

# LAW AND CENSORSHIP OF ARTISTIC WORKS IN TANZANIA: THE CASE OF BASATA

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## ABSTRACT

This article provides a critical review of the legality of censorship of artistic works by the National Arts Council of Tanzania [known as *Baraza la Sanaa Tanzania* (BASATA) in Kiswahili] established under the National Arts Council Act, 1984. The article discusses the nature and extent of the censorship mandate granted to BASATA under Act in the context of the diversity of social and cultural perspectives and diversities of the Tanzanian society regarding artistic works. In the process of the exposition, the author highlights the administrative structure and overall functions of BASATA. The artistic works which are under the mandate of BASATA are brought to the fore. A discussion on the available avenues to institute legal proceeding in a court of law against BASATA for those aggrieved by its decisions is made. Recommendations on identified issues for legal reform relating to BASATA's role in censoring artistic works in the light of the social and cultural contexts prevailing in Tanzania are made.

## INTRODUCTION

Rather than simply forbidding young people to listen to certain forms of music, read certain books, or see certain movies, many families have abdicated this responsibility to civic action groups and the government.<sup>1</sup>

The above words denote the extent to which protection of morals and ethics to children is now not a private phenomenon but a public one requiring intervention of governments. It is in this context that the *Baraza la Sanaa Tanzania* (BASATA) – the National Arts Council of Tanzania. BASATA was established in order to promote artistic works, protect the morals and values of members of the Tanzanian society. It is a government agency which among other things, having the mandate of reviving, promoting and developing arts in

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<sup>1</sup> Blanchard, M.A. (1992) "The American Urge to Censor: Freedom of Expression Versus the Desire to Sanitize Society-From Anthony Comstock to 2 Live Crew" William and Mary Law Review, Vol. 33, Issue 3, p. 742.

Tanzania.<sup>2</sup> Its core purpose is to make sure that the tradition of Tanzanian art is maintained while upholding professionalism, excellence and creativity.<sup>3</sup> It was founded in 1984 replacing and subjugating the former BAMUTA (*Baraza la Muziki Tanzania*), the National Music Council which was established under the National Music Council Act, 1974 to deal with musical works.

BASATA is established under section 3 of the National Arts Act, 1984.<sup>4</sup> The National Arts Act amalgamates the National Arts Council (BASATA) and the National Music Council (BAMUTA).<sup>5</sup> It is a body corporate with perpetual succession having an official seal.<sup>6</sup> Within its capacity it can sue and/or being sued.<sup>7</sup> It is also capable of holding, purchasing, acquiring and disposing any property, movable for the purposes of carrying out the functions conferred on the council by the law establishing it.<sup>8</sup> BASATA cannot purchase, hold or acquire immovable property within the spirit of the law establishing it.

For the purpose of this article, the term BASATA will be used interchangeably with the term “the Council”. Furthermore, in any part where the term Minister has been used, it denotes the Minister for Information, Culture, Arts and Sports in the United Republic of Tanzania.

## ADMINISTRATIVE STRUCTURE OF BASATA

The administrative structure of the BASATA is made up of the following:

### i. The Chairperson

The Chairperson is appointed by the President.<sup>9</sup> The Chairperson holds office for a period of three years and not exceeding six years unless it is necessary or desirable to do so.<sup>10</sup> The Chair presides over all meetings save for where the Vice Chairperson has appeared in his/her absence.<sup>11</sup> In the absence of the Chairperson and Vice Chairperson, members of the Council shall elect one of their members to be Chairperson for that meeting.<sup>12</sup> The Chair is also a member of the Council of BASATA.<sup>13</sup>

<sup>2</sup> Section 4 (1) (a) of the National Arts Act No. 23/1984 [Cap. 204, R.E 2002]

<sup>3</sup> BASATA bio available at <https://www.musicinafrica.net/directory/national-arts-council-tanzania-basata> retrieved on 16th December, 2018 at 12:47 hrs

<sup>4</sup> Act No. 23/1984 [Cap. 204, R.E 2002]

<sup>5</sup> Long title to the National Arts Act No. 23/1984 [Cap. 204, R.E 2002]

<sup>6</sup> The National Arts Act No. 23/1984 [Cap. 204, R.E 2002], Section 3 (1) (a)

<sup>7</sup> Ibid, Section 3 (1) (b)

<sup>8</sup> Ibid, Section 3 (1) (c)

<sup>9</sup> Item.1 (1) (a) of the schedule to Act No. 23/1984 [Cap. 204, R.E 2002]

<sup>10</sup> Ibid

<sup>11</sup> Ibid, item 4 (3)

<sup>12</sup> Ibid

<sup>13</sup>The National Arts Act No. 23/1984 [Cap. 204, R.E 2002], Section 2

## ii. The Vice Chairperson

The Vice Chairperson is elected from amongst members of the Council.<sup>14</sup> He holds office for one year but shall be eligible for re-election.<sup>15</sup> The Vice Chairperson presides all meetings of the Council in the case the Chairperson is not present.<sup>16</sup>

## iii. Members of the Council

The Council is made of 29 members, including the Chair and Vice Chair.<sup>17</sup> Council members are appointed by the Minister for Information, Culture, Arts and Sports.<sup>18</sup> These members hold office for such period as the Minister may specify in his appointment unless their appointments are sooner terminated by the Minister or they otherwise cease to be members.<sup>19</sup> In case no period is specified in their appointment letters, then they would hold office for three years from the date of their appointments and they are eligible for re-appointment.<sup>20</sup>

On 18<sup>th</sup> October, 2018, the Minister for Information, Culture, Arts and Sports Dr. Harrison G. Mwakyembe launched a BASATA Council and appointed five members. At time of writing the members of the Council comprised of Dr. Saudin Mwakaje, Lecturer of Law at the University of Dar es Salaam, Dr. Emanuel Ishengoma, Lecturer at the University of Dodoma, Ms. Asha S. Mshana, Assistant Lecturer at the University of Dodoma, Mr. Single M. Mtambalike, Film Artist and Mr. Hamis M. Mwinjuma, Music (a *Bongo Flava*) Artist.

## iv. The Secretary

The Secretary is appointed by the President.<sup>21</sup> The Secretary is also the chief executive officer of BASATA and is charged with the duty of carrying out all the day to day activities of BASATA.<sup>22</sup> The Secretary is supposed to work while abiding to the direction or policy given to him/her by the Minister or the Council.<sup>23</sup> At the time of writing the Secretary of BASATA was Godfrey Mngereza who was appointed in 2015.

## v. The Minister

The Minister's role is limited to provision of directives on policy and guidelines relating to the operation of the Council.<sup>24</sup> The Minister is also vested with power to appoint and terminate appointments of members of the Council.<sup>25</sup>

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<sup>14</sup> Ibid, item 4

<sup>15</sup> Ibid

<sup>16</sup> Ibid, Item 4 (1) (3)

<sup>17</sup> Item.1 (1) (b) of the schedule to Act No. 23/1984 [Cap. 204, R.E 2002]

<sup>18</sup> Ibid

<sup>19</sup> Ibid

<sup>20</sup> Ibid

<sup>21</sup> Act No. 23/1984 [Cap. 204, R.E 2002], Section 5 (1)

<sup>22</sup> Ibid, Section 5 (2)

<sup>23</sup> Ibid, Section 5 (3)

<sup>24</sup> Ibid

## FUNCTIONS OF BASATA

BASATA has the following functions recognized by the law establishing it;

### i. Revival and Promotion of Artistic Works

BASATA assumes responsibility to revive and promote the development and production of artistic works in Tanzania. This includes production and use of indigenous and traditional musical instruments, songs, poetry, and traditional dancing with a view of reviving and promoting Tanzania culture. BASATA is also responsible for stimulating the development of artistic works by preparing and arranging exhibitions, displays, performances, workshops, seminars and competitions between different artists. The overall aim is to ensure that, the production of artistic works does not only overlook the orthodox culture of Tanzania music but also does not destroy the Tanzania culture itself.<sup>26</sup>

### ii. Research

This includes carrying out research studies in the development and production of artistic works and marketing of such works. It also includes researching on the standard and quantity of artistic works produced in Tanzania. The aim behind is to promote the quality of artistic works and consequently improving the life standards of artists who toil for art.<sup>27</sup>

### iii. Advisory Role

BASATA is also charged with the task of advising parastatal organization and other persons engaged in artistic works whether directly or indirectly. The advice given is mainly based on proper development of enterprises for the production of artistic works. Such advice may also be accompanied with technical assistance to achieve the same. BASATA also is obliged to advise the government of Tanzania on all matters relating to the development and production of artistic works in Tanzania.<sup>28</sup>

### iv. Planning and Coordination

BASATA plans and coordinates activities of persons engaged in the production of artistic works in Tanzania. The objective in doing this is to ensure that all individuals and persons involved in artistic works are cooperative, compacted, interdependent and interrelated. It ranges from promoters, DJs, artist managers and artists themselves.<sup>29</sup> To achieve this BASATA has already put in place a requirement for promoters, artists and DJs to register with it.

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<sup>25</sup> Ibid, Schedule, Item 1 (1) (b)

<sup>26</sup> Ibid, Section 4(1) (a) and (h)

<sup>27</sup> Ibid, Section 4 (1) (b)

<sup>28</sup> Ibid, Section 4 (1) (c) and (e)

<sup>29</sup> Ibid, Section 4 (1) (d)

#### v. Training

BASATA is legally obliged to provide and promote training facilities for persons engaged in or employed or to be employed in enterprises for the production of artistic works. The Act does not specify the nature or type of training required. However, basing on the objective of BASATA, it is therefore logical to argue that, such trainings may range from training artists on the nature and kind of artistic works that may be considered unacceptable to the Tanzania culture. It may also include training on the means the artists may use to make sure their works are up to date.<sup>30</sup>

#### vi. Registration of Persons Involved in Artistic Works

The Council of BASATA also has been vested with the power to enact by-laws relating to registration of persons engaged for gain in providing public musical performance, production of musical instruments, the recording of gramophone records or magnetic tapes for play-back or otherwise in any manner with any matter relating to music.<sup>31</sup>

#### vii. Making Regulations

With the consent of the Minister, the Council may make regulations for the better carrying out of the purposes and provisions of the law establishing it.<sup>32</sup> There exists the National Arts Council Regulations of 2018, GN. No. 43 which introduces new fees for various activities related to artistic works. These recognize promoters and DJs as part and parcel of the music industry and so are also supposed to register with BASATA.

Under these new Regulations, an artist or group of artists which seek to perform outside the territory of the United Republic of Tanzania must acquire a permit from BASATA and such artist or group of artists must file a performance report to BASATA upon return.<sup>33</sup> In July, 2018, the famous artist of Tanzania Naseeb Abdul a.k.a Diamond Platinumz was stopped by BASATA at the airport as he was about to leave the country for French Island of Mayotte.<sup>34</sup> It was reported that he had not acquired a permit for his envisaged performance in Mayotte.

Any violation to the regulations attracts a fine between TZS 1 Million and TZS 3 Millions or risk being slapped with a ban of up to six months. The punishment may also include lifetime censorship or deregistration as BASATA may deem fit, necessary and suitable depending on the gravity and degree of the violation committed.

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<sup>30</sup> Ibid, Section 4(1) (f)

<sup>31</sup> Section 4 (1) (i)

<sup>32</sup> Section 15 of Act No. 23/1984 [Cap. 204, R.E 2002]

<sup>33</sup> Regulation 60 of the GN No. 43/2018

<sup>34</sup> Thomas Matiko "Diamond counting huge losses after government blocks his overseas trip" Nairobi News, July 28, 2018, available at <https://nairobinews.nation.co.ke/chillax/diamond-losses-tanzanian-government-blocks-overseas-trip/> retrieved on 16<sup>th</sup> December, 2018 at 14:05 hrs

It should be noted that in the course of performing its functioning and in order to achieve its purpose, BASATA has been in one way or another cooperating with various bodies. These include the Tanzania Communications Regulatory Authority (TCRA), the Ministry of Information, Youth, Culture and Sports, the Copyright Society of Tanzania (COSOTA), Tanzania Urban Music Association (TUMA) and the Tanzania Film Federation (TAFF).

## ARTISTIC WORKS UNDER BASATA MANDATE

The National Arts Act, 1984 vests BASATA with power to regulate and oversee activities relating to the following artistic:

### i. Art and Crafts

The Act provides that art and crafts include paintings, drawings, etchings, lithographs, woodcuts, engravings and prints. They also cover maps, plans and diagrams, works of sculpture, photographs not comprised in a cinematograph film and works of architecture being in form of buildings or models. Art and crafts also cover works of artistic craftsmanship such as pictorial woven tissues and articles applied to handicraft and industrial art.<sup>35</sup> It should be pointed out here that BASATA has been very active in regulating arts and crafts compared to other categories of artistic works.

### ii. Music

According to the National Arts Act, 1984, music includes that which is in the form of vocal, instrumental, recorded or written composition and which includes jazz bands, *taarab music*, choir, orchestral brass music, folk music, musical repertoire, dancing, opera or playwriting.<sup>36</sup> BASATA has been very vibrant in this area. A number of music songs have been banned by BASATA since 2015 up to date. They have been banned for various reasons but mainly on grounds of being immoral or ridiculing the government and allegedly creating disharmony between citizens and the government. Music industry has turned to be a swarm of employment to many youths no wonder BASATA has been vibrant in regulating and controlling this category of artistic works.

### iii. Theatre and Drama

Theatre and drama also fall under the charge of BASATA. Accordingly, this category consists of stagecraft and design, costume design; make up ornamentations and accessories, dance and choreography, audiovisual effects, circus mime and acrobatic performances. This also includes stage performances.<sup>37</sup> It is in this regard, for instance, that in 2015, BASATA banned a female artist by the name of Zuwena Mohamed a.k.a Shilole for one year on the grounds that her performance in Belgium entailed revealing

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<sup>35</sup> Ibid, Section 2 (a)

<sup>36</sup> Ibid, Section 2 (b)

<sup>37</sup> Ibid, Section 2 (c)

clothes that according to BASATA irked national morality.<sup>38</sup> BASATA Executive Secretary maintained that the penalty came following previous warnings to the same artist regarding her dressing manner during stage performances.<sup>39</sup>

## BASATA AND CENSORSHIP OF ARTISTIC WORKS IN TANZANIA

Censorship may simply be defined as the suppression or prohibition of any part (s) of a book, a film, news etc, considered to be obscene, politically unacceptable, or threat (s) to security.<sup>40</sup> It may be albeit, not always, used synonymously with the word banning.

The issue of censoring artistic works is not new in the globe. The British Broadcasting Corporation (BBC) has been also banned the playing of songs on its radio and television stations since 1960s.<sup>41</sup> As the United Kingdom's public service broadcasting corporation, the BBC has always felt some compulsion to standards of taste and decency, to varying levels, at diverse times in its history. No wonder to date it has censored more than fifty (50) songs since its establishment.<sup>42</sup>

In Uganda, on 25<sup>th</sup> September, 2012 the government banned the song titled *Tugambireku Jennifer* sang by Ssentamu Kyagulanyi a.k.a Bobi Wine for having lyrics which bitterly criticized the then executive director of the authority that ran the capital, Kampala, Jennifer Musisi.<sup>43</sup> It is also common for a country to ban a song sung by artists from another countries to be played by radio and television stations in such country. For example, in 2017 Malaysia banned a song titled "*Despacito*" by Daddy Yankee and Luis Fonsi from

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<sup>38</sup> Louis Kolumbia "Controversial singer Shilole banned over morality issues" The Citizen of July 31, 2015, available at <https://www.thecitizen.co.tz/News/entertainment/-Controversial-singers-Shilole-banned-over-morality-issues/1840560-2815562-sd33yp/index.html> retrieved on 10th December, 2018 at 18:18

<sup>39</sup> Ibid

<sup>40</sup> Bitso, C. Et al (2012) "Trends in transition from classical censorship to Internet censorship: selected country overviews" FAIFE Spotlight, p.5 available at <https://www.ifla.org/publications/trends-in-transition-from-classical-censorship-to-internet-censorship-selected-country-o> retrieved on 16th December, 2018 at 14:30 hrs

<sup>41</sup> A song titled "Saturday Nite at the Duck-Pond" by the Cougars was banned in 1963 by BBC for reason of mutilation of the classics; see also [https://en.m.wikipedia.org/wiki/List\\_of\\_songs\\_banned\\_by\\_the\\_BBC](https://en.m.wikipedia.org/wiki/List_of_songs_banned_by_the_BBC) retrieved on 15 December, 2018 at 22:25

<sup>42</sup> See [https://en.m.wikipedia.org/wiki/List\\_of\\_songs\\_banned\\_by\\_the\\_BBC](https://en.m.wikipedia.org/wiki/List_of_songs_banned_by_the_BBC) retrieved on 15 December, 2018 at 22:25

<sup>43</sup> Roy Greenslade "Ugandan song banned from the airwaves" The Guardian, Wednesday 26 September, 2012 also available at <https://www.theguardian.com/media/greenslade/2012/sep/26/freedom-of-speech-uganda> retrieved on 14th December, 2018 at 19:10 hrs

Puerto Rico from being played in public television and radio stations for having explicit sexual references and innuendos.<sup>44</sup>

Although BASATA has existed since 1974, its vibrant operation has been unfastening in the beginning of 2000s with the growth of Tanzanian music and film. It is a known fact that, from 2000 music and film industries in Tanzania have been employing a mass of the youth either directly or indirectly. Being cautious with the culture, morals and ethics of the country, BASATA has been vivacious against not only any music song or film that is likely to damage morals of the Tanzanian society but also any music, song or film which can injure the feeling of a cross section of members of the community in the country. The Council has banned music, songs and film videos having immoral contents in the context of Tanzania.

On February 28, 2018, BASATA in cooperation with Tanzania Communication Regulatory Authority (TCRA) banned 13 local songs on grounds that they are against the country's norms and values and they violate ethics of regulations of broadcasting services (Content), 2005.<sup>45</sup> The banned songs included two songs by Diamond Platnumz, *Wakawaka* and *Hallelujah*. Others were *Pale Kati Patamu* by Ney wa Mitego, *Chura* and *Nimevurugwa* by Snura, *Hainaga Ushemeji* by Manifongo, *I am sorry JK* by Nikki Mbishi, *Kibamia* by Roma Mkatoliki, *Tema Mate Tuwachape* by Madee, *Uzuri Wako* by Jux, *Nampa Papa* by Gigy Money and *Nampaga* by Barnaba.<sup>46</sup>

Most recently, on 13<sup>th</sup> November, 2018 a song called *Mwanza* by Rayvanny and Diamond Platnumz was also banned after been deemed not appropriate for public consumption.<sup>47</sup> The rate of banning songs and making orders against artists seem to increase in the 5<sup>th</sup> Phase government under the presidency of John Joseph Pombe Magufuli. Apart from banning artistic works, BASATA has also been issuing warnings and fines to artists posting their videos and pictures in social networks which have immoral content.<sup>48</sup> BASATA has been doing all these to promote the quality of artistic works in Tanzania but within the context of Tanzania culture.

A quick reading of the National Arts Act, 1984 may make one think that BASATA has no power to censor music, songs or films or any other artistic

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<sup>44</sup> Michelle Toh "Malaysian State TV and radio won't play 'Despacito' CNN-Business of July 21, 2017, retrieved on 14<sup>th</sup> December, 2018 at 19:01 hrs available at <https://money.cnn.com/2017/07/20/media/malaysia-ban-despacito-state-media/index.html>

<sup>45</sup> Louis Kolumbia "TCRA bans broadcasting of 13 local songs" The Citizen, February 28, 2018, available at <https://www.thecitizen.co.tz/News/-TRCA-bans-broadcasting-of-13-local-songs/1840340-4423520-13129j4z/index.html> retrieved on 16<sup>th</sup> December, 2018 at 14:40 hrs

<sup>46</sup> Ibid

<sup>47</sup> Thomas Matiko "Diamond, Rayvanny fined Sh. 400K for dirty song 'Mwanza'" Nairobi News, November 14, 2018, available at <https://nairobi.news.nation.co.ke/chillax/diamond-rayvanny-fined-sh400k-for-dirty-song-mwanza/> retrieved on 16<sup>th</sup> December, 2018 at 14:50 hrs

<sup>48</sup> See <https://www.musicinafrica.net/magazine/tanzanian-singer-arrested-indecent-footage> retrieved on 16<sup>th</sup> December, 2018 at 14:55 hrs



work for having immoral content. However, Section 4 (2) of the Act, vests BASATA with discretionary power to do all such acts as appear to it to be requisite, advantageous or convenient for or in connection with the carrying out its functions or to be incidental or conducive to their proper discharge and may carry on any activities in that behalf either alone or in association with any other person or body (including the government) whether within or outside Tanzania.

It is clear that the above provision gives wide discretionary power to BASATA. From this provision, it is clear that, banning of a song or a film video if done for the purpose of protecting tradition and culture of Tanzanian music is well within the law. The Act establishing BASATA clearly states that, it is the function of BASATA to revive and promote the development and production of artistic works with a view of reviving and promoting Tanzania culture.<sup>49</sup>

However, a critical question would be on what is a Tanzanian culture regarding music, films or any other artistic work? Are artistic works with for instance reference to sex against Tanzanian culture? Undisputedly this is the question of debate. There is one example from the *Sukuma* ethnic group which is found in many regions in Tanzania such as Mwanza, Shinyanga, Geita, Simiyu and some parts of Tabora and Rukwa. According to the culture of this ethnic group, there are traditional dances called *Bhukango* and *Bhuswezi* which have a number of contents referring to sex. These dances are normally done as a way of complying with traditional beliefs regarding newly born twins and babies born with footling breech.

Another custom that may be referred to being controversial is that practiced by some community members living in the coastal region of Tanzania. In this part there is a common dance called *kigodoro* in which the manner women and few men dance has a direct connotation with sex. Unlike the Sukuma dances *bhukango* and *bhuswezi* which only involve adults mainly old men, the *kigodoro* dance does not discriminate as any person of any age can participate.

It is also not uncommon to find dancing half naked women in many traditional dances of various Tanzanian and of course African societies. Emphatically, these dances cannot directly be said to be good and possibly may form part of bad cultural practices. The point that is being emphasized here is that banning songs grounded on promoting Tanzanian culture may sound ambiguous since what amounts to Tanzanian culture is uncertain. It is therefore a question of reasonability and prudence in deciding whether or not an artistic work is against Tanzanian culture.

Another controversial matter regarding censorship of artistic works which is of vital importance is the status of censorship vis-à-vis right to freedom of

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<sup>49</sup> Section 4 (1) (a) of Act No. 23/1984

expression. Since through artistic works a person may express ones ideas, it then follows that production of artistic works is one among the aspects of freedom of expression. In many countries if not all, freedom of expression is a constitutional right. In the laws of Tanzania, recognition of freedom of expression as a right is similarly unquestionable.<sup>50</sup> In this regard, therefore one may correctly argue that censorship of songs exercised with discretion by BASATA are unconstitutional as they violate the right to freedom of expression. Unlike the United State's Constitution which clearly prohibits making of any law which curtails freedom of expression,<sup>51</sup> in the Constitution of the United Republic of Tanzania there is a general limitation clause which limits all rights enshrined in it.<sup>52</sup> The Constitution provides that the rights enshrined in it should not be exercised in a manner that causes interference with or curtailment of the rights and freedoms of other persons or of the public interest.<sup>53</sup>

However, it has been argued that, where a Regulation becomes too wide in restricting the right to freedom of expression it may itself be against public interest.<sup>54</sup> Tanzania laws are silent on what amounts to public interest. This does not however bar one to resort to international law or case law which are sources of law recognized in Tanzania.

It is therefore submitted that, due to silence of the national laws in deciding what amounts to public interest, BASATA should have regard to the established international law principles of interpreting general limitation clauses.<sup>55</sup> According to international law principles, an act or omission may be regarded as being against public interest if they endanger public order or public morals or public safety or public health or national security.<sup>56</sup>

An act or omission is against public order if it bars the ordinary functioning of the society; it is against public safety if it endangers safety of persons to their lives, physical integrity or properties; it is against public health if it exposes the society to diseases and/or sicknesses; it is against public morals if it shows disrespect to fundamental values of the community and it endangers national security if it jeopardizes the existence of the nation or its territorial integrity or political independence against force or threat of force.<sup>57</sup>

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<sup>50</sup> See the Constitution of the United Republic of Tanzania, 1977 [Cap. 2, R.E 2002], Article 18

<sup>51</sup> US Constitution, 1<sup>st</sup> Amendment

<sup>52</sup> *Ibid*, Article 30 (1)

<sup>53</sup> *Ibid*

<sup>54</sup> *K.A Abbas v. Union of India*, AIR 1971 S.C. 481

<sup>55</sup> A resort may be made to the SIRACUSA Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights which unequivocally defines the meaning of public interest.

<sup>56</sup> *Ibid*

<sup>57</sup> *Ibid*

## LEGAL ACTION (S) AGAINST BASATA

As noted above, BASATA is capable of suing and being sued.<sup>58</sup> It is also a government agency of the United Republic of Tanzania. In this regard, it is an agent representing its principal - the government of the United Republic of Tanzania. In law a principal can be sued for acts done by an agent causing harm to others.<sup>59</sup> It follows therefore that BASATA can be sued using its own name. The government of the United Republic of Tanzania can also be sued basing on acts of BASATA but which are not reasonably beyond or do not exceed the authority given by law.

The laws of Tanzania allow the government to be sued in civil cases for acts giving rise to cause of action (s) done by an agent of the government.<sup>60</sup> It is also possible for BASATA and the government of the United Republic of Tanzania be sued together and at the same time depending on nature and material facts of each case. However this should strictly be on civil harms entertained by victims such as contracts, quasi-contract, detinue, torts and/or negligence.<sup>61</sup> Therefore, where for instance BASATA arbitrarily and without any reasonable ground censors an artist's song and as a result such artist suffers loss especially economic loss, such artist may perfectly take BASATA to court of law for a civil redress.

There are no reported cases on legal action taken against BASATA for banning songs. This has two implications; it is either that BASATA's decisions to ban those artistic works are taken on justifiable grounds or that artists are ignorant of the existence of the legal action avenue. In other jurisdictions, artists have sued regulatory organs that have been vested with powers such as BASATA. In November 2018 for example, a Nigerian artist by the name of Folarin Falana a.k.a Falz instituted a legal action against the Nigeria National Broadcasting Commission (NBC) for banning his song. NBC banned Falz's song titled *This is Nigeria* alleging it to possess indecent and vulgar lyrics. The Originating Summons filed by Falz sought the following;

- i. A declaration that the Defendant's prohibition of the Plaintiff's song titled "This is Nigeria" from being aired by the Nigerian media outfits on the pretext that same is laced with vulgar lyrics is in flagrant breach of the Plaintiff's right to the freedom of thought, conscience and expression as guaranteed under Sections 38 and 39 of the Constitution of the Federal Republic of Nigeria, 1999 and to that extent, such prohibition is unconstitutional, null and void;

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<sup>58</sup> Ibid, Section 3 (1) (b)

<sup>59</sup> See section 178 of the Law of Contract Act of Tanzania [Cap. 345, R.E 2009]; also see the case of *Northern Sandblasting vs Harris* [1997]HCA 39-188 CLR 313 and the case of *Burnie Port Authority vs General Jones Pty Ltd* [1994] 179 CLR 520

<sup>60</sup> Ibid, Section 3 (2)

<sup>61</sup> See Section 3 (1) of the Government Proceedings Act, 1967 [Cap.5, R.E 2002]

- ii. An order of this Honourable Court setting aside and/or vacating the decision of the Defendant as contained in the letter dated 6<sup>th</sup> August 2018 and lifting the ban or proscription of the use of the Plaintiff's song titled, "This is Nigeria" by any and all Nigerian media outfit/organizations; and
- iii. The sum of N 100,000,000 (One Hundred Million Naira) to the Plaintiff on the footing of aggravated and exemplary damages for the wrongful and unconstitutional acts of the Defendant.<sup>62</sup>

Without going into the merits of the matter, the action taken by the Nigerian artist to claim his constitutional rights is laudable. It provides food for thought to Tanzanian artists on the possibility of taking their discontents against BASATA decisions to court instead of complaining on social media.

## CONCLUSION AND RECOMMENDATIONS

It is clear that it is not uncommon for a country to have a body like BASATA. There are many countries if not all with bodies to regulate the artistic works and make sure that those works do not erode national values and norms. For example, in Kenya there is the Kenya Film Classification Board (KFCB) established under the Films and Stage Plays Act.<sup>63</sup> KFCB regulates films content to promote national values, and to protect children from being exposed to harmful content.<sup>64</sup> Rwanda has a body called Rwanda Academy of Language and Culture (RALC) whose functions are of more or less the same as that of BASATA. The Republic of South Africa also has a body called National Arts Council which is statutorily established.<sup>65</sup> In Zimbabwe there is similarly a body known as National Arts Council of Zimbabwe also statutorily established.<sup>66</sup> In Singapore, there is the National Arts Council.<sup>67</sup>

The existence of BASATA in Tanzania and its purpose and functions is of vital importance to the Tanzania community at large. Its functions can be improved if the following recommendations are taken into account:

One, BASATA should ensure equality, consistency and uniformity on grounds leading to banning of artistic works. A deep analysis may find out that there are some songs which remain unbanned but have vulgar lyrics either similar or even more than the ones banned. There was no sufficient time to conduct

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<sup>62</sup> See GbengaBada "Falz sues NBC for N100M 3 months after banning his song 'This is Nigeria'" the Pulse of 11.11.2018 available at <https://opera.pulse.ng/entertainment/music/falz-sues-nbc-for-n100m-after-banning-song-this-is-nigeria-id9092952.html> retrieved on 15 December, 2018 at 21:20 hrs; see Originating Summons at <http://www.gistmania.com/talk/topic,370730.0.html> retrieved on 15 December, 2018 at 21:15 hrs

<sup>63</sup> Cap. 222 of Laws of Kenya

<sup>64</sup> See section 17 of the Films and Stage Plays Act [Cap.222, R.E 2012]

<sup>65</sup> See section 2 of the National Arts Council Act No. 56/1997

<sup>66</sup> See section 3 of the National Arts Council of Zimbabwe Act, 1987 [Cap. 25:07 as amended in 2006]

<sup>67</sup> See section 3 of the National Arts Council Act, 1991 [Cap. 193A, R.E 2014]

research on this but from the songs aired in stations in the country, it is clear that some maybe more offensive than those that have been banned.

Two, artists should where justifiable, seek for legal redress when they reasonably think that their artistic works have been arbitrarily banned. Artists should understand that BASATA is composed of human beings capable of making errors in their reasoning. They should also be aware that BASATA is not a final and conclusive body in dispensation of justice and decision making regarding their works. On that basis, artists should not be afraid to seek judicial redress instead of complaining on social media.

Third, BASATA make more effort in holding sensitization seminars and capacity building workshops for artists in Tanzania. The workshops should, among other things, impart artists with knowledge regarding the quality of songs they release and their compatibility to national values and norms. This will act as a proactive measure than depending on reactive measure of banning songs.

Fourth, in case of any reasonable doubt as to the content of their artistic works, artists before releasing their works should consult BASATA. This will mitigate the risk of artists being slapped with fines and having their songs banned.

Fifth, BASATA should not only focus on songs sung by artists from Tanzania. It should also advice the government to ban songs with vulgar lyrics from other countries from being played by radio and TV stations in Tanzania. There are many songs from foreign countries played in Tanzania and have very vulgar lyrics. For instance there is a song called *La fete* sang by a Nigerian artist called Folarin Falanaa.k.a Falz. This song contains English cum Swahili sentence "*Hakunamatata, I like your matakomatiti*" which could be interpreted as offending Tanzanian public morals.

Lastly, BASATA should also address other categories of music songs such as gospel songs and *taarab* rather than concentrating only on *bongo flava* songs.

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