



THE HIGH COURT OF TANZANIA HELD THAT ACCESS TO CLUBHOUSE IS A FUNDAMENTAL HUMAN RIGHT IN TANZANIA

On 3rd May 2024 the High Court of Tanzania (Main Registry) at Dar es Salaam held that access to Clubhouse is a fundamental human right (*Paul Kisabo versus Minister of Information, Communication and Information Technology, Tanzania Communications Regulatory Authority and Attorney General (Misc. Civil Cause No. 27860 of 2024)*)

On 12th December 2024 Advocate Paul Kisabo, the Head of Protection Programs at the Tanzania human Rights Defenders Coalition (THRDC) instituted Misc. Civil Cause No. 27860 challenging the restriction of accessibility and availability of Clubhouse in Tanzania. Advocate Kisabo knocked the doors of the court stating that from August 2023 access to clubhouse had proven problematic for him and up to December 2023 he attempted without success to access Clubhouse.

He later became aware that the only possible way to access Clubhouse in Tanzania is through the use Virtual Private Networks (VPNs). However, using VPNs as a means of accessing Clubhouse having regard to the present legal stand by the Tanzania Communications Regulatory Authority (TCRA) to the effect that the use of VPNs without its authorisation is restricted and not permitted. Advocate Kisabo averred that TCRA placed limitations on the accessibility of Clubhouse such that the only way it can be accessed in Tanzania is by using Virtual Private Networks. However, TCRA disputed to have blocked the accessibility of Clubhouse in Tanzania and stated further that Clubhouse developers could be in a better position to explain on the state of accessibility of clubhouse in Tanzania.

Advocate Kisabo stated further that, he prefers accessing Clubhouse without the aid of VPNs and he firmly believes that TCRA has the requisite statutory and regulatory mandate as well as technical and technological capability to enable access to Clubhouse without the aid of VPNs. He further stated that the ongoing restriction on access to Clubhouse without VPNs is violative of his fundamental rights enshrined under Article 18[1]; 18[2]; 20[1]; 26[1]; 29[1] and 29[5] of the

Constitution of the United Republic of Tanzania and under international human rights instruments: the Universal Declaration of Human Rights (UDHR) Article 19; International Covenant on Civil and Political Rights (ICCPR) Article 19, and the African Charter on Human and Peoples' Rights (ACHPR) Article 9.

The rights and duties under the cited provisions alleged to have been infringed upon include the right to freedom of opinion and expression of ideas; the right to seek, receive and, or disseminate information regardless of national boundaries; the right to receive information irrespective of borders; the right to freely and peaceably associate and cooperate with other persons and to express views publicly; the right not to have his rights infringed upon by others and the right to enjoy fundamental human rights and to enjoy the benefits accruing from the fulfilment by every person of this duty to society.

With the hope of unlocking his restricted fundamental rights, advocate Kisabo sought for the following reliefs from the court:

- a) Declaration that the ongoing restrictions on the availability of Clubhouse violates Article 18(1); 18(2); 20(1); 26(1) [29(1) and 29(5) of the Constitution of the United Republic of Tanzania of 1977
- b) Declaration that the ongoing restrictions on access to Clubhouse without VPN is violative of provisions of various international treaties more particularly, the Universal Declaration of Human Rights (UDHR) Article 19; International Covenant on Civil and Political Rights (ICCPR) Article 19, and the African Charter on Human and Peoples' Rights (ACHPR) Article 9
- c) Declaration that Mr. Kisabo and similarly situated Tanzanian citizens have constitutional rights to unrestricted access to Clubhouse.
- d) Declaration that Mr. Kisabo and similarly situated Tanzanian citizens have rights under international law and treaties to unrestricted access to Clubhouse.
- e) Interim orders that TCRA provide and facilitate unrestricted access to Clubhouse while the case progresses; and
- f) Orders that TCRA provide, facilitate, and continue to provide, unrestricted access to Clubhouse.

On 3rd May 2024 the High Court held that Mr. Kisabo has the right to access Clubhouse with the limits set by the law. It is not a right or freedom without restrictions. But such restrictions if any must comply with Article 30(2) of the Constitution. Overall, the court partly declared that Mr. Kisabo has a fundamental right of access to the Clubhouse. Besides, there was no proof of restriction of access to the Clubhouse platform in the United Republic of Tanzania.

Conclusively, THRDC legal team is currently undertaking an analysis over the case and welcomes any legal minded person to submit his or her legal analysis and proposal on future legal steps to be undertaken. Every analyst is at liberty to submit his or her analysis through info@thrdc.or.tz and paulkisabo@thrdc.or.tz . We will appreciate receiving your legal analysis over the case as soon as possible.

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