

IN THE RESIDENT MAGISTRATE COURT OF KINONDONI

AT KINONDONI

MISCELLANEOUS CRIMINAL APPLICATION NO. 7 OF 2021

SAED AHMED KUBENEA ..... APPLICANT

VERSUS

DIRECTOR OF CRIMINAL INVESTIGATION.....1<sup>ST</sup> RESPONDENT

DIRECTOR OF PUBLIC PROSECUTION.....2<sup>ND</sup> RESPONDENT

PAUL CHRISTIAN MAKONDA .....3<sup>RD</sup> RESPONDENT

CHAMBER SUMMONS

*(Made Under section 99(1),(3), 128(2) and 392A (1) and (2) of Criminal Procedure Act Cap. 20 (R: E) 2019)*

LET THE PARTIES CONCERNED appear before Honourable A. L. Kimani  
Magistrate sitting in Chambers on the 2<sup>nd</sup> day of Dec 2021 at 9.00 o'clock in the  
forenoon or soon thereafter when the Applicant can be heard on an application for the following  
orders:

1. That the Honourable Court be pleased to allow the applicant to institute private Criminal prosecution against the 3<sup>rd</sup> Respondent.
2. That, this Honorable Court be pleased to adopt the charge sheet as the basis of this application as formal charge and complaint against the 3rd Respondent.
3. Any other relief that this Honorable Court will deem fit and proper to grant.

This application is supported by the affidavit of Saed Ahmed Kubenea appended herewith together with other grounds to be adduced and argued during the hearing of this application.

GIVEN under my hand and seal of the Court this..... day of.....2021



RESIDENT MAGISTRATE  
KINONDONI DISTRICT COURT  
DAR ES SALAAM,  
Registry Officer

Presented for filing this 27 day of 11 2021.

*Efhu*  
REGISTRY OFFICER

**DRAWN AND FILED BY:**

HEKIMA MWASIPU, (ADVOCATE),  
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KINONDONI MANYANYA.  
BOX 31191,  
Mob: 071794662/0759502009

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**TO BE SERVED UPON:**

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DAR ES SALAAM.
- 2. DIRECTOR OF CRIMINAL INVESTIGATION**  
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**IN THE RESIDENT MAGISTRATE COURT OF KINONDONI**

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MISCELLANEOUS CRIMINAL APPLICATION NO..... OF 2021

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**DIRECTOR OF PUBLIC PROSECUTION.....2<sup>ND</sup> RESPONDENT**

**PAUL CHRISTIAN MAKONDA .....3<sup>RD</sup> RESPONDENT**

**AFFIDAVIT**

I, SAED AHMED KUBENEA an adult Muslim and resident of Dar es salaam do hereby solemnly affirm and state as follows: -

1. **That, I am the Resident of Dar es Salaam and the Applicant in this matter, thus, conversant with the facts of this affidavit which I am about to depose hereunder as I do.**
2. **That, the first Respondent is the Director of Criminal investigation whose office is established under provisions of the Police and Auxiliary Police Service (Police General Orders) Order, time whose duties are to investigate all criminal offences in accordance with the law.**
3. **That, the Second Respondent is the Director of Public Prosecution whose office is established by the Constitution and statute as well established for the purposes of controlling all public prosecution in Tanzania.**
4. **That, the third Respondent is the ordinary citizen of united Republic of Tanzania, however, before 15<sup>th</sup> July 2020, he served as the Regional Commissioner of the Dar es**

Salaam Region and District Commissioner for Kinondoni District during the 5<sup>th</sup> Phase Government under rule of His Excellency, Late Dr. John Pombe Magufuli.

5. **That, the 3<sup>rd</sup> Respondent during his tenure as the Regional Commissioner of Dar es Salaam criminally, tortuously and violently trespassed in the Clouds Media Studio Building, that is building that houses Clouds Television and Radio stations on the night of 17<sup>th</sup> March 2017 at 3.40 when the scene of SHILAWADU was being broadcast where the event culminated into the public outcry in social media including but not limited to Whatsap, Instagram, tweeter, Jamiiforums and facebook.**
6. **That, the information collected from social media as averred in paragraphs 5 immediately hereinabove that the 3<sup>rd</sup> Respondent was accompanied with unknown armed men in police uniform who were more than five and demanded airing of video clip discrediting local pastor namely Bishop Josephat Gwajima.**
7. **That, following the public outcry in social media regarding the event of 17<sup>th</sup> March 2017 by 3<sup>rd</sup> Respondent, the then Minister of Information, Culture, Arts and sports, Mr. Nape Moses Nauye made official visit to Clouds Media Group the Office located at Mikocheni to gather information regarding the invasion of the said Studio thereby the said Minister received the full account of the said incident of armed attack carried out by 3<sup>rd</sup> Respondent and armed unknown men in uniform from the leadership of the said Clouds Media Group.**
8. **That, consequently, the Minister formed the probe Committee to investigate the matter with a view to establish with accuracy what transpired in the night of 17<sup>th</sup> March 2017 at Clouds Media Group the Studio thereby the Probe Committee was formed on 20<sup>th</sup> March 2017 three days after the event.**
9. **That, the Probe Committee constituted by stakeholders of the Journalism industry namely Dr. Hasan Abas, (Director of Information by then and spokesperson of the Government), as Chairman of the Committee, Dedatus Balile as Secretary of the probe Committee and Chief editor of Jamuhuri Newspaper, Jesse Kwayu from the Guardian**

newspaper (Chief Editor) as Member), Neng'ida Johanes from Upendo Media as Director as Member and Mabel Masasi from TCRA as Member.

10. **That, the Probe Committee was given terms of reference and such terms of reference, among others included the following; (1) to establish as to whether the 3<sup>rd</sup> Respondent violently trespassed into Clouds Media Studio in company of armed men, (2) collect information from Clouds Media Group and from 3<sup>rd</sup> Respondent personally and (3) give recommendation regarding the incident.**
11. **That, the probe Committee, invited the 3<sup>rd</sup> respondent to the committee but beside of the great efforts which were made by the committee proved futile, the 3<sup>rd</sup> respondent did give a lame excuse and thus the committees preceded with investigation with others stakeholders as averred in paragraph 9 herein.**
12. **That, after investigation, the Probe Committee Report revealed that on 17 March 2017 at 4.30 pm that 3<sup>rd</sup> Respondent violently trespassed into Clouds Media Studio together with armed men with his private Car with registration No. T553BFH and the guests register of Clouds Media group of 17<sup>th</sup> March 2017 and CCTV Camera footage which are on "U TUBE" channel till to date shows that 3<sup>rd</sup> Respondent invaded the Clouds Media Studio purposely for commanding the hosts of SHILAWADU broadcasters to air the information in Video Clip regarding on Grace Athuman who was believed fiancée of Bishop Gwajima. 3<sup>rd</sup> Respondent after discovering that the Said SHILAWADU host will not broadcast that scene he decide to storm the Studio to Command them for hr purpose of airing the said clip.**

**Annexed and marked "MATWIGA 1" is a copy of the Said report and leave of this Court is craved for the same to form part of this affidavit.**

13. **That, the act of 3<sup>rd</sup> Respondent to storm into the Clouds Media studio amount not only to abusive of power but also criminal offence.**
14. **That, the 1<sup>st</sup> Respondent being the in charge of criminal I investigation beside of the recommendation made by the probe Committee, public outcry in social media, CCTV**

footage of " U TUBE" he has never taken any initiatives till to date including charging the 3<sup>rd</sup> Respondent on the act of storming Clouds studios.

15. **That, 1<sup>st</sup> Respondent's irresponsibility and silence in taking relevant measures including prosecuting the 3<sup>rd</sup> Respondent has resulted into a public outcry regarding to the acts of the 3<sup>rd</sup> Respondent to make invasion in Cloud media Studio.**

16. **That, I have charged the 3<sup>rd</sup> Respondent of two Counts which constitutes criminal offences.**

**Annexed and marked MATWIGA 2 is a copy of the charge sheet and leave of this Court is craved for the same to form part of this affidavit.**

17. **That, the offences of which stands to be charged as annexed herein falls within the jurisdiction of this Court.**

18. **That, it is just and equitable that the prayer on Chamber summons be granted in order to enable the Applicant to prosecute 2<sup>nd</sup> respondent herein.**

Dated at Dar es Salaam this 20<sup>th</sup> day of Nov 2021.



DEPONENT

### VERIFICATION

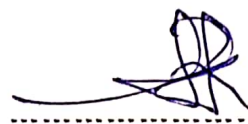
I, SAED AHMED KUBENEA , being the Applicant herein state that what is stated in paragraphs 1, 2, 3, 4, 5, 6, 7,8,9, 12,13, 14, 15, 17 and 18 are true to the best of my own knowledge and understanding and information in paragraphs 10, and 11 are the information supplied to me by Deodatus Balile the Secretary of Probe Committee which I believe to be true and information in paragraph 16 are information supplied to me by my Advocate Hekima Mwasipu of Matwiga Law Chamber which also I believe to be true.

Verified at Dar es Salaam this 20<sup>th</sup> day of November 2021



DEPONENT

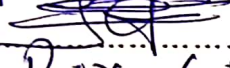
Sworn at Dar es Salaam by the said  
DAED AHMED KUBENEA who is  
Known to me personally/identified to me by  
.....the latter being known to  
me personally this 20<sup>th</sup> day of Nov 2021.



DEPONENT

**BEFORE ME:**

Name: GEORGE A. TIMOTI

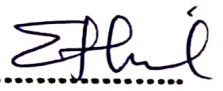
Signature: 

Address: Box 6380

Qualification: COMMISSIONER FOR OATHS



Presented for filing this 24 day of 11 2021



REGISTRY OFFICER

**DRAWN AND FILED BY:**

HEKIMA MWASIPU, (ADVOCATE)  
MATWIGA LAW CHAMBERS,  
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BOX.....  
DAR ES SALAAM

ANNEXURE MAJUMBA 2

IN THE RESIDENT MAGISTRATE COURT OF KINONDONI  
AT KINONDONI

CRIMINAL CASE NO..... OF 2021

SAED AHMED KUBENEA  
VS  
PAUL CHRISTIAN MAKONDA.

CHARGE SHEET

1. COUNT

STATEMENT OF OFFENCE

ABUSE OF OFFICE: Contrary to Section 96 of the Penal Code (R: E 2019)

PARTICULARS OF OFFENCE

CHRISTIAN PAUL MAKONDA being the Regional Commissioner of Dar Es Salaam on 17<sup>th</sup> March 2017 around 9.40pm at the Clouds Media Studio, Mikochen being employed in the public service, in abuse of the authority of his office did stormed to the Studio with other five people not in Court being armed and forced broadcaster who were in studio to air the scene of one Grace Athman believed to be the fiancée of one Bishop Gwajima which is prejudicial to the rights of Cloud media group.

2. COUNT

STATEMENT OF OFFENCE

INTERFERENCE OF TANSMISSION OF ELECTRONIC COMMUNICATION Contrary to Section 123(1) of Electronic and Postal Communication Act No. 3 of 2010.

**PARTICULARS OF OFFENCE**

**CHRISTIAN PAUL MAKONDA** on 17 MARCH 2017 at Clouds media Studio about 9.40 pm without probable cause interfered with the transmission of the scene of **SHILAWADU** which was to be broadcasted on the same day of 17<sup>th</sup> March 2017.

Dated at Dar es Salaam this .....20<sup>th</sup>.....day of .....Nov.....2021.

**SAED AHMED KUBENEA**



**PRIVATE PROSECUTOR.**

**DRAWN AND FILED BY:**

**HEKIMA MWASIPU, (ADVOCATE),  
MATWIGA LAW CHAMBERS,  
IBACON HOUSE , IKUNGI STREET,  
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# ANNEXURE MAIN PART

RIPOTI YA KAMATI YA KUCHUNGUZA TUKIO LA KUVAMIWA KITUO CHA  
UTANGAZAJI CHA CLOUDS MEDIA GROUP, MACHI 17, 2017



*Certified True Copy  
of the original  
28/10/2021  
[Signature]*

## 1. UTANGULIZI

Machi 19, 2017 zilizambwa taarifa katika mtandao ya kijamii zilizoda kuwa kituo cha Utangulizi cha Clouds Media tangu kinafomiliki vituo vya redio Clouds FM na tangu ya Clouds TV kilidawa kuamua na Mkuu wa Mkoa wa Dar es Salaam, Mhe. Paul Makonda.

Taarifa hizo ziliongeza kuwa Mhe. Makonda aliongezama na askari zaidi ya watano wenye silaha za moto katika uamuzi huo, ulidawa kuwa kiongozi huyo wa Mkoa alitaka kuwashurutisha watangazaji wa kipindi kilichokuwa hewani kutwafoto. **MAJALAZI** kutisha taarifa yenye maudhui ambayo watangazaji na wadhari wa kituo hicho waliona likuwa makiuka Kamati za Maudhui ya Utangazaji.

Kutokana na taarifa hizo kuenea kwa kasi kwenye mtandao ya kijamii na taadaye kwenye televisheni, radio na magazeti ndani na nje ya nchi, Machi 20, 2017 Watiri wa Habari Utamaduni, Sanaa na Michezo, Mhe. Nape Nnanyi, alitembelea kituo hicho kufahamu undani wa kilichotokea.

Baada ya kupata maelezo ya awali ya upande wa wamiliki wa Clouds, Mhe. Nape aliunda Kamati ya watu watano ambayo ilipewa jukumu la kukusanya taarifa za kina kuhusu mii hasa kilichotokea kutoka pande zote mbili, yaani Clouds na Mh. Makonda.

## 2. WAJUMBE WA KAMATI:

2.1 Dkt. Hassan Abbasi, Mkurugenzi-MAELEZO	Mwenyekiti,
2.2 Bw. Deodatus Balile, Mhariri Mtendaji, Jamhuri	Katibu,
2.3 Bw. Jesse Kwayu, Mhariri Mkuu, The Guardian LTD	Mjumbe;
2.4 Bibi Neng'ida Johanes, Mkurugenzi, Upendo Media	Mjumbe; na
2.5 Bibi Mabel Masasi, Mamlaka ya Mawasiliano (TCRA)	Mjumbe.

## 3. HADIDU ZA REJEA:

Kamati ilipewa hadidi za rejea zifuatazo katika kufuatilia kilichotokea.

- Kuthibitisha swapo tukio lilitokea au la,
- Kukusanya taarifa kutoka Clouds na Mh. Mkuu wa Mkoa, Paul Makonda,
- Kutoa mapendekezo na hatua za kuchukua

## 4. MBINU ZA KUKUSANYA TAARIFA:

### 4.1 Mahojiano:

Kamati ilitumia saa kadhaa kati ya Machi 20 na Machi 21, 2017 kufanya mahojiano na jumla ya wafanyakazi na viongozi 14 wa kituo cha Clouds Media ambao kwa namna

kutisha matangazo live studio wakati matangazo ya kipindi cha Sitawadu yakiendelea na kuanza kuwafokea na kuwatisha watangazaji kwa nini "habari yake" hakufushwa hewani akidai alikuwa ameshawapa taarifa watu wazito serikalini watangazaji

### 5.3 Je, kulikuwa na vitisho dhidi ya wafanyakazi wa kituo cha Clouds?

Kamati imethibitisha pasi na shaka kwamba kulikuwa na vitisho dhidi ya wafanyakazi wa Clouds. Vitisho hivyo ni askari wenye silaha za moto kufunga ndani ya studio kubabe na wakiwa wamishika silaha zao mikononi. Mkuu wa Mkoa Paul Makonda aliwatisha wafanyakazi wa Clouds waliohokuwa Studio usiku huo kwamba angewafunga jela miezi sita, alipiga simu kwa wakuu wa kituo cha Clouds moriti ya wafanyakazi na kuwahoji sababu za kutokurushwa hewani kwa "habari yake"

Mkuu wa Mkoa pia alielezwa kutoa vitisho kuwa angekwenda kuwakagua watangazaji wa kipindi kama wanahusika na dawa ya kulevya au kuwabana wadhamini wa kipindi hicho. Hali hiyo ilisababisha taharuki kubwa kwa wafanyakazi na watangazaji walokuwepo hasa ibizingatiwa kuwa wengi ni vijana wadogo kiumri.

Kamati imebaini kuwa kutokana na taharuki hiyo ya vitisho vya Mkuu wa Mkoa, waendeshaji kipindi cha SHILAWADU walishindwa kuhitimisha vyema kipindi chao kilichokuwa kikielekea ukingoni, walifazimika kubaki ofisini kwa hofu hadi majira ya asubuhi kwa usalama wao

Kamati imeziona dalili kuwa iwapo viongozi wa Clouds Media wasingemthibitisha Mkuu wa Mkoa usiku ule baada ya kuwapigita simu akiwa studio kwamba wao walishiriki kutua habari hiyo isiruke mpaka itabapokidhi vigezo vya bita'uluma, huenda KIONGOZI huyo, kwa aina ya vitisho alivyokuwa akiwitoa, angewakamata watangazaji waliohokuwa wakiteendesha kipindi hicho

Kamati pia imebaini, Mkuu wa Mkoa kwa takribani saa moja aliyokuwa "ameishikilia" stesheni ya Clouds, alitoa vitisho kwa wafanyakazi waliohokuwa zamu, akisisitiza kuwa yaliyotokea usiku huo yabaki ndani ya ofisi hizo na iwapo yangetolewa nje wangemtambua yeye ni nani. Huinaeleza ni kwa nini pamoja na tukio la kuvamiwa kituo cha Clouds kutokea Jumaa, taarifa zilifanhamika kwa umma siku mbili baadaye, yaani, Jumatili Machi 19, 2017

Kamati pia imethibitisha kuwa licha ya kuondoka usiku ule akiahidi kuwa kuna watu wanne katika kituo cha Clouds ni maadui zake na kwamba angewashughulikia (hakufafanua kwa namna gani). Mkuu wa Mkoa baada

alirudiea kutoka vitisho kwa njia ya vitu au kuwa taifa ya wafanyakazi wa Clouds mahali alikuwa na kuwatishia kwa mtelemu mbali bali na kuza amri wa wachapisho baadhi ya taarifa za kumsafaha katika mtandao ya Kiara.

Hali hii imesababisha situ hofu kubwa kwa wafanyakazi wote wa kituo hicho na kuishi kwa wasiwasi, mbaya zaidi imesababisha baadhi ya watangazaji wanapendelea kupokea vitisho hivyo kulazimika kuvimbia makazi yao ofisi zao na hata kuwa mbali na familia zao.

**S 3 Je, kulikuwa na viashiria vya kuingilia uhuru wa uhariri?**

Kamati imebaini uyungu wa sheria na uingitaji wa uhuru wa uhariri na vyombo vya habari kwa kiwango cha juu kutokana na vitisho na amri alizotoa Mkuu wa Mkoa wa Dar es Salaam Makonda.

Wakati kifungu cha 7(1)(a)(b) na (c) cha Sheria ya Huduma za Habari, 2016 iliyosamiwa na Mhe. Rais wa Jamhuri ya Muungano wa Tanzania, Dkt. John Magufuli, Novemba mwaka jana na kuanza kutumika mwaka huu, kinatoa uhuru kwa vyombo vya habari na wanahabari kukusanya, kuchakata, kuhariri na kusambaza taarifa na habari kwa mujibu wa Ibara ya 18 ya Katiba ya Jamhuri ya Muungano wa Tanzania (1977). Mkuu wa Mkoa Makonda alipofika kituo cha Clouds alipita jukumu la kuhariri kwa kuhoji ni nani aliyetulia "habari yake" inayohusu kashfa ya Askofu Gwajima isitangazwe.

Mbali na sheria, alichofanya Mhe. Makonda ni kinyume cha kifungu cha 23 cha Azimio la Dar es Salaam Juu ya Uhuru wa Uhariri na Uwajibikaji (2011), kinachosema:

*"Serikali inapaswa kuandakana na tabia ya kutumia ubabe unaozuia uhuru wa uhariri kama vile, vitisho vya polisi, kufungwa jela kwa waandishi wa habari, kunyang'anya na kuharibu vitendea kazi vya habari. Pale ambapo mawakala wa Serikali watapatikana na shutuma za kutenda ukatili dhidi ya wanahabari uchunguzi makini lazima ufanyike na wahusika washughulikiwe kwa uthabiti na uwazi."*

Pia, Sheria ya Mawasiliano ya Elektronik na Huduma za Posta Na 3 ya Mwaka 2010 katika kifungu cha 104(2)(c) inazuia chombo chochote cha habari kurusha matangazo ambayo yamegemea upande mmoja. Hivyo kitendo cha Mkuu wa Mkoa kulazimisha habari iliyokuwa haijahusisha pande zote irushwe alikuwa akishinikiza kukrukwa kwa sheria za nchi.

**S.5 Je, Mhe. Makonda alikuwa na kawaida ya kwenda ofisi za Clouds?**

...wafanyabari wa Clouds walipigwa mitama au vitabo vya bunduki?

...

...

...

**5.6.10. Kuna wafanyabari wa Clouds walipigwa mitama au vitabo vya bunduki?**

...

**6. MAONI YA KAMATI**

- i) Kamati imelewa kuwa vitabu vya *Al-Kutub wa Al-Kutub wa Dar es Salaam* vna ajabika vya kutafuta wa shereha zilizohitaji ya kutoa kutayata zinazotuziana na utangazaji wa kuhimiza kuhusu kama zilivyotapwa kugitapwa.
- ii) Kamati imelewa dhidi ya *Al-Kutub wa Al-Kutub* kutotambua ukubwa wa madaraka aliyomayo na kupitika ukizitambua vitavyo katika mazingira vya yostandhi.
- iii) Kamati imelewa kuwa vitabu vya *Clouds* unastahili pongezi kwa kusimama mistege shereha na maridhi ya kumaliza wa kuhata kwa kutafaa kutokopcha kutani kipi na maridhi (unbalanced story)



## 7. MAJIBIBI YA KAMATI

Kufuatia na tukio hilo lililofanyika kwa kutuza habari na kuwakarabana na maadui wa mara kwa mara wa Pw. Dkt. John Pumbo Mipololi anayesidita maadui wa habari unaozunguza webuli, usidho, ukweli na haki za wanatajiri. Kamati inapendekeza yabwa yote kwa Serikali kupata kwa Mhe. Waziri wa Habari, Utamaduni, Sanaa na Michezo.

- i) Mkuu wa Mkoa wa Dar es Salaam, Paul Makonda awaombe radhi wafanyakazi wa Kampuni ya Clouds Media Group na vyombo vya habari kwa upande mchumi kwa tukio hilo likiambatwa usalama na maadui ya maishaha wa habari.
- ii) Mhe. Waziri Hape Mtaaye katika kulinda marufuku ya Laisini ya Habari ambayo anaozunguza awasidhe rami mitalamko ya Laisini ya Habari dhidi ya Mkuu wa Mkoa wa Dar es Salaam, Paul Makonda kwa Mamlaka ya Uteuzi wa Mkuu huyo wa Mkoa kuomba Mamlaka ya Uteuzi inachukule hatua zinazopaswa.
- iii) Vyombo vya dola vionziwe uchunguzi wa odani dhidi ya askari waliwanga na huoduka katika kituo cha Clouds kwa ma ya kuhitibi matakoni ya ama hu viki za usoni kwani ipa hatari ya kupengela mazoezi ya kuzama vituo vya utangazaji na kutababisha matatizo ya kusalama nchini.
- iv) Kampuni ya Clouds Media kwa upande wake, ipite upya miongoro, kanuni na sheria zinazozunguza shughuli za utangazaji na kuangalia nje bora ya kuwa na udhibiti kwa wato wasimhusika kuzoza kuongia mara kwa mara na kufanyakazi za uhariri bila kuwa wanataaluma wa habari au wahusika katika chumba cha habari.

## 8. HITIMISHO

Kamati inaishukuru Serikali kwa ma yake ya dhidi kuendelea kulinda misingi ya uhuru wa habari kwa kuunda Kamati hu haraka ili kutuliza poto lililokuwa linazidi kupanda miongoro mwa wanatajiri ya habari tangu tukio hilo lililostonia lipoitokea. Aidha, tunawashukuru wote walioshirikiana na Kamati kwa kutoa maoni yao mbalimbali, kufuatilia kwa kamba kazi za Kamati hii.