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THE RIGHT TO FREEDOM OF EXPRESSION AND MEDIA REPORTING ON CRIMINAL PROCEEDINGS IN TANZANIA: FINDING THE BALANCE

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1.0 Introduction

This paper examines the impact of media reporting to crime and criminal court proceeding in Tanzania in the light of exercising the legitimate right to freedom of expression by the press, on one hand and the accused rights to presumption of innocence and fair trial on the other hand. The purpose of the discussion revolves around the effect of prejudicial crime reporting to the criminal suspects/accused and available remedies within the legal system. I will also, look upon the court practices and the law in dealing with interference with the course of justice.

Recently the media has been prejudicially reporting crimes in a manner which appears as “trial by the media”\(^2\). Serious crimes and judicial proceedings are reported by the media in series and episodes which, in most cases are exaggerations and tend to incriminate one of the parties perceived to be newsworthy. Modern Tanzania\(^3\), news industry keeps up with the developed world media technologies; like TV and radio stations, mainstream newspapers and tabloid newspapers, mobile phones companies

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1 Lord Reid in A.G v Times Newspapers Ltd, [1973] 3 All ER
2 Trial by media is a phrase (popular in the late 20th century and early 21st century) used to describe the impact of television and newspaper coverage on a person’s reputation by creating a widespread perception of guilt or innocence before, or after, a verdict in a court of law.,
3 Tanzania from 1995 to date basing on the influx of independent media houses and use of internet technology
wide part of the population than post independent Tanganyika, later Tanzania. The paper also analyses the rights of the accused person, especially the right of presumption of innocence and fair trial and justification of these rights to suspects; it also dissects the right to freedom of expression/information to the people and the press, its limitations and justifications in an attempt to find the balance between the two competing rights. Furthermore, the paper looks at other countries’ practices in limiting the press from publishing criminal proceedings in whole or part for the interests of justice and fairness of the accused person.

2.0 The Right to Freedom of Expression/Information

Human rights are inalienable and fundamental entitlements that a person inherently deserves simply because he/she is a human being\(^5\). One of those rights is the right to freedom of expression which guarantees a person the right to receive and impart information, as it is said information is power. Thus, in an attempt to empower the public, the media sector in Tanzania includes both public and private media outlets comprising of television networks, radio stations, daily newspapers and weekly newspapers and a number of World Wide Web news sites with hundreds of blogs and social networks for sharing news and information\(^6\) accessible to the public.

The right to freedom of expression and information is guaranteed in a number of international, regional and local instruments. Among these include, Article 19 of the Universal Declaration of Human Rights\(^7\), Article 19 (2), of the International Covenant on

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\(^4\) The instant nature of online publishing means that, unlike publication in traditional newspapers, it is almost impossible to contain them once they have been published. See also, http://www.guardian.co.uk/law/interactive/2010/dec/20/twitter-court-guidance, accessed on 20\(^{th}\) June 2012


\(^6\) Such as jamii forums, twitter and facebook

\(^7\) Adopted and proclaimed by the UN General Assembly in resolution 217 A (III) of 10 December 1948 at Paris
Article 9 of the African Charter on Human and Peoples’ Rights (ACHPR), Article 7 of the African Charter on the Rights and Welfare of the Child (ACRWC), and Declaration of Principles on Freedom of Expression in Africa. At the national level there is a Bill of Rights entrenched in the Constitution of the United Republic Article 18.

All these instruments are meant to guarantee and protect human rights including the right to freedom of expression. Summing up the above provisions, the right to freedom of expression includes the following elements:

i. The right to hold opinion without interference

ii. The freedom to seek, receive and impart information and ideas regardless of frontiers; and

iii. The freedom to do so orally, in writing, in print, through art or any other media of one’s choice.

The Constitution of the United Republic of Tanzania provides under Article 18 thus;

(1) Bila ya kuathiri sheria za nchi, kila mtu yuko huru kuwa na maoni yoyote na kutoa nje mawazo yake, na kutafuta, kupokea na kutoa habari na dhana zozote kupitia chombo chochote bila ya kujali vipaka ya nchi, na pia ana uhuru wa kutoingiliwa kati mawasiliano yake.

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8 Adopted by the UN General Assembly in resolution 2200 A (XXI) of 16 December 1966 at New York, entered into force on 23 March 1976
11 2002.
12 Introduced in the Constitution of Tanzania in 1984 by the Fifth Constitutional Amendment Act, 1984, [Act No. 15 of 1984
13 Constitution of the United Republic of Tanzania of 1977 [as amended from time to time] herein referred to as the Constitution, Article 18. See also the Fifth Constitutional Amendment Act, 1984, [Act No. 15 of 1984].
English version of the Article,

18. Every person –

(1) Has a freedom of opinion and expression of his ideas; has the right to seek, receive and, or disseminate information in any form regardless of national boundaries; and has the freedom to communicate and freedom with protection from interference from his communication;

(2) Has a right to be informed at all times of various important events of life and activities of the people and also of issues of importance to the society.

It’s quite clear that the right to freedom of expression and information is very important in the modern and democratic society. But the full exercise of this right is not short of duties and responsibilities to the people. The exercise of this right completely unrestricted can be disastrous and in most cases leads to infringement of the rights of others. Arguments justifying restrictions tend to concentrate on political grounds and national security as sole factors to restrict freedom expression and forget the rights of the accused persons in criminal cases which are frequently encroached by the media, especially newspapers, blogs and social media.

2.1 Limitations of the Right to Freedom of Expression/Information

The International and Regional human rights instruments together with the national Constitution recognize some legal justifications to limit the exercise of the right to freedom of expression, Article 19 (3) of the ICCPR, Article 9(2) of the ACHPR, Article

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14 See also, Article 14 of ICCPR on the right to fair trial
5 of the ACRWC, and principle 2(2) of the Declaration of Principles on Freedom of Expression in Africa recognize lawful limitation of the right provided by law to serve a legitimate interest and be necessary in a democratic society. The ICCPR specifically recognizes the following justifications for limiting or restricting the right to freedom of expression: protection of the rights and reputation of others, protection of national security, and protection of public order, public health and morals. These restrictions are referred to as “limitation clauses”\textsuperscript{16}. Article 30 (1) - (5) of the Constitution\textsuperscript{17} provides for the general limitation clause of the Bill of Rights, thus:

30. (1) Haki na uhuru wa binadamu ambavyo misingi yake imeorodheshwa katika Katiba hii havitatumiwa na mtu mmoja kwa maana ambayo itasababisha kuingiliwa kati au kukatizwa kwa haki na uhuru wa watu wengine au maslahi ya umma.

(2) Ifahamike kwamba masharti yaliyomo katika sehemu hii ya Katiba hii yanayofanua misingi ya haki, uhuru na wajibu wa binadamu, hayaharamishi sheria yoyote iliyotungwa au jambo lolote halali kufanywa kwa mujibu wa sheria hiyo, kwa ajili ya–

(a) kuhakikisha kwamba haki na uhuru wa watu wengine au maslahi ya umma havitatumiwa na matumizi mabaya ya uhuru na haki za watu binafsi;

(b) kuhakikisha ulinzi, usalama wa jamii, amani katika jamii, maadili ya jamii, afya ya jamii, mipango ya maendeleo ya miji na vijiji, ukuzaji na matumizi ya madini au ukuzaji na uendelezaji wa mali au maslahi mengineyo yoyote kwa nia ya kukuza manufaa ya umma;

(c) kuhakikisha utekelezaji wa hukumu au amri ya mahakama iliyotolewa katika shaahi lolote la madai au la jinai;

\textsuperscript{15} See also, Article 17(2) (d) on the right to privacy
\textsuperscript{17} As the Constitution of the United Republic of Tanzania is established in the Kiswahili language, the controlling version in interpreting the Constitution is the Kiswahili and not the English version; as it was held in the case of Director of Public Prosecutions v Daudi Pete [1993] TLR 22 (CA) at pg 33 and Mbushuu alias Dominic Mnyaroje and Another v Republic [1995] TLR 97 (CA) at pg 104 and 108
English version of the Article;

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;

2.2 The Right of Presumption of Innocence and Fair Trial

The right to presumption of innocence is one of the fundamental rights in criminal proceedings. The right accrues to a suspect from the time he/she is apprehended, throughout the trial until the case is decided on merits. The right to presumption of
innocence is guaranteed by human rights instruments. It forms a crucial element to the right of due process according to Articles 11(2) of the UDHR, 14(2) of the ICCPR, 7(1) (b) of the ACHPR. The right to presumption of innocence is also provided by the Constitution of the United Republic of Tanzania, thus:

13. (6) Kuwa madhumuni ya kuhakikisha usawa mbele ya sheria, Mamlaka ya Nchi itaweka taratibu zinazofaa au zinazozingatia misingi kwamba—
(b) ni marufuku kwa mtu aliyeshtakiwa kwa kosa la jinai kutendewa kama mtu mwenye kosa hilo mpaka itakapothibitika kuwa anayo hatia ya kutenda kosa hilo;

English version of the Article:

13. (6) To ensure equality before the law, the state authority shall make procedures which are appropriate or which take into account the following principles, namely:

(b) No person charged with a criminal offence shall be treated as guilty of the offence until proved guilty of that offence;

The rationale of the right is to place the parties to a criminal proceeding at equal footing before the court and to present their case freely in order to guarantee fairness to all of them. Thus, in order to ensure the parties a fair hearing many factors have to be ascertained such as the presumption of innocence, presentation of evidence, defense, right to be heard and the most important factor being the behavior of the members of the court, police, public and the press throughout the trial\(^\text{18}\) which do not prejudice the parties.

This right places the burden of proof to the prosecution.\(^\text{19}\) That is to rebut the presumption of innocence of the accused. It imposes on the prosecution the burden of proving the charge and guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt before a competent court of law. The UN Human Rights Committee comments that, public authorities should refrain from prejudging the outcome of a trial, by making public statements affirming the guilt of the accused, and

\(^\text{18}\) Magdalena Sepulveda, et al, supra at pg 189.
\(^\text{19}\) See also, Section 110 and 111 of the Evidence Act, [CAP 6, R.E 2002].
2.3 Prejudicial Crime and Criminal Proceedings News Reporting

The media in Tanzania reports a wide array of news to fulfill their readers’ demands for news and information, and crime and criminal court proceedings offers no exception. The demand pressures the editors to write flash headings of news in their newspapers to attract potential customers. That is why it is common to find news on legal issues or crime being reported in a many different headings of newspapers, different fonts and font sizes, colors and the most important is how the headings are configured. In this context the principles of human rights regarding presumption of innocence, and the right to a fair trial become of secondary priority to the press with interest of presenting a sensational plot for commercial gain.

After discussing the above rights it can be agreeable that reporting crime and criminal news requires careful wording, so as not to encroach other peoples’ rights. It has been a trend in Tanzania at the moment for the media to jump head on to report high profile crimes and criminal news in very sensational, populist, dramatized manner, without considering the rights of the accused persons. They only focus on their commercial gain from the customers than the human rights of the accused. The media has been presenting their news in a manner that appears to be “trial by the media” even if the case is at the investigation level by the police or is in court.

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20 UN Human Rights Committee General Comment No 32.
21 The public and the media have the right to attend all court hearings and the media are able to report those proceedings fully and contemporaneously. The public has the right to know what takes place in the criminal courts and the media in court acts as the eyes and ears of the public enabling it to follow court proceedings and to be better informed about criminal justice issues. The media focuses on legal stories primarily as source of entertainment as opposed to opportunities for civic education.
22 Including violent crimes, crimes such as murder, corruption, money laundering involving famous people, artists, politicians, high government officials and even ordinary citizens.
It is clear that the media, in doing so, exercise their Constitutional right of freedom of expression; however, on the other hand there is the question as to the rights of the people reported against (Example suspected criminals).

Intensive publicity is always damaging to the defendants, making it hard to assure them fairness in front of the people’ who are already convinced that they are guilty of the offence.

At the moment, Tanzanians seems to be fascinated with whistleblowers’ news involving high government officials and politicians in corruption scandals, prominent business persons and famous people such as superstar artists who are alleged to have committed crimes. The problem comes when the media, especially the press present such news to the public. They tend to concentrate on the defendants characters, exposing personal and family issues, without considering constitutional rights of the person they accuse, leading to violation of the accused’s right to privacy and fair trial. Sometimes it is usual to see editorial campaigns demanding arrest and prosecution of the culprits even before sufficient evidence is collected.

Such reporting can turn the public against such officials and the government, causing law enforcement agencies to act in haste. Culprits are invariably sent to court with ill prepared prosecution evidence. Hence, the government quite often loses the case and ultimately putting the credibility of the court into question to the public. A good example are the 2010 election corruption cases in most if not all of which the accused

23 The general rule is that all court proceedings must be held in open court to which the public and the media have access.

24 Scholars also offer propositions about the mass media’s ability to influence public opinion and behavior. Many of these academic theories proceed from a perspective of social constructionism, or a belief that our reality is composed entirely of the information we gather from social interactions, rather than from any objective, empirical, or socially transcendent knowledge or insight, Ray Surette, Media, Crime, and Criminal Justice: Images, Realities and Policies, 3rd ed., Belmont, CA: Wadsworth, 2006, pg 31–32.


This has a long term effect of diminishing public confidence to the judiciary. As more than 99 percent of the public do not attend trials, but only depend on the press for evidence, which accidentally convinced them but sadly was not legally admissible or plausible before the court.

The effect of such reporting can easily be seen from the public perception of the accused, the government and the judicial system. Furthermore, in the social media sites such as twitter, facebook and jamii forums the media, built-in hate and disappointment is clearly seen. From there the problem can easily be ascertained together with other several trials before it such as the cases involving Ditopile, Zombe, Liyumba cases and others of the like.

The notion of investigative journalism has remoulded the media into “kangaroo courts”. The media purports to have investigative powers in investigative journalism, presenting the evidence thereto to the public; prosecuting their culprits and convicting them without sending them to court, or pressuring the government law enforcement agencies to take action, basing on their reports, which do not necessarily carry admissible evidence to the court of law.

Knowing the power of the media especially the press has to the mind of the public, the politicians have now turned the media as battle ground for scandals and dirty politics. Charges are raised from political platforms and tried by the media before the public jury. There should be a balance of interest between the public right to access information and the rights of the accused. The press tends to comment on criminal trials in a series of episodes, instead of reporting only the substance of what had transpired in court. Commentaries on cases are proper only when the cases are completed on merits, in which case the course of justice is not interfered with or influenced by such comments. Intensive prejudicial publicity is equal to unfair trial and is very damaging to the defendant. Indeed the quality of court proceedings cannot be assured if the parties are

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27 See also, 27 Lord Reid in AG v Times Newspapers Ltd, [1973] 3 All ER
Trial by media equals to Roman era’s gladiators’ justice where the fate of parties are sealed by the public’s thumb up or thumb down rule\textsuperscript{28}.

2.4 Obligation to Protect

The right to the presumption of innocence obliges the police, prosecutors, court, public and the press, from prejudging any case for the interest of justice. It also obliges the authorities including the court, to prevent the press or any other person from influencing the outcome of any case before the courts. Furthermore the law requires the prosecution and the prosecution only, to bear the burden of proof throughout the trial. However, in all the dramatized trials the media seems to “share this burden” illegally, outside the temples of justice, especially in high profile criminal trials, unbalancing the level of justice.

The principle of equality of arms requires equal treatment of parties in trial to present their cases. This means the parties must be afforded a reasonable opportunity to present their cases under conditions that do not place any party at a substantial disadvantage \emph{vis-à-vis} the opposing party\textsuperscript{29}. The media unfairly shifts this balance by choosing sides, publishing incriminatory stories, which ultimately misleads the public and cost the prosecution. It is worth pointing out that, the media erratic crime and criminal proceedings reporting do not represent the noble exercise of the right to freedom of press/expression/information. Rather the sole purpose is that of attracting the customers for commercial gains, with the philosophy “\emph{the end justifies the means}”.

\textsuperscript{28} Gladiators were ancient Roman fighters who fought to death in the arena; once the fighter has been defeated the crowd would decide his fate, thumb up means mercy and thumb down means death and the victor is bound to follow what the crowd wants.

\textsuperscript{29} Supra note 4, at pg 187.
Is it Freedom of Press or Free

dom to Profit?

The journalist’s choices of news do not exclusively focus on informing the public. Journalists invariably report events and the editors create news stories from them. The news is presented basing on the newsworthiness of the report along commercial margins. To camouflage this interest the media capitalizes the right to freedom of information/expression/press and demand for news by the public. It is clear that the commercial gain by the press especially newspapers on criminal news, is paramount compared to the human rights of the accused in criminal proceedings. Advertisements in social sites such as news blogs attract a lot of visitors, thus they are potentially attractive for marketing. This makes them do anything to keep the visitors even if that means encroaching on other people’s rights30.

2.7 Exclusion of the Media from Court Proceedings

The courts have power to interfere in situations where the media encroach upon the proper administration of justice. Faulty media reporting31 poses an imminent danger to justice and require an immediate legal solution. The press report on crimes and criminal proceedings and extra judicial comments made by them regarding evidence32, social issues of the defendant and outcome of the cases are not only prejudicial to the right of presumption of innocence and fair trial33 of the accused, but also goes further to

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31 “Mass media, in both their traditional and emerging forms, focus predominantly on the sensationalistic, personal, and lurid details of unusual and high-profile trials and investigations. In short, a great deal of legal news has become a vehicle for entertainment, rather than for public education or for the reporting of breaking events with real public meaning”. See Richard L. Fox, Tabloid Justice. Criminal Justice in an age of Media Frenzy, 2nd Ed, Lynne Rienner, USA, 2007 at p 6, can also be accessed from www.rienner.com.
32 See for example, Mwananchi newspaper, “Mawakili wa Serikali wamkaanga Lulu”, Friday, June 22nd June, 2012, ISSN 0856-7573, No. 04379, pg 2
33 “Even God himself did not pass sentence upon Adam before he was called on to make his defence” R. v. Chancellor of the university of Cambride, (1723) 1 Str 557, Fortescue J at page 567, in Elizabeth Guissani,
right to privacy and family life\textsuperscript{34}. In such cases the media exhaust all news surrounding the incidents, digging further into the parties’ personal life and family, exposing even the most irrelevant information and claiming to have received the same from reliable sources who prefer to remain anonymous.

The ICCPR\textsuperscript{35} and the European Convention on Human Rights set out limited number of situations on which the press and the public may be excluded during the hearing:

i. Cases in which public morals may be injured;
ii. For protection of public order;
iii. Cases regarding Juveniles;
iv. Cases involving protection of private life of the parties; and,
v. Where publicity is found to prejudice the interests of justice\textsuperscript{36}.

3.0 Judicial Remedies Available for Prejudicial Reporting

Where there is a right there is a remedy. In the instance that the defendant is of the opinion that due to continual prejudicial reporting by the media his/her rights are jeopardized, the law provides what can be done as explained herein below.

3.1 English Position As Received\textsuperscript{37}

3.1.1. Contempt of Court

Contempt of court is a broad, common law doctrine. It was described by Joseph Moscovitz in the \textit{Columbia Law Review}\textsuperscript{38}, as “\textit{the ‘Proteus}\textsuperscript{39} of the legal world, assuming

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\textit{Constitutional and Administrative Law, Sweet and Maxwell Ltd, London, 2008} at page 300, see also, the Holy Bible Genesis 3:3-14

\textsuperscript{34} Examples are cases of, Lulu, Liyumba, Babu Seya and countless others

\textsuperscript{35} Tanzania has signed and ratified the ICCPR, See also, Tanzania Human Rights Report 2011, at pg 219

\textsuperscript{36} Undoubtedly includes rights linked to the administration of justice, such as the right to a fair trial and the presumption of innocence.

\textsuperscript{37} Reception clause prior to the twenty-second day of July, 1920 apply to and have effect within Tanzania subject to the exceptions, adaptations and modifications set out therein.

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The term ‘contempt of court’ is of ancient origin generally recognized to be of English law only since the thirteenth century and probably earlier. Generally contempt of court may be said to be constituted by any conduct that tends to bring the authority and administration of the law into disrespect or disregard, or to interfere with or prejudice the parties or their witnesses during the litigation.

The importance of contempt of court powers can be summarized from the observation of Salmon LJ, in *Jennison v Baker*⁴⁰ that,

“*The inherent power of the judges of the High Court to commit for contempt of court has existed from time immemorial. ‘Contempt of court’ is an unfortunate and misleading phrase. It suggests that, it exists to protect the dignity of the judges. Nothing could be further from the truth. The power exists to ensure that justice shall be done. And solely to this end it prohibits acts and words tending to obstruct the administration of justice. The public at large, no less than the individual litigant, have an interest, and a very real interest, in justice being effectively administered. Unless it is so administered, the rights, and indeed the liberty, of the individual will perish.”*

At common law, contempt of court has traditionally been classified basing on:

1. **Where it is committed**⁴¹, that is either
   
   i. *in facie curiae* (in front of the court); or
   
   ii. *ex facie curiae* (outside the court).

2. **Nature of the proceedings**⁴²

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³⁹ A mythological sea god capable of changing shape at will.
⁴¹ It has nothing to do with whether the proceedings are criminal or civil.
Criminal contempt arises when there is interference with or disruption of criminal or civil court proceedings. Examples include yelling in the court room, publishing matters which may prejudice the right to a fair trial (“trial by media”), or criticisms of courts or judges, which may undermine public confidence in the judicial system (“scandalizing the court”).

b. Civil.

Civil contempt occurs when a person disobeys a court order and is subject to sanctions, such as a fine or imprisonment. The purpose of civil contempt is not only to enforce court orders, but also to maintain public confidence in the judicial system “since the administration of justice would be undermined if the order of any court of law could be disregarded with impunity.”

On this distinction Lord Scarman in the case of Home office vs. Harman\(^44\), stated that, “The distinction between ‘civil’ and ‘criminal’ contempt is no longer of much importance, but it does draw attention to the differences between on the one hand contempts such as ‘scandalizing the court’, physically interfering with the course of justice, or publishing matter likely to prejudice fair trial, and on the other those contempts which arise from non-compliance with an order made, or undertaking required, in legal proceedings. The former are usually the business of the Attorney General to prosecute by committal proceedings (or otherwise); the latter, constituting as they do an injury to the private rights of a litigant, are usually left to him to bring to the notice of the court. And he may decide not to act: he may waive, or consent to, the non-compliance”\(^45\).

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\(^{43}\) Ibid

\(^{44}\) [1982] 1 ALL ER 532, HL

\(^{45}\) Ibid at pg 542.
At common law contempt is an act or omission calculated to interfere with the due administration of justice. The Court of Appeal of England in Balogh v. Crown Court at St. Albans, held that, “at common law;

“…the judge of superior court had jurisdiction to punish summarily, of his own motion, for contempt whenever there had been a gross interference with the course of justice, whether he had himself witnessed the contempt or had it reported to him”.

This jurisdiction was only to be exercised where the contempt had been proven beyond reasonable doubt and where it was urgent and imperative for the judge to act immediately to prevent justice being obstructed or undermined. The Divisional Court in DPP V. Channel Four Television, set out restricted circumstances in which a judge can act in his own motion that;

i) The contempt is clear;
ii) It affects a trial in progress or about to start;
iii) It is urgent and imperative to act at once to prevent justice being obstructed or undermined and to preserve the integrity of the trial; and
iv) No other procedure will meet the ends of justice

However, the judge can do so, only where it is urgent and imperative to do so. A publisher is liable in contempt for an intentionally prejudicial publication made when the proceedings were pending or imminent. Proceedings can be pending or imminent even prior to the arrest of a suspect.

46 [1974] 3 ALL ER
47 However, at Crown Court an application can be made by DPP
48 [1993] 2 ALL ER 517
49 The common law is still the starting point for determining what constitutes a contempt, and case law has established the powers of courts to deal with contempt
In common law, the most significant role of contempt of court law is the application of the *sub judice* rule\(^{51}\): no one should interfere with legal proceedings which are pending. In practice, this rule is usually used to prohibit publication of matters which are likely to prejudice the right of a fair trial when legal proceedings are pending, or in a more colloquial sense, to prevent “trial by the media”.

The rationale behind this rule was explained in the leading English case of *Attorney-General v. Times Newspaper Ltd*\(^{52}\), where Lord Diplock stated:

> “The due administration of justice requires first that all citizens have unhindered access to the constitutionally established courts of criminal or civil jurisdiction for the determination of disputes as to their legal rights and liabilities; secondly, that they should be able to rely upon obtaining in the courts the arbitrament of a tribunal which is free from bias against any party and whose decision will be based upon those facts only that have been proved in evidence adduced before it in accordance with the procedure adopted in courts of law; and thirdly, that, once the dispute has been submitted to a court of law, they should be able to rely upon there being no usurpation by any other person of the function of that court to decide it according to law. Conduct which is calculated to prejudice any of these three requirements or to undermine the public confidence that they will be observed is contempt of court”.

Examples of possible violations of the *sub judice* rule are a publication which abuses or pressures a party to a proceeding to the extent that he or she is deterred from attending court; a publication about matters which are not admissible as evidence in court, and may create bias such as previous convictions of the accused which are not relevant to

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\(^{51}\) The term *sub judice* is derived from the Latin phrase *adhuc sub judice li est*, which means “the matter is still under consideration”.

\(^{52}\) [1973] 2 All ER 54, at pg 72
which prejudges the issues in a case, such as declaring
the accused is guilty before the trial is over.

The competing rights of freedom of expression and fair administration of justice came
up for consideration in Attorney General v. Times Newspapers\textsuperscript{53}. The result was in favor of
the administration of justice and against the newspapers. Further petition was made
before the European Court of Human Rights which resulted in an opinion in Sunday
Times v. United Kingdom\textsuperscript{54}, that the injunction granted by the Court in the U.K. against
publication was in absolute terms and without time limit and was very wide and
violated the European Convention and that the contempt law in UK was vague and
difficult to comply with.

This lead to the enactment of the Contempt of Court Act, 1981 discussed below, which
modified the application of contempt of court under the common law on some aspects.

\subsection{3.1.3 Statutory Contempt}

\textbf{The Contempt of Court Act, 1981}

After the ECHR ruled that the English contempt law breached article 10 of the
European Convention, the Parliament enacted the Contempt of Court Act 1981. The
primary function of the Contempt of Court Act is to protect the integrity of active court
proceedings. Following the ECHR ruling, the Contempt of Court Act was drawn up
with the aim of increasing the personal freedom of speech.

There are two limitations when the Contempt of Court Act applies. These are:

a) It only applies when a publication carries a substantial risk of seriously
prejudicing justice in the proceedings. A publication must create a substantial
risk of serious prejudice to the course of justice for it to amount to contempt. In

\begin{thebibliography}{9}
\bibitem{53} [1973]3 ALL ER 54 (HL).
\bibitem{54} (1979) (2) EHRR 245.
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publication has created a substantial risk of serious prejudice, the courts will consider all the circumstances surrounding the publication and the proceedings in question. It is clear that for a publication to be contemptuous a slight or trivial risk of serious prejudice is not enough nor is a substantial risk of slight prejudice.

In Her Majesty’s Attorney-General v. Associated Newspapers Ltd and News Group Newspapers Ltd\(^55\), the court stated that there was no shortage of judicial paraphrases as to the degree of risk or the degree of impediment or prejudice which the Attorney-General must prove and; in making an assessment of whether the publication does create a substantial risk\(^56\) of serious prejudice, the court will consider; the likelihood of the publication coming to the attention of a potential juror, also, the likely impact of the publication on an ordinary reader at the time of publication and the residual impact of the publication on a notional juror at the time of trial\(^57\).

b) It applies only to publications when proceedings are active\(^58\) as per S.2 (3) proceedings cease to be active as per S.2 (3) and (4) upon:
- acquittal or sentence;
- any verdict which puts an end to the proceedings being reached; and
- a discontinuation of the proceedings.

The Act also sets out when proceedings become active. Different tests apply for criminal and civil cases\(^59\). In criminal cases, proceedings become active for the purposes of the

\(^{55}\) [2011] EWHC 418
\(^{56}\) Lord Diplock’s statement in Attorney-General v. English [1983]1AC 116 at 141H-142C. The word substantial was described as being ‘...intended to exclude a risk that is only remote.’ Auld LJ commented in Attorney-General v. BBC [1997] EMLR 76 that the threshold of risk is not high but must be proved to be simply more than remote or minimal
\(^{57}\) The above factors apply primarily to cases which will be heard by a jury - criminal cases in the Crown Court and some civil cases, for example, defamation claims. In contrast, where cases are heard on appeal or by judges alone, it is much less likely that the court would find that there was a substantial risk of serious prejudice, as professional judges are, as a result of their training, expected not to be influenced by the media in reaching a decision.
\(^{58}\) Once proceedings are active the media is expected not to publish anything that ‘...creates a substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced. The most obvious example is that any previous convictions of the defendant should not be made known to the public
ii) The issue of a warrant;
ii) The service of a summons;
iii) The service of an indictment; and,
iv) Oral charge.

However recently decided cases have decided that criminal proceedings cease to be active:
i) upon acquittal or sentence;
ii) upon any other verdict, finding or decision which puts an end to the proceedings;
and,
iii) by discontinuance or by operation of the law.

In civil cases the proceedings become active when arrangements for a hearing are made. They cease to be active when the case is disposed of, discontinued or withdrawn. The Act introduces a strict liability rule under sections 1 to 7. The strict liability rule indicates the conduct tending to interfere with the course of justice. Section 1 provides *inter alia* that; legal proceedings may be treated as a contempt of court regardless of whether there was any intent to so interfere. The strict liability rule applies only to publications. These are defined so as to include any speech, writing, broadcast or

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61 Liability for statutory contempt is ‘strict’, which means that the broadcaster’s and programme-maker’s knowledge or intention is irrelevant, as is the fact that no actual prejudice was caused in a particular case - the risk of prejudice is sufficient. If a contempt was committed intentionally, however, it would be punished even more severely
62 In *Her Majesty’s Attorney General v. Associated Newspapers Ltd and News Group Newspapers Ltd*, [2011] EWHC 418 (Admin), the court held that even on line publication of prejudicial news amounts to contempt. The newspapers were held liable for, for the publication of a photograph relating to an ongoing criminal trial on their websites. The judgment contains an important warning for bloggers, tweeters and journalists who use instant news to report on criminal trials: “*instant news requires instant and effective protection for the integrity of a*
3.2 What is the Common Law Status after the Act?

The Contempt of Court Act expressly provides that it does not restrict liability for contempt of court in respect of the conduct intended to impede or prejudice the administration of justice as per S.6 (c) of the Act. The Common law conception of contempt is therefore preserved.

3.3 Tanzanian Position

3.3.1 Court Practices

In Tanzania, the practice of the Court regarding contempt has been primarily in contempts committed in front of the court while ignoring the load of the same contempts committed outside the court room. This might be out of the misconception that contempts in front of the court are the ones perverting the course of justice, or the misconception that is inaccurate and misleading, suggesting in some contexts that it exists to protect the dignity of the judges even a bigger fear to adapt the wider common law approach. Contempt as stated at above deals with acts which interfere with due administration of justice.

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\(^{64}\) The phrase contempt of court is misleading as per Lord President (Clyde) in *Johnson v Grant*, 1923 SC 789 at 790 stated, the phrase ‘contempt of Court’ does not in the least describe the true nature of the class of offence with which we are here concerned ... The offence consists in interfering with the administration of the law; in impeding and perverting the course of justice ... It is not the dignity of the Court which is offended—a petty and misleading view of the issues involved—it is the fundamental supremacy of the law which is challenged.’ Extracted from, *A. G v Times Newspapers Ltd* [1991] 2 All ER 398, at pg 407

\(^{65}\) *Yasini Mikwanga v Republic*, 1984 TLR 10 (HC), the court stated No doubt one of the essential conditions for proper administration of justice is that there should prevail discipline in court throughout any trial. This condition will definitely be undermined if any party in the trial was to be allowed with impunity to defy an order of the court on the ground that I said order is illegal...."
In the case of John Makindi v. R. (the late Mustafa, J as he then was), the accused was convicted under Penal Code, section 114 (a), with obstructing a court messenger in the execution of a search warrant. The Court held that this section is in respect of contempt of court within the premises in which any judicial proceeding is being had or taken. It does not apply to obstructing the execution of a search warrant. The conviction was quashed. Criminal contempt under S. 114(1) of the Penal Code requires \textit{mens rea}, as it was held in the case of D. M. Patel v. R.67

3.3.2 Statutory Provisions of Contempt of Court under Section 114 and 114A of the Penal Code

Apart from Common Law practice relating to contempt of court and its application in Tanzania, contempt of court is regulated by Section 114 of the Penal Code. The provision provides for both in front of court and out of court contempt. But it is the provisions of Section 114 (1) (d) which I would like to discuss as relevant to this paper, as reproduced below;

114. Any person who-

“...114 (1) (d) while a judicial proceeding is pending, publishes, prints or makes use of any speech or writing, misrepresenting the proceeding, or capable of prejudicing any person in favour of or against any parties to the proceeding, or calculated to lower the authority of any person before whom that proceeding is being had or taken...”

Is guilt of an offence and is liable to imprisonment for six months or to a fine not exceeding five hundred shillings

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67 [CAP 16 RE 2002].
68 (1969) HCD 60.
69 S.114 (1) (a), (b), (c) and (k) of the Penal Code.
70 S.114 (1) (d), (e), (f), (g) (h) and (j) of the same.
The breach of this section and the relevant common law practices in Tanzania does not require the court or the Attorney General to have a super microscope to detect the contemptuous acts of obstructing the course of justice by the media.

The media practice of reporting crimes and criminal proceedings in Tanzania is like a “lawless jungle”, where the journalists and politicians do what they want because those responsible have turned a blind eye on them, eventually defeating the sanctity of the court; as it is said, the court like Caesar’s wife should be impeccable beyond reproach.”

Furthermore, the application of the rule of *sub judice* seems to bind only court officials, politicians and law enforcement officers, leaving out the press as if they are not bound by the rule. This has been witnessed very frequently, when the press interview government officials, even judges on matters pending in court only to report that the official could not comment on the matter because it is in the court.

Tanzanian courts have yet to adapt the wider approach to the offence of contempt of court, to include even the acts or omissions committed outside the court room, which substantially interfere with the due administration of justice. The trend endangers the

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71 Res sub judice.
72 Consider the comments by the CHADEMA leaders regarding the judgment of the Court which disqualified the party MP from the constituent of Arusha Town. The party and the defendant clearly and openly attacked the court and the judge; the comments had a very negative impact on the very existence of the court as the temple of justice.
73 Even the series of Human Rights Reports produced by the LHRC have never covered this violation of the rights of the accused by the media; they only capitalize the right to freedom of expression criticizing the government, but none at all regarding the media practice of invading and violating other people human rights.
75 S.114 (1) (d).
76 The press frequently asked, Augustine Ramadhani CJ (as he then was) on his opinion on private candidate while he was the presiding judge of the appeal case.
77 Publication will constitute a contempt under the *sub judice* rule, if it relates to proceedings which are current or pending.
the right to fair trial and other rights accruing to an accused person. It is normal for the press in Tanzania to publish and comment on matters still in court such as evidence. For example a blogger\textsuperscript{78} has the interview of the accused on her blog on the age of the accused, while the matter is a point of law and evidence under the consideration by the High Court and even during committal proceedings and this has been the point of sale in many tabloid newspapers which recently seem to be out of reach of the law and courts with regard to the rights of the accused persons.

Furthermore the little punishment and the petty fine imposed for the breach of the provisions of S. 114 (1) that of imprisonment for six months or to a fine not exceeding five hundred shillings and under S.114 (2) of detaining in custody till the rising of the court on the same day or sentencing the offender, to a fine of four hundred shillings or in default of payment to imprisonment for one month; makes this offence very trivial and insignificant, compared to the millions of shillings the media can make by publishing any prejudicial news as they wish.

The Court and the Attorney General in Tanzania have powers \textit{suo motto} to act on the instances of acts committed which prejudice the due administration of justice. However they are turning blind eyes on these kinds of reporting; which means the rights of the accused are at the mercy of the media.

\section*{4.0 What amounts to Prejudicial Reporting in other Commonwealth Jurisdictions}

Noting the development of the media technology in the modern world and the adaptation of the same in developing countries like Tanzania and the underdevelopment of the law regarding contempt of court in Tanzania, it is of utmost

\textsuperscript{78} http://swahilitime.blogspot.com/2012/04/lulu-aka-elizabeth-michael-afurahia.html, accessed on 26\textsuperscript{th} June 2012, also available at, http://www.youtube.com/watch?v=S4FtMCz9Ngs&feature=player_embedded#!
importance to discuss the practices of other Commonwealth countries. Taking the approach of considering and adapting Indian law, I would like to discuss and adopt that particular interest in the report of the “Indian Law Commission on Media Trial; Free Speech and Fair Trial Under the Criminal Procedure Code 1973”\(^{79}\).

The report was prepared *suo motto* after the extensive prejudicial coverage of crime and information about suspects and accused, both in the print and electronic media; also considering the development of media technology. The report among other things considered the likely prejudicial news impact on the rights of suspects, accused, witnesses and even Judges and in general, on the administration of justice.

Chapter IX\(^{80}\) of the report discusses what acts amounting to contempt\(^{81}\). I wish to adopt the same rationale of discussing the subject that “as a matter of information to the media and to the public to refer to the categories of publications in the media which are generally recognized as prejudicial to a suspect or accused”, as follows:

**i) Publications Concerning the Character of Accused or Previous Conclusions**

Publications which tend to excite ‘feelings of hostility’ against the accused amount to contempt, because they tend to induce the Court to be biased. Such ‘hostile feelings’ can be most easily induced by commenting unfavorably upon the character of the accused\(^{82}\).

It was held an Irish case by Pigot CB of in *R v. O’Dogherty*\(^{83}\) that “Observations calculated to excite feelings of hostility towards any individual who is under a charge … amount to a contempt of court.” Publication of past criminal record is recognized as a serious contempt under the common law\(^{84}\).

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80 Indian Report, Pg 195
81 Borrie and Lowe, *Law of Contempt*, 3rd Ed, 1996, Ch 5, pg. 132 to 179
82 ibid pg 132
83 (1848) 5 Cox C.C 348 (354) (Ireland),
84 Moffit P in, *A. G (NSW) v. Willis*, (1980) (2) NSWLR 143 (150) held; that there is “popular and deeply rooted belief that it is more likely that an accused person committed the crime charged if he has a criminal record, and less likely if he has no record”. See also, *R v. Parke*, (1903) (2) KB 432, *R v. Davis*, (1906) 2 KB 32, *R v. Thomson*
Although a confessions to police is admissible in law under certain conditions\(^8^5\), still publications of confessions by the media before trial are treated as highly prejudicial and affecting the Court’s impartiality and amount to serious contempt. In New South Wales, a police officer was found guilty of contempt in *A.G (NSW) v. Dean*\(^8^6\), when, in the course of police media conference following the arrest of a suspect in a murder inquiry, he answered a journalist’s question with a statement which suggested that the person confessed to the police. He was held to be in contempt but was let off without fine.

**iii) Publications which Comment or Reflect Upon the Merits of the Case**

This is indeed the extreme form of ‘trial by newspaper’ since the newspaper usurps the function of the Court, without the safeguards of procedure, right to cross-examine etc. Such publications prejudge the facts and influence the Court, witnesses and others. It is, however permissible to publish the fact of arrest and the exact nature of charge as in *R v. Payne 1896*\(^8^7\), and that is not contempt. This act directly violates the right to the presumption of innocence guaranteed to the accused.

In *R v. Bolam, exparte Haigh*\(^8^8\), Haigh was described as a ‘vampire’ and that he had committed other murders and the publication gave the names of the victims. Lord Goddard sent the editor to jail and fined the proprietors of Daily Mirror calling it “a disgrace to English journalism”. This situation equals to the case of a child who is accused of killing and eating parts of the body of another child, the accused child suffered what I can call a massive disgrace to Tanzanian journalism as first, his pictures

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\(^8^5\) Section 26 of the Evidence Act 1967, [CAP 6 RE 2002]
\(^8^6\)(1990) 20 NSWLR 650
\(^8^7\)(1) QB 577
\(^8^8\) (1949) 93 Sol Jo 220, see also, *R v. Odham’s Press Ltd exp AG*, 1957 (1) QB 73, also, *AG v. News Group Newspapers Ltd*, 1988(2) All ER 906
were published in almost every newspaper in the country. The media was accused of giving sweets to the child to induce him to talk, and the worst of all he was branded “Rama mla watu” by the mainstream\(^{89}\), tabloid newspapers and blogs\(^{90}\); wonderful enough, the court, the police, activist for children rights and the Attorney General “kept mum” and as usual turning a blind eye.

The situation is common in media reporting of crimes and criminal proceedings in Tanzania in the print media, news websites and social media (even worse) as discussed earlier.

iv) Photographs

In *Attorney General v. Tonks*,\(^ {91}\) it was held that the publication of photographs of an accused before trial if the identification was likely to be in issue, would amount to contempt. Blair J observed: “If a photograph of an accused person is broadcast in a newspaper immediately after he is arrested, then such of the witnesses who have not then seen him, may quite unconsciously be led into the belief that the accused as photographed is the person they saw. The fact that a witness claiming to identify the accused person, has seen a photograph of him before identifying him, gives the defense an excuse for questioning the soundness of the witness’ identification”.

Publishing photographs of the accused before arrest is perceived to be prejudicial because after the accused is arrested the witness identifying the accused may actually be identifying the person seen from the photograph rather than the suspect, in what was

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http://www.freemedia.co.tz/daima/index.php?datePg=3&monthPg=8&yearPg=2010, Tuesday, 3 August 2010 and

www.freemedia.co.tz/daima/habari.php?id=18171

\(^{90}\) http://mpoki.blogspot.com/2008/05/dogo-mla-nyama-za-watu-aliyekamatwa-na.html, Monday, May 05, 2008,


\(^{91}\) 1934 NZLR 141 (FC).
referred to in the report as displacement effect. In R v. Taylor, there was a charge of murder of the wife of the former lover of one of them. Some newspapers obtained a copy of the video made at the deceased’s wedding and froze a frame from the sequence of guests emerging from the church, kissing first the bride and then the groom, so that it appeared that the ‘peck’ on the cheek given by the accused to the groom, her former lover, was a mouth-to-mouth kiss. This photograph was accompanied by the headline ‘Cheats Kiss’ and ‘Tender Embrace – the Lovers share a kiss just a few feet from Alison’. On account of the prejudicial publication, the Court of Appeal quashed the convictions and did not order a retrial.

v) Imputation of Innocence
Direct imputations of the accused’s innocence can be considered as contempt as was done in R v. Castro Onslow’s and Whelley, where the claimant to succession to property was awaiting a trial on charges of perjury and forgery and a public meeting was held and two M.Ps who were present, alleged that the accused was not guilty but was the victim of a conspiracy. Both MPs were held guilty of contempt by Cockburn CJ.

vi) Creating an Atmosphere of Prejudice
This involves the situation where the media makes reference to a more serious offence as being committed by the accused, while the issue before the court is of a lesser offence.

vii) Criticism of Witness
Witnesses may be deterred if they become the object of public criticism. In R v. Bottomley, the newspaper reported the cross-examination as ‘relentless cross-examination’ and commented on the prosecution witness. It was held that the article interfered with a fair hearing because it held up the witnesses for the prosecution to ‘public opprobrium’ if the witness was described as “an unhappy man, writhing in the

92 P. 204 of the report.
94 (1873) L.R 9 Q.B 219
95 R v. Hutchison, exp McMahon, [1936]2 All ER 1514
96 (1908) Times, 19th Dec
viii) Premature publication of evidence

“A newspaper conducting its own private investigation and publishing the results before or during the trial is the most blatant example of ‘trial by newspaper’97. Such publications hinder the Court’s determination of facts and might otherwise be ‘prejudicial’. There is no guarantee that the facts published by the newspaper are true, there being no opportunity to cross-examine or to have the evidence corroborated.

This point can be illustrated in the meantime in the case of the artist in which the bloggers and even the TV and radio stations re-aired evidence of an interview with the artist, in which age her age was in issue even though the same was in issue during committal proceedings, and was an issue before the High Court. Furthermore the prosecution has produced the same interview from the station as evidence at the High Court. As a matter of fact several bloggers still attach the interview in their blogs while the same has been produced before the High Court and has not been adjudicated.

In R v. Evening Standard, exp DPP98, the Court found that certain newspapers ‘had entered deliberately and systematically on a course which was described as criminal investigation’. The defense of the newspaper was that they had a duty to elucidate the facts. This defense was rejected and held liable for contempt in which Lord Hewart CJ, held as follows:

"While the police or the Criminal Investigation Department were to pursue their investigation in silence and with all reticence and reserve, being careful to say nothing to prejudice the trial of the case, whether from the point of view of the prosecution or .... of the defense, it had come to be somehow for some reason the duty of newspapers to employ

97 Borrie and Lowe, ibid pg. 156
98 (1924) 40 TLR 833
independent staff of amateur detectives who would bring to an ignorance of the law of evidence a complete disregard of the interests whether of the prosecution or the defense…”

To publish results of such investigations could prejudice a fair trial and will therefore amount to contempt. In that case, the proprietors of the Evening Standard were fined 1000 pounds and two other papers, 300 pounds each.

The Indian Law Commission⁹⁹ was of the view that, assuming investigative journalism is permissible, but if that is continued after criminal proceedings become ‘active’ and a person has been arrested, and if by virtue of the private investigation, the person is described as guilty or innocent, such a publication can prejudice the courts, the witnesses and the public and can amount to contempt.

ix) Publication of Interviews with Witnesses

In principle, it can amount to contempt to publish the evidence which a witness may later give in Court. That is not to say that no statement of a witness can be published pending trial. Statements of witnesses, which have not been cross-examined, present a one-sided picture of the matter. It may be that some ‘bare facts’ be mentioned as stated by the above authors to satisfy public curiosity, even if charges are pending in Court. But an in-depth interview with a witness can create problems¹⁰⁰. The witness could, in a television interview, commit himself to a view due to tension by an inaccurate recollection of facts. When later they have to give evidence, they may feel bound to stick to what they have said in the media interview. These actions are discussed in details in the Law Commission of India Report referred above.

5.0 Finding the Balance

There is no doubt that freedom of expression is one of the hall-marks of a democratic society and has been recognized as such for centuries. (Numerous great political and

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⁹⁹ Pg 214
¹⁰⁰ Borne and Lowe state, ibid pg. 158
intellectual figures, Edmund Burke, Thomas Paine, James Jefferson and John Stuart Mill, to name a few (associated with this principle.) Freedom of public discussion of matters of legitimate public concern is, in itself, an ideal of our society\textsuperscript{101}. Justice Mahoney, in \textit{Ballina Shire v. Ringcanol}\textsuperscript{102} spoke of the ends which are achieved by the capacity to speak without fear and reprisal and the importance of these ends in a free society: “ideas might be developed freely, culture may be refined, and the ignorance or abuse of power may be controlled”\textsuperscript{103}.

However freedom of speech cannot be absolute. In legal, political and philosophical contexts, it is always regarded as liable to be overridden by important countervailing interests, including state security, public order, the safety of individual citizens and protection of reputation and one such countervailing interest is due process of law.

There is no difficulty in stating that under our Constitution, the fundamental right of freedom of speech and expression can, by law, be restricted for the purposes of contempt of Court. However this can be done only by a law passed by the Legislature provided the restrictions imposed on the freedom are “reasonable” and proportionate in order to be accepted by the court.

In countries like , the United Kingdom, Australia, New Zealand and others, any publication made in the print or electronic media, after a person’s arrest, stating that the person arrested has had previous convictions, or that he has confessed to the crime during investigation or that he is indeed guilty and the publication of his photograph etc, are treated as prejudicial and as violation of due process required for a suspect who

\textsuperscript{101} Hinch v. Attorney General, (1987) 164 CLR 15(57) Deane J
\textsuperscript{102} (1994) 33 NSWLR 680 (720)
It is accepted that such publications can prejudice the minds of judges (where assessors’ presence is not necessary)\textsuperscript{104}.

The restrictions intended to protect the administration of justice\textsuperscript{105} from interference can be used in the contempt of court. It is sufficient if there is a substantial risk of prejudice. The principle that “Justice must not only be done but must be seen to be done”\textsuperscript{106} applies from the point of view of public perception as to the Judges being subconsciously prejudiced as has been accepted in the UK and Australia\textsuperscript{107}. Contempt of court which protects the ‘administration of justice’ and the ‘course of justice’ does not accept undue interference with the due process of justice and the due process includes non-interference with the rights of a suspect/accused for an impartial trial. Thus, the contempt of court concept can be used to protect the person who is arrested and is likely to face a criminal trial\textsuperscript{108}.

It is now well settled that the right to freedom and expression under Article 18 is not absolute. The Constitution itself under Article 30 permits restrictions to be imposed on that right if they are reasonable. If a restriction on the freedom of speech and expression is intended by the legislature to protect the administration of justice or the course of justice from interference, it is my firm opinion that such a restriction cannot be said to be unreasonable within or violating the right to freedom of expression/information for it is not a permanent or absolute restriction.

In the Australian case of\textit{ Hinch v. Attorney General (Victoria)}\textsuperscript{109}, Dean J stated (at p.58) that; “The right to a fair and unprejudiced trial is an essential safeguard of

\textsuperscript{104} Ibid Chapter III, pg 46.  
\textsuperscript{105} Due process of the law encompasses not only the right to a fair trial, but also the preservation of public confidence in the administration of justice.  
\textsuperscript{106} \textit{R v. Sussex Justices; Ex Parte Mc Carthy}, (1924) 1 KB 256 (259).  
\textsuperscript{107} ibid the Indian Law Commission Report.  
\textsuperscript{108} Freedom of speech ought not to take precedence over the proper administration of justice, particularly in criminal trials where an individual’s liberty and/or reputation are at stake, and where the public have an interest in securing the conviction of persons guilty of serious crime.  
\textsuperscript{109} 1987 164 CLR 15.
Thus, the public interest in protecting the proper administration of justice, particularly in criminal cases, should generally outweigh the public interest to access information and freedom of speech\textsuperscript{110}. Even the effects of the breach of this right differ so much to the victims as pointed out by the New Zealand Law Commission that: “When a conflict arises between fair trial and freedom of speech, the former prevails because the compromise of fair trial for a particular accused will cause them permanent harm (deprivation of liberty)… whereas the inhibition of media freedom ends with the conclusion of legal proceedings”\textsuperscript{111}.

6.0 Effects of Prejudicial News Reporting

i) Failure of justice

Justice should not only be done but must be seen to be done as per, \textit{R v. Sussex Justices; Ex Parte Mc Carthy}\textsuperscript{112}. In this way, public confidence in the administration of justice is maintained. If the media publishes prejudicial material or wages a campaign, not only it may affect criminal adjudication but if it does not, the public may see and the accused may believe that justice is not done. The Supreme Court of India has indeed accepted, in more than one case, that Judges may be ‘subconsciously’\textsuperscript{113} prejudiced against the suspect/accused\textsuperscript{114}.

\textsuperscript{112} [1924] 1 KB 256 at pg. 259
\textsuperscript{113} Pg 124 indian report
Like what was stated before, the court like Caesar’s wife should be impeccable beyond reproach. “If the issues arising in litigation are ventilated in such a way as to lead the public to form its own conclusion thereon in advance, the court may lose its respect for and confidence to the public’ and that “Again, it cannot be excluded that the public is becoming accustomed to the regular spectacle of \textit{pseudo-trials} in the news media in the long run have nefarious consequences for the acceptance of the Courts as the proper forum for the settlement of legal disputes”\textsuperscript{115}.

\textbf{iii) Creating Unreasonable Expectations to the Public on the Outcome of the Case}

In media reporting of a crime or judicial proceedings, the editors use certain reasoning (stylish, sensational in series of plots and episodes) as to the public perception of a crime, overwhelming available evidence (even if inadmissible) and prediction on the outcome of the case by applying only one sided evidence to their one sided facts to the law. This creates a very strong rather “legitimate expectation” to the public that the defendant is or is not guilty. When the court of law decides on the case in a way not capitalized by the media, the public trust to the judicial system is seen as not satisfying the public expectations out of it\textsuperscript{116}

\textbf{iv) Increasing the Prosecution’s Burden}

By intensive and widespread publication of a crime or criminal proceeding, a conclusion is drawn by the public on the case as to the guilt of the accused. The prosecutors find themselves trapped in undecided case which the public expects them to make sure that the culprits are convicted. Hence, the prosecution has a burden of

\textsuperscript{115} \textit{Sunday Times v. U.K 1979(2) EHRR 245}

\textsuperscript{116} Refer, Mwananchi newspaper, Friday 22\textsuperscript{nd} June 2012, ISSN 0865-7573 No. 04379, \textit{Mawakili wa Serikali Wamkaanga Lulu}, front pg
v) Violating Rights of the Accused and Family

Media thirst for news and the desire to publish something different out of a single incidence being reported by a more than 15 television networks, 60 radio stations, 18 daily newspapers and 41 weekly newspapers, cannot easily be underestimated. The desire to be different for commercial purposes makes the media dig deep into a high profile incidence for news even the irrelevant ones. We are all witnesses of the violation of the right to privacy, presumption of innocence and fair trial\textsuperscript{118} by the media and of the newsworthy part of criminal proceedings such as family\textsuperscript{119}, private life such as marriage and other relationships. During high publicity of court cases, the media are often accused of provoking an atmosphere of public hysteria, akin to a lynch mob which not only makes a fair trial nearly impossible but also means that regardless of the result of the trial the accused will not be able to live the rest of their lives without intense public scrutiny.

7.0 Conclusion and Recommendations

The Bench- Bar-Press Committee that trains and supervises the media reporting of criminal and court procedures is of utmost importance. This cooperation can help to reach a common ground on the problem of prejudicial news reporting.

Only qualified journalists should be allowed to report court proceedings and crime to the public. The media sector is one of the sectors invaded with unqualified journalists, called “makanjanja”. These people perceive journalism not as a profession but an art which some people are born with, that is the requisite talent to practice journalism even without attending college. These together with some ethical deprived journalists taint

\textsuperscript{117} Refer, Daily News, 	extit{Albino “Killers”}, ISSN, 0856-3812, No. 10676, Monday June 25\textsuperscript{th} 2012, front page
\textsuperscript{118} Refer, Daily News, 	extit{Dar resident arraigned for theft}, Saturday, 23\textsuperscript{rd} June, 2012, pg. 3
\textsuperscript{119} The late Kanumba and Balali, also Liyumba. Their families became a source of news by the media
As a matter of urgency, the government should carry out a thorough research on the way the media impact the rights of the accused in Tanzania and enact a separate law on Contempt of Court. If things are left as they are now, the media will stop at nothing to do what they want in the masquerade of freedom of press, a time bomb we might not be able to defuse on time. Best practices can be adopted from India, Australia, New Zealand, Britain and Ireland, furthermore for the Judiciary to take a more active role to punish contempt of court committed out of the premises of the court by publication and statements of politicians. The court is a temple of justice, the most sacred place in a democratic state where justice is done.

In addition to that the Attorney General and the Director of Public Prosecutions should also, devise a way to deal with prejudicial reporting. Although in most high profile crimes they share the “burden of proof with the press”, it is not always to their advantage, sometimes too much publicity of crimes is damaging to the government and cases alike.

It is also recommended that organizations such as the Legal and Human Rights Center to carry a thorough research in their annual human rights report on the other aspects of human rights so as to produce a comprehensive report.

In conclusion it should be noted that “we do not want the press that is more or less free just as we should not tolerate trials that are almost fair”\textsuperscript{120}. Lord Denning once commented that, "while the public interest demands that the facts should be ascertained as completely as possible there is a higher interest to be considered, namely the interest of justice to the individual which overrides all others”\textsuperscript{121}

\textsuperscript{120} Anonymous
\textsuperscript{121} Profumo Affair Report 1963