IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

MISCELLANEOUS CIVIL CASE NO 30 OF 2009
(Jundu, JK, Kaijage, J. and Juma, J.)

1. JAYANTKUMAR CHANDUBAI PATEL @JEETU PATEL
2. DAVENDRA K. VINODBHAI PATEL
3. AMIT NANDY
4. KETAN CHOHAN

} APPLICANTS

VERSUS

1. ATTORNEY GENERAL
2. REGINALD ABRAHAM MENGI
3. THE DIRECTOR OF PUBLIC PROSECUTION

} RESPONDENTS

RULING

JUMA, J.:

This is a ruling on preliminary points of objection which were raised by learned counsel for both the Attorney-General (1st Respondent) and the Director of Public Prosecutions (3rd Respondent) seeking the dismissal of the petition which Jayantkumar Chandubai Patel (1st Petitioner), Devendra K. Vinodbhai Patel (2nd

Petitioner), Amit Nandy (3rd Petitioner) and Ketan Chohan (4th Petitioner) had filed in this Court on 4th June 2009 under the **Basic Rights and Duties Enforcement Act, Cap 3 R.E. 2002**. The objecting 1st and 3rd Respondents also want this Court to dismiss the affidavit which the Petitioners filed in support of their petition. Six more points of objection were filed on 10th September 2009 on behalf of the 2nd Respondent by the Ngalo & Company Advocates. Mr. Ngalo prayed for either the striking out of the name of the 2nd Respondent from the petition or the dismissal of the petition in its entirety.

Before looking at the substance of the points of objection, it is helpful to set out the background giving rise to this petition and the context of the preliminary points of objection. The four Petitioners are severally and or jointly facing criminal cases numbers 1153/2008, 1154/2008, 1155/2008 and 1157/2008 all at the Court of Resident Magistrate of Dar es Salaam, at Kisutu. The substance of these cases as per the respective charge sheets, allege that Petitioners committed the offences of conspiracy to steal huge sums of money from the Bank of Tanzania, forging deeds of assignments with intent

to defraud or deceive, uttering of false documents, and obtaining credits by false pretence. These criminal cases are still pending since 5th November 2008.

Complaint against the 2nd Respondent is based on a speech made by him on 23rd April 2009 in a special live televised programme. Contents of that televised speech was later reported and commented upon in various newspapers. According to Petitioners, that live television programme and subsequent reportage portrayed to the general public that the Petitioners were already guilty of the offences pending against them at the said subordinate court. Further, the Petitioners contend that the televised programme and comments thereon has resulted in a substantial and un-correctable prejudice to the conducting of a fair trial; and their right to be presumed innocent has been compromised. Petitioners maintain that the media has so much influenced the public that members of the public now regard their conviction as a foregone conclusion.

The Petitioners want this Court to declare that publications made by the 2nd Respondent and other people through electronic and other media has not only violated their constitutional rights, but has

resulted in a mistrial of the above-mentioned criminal cases against them. Petitioners in addition want this Court to order the Director of Public Prosecutions (3rd Respondent herein) to terminate all criminal proceedings instituted in the subordinate court against them on the ground of a mistrial occasioned by the publications made by 2nd Respondent. Petitioners believe that their basic rights as provided for under the Constitution of the United Republic of Tanzania, 1977 have been violated by the Respondents. The Petitioners contend that Article 13-(4) of the Constitution, which prohibits discrimination by anybody or by any authority performing its duties under any law or while performing any state functions has been violated. The petition is strenuously opposed by the 1st, 2nd and 3rd Respondents through their respective replies to the petition.

Apart from opposing the petition through replies to petition, the 1st and 3rd Respondents in addition objected the petition through a notice specifying five grounds. First, it is contended that this Court cannot in law exercise any power under the **Basic Rights and Duties Enforcement Act** against provisions of the Constitution of the United Republic of Tanzania 1977 (as amended) and laws

governing criminal prosecutions. Secondly, the reliefs sought by the Petitioners, are not tenable under the **Basic Rights and Duties Enforcement Act**. The third point of objection insist that the petition is bad in law because it contravenes section 8 (2) of the **Basic Rights and Duties Enforcement Act.** Fourthly, it is objected that the petition is frivolous, vexatious and an abuse of court process. Finally, the 1st and 3rd Respondents assert that the petition is incurably defective for being supported by a joint affidavit of 2nd, 3rd and 4th Petitioners.

On 10th September, 2009 the second Respondent filed his six points of preliminary objections through Ngalo & Company Advocates. The 2nd Respondent invited this Court to dismiss the Petitioners' claims against him on the objections:-

a) that being a private person, the 2nd Respondent has been and is improperly joined in the petition;

b) that the petition is bad in law for failing to join parties, whose presence is legally necessary for a proper, complete and effectual determination of the issues raised or complained of by the Petitioners;

c) that the Petitioners' grievances or complaints against the 2nd Respondent are matters justiciable in the realm of private law whose redress and remedies should have been sought from ordinary civil courts but not constitutional courts. A constitutional court has no jurisdiction to admit, entertain and determine the Petitioners' complaints against the 2nd Respondent;

d) that a constitutional court has no jurisdiction or power or authority to order the dismissal or withdrawal of a criminal proceeding pending in the subordinate court;

e) that the affidavits including the supplementary affidavit in support of the originating summons are incurably defective for containing speculations, arguments, opinions and conclusions; and

f) that the petition as against the 2nd Respondent is an afterthought, frivolous, vexatious and an abuse of the court process.

Counsel wished to proceed by written submissions on the points of objection and this Court granted that request.

The first point of objection raised by the 1st and 3rd Respondents is to all intents and purposes similar to the fourth point of objection by the 2nd Respondent contending that a constitutional court has no jurisdiction or power or authority to order the dismissal or withdrawal of a criminal proceeding pending in the subordinate court. It is clear that these preliminary points; in essence, questions the jurisdiction of this Court to either order the dismissal or withdrawal of a criminal proceeding pending in the subordinate court or to direct how the Director of Public Prosecutions (DPP) should exercise his powers under the Constitution and governing law. We shall first consider and discuss submissions made on these jurisdiction-touching matters at the very outset. As to whether this Court can direct how the Director of Public Prosecutions (DPP) exercises his powers under the Constitution and governing law the learned counsel for the 1st and 3rd Respondents submits that the power of the DPP are provided for under Article 59B of the Constitution read together with section 91 of the **Criminal Procedure Act, Cap. 20**. According to the learned counsel, the Constitution is clear that when the DPP exercises his powers under

Article 59B he shall not be subject to any authority but is only to be guided by the needs of justice, need to prevent abuse of court process and take into account the public interests. In other words, the Respondents are contending that this Court cannot in law make any order directing how the DPP exercises his constitutional discretion because doing so would be in contravention of the Constitution itself.

In addition, the counsel for the 1st and 3rd Respondents drew the attention of this Court to Part III of Chapter One of the Constitution (covering Articles 12 to 29) which; according to the learned counsel, does not give this Court power to order the DPP to terminate criminal proceedings pending in subordinate courts because this power is not envisaged as one of the categories of basic rights and duties that are available for purposes of enforcement under **Basic Rights and Duties Enforcement Act**.

Submitting on the first point of objection raised on behalf of the 2nd Respondent, the learned counsel from Ngalo & Company Advocates wondered under what provisions of the **Basic Rights and Duties Enforcement Act** the Petitioners are seeking redress. The learned counsel pointed out that neither the petition nor the

originating summons discloses how the Petitioners can obtain remedies against the 2nd Respondent since 2nd Respondent cannot prevail upon the DPP to terminate criminal proceedings against them. It was submitted that being a private citizen, the 2nd Respondent has no power to terminate proceedings in the subordinate court and he is therefore wrongly pleaded or joined in the matter. The learned counsel as a result wants this Court to strike out the name of the 2nd Respondent from both the petition and the originating summons, with costs.

Petitioners replying submissions on the points of objection were filed by three firms of Advocates, namely, Marando, Mnyele & Co. Advocates; The Professional Centre, Advocates; and Trust Mark Attorneys. In their response to the contention that this Court cannot in law exercise its powers under the **Basic Rights and Duties Enforcement Act** against the Constitution and laws governing criminal prosecutions; the learned counsel submitted that this Court has jurisdiction to issue declaratory orders since the Petitioners have come to this Court to claim that their constitutional rights under Articles 13-(4), 13-(5), 13-(6) (b) and (d) have been violated.

Elaborating on their submissions, the learned counsel referred to section 7-(2) of the **Civil Procedure Code, Cap. 33 R.E. 2002** which states that;

> *"No suit shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the court may make binding declarations of right whether or not any consequential relief is or could be claimed."*

With that elaboration, it was contended on behalf of the Petitioners that as long as the Petitioners have procedurally filed their petition in this Court they are entitled to be heard by being given an opportunity to provide evidence to support their claim. In other words, it is contended that a preliminary objection cannot be raised on matters which require the production of evidence.

The learned Advocates for Petitioners have advanced several other reasons why they believe that the first preliminary point of objection has confused the nature of Petitioners' complaints. It is submitted that the atmosphere was such that no fair trial could take place and the DPP should have invoked his powers under Article 59B of the **Constitution of United Republic of Tanzania 1977 (as amended)** and section 91 of the **Criminal Procedure Act** to remedy

the mistrial. It is further submitted that the duty of this Court is first to establish that a mistrial has occurred and this can only be done if evidence is led.

The second point of objection by 1st and 3rd Respondents centres on the question whether this Court is the proper place where the Petitioners can seek a declaration that their right to a fair trial has been violated by adverse media publication. It was submitted that both the petition and the reliefs sought are not tenable under the **Basic Rights and Duties Enforcement Act**. According to 1st and 3rd Respondents, this Court is not vested with the power to dismiss the charges facing the Petitioners in a subordinate court because in law it is that same subordinate court that has the power to dismissing the charges and discharge the Petitioners. As already observed, the 2nd Respondent also questioned under what capacity the Petitioners are seeking redress against him. He points out that neither the petition nor the originating summons discloses how the Petitioners can obtain remedies as against the 2nd Respondent since 2nd Respondent cannot prevail upon the 3rd Respondent to terminate

proceedings against the Petitioners. 2nd Respondent wants his name to be struck out of the petition.

In his third ground, 2nd Respondent objects at Petitioners' decision to resort to public law remedies under **Basic Rights and Duties Enforcement Act** in matters whose remedies are both provided for, and justiciable under private law. Elaborating on this submission, the 2nd Respondent pointed out that of the four Petitioners only the 1st Petitioner has any grievance against him. All the same even the 1st Petitioner has not shown how the 2nd Respondent has violated his constitutional rights. 2nd Respondent submits further that the 1st Petitioners claim against him on self created differences and using his influences over other media do not warrant the filing of this petition for constitutional remedies under **Basic Rights and Duties Enforcement Act.** It is 2nd Respondent's contention that both he and the Petitioners are private citizens and as such no constitutional issue can arise between private persons. In other words, private rights cannot be enforced through Articles 12-29 of the Constitution.

The 2nd Respondent took exception to Petitioners seeking relief from not only the Respondents on record but also from other people not mentioned or impleaded in the petition. It was submitted on behalf of 2nd Respondent that Petitioners should not have sought a declaratory order against other media outlets that are not cited in the petition.

In his fifth point of objection 2nd Respondent's contends that the affidavits supporting the petition are defective. Citing the Court of Appeal decision in - **Phantom Modern Transport (1985) LTD and D.T. Dobie (Tanzania) Ltd (Civil Reference Number 15 of 2001 and 3 of 2002)**, 2nd Respondent contends that an affidavit for use in court should only contain statement of facts and circumstances to which the deponent deposes either of his own knowledge or from information received and believed to be true. 2nd Respondent submitted that the affidavit of the 1st Petitioner was fatal and incurable for- containing conclusions and speculation (Para. 5); containing conclusions and arguments (Para. 6, 10); being argumentative (Para. 7); being conclusive, speculative and argumentative (Para. 11); being argumentative, speculative and

conclusive (Para. 12); being speculative, argumentative, conclusive and opinionated (Para. 14). By reason of these defects, 2nd Respondent submits that there is no affidavit to support the originating summons. 2nd Respondent regards part of paragraph 14 of 1st Petitioner's affidavit and part of paragraph 6 of the joint affidavits about composition of three magistrates to be scandalous and embarrassing statements.

In the sixth ground of objection the 2nd Respondent regards the petition to be an afterthought, frivolous, vexatious and constitute an abuse of court process. Paragraphs 5 and 6 of 1st Petitioner's affidavit describe the period prior to and the period after the institution of cases at Resident Magistrate's Court. 2nd Respondent wonders if media activities against the Petitioners begun in January 2008, why did they have to wait until June 2009.

After reading the submissions of the learned counsel on the preliminary points of objection, we propose to begin with the question whether this Court cannot in law exercise any power under the **Basic Rights and Duties Enforcement Act** against not only the provisions of the **Constitution of United Republic of Tanzania**

1977 (as amended), but also against the **Criminal Procedure Act** which governs criminal prosecutions. This question is crucial at this stage because it touches upon the jurisdiction of this Court.

We propose to survey the relevant legal parameters to determine whether either this Court or the 2nd Respondent (as a private citizen) can prevail upon the DPP to terminate criminal proceedings against the Petitioners. Article 59B (2) of the Constitution vests on the Director of Public Prosecutions with the powers to institute, prosecute and supervise all criminal prosecutions in the country:-

> *59B (2) The Director of Public Prosecutions shall have powers to institute, prosecute and supervise all criminal prosecutions in the country.*

The Constitution clearly directs under sub-article (4) of Article 59B that while exercising his powers under the Constitution, the DPP shall be free, shall not be interfered with by any person or with any authority. The only matters which he is obliged to take into account while making his decisions are-(a) the need to dispensing justice; (b) prevention of misuse of procedures for dispensing justice; and (c) public interest. The relevant Article 59B-(4) and (5) provide:

(4) In exercising his powers, the Director of Public Prosecutions shall be free, shall not be interfered with by any person or with any authority and shall have regard to the following –

(a) the need to dispensing justice;

(b) prevention of misuse of procedures for dispensing justice;

(c) public interest.

(5) The Director of Public Prosecutions shall exercise his powers as may be prescribed by any law enacted by the Parliament.

Indeed, section 91 of the **Criminal Procedure Act, Cap. 20** is the law that has been enacted by Parliament and prescribed the way the DPP exercises his powers. Section 91 of the **Criminal Procedure Act,** provides:-

***91.**-(1) In any criminal case and at any stage thereof before verdict or judgment, as the case may be, the Director of Public Prosecutions may enter a nolle prosequi, either by stating in court or by informing the court concerned in writing on behalf of the Republic that the proceedings shall not continue; and thereupon the accused shall at once be discharged in respect of the charge for which the nolle prosequi is entered, and if he has been committed to prison shall be released, or if on bail his recognizance shall be discharged; but such discharge of an accused person shall not operate as a bar to any subsequent proceedings against him on account of the same facts.*

It is clear from the foregoing provisions that the power of the DPP that is provided for under Article 59B of the Constitution includes the power to stop an ongoing criminal proceeding.

The learned State Attorney who appeared for the Attorney General in these proceedings is, with due respect, correct in his interpretation of Article 59B read together with section 91 (1) of the **Criminal Procedure Act**. We agree with him that this Court; cannot at this stage direct the DPP when exercising his powers under Article 59B of the Constitution, to terminate the pending criminal proceedings instituted against the petitioners on account of publications made by 2nd Respondent. Our reading of Article 59-B of the Constitution, together with section 91 of the **Criminal Procedure Act, Cap 20** confirms our view that this Court cannot and should not interfere with an on-going criminal prosecution initiated by the DPP. That is, courts, including this Court acting under the **Basic Rights and Duties Enforcement Act,** cannot prevail upon the DPP to stop a criminal case pending in a subordinate court.

There is another reason why we think that any order by this Court directing how the DPP exercises his constitutional power could contravene the Constitution itself. It is our opinion that the powers of this Court as provided for in the Constitution should always be exercised in harmony with the powers of other organs like the DPP which are similarly provided for in the same Constitution. The Court of Appeal in the case of the **A.G v. Rev. Christopher Mtikila, Civil Appeal No. 45 of 2009 (unreported)** fundamentally restated the law in relation to the question whether this Court (a creature of the Constitution) can strike out a provision of the Constitution:-

> *"....the cardinal principle of Constitutional interpretation is to read the entire Constitution as an entity. This Court said so in Julius I.F. Ndyanabo v. A. G., Civil Appeal No. 64 of 2001. There is, therefore, a need to harmonize the various articles of the constitution. This Court said so in Julius I.F. Ndyanabo v. A. G., Civil Appeal No. 64 of 2001. There is, therefore, a need to harmonize the various articles of the constitution.* ***This means that an article of a constitution cannot be struck out or declared unconstitutional."*** *[Emphasis provided]*

The restatement of the law by the Court of Appeal to the effect that an "article of a constitution cannot be struck out or declared unconstitutional" has significant meaning in the petition before us.

Just as this Court cannot strike out or declare to be unconstitutional any article of the constitution, this Court cannot similarly direct the DPP on how to exercise his powers under Article 59B of the Constitution. Having restated the law in relation to this petition before us, we should point out that Article 59B of the Constitution clearly provides for the exclusive constitutional powers of the Director of Public Prosecutions in so far as criminal prosecutions are concerned.

It has been submitted on behalf of the 2nd Respondent Reginald Abraham Mengi that he is a private citizen who has neither constitutional nor statutory powers to terminate criminal proceedings instituted at Kisutu RM's Court. Just as this Court cannot direct the DPP on how to exercise his constitutional mandate under Article 59B, the 2nd Respondent as a private citizen cannot similarly direct the DPP on how to exercise his power or authority. We agree with this thrust of the submission. The 2nd Respondent was, in our opinion, improperly joined in the petition. 2nd Respondent has neither the power nor any authority to direct how the DPP should exercise his constitutional mandate.

There is the issue arising from the point of preliminary objection raised on behalf of the 1st and 3rd Respondents as to whether the reliefs sought by the Petitioners, are not tenable under the **Basic Rights and Duties Enforcement Act**. This point of objection can be considered together with the third point of objection which was raised on behalf of the 2nd Respondent contending that the Petitioners' complaints against the 2nd Respondent are matters justiciable in the realm of private law whose redress and remedies should have been sought from ordinary civil courts but not "constitutional courts". We assume by "constitutional court," the 2nd Respondent meant a court which has the jurisdiction to deal with complaints regarding the enforcement of basic rights and duties as set out in Part III of Chapter One of the Constitution.

It is contended on behalf of the 2nd Respondent that as a private citizen, Mr. Mengi does not possess the mandate to order any subordinate court or even the DPP to stop any criminal proceedings facing the Petitioners. It consequently submitted on behalf of the 2nd Respondent that if the Petitioners are aggrieved by 2nd Respondent's speech, they could and still can sue for defamation. It was submitted

further, that Petitioners can also seek remedial action under the provisions of the **Penal Code, Cap. 16** and the **Criminal Procedure Act, Cap. 20**.

Jurisdiction of this Court in terms of section 3 of the **Basic Rights and Duties Enforcement Act** extends only for purposes of enforcement of basic rights and duties set out in Part III of Chapter One of the Constitution. The relevant section 3 provides:-

> *3. This Act shall apply only for the purposes of enforcing the provisions of the basic rights and duties set out in Part III of Chapter One of the Constitution.*

The question of jurisdiction over enforcement of basic rights is spelt out by the **Basic Rights and Duties Enforcement Act**. With hindsight of the restatement of law in **A.G v. Rev. Christopher Mtikila (supra),** this Court cannot therefore expand the jurisdiction of this Court so as to include the power to question how the DPP should exercise his constitutional and statutory duties.

Resort to the procedure of basic rights under **Basic Rights and Duties Enforcement Act** cannot be taken lightly as a matter of course without first giving adequate space to the subordinate court

concerned to deal with any complaints arising from the speech which Mr. Reginald Abraham Mengi made on 23rd April 2009 in a special live televised programme. Courts subordinate to this Court are vested with statutory jurisdiction, which this Court cannot interfere with outside the prescribed procedures. Subordinate courts, are vested with power to deal with any act or omission which is calculated to interfere with proper administration of justice in the subordinate court concerned. Section 8-(2) of the **Basic Rights and Duties Enforcement Act** is a stark reminder of the need to first seek redress at appropriate level before moving to this Court:-

> *8-(2).-The High Court shall not exercise its powers under this section if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law, or that the application is merely frivolous or vexatious.*

Courts in Tanzania, including the subordinate court where the four Petitioners face criminal cases, are vested with power to punish any person for contempt under section 3 (1) (c) of the **Penal Code**. This remedy was not sought by the Petitioners. Msumi, J. (as he then was) in the case of **Yasini Mikwanga V. R. 1984 TLR 10 (HC)** explains that the cardinal aim of creating the offence of contempt of

court is to arrest all conducts which are aimed or reasonably feared to be aimed at interfering with proper administration of justice. Msumi, J. cited with approval a statement of law by Lord Donovan in **AG v. Butterworth [1963] 1 QB 696** to the effect that:-

> *"The question to be decided... in all cases of contempt of court, is whether the action complained of is calculated to interfere with proper administration of justice. There is more than one way of interfering."*

Lord Denning in another case of **A.G. vs. BBC 1981 AC 303 at 305** restated the power of courts:-

> *".. it is the law, and it remains the law until it is changed by Parliament, that publication of matter likely to prejudice the hearing of a case before a court of law will constitute contempt of court punishable by fine or imprisonment or both...."*

We are persuaded by the position taken by Lord Denning MR in **R. Vs. Horseham Justices EX Farqurharson & Another [1982] 2 ALL ER 269**, even where the media is found in contempt, this does not necessarily result in termination of a criminal trial before it runs its full course. Lord Denning (at page *287*) said:-

> *"... judges at trial were not influenced by what they might have read in the newspapers.. they are good sensible people. They go by the evidence that is adduced before them and not by what they may have read in papers."*

We are also in full agreement with the statement made by Lord Salmon in **Attorney-General v BBC [1980] 3 WLR 109** that a judge or a magistrate cannot be influenced by what is said in the media. Lord Simon (at page 119) stated:-

> *"I am and have always been satisfied that no judge would be influenced in his judgment by what may be said by the media. If he were, he would not be fit to be a judge."*

Reverting back to the points of objection, the answer to the question whether this Court is the proper place where the Petitioners can seek a declaration that their right to fair trial has been violated by adverse media publication is very clear in our minds. We are of the opinion that it is the subordinate court where the Petitioners are facing criminal trials, which has adequate means of addressing the complaints which the Petitioners have, by way of a petition, brought to this Court. The Petitioners should have first sought the intervention of the subordinate court concerned. The subordinate court concerned is in a better position to determine whether the alleged excessive publicity in the media about the Petitioners was prejudicial to a fair trial and amounted to interference with the administration of justice.

There is a persuasive desision from Kenya which has firmly restated the law applicable in Kenya to the effect that media publicity *per se* does not constitute of itself a violation of a party's right to a fair hearing. **William S.K. Ruto & Another Vs Attorney General [2010] eKLR** was a Constitutional Reference case where the Petitioners had raised the questions of interpretation of the Constitution of Kenya and enforcfement of their fundamental rights. The Kenyan applicants had also urged that they cannot get a fair trial because of the comments made against them by senior Government officials and Ministers. The applicants exhibited newspaper extracts from the daily newspapers as evidence of the comments made. What Gacheche, J., Leonard Njagi., J. and R.P. V. Wendoh, J. of the High Court of Kenya in **William S.K. Ruto & Another Vs Attorney General** stated; is as applicable to Kenya as it is to Tanzania:-

> *The applicants will be tried by qualified, competent and independent judicial officers who are not easily influenced by statements made by politicians to the press. In our country today, such statements are the order of the day and it is our view that the courts will rise above such utterances. We find no basis for the applicant's fears. In* ***KAMLESH PATTNI V. AG*** *the court held as follows- 'media publicity per se does not constitute of itself*

a violation of a party's right to a fair hearing'. The Court in ***DEEPAK KAMANI VS AG*** *reached a similar finding on allegations of pre-trial publicity."*

We are persuaded by the position which the High Court of Kenya took in the case of **William S.K. Ruto & Another vs. Attorney General [2010] eKLR**. We are of the opinion that the Court of Resident Magistrate of Dar es Salaam at Kisutu is better placed to deal with the issue of fairness or lack of it arising from the televised programme and comments. Resident Magistrates' Courts have relevant legal mechanisms like their power to punish contempt; to ensure the integrity of the trial and also protect the fairness of the trial from invasion by outside influences. The Applicants shall also have an opportunity to appeal against any decision of the Court of Resident Magistrate of Dar es Salaam, at Kisutu. The appeals from decisions of subordinate courts provides another level through which the aggrieved Applicants can move superior courts re-evaluate whether trial courts operate within what the law prescribes.

Having dealt with the aforesaid jurisdictional and other points of preliminary objections submitted upon by the learned Counsel, we are satisfied that they suffice to dispose of the matters before us.

Therefore, this Court finds no need to address the remaining issues arising from points of objections raised by the Respondents i.e. (a) that the petition is frivolous, vexatious and an abuse of the court process; (b) that the petition is incompetent for being supported by an incurably defective joint affidavit of Devendra K. Vindbhai Patel, Amit Nandy and Ketan Chohan; and (c) that the Petition/Originating Summons are bad in law for non-joinder of proper and necessary parties.

In the upshot, the preliminary points of objection are sustained to the extent indicated in this Ruling. The petition filed by the Petitioners is hereby dismissed with costs.

F. A. R. JUNDU,
PRINCIPAL JUDGE
25th October, 2011

S.S. KAIJAGE,
JUDGE
25th October, 2011

I.H. JUMA,
JUDGE
25th October, 2011

RULING IS DELIVERED AND RIGHT OF APPEAL IS EXPLAINED in open Court this **25th day of October, 2011** in the presence of Mr. Rweyongeza, Mr. Kobas and Mr. Thadayo learned Advocates **(for the Petitioners)**; Ms Sylvia Matiku, the learned State Attorney **(for 1st and 3rd Respondents)** and Mr. Michael Ngalo, learned Advocate **(for the 2nd Respondent)**.

F. A. R. JUNDU,
PRINCIPAL JUDGE
25th October, 2011

S.S. KAIJAGE,
JUDGE
25th October, 2011

I.H. JUMA,
JUDGE
25th October, 2011