online Content] Regulations, 2020 [as amended].*

At this stage, we have considered the provisions of Section 39 of the **TCRA ACT**, which are to the effect that;

Any 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*

We have also considered Miss Method's argument on application of this provision in line with the decision in **Tanzania Cigarette Company**. We note from that decision that, this Court, after evaluation of factual issues, found that the parties had a pending complaint whose finding would be subject to an appeal. This Court, on the aspect of alternative remedy, held that;

The parties to this petition should first exhaust the opportunity to be heard ***under Complaint No.1 of 2008*** *and to lodge subsequent appeal.*

From the above, unless we were to be availed with similar facts resembling the case in **Tanzania Cigarette**, which will not be appropriate at this stage, we find the decision in **Tanzania Cigarette** distinguishable from the petition at hand.

We have further considered whether an alternative appeal remedy for the Petitioner lies under Section 39 of the **TCRA ACT.** Upon appraisal of this argument, we contemplate that there can be no appeal in the first place without a decision. In any case, it is settled position that it is the party in the decision to be impugned who enjoys appeal rights. In this position, we are fortified by the decision cited by Mr Seka, that is, **Abdul Ali Issa vs**



Republic [1989] TLR 16, in which the phrase "personally aggrieved" was judiciously considered to mean the one who had been party to the trial. Persuaded by this reasoning, we do not find it effective to subject the Petitioner to a remedy where he will be a stranger. In that respect, this point of objection is found unmerited and thus overruled.

On the point of *res judicata*, we have read at length the litany of decisions cited to us by Miss Method on the tests of the doctrine and its application. These decisions include **Stephen Masato Wassira vs Joseph Sinde Warioba and AG [1999] TLR 33, Boniface Muhoro and 4 Others vs. The Attorney General, and the** persuasive decision from the **US Supreme Court in Jeter v. Hewitt.** From these decisions we embrace the position that, to uphold the principle of finality, this Court like any other court will not decide a matter which has been decided in previous proceedings.

In this petition the second and third Respondent s' counsel, Miss Method, heavily relied on the decision in **Jebra Kambole** to the effect that the Petitioner is not agitating his individual rights but rather, represents the public at large thus the previous decision in **Deus Rweyemamu** was a decision in rem barring the Petitioner from challenging the provisions of the *Electronic and Postal Communications [Online Content] Regulations*.

On the other hand, it is Mr Seka's stance that the Petitioner challenges infringement of his personal rights thus not subject to the decision in **Deus Rweyemamu.** We have read the decision in **Jebra Kambole vs The Attorney General** (Civil Appeal 236 of 2019) [2022] TZCA 377 (15 June 2022). When addressing on the subject, the Court of Appeal at page 27, cited with approval the decision in **Smt. V. Rajeshwari vs T.C. Saravanabava of 16 December, 2003**, in which the Supreme Court of India held;

The plea of res judicata is founded on proof of certain facts and then by applying the law to the facts so found. It is, therefore, necessary that the foundation for the plea must be laid in the pleadings and then an issue must be framed and tried (emphasis).



Considering the rival arguments in this petition on the application of the doctrine as far as the decision **in Deus Rweyemamu** is at issue, we agree with Mr Seka that this aspect of whether the matter is *res judicata* in respect of the alleged provisions, can well be resolved after evaluation of the factual issues and hearing of the parties. With that note, we shall end here on this point of objection and hold that the point of *res judicata* in this petition needs calling of facts from the affidavits which is not our domain at this stage. In addition, even if was to the case, the whole petition cannot crumble down on account of this single point of objection as there are other claims by the Petitioner that need to be addressed by this Court.

We now address the third point to the effect that the Petitioner lacks *locus standi*. In our deliberation we have considered the provisions of Section 4 (2) of the *Basic Rights and Duties Enforcement Act [Cap. 3 R.E 2019] (BRADEA),* which provides to the effect that the petition shall be accompanied by an affidavit of admissibility, which shall state the extent to which the contravention of the provisions of Articles 12 to 29 of the Constitution has affected such person personally. We agree with Miss Method that, it is one thing to attach an affidavit and the other to indicate the extent to which the alleged contravention has affected the Petitioner personally.

Upon considering the petition as a whole, we find that the Petitioner has also alleged contravention of his fundamental personal rights and freedoms under Articles 18(a), (b), (c), and (d), 20(1), and 29(1) of the Constitution. We have further revisited the Petitioner's affidavit of admissibility more significantly at paragraphs 3 to 5 of the same are paraphrased thus;

1. He regularly contributed to and received information from Jamii Forums. It has become his preferred digital platform.
2. On 6 September 2025, he was surprised to see a public statement from the 2nd Respondent announcing the immediate suspension of Jamii Forums.



3. Since the same date, Jamii Forums became inaccessible and he could neither post content nor read previously posted materials.

In our considered view, we are persuaded that the requirement of the law under of section 4 (2) of the BRADEA has been complied with. The above depositions state the extent at which the Petitioner was affected by the second Respondent 's decision to suspend the first Respondent.

We are mindful of the submission by Mr. Seka to the effect that asking for more will be tantamount to restraining access to justice. Much as we are alive to the intent of the provision requiring an affidavit of admissibility, we also consider that the phrase "*stating the extent"* should literally be interpreted. In our deliberations we do not consider that this provision was meant to create a standard of proof of its own.

We are fortified by the position this Court took in **Sheikh Prof. Hamza Mustafa Njozi and Others vs The Registrar of Societies and Others** (Constitutional Case No. 27603 of 2024) [2025] TZHC 3590 (27 June 2025) at page 21, thus;

Requiring the Petitioners to state more than what they did is to go beyond the law and tantamount to determining the petition on merit, which is not our domain, at this juncture.

We subscribe to that view and on the reasons stated, we find the third point of objection devoid of merit. The same is overruled.

In the upshot, based on the foregoing observations, we find this petition competent before this Court to be heard and decided on merit. It is so ordered.

RULING Dated at **DODOMA ZONE** this 16th of March 2026.



A. J KIREKIANO

JUDGE OF THE HIGH COURT



L. M MONGELLA

JUDGE OF THE HIGH COURT



H. A KINYAKA

JUDGE OF THE HIGH COURT