

ISSUE NO. 01



THE UNITED REPUBLIC OF TANZANIA
JUDICIARY OF TANZANIA



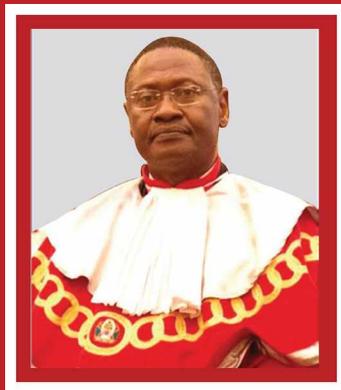
THE COURT OF APPEAL OF **TANZANIA**



2021

YEAR IN REVIEW

THE ADMINISTRATION OF THE COURT OF APPEAL



HON. PROF. IBRAHIM HAMISI JUMA
The Chief Justice

He is the head of the Judiciary of Tanzania and the Court of Appeal. He is responsible for overseeing performance of the court including giving of direction and supervision over the courts' sittings and assignments of the judicial and administrative duties.



HON. KEVIN .D. MHINA

The Registrar of the Court of Appeal

The head of the Registry of the Court of Appeal. He facilitates and supervises performance of the Court's functions, coordinates and communicates to the Chief Justice on matters relating to daily judicial functions of the Court.



MR. SOLANUS .M. NYIMBI

The Court Administrator of the Court of
Appeal

The head of Administration of the Court of Appeal. He is responsible for day-to-day administration of the court of Appeal services and operations.

MESSAGE FROM THE CHIEF JUSTICE

I have the honour to introduce the first edition of the YEAR IN REVIEW 2021 of the Court of Appeal of Tanzania. The main reason behind this and future journals is public awareness of the functions and the activities of the Court of Appeal of Tanzania. These journals will highlight the role of the Court within the justice delivery chain and how the Court contributes to the development of jurisprudence in Tanzania.

Pitched at the apex of the court systems of Tanzania, the Court of Appeal derives its jurisdiction from the Constitution of the United Republic of Tanzania and laws Parliament may enact from time to time to confer jurisdiction on this Court. This Court hears and determines appeals, revisions, reviews, and applications in its daily functions.

Appeals to the Court invariably arise from the judgment or other decision of the High Court or a magistrate with extended jurisdiction. Cases reaching up to the Court of Appeal touch different aspects of the lives of people and Tanzania as a whole. Decisions carry important lessons on diverse legal issues, land inheritance, family, constitutional matters, criminal and civil law, evidence, tax, bank loans, commercial issues, legal issues, including constitutional law, criminal law, evidence, criminal procedure, ethics, administrative law, and national security law.

Unfortunately, decisions by the Court are primarily available to lawyers, judges, and legal scholars. Yet lessons hidden in judgments, rulings, and orders touch more than parties concerned. Again, the language in Court decisions is, in most cases, legalese familiar to lawyers, judges, and magistrates, but least understood by ordinary men and women.

To appreciate the breadth and depth of cases that the Court of Appeal handles, one need only visit the Tanzania Legal Information Institute—TANZLII

(Tanzlii.org), where all the decisions of the High Court and the Court of Appeal are uploaded daily to promote free access to justice for all. This journal will simplify and share the stories locked in otherwise legalistic languages of the courts.

The journal will feature matters to demonstrate that access to justice and independence of the judiciary are integral parts of the rule of law, good governance, democracy, and economic, social, cultural, political, and sustainable development of Tanzania.

The journal will inevitably show how the Judiciary of Tanzania implements a modernization project, the Citizen-Centric Modernization Project, designed to enhance the capacity of the judiciary to deliver efficient, transparent, and accessible justice services.

The project's underlying objective is to improve the efficiency and transparency of the bench to enhance the rule of law, good governance, democracy, and economic, social, cultural, political, and sustainable development of Tanzania.

The journal will highlight how the Court deals with the challenges facing the administration of justice in Tanzania. These include delays of case disposal, backlogs, inadequate court infrastructures, and use of technology.

We hope this journal will create a forum for stakeholders' engagement with the Court. This journal, and future editions, will enhance the citizens' understanding of the Court and build citizen trust in the Court and the judiciary.

1.0. The Court of Appeal

1.1. The Court

The Court of Appeal is the apex appellate court in Tanzania established under article 117 (1) of the Constitution of Tanzania, 1977.

The Court derives its jurisdiction from the Constitution and Acts of Parliament. The Appellate Jurisdiction Act, 1979 is an example of an Act enacted by the Parliament to confer jurisdiction to the Court to hear appeals, revisions, and review its own decisions.

The Tax Revenue Appeals Act, Cap. 408 R.E. 2006 is another Act of Parliament conferring jurisdiction to the Court to hear tax appeals from the Tax Revenue Appeals Tribunal.

The Chief Justice is the head of the Judiciary and the Court. The Court currently comprises 26 Justices of appeal. The President appoints the Chief Justice. The President appoints Justices of Appeal after consultation with the Chief Justice. In the day-to-day operations of the Court of Appeal, the Registrar Court of Appeal assists the Chief Justice.

The Chief Justice sits in the Court of Appeal.

The provisions of the Constitution defining the **tenure of office of the Justice of Appeal** cover the security of tenure of the Chief Justice.

In hearing appeals, the Court three Justices constitute Full Court, and the Court's decision is of the majority.

On other occasions, five Justices, seven Justices, or nine justices (Full Bench) can constitute the Court. A single Justice can sit in chambers for applications that are supposed to be determined by a single Justice.

Registrar Court of Appeal heads the Court Registry, and Senior Deputy Registrar and Deputy Registrars of the Court assist him.

1.2. The brief history of the Court

The Court of Appeal of Tanzania was established by Act No 15 of 1979 which came into force on 9 August 1979. The Court became **operational after official inauguration by the first President of the United Republic Tanzania, Mwalimu Julius Kambarage Nyerere on 22 October 1979.**

The collapse of the East African Community in 1977 necessitated the Member States of the Community (Kenya, Uganda, and Tanzania) to establish their separate apex courts to replace the Court of Appeal for East Africa. Before the collapse, appeals from the High Court of Tanzania and the High Court of Zanzibar went to the Court of Appeal for East Africa. Afterward, with leave to the Judicial Committee of the Privy Council.

The First Amendment of the Constitution of Tanzania (Act No. 14 of 1979) formally established and introduced the Court of Appeal of Tanzania under then Article 68A of the Constitution of Tanzania of 1977, and now Article 117(1).



**Hon. Mr. Justice
Abdulla Mustafa**

The Court of Appeal of Tanzania replaced the Court of Appeal for East Africa, established under Article 80 of the Treaty for East African Co-operation, 1967. The Parliament of Tanzania enacted the Appellate Jurisdiction Act 1979 to make procedures for appeals to the newly established Court of Appeal of Tanzania.

Between 1977 to 9 August 1979, there was an "ad hoc" Court of Appeal for East Africa within Tanzania led by Hon. Mr. Justice Abdulla Mustafa, as an Acting President, other Justices were "borrowed" from the High Court on a temporal basis. The temporary appointment of Hon. Mr. Justice Mustafa as an Acting President of an "ad hoc" Court ended when the Court of Appeal of Tanzania was established and inaugurated on 22.10.1979.

1.2. Jurisdiction of the Court

The first Justices appointed were Hon Mr. Justice Francis Nyalali as the Chief Justice, Hon Mr. Justice Abdullah Mustafa, Hon Mr. Justice Lewis Makame, Hon Mr. Justice Robert Kisanga, and Hon Mr. Justice Yona Mwakasendo.

After the death of Hon. Mr. Justice Yona Mwakasendo in January 1984, Hon. Mr. Justice Ally Omar was appointed.

He was the first Justice of Appeal from Zanzibar to join the Court. The first female Justice appointed to the Court of Appeal was Hon Lady Justice Eusebia Munuo in 1987.



Inauguration of the of the Court of Appeal on 22 October 1979 by the 1st President of United Republic of Tanzania, Mwalimu Julius Kambarage Nyerere.

Top photo: His Excellency the late Mwalimu Julius Kambarage Nyerere sit with former Chief Justice the late Hon Francis Nyalali and the former Principal Judge the late Nassor Mnzavas while the former Minister for Constitutional and Legal Affairs the late Hon. Julie Manning delivered the speech

Below photo: His Excellency the late Mwalimu Julius Kambarage Nyerere listened to the former Chief Justice the late Hon Nyalali



The Court of Appeal derives its jurisdiction from the Constitution of the United Republic of Tanzania and the Acts of Parliament such as the Appellate Jurisdiction Act Cap 141 R:E 2019 and the Tax Revenue Appeals Act, CAP 408)

From this jurisdiction, the Court has the following powers:

- Appellate powers in a criminal and civil matter arising from the High Court (from both the High Court of Tanzania and the High Court of Zanzibar) and decisions of Resident Magistrates with extended jurisdiction. There are laws in Tanzania, like section 45 of the Magistrates Courts Act 1984, which allow a Resident Magistrate vested with extended jurisdiction to hear and determine appeals that would otherwise lie to the High Court.
- Appellate powers in tax appeals arising from the Tax Revenue Appeals Tribunal (established under Tax Revenue Appeals Act, CAP 408)
- Revisional powers from the decisions arising from the High Court (from both the High Court of Tanzania and the High Court of Zanzibar) and decisions of Resident Magistrates with extended jurisdiction and
- Hearing of applications

The Court nevertheless has no jurisdiction to hear;

- (a) Appeals from Zanzibari involving the interpretation of the Zanzibar Constitution.
- (b) Islamic matters arising from Kadhi's Courts.
- (c) The matter involving the dispute between the Union government and the Revolutionary government of Zanzibar.

2.0. Members of the Court

In 2021 the Court comprises 26 Justices of Appeal, including the Chief Justice. However, two justices, Hon. Mr. Justice Sivangilwa Mwangesi and Hon Mr. Justice Jacobs Mwambelele are no longer sitting justices at the Court after their appointments as the Commissioner for Ethics Secretariat and Chairman of the Electoral Commission, respectively.

The President of the United Republic of Tanzania appointed the following ten Justices of Appeal in 2021;

1. Hon. Mr. Justice Zephrine Galeba was the Judge of the High Court of Tanzania at Musoma. Appointed on 1 February 2021.
2. Hon. Lady Justice Patricia Fikirini was the Judge-in-Charge of the High Court's Commercial Division at Dar es Salaam. Appointed on 5 May 2021.
3. Hon. Mr. Justice Penterine Kente was the Judge-in-Charge of the High Court of Tanzania at Iringa. Appointed on 11 May 2021.
4. Hon. Lady Justice Lilian Mashaka was the Judge-in-Charge of the High Court's Corruption and Economic Crime Division at Dar es Salaam. Appointed on 11 May 2021.
5. Hon. Mr. Justice Dr. Paul Kihwelo, the Principal of the Institute of Judicial Administration (IJA) Lushoto. Appointed on 11 May 2021.
6. Hon. Lady Justice Lucia Kairo was the Judge-in-Charge of the High Court of Tanzania at Bukoba. Appointed on 11 May 2021.
7. Hon. Mr. Justice Issa Maige was the Judge-in-Charge of the High Court Land Division at Dar es Salaam. Appointed on 11 May 2021.

8. Hon. Mr. Justice Abraham Mwampashi was the Judge of the High Court of Zanzibar. Appointed on 11 May 2021.

9. Hon. Mr. Justice Omar Othman Makungu was the Chief Justice of Zanzibar. Appointed on 7 October 2021.

10. Hon. Mr. Justice Sam Rumanyika, the Judge-in-Charge of the High Court of Tanzania at Mwanza. Appointed on 27 December 2021.

Below are the short biographies of the current Justices of Appeal regarding their names and dates of their appointments.



Hon. Prof. Ibrahim Hamis Juma, Chief Justice

Date of appointment: 9.10.2012



Hon. Mr Justice Augustine Gherabast Mwarija,

Date of appointment: 25.7.2015



Hon. Lady Justice Stella Esther Augustine Mugasha,

Date of appointment 25.7.2015



Hon. Mr. Justice Shabani Alli Lila,

Date of appointment: 30.5.2016



**Hon. Lady Justice
Rehema Kiwanga
Mkuye,**
Date of appointment:
22.12.2016



**Hon. Lady Justice
Winifrida Beatrice
Korosso,**
Date of appointment:
27.1.2019



**Hon. Mr. Justice
Sivangilwa Sikalalilwa
Mwangesi,**
Date of appointment:
22.12.2016



**Hon. Lady Justice
Barke Mbaraka Sehel,**
Date of appointment:
27.1.2019



**Hon. Mr. Justice Dr.
Gerald Alex Mbonimpa
Ndika,**
Date of appointment:
22.12.2016



**Hon. Mr. Justice
Lugano Samson
Mwandambo,**
Date of appointment:
27.1.2019



**Hon. Mr. Justice Jacobs
Custhom Mwambegele,**
Date of appointment:
22.12.2016



**Hon. Lady Justice. Dr.
Mary Caroline Levira**
Date of appointment:
27.1.2019



**Hon. Mr. Justice
Ferdinand Katipwa
Wambali,**
Date of appointment:
6.2.2018



**Hon. Mr. Justice Ignas
Paul Kitusi,**
Date of appointment:
27.1.2019



**Hon. Lady Justice
Mwanaisha Athuman
Kwariko,**
Date of appointment:
6.2.2018



**Hon. Lady Justice
Rehema Joseph Kerefu,**
Date of appointment:
27.1.2019



Hon. Mr Justice Zephrine Nyalugenda Galeba,
Date of appointment:
1.2.2021



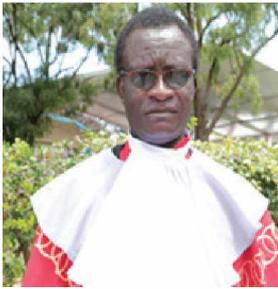
Hon. Mr. Justice Issa John Maige,
Date of appointment:
11.5.2021



Hon. Lady Justice Patricia Saleh Fikirini,
Date of appointment:
5.5.2021



Hon. Mr. Justice Abraham Makofi Mwampashi,
Date of appointment:
11.5.2021



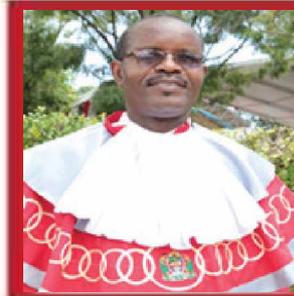
Hon. Mr. Justice Penterine Muliisa Kente,
Date of appointment:
11.5.2021



Hon. Mr. Justice Omar Othman Makungu,
Date of appointment:
7.10.2021



Hon. Lady Justice Lillian Leonard Mashaka,
Date of appointment:
11.5.2021



Hon. Mr. Justice Sam Mpaya Rumanyika,
Date of appointment:
27.12.2021



Hon. Mr. Justice Dr. Paul Faustine Kihwelo,
Date of appointment:
11.5.2021



Hon. Lady Justice Lucia Gamuya Kairo,
Date of appointment:
11.5.2021

3.0. Administration of Justice

3.1. Court of Appeal sittings.

In 2021 the Court conducted sessions at Dar es salaam, Mwanza, Arusha, Mbeya, Iringa, Dodoma, Tanga, Mtwara, Tabora, Zanzibar, Bukoba and Shinyanga. For the first time in 2021, the Court conducted sessions in Kigoma and Musoma.

First Court of Appeal Sessions in Kigoma and Musoma.



KIGOMA



MUSOMA



KIGOMA

3.2. The Court Sessions for the year 2021

In 2021 the Court of Appeal held 100% of the planned **33** sessions. In those sessions, **1,693** cases were on the Court cause list, and the Court determined a total of **1,367** cases (81%).

SUB-REGISTRY	PLANNED	CONDUCTED	PANNELS	CAUSE LISTED	DECIDED	PENDING	%
DARESALAM	8	8	24	796	600	196	75%
MUSOMA	1	1	1	29	26	3	90%
KIGOMA	1	1	1	30	26	4	87%
MWANZA	4	4	5	139	116	23	83%
MBEYA	3	3	4	120	104	16	87%
ARUSHA	3	3	4	117	90	27	77%
IRINGA	2	2	2	69	62	7	90%
TABORA	2	2	2	62	51	11	82%
DODOMA	3	3	4	121	104	17	86%
MTWARA	1	1	1	34	28	6	82%
TANGA	1	1	1	33	30	3	91%
BUKOBWA	2	2	2	60	56	4	93%
SHINYANGA	1	1	2	62	56	6	90%
ZANZIBAR	1	1	1	21	18	3	86%
TOTAL	33	33	54	1693	1367	326	81%

From the above table, out of **1,693** cause-listed cases, **326** were adjourned for different reasons.

Amongst the reasons for adjournment were:

- Non-appearance of the parties or their advocates.
- Sickness/death of the parties or their advocates.
- Parties to be given an extension of time to file supplementary records.
- Poor preparation of records of appeal.
- Failure to serve parties of notices of hearing.
- Failure to locate the parties to the appeals or applications.
- Withdraw of some advocates from the conduct of cases.
- Adjournments to allow parties to appoint Administrators of estates for the parties who passed away.



Photo: The panel of Justices of Appeal during September-October Session at Tabora. The session was chaired by Hon. Mr. Justice Shaban Lila, (centre). On his right side is Hon. Justice Dr. Levira and Hon. Mr. Justice Mwampashi JA on his left side.



Photo: Panel sitting at Dar es Salaam chaired by Hon. Lady. Justice Mkuye (center) and panel members, Hon. Lady Justice Sehel (left) and Hon. Mr. Justice Galeba (right)



Photo: Two Panels sittings at Dodoma during September -October Session



Photo: 1st Panel sitting at Dodoma Chaired by Hon. Justice. Dr. Ndika (center) and panel members Hon. Mr. Justice Mwandambo (on his left side) and Hon. Lady Justice Kairo (on his right side)



Photo: 2nd Panel sitting at Dodoma Chaired by Hon. Mr. Justice Mwambegele (center) Hon. Lady Justice Kerefu, (left) and Hon. Mr. Justice Maige,



Photo: A Panel of Hon. Justices in deliberations after concluding hearing of cases.

Quote from Makame J.A in **Ahmed Chali v. Republic**, Criminal Appeal No 56 of 1995
"We wish to predicate the second matter with a little exposition, for the benefit of some people, including those who should know better, who may not be familiar with the process of the Court of Appeal in reaching a decision in a matter heard by three or more Justices of Appeal. After hearing a matter there is normally a 'Conference' in Chambers where the Justices exchange views freely, respectfully, but seriously. Learned argument, and hammering out for consensus, take place. No bull-doing, no arm - twisting. If there is dissent it is respected, not resented. If there is all - round consensus it is obtained that way. If there is no consensus there will prevail the majority view, and the written decision will so indicate. At such a Conference the Chairman of the panel is merely 'primus inter pares', and the only additional power he has is to assign a Justice, himself included, who will compose the decision, for the consideration of others.

That decision, after approval by the others in that 'camp', is the decision of all those in that camp, owned by them and they are all responsible for it.

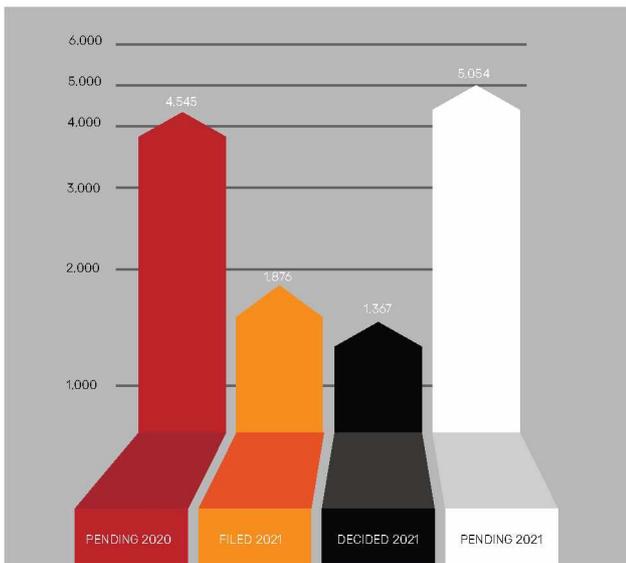
Regarding such a decision it is therefore the height of blissful ignorance to label the composing Justice as 'liberal' or 'progressive' or 'conservative' etc. For all there is, such a Justice might have started the conference holding a diametrically opposite view and only been converted during the course of conference"

3.3. Cases Statistics (Facts and Figures)

3.3.1. Cases Filed, Decided and Pending

Tables below shows the pending cases at the end of the year 2020, total cases filed in 2021, decided cases in 2021 and pending cases in 2021.

Pending 2020	Filed 2021	Decided 2021	Pending 2021	% of filed cases	% of decided cases
4,545	1,876	1,367	5,054	0.8	0.6



A total of **4,545** cases were pending at the closure of the year 2020.

Between January and December 2021, a total of **1,876** cases were filed and **1,367** cases, equivalent to 73% of all filed cases were decided. As of December 31, 2021, a total of 5,054 cases remained pending.

3.3.2. Workload per panel

Workload per panel in 2021		
Workload	Panel	Caseload per Panel
6,421	7	917

The Court recorded a decrease in the workload per panel from 1,152 in 2020 to 917 in 2021.

3.3.3. Clearance rate

Clearance Rate in 2021		
Filed	Decided	% of Clearance Rate
1,876	1,367	73

In the year 2021 the Court recorded 73% clearance rate compared to 61% in the year 2020.

3.3.4. Backlog

In 2021 the Court witness the reduction of backlog from 1055 (23%) cases in 2020 to 707 (14%) cases in 2021.

Case Backlog			
YEAR	Pending Cases	Backlog	% of Backlog
2021	5,054	707	14.0
2020	4,545	1,055	23.0

At the Court of Appeal backlog is when an appeal or application remain undecided for a period of more than 24 months (2 years).

3.3.5. Time taken

In 2021, time taken from filing of appeals and applications to the final determination stood to an average of 944 days which is equivalent to 2 years and 6 months.

3.3.6. Retrial of cases.

In 2021 a total of 52 cases were ordered to be tried afresh by the lower courts. In most cases the reasons were improper summing up of assessors and failure of the trial judge or magistrate to append signature after taking evidence.

3.3.7. Cases Uploaded to TanzLII

From January to December, 2021 a total of 736 Court of Appeal decisions were uploaded to TanzLII. See the table below

Nature of the Case	Number of Decisions uploaded	%
Criminal Appeals	392	53.26%
Civil Appeals	202	27.44%
Applications	142	19.29%
Total	736	100

4. Cases Disposed via Virtual Court Video Conferencing

In 2021, the Court embraced the virtual court system in disposing cases.

From January to December 2021, a total of 224 cases were disposed virtually by video link.

4.0. COURT DECISIONS

4.1. Some of the Landmark and important decisions delivered in 2021

4.1.1. CRIMINAL CASES

THE CONSTITUTIONAL RIGHTS TO PRIVACY AND DIGNITY DURING SEARCH.

Shabani Said Kindamba vs The Republic, Criminal Appeal 390 of 2019) (TanZlii-02/06/2021).

The purpose of search warrant is to provide safeguards against unchecked abuse by investigatory agencies seeking to protect individual citizens' rights to privacy and dignity as their Constitution rights.

Search warrant also ensures that unscrupulous officers charged with the mandate to investigate crimes do not plant items relating to criminal acts in peoples' private premises in fulfilling their undisclosed ill motives.

FAILURE TO ESTABLISH DEMARCATIONS IN WILDLIFE OFFENCES IS FATAL

Cheyonga Samson Nyambare vs The Republic, Criminal Appeal 510 of 2019) (TanZlii-25/10/2021).

Since the game reserve boundaries are statutorily defined, the evidence must place the accused inside the statutory limits of the reserve.

On the offence of unlawful entry, prosecution must prove beyond reasonable doubt that the accused was found within the statutory boundaries of that particular area.

IN MONEY LAUNDERING OFFENCES IT IS NOT NECESSARILY TO PROVE THE PROCESS OF LAUNDERING MONEY

Stanley Murithi Mwaura vs The Republic, Criminal Appeal 144 of 2019) (TanZLII-22/11/2021).

For the offence of money laundering to be proved, the prosecution need not necessarily prove the process of laundering the money so to speak, that is, placement, layering and integration.

It suffices to prove that the suspect dealt with the proceeds of a predicate offence by engaging in a transaction.

DPP RIGHTS TO APPEAL AGAINST INTERLOCUTORY IS NOT AUTOMATIC

The DPP vs FARIDI HADI AHMED & 36 OTHERS, (Criminal Appeal 205 of 2021) (TanZlii-19/05/2021).

In the wake of the decision of the High Court in STEVEN GWAZA (supra) which is yet to be reversed and in the absence of stay order, at the moment, the DPP right to appeal to the Court against the decision of the High Court or by court exercising extended jurisdiction is limited to sentence or acquittal.

COURT DECISIONS OPERATE RETROSPECTIVELY.

DPP vs Iddi Hassani Chumu & Another vs Republic, Criminal Appeal No. 430 of 2019) (TanZlii-23/12/2021).

Judicial decisions which set a precedent in law do have retrospective effect.

The Court went further to note that a court decision applies retrospectively to all the persons who, prior to the decision, suffered the same wrong or a wrong, whether as a result of the application of an invalid statute or otherwise, if they are entitled to bring proceedings seeking the remedy in accordance with the ordinary rules of law such as a statute of limitation.

It will also apply to cases pending before the Courts.

The Court however made an exception to the retrospective application of the court decision to cases already finally determined.

SECTION 21 OF THE NATIONAL PARK ACT AS AMENDED BY ACT NO 11 OF 2003 OF DOES NOT CONTAIN THE ACTUS REUS FOR THE OFFENCE OF ILLEGAL ENTRY OR ILLEGAL REMAINING IN A NATIONAL PARK

Dogo Marwa Sigana & another vs The Republic, Criminal Appeal 512 of 2019) (TanZlii-21/10/2021).

It is now apparent that the amendment brought under Act No. 11 of 2003 deleted the actus reus (illegal entry or illegal remaining in a national park) and got confusion in section 21 (1) of the NPA. As far as we are concerned, the appellants were charged, tried, convicted, and sentenced for a non-existent offence of unlawful entry into Serengeti National Park.

RIGHT TO REPRESENTATION IS NOT AUTOMATIC

Makenji Kamura vs The Republic, Criminal Appeal 30 of 2018) (TanZlii-3/12/2021).

The right to representation is not automatic. The person in need of such services has a duty to engage an advocate or apply for Legal Aid in terms of Section 33 (1) of the Legal Aid Act, Cap 21 R: E2019

EXECUTION OF THE DISPOSAL ORDER

Gibson John Mchomba vs The Republic, Criminal Appeal 320 of 2017) (TanZlii-3/12/2021).

Except where the property is livestock or items which are subject to speedy and natural decay. The execution of the disposal order should await expiry of the period of appeal or where an appeal has been filed until the appeal has been filed, until the appeal has been disposed of.

ELIGIBILITY FOR LEGAL AID

Maganga Udugali vs The Republic, Criminal Appeal 144 of 2017) (TanZlii-3/11/2021).

Under Section 33 (1) of the Legal Aid Act, Cap 21 R: E 2019 it is only an eligible indigent person who after being certified by a presiding magistrate or judge that he really needs to have such legal aid, who can, be entitled to such legal aid. To conditions set are: First, that it should be in the interest of justice for a such an accused person to have legal aid in preparation and conduct of his defence or appeal as the case may be. Second, that his means are insufficient to enable him to obtain legal services.

TANZANIA SENTENCING MANUAL FOR JUDICIAL OFFICERS

Nemes Myombe Ntalanda vs The Republic, Criminal Appeal 1 of 2019) (TaZlii-21/09/2021).

All Judicial Officers and practitioners be acquainted with the Tanzania sentencing manual for judicial officers in order to ensure that sentences imposed on the offenders are consistent, proportionate, fair, just and proper.

BAIL PENDING APPEAL AT THE COURT OF APPEAL AND THE GUIDING PRINCIPLES

Amon Mulotha Mwalupindi vs The Director of Public Prosecutions, Criminal Application No.9/6 of 2020) (TanZlii-31/03/2021).

Considerations for the grant of bail pending appeal are quite different from those applicable to bail pending trial. In applications for the grant of bail pending trial, courts are guided by one fundamental principle that is to say; right to presumption of innocence whereas in the former, the applicant who is a convict no longer enjoys that right. In considering whether or not bail should be granted pending appeal, the courts are guided by the following principles:

One, the onus is on the applicant, to satisfy the Court that justice will not be jeopardised by being granted bail pending appeal.

Two, in deciding whether bail should be granted involves balancing liberty of the individual with proper administration of justice.

Three, the applicant must show existence of exceptional or unusual circumstances upon which the court can fairly conclude that it is in the interest of justice to grant bail.

Four, if it appears prima facie from the totality of circumstances that the appeal is likely to be successful on account of some

4.1.2. CIVIL CASES

WHAT AMOUNTS TO CONSTRUCTIVE TERMINATION, CONSTRUCTIVE DISMISSAL AND INTOLERABILITY IN LABOUR DISPUTES

Kobil Tanzania Ltd vs Fabrice Ezaovi , Civil Appeal No. 134 of 2017) (TanZlii -16/09/2021).

- *For a constructive dismissal to be established, three conditions must be proved, first is that the employee must have terminated the contract of employment.*

The second is that the reason for termination of the contract must be that continued employment has become intolerable for the employee. The third is that it must have been the employee's employer who had made continued employment intolerable.

- *The onus to prove the existence of intolerability rests squarely upon the shoulders of the employee party.*

- *In order for constructive dismissal to exist, the employee's act to resign must be one of last resort. An employee must exhaust all available means of dispute resolution at the place of work.*

- *A rush to resign by the employee cannot make the constructive dismissal to stand.*

THE COURT CANNOT GRANT OR CONFER ACADEMIC AWARDS

Jean-Bosco Ngendahimana vs The University of Dar es Salaam , Civil Appeal No. 304 of 2017) (TanZlii-20/12/2021).

- *The weight of modern authorities is in favour of the view that disciplinary proceedings in higher educational institutions have to be conducted in conformity with the rules of natural justice.*

- *Courts of laws should not interfere in matters of academics in colleges and universities especially through judicial review.*

- *The Courts are not the appropriate machinery to compel academic institutions to confer an academic award which is the exclusive monopoly of internal academic mechanisms within the respective colleges and universities and the aim being to maintain the integrity and quality of academic awards.*

RECEIPTS ARE NOT REQUIRED IN TAXATION OF COSTS PROCEEDINGS.

Tanzania Rent a Car Ltd vs Peter Kimuhu, Civil Reference No. 9 of 2020) (TanZlii -06/04/2021).

In taxation of bill of costs there is no need of proof of instruction fees by presentation of receipts, vouchers and/or remuneration agreement because the taxing officer, among others, is expected to determine the quantum of the said fees in accordance with the cost scales statutorily. This decision brings an end to the conflicting decisions in the High Court on the same matter.

THE HIGH COURT CANNOT STAY WINDING UP PROCEEDINGS TO PAVE THE WAY TO ARBITRATION.

North Mara Gold Limited vs Diamond Motors Limited, Civil Appeal No. 29 of 2017) (TanZlii-23/11/2021).

The High Court cannot grant a petition for stay of the winding up of a company to pave a way for arbitration proceedings.

The Court noted that if the winding proceedings have stayed, it will offend the provision of Section 275 of the Companies Act and will be tantamount to surrendering of the winding proceedings to arbitration, while the said powers are exclusively vested to the High Court.

EVIDENTIAL VALUE OF DOCUMENTS ATTACHED ON THE AFFIDAVIT

Nitro Explosive (T) Limited vs Tanzanite One Mining Limited, Civil Appeal No. 175 of 2019) (TanZlii- 3/11/2021).

Documents annexed to the affidavit have to be considered without the need for tendering them. It observed that an affidavit is evidence and the annexure thereto is intended to substantiate the allegations made in the affidavit.

Unless it is controverted, therefore, the document can be relied upon to establish a particular fact.

A PROPERTY OWNED BY A THIRD PARTY CAN BE PLEDGED AS SECURITY FOR DUE PERFORMANCE OF THE DECREE.

The Registered Trustees of Vignan Educational Foundation Bangalore, India & Another vs National Development Corporation, Civil Application No. 469/17 of 2019, (TanZlii- 3-/9/2021).

Property for security needs not to be owned by the applicant.

Even a property owned by a third party may be accepted if the said third party undertakes an affidavit to offer his or her property as security. If the property belongs to corporate persons, there must be a Special Board Resolution duly made by the respective corporate persons in respect of that property.

THE RIGHT OF THE LENDER TO RECOVER THE BALANCE FOR INSUFFICIENT PROCEEDS ON THE SECURITY

CRDB Bank PLC vs True Colour Limited & Another, Civil Appeal 29 of 2019) (TanZlii- 21/12/2021).

In the absence of negligence or bad faith, a mortgagee who fails to realise the full loan from the proceeds of the mortgage has a right of action against the mortgagor on the personal covenant to pay if one is contained in the mortgage, and if not, he still has a right of action on the debt against the debtor, whether he be the mortgagor or a third party.

This case settled the position over conflicting decisions in the High Court on the same subject.

The High Court had held that once a borrower defaults in paying the loan and the lender exercising powers of sale proceeds against the security, they could not recover the balance in case the proceeds from the security were insufficient to pay the loan.

ADMISSIBILITY OF DATA MESSAGE

Ami Tanzania Ltd vs Prosper Joseph Msele,
Civil Appeal No. 159 of 2020)
(TanZlii11/11/2021).

In admissibility of data messages, the law does not require any signature by anyone to authenticate a data message.

The law does not require electronically generated data to be endorsed.

CONDITIONS FOR VISIT LOCUS IN QUO LOCUS IN QUO.

Kimonidimitri Mantheakis vs Ally Azim
Dewji & 7 others , Civil Appeal No.4 of 2018)
(TanZlii11/11/2021).

In order for visit of locus in quo to be meaningful;

One, ensure that all parties, their witnesses and advocate (if any) are present.

Two, allow the parties and their witnesses to adduce evidence on oath at the locus in quo.

Three, allow cross examination by either party or his counsel.

Four, record all the proceeding at the locus in quo.

Five, record any observation, view, opinion or conclusion of the court including drawing a sketch plan if necessary which must be made known to the parties and advocates, if any.

4.2. Decision by the Full Bench of the Court in 2021

In 2021 only one case was heard by the Full Bench of the Court. The case was on right to bail.

RIGHT TO BAIL IN ECONOMIC OFFENCES

Gideon Wasonga & 3 others vs The Attorney General & 2 others. (Civil Appeal 37 of 2018)
(TanZlii-23/12/2021).

The appeal was struck out for being incompetent. Therefore, it was not heard on merits.

4.3. Common mistakes by Lower Courts discovered by the Court in 2021

In number of cases the Court has discovered the following mischief from the proceedings of the lower courts which seems to be common in most cases.

1. Summing up of assessors.

- Failure to explain to assessors' vital points of law.
- Failure to involve the Appellants in the selection of assessors or having not given the opportunity to say whether or not they objected to any of the assessors.
- Failure to record whether assessors were appointed or confirmed to assist the trial
- The assessors not informed their role at the commencement of the trial.

2. Non-involvement of the accused persons when an order for destruction of perishable government trophies is made.

3. Failure by the first appellate court to consider grounds of appeal.

4. Non-involvement of assessors in the determination of cases before the District Land and Housing Tribunal.

5. Failure of trial Courts and first appellate Courts to consider defence cases in their judgments

6. The manner of recording the evidence of a child of tender age.

7. Importing extraneous matters in summing up notes and judgments

8. Failure of trial judges and magistrates to append signature after taking witnesses evidence.

5.0. ACHIEVEMENTS, CHALLENGES AND FUTURE PROSPECTS

5.1. Achievements in 2021

The court successfully achieved most of its targets in 2021. The most significant successes were;

1. The increase in access to justice. In 2021 the court conducted sessions for the first time in Kigoma and Musoma (Mara). This Follow the footsteps of Shinyanga where the first session was conducted in 2020.
2. It was also a great achievement in 2021 that the court managed to conduct two panels' sessions out of Dar es salaam. The sessions were conducted in Shinyanga, Mbeya, Mwanza Dodoma and Arusha. The aim was to tackle the problem of backlog in those areas. The result was the hearing of additional 125 cases.
3. In 2021 the Court witness increase in clearance rate from 61% in 2020 to 73% in 2021
4. The decrease in workload in workload 1152 cases per panel in 2020 to 917 in 2021.
5. The decrease in case backlog from 1055 cases in 2020 to 707 cases in 2021.

5.2. Challenges

1. Though in 2021 there was a decrease of backlog compared to 2020 but still the Court witness the presence of 707 backlog cases.
2. Still the Court possess a heavy workload compared to the number of panels of Justices. The capacity of one panel per year ranges from 297-441 cases (3 Justices panel is 297 cases and 4 Justices panel is 441 cases) on the other hand in 2021 the workload per panel was 917 cases.

5.3. Prospects

In the coming year 2022, the court is looking forward to;

1. Increase access to justice by adding a new station for conducting Court sessions. In August 2022 the Court will conduct its first session at Moshi. In 2023 the Court expect to conduct its first session at Songea.
2. Increase Court clearance rate by 100%
3. Decrease the backlog of cases by 70 %
4. Increase number of court sessions from 33 to 34.
5. Conduct all 34 sessions as planned in the 2022 Court calendar.
6. Improve the Registry and Sub-Registries of the Court in order to make sure that cases are not adjourned for the reasons caused by the Registry and Sub- Registries especially on the services of notices of hearing to the parties.

6.0. THE PAST

6.1. Former Chief Justices and heads of the Court of Appeal



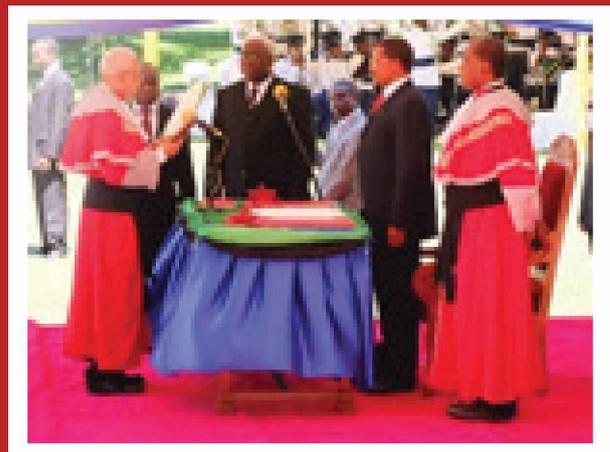
The Late Hon. Francis Lucas Nyalali
1979-2000



The Late Hon. Augustino Steven
Lawrence Ramadhani 2007-2010



Hon. Barnabas Albert Samatta 2000-2007



Hon. Mohamed Chande Othman 2010-2016

Former Justices of Appeal

1.	FRANCIS LUCAS NYALALI	1979-2000	‡
2.	ABDULLAH MUSTAFA	1979-1989	☉
3.	LEWIS MHINA MAKAME	1979-2004	‡
4.	ROBERT HABASH KISANGA	1979-2002	‡
5.	YONAH MANASEH MWAKINTU MWAKASENDO	1979- DIED IN OFFICE 1984	‡
6.	ALLY MOHAMED ALLY OMARY	1984-1996	☉
7.	NASSOR SULEIMAN MNVAVAS	1989-1997	☉
8.	AUGUSTINO STEVEN LAWRENCE RAMADHANI	1989-2010	‡
9.	LAMECK MUKAVA MFALILA	1989-1999	
10.	DAMIAN ZEFRIN LUBUVA	1993-2008	
11.	BARNABAS ALBERT SAMATTA	1997-2007	
12.	KAMGUMYA SIMON KAHWA LUGAKINGIRA	1998-DIED IN OFFICE 2003	‡
13.	JOHN ALOYCE MROSO	2001-2008	
14.	EUSABIA NICHOLAUS MUNUO	2002-2012	
15.	HAROLD REGINALD NSEKELA	2003-2012	‡
16.	JANUARY HENRY MSOFFE	2004-2015	
17.	SIMON NDOLA KAJI	2004-DIED IN OFFICE 2008	‡
18.	EDWARD MUKANDARA KAKWEZI RUTAKANGWA	2006-2017	
19.	ENGERA ARNOLD KILEO	2006-2016	
20.	NATALIA PHILLIP KIMARO	2006-2017	
21.	LAUREAN BETURANIZA KALEGEYA	2007-2011	
22.	MBAROUK SALIM MBAROUK	2007-2019	
23.	DR. STEVEN JAMES BWANA	2008-2016	
24.	BENARD MICHAEL LUANDA	2008-2018	
25.	MOHAMED CHANDE OTHMAN	2008-2016	
26.	SALUM ABDALLAH LIGHO MASATTI	2008-2016	
27.	SAUDA ZEIN MJASIRI	2008-2018	
28.	WILLIAN STEVEN MANDIA	2009-2015	
29.	KATHERINE KIMATI ORIYO	2009-2017	
30.	SEMISTOCLES SIMON KALOKOLA KAIJAGE	2012-2019	
31.	BETHUEL KASEFU MPAKANI MMILLA	2012-DIED IN OFFICE 2020	‡
32.	KIPENKA MSEMEMBO MUSSA	2012-2019	
33.	RICHARD ELIAKUNDA SAMWEL MZIRAY	2015-2020	

Former Acting Justices of Appeal

1.	DAN PETRO MAPIGANO	1990	‡
2.	MARK DANHI BOMANI	1994	‡
3.	PROF. JOSAPHAT LAUREAN KANYWANYI	1994	‡

Former Registrars of the Court of Appeal

1.	CYPRIAN GASPAR MTENGA	1979-1982	‡
2.	JAMES LADISLAUS MWALUSANYA	1982-1984	‡
3.	LUHEKELO ASHERY AARON KYANDO	1984-1987	‡
4.	JOSEPHAT MABONDYA	1987-1990	
5.	DR. STEVEN JAMES BWANA	1990-1994	
6.	LAUREAN BETURANIZA KALEGEYA	1994-1997	
7.	BENARD MICHAEL LUANDA	1997-2000	
8.	NJENGAFIBILI MPONJOLI MWAUKUGILE	2001-2003	‡
9.	AUGUSTINE GHERABAST MWARIJA	2003-2006	
10.	SOPHIA NYAMBURA WAMBURA	2007-2008	
11.	FERDINAND LEONS KATIPWA WAMBALI	2008-2009	
12.	FRANCIS SALES KATABAZI MUTUNGI	2009-2012	
13.	PENTERINE MULIISA KENTE	2012-2014	
14.	KATARINA TENGIA REVOKATI	2014-2015	
15.	JOHN RUGALEMA KAHYOZA	2015-2019	



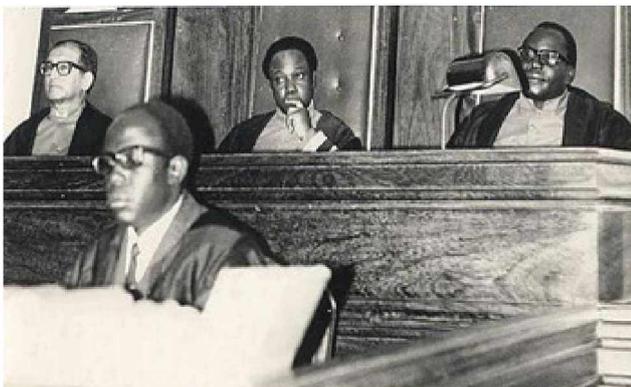
Above: Court of Appeal session at Zanzibar in 1984 from left to right the late Hon. Mr. Justice Robert Kisanga, the late Hon. Mr. Justice Abdullah Mustafa, the late Hon Chief Justice Francis Nyalali, the late Hon Mr. Justice Lewis Makame and the late Hon Mr. Justice Ally Omary.

Sitting below was the Registrar of the Court of Appeal the late Hon. Luhekelo Kyando.



Justices of Appeal in 2004

From left to right: Hon. Mr. Justice January Msoffe, the late Hon. Mr. Justice Harold Nsekela, Hon. Mr. Justice Damian Lubuva, the late Hon. Mr. Justice Lewis Makame, Hon Chief Justice Barnabas Samatta, the late Hon. Mr. Justice Augustino Ramadhani (later became the Chief Justice), Hon. Mr. Justice John Mroso, Hon. Lady Justice Eusebia Munuo and the late Hon. Mr. Justice Simon Kaji.



Above: The Court of Appeal in one of its sessions. From left to right the late Hon. Mr. Justice Abdullah Mustafa, the late Hon Chief Justice Francis Nyalali, the late Hon Mr. Justice Yona Mwakasendo Siting below was the Registrar of the Court of Appeal the late Hon. Luhekelo Kyando.

6.2. Past events in photos

6.2.1. 25 years celebrations of the Court of Appeal in 2004



Photo: The Chief Justice of Tanzania Hon Barnabas Samatta and Chief Justice Hon Himid Mahmoud led Justices of Appeal and Judges of the High Court during the Celebrations.



Photo: The former Ministers for Constitutional and Legal Affairs the late Hon. Juma Mwapachu on the left and the late Hon. Jullie Manning with the first Minister for Constitution and Legal Affairs the late Hon. Chief Abdallah Fundikira during the celebrations.

6.6.2 The first panel to conduct a case in the current court of Appeal building on 25 September 2006



Photo: His Excellency the late President Benjamin Mkapa (Centre) on his left is the former Chief Justice Hon. Barnabas Samatta. On the right is the former Minister of Constitutional and Legal affairs the late Hon. Juma Mwapachu and The former Chief Justice of Zanzibar



Photo: The panel was chaired by Hon. Mr. Justice Mroso (Centre), on his left is the late Hon. Mr Justice Nsekela and on the right Hon. Mr. Justice January Msoffe. The Panel was Assisted by Hon. Sophia Wambura who was the Senior Deputy Registrar and the Court clerk Mr. Lupembe



Photo: His Excellency the late President Benjamin Mkapa delivered his speech during the celebrations.



Photo: Hon. Justices, members of the bar and members of Police force who participated in the session.



Photo: Hon. Justices of Appeal in deliberations after concluding hearing of cases in the premise currently occupied by the Judges Legal Assitants as the office.

6.6.3. Launching of the Judiciary Calendar



Photo: On 1 February 2007, the Chief Justice of Tanzania, Hon Barnabas Samatta launched the Calendar of the Judiciary. On the left is Hon. Sophia Wambura who was the Registrar of the Court of Appeal.

6.6.4. Launching of the Judiciary Website



Photo: On 6 December 2010, the former Vice President of the United Republic of Tanzania, Dr. Mohamed Bilal launched the website of the Judiciary. On the left is the former Chief Justice the late and Hon. Augustino Ramadhani and on the right is the former Minister for Constitution and Legal Affairs the Late Hon. Celina Kombani.

6.6.5. Inauguration of the extension of the Court of Appeal building (Augustine Saidi building)



Photo: On 5 March 2010, the former Prime Minister of the United Republic of Tanzania, Hon. Mizengo Pinda inaugurating the Augustine Saidi building (an extension to the Court of Appeal Building). On the left is the former Chief Justice the late Hon. Augustino Ramadhani and behind the former Principle Judge Hon. Fakh Jundu.



Photo: The widow of the late Hon. Augustine Saidi Who was the first Tanzanian Chief Justice In front of the statue of the late Chief Justice.



Photo: The former Prime Minister Hon. Mizengo Pinda, the former Chief Justice the late Hon. Augustino Ramadhani and Mrs Ramadhani, the Former Chief Justice Barnabas Samatta and Mrs Samatta the former Justice of Appeal the late Hon. Lewis Makame and the Principal Judge Hon. Fakh Jundu with the widow, children and grand Children of the late Chief Justice Saidi.



Left: The former Prime Minister Hon. Mizengo Pinda arrives at the Court of Appeal building for inauguration ceremony.

6.6.6. Launching of the five years Judiciary Strategic Plan and Citizen Centric Judicial Modernization and Justice Service Delivery Project on 21 September 2016



Photo: The Prime Minister of the United Republic of Tanzania, Hon. Kassim Majaliwa launched the Five years Strategic Plan of the Judiciary and Citizen Centric Judicial Modernization and Justice Service Delivery Project.

On the left is the former Chief Justice Hon. Mohamed Chande Othman



Photo: From right The Prime Minister Hon Kassim Majaliwa, the former Chief Justice Hon. Mohamed Othman, The former Minister for Constitution and Legal Affairs Hon Dr Harisson Mwakyembe, The Justice of Appeal Hon Prof. Ibrahim Juma (the current Chief Justice) and the former Deputy Minister of Finance Dr. Ashatu Kijaji and the World Bank Country Director Bella Bird speaking at the launching ceremony.





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