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Name of School/Jina la Shule: LST

Name of Scholar/Jina la Mwanafunzi: NYA GAWA

Subject/Somo: LEGAL AID & HUMAN RIGHT

Class/Darasa: 40TH COHORT

Date/Tarehe: 2025

Kelvin Exzaudi Nyagawa - @ 2025
40TH COHORT

LS 110 - LEGAL AID AND HUMAN RIGHTS ADVOCACY

Date: 21 - 25/04/2025

First Session: Introduction, Generation of Human Rights and Human rights in Africa.

Violation of Civil and Political rights VS Social economic and Cultural rights and its consequences

Importance of respecting the Human Rights Socially

1. There is assurance of peace & solidarity.

Human is a branch of public Law that regulate the relationship between the government & Individuals

They (Individuals) have formulated Rules to be governed with

2. It helps to create a sustainable society.

When it comes to a human right, it does not matter on what generation we are.

People fight first for fundamental Rights not Economics

DR. ALOYSE RUGAZIA

22nd April, 2025

Instruction session: Introduction, Generation of Human Rights and Human rights in Africa

Violation of Civil and Political rights vs Social economic and Cultural rights and its consequence

1. Introduction to generational right
2. Human rights in Africa
3. Procedure for enforcement of Human rights in Tanzania (Tanzania & Zanzibar), Extraterritorial Enforcement of Human Rights in Tanzania (The UN Mechanism): Charter based Mechanism & Non-Charter based Mechanism & Practical Activities - Pleadings, objections, best practice

GENERATIONAL OF RIGHTS

I am sure that you all know about this.

(i) Civil & Political Rights - First generation
Emerged as a result of Movement of Labourers and Industrialization, Labour thought that they were denied their rights. Contained on International Covenant on Political & for Civil Rights, 1966

(ii) Economic, Social & Pol. Cultural Rights
International Covenant on Economic, Social & Cultural Rights

(iii) Collective Rights - 3rd generation
Those who are Marginalized. People with disabilities eg Albinism

GENERATION of HUMAN RIGHTS

(i) Civil & Political Rights

Right to life,
Freedom of speech, religion and Assembly
Torture

These are fundamental and basic rights which are enforceable by the court of Law.

LEGAL BASE

NOTE International Convenant on Civil Political and Civil Rights (ICCPR), 1966

(ii) Economic, Social and cultural Rights

Right to work - Article 22 of CUDRT

It is basic Right there but it is still an Economic right.

Question: If you do not have work can you sue the government?

You should have access to work - the Law has provided that.

Your job should also be protected, Someone should not take it arbitrarily.

But it is not that the government can give everyone job.

It is limited on its enforcement.

These are not directly enforceable. Like the State has no immediately responsibility of assuring you the availability or its enforcement.

The State just sign the Covenants with no guarantee on its possibility in enforcement.

How do you protect my right to life?
You just need not to kill me"

But with economic right, you have to invest in it. E.g when a person is sick then he should be taken to hospital.

Look at the right to education -
If this could be put in the 1st generation means you have to make sure everyone goes to school.

1st Generation

Political Right just need NEGATIVE ACTION I do not anything from you - E.g freedom of speech, just let me speak only that or freedom of movement (you just require not to send me to jail).

And the State How does it regulate - They should be reasonable and not arbitrary.

LEGAL BASIS

NOTE International Covenant on Economic, Social, and cultural Rights, 1966

(iii) Collective Right / ~~Indirect~~ Solidarity Right

NOTE The African Charter on Human and Peoples Right

It is peoples' Rights.
It is found under the African fundamental of idea of the society known as "UBUNTU"

In Western philosophy they say "WE ARE BECAUSE I AM"

"TU PO KWASA BABU NI PO"

In African Society / philosophy it is called
"YOU ARE BECAUSE WE ARE"
"UPO KWASABABU TUPO"
"BILA SISI USINGE KUEPO"

The first is LIBERAL, the other is CONSERVATIVE

In Africa, that makes the African Charter unique.
Africans believes on collective Rights.
E.g The right to burial ground (kwenda kwenye makaburi)
Right to a central ground.

E.g once an African dies in USA or other foreign countries they are transferred to their Mother-Land so as they can be burried their.

Because they think they belong there and not abroad.

If you look at the Charter, even PARENTING look like a collective duty. Ni jukumu la jamii nzima.
E.g The issue of greetings, you greet everyone but that is not a business of Europe.

Previously it was possible to leave your child with other person and no problem.

The European, the PARENTS have the responsibility of taking care of their kids but the kids are not responsible to take care of their PARENTS.

And for parents if they do not take care of you it is criminal.

NOTE African Charter embodies the responsibility of a child to take care of old parents. That means a parent can sue you in the African Court under African charter to enforce that right.

"Una Jukumu la kumtunza Mzazi na usipomtunza utapata LAANA" That is according to Africans.

But what is LAANA? Do you believe that? How would you know about that

But, for parents, do not reject your kids. Don't say you give LAANA, send your kid to the Hospital, as a normal kid with well-mental health cannot do what is considered wrong. Help him or her. As a normal human being cannot for instance beat his/her parents.

Uniqueness of African Charter
- Some issues are not covered in other regimes.
- We have our own ethinicity & dignity.

That is all about Generation of Human Right and you should go and dig deeper. Read those laws I have just cited for collective Rights read the AFRICAN CHARTER, etc.

Read Article 29 of the African Charter the "To preserve harmonious development of your family, respect parents at

all times, to maintain in case of need

But how the state like Tanzania realize the provision of Article 29 of the African Charter?

One was prosecuted as criminal for failure to take care of their parents. He was sent to jail for six (6) months

Some people have Lost identities (they dont know their gender) they are covered under the Human Rights.

PRACTICE & PROCEDURES IN ENFORCEMENT OF HUMAN RIGHT IN TANZANIA - ZANZIBAR

1. There is a framework provided in the Constitution (Constitutional framework for enforcing Human Right).

2. Framework for enforcing right which are violated by Administrative actions

CONSTITUTIONAL FRAMEWORK FOR ENFORCEMENT OF RIGHT

(a) Basic and fundamental Rights provided under Part III of the Constitution framework for enforcing

Part III contains fundamental rights listed from Article 12 - 29 of the Constitution.

(b) Rights not provided under Part III of the constitution enforceable under Article 108 of the constitution according to case Laws.

"Cases says that those not available under Part III can be enforced under Article 108 of CURT."

ENFORCEMENT OF THE RIGHTS PROVIDED UNDER PART III OF CONSTITUTION

SOURCES OF LAW:

How do we enforce those rights.

1. BRADEA - Basic Rights and Duties Enforcement Act
2. The BRADEA Rules, G.N No. 304 of 2014 Basic Rights and Duties Enforcement (Practice and Procedure) Rules, 2014.

IMPORTANT PROVISIONS UNDER BRADEA

Read Section 4 of BRADEA

Application to the High Court if there is violation of provisions of Article 12-129 of the constitution.

QUESTION LAW SCHOOL

COMPETENT COURT: High Court

Cause of action: Violation of provisions of Article 12-29

The scope: is violation of provisions of Article 12-29

Answer simply your Exams. Go direct.

QUESTION

Means of filing / The Documents you are required to file for case under BRADEA?

Read Section 5 of The BRADEA
- Application to be made by PETITION to be filed to the appropriate registry as Originating Summons.

Read also Rule 4 of The BASIC RIGHTS AND DUTIES ENFORCEMENT (PRACTICE AND PROCEDURE) RULES, 2014
"Any Petition filed in accordance with the provisions of the Act shall be by way of ORIGINATING SUMMONS."

DOCUMENT:
Originating SUMMONS

In Exam, if you Title the document as PETITION that is a problem.

In the past, it used to be a simple Petition See Article 30 (2) of CURT

CONTENTS OF PETITION
Section 6 of BRADEA Act
- Name and address of petitioner
- The persons, relief is sought (Respondents)
- Grounds
- Specify Section under Part III violated
- facts but not the evidence to prove such facts.
- The nature of redress sought

NB: The above is not the ~~exors~~ full ~~exactive~~ list

Amendment of 2010, you have to also accompany an affidavit showing the extent to which you have been personally affected.

That means, that particular section entails that only individuals can bring the case. Means NGO's cannot do that. Only individuals can do that.

Article 26(1) of the constitution what does it state?
"Every person has a right in accordance with the procedures provided under the Law to take action in protection of the constitution"

A person means natural and juristic person, so other person says one of the amendments negates the constitution.

So naturally, ORIGINATING SUMMONS SHOULD BE ACCOMPANIED BY AN AFFIDAVIT

Do we need two affidavit or only a single affidavit?

Do what the Law says:
(i) ORIGINATING SUMMONS
(ii) AFFIDAVIT SHOWING THE EXTENT WHICH YOU HAVE BEEN PERSONALLY AFFECTED
(iii) AFFIDAVIT SUPPORTING ORIGINATING SUMMONS (Evidence, we mean attachment).

Read also Rule 12 of BRADEA Rules:-
"The Court composed of three Judges shall,

upon receiving the reference from the subordinate Court, hear and determine the reference with in ninety days and transmit a copy of its decision to the court which made a reference.

(2) The court from which the reference was made shall, on receipt of decision by the High Court, dispose of the case in conformity with the decision."

NOTE AFFIDAVIT OF A PERSON WHO WAS SUPPOSED TO GIVE ORAL EVIDENCE Normally support the ORIGINATING SUMMONS.

Witnesses may swear those affidavits and the other side will have the right to cross-examine the witnesses.

In normal circumstances, the one swearing the affidavit should go and swear to another Advocate

The Written Laws (Miscellaneous Amendment) No. 3 of 2020.

"You need an affidavit as a substitute of Oral Evidence".

NOTE DOCUMENTS THEREFORE:-

1. Originating Summons
2. Affidavit in support of Originating Summons
3. Affidavit showing to what extent you have suffered. N

AND FOR WITNESSES

4. Affidavit as substitute of ORAL evidence.

NOTE FOR EXAMINATION PURPOSE

In Exams, make sure that the document is complete. Just write precisely, concisely, be neat. You cannot pass for attempting a simple question. Have" SPEED.

If is for better you read the all questions so as to know what / how long will the question take or how much time will you take to complete the Exams. Budget your time properly.

HEARING

Previously, the matter was to be taken first to a Single Judge to determine whether the matter is frivolous or Vexatious.

Section 9 of BRADEA

The New Amendments of 2025, has amended Section 10 of BRADEA

NOTE The Written Laws (Miscellaneous Amendment) Act (No. 2) of 2025

Section 10 amended

COMPOSITION OF THE COURT

Section 10 of The Court

Three Judges of the High Court

NOTE ASSIGNMENT!

Find these amendments and tell me what does they mean?

Does that means the three Judges will determine whether the matter is Vexatious or frivolous.

SERVICE

It should be made
Rule 5(1) of The BRADEA Rules
"Within seven days after filing of the Petition."

What follows is a Reply Rule 6(1)

CONSEQUENCES OF FAILURE TO SERVE
- Your matter becomes incompetent
- The court may adjourn. Rule 5(3) of The Rules

REPLY TO PETITION

It should be accompanied by a Counter-affidavit. Rule 6(1) of the Rules

SPEED TRACK

Rule 15(2) of BRADEA Rules
"~~The~~ The Petition shall be heard and determined within ninety days after the assignment."

CONSEQUENCES OF PROCEEDING WITH THE MATTER AFTER Lapse of speed track
It will be a ground of Appeal.

Read also Section 15 of The BRADEA Act

Normally, constitutional cases do not need evidence. But in some other circumstances may require witnesses - (Affidavit of a person) a sometimes the witness may be called, examined & Cross-examined so as the Court to reach just decisions.

Read Rule 15 (3) of The BRADEA Rules.

JUST STORIES HERE

PRACTICE: Human right is having people who cares about others.

Historically there was Heroism and Heroins You acquire status and respect if you acquire more Land.

As of current, Heroism is created according to what you have in your Bank Account. It is all about Monies.

The society now is build according to POWER and MONEY.

In the world, you should Leave behind The LEGACY.

B. THE ENFORCEMENT OF THE RIGHTS OTHER THAN THOSE UNDER PART III OF THE CURT

Here we are not talking about rights under Article 12-29 of The constitution.

We are talking those not there. & the enforcement of those not provided there has its own ways.

Read the case I am sharing with you through your CRs'

"BOB CHACHA WANGWE & 2 OTHERS V MINISTER PRESIDENT'S OFFICE REGIONAL ADMINISTRATION AND LOCAL GOVERNMENT, MISC. Civil Cause No. 19721 of 2024

NOTE

TITO ELIA MAGOTI & ANOTHER VERSUS NATIONAL ELECTRAL COMMISSION & 3 OTHERS, MISC. CIVIL CAUSE No. 3 OF 2022 - HCT DSM Main Registry.

Here the Petitioner brought the case under Article 108 of CURT not the BRADEA.

The PO raised that the matter the incompetent.

The argument was that since the matter was brought challenging the rights other than those provided under part III of CURT then the matter was properly before the High Court under Article 108(2) of CURT.

Therefore, If that is so then the High Court sitting with a single Judge can hear and determine the matter brought under Article 108(2) of The CURT.

Holding

E.B Luvanda J

The case can be brought under Article 108 (2) of The CURT and Section 2(3) of JALA

The case is applicable if the matter falls outside the scope of part III of the CURT.

DOCUMENTS

Same documents but enabling provision is different

Since the BRADEA provide everything then there you go.

COMPOSITION:

A Single Judge can determine the matter on MERIT

This second approach is all about what case Laws says.

Question: If you have a case falling

2. ENFORCEMENT OF HUMAN RIGHT VIOLATION BY ADMINISTRATIVE ACTION

A Judicial Review

It takes two faces

- LEAVE - Rule 5 of Judicial Review Rules
- Judicial Review itself - Will be covered on Friday.

READ:

1 The Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, R.E 2019
Section 17 - 19 of The Act

2. The Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014, Rule 5 and 7.

B: Commission for Human Right and Good Governance (CHRAGG)
Article 129 of CURT
- Go and Read on how to enforce here.

PROCEDURES FOR ENFORCING HUMAN RIGHT IN ZANZIBAR

For leader, he believe Zanzibar is a different bar.

As to practice in Zanzibar you should follow certain prerequisites. Like being Conversant with the Laws of Zanzibar

Read Section 4 (2) of BRADEA Act

" This Act shall apply to Tanzania & Zanzibar as well as to Mainland Tanzania in relation to all suits the courses of action in which - Concern the provisions of Sections 12 to 29 of the Constitution. "

BUT NOW, WHAT DOES CASE LAWS SAY?

ABDALLAH JUMA MOHAMED V A.G OF TANZANIA & A.G OF ZANZIBAR

" Having heard the submission of the parties, I agree that this Court has no jurisdiction to hear this Petition, what has been cited as enabling provision to move this Court to uit the BRADEA and its rules have no legal force in Zanzibar and what Petitioner wanted to challenge in this matter is the Laws enacted by the Parliament of Tanzania, which all of them, in a legal sense are no laws in Zanzibar."

QUESTION:

Was the decision Correct?

Was there an oversight?

THE CONCEPT OF CHARTER AND NON-CHARTER MECHANISM OF ENFORCING HUMAN RIGHTS

(INTERNATIONAL MECHANISMS)

CHARTER MECHANISM

Pertains to the International structure or International Human Right system created by United Nation - UN Charter

These are formed in the UN CHARTER

Or with the body specifically mentioned in the UN Charter.

NON - CHARTER MECHANISM

Are International human right systems provided/established by International legal Instruments such as:-

- CEDAW (Convention on the Elimination for Discrimination Against Women)

NOTE International ≠ International, it ≠ not Regional or sub-Regional

Regional you talk of Blocks e.g. AU, EU, AISEC, ARAB, e.t.c - African Charter e.t.c.

You can use that as Inspirational on the other Block but International is BINDING

ICCPR (International Convenant on Civil and Political Right

International Convenant on Disabilities.

All the above are International Instrument for Enforcement.

Some says the country state must give Consent and other Instrument says once you are a signatory then you are in for it.

DOCUMENT

Complaint or Communication

IMPORTANT CHARTER ON HUMAN RIGHT

Human Right Council

Previously it was Commissioners chaired and Composed of Commissioners

Now it has been expanded as council.

ITS FUNCTIONS

1. Monitor human right globally
2. Periodic human Right review
3. Special procedures. Eg Investigation of violation of Human Right

NOTE UN General Assembly and UN Security Council are also taken as the Human Right Enforcement Mechanisms.

Resolution and Peace keeping Mandate ▯ what they normally do.

HUMAN RIGHT COUNCIL ▯ the primary body to Monitor the enforcement of Human Right globally

It ▯ not in the UN Charter

It was formed by UN General Assembly

And UN General Assembly ▯ in the UN Charter

So, Resolution 62 of 2006 resolved to have HUMAN RIGHT COUNCIL

The Procedure ▯ usually through a communication.

Communication ▯ filed online. Just simple like that.

But you should simulate the Procedure on the Hard copies. It ▯ better we Learn that.

LIST OF TREATY PROCEDURES / MECHANISM

Non-Charter Mechanism

ICCPR (International

Human Right Committee formed by ICCPR

ICESCR

CEDAW - formed CEDAW Committee

- Committee against Torture
- Committee on the Right of the Child.

Not all Committee can hear Issues but others can receive complaint and hear the dispute in a very limited way.

Advocate Fulgence Maasawe

23rd April, 2025

Director of Advocacy and reforms LHRC

- The Emerging Human right Jurisprudence - national, regional and global and local application of the International Tribunal jurisprudence.

- EACJ: Composition, Legal status, Locus standi, cause of action and jurisdiction. And procedure in filing and prosecuting cases at EACJ.
- Procedures for amicus at EACJ
- Procedure for enforcement of Judgements

- ACHPR:- African Commission on Human and Political Right.
- Composition, Legal status, locus standi, cause of action and jurisdiction.
- Procedure in filing and prosecuting cases at ACHPR
- Procedure for enforcement of Judgements
- Procedure for amicus at ACHPR

EXPERIENCE OF LITIGATING AT THE EAST AFRICAN COURT OF JUSTICE (EACJ)

LAWS

1. Treaty for the Establishment of the East African Community 2006, 2007
2. The East African Court of Justice Rules of Procedure 2019
3. Go and google user guidelines.

⇒ Article 9 - EACJ establishment

⇒ Jurisdiction Article 29 and 30 of Treaty, Article 27 state as follows:

"The court shall initially have jurisdiction over the interpretation and application of this Treaty."

⇒ Article 30 permits the Court to consider Conflicts between national laws and provisions of the Treaty

⇒ And normally, the Treaty will will take precedence

STRUCTURE

⇒ The Court of first Instance
⇒ The Appellate Division

Judges are appointed by the summit from Judges or sitting judges of national Courts in the Partner States. Read Anyang' Nyongo Onyangiiyo's case as to why Appellate division was established.

If you are the retired Judge you should not take part to the same Court.

The tenure of Judges at the EACJ is Seven Years only. Maximum year stays.

Who can access the court?

Court access:

Reference by a partner State (Article 28).

EAC Secretary General through Council can refer a matter against a partner state - this has never happened (Article 29)

DEAL HERE — Reference by Legal or Natural persons resident in the Partner States (Article 30)

It is not about citizenship but Resident.

You can be an individual or Institution

- Employees of the community on the Interpretation & application of staff rules, terms & conditions of services (Article 31)

- National Courts and tribunals by way of request for preliminary Ruling Concerning interpretation or application of the Treaty.

Structure & Tenure

- Two ~~sits~~ divisions sit in Arusha
- First Instance Division - 10 Judges
- Appellate Division - 5 Judges
- Maximum number of Judges - 15 judges
- Appointment Submit
- Tenure ~~for~~ 7 years without renewal.
- Immunity - Article 49
- Can be removed by Ad Hoc Tribunal.

OPERATION OF THE COURT

- Main Registry is in Arusha
- Sub-registries in Bujumbura, Dar es Salaam, Kampala, Kigali and Nairobi (South Sudan, DRC and Somalia in process

DOCUMENTS

In English Language

- Other Language should be translated and certified.

EACJ sessions are held in Arusha quarterly and sometimes relating to different partner states

- Corum 3 full bench 5 Judges.
- Some application head by 1 Judge

Buy - RULES

EACJ, & EACJ Arbitration Rules, 2012

⇒ - There is an easy to read court users guide.

- The Registrar responsible for the business of the Court & administrative functions

Any Advocate can attend there.

FIRST REGISTRAR:

Prof. John Ruganisa, (Rtd Judge)

JURISDICTION

First Instance — Appellate Division

Article 27(1) — (Arbitration; In contract of the community

Original jurisdiction on the Interpretation of Treaty — Article 35A - Points of Law

JURISPRUDENCE

- There is requirement of exorting all available Local remedies by accessing International Court but that is not the case in the EACJ

~~Two~~ Month Rule

~~The Treaty requires that reference be~~

2 months limitation from the date of the Act, action, decision, directive.

- KATABAZI vs EAC & AG Uganda case - It the court will not abdicate from exercising its jurisdiction of interpretation under Article 27(1) merely because the reference includes allegation of human rights violation.

- AG RWANDA vs PLAXEDA RUGUMBA - The failure by Rwandan authorities to charge an arrested person

NOTE THIS: 5 months was found to have infringed Article 6(d), 7(2) and 8(1) of the Treaty.

⟹ Do not cite Municipal Law to have been infringed but mention the Article in the Treaty which the member state has infringed.

If you want to open a case then you should mention the Article in the Treaty so violated.

MOST PROVISIONS WHICH ARE VIOLATED BY THE MEMBER STATE OF EACJ

Article 6(d)

Article 7(2)

Article 8(1) of the Treaty.

NOTE: Because the EACJ has jurisdiction to interprete Treaty only and the questions of Human Right for EACJ are covered under Article 6(d), 7(2), 8(1) of the Treaty.

JUS COGENS - International Customary Law whether you are part or not, it is binding.

AG TANZANIA vs AFRICAN NETWORK

Independent Medical Unit vs AG Kenya & Others

VERY FAMOUS CASE

Hon. Sebalu vs EAC Secretary General & Others - challenged the delay in conferring appellate jurisdiction on Court to which appeals from national courts could be lodged. Held: that the failure or delay in submitting comments on the draft protocol to operationalize the extended jurisdiction of the High Court.

Human RIGHTS JURISDICTION

The EACJ has found most of human rights Article 6(d) and 7(2)

No primary requirement to exert the National Local remedies. (Principle of Subsidiarity),

TWO- MONTH RULE

TIME LIMIT: Two month from the date of cause of action (violation)

No Exception to that time Limit No extension

It is very difficult to abide with that requirement.

Professional Indemnity is of outmost important.

No provision in the Treaty which covers the concept of continuing violations as this is a human rights concept and therefore not applicable to the Interpretation of the Treaty.

CHALLENGES:

To execute is very impossible

See REBECCA GYUMI

Not ammended to date - section 14 and 17 of the Law of Marriage Act.

In 1995 we made the so called SOSPA - with consent or without consent that is rape.

Also civil case against the government are not executable see VALAMBIA'S CASE.

Execution of every decision depend on the POLITICAL WILL of the particular state.

FORMAT OF PLEADING

Rule 11- All documents prepared for use in the Court shall be:-

- In English, on paper of durable quality clear and easily legible
- The papers of every document shall be numbered in bound book form
- In all pleadings and all documents annexed thereto, every tenth line on each page shall be indicated on the right hand side.

If you do not follow the above, the Registrar will reject your Application SUMMARILY

- Paragraph numbered consecutively.

DESCRIPTION OF PLEADINGS

A STATEMENT OF REFERENCE - Rule 25(2)

1. The name, designation, address

↓

- Reliefs sought by the Applicant
- It should be signed by a party or his Advocate (Rule 45)

Where the reference seeks to challenge the legality of an Act, regulation, directive, decision or action, the statement of reference shall be accompanied by an affidavit.

All annextures should be certified (Rule 37)

Applications, notice of Motion - affidavits.

AMICUS CURIAE

- At any stage of the proceedings, the Court may, if it considers it desirable for the proper determination of the case, invite, or grant leave, to a Partner State, organization or person to submit in writing any observation on any ~~law~~ issue that the Court deems appropriate.

MTIKIRA II - Amicus Curiae
"Prof. Fimbo & Prof. Kabudi"

- Leave to appear as amicus curiae may be granted by the President or Principal Judge, as the case may be upon request in writing detailing therein that person's interest in the matter.

FIRST INSTANCE DIVISION PROCEDURES & DOCUMENTS

REFERENCE / CLAIM

↓

RESPONSE / DEFENCE ON REFERENCE OR COUNTER CLAIM

↓

REPLY TO RESPONSE / REPLY TO DEFENCE

↓

CLOSURE OF PLEADINGS / END, NO FILING OR MORE PLEADINGS) (A PRELIMINARY OBJECTION BE FILED IF ANY). - Rule 29 (1) & (2)

↓

COURTS HOLDS A SCHEDULING CONFERENCE (A PRE-TRIAL CONFERENCE)

↓

PARTIES FILE MORE EVIDENCE BY WAY OF AFFIDAVIT OR WRITTING STATEMENT IF NECESSARY

↓

HEARING OF ORAL EVIDENCE

↓

PARTIES FILE WRITTEN LEGAL ARGUMENTS (WRITTEN SUBMISSIONS).

↓

HEARING OF ORAL HIGHLIGHTS OF THE

WRITTEN ARGUMENTS / SUBMISSIONS

↓

DELIVERY OF JUDGEMENT

↓

REVIEW

APPELLATE DIVISION PROCEDURES

1. NOTICE OF APPEAL AND LETTER REQUESTING FOR CERTIFIED COPIES OF PROCEEDINGS, JUDGEMENT ORDERS / RULING

↓

2. NOTICE OF ADRESS OF SERVICE, NOTICE OF CROSS-APPEAL OR NOTICE

↓

3. MEMORANDUM OF APPEAL AND RECORD OF APPEAL

↓

4. SCHEDULING CONFERENCE

↓

5. FILING OF WRITTEN ARGUMENTS / SUBMISSIONS

↓

6. ORAL SUBMISSION

↓

7. EXECUTION OR JUDGEMENT

↓

8. REVIEW

JUDGEMENT & EXECUTION

Judgement is normally delivered within 60 days from the Conclusion of the hearing (Rule 79)

A person aggrieved by the decision, may appeal to the Appellate Division within 30 days from the decision appealed against — Written notice of Appeal (Rule 88)

REMEDIES

- The Court primarily issues declarations as to whether particular acts or piece of Legislation infringe rights or provisions of the EAC Treaty.
- It has also recommended specific amendments of legislation to bring it in conformity with the Treaty (MCT, LHRC and THRDC vs AG Tanzania)

Annulment of Orders (The Managing Editor, Mseto and Another vs AG of Tanzania, Reference No. 7 of 2016.

EXECUTION

- A party who wishes to execute a decree or order of the Court in accordance with Article 44 of the Treaty shall make an application for an execution order in accordance with Form 9 in the second schedule
- Where a judgement of the Court imposes a pecuniary obligation on a person its execution shall be governed by the Rules of civil procedure in the Partner State in which the execution is to take place Rule 85(2)
- The Order for Execution shall be appended to

the copy of the Judgement verified by the Registrar and thereupon, the party in whose favour execution is to take place, may initiate execution proceedings. Rule 85(3)

- No Mechanism for Execution of a Judgement not imposing pecuniary obligation.

QUESTION

SESSION 11 Massawe continues --

23rd April, 2025

REGIONAL MECHANISMS:

AFRICAN COMMISSION ON HUMAN AND PEOPLE'S RIGHTS (ACHPR) and AFRICAN COURT ON HUMAN AND PEOPLE'S RIGHTS (AfCHPR).

ACHPR: Composition, Legal status, Locus standi; causes of action and Jurisdiction

- Procedures in filing and prosecuting cases at ACHPR.
- Procedure for amicus at ACHPR
- Procedure for Enforcement of Judgements.

INTERNATIONAL, REGIONAL AND NATIONAL HUMAN RIGHTS PROTECTION SYSTEMS

AFRICAN REGIONAL MECHANISMS

ACHPR - African Commission on Human and Peoples' Rights

AfCHPR - African Court on Human and Peoples' Rights.

LEGAL BASIS

1. Banjul Charter - African charter on Human and Peoples' Right
2. ACHPR Rules and of Procedure

AFRICAN REGIONAL MECHANISMS

1. African Commission
2. African Court

If you read well commission then you will understand the Court.

African Commission Is more of Quasi-Judicial body tasked with promoting and protecting human rights and collective (people's) rights throughout the African continent as well as interpreting the African Charter on Human and Peoples Rights and considering individual complaints of violation of the Charter

HOW TO SEIZE THE ACHPR WITH A COMMUNICATION

READ Procedural Requirements; Rule 109 of the African Commission on Human and Peoples Rights Rules of procedure provides the outline for a seizure letter, and indicates as follows:-

- You may wish your identity to be withheld.
- The address should also be known for the reairing correspondence.
- An account of the act or situation complained of specifying the place, date and nature of the alleged violations;
- Name of victim who can be s/he is not a complainant-E.g lawyer in watoto
- Any public Authority that has taken cognizance

of the fact or situation alleged. - Institution

- The name of the state (s) alleged to be responsible for the violation of the African Charter, even if no specific reference is made to the Article (s) alleged to have been violated;
  Don't mention the Article infringed in the Law.
  This was made to ensure access to justice to everyone
  Unaweza ukawa na kesi unefanyiwa sha hujui sheria ni Epi.

- Compliance with the period prescribed in the African Charter for submission of communications.

- Any step taken to exhaust domestic remedies, or if the applicant alleges the impossibility or unavailability of domestic remedies, the grounds in support of such allegations

- Article 56(7) - say the matter has never been submitted to another International Settlement proceeding.
  The aim is to avoid conflicting decision.

Read Article 56 of the African Charter read with Rule 115 of ACHPR Rules of Procedure
- Indicate their authors even if the latter request anonymity.
- Do not use offensive Language.
- Must be apparent evidence not news through media.
  Have tangible evidence

COMPATIBILITY WITH THE AU CHARTER AND AFRICAN CHARTER ON HPR

Read Article 60 & 61 of the African Charter

The country subjected to A. must have been signed by the parties (Member State only)

Monism & Dualism

One country is not a Member of AU - Morocco

Principle of Legality / non-retroactivity.
State must be a party to the African Charter.

→ The Matter should be against the state and not Organ of the State

NATURE OF LANGUAGE
Read Article 56(3) in line with Article 9(2) of the Charter - FREEDOM OF EXPRESSION
Use language not to undermine.

SOURCES OF INFORMATION
- Not based exclusively on the Media (news)
- Can be relied but should be independently verified by UN Reports, INGOs, etc

You must exhaust local remedies unless it is unduly prolonged.

The African Court should not be the Court of first instance.

What constitutes remedy?
- Availability, effective, sufficient.
- Available : Petitioner can pursue

EXCEPTIONS TO THE RULE
- Local Remedies are non-existent
- Local Remedies are demonstrably ineffective
- Local Remedies are unduly prolonged. SUDAN
- The communication Concerns serious and widespread violations. Those seeking asylum - ROMA
- The victim's life, safety or Liberty would be endangered by the attempt to seek local remedies
- The victim is unable to obtain legal representation
  - You may fail as in 2017 we Tanzania establish legal Aid.

SUBMITTED WITHIN REASONABLE TIME
Six (6) Months not in the Charter
Extension in Itare - give reasons
MAJUEU VS ZIMBABWE

SUMMARY SEIZURE PROCESS
- To Chairperson of Commission through Secretary
Read Rules.
Article 56(2)
- The complaint must be allege PRIMA FACIE CASE (Cause of Action) violation of the charter

DECISION ON MERIT
After submission by the parties -

If the Respondent did not reply, it may proceed

Expante (Ex default)

- Decision within 1 year

- Shall remain confidential and not be transmitted to the parties until the Commission's Activity

Article 59 of the charter, E' and subject to Rule 63.(2)

Commission must send report to the Assembly and then it should be considered or otherwise

After that within 30 days to be transmitted to parties

And 30 days to be published from when it was sent to the parties.

Compensation here are called REPARATIONS which to be raised requires more evidence.

KENNY SALUHUWA - Nigerian Author - was hanged before hearing of the case.

TIO - Tanzania Insurance ombudsman

Lalamika kwa ndio, E nchi Imeziingia, i go to the ACHPR - ACHPR

TIRA -

AFRICAN COURT ON HUMAN AND PEOPLES RIGHTS

WHY ESTABLISHED?

- It was realized that the recommendations made by the African Commission were hardly respected by States because they were not legally binding (had no force of law), and victims of human rights violations had no where to turn to.
- Established thus to complement the protective mandate of the Commission, with a view to enhancing the enjoyment of human rights.

RELATIONSHIP

The r/ship between the two institutions is defined by statute - the Protocol. This r/ship is outlined in five Articles in the Protocol. These are:-

- Articles 2. - that specifies the mandate of the Court, that is, to complement the protective mandate of the Commission
- Article 5(1)(a) - the Commission is one of the entities that has direct access to the Court
- Article 6 - when deciding on the admissibility of a case instituted under Article 5.3 of the Protocol, the Court may request the opinion of the Commission. The Court may consider or transfer cases to the Commission
- Article 8 - the court will elaborate its rules bearing in Mind the complementary btn the Commission and the Court.
- Article 33 - the Court shall consult the Commission as appropriate, in the drawing up of its Rules.

COMPLEMENTARILY

Circumstances under which the Commission could seize the Court, (Rule 118 of the RoP), cite the instances, non-compliance with Commissions recommendations, non-compliance with request for provision of measures issued by the Commission, Situation of crisis or Massive Human Rights violations, and at any other stage in the consideration of a communication.

Transfer of cases by the Court to the Commission

Litis Pendens - Pending Litigation

Consideration of cases by the Court that were before the Commission.

FINDINGS

- Where the court determines that there has been a violation of human and/or peoples rights, it may issue appropriate orders to remedy the violation, including the payment of fair compensation or reparation. The Judgement is FINAL and NOT APPEALABLE

- The Court may also interpret its own Judgements and decisions. In cases of extreme gravity and Urgency, and when deemed necessary to avoid irreparable harm to person, the Court may adopt such Provisional measures as shall be necessary

ENFORCEMENT OF JUDGEMENT

Article 31 of Protocol - report on non-compliance

Executive Council to monitor implementation on behalf of Assembly.

JURISDICTION

Contentious Jurisdiction - Where the Court examine allegation of human rights violation brought by one entity against another entity, for example an individual or NGO against a state, or one state against another State.

- Under this jurisdiction: ~~the county may, at the request of a Member~~ the Court has jurisdiction to deal with all cases and disputes submitted to it concerning the interpretation and application of the Charter, the Protocol and any other relevant human rights instrument ratified by the states concerned. In this case, the Courts also has power to promote amicable settlement of cases pending before it in accordance with the provisions of the Charter.

ADVISORY JURISDICTION - where a relevant entity seeks the opinion of the Court on a human rights or related matter, for example, requesting the Court to provide its opinion on a certain provision of the Charter or any other human rights instrument.

Under this jurisdiction, the Court may, at the request of a Member State of the African Union, any of the organs of the African Union, or any African Organization recognized by the African

Union, provide an opinion on any legal matter relating to the Charter or any other relevant human rights instruments, provided that the subject matter of the opinion is not related to a matter being examined by the commission.

ACCESS TO THE COURT

Access to the Court in contentious matters can be in two ways: DIRECT ACCESS and INDIRECT ACCESS

DIRECT ACCESS: Article 5 of the Protocol gives direct access to the following:-

⇒ The AFRICAN COMMISSION
State parties to the Charter - state party which lodges a complaint before the Commission, state party against which complaint was lodged before the Commission, state party whose citizen is a victim of human rights violation, and a state party that has an interest.

⇒ AFRICAN INTERGOVERNMENTAL ORGANIZATION (E.g ECOWAS; SADC e.t.c)
The above entities can bring cases to the Court, even against states that have not made declaration.

INDIRECT ACCESS:
Apart from the above entities, cited above other entities may only access the Court indirectly. Article 5(3) of the Protocol provides that the

Court may entitle relevant NGOs with observer status before the Commission, and individuals to institute cases directly before the court, in accordance with Article 34(6).

What does Article 34(6) provides:-

Ratification and declaration

"For an individual or an NGO to bring a case by the Court, the state against which they are complaining must have made The Declaration under Article 34(6). They cannot submit a case "directly".

However, they can do so indirectly. (How?) - By bringing a communication before the African Commission, and the latter can, at its discretion, decide to submit the matter to the Court.

Circumstances under which the commission may submit a matter to the Court - see Rule 118 of The Rules of Procedure of the Commission

If the Commission decides to submit the matter to the Court - the Court may decide to hear the Individuals or NGOs by the commission

ISSUES TO CONSIDER

- Whether the state has ratified the Protocol
- Whether the state has made the Declaration
- If an NGO, Whether the NGO has observer status by the Commission.

END

DR. NATUJWA MULENGA

24th April, 2025

Access to Justice and Rule of Law and Comparative discussion on various Legal Aid schemes.

Main features of the Legal Aid Act, Legal Aid Regulations, case Law on Legal Aid and Practical ~~aspects~~ considerations/impact in the provision of legal Aid

Practical Aspects of Business and Human Rights (The UN Guiding Principles on Business and Human Rights).

Do all assignments diligently. You do it for yourself.

Human Rights are inherent. To be treated as a human being is because you are born as a human being but why do we have to go and advocate for Human Rights. Why are we Advocating for that.

WHO VIOLATES HUMAN RIGHT?

Because if you do not know who violates then how can you access the same?

It is the Human being himself regardless of the position.

Why the state is the custodian of human right? Is the state the custodian?

Read social contract theory

The state is the Machinery. It has Military, It has court, it has everything.

So we people assume we have given the state power for adherence of human right.

But despite giving those powers, Laws to ensure they check and balance.

Human rights are violated by individuals. Us a custodian should protect other human beings.

LABOUR LAWS

People to work not more than 9 hours a day.

But look at House Maid (Wadada wa kazi) How many hours do they work?

Let say 15 hrs per day x 7 days = 105 hrs

Human right are violated because some people thinks that a certain person does not deserve.

Human right starts at your home.

Stand for human right. People are abused.

Abuse the name of Love: You exactly know that your boyfriend is a cheater then you go with your friends. That thereafter you become offended. That is your own risk.

Betrayal is when you never knew.

Do not ever abuse in the name of LOVE. You will be a case study. No GUILT of LOVE.

We are all grown up now. We are to make our own choices. We expect you guys to be Leaders in the future.

Because we are aware that you can not control yourself then we have the Laws.

Article 13 talks that all people are equal bfr the law.
It talks of entitlement. It is not a discretion.
Equality bfr the Law
No discrimination
Protection
Even if you commit a criminal act then you should be prosecuted in accordance with the Law.
You should not be tortured. Corporal Punishment should also be in accordance with the Law.

Article 14 of ICCPR talks of right of equality before the Court & Tribunal
- Independent Tribunal
- Accessibility
- Competent personel"
- Good law
- Resources availability.
- Timely and fair trial regardless of who & which case it is.

TALKING OF ACCESS TO JUSTICE
We talk of availability of system.
- There should be court

- The should be personal
- There should be court in every station accessible by all
- Affordability:
  Courts should not have unreasonable fees.
- Tangible results
  There should be progressiveness, as the society changes according to time. Progressive of the Law

CONCEPTUAL

What do people perceive about access to justice?

If people do not know how can they access?

People should know where and how to access?

People should have trust to the Court.

If they do not trust then they will take law to their hands.

So, Judiciary should be trusted.

If I believe Judge can be corrupted will I go?
No.

Question HOW DO WE HAVE JUDICIARY TRUSTED?

People should also understand the procedures of instituting cases and other stages.

Every Law have their own procedures!

Know what EFFECTIVE SUBSTANTIVE LAW entails

And what EFFECTIVE PROCEDURAL LAW entails

Know difference between Criminal & Civil

ACCESS TO JUSTICE ALSO COVERED

=> EFFECTIVE CRIMINAL JUSTICE SYSTEM

Offences should be defined clearly. People were criticizing Anti-Money Laundering. Because anybody can be kicked in.

=> Arrested person should be arrested because of the offence and not because of feelings or Politics or Order.

=> How do you detect that a person has committed the offence?

=> There should be proffessionals in the Prosecution. But you cannot have this if:-

(i) You do not have clearly defined offences

(ii) Independent Judiciary.

The State has to provide RE-integration of all convict offenders

- Eg VETA or Wasomeshwe Degree e.t.c

Right to Education

Other rights.

Effective and Executable remedies.

LEGAL AID

TLS give cases to Advocates — PRO. BONO
And Advocate get points.

* LILONGWE DECLARATION OF 2004

Some people are not able to afford Legal service.
- Representation
- Advise
- Opinion
- Etc.

Just help a person. Do it as a part of the service to the community.

We have Legal providers as follows
→ LHRC
→ TAWLA
- WILA
- UDSM
- LST
- MZUMBE
- Mama Samia Legal Aid Campaign

LEGAL AID ACT — Go and Read

Historical background
PLUS MSELEWA Commission, 1977 go and read
There was a need for people to be helped

Go and read various Models of Legal Aid:-
Eg Let we take Alumnus who provide Legal Aid to the community
Wizarani - State panned & Donor funded.

Field, Let student go and provide Legal Aid
Clinic - 1 week

Legal Aid is free as it said.

You are supposed to help each and everything.

CHALLENGES OF LEGAL AID PROVISION

1. Most of them are DONOR funded so not well distributed
2. People do not want to provide Legal aid in Criminal
3. Donor's dependence
4. Lack of uniformity.

We are not sure about NGO's if they are providing efficient Legal Aid.

Go and Read Legal Aid Act.
It will tell you about:-
(i) Mandate of Registrar
(ii) How is it provided etc
(iii) Criteria of Legal Aid

Question How do you identify someone who is indigent/ is in need
capacity
How do you determine financial stability
Some have no financial access
She has a car or etc But how? who should?

Case

Go to case basis to determine financial Muuoki

Limit to financial stability.

We look on the MINIMAL WAGE

CASE TO CASE basis on the type of ABUSE

Know the LIMIT of LEGAL AID provision.

Kituo Larima kisajiliwe. And should file Report ANNUALLY for CHECK & BALANCE

It is the duty of the state to protect its symbol.

State should know what Legal Aid exactly do.

Go to local government, there are alot of problems How do you Mediate.

How do you assist people in Legal Aid in trivial issues.

Do not be the problem when offering the Legal Aid.

Help people regardless of their Economic position. Do not discriminate people. Just help them.

⇒ Activisim
⇒ Advocacy Campaign
⇒ Radio Campaign
⇒ Vipepenushi
⇒ Paralegal — Diploma & Certificate

DR. NATUJWA continues

PRACTICAL ASPECTS OF BUSINESS AND HUMAN RIGHTS (THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS)

You are going to perform Law in different capacities.

Representing Corporation etc.

Understand how to adhere Business and human rights.

We develop Laws because of social and Economic development.

How can the states be unified to create Laws which are equally enforceable.

The guidelines cut across various Countries.

The UN Guiding Principles on Business and Human Rights: An Introduction, (UNGP's)

Since 2011, it has three pillars:-

1. Protect by the state
2. Respect by corporate
3. Remedy (Access to remedy) If corporate infringes

That is why we have Labour Laws, Environmental Law etc

ACCESS TO REMEDY

Whether the corporate adhere

DUE DILIGENCE

1. A policy commitment to respect human rights
2. An on-going human rights due diligence process.
3. A process that enables them to remedy related human rights harms.
4. Adherence to: International Human Right Instrument.
5. - Universal Declaration of Human Rights
6. - Covenant on Civil and Political Rights
7. - Covenant on Economic, Social & Cultural Rights.

The first actor is the state
The second is a corporation
I should go over and above, to look what rights the Employee has.

The policy should be implemented there should be a desk. where to send complaint.

UNGP's work with different instrument as mentioned above.

- Look at impacts and supply chain
- There actual and potential human right violations needs to be avoided.
- Human right due diligence
  1. Identify ~~the problem~~ & Access Impacts
  2. Integrating the findings
  3.

THE THEORETICAL FOUNDATIONS OF REMEDY

What is remedy?

Remedy the way a right is enforced when some harm, recognized by society as wrongful, is inflicted upon an individual

. The Primary function of remedy is to place the harmed person in the same position as he or she would have been, had the harm not occured.

It is always non-Judicial Mechanism - It only involves Mediation, Negotiation, Arbitration - Quasi Judicial Body.

CASE

NGO RAID

~~LE DAY~~ - opened a case against Mwadui Gold Mine accusing for ~~grieva~~ grevious human right violation conducted by security personnel.

SHINYA NGA

WILLIAMSON DIAMOND MINE

A Lawsuits against for human rights violation by guards was filed in May, 2020 in the High Court of England and Wales NGO RAID claimed evidence of harm by Contracted guards who shot locals on the Concession, including 10 killings and 50 injuries since 2009. Following the report, Petra Diamon initiated an Internal Investigation. Initial Internal investigations found the record of only one Live-fire incident during the alleged window, alongside other use of "reasonable force" against illegal Miners"

~~TYPES~~ PURPOSES OF REMEDIES

1. Reparation
2. Deterrence
3. Medical cover
4. Restrative Justice - Power balance is its aim

Eg Corporation Making Apology

1. Restitution where possible
2. Compensation where not
3.

THE UNGP's EFFECTIVENESS CRITERIA

Principle 31 is everything

Legitimacy
- Widely trusted
- Seen to be objective

Accessibility
- Known widely
- Language / Physical and other barriers should not be there

Predictability
- Stages should be known
-

Equitability
- Equal engagement process
- Participation based on enforced consent

Transparency
- Parties kept informed of the process
- Overall performance publicly known

What is the purpose of Any Grievance Mechanism?

UN GP know the local remedies.

Know the Law of the country first! Look the Legal practice of the Local country.

Hon. Makarambi, J (Rtd)

25th April, 2025

African Committee of Experts on the Rights and Welfare of the Child

- Composition
- Legal status
- Locus standi
- Cause of action
- Jurisdiction

- Procedure for filing and prosecuting cases
- Procedure for enforcement of Judgements

- Judicial Review

ACERWC.

Substantive Law
African Charter on the Rights and welfare of the Child

Procedural Law
Guideline - ACERWC

Laws
- ~~Child~~ Guideline on Child participation, February 2022
- Revised Guidelines for the Consideration of Communication, October 2014
- African Charter on the Rights and Welfare of the Child.

REGIONAL HUMAN RIGHTS ENFORCEMENT MECHANISMS

EACJ - Arusha
AfCHPR - Banjul, Gambia
ACtHPR - Arusha

EACJ is a Court of Law.

AfCHPR is a Quasi-Judicial body.

ActHPR is a Court comprising of 11 Judges

Judicial & Quasi Judicial Organs of the African Union

- The Summit
- The Pan-African Parliament

ACERWC falls within AfCHPR

- Date of adoption July 01, 1990
- Signature: 2019
- Entry: 1999
- As of November, 2024
- 51 Member States of the African Union have ratified the Charter.
- 42 States Parties have submitted at least one report to the ~~Afr~~ ACERWC
- Over 20 states have fulfilled their duty to submit

periodic reports.

. 25 Communications have been submitted regarding alleged violations of children's rights.

ACRWC - African Charter on Right & welfare of the child

ACRWC was adopted on 1999

- Like UN Convention, the African charter also provides independent committee to monitor govt's progress in implementation. It is called ACERWC

- The Committee has 11 members elected for 5 years and govt should send progress within three years.

Article 37 (1) was amended that the other may be re-elected

ACERWC

Is the first and only child rights treaty body in the world with competence to receive complaints against states.

Establishment

Article 32 of ACRWC

Address: Nala House, Balfour Road, Maseru, Kingdom of Lesotho

visit website
http://www.acerwc.africa/

ACRE - 1989
ACRWC - 1999

NOTE ACRWC talks of the rights of the child as well as welfare of the child together with the duties of the child.

CHILD: Below 18 years

MANDATE
- To collect information
- Interprete provision of the Charter
- Monitor the implementation of the charter
- To receive complaints against member state and decide

MANDATE: Article 32 up to 46 of the ACRWC

COMPOSITION
Article 33.1 of The Charter
- 11 members of high moral standing, Integrity, Impartiality, and competence in matters of the rights and welfare of the child.
- They serve in their personal capacity
- Elected by the Assembly of Heads of State and Govt
- Accerwc Complements the existing efforts E.g UN Committee

JURISDICTION

- Subject Matter
- Territorial jurisdiction

on communication filed by it by either states that have not ratified ACRWC against a state that has ratified ACRWC, victims or any other interested party ~~over~~ could be proven that it is in the best interest of the child.

SESSION AND STATE REPORTING

Twice a year for three days.

Held in Addis Ababa Ethiopia and are open to public and NGO's

- State parties to ACRWC are supposed to submit an initial report within two years of ratification of the children's Charter and every three years after that.

NGO's and CSO's also work with ACERWC

HOW TO ACCESS THE ACERWC

- The ACERWC can receive and consider complaints from individual's against state party

Read - Revised Guideline for consideration of communication

- section I - Access to committee
- Section II - Form and content of communication

Section III - Preliminary Review, and Processing of communication by the Secretariat

SECTION IX - Procedures on the Admissibility

LOCUS STANDI

Article 44

Person either on their own behalf or on behalf of the third party who alleges the violation of the ACRWC

Should be violation of the provisions of the ACRWC

a. Any individual or group of natural or legal person including children;

b. Any state state party to the ACRWC

c. Any Intergovernmental or NGO legally recognized in either one or more members of the member States of the AU, a state party to the African Children's Charter of or the UN - eg UNICEF

Jurisdiction is determined by the child's age at the time of the alleged violation.

Read section 1.4 (a) and (b) of the Revised

REQUIREMENT FORM

← It will not be received if

i. It is anonymous

ii. It is not written in one of the official language of the committee.

iii. It concerns a state non-signatory to the Charter

iv. It is not duly signed by the complainant or her/his representatives.

Read Section II - 2.

REQUIREMENT OF CONTENT

Read Section II - 3

A communication shall have:-

(a) Clear particulars of the complainant or Complainants and party or parties against who such complaint has been made.

(b) Where possible, the name of the victim or victims, in case they are not the Complainant or complainants, and of any public official or authority who has taken cognisance of the fact or situation alleged

(c) Whether name of the victim to be disclosed or not

(d) Date

(e) An account of the situation which is the cause of the subject matter

(f) The provision of the Charter alleged to be breached.

(g) Remedies

h. Any step taken to exhaust the local remedies

i. Admissibility on the merit of the case

j. Whether the same has been decided or is in another International instrument.

k. The address of receiving correspondences.

PROCEDURES ON ADMISSIBILITY

Section IX read.

i. Should be compatible with AU & ACRWC

ii. Communication not based on Media

iii. The Communication not ~~Lusta~~ submitted anywhere else

iv. Exhaustion of the local remedies

v. Reasonable time.

vi. Do not have disparaging or insulting Language.

Go & Read ISSUE OF WSD - KATTI, I decided on Extension of Time after lapse of 7 days extended.

1066 - Norman Conquest
Is what made England to have French words. French ones Colonized England

Determination of Admissibility

Section IX 2 (i - vii)

ACERWC - Is the only treaty body in the world dealing with rights of the child that has a procedure allowing those who are not part to the Charter to bring complaint against the state which is a party to the Charter.

Article 44 defines communication.

Article 45 the Committee is required to submit report and communication received to the each ordinary session of Assembly of Head of State.

Like, Af CHPR, the Committee's jurisdiction is compulsory and automatic.

CASE

CASE STUDY

NUBIAN CHILDREN IN KENYA V KENYA (MERIT HEARING - ACERWC

By RRICE MARTIAL DJEUGOUE

Was filed on behalf of the children.

Kenyan Nationality was denied of Birth they were Immigrants born in Kenya and denied Citizenship.

The ACERWC head the case on MERIT on Addis Ababa.

DECISION:

Kenya violated the rights of the child

Stateless, discrimination.

- But, Kenya Republic said that they will tekele za but nothing done.

Protection against stateless.

~~State holders brainstorm on Measure.~~

Rape - Cameroon Case study 2

Raped by prominent person.

10 years old child

ACERWC Made a decision

Compensation 90,000 USD to the child.

And other decisions. Eg Structural Measures to prevent such violations.

It was the first case of sexual violation against MINOR heard by ACERWC

JUDICIAL REVIEW

1. Introduction and General overview
2. Nature, Meaning and scope of JR
3. Foundation of JR
4. When is JR available
5. Grounds
6. Practice & Procedure

If in Public interest in efficient public administration

Rule of Law —

Prerogative Jurisdiction and its Supervisory role over Inferior Courts and Tribunals and decision makers.

20th Century — come into place
- Trampling of human rights
- Perversion of justice; and
- Denial of redress against the immense powers of the state.

Ex. ADMINISTRATIVE TRIBUNALS AND ENQUIRIES (REPORT)

Proliferation of tribunals
- Widespread Maladministration or injustice in these tribunals and proceedings

Lord Hewart — In The New Despotism (1959)
⇒ Go & Read

The decision of the Tribunal shall be FINAL and CONCLUSIVE — . This - triggered Judicial Review.

Principles of openess, fairness and Impartiality and to make it plain that these procedures are capable of providing justice

Appointment to tribunals done by minister and appeal to Minister this is not acceptable.

- Democracy - Separation of Power - Article 4 of CURY

In a government of "despots" there is no limitation on the powers or/and

- Charles Montesque - Doctine of Separation of Power.

There is Checks and balances of the three organs of the State.

But President can dissolve the Parliament as he is the part of the Parliament.

DESPOTS - No limitation of Power

Ministers are Members of Parliament

DESPOTS - Trump Donald
Absolute power
Cruel or oppressive way.

⇒ In the mid 19th century when Administrative Law

II. THE NATURE, MEANING AND SCOPE OF JUDICIAL REVIEW

MEANING Is the exercise of supervisory jurisdiction of the High Court over acts (or omission / refusal to act) of public bodies, such as variety of tribunals or government department.

Judicial Review is the Court's power to Review the actions of other branches of gvt especially Courts power to deem invalid actions exercised by

CHURCH OF SCIENTOLOGY v WOODWARD (1982) 154 CLR. 25, Brennan, J. provided meaning of Judicial Review.

SCOPE OF JUDICIAL REVIEW

Rule of Law - doctrine of Rule of Law

Article 13(1) of CURT

No one is above the Law

SCOPE The scope - the court deal with,

- Whether decision is Lawful or unlawful in the Public Law sense and the court will normally NOT be concerned with the Merit of the Merits of the decision

The Court review the decision Making process and not Merits

It does not decide a right though it might affect a right.

An applicant is required to proceed by way of prerogative orders only when:-

(a) The challenge is on PUBLIC Law and no other ground

(b) The litigant does not seek either to enforce or defend a completely constituted private Law right.

JUDICIAL REVIEW WE DEAL WITH:-
Legislative action

Administrative action

Judicial Action,

JUDICIAL REVIEW ON ADMINISTRATIVE ACTION
Over decision for those Public bodies which perform public functions.

The court is concerned with Legality of Administrative decisions.

SECURE THE FOLLOWING:-
Procedural
Substantive fairness of the process

IPTL vs TANESCO - Samatta, J - Common Law

ENFORCEMENT BRADEA

PETITION and ORIGINATING SUMMONS - are different document - BAWATA CASE.

Exhaust all available remedies before ONESMO ORENGURUMWA IS challenging those affidavits.

Article 108 (2) of CURT

Quiz

QUESTION In the case of Tanzania, other than the legality of administrative actions/omissions, can judicial review proceedings be invoked to challenge the Constitutionality of any administrative action and/or legislative enactments?

ADO SHAIBU VS HONOURABLE JOHN POMBE MAGUFULI (President of the United Republic of Tanzania) & Others (Misc. Civil Cause 29 of 2018) [2019] TZHC 3 (20 September 2019)

Constitution petition under Article 30

III FOUNDATION OF JUDICIAL REVIEW

Theoretical foundations

- Doctrine of Ultra-vires

You cannot act beyond your power.

- Court has Inherent Powers to impose standard on fairness and justice.

- Rule of Law is also to be said to be one of the foundation of judicial Review
Article 13(1) of CURT
"Equality before the Law & Protection"
Law
Public Bodies can be ventilated by way of Judicial Review.

It test the Public Law. Not private Law or matters — O'REILLY VS MACKMAN and
ROY V KENSINGTON & CHELSEA
AND WESTMINSTER

Go & Search — Read, MTONGANI CASE —
KESSY VS MUNICIPAL OF

* The court will generally look at the function

TO SUCCEED IN JUDICIAL REVIEW:-

- An application should be:
  i. Brought by person about government (public action)
  ii. By person with standing
  iii. On grounds set out by courts in the Common Law.
  iv. Within the relevant time limits (timing) and,
  v. Seeking an available remedy.

REMEDIES INCLUDE:

✓ Setting aside the decision (certiorari)
✓ referring it back to the decision maker and
✓ declaration, that the decision is unlawful

Mandamus

The Court does not go to the MERIT of the decision.

ALTERNATIVE REMEDY REQUIREMENT

- Judicial review is a remedy of Last result.
- Applicant should exhaust all appeal procedures

OUSTER CLAUSE

- An ouster clause is a provision in a legislation that seeks to remove (oust) the jurisdiction of the Court in Judicial Review

ANISMINIC Vs FOREIGN COMPENSATION COMMISSION (1969) 2AC 147 (HL) — An ouster clause cannot protect decision which is NULLITY

STANDING - LOCUS STANDI

Rule 4 of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014

- A person whose interests are adversely affected by decision / proceeding that is influenced or changed in a negative or harmful way

- A person must have an interest that is greater than the interest of a member of the general public

Whoever personally affected has a locus standi

TWO TYPES

Personal Standing — No problem

Representative standing - Problem

Can a group of people file a Judicial Review? YES - KUNDUCHI DAMA CASE
KUBOMOLEWA NYUMBA 240
KIMARA KURUSHA UTENDI
WA BARABARA
Same to AIRPORT

PERSON STANDING: Decision affected the applicant's personal right or interest, the applicant has personal standing.

REPRESENTANTIVE STANDING: If the applicant was effectively pursuing for Public Interest.

NB: The Law is not clear on PERSONAL STANDING

✓ JOHN MWOMBEKI BYOMBALIRWA VS THE REGIONAL COMMISSIONER & THE REGIONAL POLICE COMMANDER

✓ MLAKI.

PUBLIC / REPRESENTATIVE STANDING

FESTO BALEGALE AND 794 OTHERS VS. DAR ES SALAAM CITY COUNCIL MISC. CIVIL CAUSE NO 90 OF 1991, HCT at DSM (UNREPORTED)

LELO DIDA and 171 OTHERS VS ARU, THE UDSM & AG HC AT DSM Misc Civil Application No. 61 of 2009

JOHN MWOMBEKI

Five conditions for Issuance of order of Mandamus.

GROUNDS OF JUDICIAL REVIEW

Council of Civil Service Union VS Minister of Civil Service ...

1. Illegality
2. Irrationality
3. Procedural Impropriety

1. ILLEGALITY

Decision making authority commits an error of law.

- Excess of Jurisdiction
- Absence of Power
- Unlawful delegation
- An error of Law on the face of records
- For proper motive / purpose

2. IRRATIONALITY

Take leave of two senses

ASSOCIATED PROVINCIAL PICTURE HOUSES LTD VS WEDNESBURY CORPORATION (1947) 2 All ER 223

Decision which is not logical. No sensible person could have arrived at that decision.

ROBERTS VS HOPWOOD [1925] AC 578

"Exercise of discretion should follow the reason. Act reasonably"

3. PROCEDURAL IMPROPRIETY

Without observing the proper procedure. Failure to follow statutory procedures

- Breach of rules of natural justice
  1. Doctrine of Legitimate expectation
  2. To be heard
  3. Reason for the decision - (nullum arbitrium sine ratione obus.
  4. Rule against bias

Executive Director of NEC – Mutahi Kiunjuri Uchaguzi Kama Hujasaini Maadili Kanuni – No right to be heard.

JURISDICTION ERROR
- Lack of jurisdiction –
- Excess jurisdiction
- Abuse of jurisdiction

The court may reject an administrative action on the ground of ultra vires in all these three situations.

→ The Doctrine of ULTRA VIRES is the basic structure of Administrative Law. Used to control acts of Administrative bodies. To prove excessive power. or outside the ambit of the acting party.

RATRA & TARURA – have jurisdiction to deal with barabara

BC. Dsm Permitted – Lacked jurisdiction.

(i) Lack of jurisdiction – No jurisdiction at all.

The Court may review on the ground that the authority exercised jurisdiction which it was not supposed to.

Power of review may be exercised in the following grounds:-
i) Unconstitutionality of the decision.

(ii) Authority not properly constituted

(iii) Authority mistakenly exercised jurisdiction it does not have.

(II) Excess jurisdiction - Authority has jurisdiction but Exceed

(a) Continuing to act even after event ousting jurisdiction

(b) Entertaining matters outside jurisdiction

III ABUSE OF JURISDICTION

- For improper purposes
- Error apparent on the face of record
- Bad faith
- Fettering discretion
- Non consideration of relevant matter.

2. IRRATIONALITY (WEDNESBURY TEST)

The discretionary power conferred on an administrating should be exercised reasonably.

No reasonable person could arrive at it.

THREE CONDITIONS

- Took into consideration the factors that ought not to have been taken
- Failed to take factors that ought to be taken

- Decision was so unreasonable that a reasonable man could not have reached

3: PROCEDURAL IMPROPRIETY
- Failure to comply with the laid down procedures.
- Procedural Impropriety Covers:-
  (i) Failure to observe statutes
  (ii) Failure to follow common rules of natural Justice

PRACTICE & PROCEDURE OF JUDICIAL REVIEW

- LAWS
  JALA
  Law Reform Rules
  BRADEA
  CURT

Article 30(3) of the CURT

The Law Reform (Fatal Accidents and Miscellaneous Provisions) Act
MANDAMUS
PROHIBITION
CERTIORARI

Rules of Procedure - Judicial Review & fees

JALA

BRADEA

Read Section 8(4) of the Basic Rights and Duties Enforcement Act, Cap. 3 R.E 2019

"(4) For the avoidance of doubt, the provisions of part VII of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, which relate to the procedure for and the Power of the High Court to issue prerogative orders, shall not apply for the purposes of obtaining redress in respect of matters covered under this Act."

APPLICATION OF JUDICIAL REVIEW

SUBSTANTIVE Section 17 & 18 of Law Reform Act
PROCEDURE Rule 8(1)(a) and (b), (2), (3), (4), (5) Rules

⇒ Rule 3 defines judicial Review Application for orders of Certiorari, Prohibition & Mandamus:-

⇒ Under common Law, the High Court has Inherent Powers (by virtue of its existence) to issue prerogative orders (remedies) namely, the "writs" of Mandamus, Prohibition and Certiorari among others.

High Court established on 1920 under Tanganyika Order in Council. - Muembeni

Court of Appeal - 1979

Read section 2(3) of JALA – Application of Common Law principles.

See ALFRED LAKARU VS TOWN DIRECTOR (ARUSHA)

Since 1968 Court does not use "writs" rather "order"

JURISDICTION OF HIGH COURT
Section 17 of Law Reform (Miscellaneous Provision) Act

TIME LIMIT
– Rule 6 – Six months from when the grounds for application arose.

Very strict time limit of applying.

WHO CAN APPLY
Rule 4 of the Rules, 2014
One who has interest, or affected.

Section 17
Mandamus
Prohibition
Certiorari

NOTE In Criminal Law, then is "HABEAS CORPUS" under Criminal procedure Law but in Court Law, we have these writs.

Read Section 17(2) of Fatal Accidents

Mandamus, requiring the Public body to do something which ought to be done. ⟹ HABEAS CORPUS

WRITS.
- HABEAS Corpus
- Quo - Warranto
- Mandamus - requiring an act to be done
- Certiorari - Quashing decision
- Prohibition - Prohibiting.

But Judicial Review in Tanzania only three.

THE JUDICIAL REVIEW APPLICATION
TWO STAGES

STAGE 1.
Application for Leave
(Filtering Application)

Rule 6, Application for Leave to apply for Judicial Review - - - -

CRITERIA FOR GRANT
1. Arguable case
2. Standing
3. Time limits
4. Exhaustion of alternative Remedies

It is Exparte.

APPLICATION FOR REVIEW

- Made Ex-parte
- Prescribed form A
- Supported by an Affidavit verifying the facts relied upon
- A statement of the name and description of the Applicant
- The relief sought and grounds upon which it is sought

Duty of candour

~~Relief~~

Application by oral hearing.

There is limited discovery in Judicial review and no duty to give reasons for administrative decision

No need to establish prima facie case

It aims to filter HOPELESS APPLICATIONS

ILL-FOUNDED APPLICATIONS delay decision making decision.

SUBSTANTIVE HEARING STAGE.

(i) Arguable case on Merit.

Should disclose serious issues to be determine

PURPOSE: To Protect Public body.

Show Interest

rights are affected.

Time limit
6 months - Rule 6 of Rules, 2014

REFUSAL DUE TO:
- Undue delay
- Out of Time
- Lack of promptness
- Exhaustion of Alternative remedies.
- Legal alternative remedies.

QUESTION

QUESTION Can an ~~illegible~~ Unincorporated association make application for judicial review? In Tanzania?

If so, Can it make it in its own name. through one or more of its members applying in a representative capacity?

They can bring the matter in representative capacity. You should show that how you have been personally affected. Unincorporated can not be personally affected.

The conditions are well known under the Law.

APPLICATION FOR JUDICIAL REVIEW

1. LEAVE STAGE
2. INTERIM RELIEF
3. SUBSTANTIVE APPLICATION AND PROCEDURE: ROLLED UP HEARING

→ Injuction under Equity not common Law
Section 2(3) of JALA
That the decision should not be executed.
ATIL10 VS MBOWE
Grounds are there

4. Respondent and the duty of Candour
5. Relief
6. Costs / Damages?
7. Appeal — CAT

RELIEFS / REMEDIES

1. Certiorari — Quashing order - An order requiring the relevant decision be brought into the Court to be quashed.
It says that the decision was <u>INVALID.</u>

2. Mandatory order (Mandamus) - Is an order requiring a decision maker to perform its duty as per the Law: It says decision maker failed to perform
BYOMBALIRWA

3. Prohibition order is an order restraining a decision maker from acting.
A decision maker is acting or will act improperly.

4. Declaration:— Pronounces Authority or statutory provisions INVALID.

- There are no Rules on Costs or Damages.

- See Rule 17: default rule
The practice and procedure of High Court to apply.

WHEN CAN THE COURT AWARD DAMAGES
A claim for damages cannot stand alone in Judicial Review, should follow the Main prayers.

PRIVATE LAW DAMAGES IN JUDICIAL REVIEW (PUBLIC LAW)

- Breaches of public law do not automatically lead to a claim for financial compensation, except in cases involving claims under Bill of Rights.

- Damages may be awarded against public bodies in Judicial Review, if a claimant can show a recognised cause of action in tort (civil wrong).

Economic tort - Companies - BAGENDAL CASE.

TORT Negligence and Misfeasance in public office.
Duty of care
Breach of that duty
Damages.

Public Authority has no any immunity over Negligence of Public officer in their exercise of

~~Page~~ Their duties.

APPEALS

- AJA
- CAT Rules
- CAT Rules Amendments.

- Stay of Execution apply to the Court of Appeal.
- Legal sector

Question: When the High Court is exercising the Judicial Review jurisdiction, does it require Leave? (Is it original Jurisdiction).

In Kenya - Judicial Review enforces Human Right.
23(3) - Article 22

Judicial Review in Kenya not based only on Public Law but in Private sphere.

Article 30(3) - Judicial Review was contemplated here.
So Section 8(2) of BRADEA is unconstitutional

And it talked of any person so that Section 9(2) of BRADEA is also unconstitutional.

PUBLIC INTEREST LITIGATION

Art. 26(2)
Mentions any person

Art. 30(5) — Read

Structural interpret.

Harmonious Interpretation - If the provisions of the Constitution conflicts. LUGAKINGIRA, J

CIRCUMSTANCES OF ~~CHAL~~ TURNING THE MATTER INTO CONTENTIOUS
- Validity of the will
- You have no faith with the Petitioner
- Properties not listed *
- Your properties listed*

Jurisdiction of Courts in Contentious Proceedings
- Land matters
- 15,000 C.D.D

Caveats and Subsequent events
- You are going to do

NOTE. - Involvement of the Administrator General
(i) By order of the Court
(ii) Where the Administrator General is appointed in a WILL
(iii) Where the Administrator General apply for grant in certain cases. Section 5 of the Act.

Read Section 5

If there is a conflict in the family or among the family members, report should be sent to administrative officer in charge of the District who shall report the same to the Administrator General.

Task 1.

(a) Zuwena & Maryam petitioned for Letters

Diana has ~~not~~ no faith

You are assisting Diana

Caveat & Appearance & Affidavit.

SEMINARS DAY ONE -.

⇒ - Illegally adopted and given new name
- Aiming at hiding their identity
- Religious name adopted in total disregard of their cultural ties.
- They were prohibited of their right to citizenship under Citizenship Law, 2020

In the aftermath of the above, the movement started. There was the grandmother of the Movement (They were five).

They now think that the children were actually denied of their rights and that the Human rights was violated.

Assuming that the laws of Amazulu Republic are similar to those of Tanzania, as an Advocate, respond to the following:-

Local framework & constitutionality.

1. High Court (Main Registry).
Section 4(1) of BRADEA [Cap 1 R.E 2019]

Admissibility Criteria
- Applicant of Admissibility
- Exhaust all the available remedies
- Show that you have personal affected
- If you are aggrieved by the decision of President, Prime Minister, Speaker, Vice President you should sue the Attorney General.

Rights violated;

- Freedom of Religion Article 19 of the Constitution

Article 29(4) - of Constitution of The United Republic of Tanzania

Article 13(1) - No one is above the Law and no one should be discriminated, equality before the Law.

Article 13(4) - No body should be discriminated

Article 13(3) -

Article 13(5) - Meaning of Discrimination.

Article 13(6)(e) -

Article 15 - Personal Freedom

Question Who will be the parties to the case!

5 grandmother } Petitioners

Vs

- The Attorney General of Amazulu Republic
~~Ministry of Constitutional and Legal affairs~~
~~Ministry of Home affairs } Respondents~~

What are the documents

- Petition by way of originating summons
- Affidavit of admissibility } Section 4(2) of BRADEA
- Affidavit in support of the Petition.

ORIGINATING SUMMONS

- Title
- ~~Parties~~
- Originating Summons
- Law applicable
- ~~Orders~~ Orders
- ~~Date~~

LAW APPLICABLE

Section 4(1), 5, 6, BRADEA
Rule 4 of the Rules

Articles 26(2) and 30(3) of the CURT

→ Content of the Petitioner - read section 6.

ORDERS THOUGHT

→ Declaration that the Citizenship Law, 2020 has violated in is contrary to the provisions of Article 13(1), 13(2), 13(3), 13(4), 13(5), 13(6)(e), 29(4) 19, and 15 of the constitution.

→ Declaration that the acts of the government of Amaruka Republic are in violation of the provisions of Article 13(1), 13(2), 13(3), 13(4), 13(5), 13(6)(e), 15, 19, 29(4) of the Constitution.

→ An order that the government of Amaruka Republic redresses the Children to their original position and to their name and ethic identity.

→ Any other relief that the Honourable Court may deem fit and just to ground.

ON THE GROUND THAT;

1. That, the government of Amazulu Republic enacted the citizenship Law, 2020 which violates the provisions of Article 12, 13(1), 13(2), 13(3), 13(4) 13(5), 13(6)(e), 15, 19, 29(4) of the constitution

2. That, the Act of the government of Amazulu violates the right to personal freedom, right to dignity, right to equality and no discrimination.

PART III OF

SPECIFIC PROVISIONS VIOLATED UNDER THE CURT

1. Article 12, 13(1), 13(2), 13(3), 13(4), 13(5), 13(6)(e), 15, 19, 29(4) of constitution.

PARTICULARS OF FACTS

GIVEN UNDER MY HAND

Presented for filing

DRAWN & FILED:

TO BE SERVED UPON:

DAY TWO - RECAP

Procedures at EACJ
- filing of Reference - Rule 25 contents
- Service
- Reply to the Reference Rule 32
- Scheduling orders
- Filing of submissions
- Oral submissions

Document ⇒ Statement of Reference as per Rule 25

1. Pleadings

2. Scheduling orders
   - Written submission
   - Witness
3. Hearing
   - Written submission
   - or oral evidence
4. Judgement

JURISDICTION OF THE EACJ

- Jurisdiction on the violation of the Articles of the treaty.
- Jurisdiction over partner state violation of the Articles of the Treaty.
- No need of Exhausting the remedy available locally.
- Documents ← Communication
  - Statement of Reference

YESTERDAY'S QUESTION – PETITION

- AMAZURU
- Main Registry
- at Amazuly

Parties

Individual names of grandmothers
Vs
Attorney General (only)

CAUSE OF ACTION

- Violation of basic human right 12, 13(2) and 19 – Articles
- Constitutionality of the Citizenship Law, 2020

DOCUMENTS FOR APPLICANT

- Originating summons
- Joint Affidavit
- Joint Affidavit of admissibility

If urgency

- Certificate of Urgency

RESPONDENT

- Counter affidavit – affidavit of admissibility
- Counter affidavit – affidavit in support
- Reply to the originating summons
- Notice of preliminary objection.

ENABLING PROVISIONS

- Article 26(2), 30(3)
- Section 4 and 5 of BRADEA

REMEDIES:

- Declaratory order that the Citizenship Act is unconstitutional.
- Declaratory order that there is violation of human rights
- Order stopping the violation
- The Court to declare the provision as unconstitutional.

Section 8 (1) (b) of BRADEA
Lead to request orders

Principles of Affidavit are followed.

All parties should swear before the Commissioner for Oaths.

- Originating Summons who signs? Is it Advocate or Complaint

How Originating Summons is drafted?

-

{ All documents to be drafted - typed.
Service to be done as well }

How will the Respondents reply.

{ "Reply to the Originating Summons"
How will it be replied?
Just reply grounds raised there }

DAY 2 - TASK ONE - FEEDBACK

- High Court - Cap. 310 R.E 2002

- Cause of action
*Refusal to change / register the names and Identity of children
*

WHO WILL BE THE PARTIES
- Five grandmothers VS A.G And Director RITA

- Orders
- Mandamus and Certorari

Documents
- Leave Stage
<i> Chamber summons
<ii> Affidavit
<iii> Statement ~~in~~ of facts in which Leave is sought

Judicial Stage
<i> Chamber summons
<ii> Affidavit
<iii> Statement of facts in which Leave was granted

Moving provisions Leave
- Rule 5(1) of the Rules
19(2) Section - The Law Reform (Fatal Accident Miscellaneous provisions) Act [Cap. 310 R.E 2002]
Judicial Review
- Rule 8(1) of the Rules

-
LEAVE
- In order to determine whether there is an arguable case.

FOR THE PURPOSE OF EXAM

NB: If the application for Leave will be granted then I will proceed to draft documents for filing before the court.

TASK TWO

- EACJ

Article 27 of the Treaty

Cause of action

- Breach of Article 6(d) and 7(2) of the treaty
- Violation of the Human Right
- Unconstitutionality of the Citizenship Act

EACJ

- Deals with interpretation of the Treaty

- Locus Standi — Secretary General

Article 28, 29, 30 — Legal or natural person.
└ Member state

Violated provisions: Article 3, (8) 17(3), 18(1), (2), (3), Article (20), Article (22) of the African (Banjul) charter

Article 6 and 9 of the African Charter on the Right and welfare of the Child.

Who will be the parties:

Five Mothers

Vs the Republic of Amanda

DOCUMENTS

- Reference Rule 25(1) and (2)
  &
  Affidavit in support of reference

Read Rule 11, 26, 32, 33, 55 & 59 (How to prepare the documents.)

Statement of Reference - Rule 25(1) and 25(3)

Rule 25(3) - Affidavit If you challenge the legality:-

AS FAR AS HUMAN RIGHT IS CONCERNED

1. Know where to file the case.

DISCUSSION – Rekundo Charles

22nd April, 2025

Six (6) Components of Human Rights.

1. Enforcement of Human Right in Tanzania
   1.1 Judicial Review
2. Enforcement of Human Right – Sub-Regional
3. Enforcement of Human Right Regionally.
4. Enforcement of Human Right Internationally.
5. Grievances Mechanisms
6. Legal Aid – Very rare Questions.

1. TANZANIA: ENFORCEMENT

Substantive Law, you must know

① Constitution of URT

You cannot enforce International Law here.

It may be the whole of CURT or 12–29

12–29 – Fundamental Human Rights.

Look others under Article 5 – voting

The way of enforcing is different

PROCEDURAL Law

① BRADEA

② BRADEA Rules

⇒ Fundamental Rights. — 12 - 29

I file the case because Article 26(2) of CURT give Locus standi for one aggrieved or whose his fundamental right has been infringed

⇒ Article 26(2) give locus standi for a person to protect the CURT

Every person has that duty.

Application of Article 26(2) in relation to human Right Issues is subject to limitation under BRADEA & Its Rules.

⇒ Article 30 of Constitution gives the Court having Jurisdiction on Issues of seeking redress

In this part III Chapter One ⇒

⇒ The High Court (Main Registry) has jurisdiction as per that provision.

⇒ Enabling provisions

Article 26(2), 30(3), Specific Article of the Constitution which has been breached.

PROCEDURAL

⇒ BRADEA - very contradicting

Petition will be lodged by originating summons But for Law school we use Petition and not Originating Summons - but all will be correct.

Section 5 of BRADEA — High Court. (Document)

Section 6 of BRADEA — Contents of Petition

Section 4 — gives Locus Standi — Just like Article 20 (2) of CURT

Rule 4 gives the document as well.

RELIEFS:

1. The Court to declare that there is a breach of a constitutional Right
2. Compensation — will depend on the scenario.
3. Any other order.

IN THE MATTER OF CURT

IN THE MATTER OF BRADEA ACT

IN THE MATTER OF BRADEA RULES

IN THE MATTER OF CHALLENGING THE BREACH OF ARTICLE ____ OF COURT

Article 4(2) of BRADEA was challenged by ONESMO OLENGURUMWA

DOCUMENTS

⇒ Petition

⇒ Affidavit of Admissibility Section 4(2) of BRADEA

⇒ Affidant of admissibility.
You state how you have been personally affected

You must state how did it affected you personally for instance due to so and so — you failed.

Know the contents of the PETITION.

⇒ ENFORCEMENT FOR THOSE NOT UNDER ARTICLE 12–29
BRADEA not applicable.

Here we file normal PETITION. No Law but we borrow from the BRADEA how to draft PETITION

- 1. ~~Seeking~~ Reference from Subordinate Court } WORK OF BRADEA
- 2. Petition to High Court.
- No affidant here.

JUDICIAL REVIEW
⇒ What Court has jurisdiction
⇒ Parties
⇒

⇒ Fatal 0 Rules
4 Provisions only.
⇒ Leave Stage 2 provisions
⇒ Substantive Stage 2 provisions.

LEAVE is a must — High Court — Main Registry

LEAVE

Section 9 of The Fatal Acts & Rule 5 of Fatal Rules

Section 10 because normally Attorney General is a party.

FACTORS TO CONSIDER BY FILING JUDICIAL REVIEW

1. It is a Public Body
2. Whether it is a Private body Exercising the Public function.

E.g CCM, CHADEMA

Halima Mdee joined A.G but sued CHADEMA because it is private but exercise public function.

Also, Private Universities, A.G will be a party.

GROUNDS FOR JUDICIAL REVIEW

1. Illegality - Did not follow the Law
2. Procedural Impropriety - The procedures were not proper.
3. Irrationality -
   - A person exercising reasonable care could have not reached into that decisions.
   - Read the scenario carefully.

Right to be heard.

REDRESS TO BE SOUGHT PREROGATIVE ORDER

1. Mandamus
2. Certiorari
3. Prohibition.

MANDAMUS ← Irrational Procedural

To compell a public body / private person public function to do what was supposed to be done. Do what you ought to have done.

CERTIORARI

To delete the decision because they were not proper. In most times we quash and compell. So Mandamus ~~prefer~~ follow Pre Certiorari.

PROHIBITION

To prohibit something in progress not to proceed. That might be continuous. Not reached to a point of being called a decision.

We cannot quash or compell because it is not a decision.

PROCEDURES OF ENFORCEMENT ~~OF~~ BY WAY OF JUDICIAL REVIEW

1. LEAVE STAGE Grant Leave so as to present an application for Judicial Review

Chamber Summons

Affidavit

Statement of facts ← Rule 5 requires.

PROVISIONS

Section 18 of Fatal. Act read together with Rule 5 of Fatal Rules.

Content of Statement of fact - Read Rule 5 (2) of the Rules

4

⇒ STATEMENT OF FACT UPON WHICH THE LEAVE IS TO BE GRANTED" - Tithe.

SUBSTANTIVE STAGE

Once the Leave is granted.

- This Hon. Court be Pleased to quash the decision of Law which
- This Hon. Court to compell 1st
- _____ to prohibit 1st.

DOCUMENTS;

Chamber Summons.
Affidavit
Statement of fact

Enabling provision:
Section 17 of Patal Act read together with Rule 8 of The Patal Rules.

⟹ "STATEMENT OF PACT IN RESPECT OF WHICH LEAVE WAS GRANTED"

Remember the prayers ⟷

⟹ You are not compelled to reach the substantive stage. So you actually draft LEAVE and mention that upon grant of the Application for LEAVE then I will file Application for Judicial REVIEW.

If time permits you may proceed to draft.

CHALLENGE TO WHAT ARE THE PARTIES

- Look the Institution which committed the Act and under which Ministry it is.

Institution

Eg TANROAD + Permanent Secretary of the Respective Ministry + Attorney General.

⟹ Some Political parties are under The Registered Trustees / Body of Trustees Eg CHADEMA + Attorney General.

HABEAS CORPUS

- Uhamiaji arrested and detained
- TAKUKURU
- POLICE
- DRUG CONTROL
- ANTI-TRAFFIC

⟹ Police

OCS, OCID, RPC, IGP, Permanent Secretary Ministry of Home Affairs + Attorney General

Immigration

Head of sections + Permanent Secretary Ministry of Home Affairs + Attorney General.

⟹ Know the Institution.

Know the nature of the document. Does it require IN THE MATTER or IT DOES NOT.

SUB - REGIONAL

EACJ -

Substantive
Procedural

SUBSTANTIVE
Gives foundation to enforce
Does not deal with human rights
Deal with enforcement of good governance

Treaty establishes fundamental principles which the Partner state has to abide.

We enforce those fundamental principles.

Because it does not enforce the Human rights then we go for breach of fundamental principle which within there is a human right.

"There should be breach of good governance by violating the Rule of Law."

LEGAL CAPACITY FOR THE ONE TO SUBMIT A CASE AT EACJ

- Should be a person from the Partner state.
Article 3 provides partner state & give a room for others who will join.
- You must prove the fundamental principle breached by the partner state.
Article 6 (d)

Locus STANDI
Article 28, 29, 30, 31
Who can submit the matter to EACJ.

Article 28 - Partner state
Choose 29 - Secretary
One 30 - Natural person / Legal
31 - Dispute btn community & Employee

The Article 27 - JURISDICTION OF THE COURT

All the above are the Enabling provision

E'g CHADEMA can enforce their rights.

EACJ does not need to Exhaust local remedies.
Does not act as Appellate Court.
Case are received as ~~appellate~~ Court

First Instance Division
Appellate Division ← Notice of Appeal
Memorandum of Appeal.

PROCEDURAL LAWS
From Pleadings - 7 Rule
Rule 25 - gives us document.
⇒ A statement of Reference

⇒ Contents of the statement Rule 25 (2) of Rules
Subject Matter - facts
⇒ Summary of point of law. I am the Partner State, Mention all the provisions

The evidence of to be submitted are as follows:-
- Witness
- Documents
- Audio
- Etc

RELIEFS

Whereof;
Declare that Tanzania breached the Rule of good governance for denying the right to education
Compensation
Any other redress

ACERWC

African Committee of Experts for Right & welfare of a child

REGIONAL ENFORCEMENT MECHANISMS

ACERWC - African Committee of Experts for Rights & Welfare of Child
African Court
Commission

ACERWC

- Enforces the right of the child regionally.

Admissibility Criteria
Section 9 (1)

- The communication should be compatible with the provision of the Act & African Children Charter
- Should be not from information from the Media. Not be exclusively. You should have evidence.
- The communication should not be pending to any other International dispute resolution.
- If does not receive anything pending.
- Exhaust the local remedies first (National level).
- Communication should not have abusive language.
- Section 1 - Who can access / Individual, NGO's, TLs, State part, to the African Children Charter

HOW DO WE GO? DOCUMENTS

Document 8 Communication:

CONTENT OF THE COMMUNICATION
Section 2(3)

- Particulars of Complainant & Respondent
- The name of the victim/victims if they are not Complainants.
- Identity withheld or not.

- The state responsible
- Account on the act or situation of which is a subject matter
- The provision of of the Charter breached
- Relregs
- Any step to exhaust Local remedies. (National level).
- That the matter has not been submitted to any International level
- Address for receiving correspondence from the Committee
- Dated at ____

IN THE AFRICAN COMMITTEE OF THE ~~EXPERT ON~~ RIGHT & ~~WELFARE~~ OF THE CHILD

AT LEJO THO

COMMUNICATION No ____ 2024

X

V

Y

COMMUNICATION

(Made under ____ of The Charter ~~Article~~ s. 1, 2, ~~10~~, 9 of the ACERWC)

1.

2.

3.

CPC

AFRICAN COURT

SUBSTANTIVE RIGHTS
African (Banjul) charter on HPR

Tanzania withdrew from being bound.

PROCEDURE
Protocol on Human and People's Right, 1998
Rules of the Court
WHO CAN ACCESS - Article 5
- Commission
- state party
- African Intergovernmental organization
- NGO

COMMISSION - HOW TO INSTITUTE A COMPLAINT
Communication
Rule 108
Content - Use of ACERWC

Admissibility Criteria
Article 56 of the African (Banjul) Charter

IN THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHT
AT ARUSHA
COMMUNICATION No __ OF 2025
X
v.
Y

COMMUNICATION
(Applicable Laws - 1 55
Rule 108, Article 47, 56 plus rights breached)

INTERNATIONAL ENFORCEMENT MECHANISM

- CEDAW
- ICCPR
- CRC
- ICESCR
- Disabilities
- Forced Labour & Immigrants
- Against torture

CEDAW - SUBSTANTIVE

What is women discrimination - Article 1.

If Tanzania does not make policies to protect women we can enforce to CEDAW

If the country state breaches the obligation.

→ Article 2 - read.

Protocol - Procedures

Article 4 - Committee on Elimination of

Article 2 - Document - Communication.

Admissibility criteria

⇒ State should be party to the Protocol

⇒ All available domestic remedies have been exhausted unless unnecessary prolonged. (Prove required).

⇒ Should not have been determined by the committee

⇒ Incompatible with provisions of the Article

⇒ Should not be abuse of the process.

Borrow practice from ACERWC

- Rights - Substantive
- Procedural - Protocol

Procedural

1. Name of the Court
2. Document
3. Admissibility Criteria

CONVENTION

4. Where the court is located

GRIEVANCIES MECHANISM

⇒ How to structure grievancies Mechanism
⇒ How will it be
→ Establishment
⇒ Access
⇒ How to Lodge a Complaint.