

Joseph Osmund Mbilinyi & Another vs The Commissioner General Tanzania Prison Service & Another	
Project code ¹	TAN
URL	https://tanzlii.org/akn/tz/judgment/tzhc/2022/15340/eng@2022-12-19
Citations	(Misc. Civil Cause No. 13 of 2021) [2022] TZHC 15340
Country	Tanzania
Date of judgment	31 August and 19 December 2022
Court	High Court
Location	Dar-es-Salam
Case type ²	Petition
Result	Dismissed except for 1 st claim
Flynote ³	<p>Human rights and fundamental freedoms - right to privacy, freedom from torture, cruel, inhuman and degrading treatment or punishment</p> <p>Human rights and fundamental freedoms - the right of prisoners to humane living conditions and dignified treatment - the right to consent and privacy in HIV and AIDS testing</p>
Legislation and International Instruments ⁴	<p>Legislation</p> <ul style="list-style-type: none"> • Section 2(a), (b) & (c), 33, 34, 37, 39,71 and 99(1) of the Prisons Act (Cap 58 R.E 2002) • Regulations 2 (c), (i) & (l), 4 (a), 5(a)(i), 5(b)(i), 6(a) & (b), 7, 8 and 9 of the Prisons (Prisons Offences) Regulations G.N No. 13 of 1968 • Regulations 2(a), (b), (d) & (e) of the Prisons (Restraint of Prisoners) Regulations G.N No. 18 of 1968 • Regulation 12(4), 23 of the Prisons (Prison Management) Regulations G.N No. 148 of 1968 • Article 11(1), 12(2), 13(1), 13(b)(e),13(6)(a), (b), (c) & (e), 14, 16(1) 18, 26(2), 29, 30(2)(b) and 30(3) of the Constitution of Tanzania 1977 as amended • Section 5 of the Basic Rights and Duties Enforcement Act • Rule 4 of the Basic Rights and Duties Enforcement Act (Practice and Procedure) Rules 2014 • Corporal Punishment Act, Cap 17 R.E. 2002 • Sections 28,131(1), 131(2)(a) and (d), 131 A (3)

¹ Project code is the combination of the three jurisdiction letters (KEN for Kenya, SAF for South Africa etc) and the unique case identification number for the index. E.g., a project code could be KEN1, SAF34, ZAM12).

² Whether Trial, Application or Appeal.

³ **Area of law** - topic - subtopic.

⁴ Legislation/ International instrument title and section numbers.

	<p>and 132 (1) Penal Code, Cap 16 R.E. 2019.</p> <ul style="list-style-type: none"> • Orders 2(i) & (viii), 228, 408, 479, 685, 701 and 831 of the Prison Standing Orders • Sections 15(1), (3) and 4 of the HIV and AIDS {Prevention and Control} Act, No. 28 of 2008 • HIV and AIDS (Counselling and Testing, Use of ARV's and Disclosure) Regulations, 2010. <p>International instruments</p> <ul style="list-style-type: none"> • International Covenant on Civil and Political Rights, 1966 • Rules 43 (1), 58(1) of the United Nations Standard Minimum Rules for Treatment of Prisoners (The Nelson Mandela Rules) 2015, • Kampala Declaration on Prison Conditions in Africa, 1996 • International Covenant on Social, Economic and Cultural Rights, 1996
Cases cited as authority ⁵	<ul style="list-style-type: none"> • <i>Johnson v Avery</i> 393 US 483 (1909) • <i>Sunil Batra v Delhi Administration</i> 1978 AIR 1675 • <i>Fra Noise Coralie Mullin v The Demonstration, Union of Indra</i>, 1981 AIR 746 • <i>P. Nedumaran v The State of Tamil Nadu</i>, Rep, 2001. • <i>Charles Sobraj v The Superintendent Central Jail of Tihar</i> (1978) AIR 1514 • <i>Vandom v Republic of Korea</i>, Communication No. 2273 • <i>C v Minister of Correctional Services</i> 1996 (4) SA 292 (T) • <i>Walker v Sumner</i>, 917 F. 2.d 382 (911 Cir. 1990) • <i>S v Williams and Others</i>, 1995 (3) SA 632 • <i>Kukutia Ole Pumbuni and Another v The Attorney General</i> (1993) TZR 159 • <i>Rev. Christopher Mtikila v Attorney General</i> (1995) TLR 31 • <i>Julius Ishengoma Francis Dyanabo v Attorney General</i>, 2004 TLR 14 • <i>Centre for Strategic Litigation Limited and Another v Attorney General and Others</i>, Misc. Civil cause No. 21 of 2019 (TZHC) (unreported) • <i>Attorney General v W. K. Butambala</i> (1993) TZR 46 • <i>Ganga Sugar Corporation v State of U.P & Others</i>, AIR 1980 SC 286
Facts ⁶	The petitioners challenged the constitutionality of various provisions of the Prisons Act and related regulations. They objected to practices such as

⁵ List of cases considered to be important precedent (case name and citation).

⁶ Brief facts about the case (max 150 words).

	<p>mandatory HIV testing without consent, public disclosure of test results, restrictions on latrine use, undignified strip searches, inadequate uniforms and bedding, prison overcrowding, corporal punishment, inadequate meals, solitary confinement, denial of visitation rights, and unpaid prisoner labour. They also argued that there were insufficient safeguards and due process in the disciplinary powers of prison officials.</p>
<p>Summary⁷</p>	<p>The court declared that mandatory HIV testing and disclosure of results violated prisoners' rights to dignity, privacy, and freedom as protected in articles 12(2) and 16(1) of the Constitution.</p> <p>Prisoner searches upon admission were deemed constitutional, as the law included adequate safeguards against abuse of power.</p> <p>Order 2(xv) of the Prisons Standing Orders, which addresses prisoner treatment in confinement, was found to be constitutional. Solitary confinement allowed visits from officials (regulation 8(4)(a) of GN No. 13 1968).</p> <p>The petitioners' complaints about dietary needs lacked constitutional significance and were time-barred under section 99(1) of the Prisons Act. They failed to exhaust available remedies within Prison Laws.</p> <p>The court held that the hearing conducted by the officer in charge met the minimum requirements for a fair hearing (Article 13(6)(a) and (o) of the Constitution), considering relevant sections of the Prisons Act (33(1), 33(2), 34(3), and 37). Punishments imposed by the Commissioner are not appealable but can be reviewed. Further, that corporal punishment was recognized and accepted as a valid form of punishment.</p> <p>The court dismissed the petitioners' claim on pit latrine use and potential abuse, citing insufficient evidence to prove the statute's unconstitutionality (regulation 2 of G.N. No. 13/1968). The complaint about inadequate clothing was dismissed for not challenging a specific constitutional provision. The petitioner's complaint on overcrowding was also disregarded due to lack of empirical data supporting their arguments, in accordance with Order 479 of the Prisons Standing Orders.</p>
<p>Decision/ Judgment⁸</p>	<p>The first claim succeeded, while the remaining petition</p>

⁷ Summary of the determination of legal questions and/or grounds of appeal (between 150-250 words).

	was dismissed.
Basis of the decision ⁹	Compelling prisoners to test for HIV and disclosing the results to third parties, violated prisoners' rights to dignity, privacy, and freedom as protected by articles 12(2) and 16(1) of the Constitution. The remaining claims lacked merit.
Reported by Date	Nova Nalondwa 15 June 2023

⁸ A brief summary of the ruling/judgment of the court (max 100 words).

⁹ A 1-2 sentence summary of the basis of the decision (i.e., which legal rules were relied on).