IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (DAR-ES-SALAAM SUB-REGISTRY)

AT DAR-ES-SALAAM

MISCELLANEOUS CIVIL CAUSE NO 2378 OF 2026

IN THE MATTER OF THE CONSTITUTION OF THE UNITED REPUBLIC OF TANZANIA 1977 - AS AMENDED FROM TIME TO TIME.

AND IN THE MATTER OF BASIC RIGHTS AND DUTIES ENFORCEMENT ACT [CAP. 3 R.E. 2023]

AND

IN THE MATTER OF BASIC RIGHTS AND DUTIES ENFORCEMENT (PRACTICE AND PROCEDURE) RULES, 2014

AND

IN THE MATTER OF CHALLENGING THE RESPONDENTS' ACTIONS TO RESTRICT ACCESS TO "X" (FORMERLY KNOWN AS "TWITTER") SOCIAL MEDIA PLATFORM FOR COMMUNICATION, DISSEMINATION AND ACCESS TO INFORMATION AMONGST TANZANIAN USERS.

TITO ELIA MAGOTI..... .....1st PETITIONER

KUMBUSHO DAWSON KAGINE..... .....2nd PETITIONER

VERSUS

MINISTER FOR COMMUNICATIONS

AND INFORMATION TECHNOLOGY.....1st RESPONDENT

TANZANIA COMMUNICATION

REGULATORY AUTHORITY.....2nd RESPONDENT

ATTORNEY GENERAL .....3rd RESPONDENT

JUDGMENT

E. B LUVANDA ,J

The Petitioners, users of X (formerly Twitter), challenge the constitutionality of the respondent's restriction on access to the platform in Tanzania from 20–21 May 2025, contending that the restriction was unlawful, arbitrary, and inconsistent with constitutional and international human rights standards. It was imposed without prior notice, public consultation, or adequate legal justification, amounting to a blanket nationwide ban that affected all users and content, violating constitutional rights, including freedom of expression, access to information, freedom of peaceful assembly and association, and participation in public affairs, while adversely affecting journalists, students, businesses, content creators, and the digital economy. They thus prayed for declarations that: -

(a) *The action of the Respondents to restrict access to social platform "X", formerly known as Twitter, is unconstitutional, thus offending the provisions of Article 18, 20 (1), 26(1) and 29 (1) of the Constitution of the United Republic of Tanzania of 1977 as amended from time to time;*

And issue an order:

(b) Directing the Respondents to immediately lift, remove, and cease all restrictions, blocks, throttling, or any other technical or administrative measures imposed on access to the social media platform "X", formerly known as Twitter, thereby restoring full, open, and uninterrupted access to the Petitioners and the general public.

(c) Any other orders this Court will deem fit and just to grant.

The Respondents oppose the petition, asserting that the restriction of access to X in Tanzania was lawful, justified, and implemented in accordance with the Constitution and applicable laws to protect public safety, public health, and public morality. They contend that, despite prior notice from the regulatory authorities, X failed to comply with Tanzanian laws governing prohibited content, thereby rendering the restriction a measure of last resort. The Respondents further submit that the responsibility for notifying users rested with the owner of the X platform, rather than the Government.

They firmly deny that the restriction violated the Petitioners' constitutional rights, asserting that freedom of expression, access to Information, peaceful assembly, education, business, journalism, and civic participation remained

accessible via alternative social media platforms, media outlets, and other communication channels, including Facebook, Instagram, TikTok, WhatsApp, YouTube, and traditional media, maintaining that the restriction was proportionate, lawful, and consistent with Tanzania's constitutional, statutory, regional, and international obligations, and pray that the petition be dismissed.

In support of the petition, **Mr Jebra Kambole** and **Robert Sylivester Majige**, advocates for the petitioners, submitted that the petition raises a constitutional question regarding the right to freedom of expression guaranteed under Article 18 of the Constitution of the United Republic of Tanzania, 1977, and protected under international human rights instruments brought in the public interest on behalf of thousands of Tanzanian users of the social media platform X, including citizens, journalists, businesspersons, students, teachers, lawyers, politicians, content creators, and even government institutions, all of whom were adversely affected by the abrupt restriction of access to the platform, describing X (formerly Twitter) as a global social networking platform that serves as a modern digital forum for the exercise of freedom of expression, access to information, and freedom of assembly. In support, they relied on **SERAP & Three Others v. Federal**

Republic of Nigeria, Applications Nos. ECW/CCJ/APP/23/21, 24/21, 26/21 & 29/21, Judgment No. ECW/CCJ/JUD/40/22 (ECOWAS Court, 14 July 2022).

They contended further that from 20th May 2025, users in Tanzania faced restricted access to X without notice or lawful justification, while access remained available elsewhere. Citing the press release by the Digital Rights Alliance Africa (DRAA) (annexures X1), a copy of the Press Statement by the Internet Governance Tanzania Working Group (IGTWG) (annexure X2), a public Expert Opinion on the Blocking of the X Social Media Platform in Tanzania by Open Observatory of Network Interference (OONI) Foundation (OONI Foundation), (annexure X3), a letter dated a letter to United Republic of Tanzania dated 14 July 2025 by the Special Rapporteur on the promotion and protection of the Right to Freedom of Opinion and Expression; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on the Independence of Judges and Lawyers, pursuant to Human Rights Council resolutions 52/9, 54/14, 53/4, 50/17 and 53/12 inquiring on why the government clocked access to X formally twitter annexture and the government response letter dated 9th September 2025,

,annextre X6 and X7 and annexture X8, claiming that the Respondents admitted imposing the restriction under Regulations 16 and 19(b) of the Electronic and Postal Communications (Online Content) Regulations, GN No. 538 of 2020 (as amended), purportedly to protect public safety, health, and morality. They are firm that the restriction was undisputed and that the Petitioners had met their evidential burden expressed in the decision of **Julius Ishengoma Francis Ndyanabo v. Attorney General,** [2004] TLR 14 and called upon the court to determine whether the restriction violated the Constitution; whether the Respondents had justified the limitation of constitutional rights; and the appropriate remedies.

On the first issue, the petitioner's counsel argued that Article 18 confers broad rights to freedom of expression, communication, access to information, and the right to be informed, and that these rights may be limited only under Article 30(2). They urged the Court to adopt a liberal and purposive approach to constitutional interpretation, relying on **Julius Ishengoma Francis Ndyanabo v. Attorney General** (supra); **Attorney General of The Gambia v. Momodou Jobe** (1984) AC; **Sakal Papers (P) Ltd. & Others v. Union of India**, AIR 1962 SC 305; **Secretary, Ministry of Information & Broadcasting v. Cricket Association of**

Bengal (1995) 2 SCC 161; and **S. Rangarajan v. P. Jagjivan Ram & Others** (1989) 2 SCC 574.

They also challenged the evidential value of Annexure OSG1, arguing that it proved neither that it had been sent nor that it had been received, and therefore could not justify the impugned restriction. They further submitted that the Respondents imposed the nationwide restriction without prior public notice or consultation, contrary to the principles of transparency, legality, and procedural fairness. The counsels maintained that the restriction was an indiscriminate blanket ban affecting both lawful and unlawful content, contrary to the constitutional requirements of legality, necessity, and proportionality. They insisted that the Respondents ought to have targeted only the offending content rather than blocking the entire platform, thereby unjustifiably infringing the rights to freedom of expression, access to information, and civic participation. Referring the court to annexures X1–X3, X7 and X8, including evidence that the restriction allegedly caused significant economic losses to online businesses and digital creators, adversely affected journalists, students, educators, businesses, content creators, government communication, public health information, emergency alerts, logical innovation, and democratic discourse they said, it violated

Articles 18, 20(1), 26(1), and 29(1) of the Constitution, as well as the Access to Information Act, the African Charter on Human and Peoples' Rights, and the International Covenant on Civil and Political Rights. They cited the case of **Hoho v. The State**, Case No. 493/05 (2008) (Supreme Court of Appeal of South Africa), para. 29, in support of their argument.

Regarding justification under Article 30(2), the petitioners' counsel accepted that constitutional rights are not absolute but argued that the burden of establishing that the restriction was lawful, necessary, and proportionate rested on the Respondents, and that the Respondents have failed to discharge that burden. They banked on the case of **DPP v. Daudi Pete** [1991] TZCA 45; **Kukutia Ole Pumbun & Another v. Attorney General** [1993] TLR 159 (CAT**); R. v. Oakes** [1986] 1 SCR 103; **CORD & Others v. Republic of Kenya & Others**, Petition No. 628 of 2014; and **Media Council of Tanzania, Legal and Human Rights Centre & Tanzania Human Rights Defenders Coalition v. Attorney General**, Reference No. 2 of 2017 asserting that any limitation of constitutional rights must satisfy the three-part test of legality, legitimacy of purpose, and proportionality.

They condemned the Respondents for failure to identify any statutory provision authorising a blanket ban on access to X. Relying on paragraphs 15–18, particularly paragraph 15, of the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (1985), they argued that Regulations 16 and 19(b) only permit the regulation or removal of prohibited content, not the blocking of an entire social media platform. They were therefore forceful that the Respondents acted ultra vires, having exceeded the powers conferred by the Regulations. The restrictions, they argued, failed the first requirement of the constitutional limitation test and was therefore unconstitutional.

On the second limb of the constitutional limitation test, counsel submitted that the Respondents failed to establish a pressing and substantial objective for the restriction invoking public safety, health and morality without identifying the allegedly prohibited content or demonstrating how it threatened those interests. Relying on **SERAP & Three Others v. Federal Republic of Nigeria** (supra), para. 85, they argued that Article 30(2) could not cure the absence of a lawful basis, as any restriction must be lawful, necessary and adequately justified. They maintained that the second test has not been met.

On the **proportionality** limb of the constitutional test, they faulted the Respondents for failure to adopt the least restrictive means of achieving their stated objectives. It was maintained that a blanket restriction on access to X was excessive and disproportionate, as it affected all users and all content, both lawful and unlawful. They cited DPP **v. Daudi Pete** [1991] TZCA 45; **Republic v. Mbushuu** [1994] TLR 146 (HC); **Jeremia Mtobesya (supra); Kukutia Ole Pumbun & Another v. Attorney General** [1993] TLR 159 (CAT); and **Julius Ishengoma Francis Ndyanabo v. Attorney General,** (Supra) to bolster their argument.

They contended that the Respondents ought to have targeted only the offending content or its publishers rather than blocking the entire platform. And that access to other social media platforms could not justify the restriction, as each platform has unique features and users, relying on **Aidan Frederick Lwanga Eyakuze v. Commissioner General of Tanzania Immigration Service Department & Others,** Civil Appeal No. 13 of 2020 (CAT) and **SERAP & Three Others v. Federal Republic of Nigeria,** Applications Nos. ECW/CCJ/APP/23/21, 24/21, 26/21 & 29/21, Judgment No. ECW/CCJ/JUD/40/22. They maintained that the Respondents produced no evidence demonstrating that the blanket restriction was proportionate or

necessary, and therefore prayed for declarations that the restriction violated Articles 18, 20(1), 26(1), and 29(1) of the Constitution, together with an order directing the Respondents to immediately lift all restrictions on access to X.

In response to the Petitioners' submissions, Mr. Stanley Stanislaus Kalokola, learned Senior State Attorney, conceded that access to X in Tanzania had been restricted but maintained that the restriction fell within the constitutionally permissible limits on the enjoyment of fundamental rights. Relying on **Julius Ishengoma Francis Ndyanabo v. Attorney General** (supra), he acknowledged that the State bears the burden of justifying any limitation of rights, while emphasizing that constitutional rights are not absolute and must be exercised subject to corresponding duties.

He adopted the issues framed by the Petitioners, namely, whether the restriction violated the Constitution, whether the Respondents had justified the limitation, and the appropriate remedies. Relying on **His Holiness Kesavananda Bharati Sripadanagalavaru v. State of Kerala & Another** [1973] Supp. S.C.R. 1, as cited in **Julius Ishengoma Francis Ndyanabo v. Attorney General** (supra), he submitted that constitutional

rights may be reasonably limited through appropriate checks and balances to protect the rights of others and the public interest.

On whether the restriction violated the Constitution, he argued that although the Petitioners advocated a broad interpretation of the rights to freedom of expression and access to information, as reflected in **Secretary, Ministry of Information and Broadcasting v. Government of India** (1995) 2 SCC 161 and S**. Rangarajan v. P. Jagjivan Ram & Others** (1989) 2 SCC 574, those rights must be exercised within the constitutional framework of rights and duties. He maintained that the Bill of Rights requires a balance between individual freedoms and corresponding responsibilities, and that no fundamental right is absolute. In support, he relied on **Zakaria Kamwela & Others v. Minister of Education & Vocational Training & Another,** Civil Appeal No. 3 of 2012 [2013] TZCA 167 (5 July 2013), and **Julius Ishengoma Francis Ndyanabo v. Attorney General** (supra), submitting that limitations on fundamental rights are permissible where necessary to maintain public order and prevent the abuse of freedoms.

He further submitted that Articles **29(5), 30(1) and 30(2)** of the Constitution permit limitations on fundamental rights to balance individual

freedoms with corresponding duties. He argued that the right to freedom of expression under Article 18, including its exercise through online platforms such as X, is subject to lawful limitations, and that the State has a duty to regulate electronic platforms where their use threatens public rights and interests. He added that the protection afforded by the Government to citizens in the physical environment must equally extend to the digital space. Citing **Justice D. M. Dharmadhikari, Human Values and Human Rights**, Universal Law Publishing Co., New Delhi, India, p. 122, he emphasized the State's responsibility to balance individual freedoms against societal interests.

On the constitutional justification for restricting access to X, the learned Senior State Attorney submitted that, pursuant to **Article 26(1) of the Constitution**, every person, including operators of online platforms, is bound to observe and comply with the laws of Tanzania. Accordingly, X, as an electronic platform operating within Tanzania's cyberspace, was under an obligation to comply with Tanzanian laws.

He maintained that the Petitioners' challenge lacked merit, as the Respondents had demonstrated a constitutional basis for the restriction. He

argued that the restriction did not amount to a complete denial of the rights to freedom of expression and access to information, since other platforms, including Instagram, TikTok, Facebook and WhatsApp, remained accessible. He contended that access to X was restricted following its use to disseminate prohibited content, as explained in paragraphs 10 and 11 of the counter-affidavits. In support, he referred to **Annexure OSG-1**, which showed that X had been notified of the dissemination of allegedly indecent, defamatory, hateful and unethical content in contravention of Regulation 16 of the Electronic and Postal Communications (Online Content) Regulations, 2020, and required to take corrective measures before regulatory action was initiated.

He further argued that the restriction was intended to safeguard public safety, health and morality, which are recognised grounds for limiting fundamental rights under **Article 30(2)(b) and (f) of the Constitution**. He submitted that the Electronic and Postal Communications (Online Content) Regulations, 2020 provide the regulatory framework for enforcing those constitutional limitations. Relying on **Julius Ishengoma Francis Ndyanabo v. Attorney General** (supra), he maintained that restrictions imposed in the interests of public safety, order, health and morality are

constitutionally permissible. He relied on **Kukutia Ole Pumbuni & Another v. Attorney General [1993] TLR 159 (CAT)** H and **Umuhoza v. Republic of Rwanda (Application No. 003/2014) [2017] AfCHPR 13 (24 November 2017)**.

On the issue of lawfulness, the learned Senior State Attorney submitted that the restriction on access to X was imposed pursuant to Regulations 16 and 19(b) of the Electronic and Postal Communications (Online Content) Regulations, 2020, which govern online content service providers, internet service providers, application service providers and related online activities. He maintained that the Regulations remain valid and enforceable, having neither been nullified nor declared unconstitutional by a competent court. He maintained that the Second Respondent (TCRA) acted within its statutory mandate in restricting access to X. That the restriction was neither arbitrary nor an abuse of power, as it was undertaken pursuant to the law and followed prior notification to X, as evidenced by paragraph 10 of the counter-affidavit and **Annexure OSG-1**.

He was forceful that Regulation 19(b) empowers TCRA to take measures against non-compliance, including restricting access to prohibited content,

and that the term "including" gives TCRA a range of regulatory options. He relied on **Paul Kisabo v. Minister of Information, Communication and Information Technology & Others (Misc. Civil Cause No. 27860 of 2024) [2024] TZHC 1970 (3 May 2024)**, where the Court considered TCRA's regulatory mandate over online content.

He, seemingly in the alternative argued that safeguards against abuse exist through appeal to the Fair Competition Tribunal under Regulation 20(4) and judicial review under the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, Cap. 310 R.E. 2023 citing the case of **Attorney General v. Dickson Paulo Sanga (Civil Appeal No. 175 of 2020) [2020] TZCA 371 (5 August 2020)** as reference.

On whether the restriction served a legitimate purpose, he argued that the Government has a constitutional duty under Article 30(1) of the Constitution to balance individual rights with public interest. According to annexure OSG-1, he elaborated, X was notified of defamatory, hateful, and unethical content being circulated on the platform and was given an opportunity to take corrective action, which it failed to do and therefore the restriction came in to protect public morality, safety, and health under Article 30(2)(b) and

(e) of the Constitution. He cited **Prisca Nyang'uba Chogero v. Attorney General of the United Republic of Tanzania (Misc. Civil Cause No. 26 of 2021) [2022] TZHC 15880 (24 June 2022)** on the importance of regulating the media sector to protect societal values.

Regarding proportionality, the learned state attorney was firm that the measure was justified because the restriction targeted only X while other platforms remained accessible; X was first given an opportunity to remedy the violation; and neither X nor its owner challenged the decision through available legal mechanisms. He was adamant that public interest must prevail where it conflicts with individual interests, relying on the principle "***Salus populi suprema lex esto***" and the decision in **Ms. Contract International (T) Ltd v. Permanent Secretary, Ministry for Housing and Human Settlement Development (Misc. Land Application No. 612 of 2023) [2023] TZHCLandD 17318 (14 November 2023)**. He firmly submitted that restricting content prohibited under the Third Schedule to the Regulations constituted a lawful measure aimed at protecting the public interest.

The learned Senior State Attorney further argued that the Petitioners' concerns regarding loss of access to information, education, business opportunities, journalism, and civic discussions were speculative and unsupported by evidence as such activities could still be conducted through other platforms and invited the Court to rely on evidence rather than speculation. He relied on **Q-Bar Limited v. Commissioner General, Tanzania Revenue Authority (Civil Appeal No. 163 of 2021) [2022] TZCA 381 (16 June 2022)**, **Eshe Ayoub Chamshana v. National Bank**

of Commerce Limited & 7 Others (Misc. Commercial Application No. 28449 of 2023) [2025] TZHCComD 160 (4 July 2025) and **David Joseph Mahende v. Afriscan Group T. Ltd (Civil Appeal No. 200 of 2016) [2022] TZCA 816 (15 December 2022) to boldster his argument**.

He lastly submitted that the restriction was constitutionally justified, aimed at protecting public order and morality from prohibited content, and that the petition lacked merit and should be dismissed with costs.

On rejoinder, Mr. Jebra Kambole and Mr. Mpale Mpoki, learned Advocates for the Petitioners, submitted that the Respondents' submissions, though extensive, failed to provide any factual evidence justifying the restriction. They argued that while the Respondents alleged that X was used to publish defamatory, hateful, and unethical content, they produced no tweets, posts, screenshots, or other evidence to support those claims. They contended that such assertions remain mere allegations and cannot form the basis for limiting constitutional rights.

They further challenged the evidential value of Annexure OSG-1, arguing that the Respondents failed to prove that the alleged notice to X was ever

sent, received, or acknowledged, as no email, delivery receipt, or confirmation of transmission was produced. They also submitted that the Respondents failed to respond to Annexures X1, X2, X3, X6 and X7, which demonstrated the scope and impact of the restriction, and that such failure amounted to an unchallenged acceptance of their contents. They further argued that the Respondents did not address the alleged violations of Articles 20(1), 26(1), and 29(1) of the Constitution.

On the alleged constitutional violation, counsels argued that the Respondents had conflated the existence of an infringement with its justification under Article 30(2). They contended that reliance on the limitation clause did not disprove the alleged interference with Article 18 rights.

They further rejected the Respondents' argument that access to other platforms such as Facebook, WhatsApp, and TikTok cured the restriction, submitting that each platform has unique features, users, and functions. They relied on **Aidan Frederick Lwanga Eyakuze v Commissioner General of Tanzania Immigration Service Department & Others**, Civil Appeal No. 13 of 2020 (CAT), arguing that access to alternative

platforms does not remedy interference with a specific right. They added that restricting X impaired users' participation in online discussions, including X Spaces, thereby interfering with their rights to freedom of expression, association and civic participation under Articles 18 and 20(1) of the Constitution.

Regarding justification of the limitation, counsel submitted that the Respondents failed to establish that the restriction was lawful. They argued that Regulations 16 and 19(b) of the Electronic and Postal Communications (Online Content) Regulations, GN No. 538 of 2020 only permit action against prohibited content and do not authorize blocking an entire platform. They maintained that the Respondents exceeded their statutory powers by restricting access to X as a whole. They distinguished **Paul Kisabo v Minister of Information, Communication and Information Technology & Others** (Misc. Civil Cause No. 27860 of 2024), arguing that the case did not determine whether TCRA has power to block an entire social media platform, did not apply the Article 30(2) proportionality test, and did not consider the legality of a blanket restriction.

The petitioner's advocates further rejected the argument that the matter should have been brought through judicial review. They submitted that the Petition challenges the constitutionality of State action affecting fundamental rights under Articles 18, 20(1), 26(1), and 29(1), and therefore falls within the jurisdiction of the Court under the Basic Rights and Duties Enforcement Act, Cap. 3, rather than judicial review under the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, Cap. 310. They distinguished **Attorney General v Dickson Paulo Sanga** (supra), arguing that it concerned criminal proceedings and was inapplicable to the present constitutional petition.

On legitimate purpose, the counsels accepted that public morality, safety, and health may justify limitations under Article 30(2), but argued that the Respondents failed to provide evidence demonstrating that such threats existed, identify any prohibited content, users responsible, or provide any material evidence showing the seriousness of the alleged harm. They maintained that general assertions in affidavits cannot justify interference with fundamental rights.

On proportionality, they maintained that the restriction was excessive because it affected all users and all content, including lawful content. They argued that the availability of other platforms does not make the restriction proportionate, as X has unique features and cannot simply be replaced by other platforms. They further submitted that Annexure OSG-1 did not prove that proper notice was given to X, and even if it was served, it did not amount to notice or consultation with affected Tanzanian users.

And further that the absence of a complaint from X's owner was irrelevant because the Petition was brought to protect the rights of Tanzanian users, not the interests of the platform owner. They maintained that the restriction affected citizens' rights to expression, access to information, association, and participation in public affairs.They finally reiterated their prayers, seeking that the petition be allowed and appropriate declarations and orders be granted.

After parties written submissions, counsels for the parties also were invited for oral submissions clarifying the points in issue. Mr. Jebra Kambole, learned counsel for the Petitioners, submitted that the Petition concerns the violation of constitutional and human rights arising from the Respondents' restriction

of access to the X platform, formerly known as Twitter. He argued that, once the Respondents relied on justification for limiting fundamental rights, the burden rested upon them to establish its legality. Citing **Daudi Pete** (supra), he identified three tests for determining the validity of such limitation: legality, legitimate aim and proportionality.

On legality, he challenged the Respondents' reliance on regulation 19 of the Online Content Regulations, GN No. 538 of 2020, arguing that the provision did not confer powers upon the Authority to block an entire platform.

On legitimate aim, he submitted that the Respondents had not produced sufficient evidence demonstrating the alleged immoral or unethical content, or showing how the restriction was necessary to protect public health. He maintained that merely describing content as immoral or unethical could not, without supporting evidence, justify limiting constitutional rights.

On proportionality, he argued that blocking the entire platform was excessive, as it restricted access to both prohibited and permissible content. He proposed less restrictive measures, including issuing specific notices or warnings and taking action against individuals responsible for posting prohibited content. He further submitted that other social media platforms,

such as Facebook and TikTok, could not be regarded as adequate alternatives because they offered different features and means of communication. He therefore maintained that the Respondents had failed to justify the restriction.

Mr. Mpale Mpoki, learned Senior Counsel for the Petitioners, submitted, that constitutional litigation differs from ordinary civil proceedings. He argued that the Respondents' reliance on Article 30 of the Constitution amounted to an admission that the Petitioners' rights had been limited, while asserting a constitutional justification for doing so. In his view, the Court is therefore required to examine whether the limitation was proportionate to the intended objective.He contended that the Respondents had failed to satisfy the proportionality test established in **Daudi Pete** (supra) and **Kukutia Ole Pumbun** (supra). He likened reliance on Article 30(2) to a defence in tort proceedings, where a party acknowledges the underlying interference but seeks to justify it. He maintained that the restriction was disproportionate and consequently unconstitutional.

In reply, Mr. Stanley Kalokola, learned State Attorney for the Respondents, submitted that the Respondents relied on Articles 30(1) and 30(2) of the

Constitution to justify a lawful limitation of rights, rather than an unconstitutional violation. He argued that the distinction lay in the existence of a constitutionally recognised justification for the limitation.

He submitted that the X platform had operated contrary to the Online Content Regulations despite engagement with the Tanzania Communications Regulatory Authority (TCRA). Referring to Annexure OSG-1, he argued that the correspondence demonstrated how the platform owner had been required to take remedial measures to ensure compliance with the Regulations.He further contended that the Petitioners could not make assertions on behalf of the platform owner without supporting evidence from the owner itself. In particular, he argued that there was no evidence establishing that the platform had not been warned or notified of the alleged non-compliance. He urged the Court not to treat submissions as a substitute for evidence.

The learned State Attorney also submitted that the Online Content Regulations provided an avenue of redress through an appeal to the Fair Competition Tribunal. He observed that the platform owner had not pursued that remedy.

On proportionality, he argued that the responsibility to ensure that content complied with the law rested primarily upon the platform owner, not the regulator. He maintained that the Authority had first engaged the platform owner and requested remedial action, as evidenced by Annexure OSG-1. The restriction was imposed only after the platform failed to comply with the directive. He emphasised that the measure targeted the X platform alone and did not affect other online platforms.

He finally acknowledged the individual rights of persons wishing to access the platform but argued that such rights ought to be exercised consistently with the rights of others and the public interest. Relying on Articles 29(5), 30(1) and 30(2)(a) and (b) of the Constitution, he maintained that individual rights could lawfully be limited where their exercise conflicted with the protection of the public interest and the rights of others.

We have considered the entire petition and the parties' submissions. On our part, we shall pick from the proposition as to whether the limitation was prescribed by law. It is common ground the Petitioners and the general public experienced restrictions on access to the social media platform X, formerly Twitter, in Tanzania on 20 and 21 May 2025. The Respondents

admitted restricting access to the platform, explaining the decision followed the Chief Executive Officer of X's alleged defiance of a warning issued by the Director General vide a letter marked Annexure OSG-1. They maintained the restriction was lawful under Regulations 16 and 19(b) of the Electronic and Postal Communications (Online Content) Regulations, 2020, as it was intended to prevent prohibited content in the interests of public safety, health and morality. They banked on Article 30(2)(b) and (f) of the Constitution, which permits limitations on fundamental rights and freedoms, including freedom of expression and access to information, in the interests of public safety, public health, morality and the public interest.

Before considering the scope of the limitations permitted under Article 30(2)(b) and (f) of the Constitution, it is necessary in our view, to examine the contents of Annexure OSG-1, referred to in paragraph 10 of the counter-affidavit. In that letter, the Director General accused X of facilitating the publication, dissemination and access to indecent content in Tanzania. In particular, paragraph 2 stated the Authority had observed an increase in such content on the platform, including defamatory, hateful and unethical material prohibited under Regulation 16 of the Electronic and Postal Communications

(Online Content) Regulations, 2020 (GN No. 538 of 2020). The paragraph reads:-

> *"2. The **Tanzania Communications Regulatory Authority (TCRA) has noted with concern the increase of indecent content being published, disseminated and accessed through the Twitter (X) platform in the Tanzanian cyberspace**. The content being published and shared in Twitter (X) includes **defamatory, hateful and unethical content** which is prohibited in Tanzania under **Regulation 16** of the Electronic and Postal Communications (Online Content) Regulations, 2020."(Emphasis added)*

As indicated above,the TCRA relied on Regulation 16 as the basis for its concern about the content appearing on the platform.

In both their reply to the Originating Summons and submissions made before the court the Respondents maintained that the restriction was imposed pursuant to Regulation 19(b) of the Electronic and Postal Communications (Online Content) Regulations, GN No. 538 of 2020. This argument raises a question whether the Respondent has the mandate and power to restrict

access to a social media platform. But before we move into that analysis , we find it pertinent to define tow relevant terms , the "content" and "social media".

Regulation 3 of GN No. 538 of 2020 defines the word content to mean,

> *"...information in form of speech or other sounds, data, text or images whether still or moving except where transmitted in private communications'*

And "social media" is defined as :-

> *"...online-based applications and platforms that bulid on the ideological and technological foundations of web and that allow the creation and exchange of highly interactive user generated content and platforms through which individuals, organisations and communities share, co-create, discuss and modify user-generated content"*

The prohibited content falls within the former definition and is regulated under Regulation 16 and 19, whereas a social media platform, in this case, X formally Twitter is the medium through which both lawful and prohibited content may be published and accessed. We have undertaken a careful and deliberate examination of the above provisions. Regulation 16, G.N. 538 of 2020, provides: -

*"(1) A person shall not publish any **prohibited content as set out in the Third Schedule**.*

*(2) A person shall not render, possess or distribute technology, program, application or any other related thing that allows or helps users to have access to **prohibited content**" (Emphasis added)*

Construed plainly, the provisions impose two distinct but related prohibitions. Sub-regulation (1) prohibits the publication of content specified in the Third Schedule as prohibited contents, while sub-regulation (2) prohibits the provision, possession or distribution of tools or technology intended to facilitate access to such prohibited content. Neither provision expressly authorises the blanket restriction of an entire social media platform merely because prohibited content is published on it. To construe them otherwise would extend their scope beyond the prohibitions expressly prescribed by the law.

Regulation 19 provides:

*"In carrying out its functions of regulating **online content**, the Authority shall have the following powers:*

(a) to licence and keep a register of ***online content*** *service providers;*

(b) to take action against non-compliance to these Regulations, including to order removal of or ***bar access*** *to* ***prohibited content****;*

(c) to conduct public awareness in relation to safe use of ***online content****."(emphasis added)*

In sum, Regulation 19(b) empowers TCRA to order the removal of, or block access to, prohibited content; it does not expressly confer authority to block an entire social media platform hosting both lawful and unlawful content. Had the Legislature intended to grant such an extensive power, it would have expressly provided for it. Since the Respondents relied on this provision to justify the restriction, we find that the blanket blocking of access to X exceeded the statutory mandate conferred upon them.

The learned Senior State Attorney relied on Articles 29(5) and 30(1)–(2) of the Constitution to justify the restriction, arguing that fundamental rights, including those under Article 18, may lawfully be limited. We have no problem with that. Article 29(5) of the Constitution reads:-

"29(5) In order that all persons may benefit from the rights and freedoms guaranteed by this Constitution, every person has the

duty to so conduct himself and his affairs in the manner that does not infringe upon the rights and freedoms of others or the public interest."

And Article 30 (1)(2) provide:

"30.-(1) The human rights and freedoms, the principles of which are set out in this Constitution, shall not be exercised by a person in a manner that causes interference with or curtailment of the rights and freedoms of other persons or of the public interest.

(2) It is hereby declared that the provisions contained in this Part of this Constitution which set out the principles of rights, freedom and duties, does not render unlawful any existing law or prohibit the enactment of any law or the doing of any lawful act in accordance with such law for the purposes of

(a) ***ensuring that the rights and freedoms of other people or of the interests of the public are not prejudiced by the wrongful exercise of the freedoms and rights of individuals****;*

(b) ***ensuring the defence, public safety, public peace, public morality,*** *public health, rural and urban development planning, the exploitation and utilization of minerals or the increase and development of property of any other interests for the purposes of enhancing the public benefit;*

(c) ensuring the execution of a judgment or order of a court given or made in any civil or criminal matter;

(d) protecting the reputation, rights and freedoms of others or the privacy of persons involved in any court proceedings, prohibiting the disclosure of confidential information or safeguarding the dignity, authority and independence of the courts;

(e) imposing restrictions, supervising and controlling the formation, management and activities of private societies and organizations in the country; or

(f) enabling any other thing to be done which promotes or preserves the national interest in general." (Emphasis added)

Insisting on the above constitutional point, in **Zakaria Kamwela & Others v. Minister of Education & Vocational Training & Another** (supra), at page 40, the Court of Appeal observed:

"It is common ground that the fundamental rights and duties enshrined in Articles 12 to 28 of the Constitution... are not absolute."

And in **Julius Ishengoma Francis Ndyanabo v. Attorney General** (supra), the court held:-

"Fundamental rights are not illimitable. To treat them as being absolute is to invite anarchy in society. Those rights can be limited, but the limitations must not be ***arbitrary, unreasonable*** *and* ***disproportionate to any claim of State interest****."(bold is ours)*

It is therefore beyond dispute that the fundamental rights and freedoms guaranteed under Article 18 of the Constitution are not absolute. Their limitation is permissible only where it is legally authorised, directed towards a legitimate objective and imposed through measures necessary and proportionate to achieving that objective.

Luckily, the issue before us is not whether constitutional rights may be limited but whether the limitation imposed in this particular case was authorised by law and exercised in accordance with constitutional requirements. Our answer is plainly no.

Apart from admitting the imposition of the restrictions complained of, the Respondents have also established that the restriction aimed at barring content prohibited under Regulation 16 of the Electronic and Postal Communications (Online Content) Regulations, 2020. However, as already demonstrated above neither the Electronic and Postal Communications

(Online Content) Regulations, 2020 nor any other written law empowers the Respondents to block access to an entire social media platform. As stated, Regulation 19(b) authorises the Authority to order the removal of, or bar access to, ***specific prohibited content,*** not to prohibit access to the platform itself. We are of the firm view that an authority cannot restrict fundamental rights merely because it considers such action desirable or necessary. It must act within the powers expressly or lawfully conferred upon it. By imposing a nationwide restriction on the entire X platform, the Respondents exercised powers that the law does not confer on them. In those circumstances, Article 30(2) of the Constitution cannot be invoked to validate the restriction, as it applies only where the impugned act is lawful and undertaken in accordance with law.

It should be emphasised here that the three-part constitutional inquiry, legality, necessity and proportionality, presupposes the existence of a valid law authorising the limitation. Where no legal authority exists for the impugned measure, the inquiry ends at the first stage. In this case, the absence of a lawful foundation is itself sufficient to invalidate the restriction. This approach is fully supported by the authorities relied upon by both parties, the case of **DPP v. Daudi Pete** (supra) in which the Court of Appeal

held that legislation limiting fundamental rights is constitutionally valid only if it falls squarely within the parameters of Article 30. In its decision, the Court held:

> *"We accept the proposition that any legislation which falls within the parameters of Article 30 is constitutionally valid, notwithstanding that it may be violative of basic rights of the individual. But, and this is the crucial part, such legislation must fit squarely within the provisions of the article. Any statute which is so broad as to fall partly within and partly outside the parameters of the article would not be validated for the reason to be given hereafter."*

Similarly, in **Kukutia Ole Pumbun & Another v. Attorney General** (supra), the apex Court commented that any law restricting fundamental rights must satisfy two essential requirements; first, it must be lawful, non-arbitrary, and contain adequate safeguards against abuse; and second, the limitation must be no more than is reasonably necessary to achieve a legitimate objective. A law that fails either requirement is not protected by Article 30(2). The court specifically said:

'Because of the coexistence between the basic rights of the individual and the collective rights of the society, it is common nowadays to find in practically every society limitation to the basic rights of the individual. So that the real concern today is how the legal system harmonizes the two sets of rights. In trying to achieve this harmony, the view has been that in considering any act which restricts fundamental rights of the individual, such as the right of free access to the Court of law in this case, the Court has to take into account and strike a balance between the interests of the individual and those of the society of which the individual is a component. Thus, consistent with that approach, the Court in Pete's case laid down that a law which seeks to limit or derogate from the basic right of the individual on grounds of public interest will have special requirements; first, such a law must be lawful in the sense that it is not arbitrary. It should make adequate safeguards against arbitrary decisions, and provide effective controls against abuse by those in authority when using the law. Secondly, the limitation imposed by such law must not be more than is reasonably necessary to achieve the legitimate object. This is what is also known as the principal of proportionality. The principle requires that such law must not be drafted too widely so as to met everyone including even the untargeted members of the society. If the law which infringes a basic right does not meet both requirements, such law is not saved by article 30(2) of the Constitution, it is null and void'

And in **Julius Ishengoma Francis Ndyanabo v. Attorney General** (supra), the Court said:-

" Fundamental rights are not unlimited. To treat them as being absolute is to invite anarchy in society. Those rights can be limited, but the limitation must not be arbitrary, unreasonable and disproportionate to any claim of state interest"

The authorities above support a common constitutional principle that the state must first establish a lawful basis for limiting a constitutional right before the Court can consider whether the limitation is reasonable or proportionate.

The Respondents' evidence establishes that the restriction was imposed following alleged non-compliance by X with TCRA's warnings concerning prohibited content, taken as a last resort, intended to protect public safety, public health and public morality. In particular, Annexure OSG-1 indicates TCRA had reported specific accounts containing prohibited content, but X allegedly failed to take action. Paragraphs 10 and 11 of the joint counter affidavit read:

"10. That the contents of paragraphs 20 and 21 of the Petitioners' Affi davit are denied. I state that the restriction to access to X platform was effected following the posting of

prohibited contentsin the Platform accessible to all users contrary to t he Constitution and laws of the land. I further state that, it is only ***the owner of X platform who has the power of controlling what is being posted in the said platform and*** accessed in Tanzanian ***cyberspace****. In addition, I state that, access to* ***X platformin Tanz ania has been restricted for the owner's failure to abide with the laws and procedures of Tanzania****. ...*

11. That the contents of paragraphs 22, 23 and 24 of the Petitioner's Affidavit are denied. The contents of paragraph 10 herein above are reiterated. I state that restricting access to X was the last resort after the said platform owner refused to cooperate and abide with Tanzanian's laws and Regulations. I further state that, restricting access to X Platform in Tanzania aimed at ensuring protection of public safety, public health and public morality"

And paragraph three of annexure OSG1 reads:-

"TCRA has been reporting some specific user accounts which contain prohibited contents in the Tanzania cyberspace but no any actions have been taken by Twitter (X)"

We have traversed the Tanzania Electronic and Postal Communications Act, Cap 306 and GN No. 538 of 2020. The relevant provisions provide for the Authority's powers to regulate prohibited online content, enforce licensee compliance, and suspend or revoke a licence for breach of its conditions. Firstly, the Authority has powers under Regulation 8(1) of the Electronic and Postal Communications (Online Content) Regulations, 2020, to suspend or revoke a licence if it is satisfied that the licensee has violated or breached its terms and conditions.

Secondly, Regulation 19(b) concerns enforcement against prohibited content. It empowers the regulator to order the removal of, or block access to prohibited content.

Thirdly, Regulations 20 and 21 provide mechanisms for handling complaints and dealing with breaches. Under Regulation 21(2) and (3), where a licensee, in this case the Owner of the X platform, breaches the Regulations, the Authority may refer the matter to the Content Committee. Upon determination, the Committee may issue a warning, require a public apology, order removal of the offending content, or impose a fine under the Act. A

person aggrieved by the Authority's decision may appeal to the Fair Competition Tribunal under Regulation 20(4).

Fourthly, under section 22 of the Tanzania Communications Regulatory Authority Act, Cap. 306, the Authority may suspend or cancel a licence where the licensee commits a material breach of the licence conditions or section 26 and fails to remedy the breach within thirty days of receiving notice from the Authority and here the law requires both a material breach and failure to remedy it within the prescribed period.

Section 21 of the Act sets out the relevant grounds for material breach. Section 21(g) is particularly relevant, as it recognises as a material breach the repetition or continuation of an infraction after the Authority has issued a written notice requiring the licensee to cease the offending operation, or a combination of such infractions. Section 21(i) also covers failure to comply with any other condition specified in the licence.

It is clear therefore from the above that the Authority has distinct enforcement powers, depending on the nature of the breach. However, none of them confer a general power to block an entire social media platform as a substitute for the prescribed enforcement procedures.

In the present case, the Respondents embarked on a course of action not authorised by any law, with the potential to block the entire platform, thereby interfering with the Petitioners' right to freedom of expression and information enshrined in it. This action was unlawful and amounted to arbitrary practice, which is unfair, indefensible, and incomprehensible.

The learned Senior State Attorney further argued that any grievance against the decision should have been pursued by way of an appeal to the Fair Competition Tribunal or through judicial review under the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, Cap. 310. We are unable to agree. The present proceedings directly allege violation of the petitioners' fundamental constitutional rights. Such claims fall squarely within the jurisdiction conferred upon this Court under the Basic Rights and Duties Enforcement Act, Cap. 3 R.E. 2023, and the Basic Rights and Duties Enforcement (Practice and Procedure) Rules, 2014. The judicial review remedy would have been, in an appropriate case, taken by the licensee and not the petitioner before the court. After all, the availability of alternative administrative remedies does not oust or diminish this Court's constitutional jurisdiction to determine alleged violations of the Bill of Rights. We also note that the Respondents did not identify any statutory provision conferring upon

the Petitioners a right of appeal against the impugned restriction, the petitioner's not being the licensee of the platform.

The Respondents relied on **Paul Kisabo v. Minister of Information, Communication and Information Technology & Others** (supra). That decision is distinguishable. The issue of whether TCRA possesses statutory authority under Regulation 19(b) to block an entire social media platform did not arise for determination. Nor did the Court examine the legality or proportionality of a blanket platform restriction under Article 30(2). Any observations regarding blocking powers were therefore obiter dicta and cannot be treated as binding authority on the issues before us.

Similarly, **Attorney General v. Dickson Paulo Sanga** (supra) is inapplicable. That case concerned the Director of Public Prosecutions' exercise of prosecutorial powers and the availability of judicial review. It did not involve a constitutional challenge to the restriction of fundamental rights under the Basic Rights and Duties Enforcement Act.

The foregoing analysis leads us to answer the first issue, namely, whether the restriction violated the Constitution of the United Republic of Tanzania, in the affirmative. The second issue, whether the Respondents justified the

limitation of the Petitioners' fundamental rights and freedoms, is answered in the negative.

This brings us to the reliefs sought. Having found the restriction of access to X unlawful and unconstitutional for want of clear enabling legal authority, we find the reliefs sought by the Petitioners merited. Accordingly, the Petition is allowed, and the following orders are made:

(a) The action of the Respondents to restrict access to social platform "X", formerly known as Twitter on 20/5/2025 without justification is unconstitutional, and offend the provisions of Article 18, 20 (1), 26(1) and 29 (1) of the Constitution of the United Republic of Tanzania of 1977 as amended from time to time.

(b) We hereby direct the Respondents to immediately lift, remove and cease any restrictions, blocks, throttling or other technical or administrative measures imposed by them on access to the social media platform "X", formerly known as Twitter, and thereby ensure uninterrupted access to the platform by the Petitioners and the general public. For avoidance of doubt, this order shall not preclude the Respondents, in the lawful exercise of their regulatory mandate

under Regulation 19(b) of the Electronic and Postal Communications (Online Content) Regulations, 2020, from ordering the removal of, or barring access to, specific content established to be prohibited under the said Regulations or any other applicable law.

(c) We make no order as to costs, this being a public interest constitutional petition

Dated at Dar es Salaam, this 24th day of November 2026.

S. M. MAGHIMBI

JUDGE

E. B LUVANDA

JUDGE

E. Y MKWIZU

JUDGE