**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**MAIN REGISTRY**

**AT DAR ES SALAAM**

**(CORAM: MLYAMBINA, J., KAKOLAKI, J., AND AGATHO, J.)**

**MISCELLANEOUS CIVIL CAUSE NO. 12 OF 2023**

**IN THE MATTER OF THE CONSTITUTION OF THE UNITED REUBLIC OF TANZANIA OF 1977 [CAP 2 R.E. 2002] AS AMENDED FROM TIME TO TIME**

**AND**

**IN THE MATTER OF THE BASIC RIGHTS AND DUTIES ENFORCEMENT ACT [CAP 3 R.E. 2019]**

**IN THE MATTER OF CHALLENGING PROVISIONS OF SECTION 44 OF THE LAW OF LIMITATION ACT, 1971**

**IN THE MATTER OF THE BASIC RIGHTS AND DUTIES ENFORCEMENT (PRACTICE AND PROCEDURE) RULES, 2014 [G.N. 304 OF 2014]**

**BETWEEN**

**JORAN LWEHABURA BASHANGE.....PETITIONER**

**VERSUS**

**MINISTER FOR CONSTITUTIONAL**

**AND LEGAL AFFAIRS.....1ST RESPONDENT**

**HONOURABLE ATTORNEY GENERAL.....2ND RESPONDENT**

**JUDGEMENT**

**Date of last Order:** *06/03/2024*
**Date of Judgement:** *13/03/2024*

**AGATHO, J.:**

During the era of the Roman Empire, the time for action against any civil wrong was perpetual. However, as the time pass by, this has changed in both civil law and Common Law jurisdictions. For English Common Law especially in England, the time was set upon which one must prefer his action before the Court of law. Failure to do so within the time prescribed, he will be barred. That practice has been in place for the past four hundred years. In Tanzania, the limitation period for actions was brought by *the Indian Law of Limitation Act 1908* vide the *Tanganyika Order in Council (TOC) of 1920.* Later in 1971, the legislature enacted the current Law of *Limitation Act [Cap 89 Revised Edition 2019] (herein LLA)* to prescribe time limits within which a particular civil action must be preferred in the Court of law. Primarily, the LLA works on the principle of two legal maxims. *One, "intrigued republican ut sit finis litium"* which implies for the open intrigued, the case must come to an end. *Two, "Vigilantibus non dormientibus Jura subsentions"* which suggests that Courts ensure those who are careful around their possessions. However, under *Section 44(1) and (2) of the LLA,* the Minister responsible for legal affairs (the 1st Respondent) is empowered to extend time to file suits in the Court of law.

In this petition, the Petitioner moved the Court by way of originating summons under *Article 26(2) of the Constitution of the United Republic of Tanzania of 1977 [Cap 3 Revised Edition 2002]* (as amended from time to time) (herein CURT), *Section 4 and 5 of the Basic Rights and Duties Enforcement Act [Cap 3 Revised Edition 2019] (herein BRADEA) and Rule 4 of the Basic Rights and Duties Enforcement (Practice and Procedure) Rules 2014, Government Notice No. 304 of 2014* to challenge *Section 44 (1) and Section 44 (2) of the LLA* giving power to the Minister responsible for Legal Affairs (the 1st Respondent) to extend the time of limitation.

According to the Petitioner, *Section 44 (1) and Section 44 (2) of the LLA* is unconstitutional, absurd, violates rules of natural justice, fundamental rights and contravenes the doctrine of separation of powers. The Respondents have opposed the petition citing that *the Hansard of 1971 on the LLA Bill* indicates the purpose and rationale of the provision of that law. In addition, the Respondents have contended that the impugned provisions of the LLA are legitimate and constitutional. The Court has been invited to determine the merit or otherwise of the petition.

Briefly, the Petitioner is praying before this Court for orders as follows:

(a) A declaratory Order that *Section 44 (1) and (2) of the LLA]* contravenes *Article 13(1), (2), (3), (6)(a); Article 26 (1) and Article 29(1) of the Constitution of the CURT as amended* and thus unconstitutional, null and void and the same be expunged from the statute book.

(b) A declaratory order *that Section 44(1) and (2) of the LLA]* contravenes *Articles 3(1) and (2), 7(1) (c) and 19 of the African Charter on Humana and Peoples' Rights, 1981(herein ACHPR); Articles 3(a), (b), 14(1) and 26 of the International Covenant on Civil and Political Rights, 1966 (herein* ICCPR) *and Articles 7,8 and 10 of the Universal Declaration of Human Rights, 1948 (herein* UDHR).

(c) An order for the Respondents to take necessary steps to ensure extension of time to file suits are dealt and determined by the Court of law together with the extension of time to file appeal and applications under *Section 14 of the LLA.*

(d) Each party to bear its own costs and any other order the Honourable Court shall deem fit and just.

Before delving into the crux of the controversy, it is worthy sketching the history and role of law of limitation. Understanding such important tenets will assist the Court in determining the petition at hand.

It is equally important to ponder as to why the 1st Respondent was given such power to extend time of limitation for filing suits. [See *the Law Reform Commission of Tanzania, Comprehensive Review of Civil Justice System (BEST PROGRAMME) Part III, July 2012].* The answer is in the cited Hansard herein below. The 1st Respondent was given the power to extend time limitation because cases were dismissed for being time barred and people lost their rights.

Central to the reliefs sought by the Petitioner, we raised the following issues in attempting to determine this petition. These are: *Whether the LLA's provision granting power to the 1st Respondent is unconstitutional for contravening the CURT; Whether the impugned provision of the LLA contravenes international human rights instruments ratified by Tanzania? And, whether the Respondents should be directed to rectify the mischief in the impugned provision of the LLA, if any.*

In a bid to determine the petition, we will traverse the petition, affidavit, counter affidavit, submissions of the parties and the law. In a

nutshell, the Petitioner's case is that *Section 44(1) of the LLA* has granted power to the 1st Respondent in consultation with the 2nd Respondent to extend the period of limitation for filing of suits for a period not exceeding one half of the period prescribed for a particular suit. According to *Section 44(1) of the LLA*, the period extended by the 1st Respondent whether so extended before or after the prescribed period had lapsed, must commence to run immediately upon expiry of the period prescribed by the LLA. It was his view that *Section 44(2) of the LLA* does not extend period but refers back to the extended time of the past and expired period and it is inconsistent with *Section* which requires the extended time to be counted from the date of the order of extension.

The Petitioner suggested that *Section 44(2) of the LLA* contradicts *Section 44(1) LLA*, it is illogical and absurd provision. It was his view that that provision of the law in effect disables the claimant from filing a suit, hence denial of access to justice and Courts of law. The repercussion is that the extended period becomes useless and there is no point at all of making an application for extension of time to file the suit.

Moreover, the Petitioner submitted that the extension of time to file a suit is a legal and judicial process which is part and parcel of the intended

suit and extension of time to file a suit. That the challenged provisions split the jurisdiction of the Court for extension of time to file a suit by conferring to the 1st Respondent who is an Executive Arm of the State, while the Court is left with jurisdiction to adjudicate the suit. The Petitioner further contended that the impugned provisions are discriminatory.

The Respondents on the other hand protested the petition. They advanced several points of objections to the petition. *One*, that the Petitioner had not shown how he has been personally affected by the operation of the impugned provisions of the LLA. *Two*, that the contested provisions do not contravene the constitution and they are not discriminatory. *Three*, that there is no absurdity in *Section 44(1) and (2) of the LLA*. Lastly, the Respondents slammed the Petitioner for failure to prove his case beyond reasonable doubt as standard of proof in constitutional petitions.

In terms of legal representation, Ms. Narindwa Sekimanga, State Attorney appeared for the Respondents while Mr. Daimu Halfani, Advocate, represented the Petitioner. The petition was heard by way of written submissions. We are grateful for the industrious research work done by the parties' counsel. They presented insightful points for and against the petition.

For clarity, the submission of the parties and analysis will be dissected into three parts: (i) the submissions on; *whether Section 44(1) and (2) of the LLA contravenes the CURT; (ii) whether Section 44(1) and (2) of LLA contravenes the AU Charter, ICCPR and UDHR; and (iii) if the above are answered in the affirmative, whether the Court should order the 1st and 2nd Respondents to take steps to amend the LLA to rectify the absurdity and make the law conform to the CURT and the International Conventions. In so doing to empower the Court to determine applications for extension of time to file suits just as it is with extension of time for appeals and applications.*

Ideally, the analysis will be done after the background and purpose of the LLA has been sketched. The Petitioner submitted that prior to the enactment of the LLA, 1971, the *Indian Limitation Act, 1908* applied to Tanzania by virtue of *Article 17 (2) of the Tanganyika Order in Council, 1920. The Indian Limitation Act, 1908* its predecessor, *The Indian Limitation Act, 1877 and its successor The Limitation Act, 1963* did not contain a provision for extension of time to file suits. However, there are provisions for the extension of time for filing appeals and applications like *Section 14 of the LLA. Section 5 of the Indian Limitation Act, 1908* provides that:

> Any appeal or application for a review of judgment or for leave to appeal, or any other application to which this Section may be made applicable by or under any enactment for the time being in force may be admitted after the period of limitation prescribed therefor, when the appellant or Applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

Proviso to *Section 5 of the Indian Limitation Act, 1877* provides that:

> Any appeal or application for a review of judgment may be admitted after the period of limitation prescribed thereof, when the appellant or Applicant satisfies the Court that he had sufficient cause for not presenting the appeal or making the application within such period.

And *Section 5 of the Limitation Act, 1963 of India* provides that:

> Any appeal or any application, other than an application under any of the provisions of *Order XXI of the Code of Civil Procedure, 1908,* may be admitted after the prescribed period, if the appellant or the Applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

The reason for excluding extension of time to file suit from the Indian Limitation statutes was given in the *Law Commission of India Eighty-Ninth Report on The Limitation Act, 1963* at its Chapter 5 stating that *Section 5 of*

*the Indian Limitation Act* allows Courts to entertain appeals or applications filed after the prescribed period. However, this Section does not apply to suits. *The Indian Limitation Bill, 1908*, was considered for comments on this issue. Dr. Hari Singh Gaur suggested that a suit could be included in the clause, but the Divisional Judge, Nagpur, was concerned about potential unsavoury practices. The Court believed that enlarging the scope of Section 5 to cover suits would harm the administration of justice, as the rapport between lawyers and rural clients is often established. The Court therefore declined to recommend extension of this Section.

In Tanzania, according to the counsel for the parties, when the Government was enacting *the Law of Limitation Act 1971*, the parliamentary debates shed some lights as to the 1st Respondent's power to extend time to file suits. The counsel submitted that; in that Parliamentary session, the Attorney General informed the Parliament about the inclusion of the provision for extension of time for suits, which was absent in *the Indian Limitation Act, 1908* that applied to Tanzania. The proposal for allowing the Minister for Justice to extend the time filing suits was welcomed by most people, including magistrates who had to dismiss suits for being time barred.

The Attorney General is recorded by the Hansard of 19th January, 1971 as telling the National Assembly, the following regarding *Section 44 of the LLA*:

> *Haiafu kuna jingine jipya ambalo linafanywa na muswada huu, jambo ambaio halikuwepo kwenye sheria ile ya zamani. Waziri anayeshughulika na mambo ya sheria, yaani Makamu wa Pili wa Rais, anapewa uwezo chini ya Ibara ya 44 wa kuongeza muda zaidi ule uliowekwa kwenye muswada kama akiona kuwa haki itatendeka kwa kufanya hivyo. Maana ingawa muda kwa jumla unaongezwa lakini bado haitawezekana pengine kwa watu fulani fulani, kwa sababu nzuri, wakashindwa kufikisha madai yao au kufungua mashitaka katika muda huo uliowekwa. Kwa hiyo Waziri anayehusika anapewa akiba hii kibali cha Bunge. Yaani hii inakuwa ni kama kiporo anachopewa Waziri na Bunge hili. Pendekezo hili la kumpa Waziri uwezo kma huu limepokelewa vizuri sana na wale wanaohusika, hasa Mahakimu kwa kuwa mara nyingi inawabidi wakatae mashitaka ya namna kutokana na matakwa ya sheria. Lakini sasa wataweza kumshauri mtu ambaye alikuwa yuko kwenye hatari ya kupoteza haki yake afikishe kilio chake kwa Waziri ili afikirie kama anaweza kumpa nafasi zaidi, na Waziri sasa atakuwa na uwezo wa kufikiria kiiio hicho. Nikiwa hapa ni lazma nitoe onyo dogo nalo ni kwamba uwezo huu anaopewa Waziri hauna maana kwamba sasa watu wataanza kufungua mashitaka yao yote ya zamani au kwamba*

*sasa hawana haja ya kuwa macho katika madai yao, maana wakielewa yuko Waziri ambaye atawafikiria. Sio madhumuni ya muswada huu.Waziri hatautumia uwezo wake huu kwa kuwasaidia watu wa namna hii, uwezo wake Waziri atautumia pale tu ambapo anaona pana sababu maalumu ya kufanya hivyo katika kutekeleza haki zaidi. Sheria inapotengenezwa inatengenezwa kwa ajili ya watu, yaani iwasaidie watu na wala sio kuwaumiza au kuwakandamiza. Kwa kweli sheria yoyote ambayo matokeo yake ni kuwa kuwakandamiza watu au kuwanyima haki yao ni sheria mbaya. Haifai sheria ya namna hii ifunge mikono ya watu* wote.

According to the Petitioner, absence of the provision for extension of time to file suits in *the Indian Limitation Act, 1908* which applied to Tanzania was a mischief which the Parliament through *Section 44 of the Law of Limitation Act, 1971* intended to cure. He added that, the petition does not question the constitutionality of such power to extend time to file suit. Rather, it challenges conferring of such powers on the 1st Respondent particularly after the enactment and coming into force of *The Fifth Constitutional Amendment Act, 1984* instead of the Courts of law. In his view, that is inconsistent with the constitutional provisions brought by *the Fifth Constitutional Amendment Act.*

Ms. Sekimanga for the Respondents was of the view that from the above extract of the Hansard, the purpose of introducing *Section 44 in the LLA* was to make sure justice is done by helping those who are aggrieved, whose time has elapsed, and they have not instituted their suit because of one reason or another to be given a second chance. That, the responsible Minister was mandated by the Parliament to do so. The said Section was introduced so as bring equality to the society and do away with all types of discrimination among the citizens.

The Respondents' State Attorney went on arguing that the purpose of giving extension of time was for the Government to extend the same to the citizens and not otherwise. To her, it is impossible for the Government to give extension of time to itself. She added that; the extension of time is granted to a citizen so that he can have access to Court if it is reasonable and just.

According to Ms Sekimanga, when the Applicant is granted extension of time, it does not mean that the adverse party loses his case. Both parties will be required to attend to the Court and each to present their case and obtain their judgement.

It was the contention of the Respondents' State Attorney that *the LLA does not apply to proceedings initiated by the government as it has been explained in Section 43 of the same.* The government is prohibited to go to the 1st Respondent who is also part of the government, to be given extension of time to file a suit. Therefore, the impugned Section does not apply in proceedings initiated by the government. It means that the impugned Section abides with *Articles 13(1) and (2), 26(1) and 29(1) of the CURT.* This has been fiercely rejected by the Petitioner who has shown that *Section 44(1) and (2) of the LLA* applies to government too.

In addition, learned State Attorney Ms. Narindwa Sekimanga submitted that the mind of the Legislature when adopting LLA to Tanzanian jurisdiction was for the same to provide specific time within which any litigant may file his/her suit in Court. It means that each civil action has a specific time within which it must be instituted in Court. Also, in enacting the LLA, the legislature wanted to help the Tanzanian society and not to suppress them, as per Hansard dated 19th to 27th January, 1971 under the heading *MISWADA YA SHERIA YA SERIKALI, The Law of Limitation Bill, 1971,* pages 17 to 19. Once the said time has elapsed or expired then the aggrieved party has no room to access the Court. But at the same time the Court's hands are tied as they

cannot entertain any suit whose time has elapsed. The only remedy for the aggrieved litigant is to knock on doors of the 1st Respondent so that his/her time can be extended as per *Section 44 (1) of the LLA.*

The Petitioner's counsel rejoined by rejecting the State Attorney's argument that *the Law of Limitation Act* does not apply to the proceedings initiated by the Government. He submitted that under *Section 45 of the LLA,* the Act applies to the proceedings by or against Government. It provides:

> *Subject to the provisions of this Act or any other written law to the contrary, this Act shall apply to proceedings by or against the Government as it applies to proceedings between private persons.* Italized is ours for emphasis.

Mr. Daimu Halfani Petitioner went on submitting that the Schedule to the LLA has prescribed period of limitation for in contract, detinue, tort and suits or actions including application. So, the Government is equally subject to the law of limitation in those cases except for *Section 43(c) of the LLA* which provides that:

> The Act shall not apply to proceedings by the Government to recover possession of any public land or to recover any tax or the interest on any tax or any penalty for non-

payment or late payment of any tax or any costs or expense in connection with any such recovery.

And *Section 20 of the Government Proceedings Act* provides that:

> Nothing in this Act shall prejudice the right of the Government to rely upon any written law relating to the limitation of time for bringing proceedings.

Mr. Halfani added that; the law as it stands, it is possible for the Minister for Constitutional and Legal Affairs to extend the period of limitation for filing suit by the Government, Executive agency, Parastatal organization, Government department, Government ministry including Constitutional and Legal Affairs, Local Government authorities or Government officer including Attorney General. The fact that the Government has not, or normally does not or has never sought to extend time does not mean it is legally impossible. He clarified his point by submitting that, the issue is not that whether when the Minister extends time to a person to file suit the adverse party loses her or his case. The point is that the person against which the extension is granted must be heard (that is a protection ought to be afforded by the law) in the same way the Respondent in the application under *Section 14 of the LLA* is heard. That is, the equality before the law.

Besides, looking at the legislative preparatory works (Hansard), we delve into the position of the law of limitation in other common law jurisdictions to make an informed decision.

At this juncture, an intriguing question is; should the power given to the judiciary to dispense justice as per *Article 107A(1) of the CURT* extend to determining prolongation of time to file suits? One convincing argument is that if the Court has been given power to extend time for other matters such as appeals, why not suits?

Furthermore, Courts are temple of justice and as per *Article 107A of the CURT,* the supreme authority for dispensation of justice. Other authorities such the 1st Respondent is part of the Executive (See *Law Reform Commission of Tanzania, Comprehensive Review of Civil Justice System (BEST PROGRAMME) Part III, July 2012*), hence likely to have conflict of interest or to be biased in extending time to file suits. That is why, as will be revealed herein below, in other Common Law jurisdictions including the UK such powers have been given to the Court.

Discussion of *Section 44 (1) and (2) of* LLA would be comparatively incomplete if we cannot *albeit* briefly glance at the position in other Common

Law jurisdictions. In Uganda, powers to extend time of limitation (as per *Section 26(5) Limitation Act Cap 80)* is given to the Court only on matters relating to arbitration. In Kenya, as per *Section 27, 28 and 29 of the Limitation Act, Cap 22 RE 2012,* it is the Court that has power to extend time to file suits in certain cases (fraud, mistake and ignorance of material facts).

In the UK under *the Law of Limitation Act 1980 (consolidating the 1939 Act)*, the powers to extend time is not left to the Executive rather it has been given to the Court on specific issues as stated in *Sections 32 and 33 of the Act.* There are also restrictions and conditions on how such discretion may be exercised.

The reason as to why the powers to extend time has not been given to the Minister of Justice in these jurisdictions is that the Minister is part of the Executive. She/he is likely to be conflicted hence biased in extending time of limitation for suits. Moreover, it is against the rule of law to let the Executive deal with matters of interpretation of law that ought to have been done by the Court.

Contrary to the position in other Common Law jurisdictions, in Tanzania *Section 44(1) and (2) of the LLA* empowers the 1st Respondent (part of the Executive) to extend time to file suits. But, as shown below, the impugned

provision lacks procedure or checks on how the 1st Respondent exercises the said power. This has raised eyebrows as there is a risk for abuse of such power.

Besides, the Petitioner decried contravention of the doctrine of separation of powers in that: the 1st Respondent is part of the Executive it does not have adjudicative role. Although in some instances it can function as a quasi-judicial body because there is not a watertight separation of powers. Yet, the 1st Respondent is not a Court. Moreover, the doctrine of separation of powers requires the legislature to enact laws, the judiciary to interpret the laws and the Executive to implement the laws. The case of **Mwalimu Paul John Mhozya v. Attorney General** (No.1) [1996] TLR 130 (HC) explicates the purpose and function of the doctrine of separation of powers.

Apart from the risk of violating the doctrine of separation of powers, the Petitioner pointed out that there is also lack of clear procedures in the exercise of discretion to grant extension of time to file suits. It was the Petitioner's argument that the 1st Respondent has blanket powers to extend time without having set of procedures that will vindicate transparency and accountability.

The Petitioner was surprised to find the Respondents instead of submitting about procedures, if any. They dwelled on conditions for grant of extension of time to file suits. These in our view are two different things. The Respondents submitted that *Section 44(1) and (2) of the LLA* empowers the 1st Respondent to extend time to file any suit in Court after expiration of a prescribed time subject to conditions as it was elaborated in the case of **Rajabu Hassan Mfaume (the Administrator of the estate of late Hija Omari Kipara v. Permanent Secretary Ministry of Health , Community Development, Gender, Elderly and children and 3 Others,** Civil Appeal 287 of 2019, Court of Appeal of Tanzania at Mtwara, at pages 17 and 18;

> the Minister has broad discretion under *sub-Section (1) of Section 44 of the Act* to extend the period of limitation prescribed for any suit, by an order under his hand, subject to three conditions: *one*, the extension may be granted if the Minister is satisfied that it is just and equitable to do so in view of the circumstances of the case. *Two*, the grant should be made by the Minister after consultation with the Attorney General. *Three*, the allowable extension must not exceed one-half of the period of limitation for such suit... sub-Section (2) restricts the Minister's power under sub-Section (1). It does so, first and foremost, by expressly

providing that once an extension is granted, the provisions of the Act will apply to such suit as if references to "the period of limitation" were references to "the aggregate" of the period of limitation prescribed for such suit by the Act and the period specified in such order.

It was the Petitioner's view that the above stated conditions are not procedures. The conditions are important and so are the procedures. It is unclear how the 1st Respondent examines and determines the applications for extension of time to file suits. It is trite that one cannot assess procedural fairness if there are no procedures laid down in the law. The impugned provisions of the LLA are silent on the procedures to be followed by the 1st Respondent in determining the application for extension of time to file suits.

The Petitioner rightly wondered that the learned State Attorney did not state the procedure followed by the 1st Respondent in exercising discretionary powers under *Section 44(1) of the LLA.* Therefore, as there is no known procedures followed by the Minister of Constitutional and Legal Affairs, the exercise of his powers under *Section 44(1) of the LLA* is arbitrary. However, the learned State Attorney argued that the Minister exercises powers under *Section 44(1) of the LLA* subject to the condition under *Section 44(2) of the LLA*, that is, the period extended by the Minister must not

exceed one-half of the period of limitation for such suit and the period so extended must commence to run immediately upon the expiry of the period prescribed by the Act. This is a condition which the Petitioner has argued to be absurd.

We partly agree with the Respondents that there are conditions stated. But we disagree with their submission that there are procedures governing exercise of powers to extend time. What procedure is found under *Section 44(1) of the LLA* that regulates the 1st Respondent's exercise discretionary powers to grant extension of time to file suits? We have looked at the impugned provision of the law and found that no procedure has been stated therein except for conditions in terms of time and discretion. [See *Section 44(2) of the LLA].* We are of the view that failure to provide for procedures for the exercise of such powers implies that there is nothing to restrict arbitrary exercise of the said powers. There is no check as to how such powers are exercised.

Additionally, *Section 44 of the LLA* is inconsistent with the protection accorded under *Articles 13(1) of the CURT* which provides for equality before the law. The Petitioner rightly observed that the mandate given to the 1st Respondent is incompatible with the right under *Article 13(3) and (6)(a) of*

*the CURT* requiring or envisaging same judicial tribunal, Court or agency to hear and determine a dispute and never judicial and Executive arms to deal with same dispute in portions, or different aspects of same suit be dealt with by Executive arm of the State as well as Court of law. And that *Article 29(2) of the CURT* provides that:

> *Kila mtu katika Jamhuri ya Muungano anayo haki ya kupata hifadhi sawa chini ya sheria za Jamhuri ya Muungano.*

The literal translation of the above Article is that every person in the United Republic has the right to equal protection under the laws of the United Republic.

Reflecting on that Article, the Petitioner's counsel argued that the Applicant under *Section 44(1) of the LLA* does not get equal protection (*hapati haki ya hifadhi sawa*) with the Applicant falling under *Section 14 of the Law of the LLA.* Counsel Daimu Halfani implored that the Applicant on extension of time for suits should have equal treatment like the Applicant on extension of time for appeals and applications.

Incongruently, the Respondents argued that the provision of *Section 44(1) and (2) of the LLA* does not contravene *Articles 13(1), (2), (3), (6)(a); Article 26(1) and Article 29(1) of the CURT* as alleged by the Petitioner due to several reasons. In their viewpoint, the act of extending time to the

aggrieved person brings justice and access to Court, where there is no hope according to the law. At the same time, they argued that the 1st Respondent does not extend time arbitrarily but when she sees that it is just and equitable to do so. *Section 44(2) of the LLA* has given her conditions to adhere to when extending time, to protect the rights of the adverse party. To them, the provisions of *Section 44(1) and (2) of the LLA* are not discriminatory. They bring justice and **equality** to all people before the law as *per Article 13(1), (2) and (6) (a) of the CURT.*

Ms. Sekimanga, State Attorney argued that the 1st Respondent has been mandated by the Parliament to extend time as per Hansard dated 17th to 27th January, 1971 at page 20 second paragraph, as it reads:

> *Kwa hiyo Waziri anayehusika anapewa akiba hii kibali cha Bunge. Yaani hii inakuwa kama ni kiporo anachopewa Waziri na Bunge hili.*

According to Ms. Sekimanga, the legislature when enacting *Section 44 of the LLA* deliberately gave the powers to the 1st Respondent. It could have chosen to authorise the Court to extend the time to file a suit, but it did not. She submitted that the act of mandating the 1st Respondent to extend time

as far as *Section 44 of the LLA* is concerned does not contravene *Article 13(3) of the CURT.* This Article reads:

> The civic rights, duties and interests of every person and community shall be protected and determined by the Courts of law or *other state agencies established or under the law.* [Emphasis supplied].

It was the Respondents' view that the 1st Respondent is among other state agencies established by the law. Thus, under *Section 44(1) and (2) of the LLA* she has the duty and responsibility of protecting the rights, duties and interests of every person and community as per *Article 13(3) of the CURT.*

The Respondents suggested that the power of the 1st Respondent to extend time to the aggrieved litigant brings justice whether the adverse party accepts or not because the extension of time is not done arbitrarily. Rather it is done according to the procedure and conditions laid down in *Section 44(2) of the LLA.*

In addition to the above, the Respondent submitted that extension of time to file suit does not mean the right of the adverse party has been infringed because he will have time to give his defence when the case is called in for hearing after extension of time. This thought was disputed by

the Petitioner in that the issue is not what happens when the suit is before the Court of law. But, how the adverse party's right to be heard is afforded when the 1st Respondent determines the application for extension of time. That is the arbitrariness complained of.

Moreover, *Section 44 of the LLA* does not provide for the right of appeal against the 1st Respondent's decision refusing to extend the time to file a suit. It is unclear whether there could be judicial review against the 1st Respondent's decision. That would mean that the power to extend time is merely administrative or quasi-judicial.

Another controversy pointed by the Petitioner that lingers the 1st Respondent's power to grant or refuse extension of time to file suit under *Section 44 of the LLA* is lack of due process, which reveals how the LLA impugned provisions contravene the CURT. It is axiomatic that where there is adherence to due process arbitrariness is controlled.

That takes us to the first issue as to; *whether the LLA contravenes the CURT.* But before making headway, one ought to appreciate the term *"due process."* The Petitioner 'cited the case of **Commissioner of Prisons & Another v. Seepersad & Another (Trinidad and Tobago)** [2021] UKPC 13 where at paragraph 30 the Privy Council said:

> In short, "due process" has generally been considered to protect rights of a procedural nature, fair trial rights, in particular (though not exclusively) the right to procedural fairness. This is a right which is engaged in all kinds of contexts, both judicial and administrative.

From that extract due process means procedural fairness. It includes fair hearing, right of appeal, transparency, etc. Meritoriously, the Petitioner's argued that there is lack of due process in exercise of power under *Section 44 of the LLA*. Indeed, while applications for the extension of time to file a suit is dealt by the Executive arm of the State under *Section 44(1) of the LLA* and it is determined without due process protection. To the contrary, applications for extension of time to file appeal are determined by the Court of law under *Section 14 of the LLA.* The Applicant here enjoys effective legislative and judicial protection and due process.

To support his argument, Mr Halfani referred to the decision of the Privy Council in the case of **Nankissoon Boodram also called Dole Chadee v. The Attorney General for Trinidad and Tobago and Another** [1996] UKPC 63 (also cited [1996] 2 WLR 464, [1996] AC 842) interpreted *Section 4(a) and (b) of the Constitution of Trinidad and Tobago*

guaranteed the right of the individual to equality before the law and protection of the law which is *in pari materia* with *Articles 13(1) of the CURT.* The Privy Council said in respect of the said *Section 4:*

> The "due process of law" guaranteed by this Section has two elements relevant to the present case. First, and obviously, there is the fairness of the trial itself. Secondly, there is the availability of the mechanisms which enable the trial Court to protect the fairness of the trial from invasion by the outside influences. These mechanisms form part of the "protection of the law" which is guaranteed by *Section 4(b),* as do the appeal procedures designed to ensure that if the mechanisms are incorrectly operated the matter is put right.

He also cited the case of **Darrin Roger Thomas and Another v. Cipriani Baptiste and Others** [2000] 2 A.C. 1 at pages 32-33 (also [1999] 3 W.L.R. 249 PC) that stated:

> The due process of law provision fulfils the basic function of preventing the arbitrary exercise of Executive power and places the exercise of that power under the control of the judicature.

According to Mr Daimu Halfani, due process means fairness. And in judicial process, it entails an opportunity to appear before a Court, a committee, a board, or a council to present evidence and argument before a decision is given. Due process also involves the right to receive fair notice of the hearing, the right to secure the assistance of counsel or advocates, the right to cross examines witnesses or file affidavits and counter affidavits, a written decision, with reasons based on evidence introduced, and with an opportunity to appeal from an adverse decision. He rightly opined that this is not available in proceedings before the Minister under *Section 44(1) of the LLA.* In stark contrast, the same is efficiently and effectively accorded to the proceedings under *Section 14 of the LLA.* Unlike applications under *Section 14,* there are no established procedures in applications under *Section 44(1) of the LLA.* The Applicant under *Section 44 of the LLA* does not get protection of the law guaranteed by the CURT the same protection one gets under *Section 14.*

As pointed out earlier, the Respondents considers *Section 44 of the LLA* not to be violative of the equality before the law as guaranteed by the CURT. However, their submission does not mention the term due process.

Mr. Daimu Halfani argued that *Section 44 of the LLA* does not allow the person against whom the extension of time is brought to present their support or opposition to the application for extension of time. However, this right is available in an application for extension of time to file appeal or application under *Section 14 of the LLA.* The 1st Respondent, in consultation with the 2nd Respondent, determines the application under *Section 44 of the LLA* on her own. Indeed, appearance of the parties before the Court or before a person who determines the rights to explain or argue in support of the application is one of the essentials of the right to be heard and due process of the law. *Article 13(6)(a) of the CURT* provides that:

> *Kwa madhumuni ya kuhakikisha usawa mbele ya sheria, Mamlaka ya Nchi itaweka taratibu zinazofaa au zinazozingatia misingi kwamba wakati haki na wajibu wa mtu yeyote vinahitaji kufanyiwa uamuzi wa mahakama au chombo kinginecho kinachohusika, basi mtu huyo atakuwa na haki ya kupewa fursa ya kusikilizwa kwa ukamilifu.*

The Respondents argued that the impugned provision promotes equality and prohibits discrimination by providing justice, access to Court, and fair hearings for all individuals. They argued that extending time for civil cases allows for more time to present their case and defend themselves,

while safeguarding their rights to fair hearing and equality, which is in line with the ACHPR, ICCPR and UDHR, which Tanzania is a party to.

The Respondents asserted further that the responsible Minister, as an impartial and competent state agency, cannot extend time to Government-initiated proceedings. They argued that the Minister must follow the procedures laid down in law, which includes not extending time beyond one-half of the initiated time. This has been fiercely disputed by the Petitioner. He has convincingly shown that there is nothing in the LLA that bars the 1st Respondent to extend time to the Government to file suits.

The Petitioner went on rejoining by submitting that there are no procedures to ensure that the Applicant under *Section 44 of the LLA* is accorded "*haki ya kupewa fursa ya kusikilizwa kwa ukamilifu*". Unlike *Section 44 of the LLA*, the Applicant under *Section 14 of the LLA* is accorded the right to be heard "*haki ya kupewa fursa ya kusikilizwa kwa ukamilifu*". In practice, the Applicant under *Section 44 of the LLA* writes a letter to initiate application to the 1st Respondent for extension of time to file suit while the Applicant under Section 14 of the LLA initiate application by a chamber summons supported by affidavit. It is our settled view that this is an unfair criticism. What matters is that the Applicant is afforded the right to heard,

be it by way of writing a letter or filing chamber summons. It does not matter. Nevertheless, the controversy that remains is *whether the proceedings before the 1st Respondent are transparent, and whether they are subject of appeal.*

The Petitioner claimed that, in contrast to the proceedings for extension of time to file suits, after the originating processes (documents instituting the applications and moving the Court or Minister), the Applicant and the Respondent under *Section 14 of the LLA* are accorded the right to be heard by filing counter affidavit, reply to counter affidavit, and oral or written submissions before the Court composes and deliverers a ruling. All these aspects of due process and protection of the law are not accorded to the Applicant in the proceedings under the *Section 44 of the LLA.*

Although proceedings before the Minister are a part of judicial process, there is no Respondent at all. Thus, it is a contravention of *Articles 13(1) and 29(2) of the CURT* that guarantee Applicants and Respondents under *Sections 14 and 44 of the LLA* entitlement to protection of the law and equality before the law. Contrary to prescription under *Articles 13(1) and 29(1) of the CURT,* the Applicants under *Sections 14 and 44 of the LLA* are treated differently amounting to unfair discrimination. *Article 13(2) of the*

*CURT* prohibits the law to provide such discrimination which the impugned provisions have created, and this contravenes provisions of *Article 26(1) of the CURT* which requires every person including the Parliament to observe and abide by it. Mr Daimu Halfani warned that the contravention of the CURT continues as long as *Section 44(1) and (2) of the LLA* as enacted continue to exist in the statute book.

*Arbitrariness of Section 44 of the LLA* is another concern that the Petitioner has pointed out. *Section 44 of the LLA* is arbitrary law. It is based on individual discretion (judgment or will) of a Minister rather than a fair application of the law. In the case of **Kukutia Ole Pumbun & Another v. Attorney General and Another** [1993] TLR 159 the Court of Appeal made findings and deliberations on the constitutional validity of *Section 6 of the Government Proceedings Act 1967* requiring the Minister's consent to sue the Government. The findings and deliberations made at page 167 are equally applicable to this case particularly on the 1st Respondent's power under *Section 44 of the LLA.* The Petitioner prayed that the Court be guided by such Court of Appeal decision in which it stated:

> It is most apparent that the law is arbitrary. It does not provide for any procedure for the exercise of the Minister's power to refuse to give consent to sue the Government. For instance, it does not provide any time limit within which the Minister is to give his decision, which means that consent may be withheld for an unduly long time. The Section makes no provisions for any safeguards against abuse of the powers conferred by it. There are no checks or controls whatsoever in the exercise of that power, and the decision depends on the Minister's whims. And, to make it worse, there is no provision for appeal against the refusal by the Minister to give consent. Such law is certainly capable of being used wrongly to the detriment of the individual.

Without sugarcoating the above holding of the CAT which is relevant and applies directly to *Section 44 (1) of the LLA.* It is our profound view that the Section lacks safeguards against abuse of the powers conferred to the 1st Respondent. There are no checks or controls in the exercise of the said powers, and the decision depends on the 1st Respondent's mercy. And to add misery, there is no provision for appeal against the refusal by the 1st Respondent to extend time. Indeed, lack of such provision for appeal is contrary to *Article 13 (6) (a) of the CURT.*

Still on the contravention to the CURT, apart from arbitrariness, the Petitioner has attacked *Section 44(1) the LLA* for contravening the principles of natural justice. These principles are found in the CURT. Hence any law contravening them simultaneously contravenes the CURT. In their view *Section 44(1) of the LLA* is inconsistent with principles of impartiality. The 1st Respondent when determining the application as provided for under *Section 44(1) of the LLA* in consultation with the 2nd Respondent becomes a judge in his or her own cause and is a breach of cardinal and constitutional principle of natural justice, *Nemo judex in causa sua.* That is the rule against bias.

The Respondents have submitted that the application for extension of time does not apply to government. It is unclear whether that means all government institutions as these too can seek extension of time to file a suit. In any case the Respondents' argument cannot be valid. The 1st and 2nd Respondents are not impartial as they are part of the government (Executive) liable in and subject to civil proceedings like any other private persons under *the Government Proceedings Act Cap 5 Revised Edition 2019. Section 3(1)* which read:

> Subject to the provisions of this Act and any other written law, the Government shall be subject to all those liabilities in contract, quasi-contract, detinue, tort and in other

respects to which it would be subject if it were a private person of full age and capacity and, subject as aforesaid, any claim arising therefrom may be enforced against the Government in accordance with the provisions of this Act.

Although the Respondents have resisted Mr Daimu Halfani's contention that the 1st Respondent and 2nd Respondent are potential litigants and there is a possibility of bias, the impugned provisions of the LLA require the person aggrieved by the actions of the Government and who is late to bring the suit to seek extension to the same Government which is an intended defendant making Government to be the judge of his own cause.

Moreso, the impugned provisions do not prescribe the procedure for the 1st Respondent to avoid or recuse to be a judge in a situation the extension of time is sought for a suit against the Government, or the 1st Respondent himself or herself. The 1st Respondent as the Minister cannot recuse herself (that is, to declare oneself to be disqualified to judge something or participate in something because of possible bias or personal interest) or be required to disqualify (exclude) from determining the application. The act of the 1st Respondent to be a judge in her own matter or government matter contravenes *Article 13(6)(a) of the CURT* on fair

treatment and trial and before impartial tribunal or agent (*Article 13(3) of the CURT*).

Along with contravention of rules of natural justice and arbitrariness, lack of coherence in the provision of the law is another point of attack the Petitioner directed to *Section 44(2) of the LLA*. This *Section* provides:

> Where an order under subsection (1) is made in relation to any suit, the provisions of this Act shall apply to such suit as if references herein to the period of limitation were references to the aggregate of the period of limitation prescribed for such suit by this Act and *the period specified in such order, such later period commencing to run immediately upon the expiry of the period prescribed by this Act. Emphasis supplied.*

For discussion on lack of coherence in the law, see **Fuller's Morality of Law, Revised edition** pp.63-65.

The Petitioner proceeded arguing that Section 44(2) of the LLA negates the extension of time for filing suits, contradicting Section 44(1). This denial of access to justice and Courts of law makes the extended period useless, making the application for extension of time to file a suit unnecessary.

Incoherence of the law could also lead to absurdity. Even though the Respondents have disputed the allegation of absurdity of *Section 44 of LLA,* the Petitioner has ably amplified it. When the absurdity of a legislative provision is raised and proved the Court can declare a provision of the law unconstitutional. That is because the legislature never intended to enact the law that poses absurdity. That was held in **Stephen Masatu Wassira v. Joseph Sinde Warioba & Attorney General** [1999] TLR 70. The law that creates absurdity is void to the extent of that absurdity. It was the submission of the Petitioner that the Court of Appeal of Tanzania stated in the case of **Attorney General v. Lohay Akonaay and Another** [1995] TLR 80 at page 89 that it is the rule of interpretation that a law should not be interpreted to lead to an absurdity.

On the description of absurd legislation, Mr. Daimu Halfani counsel for the Petitioner cited the case of **Pointe-Claire (City) v. Quebec** (Labour Court), [1997] 1 S.C.R. 1015 in which the Supreme Court of Canada adopted the definition at page 1065 paragraph 90 that absurd may mean something illogical, incoherent, or incompatible with other provisions or with the object of the legislative enactment. The Petitioner also found support in the case of

**Reyes v. R (Belize)** [2002] UKPC 11 ([2002] 2 WLR 1034, [2002] 2 AC 235] Privy Council stated at paragraph 26:

> When (as here) an enacted law is said to be incompatible with a right protected by a constitution, the Court's duty remains one of interpretation. If there is an issue (as here there is not) about the meaning of the enacted law, the Court must first resolve that issue. Having done so it must interpret the constitution to decide whether the enacted law is incompatible or not.

We concur with the Petitioner that the absurdity in *Section 44(2) of the LLA* does not lie in how it is interpreted or applied but lies in the rule expressed in the provision itself. Again, such **absurdity** arises from internal contradiction, and it is apparent. There is no issue about the meaning of *Section 44(1) and (2) of the LLA* enacted law because in the **Rajabu Hassan Mfaume (The Administrator of the Estate of the Late Hija Omari Kipara) v. Permanent Secretary, Ministry of Health, Community Development, Gender, Eldery & Children, and Three Others,** Civil Appeal No. 287 of 2019 (unreported) [2022] TZCA 148 (28th March 2022) the Court of Appeal expressed the correct meaning of *Section 44(1) and (2) of the LLA*. In considering *Section 44(1) and (2) of the LLA*,

the Court of Appeal said at pages 17-18 that: *Firstly*, the Minister has broad discretion to extend the period of limitation for a suit under *sub-Section (1) of Section 44 of the Act*, subject to three conditions: it must be just and equitable, made after consultation with the Attorney General, and not exceed one-half of the period of limitation for such suit. The order can be made before or after the suit's expiry. *Secondly*, subsection (2) of the same provision mandates that the granted extension period must begin immediately upon the expiry of the prescribed period, regardless of whether the grant was made before or after the limitation period.

According to the Petitioner, in **Rajabu Hassan Mfaume case** *(supra)*, the effort of the Minister (1st Respondent) under *Section 44(1) of the LLA* to extend time to ensure **Rajabu Hassan Mfaume** files the suit to gets his rights was thrashed by *Section 44(2) of the LLA.* He observed that this cannot happen to proceedings under *Section 14 of the LLA.*

To remedy the absurdity of *Section 44(2) of the LLA* the Petitioner suggested that the legislature should amend the LLA because the absurd provision contravenes the provisions of the CURT. The Petitioner also reminded the Court that through the *Constitution (Consequential, Transitional and Temporary Provisions) Act, 1984* the Parliament delegated

its legislative authority and empowered the President of the United Republic to amend all such laws. However, the impugned provisions of *Sections 44(1) and (2) of the LLA* were not amended to remove the absurdity. He beseeched the Court to strike off *Section 44(2) of the LLA* to remove the absurdity and eliminate contravention to the Constitution.

*Whether Section 44 of the LLA restricts human rights in Tanzania is a next point for consideration.* We have shown hereinabove that The LLA was enacted before the CURT, 1977 came into force, which later in 1984 was amended to introduce basic rights and duties through *The Fifth Constitutional Amendment Act, 1984.* The political and social conditions prevailing at the time of enactment of the LLA coupled with the absence of Bill of Rights in our laws particularly the CURT, which was in force by then, the power of Minister to extend time for filing suits under *Section 44 of the LLA* may have been included in the Act in good faith, quite in order and not objectionable. However, that cannot be the same after *The Fifth Constitutional Amendment Act, 1984.* This will be illustrated in due course.

The Petitioner opined that in 1971 it was thought appropriate to give the power to the Minister instead of a Court of law to extend time to file suits. Under similar atmosphere, in 1984, through *Section 5(3) of The*

*Constitution (Consequential, Transitional and Temporary Provisions) Act 1984,* the Parliament delegated to the President of the united Republic power to amend any existing law as may appear to him to be necessary or expedient for bringing that law in conformity with the provisions of *the Fifth Constitutional Amendment Act, 1984* and the Constitution for giving effect or enabling effect to be given to those provisions. It should be noted that in 1970s and 1980s were the period of party supremacy (see: *Section 3 of the Interim Constitution of Tanzania, 1965 Act No. 43 of 1965*). During that time the separation of powers and functions of the Executive, legislature and judiciary were blurred. The situation has changed as now there is supremacy of the CURT, and every branch of Government has its powers, and functions conferred to it by the CURT, always observing *Articles 12-29 of the CURT* embodying the basic rights, freedoms, and duties.

Mr. Daimu Halfani submitted that substantive provisions of *the Interim Constitution of Tanzania, 1965* entrenched some Basic Rights and some were recognized in the preamble to the said Interim Constitution. This Constitution applied to Tanzania until 1977 after passing of *the Constitution of the United Republic of Tanzania of 1977.* The Constitution of Tanganyika African National Union (TANU) had some basic rights. And TANU Constitution was a

first schedule to *The Interim Constitution of Tanzania, 1965* by virtue of *Section 3 of the Interim Constitution.* Hence, validity of *Section 44 of the LLA* could not have been tested using *the Interim Constitution of Tanzania, 1965* because there were no provisions for the protection of basic rights. In the case of **Hatimali Adamji v. East Africa Posts and Telecommunications** [1973] LRT n.6 the Court considered to invoke the basic rights contained in the preamble of the Interim Constitution to question violation of the Adamji's rights and discrimination against race that was vivid in that case but failed, holding that:

> The Preamble to a Constitution does not in law constitute part of the Constitution and so does not form part of the law of the land.

The Petitioner submitted hereinabove that the power of the Minister under *Section 44 of the LLA* may have been included in good faith, in order and not objectionable at the time of enactment according to legal set up, social and political condition of the time. However, the Privy Council in the case of **Hinds and Others v. The Queen** [1976] 1 All ER 1976 (also [1976] 2 WLR 366, [1977] AC 195) stated that:

> A breach of a constitution restriction is not excused by the good intentions with which the legislative power has been exceeded by the particular law.

The case of **Hinds and Others***(supra)* is an authority on the principle that in deciding whether any provisions of a law passed by the Parliament as an ordinary law are inconsistent with the Constitution, the Courts are not concerned with the propriety or expediency of the law impugned but they are concerned solely with whether those provisions, however reasonable and expedient, are of such a character that they conflict with an entrenched provision of the Constitution and hence can be validly passed only after the Constitution has been amended by the method laid down by it for altering that entrenched provision.

The Petitioner submitted that Tanzania is a democratic state. It is committed to observe and uphold Human Rights. The legal position is that a democratic state observes and protects fundamental rights. In the case of **Republic v. Minister for Home Affairs and others ex-parte Sitanize** [2008] 2 E.A. 323 the Court stated at page 342 that:

> A democratic society has been defined to include a society which respects human rights.

In the case of **Julian J Robinson v. Attorney General of** Jamaica [2019] JMFC Full 04 the Supreme Court of Jamaica (Sykes, CJ) said at paragraph 104:

> One of the hallmarks of liberal democracies is the articulation, protection and upholding of human rights.

The Petitioner also submitted on the issue; *whether Section 44(1) and (2) of the LLA is saved by Article 30(2) of the CURT.* He referred to *Article 30(2) of the CURT* providing for only six situations which can limit the enjoyment of the basic rights and freedoms, which are:

a) ensuring that the rights and freedoms of other people or of the interests of the public are not prejudiced by the wrongful exercise of the freedoms and rights of individuals;
b) ensuring the defence, public safety, public peace, public morality, public health, rural and urban development planning, the exploitation and utilization of minerals or the increase and development of property of any other interests for the purposes of enhancing the public benefit;
c) ensuring the execution of a judgement or order of a Court given or made in any civil or criminal matter;

d) protecting the reputation, rights and freedoms of others or the privacy of persons involved in any Court proceedings, prohibiting the disclosure of confidential information or safeguarding the dignity, authority and independence of the Courts;
e) imposing restrictions, supervising and controlling the formation, management and activities of private societies and organizations in the country; or
f) enabling any other thing to be done which promotes or preserves the national interest in general.

It was the Petitioner's stance that none of the above situations justify or support the impugned provisions of *Section 44(1) and (2) of the LLA.*

The next issue is; *whether the Section 44(1) and (2) of the LLA contravenes the international and regional human rights instruments that have been ratified by Tanzania.* It is the prerogative of the Executive of the State to bind the country and its people to the international treaties and relations or cooperation. It formulates or creates and executes policies. Where the implementation or execution of the policy or international treaty, agreement, relation, or cooperation requires legislation, the Executive will present to the Parliament a Bill proposing to enact the required legislation. As was stated in the case of **Okunda and another v. Republic** [1970] EA 453 at page 456 that: "*A state signs a treaty in the full knowledge of its*

*contents and in full knowledge of its own laws and legal policy."* Mr Halfani also referred to the case of **Attorney General v. Rebeca Z. Gyumi,** [2019] 1TLR 114 at page 132 where the Court of Appeal of Tanzania stated that when the Government ratifies and domesticates international human rights instruments, it demonstrates commitment to enforce them and assure smooth realization of human and peoples' rights.

The Petitioner further criticized the LLA for contravening *Article 3 of the ACHPR* providing for equality before the law and equal protection by the law. He argued that *Article 3(a) of the ACHPR,* has been incorporated into our laws and domesticated through *Article 13(1) of the CURT.* Thus, the contravention of this Article of the CURT is contravention of *Article 3 (a) of the ACHPR.*

*Article 7(1)(a) of the ACHPR* is on the right to be heard and right of appeal. That Article has been incorporated into our laws and domesticated through *Article 13(3) and 13(6)(a) of the CURT.* Similarly, violation of *Article 13(3) and 13(6)(a) of the CURT* is the violation of *Article 7(1)(a) of the ACHPR.*

Mr Daimu Halfani went on demonstrating *Article 7(1)(c) of the ACHPR* on the right to be heard including the right to legal

representation by a counsel. *Article 7 (1) (c) of ACHPR* Article has been entrenched into our laws and domesticated through *Article 13(6)(a) of the CURT.* A person violating *Article 13(6)(a) of the CURT* simultaneously violates *Article 7(1)(c) of the ACHPR.*

The Petitioner's counsel expostulated *Article 19 of the ACHPR* dealing with equality before the law and non-discrimination. The said Article has become part of law through *Articles 12 and 29(1) of the CURT.* The infringement of *Article 12 and 29(1) of the CURT* is also infringement of *Article 19 of the ACHPR.*

The relation and significance of the ACHPR to the United Republic of Tanzania laws was well elaborated by the Court of Appeal of Tanzania in the case of **Director of Public Prosecutions v. Daudi Pete** [1993] TLR 22 at page 34-35 it stated that Tanzania signed *the ACHPR* in 1982 and ratified it in 1984. The Bill of Rights and Duties was introduced into the Constitution under the Fifth Amendment in 1985, slightly over three years after signing and a year after ratification. The Bill of Rights and Duties in the Constitution aligns with the ACHPR's concepts. The Court of Appeal of Tanzania reaffirmed the above position in the case of **Attorney General v. Rev Christopher Mtikila** [2010] 2 EA 13 as it stated at page 21 holding that

the reference to international Human Rights Instruments has become a usual practice.

It follows that, in enacting local laws Tanzania is enjoined to observe its obligations arising out of the international and regional human rights instruments. The use of international human instruments was emphasized and put clear by the Court of Appeal in the case of **Attorney General v. Rebeca Z. Gyumi,** *(supra)* where at page 132 it stated that Tanzania is not an isolated island but has benefited from international legal jurisprudence through ratifying and domesticating international, regional, and subregional instruments. These instruments acknowledge international community outcry and take action against human rights violations, including the right of a girl child. The Tanzanian government's commitment to enforcing these instruments ensures smooth realization of human and peoples' rights, and their provisions cannot be interpreted in isolation.

It is for the aforesaid reason and as submitted by the Petitioner that where there is violation of ratified international human rights instruments the High Court has power to declare that a particular local legislation is contrary to the International Covenants. This was held in **Christopher Mtikila v. Attorney General** [2006] TLR 279 at page 312.

Besides ACHPR, the parties submitted on how the impugned provisions of the LLA violates the ICCPR. For instance, *Article 2(3)(a) and (b) of the ICCPR* provides:

> 3. Each State Party to the present Covenant undertakes:
> a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
> b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy.

*Article 2(3) (a) & (b) of the ICCPR* has become part of our laws through domestication under *Article 13(3) and (6)(a) of the CURT.* Hence the contravention of *Article 13(3) and (6)(a) of the CURT* is a contravention of *Article 2(3) (a) and (b) of the ICCPR.*

*Article 14(1) of the ICCPR* provides that; all persons shall be equal before the Courts and Tribunals. In the determination of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent, and impartial Tribunal established by

law. This provision has been incorporated into our laws and domesticated through *Article 13(1), (3) and (6)(a) of the CURT.* Thus, contravention of *Article 13(1), (3) and (6)(a) of the CURT* is also a contravention of *Article 14(1) of the ICCPR.*

What is more is that *Article 26 of the ICCPR* provides for equality before the law. The law ensures equal protection for all individuals, prohibiting discrimination based on race, colour, sex, language, religion, political opinion, national or social origin, property, birth, or other status, and providing effective protection against such discrimination. *Article 26 of the ICCPR* has been incorporated into our laws and domesticated through *Article 13(1) and (2) of the CURT.* Thus violating *Article 13(1) and (2) of the CURT* amounts to violation of *Article 26 of the ICCPR.*

On top of the aforesaid international instruments, the Petitioner cited *the UDHR.* The UDHR has been recognized, affirmed, and incorporated into other laws of Tanzania by *Article 9(f) of the CURT* and obliges the state authority (Courts, Executive and the Parliament) and its Agencies to observe it.

The rationale for such recognition and affirmation was stated in the case of **Christopher Mtikila v. Attorney General** [2006] TLR 279 in which the High Court stated at page 310 that:

> We have no doubt that International Conventions must be taken into account in interpreting, not only our Constitution but also other laws, because Tanzania does not exist in isolation, it is part of a comity of nations. In fact, the whole of the Bill of Rights was adopted from those promulgated in the Universal Declaration of Human Rights.

In the case of **Legal and Human Rights Centre and Two Others v. Attorney General** [2006] TLR 240 the High Court stated at page 271:

> Tanzania is a party to various International Human Rights Instruments. The Universal Declaration of Human Rights (UDHR), which is the core of International Human Rights law, is incorporated in *Article 9(f) of our Constitution. Article 7 of the UDHR* provides for equality before the Law and bars discrimination.

Mr. Daimu Halfani for the Petitioner submitted that *Article 7 of the UDHR* provides for equality before the law and non-discrimination. *Article 7 of the UDHR* is part of Tanzania as it was domesticated through *Article 13(1), (2) and (4) of the CURT*. Thus, contravention of *Article 13(1), (2) & (4) of the CURT* is also a contravention of *Article 7 of the UDHR.*

He also submitted on *Article 8 of the UDHR* which provides for a right to an effective remedy by the competent national tribunals for acts violating the fundamental rights. The said *Article 8* is embodied into the Tanzanian laws through *Article 13(3) of the CURT.* It means that contravening *Article 13(3) of the CURT.*amount to violation of *Article 8 of the UDHR.*

Thereafter, turned to *Article 10 of the UDHR* that provides for right to heard and rule against bias. The tribunal ought to be independent and impartial. This *UDHR Article* became part of our laws after being domesticated through *Article 13(6)(a) of the CURT.* Thus, contravention of *Article 13(6)(a) of the CURT* is a contravention of *Article 10 of the UDHR.*

Mr Daimu Halfani for the Petitioner submitted on the purpose of the *Articles 12(1),(2),(3), (6)(a), 26(1) and 29(1) & (2) of the CURT* and effect of the impugned provisions of Section 44(1) and (2) of the LLA. He cited the case of **Augustino Lyatonga Mrema v. Speaker of the National Assembly and Another** [1999] TLR 206, where it was stated at page 216 that:

> Our constitution confers upon this Court power of judicial review, it has been assigned the role of a sentinel on that quivive's on human rights issues, and it cannot abdicate from that duty: See *Article 30(3) of the Constitution, and*

*the Basic Rights and Duties Enforcement Act 1994.* But I would be fast to add that this power of review, while exercisable in many areas like (1) contravention of mandatory provisions of the Constitution, imposing limitations on the Legislature, (2) state operating beyond statutory state boundaries (3) legislating on subject not assigned on the legislature. *Important for our purposes here is the alleged contravention of the fundamental right* in this case. I have, in that direction cultivated myself to think that *in determining the constitutionality of provision* or conduct alleged to be violative of a fundamental right, *the Court must weigh the substance, the real effect, and the impact thereof on the fundamental right alleged. Emphasis applied.*

The Petitioner's counsel also referred to the case of **Legal and Human Rights Centre and Two Others v. Attorney General** [2006] TLR 240 in which the High Court stated at page 278 in respect of the purpose of *Article 21 of the Constitution*:

> Another principle of Constitutional Interpretation is that *in interpreting a legislation vis a vis the constitution, both the purpose and effect of the legislation must be given effect.*

Mr. Daimu Halfani further submitted that in as far as this case is concerned, the purpose of *Articles 12(1), (2),(3), (6)(a), 26(1) and 29(1) &*

*(2) of the CURT* include, first, to ensure every person is protected by the law. Our constitution in numerous provisions refers to "*sheria*" meaning "law" and "*sheria iliyotungwa na Bunge*" meaning law enacted by the parliament that is legislation. Sheria (Law) is wide and includes "*sheria iliyotungwa na Bunge*" (law enacted by the parliament). *Section 2(3) of the Judicature and Application of Laws Act [Cap 358 RE 2019]* describes what constitutes *sheria* (law), that is, written laws (constitution and legislation), case laws of Tanzania, common law, the doctrines of equity and the statutes of general application, customary laws and Islamic law. Protection of law of the rights of the person is required to ensure he or she retains and enjoys it and is not deprived or jeopardized. One of those protections is the access to Courts of law or other agencies to protect when violation is threatened or regain his rights when he has been deprived. Another protection is the requirement of observing a fair trial or fair treatment. ***Second purpose*** *is that* persons with similar problems or predicament should be equal before the law and they should receive equal protection of the law.

He buttressed his submission with the case of **Nervais v. R** [2018] CCJ 19 (AJ) at paragraph 49 the Caribbean Court of Justice, which said:

The right to protection of the law or due process includes the right to a fair trial.

*The right to a fair trial as an element of protection of the law is one of the cornerstones of a just and democratic society, without which the rule of law and public faith in the justice system would inevitably collapse. Italized is ours for emphasis.*

Mr. Halfani further relied on the case of **Srinivasa Theatre and Others v. Government Of Tamil Nadu And Others** 1992 SCR (2) 164, where the Supreme Court of India described the phrases equality before law' and 'the equal protection of laws" which is provided for by *Article 14 of the Constitution of India of 1949*. Moreover, the Petitioner's counsel stated that *Article 14 of the Constitution of India of 1949* is substantially like *Article 13(1) of the CURT* dealing with equality before the law and protection by the law. He submitted that since both Articles cater for the fundamental right of equality before the law and the equal protection of the law, the interpretation given in Indian case of **Srinivasa Theatre and Others case** *(supra)* also applies to Tanzania due to *Article 13(1) of the CURT.*

It was the view of Mr Daimu Halfani that, the objective of the LLA is "*to prescribe the law for the limitation of actions in civil proceedings and for*

*related matters." Section 2 of the LLA* defines proceedings as follows *""proceeding" means a suit, an appeal or an application, and includes proceedings under customary law."* One of the aspects which the Act covers is the power to extend time to file suit, appeal, and application. These suits, appeals and applications are heard and determined by the Courts of law. In law, the extension of time to file proceedings that is, suit, appeal, and application, is heard and determined by the Court which has jurisdiction to hear and determine the proceedings the period of which is sought to be extended. This rule is enacted in *Section 14(2) of the LLA* which provides that the Court which has power to extend time to file appeal or application is the Court having jurisdiction to entertain the said appeal or application. As regards suits, *Section 44 of the LLA* gives power to the Minister to extend time to file suits and if granted, the Court takes over and determines the suit filed.

As properly submitted by Mr. Daimu Halfani, the principles and factors for granting extension of time to file suits, appeals, and applications should be the same, inclusive, certain, and transparent. The aggrieved party has the right to appeal against the procedure and merits of the decision providing protection of the law. However, the Applicants before the Minister do not

have protection due to the lack of known procedures, inclusiveness, uncertainty, and transparency. Judicial review is invoked to challenge the Minister's handling of the application, but the Applicant cannot challenge the Minister's decision on merits.

Indeed, substantive rights are determined in suits. Appeals come after the suits have failed. Applications do not determine substantive rights. The rights to be determined by the Courts referred to under *Article 12(3) and (6)(a) of the CURT* are strictly those asserted in suits. As such, greater protection and care should have been accorded to suits from its inception at the stage of extension of time. Thus, splitting the Court's jurisdiction as is done by *Section 44 of the LLA* removes the protection of the law on the Applicant and the prospective Plaintiff.

Further, it is almost impossible to rule out bias on the part of the Minister when the Government or the Minister himself or herself, and the Attorney General are involved. The time extended by the Minister instead of counting from the date it is given, the impugned *Section 44(2) of the LLA* compels counting from the time the period of time expired which does not help the Applicant and logically absurd thus renders him to be not equal

before the law and lose equal protection of the law accorded to Applicant under *Section 14 of the LLA.*

According to the Petitioner, *Section 44 of the LLA* violates *Articles 12(1),(2),(3), (6)(a), 26(1), and 29(1) & (2) of the CURTS,* impacting basic rights and people's rights. If declared unconstitutional, it would align with the CURT, removing injustice and unconstitutionality.

Besides that, the impugned provisions of *Section 44(1) and (2) of the LLA* have not passed the proportionality test principle. As this Court stated in **Legal and Human Rights Centre and Two Others v. Attorney General** [2006] TLR 240 at page 273 that the mischief created is more serious than the object sought to be achieved. It was earlier held in **Peter Ng'omango v. Gerson M.K. Mwangwa and Another** [1993] TLR 77 at page 86 that:

> It is also my considered view that the Government Proceedings Act 1967 offends the doctrine of proportionality. This principle of proportionality requires that the means employed by the government to implement matters in public interest should be no more than is reasonably necessary to achieve the legitimate aims.

The Petitioner argued that it was unnecessary to split Court's jurisdiction so that a portion of it be shared and another dealt by the Minister. It was sufficient to include suits in *Section 14 of the LLA.*

In his view the impugned provision of the LLA lacks proportionality between the object and its effects. In the case of **Julian J Robinson v. Attorney General of Jamaica case** *(supra)* the Supreme Jamaica (Sykes CJ) said on doctrine of proportionality:

> What is proportionality? It is the legal doctrine of constitutional adjudication that states that all laws enacted by the legislature and all actions taken by any arm of the state, which impact a constitutional right, ought to go no further than is necessary to achieve the objective in view. (At paragraph 86)
>
> In a constitutional democracy where there is constitutionalism and not just the existence of a constitution, the exercise of power, whether Executive, legislative or judicial, is no longer based simply on the idea of having the power to do what one is authorised to do but is also accompanied by justification for decisions and actions. This is why judges give reasons for their decisions. Now, in the context of constitutional challenges, justification is now required of the Executive and legislative

arms of government. In a word, proportionality is about accountability. (At paragraph 88)

Under the proportionality test for constitutionality, the legislature must find the least harmful way to achieve the objective. (At paragraph 142)

According to the Petitioner's Counsel, the impugned provisions have not passed the proportionality test and are incompatible with the CURT and international and regional human rights instrument standards. Section 44 of the LLA is against the spirit, role, and purpose of the LLA itself. On that respect, it is a contravention of *Article 26(1) of the CURT.*

The Respondents on their part have protested the allegations that the impugned provision contravenes *Articles 3(1) and (2), 7(1) (c) and 19 of the ACHPR; Articles 3(a), (b), sic, 14(1) and 26 of the ICCPR and Articles 7,8 and 10 of the UDHR* due to the following reasons. Before embarking on those reasons, they correctly observed that *Article 3(a) and (b) of the ICCPRs* does not exist.

We have noted that there is *Article 2(3)(a), (b) and (c) of the ICCPR.* the Respondents argument that *Article 14(1) of the ICCPR* is totally misplaced as it is about equality before the Courts and Tribunals in criminal

charges. They therefore prayed for these two Articles to be disregarded in this Petition. We agree with the Respondents' submission in as far as the two Articles are concerned.

Understandably, the Respondents voiced their concern about the Petitioner's lengthy submission, which in their view was out of context in relation to his grievances in this petition. But they also wondered that the Petitioner has not shown how personally he has been affected by the impugned provision as per requirement of the law. Frankly, this should not detain us much as the records show that the Court addressed this point in its ruling dated 29th November 2023 against the Preliminary Objections raised by the Respondents. It is unbecoming of the Respondents to repeat what was declined in the said ruling. Even if entertained, this Court lacks jurisdiction to overturn its own decision.

The Respondents went further submitting that in his submission the Petitioner referred a case of **Charles Onyango Obbo and Another v. Attorney General** [200] UGCC 4, from which it is quoted:

> ... it has been determined that it is a duty of a person who complains that his rights and freedoms have been violated to prove that indeed the state or any other authority has

taken an action under the authority of law or that there is ana act or omission by the state which has infringed on any of the rights or freedoms of the Petitioner enshrined in the constitution...

To their surprise, there is nowhere in the Petitioner's submission where he has shown how his rights as per *Articles 13(1), (2), (3), (6)(a); Article 26(1) and Article 29(1) of the CURT and Articles 3(1) and (2), 7(1) (c) and 19 of the ACHPR; Articles 3(a), (b), (sic) Articles 14(1) and 26 of the ICCPR and Articles 7,8 and 10 of the UDHR* have been infringed or violated by impugned provision.

In the Respondents' view, the Petitioner has failed to show that he applied to the Minister for an extension of time to file his suit and he was not granted. The Petitioner has not shown that maybe he was an adverse party in a suit whose time had expired, and the aggrieved party applied for extension, the grant of which infringed the Petitioner's rights.

Mr Daimu Halfani correctly rejoined that these points were the subject of preliminary objection and were decided by this Court in its ruling dated 29th November, 2023 from page 10 to page 17. It is improper to raise them again in determination of the merits of the case. The Court cannot seat in

appeal against its own decision, it is simply *functus officio*. The ruling explicitly stated on page 12 that there is no legal requirement that one has to show that he has applied to the 1st Respondent for extension of time and was refused for him to file constitutional petition challenging constitutionality of *Section 44(1) and (2) of the LLA.*

The Petitioner's counsel argued that the issue before the Court now is the constitutional validity of the impugned provisions. The analysis and weighing of the impugned provisions and the contravened provisions of the Constitution and international human rights instruments has been done as indicated hereinabove. But a brief analysis is also provided hereinbelow.

It was the Respondents' submission that the Petitioner has failed to discharge his duty as per principle of presumption of constitutionality of statute by not proving his case to the standard required. They argued that a mere allegation that the impugned provision violates the provided Articles of the CURT, the regional and International Human rights Instruments does not mean that the same is unconstitutional. In the case of **Rev. Christopher Mtikila v. Attorney General** [1995] TLR 31 at page 34 it was explained that:

The constitutionality of the statutory provision is not found in what could happen in its operation but in what it actually provides for; the mere possibility of a statutory provision being abused in actual operation will not make it invalid.

Based on the said principle, the Respondents suggested that the Petition is baseless, it should be disregarded and fall short of the standards under which this Court may invoke its powers enshrined under *Article 30(5) of the CURT* read together with *Section 13 of the BRADEA* to declare the impugned provision unconstitutional or direct the Government or the Parliament to correct the alleged defects. They supported their view with the case of **Jebra Kambole v. Attorney General,** Miscellaneous Civil Cause No.27 of 2017 (unreported) at page 10, where this Court had the following to say with regards to the burden and standard of proof as well as presumption of constitutionality of statutes:

> We are aware of the settled principle of law that breach of the Constitution is such a grave and serious matter that cannot be established by mere inference but beyond reasonable doubt. We are equally aware of the principle of presumption of constitutionality of legislation or statutory

provision, which principles assign onus of proof upon those who challenge the constitutionality of legislation or a statutory provision. We do not entertain any doubt that the above principles call for evidence from the Petitioner to prove the alleged complaints of violation of the constitution.

While the Petitioner maintained that the standard of proof in constitutional cases is on the balance of probability in accordance with **The Attorney General v. Dickson Paulo Sanga** [2020]1TLR 61, the Respondents hold an opposite view. They argued that the Petitioner had a duty to prove that there is breach of his rights. He has to show how he has been personally affected by the impugned provision; therefore, it is unconstitutional, the duty which he has failed to do. Reliance was placed on **Jebra Kambole's case,** and **Charles Onyago Obbo's case.** As it will unfold hereinbelow we hold a different view. We think every citizen under *Article 26(1) and (2) of CURT* is obliged to defend the constitution whenever it is being violated or it is likely to be contravened by any authority or any law.

The Court is of the firm view that the requirement that the Petitioner should prove how he has been affected by the 1st Respondent's exercise of powers under *Section 44(1) of the LLA* is unfounded in law. Thus, the Respondents argument that the Petitioner was bound to prove on the existence of the alleged facts by a person whose rights to equality before the law, right from discrimination, fair trial, right to be heard and whose matter to be presided by the competent Tribunal or state agency established by the law has been violated is without substance. Their citation of *Section 110(1) of the Evidence Act, [Cap 6 R.E 2019]* was thus misplaced.

Unconvincingly, in the context of the present petition, the learned State Attorney argued that in absence of evidence to that effect, it is doubtful on whether the alleged facts exist or not. She sought support in the case of **Centre for Strategic Litigation Limited & Another v. Attorney General & 2 Others,** Misc. Civil Cause No. 21 of 2019 (HC unreported) at page 40-41 where this Court had the following observation in respect to proving existence of facts:

> Apart from citing the provision of law, there must be facts showing that what is contained in the provisions contradicts the Constitution. Those facts must be clearly shown in the Affidavit supporting the petition and

substantiated by the arguments during submissions. This is what we call proof and as pointed out; they must be put in such a way that leave no doubts...

In line with the above holding, the Petitioner in the case at hand has stated in his affidavit how the impugned provision of the LLA contradicts the CURT. The Respondents lamented the lack of sufficient proof of violation. They criticized the Petitioner for explaining how the impugned provision violates the Articles of the CURT and international human rights instruments. It was their view that the Petitioner failed to discharge his burden of proof to justify the existence of violations or infringements as the result of the said impugned provision. They invited the Court to be guided by the case of **Centre for Strategic Litigation Limited & Another v. Attorney General & 2 Others,** at page 42, *supra* which held that:

> It is on totality of the above, this Court is constrained to agree with the learned Principal State Attorney that indeed both the Affidavit and the written arguments by the learned counsel for the Petitioners utterly failed *to meet the standard of proof required in constitutional petitions by all intents. Allegations alone, however, serious may be, cannot be basis for the Court to declare a provision of law unconstitutional. The need to prove what is alleged need*

*not to be over-emphasized here over and again* [emphasis supplied].

Contrary to the Respondents' argument, in the present case, the affidavit of the Petitioner and his submission have lucidly shown disturbing features of the impugned provision of the LLA. The Petitioner ably established *prima facie case*. On that basis, the burden of proof shifts to the Respondents to show how the impugned provision conform to the CURT. Essentially that is the position in **Dickson Paulo Sanga's Case** *(supra).* Indeed, what is emphasized in **Centre for Strategic Litigation Limited & Another's case** page 40-41 is the establishment of *prima facie case*. Hence, it is our considered view that the Respondents' contention is unmeritorious. Firstly, their view requiring proof of how the Petitioner has personally been affected does not apply in every situation. And secondly, standard of proof in constitutional petition now is on the balance of probability as per **Dickson Paulo Sanga's case** *(supra).*

On top of the above observation, the Respondents have not told the Court whether absurdity inherent in the law itself requires further proof. Again, we wonder, does the absence of procedure in the law or lack of a right of appeal in *Section 44 of the LLA* against the decision of the 1st

Respondent require further proof other than looking at the law itself? The Respondents have not addressed these questions. We have touched upon absurdity of Section 44 of the LLA herein, but for detailed treatment of the subject matter see **Stephen Masatu Wassira v. Joseph Sinde Warioba & Attorney General** [1999] TLR 70.

This Court discards the Respondents supposition that the Petitioner ought to prove how he had been affected by the impugned provision of the LLA. The requirement to prove a violation of one's right or interest before filing a constitutional petition is not universally applicable and could potentially eliminate public interest litigation. This would be dangerous to a democratic state that upholds the rule of law and supremacy of the constitution. Such a requirement goes against the spirit of *Article 26(1) and (2) of the CURT.*

The Petitioner disputed the learned State Attorney's submission on the standard of proof in constitutional petition. While the State Attorney argued that the standard of proof is beyond reasonable doubt, Mr Halfani rightly argued that the standard of proof is on balance of probability. The Respondents seem to have relied on an old position that has been overtaken by the current stand of the law. The current position of the law is loud as

held by the Court of Appeal in **Dickson Paulo Sanga's case** *(supra)* at page 86:

> We agree with the Respondent that, *while the Respondent had a duty to establish a prima facie case which he discharged, the burden shifted to the appellant who was duty bound to prove that the impugned provision is not violative of the Constitution. We need not say more. In the premises, we do not agree with the appellant that in constitutional petitions it is incumbent on the Petitioner to prove his case beyond reasonable doubt. Emphasis added)*

Equally, it is not farfetched to refer to this Court's position in the case of **Joran Lwehabura Bashange v. The Chairman of National Electoral Commission and Another,** Misc. Civil Cause No. 19 of 2021 [2023] TZHC 16367 (29th March 2023) followed the decision of **Dickson Paulo Sanga case** *(supra)* and at page 34 this Court held:

> We are settled that the position in **Rev Christopher Mtikila v. Attorney General** (supra) as to proof beyond reasonable doubt in constitutional cases would no longer hold in view of the position held by the recent decision of the Court of Appeal in **Dickson Paulo Sanga**. We thus agree with the submission by the Petitioner's counsel that the Court of Appeal has clarified in **Dickson Paulo Sanga**

(supra) that the burden of proof in constitution petitions is not beyond reasonable doubt.

Reading through the submissions of the parties, one can hardly hide his dismay that the two decisions above eluded the mind of the learned State Attorney. We wish to reiterate here, that being the officers of the Court, the counsel for the parties ought to be objective in their submissions. Subjective submissions do not cater for justice.

Turning to the cases that the Petitioner cited from other common law jurisdictions touching upon basic rights and principles of due process, absurdity, fair trial, etc., the Respondents, horrendously dismissed them. They submitted that those cases talk of the right to equality, non-discrimination, fair trial and right to be heard which are being promoted by the impugned provision by giving second chance to those who could not access Court. They opined that these cases do not deal with law of limitation. But it is our settled view that the issue that prompted the Petitioner to refer to foreign jurisprudence was to show how fundamental human rights are universal and jealously protected parallel with showing that the impugned provisions of the LLA

contravenes them. Therefore, the cited foreign cases are relevant. But we understand that the Petitioner has made a meal of these cases.

In fine and considering what we have held herein above, we find the Respondents' allegation that the Petitioner has failed to discharge his constitutional obligation to prove his case to the standard required in the constitutional cases, that of beyond reasonable doubt, to be misconceived and without merit. By the same token the Respondents have failed to show how the impugned provision of the LLA conform to the CURT.

Regarding the Reliefs sought, the Respondents prayed for dismissal of the petition with costs. The Petitioner on his side besought the Court to declare that the impugned LLA provisions to be violative of the CURT, and the international instruments. Moreover, the Court should declare the provisions unconstitutional, hence void and strike them off the statute book. Further, the Court should direct the Respondents to rectify the unconstitutional provisions of the LLA. Antagonistically, the Respondents' prayed for the dismissal of the instant petition for being devoid of merits. We have hinted earlier that this is untenable and so is the prayer for costs.

Notably, and unlike the Respondents, the Petitioner has extensively submitted on the power of the Court to declare the impugned provisions unconstitutional and void and striking off from statute book. Undisputedly, the High Court has jurisdiction and power to declare unconstitutional and void any statute or provision of a statute which contravenes the provisions of the Constitution. After such a declaration the High Court has power to make further order to strike down from the statute book the offending statute or provision of the statute. The sources of this power are the inherent jurisdiction, the CURT and the BRADEA. In the case of **Attorney General v. Lohay Akonay & Another** [1995] TLR 80 at page 90 the Court of Appeal stated:

> It is a fundamental principle in any democratic society that *the Constitution is supreme to every other law or institution.* Bearing this in mind, we are satisfied that the relevant proviso means that what is stated in the particular part of the Constitution is to be exercised in accordance with relevant law. It hardly needs to be said that such regulatory relevant law must not be inconsistent with the Constitution. (Emphasis added)

In the Case of **Jackson S/O Ole Nemeteni @Ole Saibul @Mdosi @Mjomba Mjomba & others v. Attorney General,** Misc. Civil Cause No. 117 of 2004(unreported) [2007] TZHC 494 (13th July 2007) at page 22 at page 17 this Court said:

> The fact that the Constitution is the supreme law of the land has long been settled. A law that is inconsistent with the provisions of the Constitution shall, to the extent of that inconsistency be void. This is also settled.

The Petitioner intelligibly submitted that this Court has inherent jurisdiction to declare that the local legislation contravenes the ACHPR, the ICCPR and the UDHR. Jurisprudence from our jurisdiction and other Commonwealth jurisdictions have indicated that such declaration can validly and competently be made. In the case of **Attorney General v. Lohay Akonay & Another** *(supra)* at page 94 the Court of Appeal stated:

> Although the Deputy Attorney-General was very forceful in submitting to the effect that the learned trial judge erred in striking down from the statute book those provisions of *Act. No. 22 of 1992* which she found to be unconstitutional, he cited no authority and indicated no appropriate practice in countries with jurisdiction similar on what may be described as the authority or force of reason by arguing that the Doctrine of Separation of Powers dictates that only

> the Legislature has powers to strike out a statute from the statute book. We would agree with the learned Deputy Attorney-General in so far as valid statutes are concerned. We are unable, on the authority of reason, to agree with him in the case of statutes found by a competent Court to be null and void. In such a situation, we are satisfied that such Court *has inherent powers to make a consequential order striking out such invalid statute from the statute book.* (Emphasis supplied).

The Petitioner considers the High Court as having powers and discretion under *Article 30(5) of the CURT and Section 13 of the BRADEA* to grant appropriate reliefs in appropriate cases. The overriding objective in granting reliefs is to secure the Applicant the enjoyment of the basic rights, freedoms and duties conferred or imposed on him under the provisions of *Articles 12 to 29 of the CURT.* But the Court will have to ask itself what orders to make to ensuring the enjoyment of the basic rights conferred by the CURT.

As to the proper interpretation of the extent of the powers and discretions under Article 30(5) of the CURT and Section 13 of the BRADEA, analogy is drawn from the case of **Jorsingh v. Attorney General** [1997] 3 LRC 333 where at page 334 it was held that:

> There is no limitation on what the Court can do. Any limitation of its powers can only derive from the constitution itself. Not only can the Court enlarge old remedies, it can invent new ones as well, if that is what it takes or is necessary in an appropriate case to secure and vindicate the rights breached. Anything less would mean that the Court itself instead of being the protector, defender and guarantor of the constitutional rights, it would be guilty of the most serious betrayal.

On that basis the Petitioner has prayed for declaratory orders which are backed by *Article 30(5) of the CURT and Section 13 of the BRADEA.* Understandably, this Court has jurisdiction and power to make such a declaration. However, as righty held in the case of **Julian J Robinson v. Attorney General of Jamaica** *(supra)* at paragraph 170 that:

> A declaration of unconstitutionality does not mean that the legislature cannot pass a law to give effect to the Executive's policy. All that has happened is that the judicial arm has said that that particular law has violated the Constitution. The legislature is free to revisit the issue.

Again *Article 64(5) of the CURT* clearly provides that:

> "...this Constitution shall have the force of law in the whole of the United Republic, and in the event any other law

conflicts with the provisions contained in this Constitution, the Constitution shall prevail and that other law, to the extent of the inconsistency with the Constitution, shall be void."

Thus, legislation or its provision can be declared void under *Article 64(5) of the CURT.* That was also held in **Mtikila v. Attorney General, [1995] TLR 31** at page 52. Moreover, in the case of **Kukutia Ole Pumbun and Another v. Attorney General and Another** [1993] TLR 159 at page 169 the Court of Appeal stated that:

> The Republic has totally failed to show that the said Section is saved by the provisions of the Constitution which allow for derogation from basic human rights. In the circumstances we have no alternative but to hold, in terms of *Article 64(5) of the Constitution of the United Republic of Tanzania that s 6 of the Government Proceedings Act 1967 as amended by Act 40 of 1974* is void. It is accordingly struck down for being unconstitutional.

Furthermore, in the case of **Director of Public Prosecutions v. Daudi Pete** [1993] TLR 22 the Court of Appeal found at page 41 that *Section 148(5)(e) of the Criminal Procedure Act violates Article 15(2)(a) of the CURT* hence unconstitutional and would be null and void in terms of *Article 64(5) of the CURT* unless it is saved by general derogation clauses

found in *Article 30 and 31.* Therefore, the Petitioner's prayer that the Court declare *Section 44(1) and (2) of the LLA* to be unconstitutional and void under *Article 64(5) of the CURT* is sound.

Aside from constitutional challenge, another prayer was for declaration that the impugned provisions of the LLA contravene the International and Regional Human Rights Instruments. The Petitioner submitted that this Court has jurisdiction to declare that the local legislation contravenes the ACHPR, the ICCPR and the UDHR. As shown below, this Court and the Court of Appeal have validly and competently done so. The Respondents did not submit against this relief as they had already viewed that the petition lacks merit.

In any case in the case of **Mtikila v. Attorney General**[2006] TLR 279 at page 311-312 the High Court declared the amendments to *Articles 21 (1) Article 39 (1) (c) and Article 67 (1) (b) introduced by Act No. 34 of 1994* also known as the 11th Amendment are unnecessary and unreasonable restrictions to the fundamental right of the citizens of Tanzania to run for the relevant elective posts either as party members or as private candidates. It declared the alleged amendments unconstitutional and contrary to the International Conventions to which Tanzania is a party.

Likewise, the Court of Appeal in **Attorney General v. Rebeca Z. Gyumi** *(supra)* at pages 133-134 upheld the High Court invalidation of certain provisions of the Law of Marriage Act (LMA), 1971 holding that *Sections 13 and 17 of that Act* in Tanzania violates international law and contract principles, particularly in marriages. *The Convention on the Rights of the Child, 1989 (CRC)*, came after the LMA. And in 2009, Tanzania enacted *the Law of the Child Act* to reflect the CRC rights without amending the LMA to incorporate the age and rights protected.

Regarding severability, the Petitioner submitted that considering the entire submissions it is evident that the impugned provisions of *Section 44(1) and (2) of the LLA* are unconstitutional and void and cannot be saved and can be scrapped without any adverse effect. However, there are two sub-Sections, that is, *Section 4(3) and (4) of the LLA* which have not been directly attacked and are not subject of this petition. Can the two *sub-Sections (3) and (4) of Section 44* be severed?

In the case of **Attorney-General for Alberta v. Attorney-General for Canada** [1947] A.C. 503 the Privy Council stated at page 518 that:

> The real question is whether what remains is so inextricably bound up with the part declared invalid that

> what remains cannot independently survive or, as it has sometimes been put, whether on a fair review of the whole matter it can be assumed that the legislature would have enacted what survives without enacting the part that is ultra vires at all.

The two *subsections (3) and (4) of Section 44 of the LLA* support or refer to *Section 44(1) of the LLA* which confer the impugned Minister's jurisdiction and power. The provisions of *Section 44(3) and (4)* depend on *Section 44(1) of LLA.* Thus, on a fair review of the whole matter it cannot be assumed that the legislature would have enacted what survives (i.e. *Section 44(3) and (4) of LLA)* without enacting the part that is *ultra vires* (that is, *Section 44(1) and (2)),* and that once the impugned provisions are declared invalid and stricken off the statute book what remains cannot independently and meaningfully survive. Truly, the rectification will have to extend to the whole of *Section 44 of the LLA.* But severability of law is not among the reliefs sought in the petition. It may be by implication. But we cannot speculate.

Remarkably, the Petitioner has also requested an order for the Respondents to ensure the extension of time to file suits are dealt by the Court just like appeals and applications under *Section 14 of the LLA,*

as per *Article 30(5) of CURT and Section 13(1) of the BRADEA*, guaranteeing equal protection and equality before the law.

The Respondents on their side have submitted that the prayer should be disregarded due to the fact that the legislature's intention was that the extension of filing suits should be dealt with other state agency who is the 1st Respondent as grasped from the 1971 Parliamentary debates on the Law of Limitation Bill when the Attorney General proposed the provision of *Section 44 of LLA* that empowers the 1st Respondent to grant the said extension of time to file suits. He intimated that that will be well received by judicial officers as often they were dismissing cases for being time barred.

Although the Respondents argued that the legislature's intention in enacting the LLA is in line with the CURT, it is observed that *Section 44 of the LLA* was enacted prior to inclusion of the Bill of Rights in the CURT. We find substance in the Petitioner's argument that *Section 44(1) of the LLA* lacks procedures for exercising powers granted to the 1st Respondent, it contravenes rules of natural justice and lack of right of appeal.

It also came to our attention that the Government had an opportunity to rectify the mischief in impugned provisions like in other statutes. It is for this reason the Petitioner beseech the Court to give directions to the Respondents. It was his view that negligence to take steps to amend the law when circumstances required him to take such action has happened before, though on a different law. In the case of **Judge-In-Charge, High Court at Arusha & Another v. N.I.N. Munuo Ng'uni** [2004] T.L.R. 44 at pages 55-56 the Court of Appeal held:

> In the fifth ground the appellants sought to fault the learned judges for holding that the second appellant was to blame for his negligence to take steps to amend Section *4(2) of Act No. 21 of 1969.* Again Mr. Kamba conceded that the Attorney General is duty bound to initiate amendments but argued that the Respondent has also an obligation to draw the attention of the A. G. to pieces of legislations needing revisiting. The Respondent submitted that the Attorney General is the principal legal adviser to the Government under *Article 59 (3) of the Constitution* and contended that it was his duty to amend the offending Section. Their lordships had this to say in their judgment:

In actual fact, a number of repeals and amendments of the law have been made since the commencement of *Act 16 of 1984*. But nothing has been done to the impugned provision in order to bring *Act 21 of 1969* into conformity with the basic rights provisions of the Constitution. There being no evidence that the Attorney General has taken any steps in that direction, the reasonable inference is that he has been remiss in his duty and a charge of neglect, not negligence, has thus to stick.

For the sake of clarity, we have to point out that *Act l6 of 1984* referred to by their lordships is *the Constitution (Consequential, Transitional and Temporary Provisions) Act, 1984.* That Act gave the Government three years in which to "bring existing laws into conformity with the basic rights provisions of the Constitution and thus stalling any action in that period of time.

We are at one with the learned judges and, we wish to add, that this Court prompted the Attorney General into action in **Attorney General v. W.K. Butambala** [l993] TLR 46 which dealt also with, *Section 4 (2) of Act No. 21 of 1969*. This Court said at page 54:

By way of post-script we desire to add that the fees payable *under Section 4 of the Legal Aid (Criminal Proceedings) Act, 21 of 1969*, may be grossly inadequate

and out of date. We think something positive must be done

...

This Court said that on 14th June, 1991, yet up to 9th November, 1993, when the cause of action in this matter arose, a period of almost thirty months, nothing was done by the Attorney General. In that appeal, just as in this one, the Attorney General was very ably represented. We, therefore, find that the learned judges were justified to hold that the charge of neglect was correctly placed at the door of the second appellant. We cannot fault them. This ground, too, fails.

Consequently, the Court order directing the Respondents is vital because the Court has a duty to protect the constitution of the land as held in **Hamisi Masisi and Others v. the Republic** [1985] TLR 24 at page 30.

Mr. Daimu Halfani rejoined further that the learned State Attorney has invited the Court to decline ordering the Respondents to take steps to ensure extension of time to file suits are dealt by the Court under *Section 14 of the LLA* because it was an intention of the legislature to confer power to extend time to file suits to the 1st Respondent not to the Court. He submitted that in contrast to the learned State Attorney's view the legislature in our jurisdiction is not supreme. To him what is

supreme is the constitution. And his prayer was premised on the facts that *Section 44 of the LLA* is unconstitutional and void as submitted in submission in chief. The unconstitutionality can be removed and the purpose of extension of time to file suit can be constitutionally met by inclusion of the term of suit in *Section 14 of the LLA*. Although there is sense in Mr. Halfani's submission, we decline to direct the Respondents to ensure the extension of time to file suits is dealt by the Courts under *Section 14 of LLA* because once *Section 44 of the LLA* is rectified that mischief will be addressed.

However, ably, the Petitioner argued that the Court could read the word "suit" into *Section 14(1) of the LLA* to extend the Applicant's time to file a suit for the enjoyment of basic rights. The High Court of Tanzania used similar constructions to avoid absurdity in the case of **The Chairman of Democratic Party v. The Registrar of Political Parties & Another,** Miscellaneous Civil Application No. 42 of 1993, the High Court of Tanzania (unreported). Similarly, in the case of **Joseph Warioba v. Stephen Wasira and Another** (supra), the Court of Appeal held that; reading words into Sections is permissible in appropriate circumstances. In the United Kingdom, where the

Parliament is Supreme and its legislation is immutable, the House of Lords in **Inco Europe Ltd and Others v. First Choice Distribution (A Firm) and Others** [2000] UKHL 15 (9th March, 2000) expressed some degree of where Courts can add or substitute words into a statute. It held that the Courts must be sure of three matters: *the intended purpose of the statute or provision, that the draftsman and Parliament failed to give effect to that purpose in the provision, and the substance of the provision if the error in the Bill was noticed.*

By way of a brief analysis, we revisit the points raised earlier and subject them to the affidavits and submissions of both learned counsel representing the parties and the relevant laws. The issues are: (1) *whether Section 44(1) and (2) of the LLA contravene the CURT. Under this, the sub issues are; absurdity of the impugned provisions of the law, lack of due process, contravention to fundamental rights e.g., equality before the law, rules of natural justice (rule against bias and right to be heard), lack of appeal; (2) whether Section 44(1) and (2) of the LLA contravenes Articles of ACHPR, ICCPR and UDHR; (3) whether Section 44(1) and (2) of the LLA is arbitrary and lack of procedural safeguards to guard against abuse of discretionary powers; (4) what is the standard*

*of proof in constitutional petitions. See* ***Dickson Sanga's case****; (5) whether the Petitioner is required to prove his interest or how has he personally been affected by the 1st Respondent's power under Section 44(1) of the LLA.* This last point has been addressed by the ruling of this Court dated 29th November 2023. Thus, needless to repeat here.

We begin with the issue; *(1) whether Section 44(1) and (2) of the LLA contravenes Articles 13(1), (2), (3), (6)(a); Article 26(1), and Article 29(1) of the CURT,* under this heading, the sub issues are; absurdity of the impugned provisions of the law, lack of due process, contravention to fundamental rights e.g., equality before the law, rules of natural justice (rule against bias and right to be heard), lack of appeal. The Petitioner has meticulously submitted on these critical points. We noted that the Respondents did not seriously make a case against them. In our jurisdiction absurdity of the law has been treated as a terrible legal malaise and the Courts have readily intervened to remove the absurdity in the law (see the case of **Stephen Masatu Wassira v. Joseph Sinde Warioba & Attorney General** (supra). But what are the features of absurd law, they include a law that lacks procedural safeguards. It restricts the right of appeal. It contravenes the rules of

natural justice (right to be heard and rule against bias). As rightly pointed out by the Petitioner, these features are visible in the impugned provision of the LLA. The absurdity in *Section 44(1) and (2) of the LLA* contravenes the CURT. As seen herein above, the Petitioner eloquently presented these points. It is crystal that the impugned provisions lack procedures or procedural safeguards to control abuse of discretionary powers given to the 1st Respondent. *Section 44(1) and (2) of the LLA* infringes upon the rules of natural justice (right to be heard and rule against bias) hence contravenes the CURT. A law or decision by an authority that ignores the rules of natural justice is legally invalid. See **Mbeya – Rukwa Auto Parts & Transport Limited v. Jestina Mwakyoma** [2003] T.L.R. 251.

The Respondent argued that the power given to the 1st Respondent to extend time to file suits under the provisions of *Section 44(1) and (2) of the LLA* does not apply to the government. This was resisted by the Petitioner who cited the Government Proceedings Act to show that the government may apply for extension of time. This Court wonders whether *Section 44 of the LLA* bars the 1st Respondent from extending time for filing suits to the Government including its institutions and public corporations.

Regarding the proceedings before the 1st Respondent when dealing with application for extension of time to file a suit, it is unclear as to what recourse does the Applicant have in case his application for extension of time to file suit is rejected by the 1st Respondent? The Respondents have not addressed these critical questions.

We thus find that the impugned provisions of the LLA contravene the CURT, hence void.

Also, it is our understanding that it was not the objective of the CURT that the provision of the LLA would render the provisions of the same CURT nugatory and unrealistic. The violation of *Articles 13(1), (2), (3), (6)(a); Article 26(1), and Article 29(1) of the CURT by Section 44 (1) and (2) of the LLA makes the Constitution prevail and Section 44 (1) and (2) of LLA* to the extent of inconsistence void. In other words, the provision of *Section 44 (1) and (2) of LLA* would not render nugatory the provisions *of Articles 13(1), (2), (3), (6)(a); Article 26(1), and Article 29(1) of the CURT.* Indeed, none of the provision of any statute can supplant the deficiencies in *Section 44(1) and (2) of the LLA.*

The next issue is *whether Section 44(1) and (2) of the LLA contravenes Articles of ACHPR, ICCPR and UDHR.* As the submissions

show, the Petitioner has correctly argued that the cited international instruments have been domesticated in Tanzania [see **AG v. Rebeca Z. Gyumi**; **Mtikila v AG** (supra); **DPP v. Daudi Pete** (supra)]. They are part of the CURT. These instruments contain Articles on fundamental rights and principles such as equality before the law, right to be heard, procedural fairness, etc. We have observed that the Respondents did not submit on the nexus between the rights contained in these international conventions and the CURT and how they are linked or delinked with the impugned provisions of the LLA. They simply lamented the lengthy submission of the Petitioner, and they could not comprehend its relevance. On our part, we feel compelled to state that Tanzania has ratified these international instruments. They are part of the CURT. It is also non-issue that any law that contravenes these instruments cannot be spared. There are several cases that held this view such as **Rebeca Gyumi's case**. In as far as the fundamental rights are concerned, such as the right to be heard, *(Article 13(6) of the CURT)* enshrined as well in the cited international instruments, *Section 44(1) and (2) of the LLA* is deficient and hence contravenes them. Therefore, the Petitioner

correctly argued that violation of the Articles of international instruments is a violation of the CURT.

The third issue is; *whether Section 44(1) and (2) of the LLA is arbitrary and lack of procedural safeguards to guard against abuse of discretionary powers; what is the standard of proof in constitutional petitions?* The standard of proof in constitutional petitions is on the balance of probability as well articulated in **Dickson Paulo Sanga's case** (supra). Procedures on the exercise of powers are critical in the control against abuse of such powers. The procedures enhance transparency and accountability, hence enhancing the rule of law. The Petitioner rightly submitted that the impugned provisions conspicuously lack procedural safeguards to guard against abuse. It is not clear how the application for extension of time to file a suit is handled by the 1st Respondent. Such void in the law cannot be left unfilled. It will be fertile ground for abuse of discretion granted. There is sense in the submission of the Petitioner. This Court declares that the impugned provisions clearly lack procedural safeguards to control exercise of the 1st Respondent's discretion in extending time to file suits. The absence of procedures poses a danger that the powers may be exercised arbitrary

as held in **Kukutia Ole Pumbun & Another v. Attorney General and Another** *(supra).*

Having analysed all the above issues *albeit* briefly, we now scrutinize the reliefs sought by the parties. The Petitioner has prayed for the following: (a) declaration that *Section 44(1) and (2) of the LLA* are unconstitutional hence null and void and should be expunged from statute book; (b) declaration that Section *44(1) and (2) of the LLA* contravenes Articles of ACHPR, ICCPR and UDHR. Since these international instruments have been domesticated and incorporated into the CURT, the Courts have held that contravention of the international instruments (such as ACHPR, ICCPR, and UDHR) ratified by the United Republic of Tanzania is contravention of CURT; (c) a Court order directing the Respondents to take necessary steps to ensure extension of time to file suit are dealt and determined by the Court as is with the extension of time to file an appeal or an application under *Section 14 of the LLA.* And (d) each party to bear its costs.

On the other hand, the Respondents prayed for dismissal of the petition for lack of merits. It was the Respondent's view that the Petitioner has failed to prove how he has been affected with the

impugned provisions of the LLA. They also prayed that costs be granted in their favour.

From the analysis above and fortified with the authorities cited, the Court declares, and orders as follows:

(1) the provisions of *Section 44(1) and (2) of the LLA* are void to the extent that they contravene the CURT due to possible bias, lack of right to be heard, and discriminatory as the opposite party to the application for extension of time is not involved at all, hence lack of equality before the law. These provisions pose absurdity for lacking procedural safeguards against abuse of discretionary powers granted to the 1st Respondent. Thus, lacking due process. And above all there is no right of appeal afforded.

(2) It is further ordered that the Government through the Office of Attorney General is given 12 months from the date of this judgement to rectify the mischief identified, failure of which the aforesaid provisions of the LLA will be non-starter and are struck out from the statute book.

(1) This being a public interest litigation of its kind, each party to bear its costs.

Order accordingly.

**DATED** at **DAR ES SALAAM** this 13th Day of March, 2024.

**Y.J. MLYAMBINA**

**JUDGE**

**13/03/2024**

**E. E. KAKOLAKI**

**JUDGE**

**13/03/2024**

**U. J. AGATHO**

**JUDGE**

**13/03/2024**