

## Re BYANSI (FOND)

[Rwanda SUPREME COURT – RS/INCONST/SPEC 00003/2021/SC – (Ntezilyayo, P.J., Nyirinkwaya, Cyanzayire, Hitiyaremye and Karimunda, J.) 25 March 2022]

*Constitution – Freedom of press – It is a principle that is expressed via the freedom of expression and of access to information to ensure that the public is aware of court proceedings without necessarily requiring their personal presence at courts. Such principle has to be respected by all including the judiciary, so that no other right, to wit the right to fair justice, to fair administration of justice as well as the privacy of litigants or witnesses, is violated – Deprivation of such right must be based on a legitimate and rational purpose.*

**Facts:** Byansi petitioned the Supreme Court praying it to declare that Article 71, paragraph 5, of Law n° 22/2018 of 29/04/2018 relating to civil, commercial, labour and administrative procedure on matters related to application for the authorization to make audio and video recordings in the courtroom, is inconsistent with paragraph one, Article 38 of the Constitution of the Republic of Rwanda of 2003 revised in 2015 providing for freedom of press.

Prior to the hearing of the case in merit, the Court analysed whether the Petitioner had an interest in initiating a petition for unconstitutionality and held that he is eligible to do so.

The case was heard in merit and the issue was to analyse whether prior application for the authorization to make audio and video recordings at the hearing provided under Article 71, paragraph 5, of the aforementioned Law violates the freedom of press provided under Article 38 of the Constitution of the Republic of Rwanda.

The petitioner argues that, as a journalist with a strong focus on investigative journalism in Rwanda and abroad, he finds that the impugned provision is an obstruction to journalists since it sets a deadline for them to apply for authorization to make audio and video recordings in the courtroom, which is a mechanism to deny access to information for the press, hence depriving the press of its freedom, while Article 70 of the impugned law provides for a hearing to be conducted in public.

He elucidates that informing the public about courts' activities falls within the scope of the right to freedom of press and of access to information, which must be complied with by the Judiciary as a state institution. He argues that it is not appropriate for journalists to be required to apply for an authorization to do their job as long as they present their service cards as journalists.

The Government of Rwanda retorts that paragraph 5 of Article 71 of the impugned Law n° 22/2018 of 29/04/2018 is not inconsistent with the Constitution because it does not in no way provide that the press must have access to information in any way. It is in that framework that such procedure mentioned in the impugned article was provided. The Government further elucidates that the fact that the law requires the press to apply for making audio and video recordings in the courtroom does not violate the principle of conducting hearings in public.

**Held:** 1. It is a principle that is expressed via the freedom of expression and of access to information, to ensure that the public is aware of court proceedings without necessarily requiring their personal presence at courts. Such principle has to be respected by all including the judiciary, so that no other right to wit the right to fair justice, to fair administration of justice as well as the privacy of litigants or witnesses, is violated.

2. Deprivation of the right to freedom of expression and access to information must be based on a legitimate and rational purpose.

**The petition seeking to declare a provision of Law inconsistent with the Constitution lacks merit.**

**Statutes and statutory instruments referred to:**

The Constitution of the Republic of Rwanda of 2003 revised in 2015, articles 23, 38, 41 and 43;  
International Declaration of Human Rights of 1948, Article 19;  
Law n° 22/2018 of 02/06/2018 determining jurisdiction of Court, article 72;  
Law n° 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure, articles 70 and 71;  
Law n° 058/2021 of 13/10/2021 relating to the protection of personal data and privacy, article 3;  
Law of 26/07/1881 relating to freedom of the press, article 38.

**Cases referred to:**

Mugisha Richard, RS/INCONST/SPEC 00002/2018/SC, rendered by the Supreme Court on 24/04/2019;  
The NDPP v Media 24 Limited & others and HC Van Breda v Media 24 Limited & others (425/2017) [2017] ZASCA 97 (21 June 2017) paragraph 16.  
Swapnil Tripathi & others vs. Secretary General & Others, Supreme Court of India, Writ Petition (Civil) N°. 1232 Of 2017, p.8.  
Affaire Pinto Coelho C. vs Portugal (N° 2) rendered by European Court of Human Rights.

## **Judgment**

### **I. BACKGROUND OF THE CASE**

[1] On 4 June 2021, Byansi Samuel Baker petitioned the Supreme Court seeking to declare Article 71, paragraph 5 of Law n° 22/2018 of 29/04/2018 relating to civil, commercial, labor and administrative procedure providing that authorization to make audio and video recordings in the courtroom is applied for in writing at least forty-eight (48) hours before the hearing, inconsistent with Article 38, paragraph one of the Constitution of the Republic of Rwanda of 2003 revised in 2015, which provides that freedom of press, of expression and of access to information are recognised and guaranteed by the State.

[2] He argues that, as a journalist with service card number 17/726-1<sup>1</sup> and who mainly focuses on investigative journalism in Rwanda and abroad, he finds that Paragraph 5 of article 71 of the aforementioned Law is an obstruction to journalists since setting a deadline for them to apply for authorization to make audio and video recordings in the courtroom, is a mechanism to deny access to information for the press, hence depriving it of its freedom whereas Article 70 of the Law n° 22/2018 of 29/04/2018 relating to civil, commercial, labor and administrative procedure provides that a hearing is conducted in public.

[3] He elucidates that informing the public about courts activities falls within the scope of the freedom of the press and of access to information, which must be complied with by the courts as a public institution. He argues that it is not appropriate for journalists to be required to apply for an authorization to do their job, while they present their service cards as journalists. He concludes by adding that setting the deadline for the application for the authorization to make audio and video recordings in the courtroom can be construed as a disregard to nowadays' mobile journalism.

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<sup>1</sup> This card has been issued by Rwanda Media Commission on 12/05/2020 to expire on 12/05/2021, and it was latter extended from 20/09/2021 to 20/09/22.

[4] State Attorney Habumuremyi Prosper, argues that paragraph 5 of Article 71 of Law n° 22/2018 of 29/04/2018 relating to Civil, Commercial, Labor and Administrative Procedure is not inconsistent with Article 38 of the Constitution of the Republic of Rwanda.

[5] He elucidates that the Constitution does not in no way provide that the press is allowed to seek information by all means. It is in that framework that such procedure has been provided under paragraph 5 of Article 71 of the aforementioned Law in order for the person wishing to make audio or video recordings in the Court to apply for an authorization at least 48 hours before the hearing.

[6] He further adds that the fact that the law requires the press to apply for making audio and video recordings in the courtroom does not violate the principle of publicity of hearings as provided under paragraph 6 of Article 71 of the aforementioned Law n° 22/2018 of 29/04/2018.<sup>2</sup>

[7] The case was heard in public on 15/11/2021, whereby Byansi Samuel Baker was assisted by Counsel Ruramira Bizimana Zébédée and Counsel Musore Gakunzi Valéry while the Government of Rwanda was represented by State Attorney Habumuremyi Prosper.

[8] Prior to the hearing of the case in merit, the Court determined whether the Petitioner, Byansi Samuel Baker, had an interest to initiate a petition for unconstitutionality in accordance with paragraph one of Article 72 of the Law n° 22/2018 of 02/06/2018 determining jurisdictions of courts.

[9] On october 12,2021, the Court ruled that Byansi Samuel Baker has an interest to petition for unconstitutionality of a provision of law in the instant case.

[10] The case was heard in merit on February 15, 2022, Byansi Samuel Baker assisted as before and the Government of Rwanda represented by Counsel Kayitesi Petronille. The parties debated on whether paragraph 5 of article 71 of the aforementioned Law n° 22/2018 of 29/04/2018 is inconsistent with Article 38 of the Constitution of the Republic of Rwanda, and consists of the issue to be analysed in the instant case.

## ITS ANALYSIS

### **a. Whether paragraph 5 of Article 71 of the Law n° 22/2018 of 29/04/2018 relating to Civil, Commercial, Labor and Administartive Procedure is inconsistent with Article 38 of the Constitution of the Republic of Rwanda of 2003 revised in 2015**

[11] Byansi Samuel Baker argues that informing about courts activities falls within the scope of the freedom of press and of access to information, and among those required to respect this right include public institutions to which the judiciary belongs.

[12] He further argues that setting the deadline for a journalist wishing to apply for making audio and video recordings in the courtroom, is a mechanism of denying access to information towards the press as well as preventing them from publishing information about pending cases while the principle is that the hearing is conducted in public as provided under Article 70 of the Law n° 22/2018 of 29/04/2018 relating to civil, commercial, labor and administrative procedure.

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<sup>2</sup> Paragraph 6, Article 71 of Law n° 22/2018 of 29/04/2018 relating to civil, commercial, labor and administrative procedure provides that the president of the court decides in writing to grant or reject the application for making audio and video recordings after examining whether the granting of such application cannot adversely affect the interests of the administration of justice, national security, safety of parties and morals.

[13] He further submits that setting the deadline for the application for the authorization to make audio and video recordings in the courtroom can be construed as a disregard to nowadays' mobile journalism, and that justice is served on behalf of the people, therefore, people should have informed about public activities. He cites the example of Uganda where journalists are not required to apply for collection of information from the judiciary, rather, they only present their service cards.

[14] He elucidates that the fact that Article 71 of the aforementioned Law entrusted the judge with the power to grant authorization to make video recordings in the courtroom which is excessive on ground that there may be many applicants and yet the Court may grant it to some while denying it to others.

[15] He alleges that the deadline required for the journalist to apply for the authorization (48 hours) is not reasonable, because apart from famous cases, the journalist has nowhere else to find the list of cases to be heard, except on the noticeboard at the courtrooms in the morning of the hearing date, and for this reason, he/she is challenged by such application deadline.

[16] Byansi Samuel Baker concludes by praying the Supreme Court to declare Paragraph 5 of Article 71 of the Law n° 22/2018 of 29/04/2018 relating to Civil, Commercial, Labor and Administrative Procedure, inconsistent with Article 38 of the Constitution of the Republic of Rwanda.

[17] Ruramira Bizimana Zébedée, counsel for Byansi Samuel Baker, states that in accordance with Article 6 of the Law regulating Media, a journalist intends to provide information to the public by making audio and video recordings, and that he/she is also allowed to disclose anything other than judicial confidentiality. Article 12 of that law also allows journalists to gather information wherever and publish it in accordance with the law, and he therefore finds that applying for an authorization as a serious impediment. He prays the Court to consider the case of Mugisha Richard decided by the Supreme Court, where in its paragraph 65, the same court ruled that the freedom of press is a right that must be respected by all.

[18] Counsel Gakunzi Valéry, assisting Byansi Samuel Baker, states that Article 71 of the aforementioned Law n° 22/2018 is part of the second section relating to conduct of hearing. He motivates that making audio and video recordings is part of media. He finds that in order for the Court to determine whether such a provision is unconstitutional, it is necessary to analyse whether there are other rights or freedoms that would be violated by the fact that a journalist makes audio and video recordings in the courtroom without authorization.

[19] He states that based on article 38, paragraph 2 of the Constitution, what a journalist making audio and video recordings at a hearing should avoid is the violation of the citizen's right to privacy, a principle provided for under Article 23 of the Constitution.

[20] With regard to the definition of privacy, he argues that such definition is neither provided in the Constitution nor in the Law determining offences and penalties in general. It is only Article 3, subparagraph 6° of the Law n° 058/2021 of 13/10/2021 relating to the protection of personal data and privacy which defines privacy as a fundamental right of a person to decide who can access his or her personal data, when, where, why and how they can be accessed.

[21] He cites an example of the case decided by the Supreme Court that sets the precedent on privacy, in which Gisa Frediane prayed the Court to award damages against BRALIRWA for having used her photos in the promotion of its product Heineken without her consent. BRALIRWA Ltd's Counsel admitted before the Commercial High Court that such photographs and videos were indeed used by BRALIRWA Ltd to advertise its beer without having a contract with Gisa Frediane. He

claims that such photographs and videos were provided to BRALIRWA Ltd by EXP RWANDA Company but failed to produce the contract they had with the said company.

[22] He further adds that the Supreme Court adjudicated on Article 38 of the Constitution<sup>3</sup> whereby it held that the right to freedom of expression includes the right to freedom of holding one's opinions with no interference, of access to and publication of information. It is evident that anything including the law or its provisions that can violate such right, is inconsistent with the Constitution.

[23] He however argues that, as equally provided under Rwandan legislation, the freedom of press includes exceptions/ restrictions, including non-violation of privacy. He refers to the case of Pinto Coelho C. vs Portugal (number 2) decided by the European Court of Human Rights to explain the basis in determining whether the freedom of press is a threat to one's privacy.

[24] He states that the issue in that case arose from the fact that a journalist published on television information about a pending case in the court that had sentenced a person, where he explained that the latter was wrongly convicted based on one inculpatory and two disculpatory witness declarations, and by showing photos of the courtroom and the audio recordings of the hearing including those of 3 judges, of which he had manipulated. The president of the bench accused him of broadcasting audio and video recordings of the courtroom without authorization. The Constitutional Court of Portugal convicted such journalist.

[25] He further elucidates that the convicted journalist later filed a lawsuit against Portugal in the European Court of Human Rights and the latter ruled that in order to establish that freedom of press violates other rights or freedoms, including the right to privacy, there must exist three (3) complementary elements: i) whether such exception or restriction is provided by the law; ii) to determine whether such exception or restriction is for a rational purpose; iii) whether such interference in the freedom of press is necessary in a democratic country.

[26] He states that in explaining the three elements, the Court relied on the basic principles adopted in previous judgments of the same court including the fact that audio and video recordings taken by the journalist during the hearing were taken in order to provide information in the public interest and the conduct of the accused; thus, such audio and video recordings of the hearing were not obtained illegally.

[27] Counsel Gakunzi Valéry concludes that according to Rwandan legislation, a journalist who takes photos or makes audio recordings and publish them without authorization is liable to civil fine and he/she may even be sentenced to an imprisonment, therefore, Article 71 of the aforementioned Law n° 22/2018 violates the freedom of press, as its content is an exception that impedes the exercise of the freedom provided under Article 38 of the Constitution.

[28] State Attorney Kayitesi Petronille argues that Byansi Samuel Baker's petition is unfounded on ground that paragraph 5, Article 71 of the aforementioned Law n° 22/2018 is not inconsistent with Article 38 of the Constitution of the Republic of Rwanda. She argues that paragraph 5, Article 71, of Law n° 22/2018 sets out how the freedom of press and its enforcement are exercised at the hearing, therefore it is not a denial of access to information towards the press as alleged by the petitioner, rather, it is a way of enforcing the provisions of Article 38 of the Constitution of the Republic of Rwanda.

[29] She further elucidates that the Constitution does not in no way provide that the press is allowed to seek information by all means. That is why it has established such a procedure in Article 71,

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<sup>3</sup> Judgment RS/INCONST/SPEC 00002/2018/SC about Mugisha Richard, rendered on 24/04/2019.

paragraph 5, of the aforementioned Law n° 22/2018, which states that it is required to apply for an authorization at least 48 hours before the hearing.

[30] She further adds that the fact that the law requires a journalist to apply for making audio and video recordings in a courtroom does not violate the principle of publicity of hearing provided under paragraph 6 of Article 71 of the aforementioned Law n° 22/2018, which means that authorization is granted or denied depending on the determination of the President of the Court, which means that such procedure complies with the provisions of Article 38 of the Constitution of the Republic of Rwanda.

[31] The State Attorney submits that Article 41 of the Constitution provides that in exercising rights and freedoms, everyone is subject only to limitations provided under the law aimed at ensuring recognition and respect of other people's rights and freedoms, as well as public morals, public order and social welfare which generally characterise a democratic society. In addition, such applies to the freedom of press, which is why she argues that Article 71 of the aforementioned Law n° 22/2018 of 29/04/2018 intends to enforce the provisions of Article 38, paragraph 2 of the Constitution.

[32] Regarding the lack of information about the cause list in order to apply for authorization, the State Attorney argues that the Court should not rely on this ground to declare such provision unconstitutional, but instead, the practice should be improved so that the media could access to the cause list on time, which will help them to meet the deadline for applying for an authorization to make audio and video recordings.

[33] She further elucidates that because the Judiciary is the guardian of human rights and freedoms as provided under Article 43 of the Constitution, Courts are responsible for determining modalities of accessing information in the courtroom by the media in order to protect the rights and freedoms of litigants in particular and of the public in general.

## **DETERMINATION OF THE COURT**

[34] Paragraph 5 of Article 71, of the Law n° 22/2018 of 29/04/2018 relating to civil, commercial, labor and administrative procedure provides that authorization to make audio and video recordings in the courtroom is applied for in writing at least forty-eight (48) hours before the hearing.

[35] Paragraph one of Article 38, of the Constitutional of 2003 revised in 2015 provides that freedom of press, of expression and of access to information are recognised and guaranteed by the State. Freedom of expression and freedom of access to information shall not prejudice public order, good morals, the protection of the youth and children, the right of every citizen to honour and dignity and protection of personal and family privacy. Conditions for exercising and respect for these freedoms are determined by law.

[36] It is in the finding of the Court that Article 38 of the Constitution providing that freedom of press includes the right to hold opinions without interference and access to information. This right is also enshrined in Article 19 of the Universal Declaration of Human Rights of 1948, which states that everyone has the right to freedom of opinion and of expression; this right includes freedom to hold one's opinions without interference, and to seek, receive and impart information and ideas through any media and regardless of frontiers.<sup>4</sup> It is thus evident that freedom of the press is a constitutional right that should not be violated. This also concurs with the ruling of the Supreme Court in the case

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<sup>4</sup> Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers".

of Mugisha Richard where it ruled that anything including a law or its provision that violates the freedom of press would be unconstitutional.<sup>5</sup>

[37] The Court finds, however, that in Article 38 of the Constitution, the Legislator has provided for exception on other rights that the freedom of press should not violate. In the following paragraphs, the Court is going to examine the submission of Byansi Samuel Baker and analyse whether the application by a journalist for the authorization to make audio and video recordings in the courtroom violates his/her constitutional rights, and thus being inconsistent with the Constitution.

[38] In general, allowing the press to make audio and video recordings in the courtroom is regarded as a way to bring justice closer to the people and to make the courts more transparent. The issue often arises as to how these rights of the press should not interfere with other rights and principles such as the right to fair justice, the right to privacy of the parties and the rights of the victims.<sup>6</sup>

[39] Covering audio-visual recordings in a courtroom is a practice that has occurred in recent years considering technological development. It is in this context that it is important to refer to legal instruments or precedents in relation to such subject matter from the most technologically developed countries and which even initiated such procedure earlier than Rwandan Courts.

[40] In the judgment rendered by the Supreme Court of Appeal of South Africa about *The NDPP vs Media 24 Limited & others, HC Van Breda vs Media 24 Limited & others*, the same Court declared that the freedom of the press and the principle of open justice provided for under the Constitution of the said country, are closely interrelated since they are used interchangeably for the media, reporting accurately and fairly on legal proceedings and judgments, to make a remarkable contribution to public confidence in the judiciary.<sup>7</sup>

[41] The Court held that while these rights and principles are complementary, the Court is vested with the power to limit the nature and scope of the broadcast where necessary to ensure the fairness of the proceedings before it. It also helps the Judiciary in safeguarding and upholding the principles of impartiality and the independence of the judiciary in the interests of justice.<sup>8</sup>

[42] The Court ruled that the judge should base on the following factors in considering the media's application for audio-visual coverage for each case:

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<sup>5</sup> Judgment RS/INCONST/SPEC 00002/2018/SC about Mugisha Richard, rendered on 24/04/2019, page 28.

<sup>6</sup> [...] "there is no real doubt that by allowing audio-visual coverage, courts will become more accessible to the public, and thus will potentially expose larger portions of society to the legal process, making it more transparent. The tough questions that still remain are first, whether audio-visual coverage should be recognized as a constitutional extension of the public trial or freedom of the press, and second, how one balances any potential effects of such coverage on rights and principles such as fair trial, privacy of parties to the legal process, and rights of victims." See Itay Ravid, Tweeting #Justice: Audio-visual Coverage of Court Proceedings in a World of Shifting Technology, 2016, p. 51, [https://law.stanford.edu/wp-content/uploads/2017/02/Tweeting\\_Justice-Ravid.pdf](https://law.stanford.edu/wp-content/uploads/2017/02/Tweeting_Justice-Ravid.pdf).

<sup>7</sup> Judgment, *The NDPP v Media 24 Limited & others and HC Van Breda v Media 24 Limited & others* (425/2017) [2017] ZASCA 97 (21 June 2017) para.16, "Freedom of the press and the principle of open justice are closely interrelated. The media, reporting accurately and fairly on legal proceedings and judgments, make an invaluable contribution to public confidence in the judiciary...."; <https://media.lawlibrary.org.za/files/judgments/zasca/2017/97/2017-zasca-97.pdf>.

<sup>8</sup> "..... Where there is a debate about whether given court proceedings should be broadcast, a court is vested with the power to limit the nature and scope of the broadcast where necessary to ensure the fairness of the proceedings before it. The power of the court to do so is an inherent one flowing from arts 173 of the Constitution 166 and must be exercised in the interests of justice is a key tool for courts to ensure their own independence and impartiality It recognises that courts have the inherent power to regulate and protect their own process. A primary purpose for the exercise of that power must be to ensure that proceedings before courts are fair. It is therefore fitting that the only qualification on the exercise of that power contained in s 173 is that courts in exercising this power must take into account the interests of justice." *Ibid.*, para. 59

- Whether such coverage does not interfere with the rights of the parties to a fair trial;
- Whether coverage applied for does not unduly detract from the solemnity, decorum and dignity of the court.<sup>9</sup>

[43] In India, the issue of audio and video recordings was addressed by the courts as per the case of Swapnil Tripathi & others vs Secretary General & Others rendered by the Supreme Court of the said country, where the same court explained the importance of audio - visual coverage in the hearing as regard to the right of access to justice and the principle of public hearing, whereby the same court stated that live streaming of the court proceedings facilitates the judiciary to enforce that right and principle, because such action makes it easier for the general public to follow court proceedings, as well as accessing information about the case, since it is not easy for many people to attend hearings due to limited financial resources, the capacity of courtrooms that are not large enough to accommodate a large number of people comparing to live streaming, and so on.<sup>10</sup>

[44] The court also elucidated that live streaming a hearing would be another way to uphold the rights of the public and of the parties in particular. The Court, however, held that while such an act assists the Judiciary and is based on the statutory rights, it must be done in a manner that does not prejudice the solemnity, decorum and dignity of the court, the privacy of the parties or the witnesses in that case, and avoiding anything else that would hinder the administration of fair justice. For this reason, it is important for the Court to establish guidelines for the conduct of such coverage in order to avoid violations of the rights provided for and to ensure that the observance of the rights on the one hand does not infringe on the rights of the other.<sup>11</sup>

[45] The Court of Cassation in France also set the position on the issue relating to audio-visual coverage of the court proceedings by holding that even if the public has a right to freedom of expression and interest in receiving information about court proceedings, the freedom of information must be balanced against other interests at stake, namely, the serenity of the proceedings and, in particular, the spontaneity and sincerity of the testimony as well as the attitudes of the defendants and witnesses, all of which depend, inter alia, on the certainty that there will be no publication of their statements in the courtroom, and thus affecting their privacy.<sup>12</sup> The prohibition of any audio or video

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<sup>9</sup> *It remains the duty of the trial court to examine with care each application. That court should exercise a proper discretion in such cases by balancing the degree of risk involved in allowing the cameras into the court room against the degree of risk that a fair trial might not ensue. ... In making that decision, the judge may consider whether there is a reasonable likelihood that such coverage would: (i) interfere with the rights of the parties to a fair trial; or (ii) unduly detract from the solemnity, decorum and dignity of the court.*” Idem.

<sup>10</sup> [...] “Indubitably, live streaming of Court proceedings has the potential of throwing up an option to the public to witness live court proceedings which they otherwise could not have due to logistical issues and infrastructural restrictions of Courts; and would also provide them with a more direct sense of what has transpired. Thus, technological solutions can be a tool to facilitate actualization of the right of access to justice bestowed on all and the litigants in particular, to provide them virtual”; See Judgements of Swapnil Tripathi & others vs. Secretary General & Others, Supreme Court of India, Writ Petition (Civil) No. 1232 Of 2017, p.8, [https://main.sci.gov.in/supremecourt/2017/40426/40426\\_2017\\_Judgement\\_26-Sep-2018.pdf](https://main.sci.gov.in/supremecourt/2017/40426/40426_2017_Judgement_26-Sep-2018.pdf).

<sup>11</sup> [...] “live streaming of court proceedings in the prescribed digital format would be an affirmation of the constitutional rights bestowed upon the public and the litigants in particular. While doing so, regard must be had to the fact that just as the dignity and majesty of the Court is inviolable, the issues regarding privacy rights of the litigants or witnesses whose cases are set down for hearing, as also other exceptional category of cases of which live streaming of proceedings may not be desirable as it may affect the cause of administration of justice itself, are matters which need to be identified and a proper regulatory framework must be provided in that regard by formulating rules ..... It must be kept in mind that in case of conflict between competing Constitutional rights, a sincere effort must be made to harmonise such conflict in order to give maximum expression to each right while minimizing the encroachment on the other rights.” Ibid., paragraph 13.

<sup>12</sup> [...] “Même si le public a un intérêt légitime à recevoir des informations relatives aux procédures en matière pénale », particulièrement s’agissant d’une affaire de terrorisme, « la liberté d’information doit être mise en balance avec les



recording in the courtroom constitutes a necessary measure to guarantee the serenity and sincerity of judicial debates, which are a prerequisite for the manifestation of the truth and thus contribute to the impartiality of the judicial power.<sup>13</sup>

[46] In the course of trial by the Court of Cassation, a lawsuit was also filed in the Constitutional Court of France where it was requested to confirm that the application for authorization to record audio and video in the courtroom was in violation of Article 38 ter of the Law of 26/07/1881 on the freedom of the press. The court ruled that the provisions of the law which may appear to be prejudicial to the freedom of press and communications, are reasonable and legitimate in the light of the purpose for their enactment.<sup>14</sup>

[47] Based on the motivations provided by foreign courts, the instant Court finds that the principle of freedom of the press which is reflected in the freedom of expression and of access to information, is a principle that must be respected by all, including the courts, because it allows the public to get information about court proceedings without necessarily requiring their personal presence, but that principle should not prejudice other rights including the rights of the parties to fair justice and fair administration of justice, as well as the right to privacy of the parties or witnesses.

[48] The court finds that, in general, the principle of freedom of the press is respected by Rwandan courts because the hearing is conducted in public<sup>15</sup> in order to facilitate anyone wishing to follow it, except that the Legislator determined the procedure for the making of audio and video recordings in the courtroom.

[49] The freedom of expression and of access to information is one of the fundamental tenets of a democracy and the protection of other rights. Accordingly, prohibition from exercising that right should be based on a rational and legitimate purpose. In this regard, the Court finds that the Legislator has provided in the second paragraph of Article 38 of the Constitution, the limitations to the principle of freedom of the press in the courts in order not to prejudice public order, good morals, the protection of the youth and children, the right of every citizen to honour and dignity and protection of personal and family privacy.

[50] The Court therefore finds that the fact that Article 71, paragraph 5 of the aforementioned Law n° 22/2018 has provided the modalities of exercise of such freedom where it obliged those who want to make audio and video recordings in courtroom to apply for authorization within 48 hours, such is

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*autres intérêts en présence » à savoir, la sérénité des débats et particulièrement, la spontanéité et la sincérité des dépositions ainsi que les attitudes des accusés et des témoins, tous dépendant notamment « de la certitude qu'aucune publication de prises de vue n'interviendra », et également « le droit à l'image des parties concernées qui doit être préservé dans l'enceinte judiciaire;” Voir Clara Le Stum, Prise d'images et de sons pendant les audiences: une interdiction nécessaire pour la Cour de Cassation, 21 Avril 2020, <https://www.actualitesdudroit.fr/browse/penal/procedure-penale/27029/prise-d-images-et-de-sons-pendant-les-audiences-une-interdiction-necessaire-pour-la-cour-de-cassation>.*

<sup>13</sup> ..... “l'interdiction de tout enregistrement, fixation ou transmission de la parole ou de l'image après l'ouverture de l'audience des juridictions administratives ou judiciaires, et de leur cession ou de leur publication, constitue une mesure nécessaire, dans une société démocratique, à garantir la sérénité et la sincérité des débats judiciaires, qui conditionnent la manifestation de la vérité et contribuent ainsi à l'autorité et à l'impartialité du pouvoir judiciaire”. Idem.

<sup>14</sup> [...] “l'atteinte à l'exercice de la liberté d'expression et de communication qui résulte des dispositions contestées est nécessaire, adaptée et proportionnée aux objectifs poursuivis, à savoir la bonne administration de la justice, le droit au respect de la vie privée des parties et des personnes participant aux débats, à la sécurité des acteurs ou également au respect de la présomption d'innocence;” Conseil Constitutionnel, Décision n° 2019-817 QPC du 6 décembre 2019, <https://www.conseil-constitutionnel.fr/decision/2019/2019817QPC.htm>.

<sup>15</sup> Article 70 of the aforementioned Law n° 22/2018 which provides for a hearing to be conducted in public.

rational and legitimate because it is the duty of the Judiciary to ensure a peaceful and in respect of the rights of litigants and of other parties concerned by the case.

[51] With regard to additional allegations by the petitioner about difficulties in finding time to apply for authorisation for making audio and video recordings in the courtroom on ground that it is impossible to get information about the cause list because the courts provide it shortly before the hearing, the instant Court finds that there are other remedies to such issue rather than declaring the impugned provision of the law unconstitutional.

[52] Based on the foregoing, the Court finds that paragraph 5 of Article 71, of Law n° 22/2018 of 29/04/2018 relating to civil, commercial, labor and administrative procedure is not inconsistent with Article 38 of the Constitution of the Republic of Rwanda of 2003 revised in 2015.

### **III. DECISION OF THE COURT**

[53] Decides that the petition initiated by Byansi Samuel Baker seeking to declare paragraph 5 of Article 71 of Law n° 22/2018 of 29/04/2018 relating to civil, commercial, labor and administrative procedure inconsistent with Article 38 of the Constitution of the Republic of Rwanda of 2003 revised in 2015, lacks merit;

[54] Holds that paragraph 5 of Article 71 of Law n° 22/2018 of 29/04/2018 relating to civil, commercial, labor and administrative procedure is not inconsistent with Article 38 of the Constitution of the Republic of Rwanda of 2003 revised in 2015.