

# Q&A<sup>with</sup>



Vol. 2

Fayaz A. Bhojani, Esq  
BCom (McGill), LLB (London), LLM (Berkeley)

Gaudiosus Ishengoma, Esq  
LLB (UDSM)

This publication may be reproduced or transmitted, in any form, electronic, mechanical, photocopying, recording, scanning or otherwise, with appropriate acknowledgement given to FB Attorneys. Any enquiries about the book should be sent to FB Attorneys at this e-mail address: [info@fbattorneys.co.tz](mailto:info@fbattorneys.co.tz)

Disclaimer: Information found in this book is intended to give you a general overview of the law. It is not a substitute for the role of your legal advisor. Please note, the responses to the questions in this book, reflect the position of the law as of the date of the question and not the date of publication. You are strongly advised to check for accuracy of the answers based on the law at the time. If you have legal issues, you are urged to contact your attorney.

Vol. 2

Printed and Published in the United Republic of Tanzania.

ISBN 978-9976-5241-1-6

To my mum Zainul and dad Amir.  
*FAyaz A. Bhojani*

To my daughter Highness Ikamikile.  
*Gaudiosus Ishengoma*



# Preface

Welcome to the second volume of 'Q&A with FB Attorneys'.

Q&A with FB Attorneys column was first published in the Daily News in 2009, making it one of the first interactive legal question and answer columns in East Africa. Based on the success of volume 1 and the number of positive reviews, FB Attorneys embarked on volume 2 which covers questions and answers from 2012 to 2014 on Tanzanian and International Law. The book is a useful guide to readers, students, teachers, legal practitioners and the public. There are 14 chapters in volume 2 and additional topics include Business Disputes, Immigration Law, Real Estate, Mining Law, Corporate Criminality, Environmental Law, and Tax Law and the TRA.

The book aims to reach out to readers from all walks of life in an attempt to make the public aware of the law and the repercussions of not following the law. The law can confuse, frustrate and might sometimes not even work for you, but the general norm is that it must be followed. What the book does is to educate you on the law, your rights and the do's and don'ts.

As well as answering some serious questions on the law, this book has a sense of humour and the weekly columns published make for a good Monday morning read with a cup of coffee.

We thank the Daily News, the leading English newspaper in Tanzania that publishes the Q&A columns every Monday ([www.dailynews.co.tz](http://www.dailynews.co.tz)). It has been an excellent partnership between the Daily News and FB Attorneys.

We hope you enjoy reading the book.

# FB Attorneys

FB Attorneys is a full service law firm based out of Dar es Salaam and brings with it a cumulative experience of over 70 years and a thorough knowledge of colloquial practices within the East African region. We cover all aspects of the law and specialise in Corporate and Commercial matters including Mining, Oil and Gas, Tax, Litigation, Banking, Competition, Compliance, Criminal Law, Real Estate, Intellectual Property Law and Land Law, amongst others.

We are held in high esteem throughout the region and internationally. Our stellar reputation has been built on successfully handling complex business transactions that consistently require a high level of sophistication. Frequently relied upon by clients as the preferred law firm for demanding legal cases, FB Attorneys offers unprecedented legal advice on a variety of corporate and commercial matters.

FB Attorneys has established long-standing relationships with some of the leading financial institutions, government entities, not-for-profit organisations, and other prominent public and private sectors in East Africa.

FB Attorneys is proud to be a member of LEX Africa. An alliance of leading law firms across Africa, with a track record of more than 20 years. It was founded in 1993 and was the first legal alliance focusing solely on Africa.

# About the Authors

Fayaz A. Bhojani, Esq

BCom (McGill), LLB (London), LLM (Berkeley)

Fayaz Bhojani is the managing partner of the firm with 20 years of experience in corporate legal affairs and co leads the firm's litigation team. Fayaz is a graduate of the world-renowned Berkeley Law School at the University of California and as an undergraduate studied actuarial science under the Society of Actuaries (SOA), bringing with him sharp mathematical skills.

Having consulted for some of the leading multinational companies, Fayaz brings strong commercial sense to any legal transaction and has successfully negotiated and completed several large transactions in the extractive industry. His practice spans a number of sectors including financial services, telecoms, energy, mining, tax, competition and M&A. He is recognised for his ability to deal with legally complex corporate and litigation matters that require careful judgement. He is a hands-on partner and gets fully involved in all drafting and negotiations and has been consistently ranked as a leading top lawyer in Tanzania by Chamber and Partners, IFLR 1000 and Legal 500.

Gaudiosus Ishengoma, Esq

LLB (UDSM)

Having worked as a state attorney for eight years, Ishengoma leads the firm's litigation team and has wide experience in high value litigation cases and all aspects of arbitration. In his legal career spanning 26 years, he has handled complex and substantial commercial disputes of a varied nature and focuses on land, extractive industries, banking, telecom, competition and contract law. He has been involved in major cases before the High Court of Tanzania (Land Division), Commercial Court and the Court of Appeal and brings with him an excellent track record in bank recovery cases.

Ishengoma has been trained by the British Council under a team from the House of Lords on prosecution skills and has wide experience in relation to competition claims, shareholder disputes and tax appeals including corporate crime. He is ranked as a leading lawyer by IFLR 1000 and Legal 500, and as a highly regarded lawyer by Chambers and Partners.





# Contents

Business disputes with state officials .....	1
Children, Relationships, Marriage and Divorce Law .....	15
Commercial Law, Business Disputes and IP .....	39
Consumer and Claimant Rights.....	59
Corporate and Banking Law, Shareholder Disputes .....	87
Cross-border Trade, Mining Law, International Investments .....	103
Disputes between individuals .....	115
Employment and Immigration Law.....	123
Environmental and National Heritage Law .....	147
Lawyers, Statutory Interpretation and Court Procedures .....	155
Money Laundering and Corporate Criminality .....	183
Power of Attorney, Death, Probate and Wills .....	193
Property and Planning Law .....	199
Tax Law and the TRA .....	207



# Business disputes with state officials

---



Every day, and across the country, business owners interact with countless state officials. Most of these interactions are helpful and courteous, but occasionally they are not. Sometimes, state officials abuse their power, rendering their behaviour illegal. Indeed, it is not only government officials that can behave illegally, even Ministers can do so.

In this chapter, we offer several examples of situations where state officials have gone too far, and behaved so badly that business owners have a right to legal redress. We also include examples particularly in relation to immigration where government officials have behaved lawfully, even though their behaviour upsets business owners.

Alarming, this chapter also includes examples of criminals posing as state officials, even policemen, in order to gain access to business premises and information. We advise company owners to be aware of this danger, and challenge “officials” whose behaviour appears suspicious.

### **Powers of immigration officials**

**I am a business owner in Dar es Salaam, and have both local and foreign employees working for me. There has been an incident which ruined my reputation and business in general. Immigration officials raided my office in the midst of a busy day, turned it upside down, placed all of us, including my clients, under arrest, and refused to let anyone enter or leave the office. The officers from immigration had no warrant to search, nor did they give notice. I was invaded like they owned the office, and they took with them some confidential documents. Can they do this? What are the general powers of immigration?**

*23 January 2012*

The Immigration Act of Tanzania (IAT) provides for the duties and powers of the immigration officials in general. The IAT gives immigration officials the power to enter into any premises at reasonable hours and search the said premises without a warrant. They also have the power to take documents which are related to immigration issues, including the power to demand the same from the persons who seem to be immigrants. Hence, it is often recommended that those on work permits should carry a certified copy of their permit.

Immigration officials also have the power to arrest persons who lack relevant documents entitling them to be in Tanzania. If any person is arrested, they must be presented to the Magistrate of the nearest Court as soon as possible. However, under the IAT, immigration officials are not authorised to use excessive force during the whole process.

In your situation, unless the immigration officials came at an unreasonable hour, physically harmed someone due to use of excessive force, or did not take an arrested person to a Court fast enough, the law allows them to do all the acts that they did when

they came to your office.

When all is said and done, immigration officials must treat all persons with dignity. In your instance, your major complaint seems to be how they ambushed you and treated your staff. This undignified approach can be reported to the Director of Immigration, who may investigate this incident.

The last part of the question relates to the general powers of the Immigration Department. We reproduce some key ones for your general reference.

The law states that any immigration officer may: (a) interrogate, or scrutinise the passport of any person who desires to enter or leave Tanzania or any person who he has reasonable grounds for believing to be a prohibited immigrant and, when he has reason to suspect any infringement of any provision of this Act, or any regulations made hereunder, interrogate or scrutinise the passport of any person who he believes can give information regarding such infringement; (b) require any person who has entered or who desires to enter or leave Tanzania to make and sign any prescribed form of declaration and submit himself to examination by a medical practitioner; (c) require the master of a ship, the captain of an aircraft, the guard of a train or the person in charge of a vehicle arriving from or leaving any place outside Tanzania to furnish a list in duplicate, signed by himself or his agent or other person authorised to do so on his behalf, of the names of all persons in the ship, aircraft, train or vehicle and to furnish such other information as may be (d) if he has reasonable cause to suspect that any person has contravened any of the provisions of this Act or of any regulations made hereunder or that the presence in Tanzania of any person is unlawful, and if he is of opinion that in order to prevent justice from being defeated it is necessary to arrest such person immediately arrest any such person without

warrant, and such person shall be brought before a Magistrate as soon as is practicable; (e) require the production to him of any proof or evidence which he may consider necessary to substantiate any statement, either verbal or written, made for the purpose of obtaining any permit, pass or other authorisation which may be issued under the provisions of this Act; (f) enter upon any premises at all reasonable hours and investigate any matter relating to immigration; (g) require any person to produce to him any document which such person may be carrying or conveying.

For the purposes of discharging his functions under this Act, an immigration officer may, without a warrant, stop, enter, board and search any aircraft, train, vehicle, vessel, ship, building, premises, godown, container, boat or any part thereof, of Tanzania.

From the above, you can see that the powers of immigration officers are extensive. However, it is not uncommon for them to misuse their powers. For example, they can only take documents that are relevant to immigration and not otherwise.

You must understand that Immigration in Tanzania has the tough task of balancing between ensuring that locals get employment vis a vis specialist jobs that require foreign persons. All countries have such protectionist policies, to ensure the employment of their people. There are also instances of companies not complying with the law. Unfortunately, this sometimes leads to innocent companies suffering from such raids, which we agree are not always carried out within the boundaries of the law.

### **In Court for refusal to pay garbage costs**

**My office is located in the Dar es Salaam city centre where, for many years, I have paid TZS 7,500 per month as garbage collection costs. Suddenly, a few months ago, the**

**garbage collectors demanded TZS 150,000. I refused to pay the increased amount, and they refused to collect the old amount. I have now been sent a Court summons. What should I do?**

*6 February 2012*

Although garbage collection does not sound like a big deal, non-payment for garbage collection is a criminal offence. The rates for garbage collection are stipulated in the Dar es Salaam City Council (Collection and Disposal of Refuse) by-laws, 1994. Schedule C of this by-law is relevant in answering your question.

Under these by-laws, the rates are set according to the number of employees businesses have. For example, businesses with between 76 and 100 employees are required to pay TZS 150,000; the TZS 7,500 rate is for businesses who employ between six and ten employees. Unless the number of your employees has increased, we believe you have a good defence.

On a different note, and as a precautionary measure, it is advisable to appear before the Court with two persons who can bail you out, just in case bail is called for.

### **Newspaper editor charged with sedition**

**I work as a Deputy Editor in one of the newspapers in Tanzania. Due to a certain editorial that upset the government, I have been charged in Court with sedition. It is true that I wrote the editorial, but I believe what I wrote and don't understand how I can be arrested for expressing my opinion. Aren't editorials exempt from 'balancing the story ideology' as it is merely an expression of my opinion? What should I do?**

*2 April 2012*

You have been charged with sedition under the Penal Code, the criminal statute of

#### 4 • Business disputes with state officials

Tanzania. The Penal Code defines seditious intention as an intention: (a) to bring into hatred or contempt or to excite disaffection against the lawful authority of the United Republic or the government thereof; or (b) to excite any of the inhabitants of the United Republic to attempt to procure the alteration, otherwise than by lawful means, of any other matter in the United Republic as by law established; or (c) to bring into hatred or contempt or to excite disaffection against the administration of justice in the United Republic or (d) to raise discontent or disaffection amongst any of the inhabitants of the United Republic; or (e) to promote feelings of ill-will and hostility between different classes of the population of the United Republic.

The Penal Code further states that an Act, speech or publication is not seditious by reason only that it intends: (a) to show that the government has been misled or mistaken in any of its measures; or (b) to point out errors or defects in the government or constitution of the United Republic as by law established or in legislation or in the administration of justice with a view to remedying of such errors or defects; or (c) to persuade any inhabitants of the United Republic to attempt to procure by lawful means the alteration of any matter in the United Republic as by law established; or (d) to point out, with a view to their removal, any matters which are producing or have a tendency to produce feelings of ill-will and enmity between different classes of the population of the United Republic. (3) In determination whether the intention with which any act was done, any words were spoken or any document was published, was or was not seditious, every person shall be deemed to intend the consequences which would naturally follow from his conduct at the time and in the circumstances in which he so conducted himself.

You seem to be under the wrong impression that an editorial can be recklessly written. That is not the case. An editorial, whilst an opinion, can also be seditious. It is true that the Constitution allows you to express your opinion, but that opinion can only be expressed within certain boundaries. Your attorney can guide you further.

#### Government websites not updated

**I am a foreign consultant. I have always noted that the websites of government departments, Ministries and also parliament are either not updated or provide information that is old, irrelevant and inappropriate. To give you an example: one website still refers to the President as being Benjamin Mkapa. The national government website still has names of some of the old Ministers. Even worse, some websites have the old laws posted, while others have links that never open. Is there no website law that makes it an offence to post such old information? This is the year 2012 and such lethargy should not be accepted especially when maintaining a website does not require a massive amount of a budget, merely commitment. How can this be sorted out? If I have relied on information on any of these websites, can I sue that department?**

*9 July 2012*

Unfortunately, there is no law that we are aware of that makes this an offence. However good governance principles and common sense dictate that these departments, Ministries, agencies, as the case may be, should update their websites on a daily, or at the least, a weekly basis. Since you seem to have a list of all such websites, it is not unwise to write to these institutions, and alert them to their anomalies.

The second part of your question cannot be answered without us knowing how you relied upon the information, and what other

sources were available to you to check, prior to relying on that information. Generally, your claim will not succeed if you had constructive knowledge, which you seem to have, of the website not having been updated. If that is the case, we do not believe you have very high chances of succeeding. Your attorneys can guide you further after you disclose all facts to them.

### **One pharmacist at two places**

**I am a practising pharmacist running two pharmacies where I have displayed my qualifications. I have assistants at both locations but spend more time at the bigger pharmacy. Some inspectors came to the smaller pharmacy when I was not there, and found me absent. The disciplinary committee has now charged me for the misbehaviour of allowing unqualified personnel to provide services, contrary to the Pharmacy Act. Did I break the law? How do I run my business?**

*17 September 2012*

Your question also provides the hint to the answer. As a pharmacist, you know that you cannot display certificates at one pharmacy and work at another. It is true that this is the current market practice. However, this market practice is one, we are informed, that is being cracked down upon.

A pharmacist is a professional who gives out medication. Wrong medication can lead to death. You must take your duties seriously and comply with the Pharmacy Act. This Act requires that you work only at one place, where you display your certificate of registration.

We recommend that you stop working at these two places and comply with the law.

### **Lowest bidder, still not winner**

**I bid for a large tender for the construction**

**of a road. My bid was the lowest, yet I was not awarded the tender. Upon following up, I was told that the others had a better bid. Should I have not been awarded the tender?**

*17 December 2012*

As of today, tenders are overseen by the Public Procurement Act 2004 (PPA 2004) which has regulations under it. The most critical information for you is that it is not only the price that is a determining factor but other composite factors.

The PPA 2004 introduces the concept of "lowest evaluated cost". This means the price offered by a supplier, contractor, or consultant that is found to be the lowest after consideration of all relevant factors, and the calculation of any weighing for these factors. Factors can only be considered, and weighed, if they were specified in the tender documents.

For example, some tenders have both a technical bid and a financial bid. Here, a certain percentage is allocated to each of these bids. The weighted average then forms the final lowest evaluated cost.

If you are unhappy with not being selected, you have the right to appeal to the procuring entity and then to the Public Procurement Appeals Authority (PAA). The PAA has recently annulled a number of tenders for being irregularly conducted. Your attorney may want to consider this route and can guide you further.

### **Public Private Partnership Act**

**I have been hearing about the Public Private Partnership Act (PPPA) and that the private companies shall be charging money to citizens for using some public structures like roads. How can the government be selling our own roads? Kindly explain if I have got it wrong.**

*24 December 2012*

The PPPA will help the government and the private sector to work together, for the benefit of the whole community. The government of Tanzania intends to do a lot of things to develop the country i.e. build subways, hospitals, roads, universities etc. However, it is not a secret that the government does not have enough money to implement such vast projects fast enough. The PPPA aims to involve the private sector and companies which have financial ability to build such structures. The Act does so by enabling partner companies to recover their costs and profit for a limited period. Eventually, the structures they deliver will become the property of the government. Yes, this may involve charging persons small amounts of money for the use of the structures, for a limited period. However, this approach allows for the development of the country. Similar acts are present in many other countries where the private sector has taken a lead role in such infrastructure projects.

Hence you have it wrong, the government is not selling the country, but working towards further and faster development.

### **Registration of tour guides**

---

**I grew up in one of the villages on the slopes of Mount Kilimanjaro. From time immemorial, our family has been earning its living from tour guiding activities. We have, for all this time, not been interrupted by anybody, and this experience has been passed amongst us for many generations. Recently, my older brother was apprehended for operating as a tour guide without being registered. We got him released, but only because of the connections we had with a certain man. I wonder what law forces us to register. We have been doing this for years now, and most of us have no qualifications to do other jobs. Was the reason for the arrest of my brother fair? Please advise.**

31 December 2012

**FB**

At the outset, we wish to point out that every tour guide is required to be registered pursuant to the directives under the Tourism Act (TA) No. 29 of 2008. A person who contravenes this commits an offence and shall on conviction be liable to a fine of not less than TZS 1M, or imprisonment for a term not exceeding six months, or both. The TA has further put conditions for one to be registered as a tour guide. These conditions include: being a Tanzanian of 21-years-old, to have at least completed O-level education, to hold a valid first aid certificate, to have adequate knowledge of the area, and knowledge of the position applied for, and to have any other qualifications as the Minister for tourism may, by order in the Gazette, specify.

Since your brother operated as a tour guide, he was contravening the law. As such, his arrest was justifiable. The fact that your connections got him released might not save you the next time, should you persist in continuing to operate as tour guides without being registered.

Lastly, no matter how much we may sympathise with you to the effect that the law has not considered your time immemorial experience over the issue (tour guiding operations by your family) we still suggest you need to feel the breeze introduced by the TA. This Act is the law which we must all abide by. If you wish to solicit a changes in the law, in order to take account of your needs, we suggest you write to the Minister of Tourism.

### **Refusal to give revenue documents to labour officer**

---

**I am a businesswoman now in Mwanza, having opened an office here. My main business is importation. I sell a myriad of merchandise from China. I employ seven Tanzanians as my assistants. Recently, a person who identified himself as a labour officer came over in my office and requested**



**various books and documents. He said he was there to ensure compliance of labour laws. I gave him the documents he needed, but I declined to give him books showing revenues of the business. He said he will take a legal action against me? What does the law say?**

*28 January 2013*

Under the Labour Institutions Act (LIA), Act No. 7 of 2004, for the purposes of administration of labour laws, a labour officer may, at any reasonable time, enter any premises with a prescribed certificate of authorisation, and require any person who has control over any information, book, document or object to furnish it and explain any entry in the information, book or document or on the object. These powers are provided under Section 45 of the LIA, and extend to seizure or making copies of any information, book, document or object. However, for clarity purposes, the LIA has made it clear that any information, book or document, sample or object shall be relevant to the enforcement and administration of the labour law.

If the officer's demands were for books and information that was not relevant to labour, we entirely agree with your decision to decline to give him your revenue books. We do not see the relevance of these revenue books to the enforcement and administration of the labour laws, unless you have not told us all the facts.

Under the LIA, it is an offence to refuse to produce a document required by the labour officer. However, it is explicitly provided, under Section 49 of the same law, that it shall not be an offence to refuse to answer a question or produce any information, book, document or object if there is a lawful ground for the refusal.

We do not see any likelihood of successful

legal action being taken against you, because you have lawful grounds for refusing to give revenue books to the labour officer. Things would have been different if the books were required by the Tanzania Revenue Authority (TRA) officials. If you have the name of the labour officer, do not be shy about reporting him to the labour commissioner. Your lawyers can also guide you further.

### **Government officials are always late**

**I have been to Tanzania several times in the past two years. Every time I visit a permanent secretary or deputies of Ministers, I end up waiting for hours to see them. There is no sense of apology, and it beats me why they cannot manage their time properly. Such time wastage is costing this country millions of dollars every day. Had this happened once or twice, it would be understandable but this seems to be the order of the day here. No public official seems to have respect for time.**

**Our company has spent thousands of additional dollars on me because I always have to extend my stay in Tanzania. Recently, one of us had to go all the way to Dodoma to meet a certain Minister only to be told by his deputy that the previous night the Minister had travelled back to Dar for some "official" duties. A phone call from him for us to cancel our trip would have saved us all the funds we spent going all the way to Dodoma. Please guide on what I should do? Is there no guideline on this? How and to whom can I address this?**

*6 May 2013*

The Public Service Management (PSM) has a code called Code of Ethics and Conduct for the Public Service made by the Minister of State, President's Office Public Service Management under the Authority of Section 34 of the Public Service Act, 2002 and Regulations 65(1) of the Public Service

## 8 • Business disputes with state officials

Regulations, 2003. The code clearly provides for the following: pursuit of excellence in service, practice meritocratic principles in service delivery, execute duties and assigned responsibilities with maximum standards and within required time, unless otherwise authorised, public servants to use official time in an honest way to fulfil official responsibilities and shall not use official time for their private activities or leisure.

From the above, you can see that the law has provided that a public official must perform his duties at a certain standard and taking into account meritocratic principles. Hence not keeping time is surely in breach of the law. You can either decide to formally lodge your complaint with the superiors of the persons you were to meet or with the Minister responsible for Public Services Management.

We agree with you that not keeping time or managing time is a bad impression that is created by officials. In fact, in some countries timekeeping is crucial, even a five minute delay, comes with an apology. Your lawyers can guide you further.

### BoT refusal for name

**We are a bank of international repute. Our bank's name also bears the word "central" in it. Our informal discussions with the Bank of Tanzania (BoT) have revealed that the BoT is not happy with the use of the word "central". This is because the BoT is sometimes referred to as a central bank. However, our name is not central bank, but rather a name that only has, amongst other words, the word "central" in it. How do we convince the BoT? Why is the BoT so stiff about this?**

*10 June 2013*

The Bank of Tanzania Act is clear. It says that, save with the written consent of the BoT, no bank shall be registered under the

provisions of any law, by a name which includes any of the words "Central", "State," "Government" and "Reserve".

The BoT is bound under this Act and will, very likely, not allow you to register. The BoT is not being stiff but is trying to ensure that there is, amongst others, no market confusion that you will create.

### Fake police in office

**My secretary informed me that two police officers had come to see me, in order to question me over an alleged offence. Believing them to be real officers, they had come in a car that had police Tanzania number plates, I allowed them in. They then started threatening me about something I had no idea about. Little did I know that the individuals were former police officers, who had been fired. They are going around trying to extort money from people, pretending to be still on duty. Is there no law that they can be punished under?**

*8 July 2013*

Under the National Security Act this is a serious offence. Section 6 of this Act states that any person who, for the purpose of gaining or assisting any other person to gain admission to a protected place or for any other purpose prejudicial to the safety or interests of the United Republic (a) without lawful authority uses or wears any uniform of the Defence Forces or of the Police Force or any other official uniform of the United Republic or any uniform so closely resembling the same as to be likely to deceive, or falsely represents himself to be a person who is or has been entitled to wear or use any such uniform; (b) without lawful authority uses any vehicle belonging to the government or any branch thereof, or any vehicle which because of false number plates or other reason so closely resembles such a vehicle as to be

likely to deceive, or falsely represents himself to be a person who is entitled to use such a vehicle commits an offence and shall be liable on conviction to imprisonment for a term not exceeding 20 years.

If you have not already done so, you should report this to the police.

### **Joint venture with government agency**

**We have entered into a joint venture (JV) with a government agency, whose CEO is under a certain Ministry. The JV has had some financial challenges, due to an influx of foreign players and depressed price of the commodity we deal in. Our projections on profitability have not been met and the Minister made a remark that he intended to terminate the JV. We have invested millions of dollars into the project and are quite surprised with such a threat. Even the agency's CEO is sympathetic to the project but says the Minister has wide powers under the law to terminate us even though there is a mechanism under the JV agreement where a dispute has to be referred to arbitration. Kindly guide if there is any law that gives the Minister such blanket powers.**

*29 July 2013*

It is very hard for us to answer this question without knowing what agency you are referring to and what Ministry such agency is under. All government agencies are established under a certain law, whereby the powers of the agency and sometimes the Ministry responsible for the agency are stipulated. We hence answer this question in general terms and suggest you seek specific legal advice.

To begin with, the JV agreement will have provided for the rights and obligations of the parties, including a termination clause. Depending on the type of default, there will be stated various options to terminate, rectify,

cure et al. Hence, the Minister is bound by the JV agreement and has no right to issue these threats unless, of course, the law establishing the agency or any other law provides for such blanket powers, which we doubt. The Minister might have been carried away in his remarks, and you should draw his attention to the JV agreement.

If this loss-making state is due to declining community prices, rather than your negligence, we do not see why you would be in breach. When projections are made, they are made on the basis of certain assumptions, which change over time.

If the JV agreement has an arbitration clause, and the Minister threatens to terminate it, we recommend that you immediately regard this as a dispute, and refer the matter to arbitration. If necessary, you can make an appropriate application in Court for necessary injunctive relief pending final determination of arbitration.

It might be worth notifying the Minister and his legal advisors in the Ministry that due process must be followed, and that termination would be illegal. The government has taken a number of high ranking officials to task for failing to comply with the terms of agreements. Where those officials have illegally terminated contracts, allegedly in the name of the government, this has lost the government billions, even trillions, in arbitration. A contract that parties enter into must be respected within the four corners of the contract, and read in conjunction with the laws of the land.

### **Pharmacy operated by non-pharmacist**

**I came to Tanzania as a cultural tourist and witnessed that there are no satisfactory supplies of medicine in rural areas. I wish to come and establish a pharmacy business in rural areas and have already done the preliminaries for this including getting an**

**opinion on a business structure. I want to make these medicines available at cheaper and affordable prices. However, I have been informed that, not being a pharmacist by profession, I cannot do this. Is this true? Your guidance on this shall be highly appreciated.**

*28 October 2013*

The local legislation for regulation and control of the pharmacy profession and practice is the Pharmacy Act No. 1 of 2011. It is this piece of legislation which has also established a Pharmacy Council as the sole authority for registering, enrolling and listing of pharmacists, pharmaceutical technicians and assistants. In this, it is an offence for a person to operate a pharmacist business unless that person is a pharmacist or is in association with a pharmacist. Also, under Section 43 of this Act, no person other than a pharmacist shall manufacture for sale, supply or dispense any medicine except under the immediate supervision of a pharmacist. The sentence for going against such provision is a fine not less than TZS 1M, or imprisonment for a term of not less than six months or both. If the offender is an association, firm or body corporate, the sentence is a fine of not less than TZS 5M.

Coming back to your query: the intended investment venture is possible. However, to comply with the law, you should carry that business with a pharmacist. This pharmacist must be registered in Tanzania.

What is perhaps more challenging for you is the fact that there is a shortage of pharmacists in Tanzania. Getting pharmacists, let alone ones in rural areas, may prove to be challenging. The law has not addressed this, and we advise you to contact the sector Ministry to discuss this.

### **Authorities took my cows**

---

**I have a number of cows and goats. To save costs, I usually release them on the streets near home so they eat the grass and whatever else they can find. I have been doing that for years but, out of nowhere, the municipal authorities took my cows and goats. They also demanded that I pay a fine. Additionally, they are ordering me that I should never let them out like that. Is this legal? Can a man not feed his cows and goats in peace on a freely-grown grass that is on my own motherland of which I am a citizen? I want to take the municipal to task. What should I do?**

*13 January 2014*

We understand your frustration. Yes, it was a practice for a long time for people to leave their animals wandering the streets and major roads. However, such practice is now prohibited under municipal laws and regulations. These laws and regulations aim to ensure that the city is kept clean, unwanted health issues are avoided, and accidents are prevented. We believe the municipal authorities are within the law in ordering you to stop this.

Merely being a citizen does not mean you can do anything you want in the motherland. There are rules and regulations that must be followed, in order to allow all to live in peace and harmony. Imagine what would happen to the city of Dar es Salaam if every resident released their cows and goats on the streets. We recommend you consult your lawyer.

### **Accountability of public officials**

---

**I have been working with some accountants in government offices. I know these accountants are causing huge losses to the government because of their negligence. They might not be stealing but their non-attention to detail, and hurry to go home, is**

**a serious issue that needs to be addressed. Is there no law that has consequences for such behaviour?**

24 February 2014

Section 10 of the Public Finance Act specifically provides the following:

Where there occurs a loss of or deficiency in public money or other money that has been advanced to or was under the control of a public officer or where a loss or destruction of or damage to public property or other property occurs while the property was in the care of a public officer and the Minister is satisfied after due enquiry that the negligence or misconduct of the officer caused or contributed to such loss or deficiency, then (a) the amount of such loss or deficiency; or (b) the value of the property lost or destroyed; or (c) the cost of replacing or repairing the damage to that property, as the case may be, shall be a debt due to the government and may be recovered from the officer in accordance with the Public Officers (Recovery of Debts) Act, 1970.

Where the negligence or misconduct of a public officer was not the sole cause of any loss, deficiency damage or destruction resulting in an action under subsection (3), the amount recoverable from the officer may be restricted to so much only of the cost of, or the cost of replacing or repairing, the loss, deficiency, damage or destruction as the Minister considers, after due enquiry, to be just and equitable having regard to the contribution made by the officer to that loss, deficiency damage or destruction.

In this section, a reference to a public officer includes a person who has been such a public officer.

You can see from the above that there is a specific law that allows the government to recover losses caused to the government by such officers. Many accountants are not aware

of this provision of the law.

## Diplomats cannot be touched

**Why is it that diplomats cannot be touched in Tanzania? We are too soft on this. How can we change? I am shocked.**

17 March 2014

We are not sure what you mean on how we can change. We are a signatory to the Vienna Convention, and our diplomats are accorded the same privileges as other signature countries. You must also remember that we have good diplomatic support in Tanzania. Your comments are misguided and likely unwelcome.

Furthermore, and to add further shock to you, the Vienna Convention also offers the following: Article 9. The host nation at any time and for any reason declare a particular member of the diplomatic staff to be *persona non grata*. The sending state must recall this person within a reasonable period of time, or otherwise this person may lose their diplomatic immunity. Article 22. The host country must never search the premises, nor seize its documents or property. Article 30 extends this provision to the private residence of the diplomats and that is why you see the private residents of diplomats clearly marked in Dar. Article 27. The host country must permit and protect free communication between the diplomats of the mission and their home country. Article 29. Diplomats must not be liable to any form of arrest or detention. They are immune from civil or criminal prosecution, though the sending country may waive this right under Article 32. Under Article 34, they are exempt from most taxes, and under Article 36 they are exempt from most customs duties. Article 31.1c Actions not covered by diplomatic immunity: professional activity outside diplomat's official functions. That is the reason most

diplomats do not engage in anything beyond their “diplomatic scope of work.”

### **Conflict of interest on TRA Board**

---

**I have noted that there are members in the TRA Board who are conflicted in procurement issues amongst others. Is there no law that stops them from being part of decision making pertaining to such procurement?**

*23 June 2014*

Schedule 2 paragraph 4 of the Tanzania Revenue Authority Act answers your question. It states: 4 (1) A member of the Board who has a direct or indirect personal interest in a matter being considered or about to be considered by the Board shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest to the Board. (2) A disclosure of interest under sub-paragraph (1) shall be recorded in the minutes of the meeting of the Board and the member making such disclosure shall not, unless the Board otherwise determines in respect of that matter: (a) be present during any deliberation on the matter by the Board; (b) take part in the decision of the Board. (3) For the purpose of the making of a decision by the Board under sub-paragraph (2) in relation to a member who has made a disclosure under sub-paragraph (1), the member who has made such disclosure shall not: (a) be present during the deliberations of the Board for the making of the determination; or (b) influence any other member or participate in the making by the Board of the determination. (4) When there is no quorum for the continuation of a meeting only because of the exclusion of a member from the deliberations on a matter in which he has disclosed a personal interest, the other members present may: (a) postpone the consideration of the matter

until a quorum, without that member, is realised; or (b) proceed to consider and decide the matter as if there was a quorum.

Hence, a member of the TRA Board who is conflicted must disclose this interest. If they do not do so, they will be contravening the Act. The maximum penalty for breaching this Act is two years in prison.

### **Suing the government**

---

**Why do I have to wait 90 days to sue the government? Or is my lawyer taking me for a ride? What happens if the department I am suing does not defend the suit? What else can you advise me?**

*18 August 2014*

Section 6 of The Government Proceedings Act clearly states that: (1) Notwithstanding any other provision of this Act, civil proceedings may be instituted against the government subject to the provisions of this section. (2) No suit against the government shall be instituted, and heard unless the claimant previously submits to the Government Minister, Department or officer concerned a notice of not less than ninety days of his intention to sue the government, specifying the basis of his claim against the government, and he shall send a copy of his claim to the Attorney General. (3) All suits against the government shall, after the expiry of the notice be brought against the Attorney General, and a copy of the plaint shall be served upon the government Ministry, Department or Officer that is alleged to have committed the civil wrong on which the civil suit is based. (4) All suits against the government shall be instituted in the High Court by delivering in the Registry of the High Court within the area where the claim arose. (5) Notwithstanding the provisions of subsection (3), the Attorney General may, unless another person ought to be sued,

be sued or be joined as a co-defendant, in proceedings against the government. (6) The provisions of the Public Officers (Recovery of Debts) Act, shall apply to any officer who occasions the government to incur loss, costs or damages as a result of his failure to obtain legal representation in the suit.

Although quite remote, should the government department sued not defend itself by not filing a defence, the suit will go *ex parte*. If this happens, it is likely that you will succeed. However, the department's head who failed to defend the suit will end up being personally liable for such amounts under the Public Officers (Recovery of Debts) Act.

### **PCCB powers to search**

**Prevention and Combatting of Corruption Bureau (PCCB) officials searched our premises. We demanded to know who they were but they refused and forcefully entered. Is this allowed?**

15 September 2014

You did not tell us what happened after they entered. However, we refer to you Section 11 of the Prevention and Combatting of Corruption Act (PCCA) for guidance. This Act clearly states the following in Section 11: (1) The Director General shall issue to a member of the Bureau an identity card which shall be *prima facie* evidence of appointment as a member of the Bureau. (2) Every member of the Bureau, shall on demand, produce his identity card to the person demanding that identity card. (3) Any officer of the Bureau conducting investigations into an offence alleged or suspected to have been committed under this Act or any other law relating to corruption may request any public official for assistance in the reasonable exercise of his powers or the discharge of his duties under this Act.

Section 12 of the PCCA is the search provision. It states: (1) The Director General may, by writing, authorise any officer to search any person, if it is reasonably suspected that such person is in possession of property corruptly or illicitly acquired or to search any premises, vessel, boat, aircraft or other vehicle whatsoever in or upon which there is reasonable cause to believe that any property corruptly or illicitly acquired has been placed, deposited or concealed.

Hence, the searching of your premises is allowed under the law. However, if the officers who are present are unwilling to show their identification, they cannot be from the PCCB. It is likely that you were dealing with some crooks, especially considering that they forced their way in.

### **Bid seal in tender opened prematurely**

**Our company applied for a large tender for road construction. When the bids were opened, we found that our tender seal had been tampered with, and envelope opened. Is this not a serious issue?**

22 September 2014

If the tender seal was opened, the tender may have to be cancelled. However, this will depend on the circumstances and the evidence that can be found.

Assuming you are correct, the person who opened the seal is guilty of an offence, as provided under Section 104 of the Public Procurement Act 2011. This Act also applies to the opening of documents submitted electronically. It is also an offence to divulge the contents of tender documents before the appointed time for the public opening of those documents.

Anyone convicted of this offence shall be liable to a fine of not less than TZS 10M, or to imprisonment for a term of not less than seven years or both. In addition to the

#### 14 • Business disputes with state officials

penalty imposed in this section, the Court shall order that the amount of loss incurred by the complainant be compensated. If this compensation is not paid, the Court shall issue an order of confiscation of personal property of the person convicted in order to recover the loss.



# Children, Relationships, Marriage and Divorce Law

---

“

Marriage, divorce, and children's welfare issues can all result in bitter legal battles. Do you have a right to claim for wedding gifts not delivered, name your child, or obtain a divorce when your spouse gains weight or grows a beard? These are just some of the questions asked by readers of our column.

### Entitlements upon divorce

---

**I have been married ten years, am sick of my husband and want a divorce. I have been a stay-home wife and have not financially contributed directly to the acquisition of various properties that my husband acquired during the pendency of marriage. He always used to tell me that I had brought good luck to him in that, after we got married, he made tonnes of money. My husband knows I want a divorce but has told me point blank that, if I ever file for divorce, I will be on the streets and he will not maintain or pay me. He also keeps mentioning that all the assets belong to him or his family members. It is true that I have not brought any hard cash home, but I have assisted in supervising all his businesses. Am I not entitled to anything? How can I proceed? In this harsh world, I will not survive a day if my husband kicks me out without any payment?**

*6 February 2012*

You have not mentioned the reasons you seek a divorce. In Tanzania you cannot merely agree on getting divorced; the Law of Marriage Act provides for specific reasons like adultery, cruelty, desertion, that one must adduce to get divorced. The Court must also be satisfied that the marriage has broken down irreparably before making any orders for divorce.

In the event you proceed to file for divorce, there are lots of Court decisions to guide you about your rights. These decisions include one famous case by the Court of Appeal of Tanzania, which ruled that domestic chores count as a contribution to the acquisition of matrimonial properties. Since you have assisted your husband by taking care of the home in his absence, including supervising the said family businesses, you are entitled to an equal share of the matrimonial properties

much as he is entitled to the same. Generally speaking, it does not matter whether the property is in his name or yours.

Your husband seems to think that he can get away by merely throwing you out. This is not the case, and the law comes to your protection. Your husband should read about some famous divorces, where the husbands became poorer. Examples include media magnate Rupert Murdoch, former basketball star Michael Jordan, former golf champion Tiger Woods, movie director Steven Spielberg, Actor Harrison Ford and singer Lionel Richie, whose divorce settlements were worth billions of shillings.

We must warn you that if, at any time, you have used matrimonial properties in a manner to have wasted them, for example, in buying unnecessary jewellery or used funds flamboyantly, these amounts will be deducted from sums payable to you. Our advice here is only meant as a guide and is not meant to further spoil or strain your relationship. You might want to consult a marriage counsellor for further advice.

### Wife wants divorce

---

**My wife and I are happily married until recently, when she started retrieving my pre-marriage emails and found some romantic mails with my previous girlfriend. She says that I should have told her about this before marriage. I responded that she had never asked, and that I have never communicated with the ex after marriage. She also had boyfriends, whose details I never asked on, because I believe the past is buried behind you. My wife is now seeking a divorce from me. What should I do?**

*20 February 2012*

The Law of Marriage Act of Tanzania provides for specific grounds that can be adduced in a petition seeking divorce. For

example, one cannot simply get a divorce in Tanzania by consent of the husband and wife. Some of the common grounds are cruelty, adultery and desertion. It is quite clear that you do not fall under the category of adultery assuming that you have told us the truth in that you have never met the ex after marriage. We find it hard to believe that your wife would just, out of the blue, decide to check your emails of many years before. If you are hiding anything from us, then please ignore this response. However, we continue answering your question assuming you have not concealed anything from us.

The other common ground for divorce is desertion, which we also believe does not apply in this case. Cruelty, which might apply, is also quite remote. For example, can your wife claim that you have been cruel by not disclosing your ex? We doubt it, unless there are other extraordinary circumstances that are not known to us.

All in all, we do not see how your wife's petition will succeed on the ground as stated in your question. We suggest that you both seek counselling. It seems there might be more to your situation than meets the eye.

### **Breach of privacy**

**I sent my 14-year-old boy to South Africa for some trials in a sports academy. Before they admitted him, he was escorted to the male bathroom to do a urine test. I protested, but they said that this was compulsory. Is that not a breach of his constitutional right to privacy?**

*27 February 2012*

This issue has been debated in many countries. Our research shows that the outcome reached has, almost always, been in favour of the institute conducting the test. When your son was to take a urine test, he was likely escorted to a toilet. However, it is

unlikely that anyone watched him take the urine sample.

We must point out to you that our answer cannot be more specific, as our constitution does not stretch as far as South Africa on such matters. You might need to contact a local lawyer who can guide you further.

### **Desertion of child and neglecting to provide food**

**I have seen a lady in Dar es Salaam who does not provide for her young children. She says it is her who decides on the child's welfare, not anyone else. She hardly cares about them though she is able to do so. Is this not an offence?**

*19 March 2012*

Any person who is the parent, guardian or other person having lawful care or charge of the child is obliged to provide the necessities of life like food, clothes, bedding etc for the better welfare of the child. Leaving the child without means of support is an offence of desertion, punishable by law. In addition, refusing to provide the necessities of life so as to injure the health of a child, is equally an offence. These offences are punishable with imprisonment for two years, a fine or both.

### **Compelling partner for HIV test**

**My boyfriend and I have been in a relationship for six months and intend to get married. Whilst I have accepted his proposal, I have a condition that both of us should go for an HIV / AIDS test before we proceed. Surprisingly, he has refused on the grounds that he is healthy and doesn't see the need of doing the test. Should I get married to him? What can I do?**

*30 April 2012*

The law in Tanzania does not allow compulsory HIV testing unless there is consent

of the person to be tested. There are, however, circumstances where HIV testing may not require consent. These situations include where there is a Court order, donor of human organs tissue and to sexual offenders. Your boyfriend does not fall under any of the above categories. Hence, you cannot force him to do the test.

On a different note, it is worthwhile to inform your boyfriend that it is an offence under our law to intentionally transmit HIV to another person. The offence is imprisonable for between five and ten years.

Being healthy does not mean you are free of HIV/AIDS, we suggest both of you seek services of an HIV/AIDS counsellor. And as to whether you should get married or not: unfortunately, as lawyers, we are not qualified to answer this question.

### **New husband marrying my daughter**

---

**I was married for over 20 years and our marriage was not blessed with any child. We adopted a child who we have been raising over the past many years. My husband is no more as he succumbed to Alzheimer's about five years ago.**

**Recently I met a nice younger man, whom I got married only to find out that he then started having an affair with my adopted daughter. I had no choice but to get divorced only to find out that my ex-husband and adopted daughter now intend to get married. My lawyers tell me that it is difficult to stop a marriage as it is a contract between two parties, and I cannot interfere. What should I do?**

*30 April 2012*

Your lawyers are right to the extent that marriage is a contract. However as to whether you can stop the marriage, we believe you can.

According to the Law of Marriage in Tanzania, a father is prohibited from marrying

his own child or from marrying the child of his former spouse(s). Your ex-husband might argue that the young lady he is now dating is not his daughter, neither your daughter, as you adopted her. However, the law recognises her as your daughter. Hence, under our laws, your ex cannot marry her.

Also, under our Penal Code, any male person who has prohibited sexual intercourse with a female person who is, to his knowledge, his granddaughter, daughter, sister or mother, commits the offence of incest. Where the female in question is 18 years or older, then any male convicted of this offence shall be sent to prison for a term of not less than 20 years. It is immaterial that the sexual intercourse was had with the consent of the woman.

Your daughter is also committing a crime. The Penal Code states that any female person aged 18 years or older, who knowingly permits her grandfather, father, brother or son to have carnal knowledge of her commits the offence of incest. Upon conviction, a female found guilty of this offence is liable to imprisonment for life or imprisonment of not less than 30 years. In addition, they shall be ordered to pay compensation, of an amount determined by the Court, to the victim in respect of whom the offence was committed. It can be debated whether your ex-husband can be deemed to be your daughter's father. But, all in all, the crime of incest would still be committed by your ex. You can, therefore, report the matter to a police station.

You can also object to the church where the marriage is going to take place, or make an application in Court.

### **Wife denying love**

---

**From the time I got married, my wife has not allowed me to even touch her. She says she is not ready for this. I am confused as to what to do. Can I get a Court order to force**

**her to cooperate with me? I still love her.**

*7 May 2012*

When you say she doesn't allow you to touch her, we assume that your wife is denying you sexual intercourse i.e. cohabitation under your conjugal rights.

Marriage is a contract. One of the conditions of the contract is that you will live as man and wife and that you will not be denied cohabitation. You are being denied these rights on the ground that somehow your wife is not ready. You probably wished she had told you this before marriage, but it is too late now. Thus, your question is can you get a Court order that will force her to 'cooperate.'

The old action of seeking a Court order to enforce your conjugal rights is no longer an option. You thus have no option but to either continue to live like that and wait for your wife to be 'ready' or proceed to divorce her. Denial of conjugal rights is one of the grounds based on which you can petition to divorce.

Please be informed that you should not forcefully try to engage her in intercourse. Although you are the husband and still in love, your wife has the right to say no. Forcefully engaging in any such activity may lead to you being charged with the serious offence of rape.

On a different note, you may want to find out what the reasons are for her to say 'no' to you. You should also consider seeking advice from a marriage counsellor.

### **Maximum number of children**

---

**My father-in-law has been interfering with my marriage for the past many years. He now says that I am putting his daughter under too much stress with constant pregnancies. I don't believe in condoms and it is beyond my control that God has bestowed us with many children. A lawyer**

**has now written a letter to me explaining that there is some sort of regulation where a family must use contraceptives, otherwise there is a limit on the number of children one can have. Is this true?**

*4 June 2012*

In our many years of experience, we have never seen a law that forces one to use contraceptives. There is also no law that specifies the maximum number of children you can have.

Whilst your lawyer and father-in-law are misguiding you, it is not a bad idea to think about using some natural ways of preventing pregnancies. Birth control might be beneficial after you have had a number of children. That again is subjective and merely a thought.

As lawyers, our knowledge of natural birth control is limited. We advise you to contact a sex counsellor.

### **Want to marry a 16-year-old**

---

**I am a University graduate, residing in Dodoma. I am dating a 16-year-old girl. Both of us are madly in love with each other and want to get married. The parents of the child have refused to bless us to get married. I have done everything to persuade them to bless us but all in vain. What options do I have?**

*18 June 2012*

The law as it stands today requires a female who has not attained the apparent age of 18 years to obtain the consent of her parents, or guardian where there is no parent before getting married. Section 17 of the Law of Marriage Act 1971 provides however that, where consent is withheld, one can apply to Court. If the Court decides that consent is being unreasonably refused, it may grant such consent. This decision shall have the same effect as if it had been given by the parents or guardian, as the case may be.

The world over it is widely reckoned that it is better to get married at a more matured age, after the girl has attained some level of advanced education. Her beauty may fade in 20 years, but her education will remain. This is, perhaps, what her parents are thinking. We think it is not entirely incorrect to think on those lines.

We must also bring one more serious issue to your attention. We assume that you are also sexually involved with the girl. Please note that, under Section 130 (2) (e) of the Penal Code, a male person commits the offence of rape if he has sexual intercourse with a girl or a woman with or without her consent when she is under 18 years of age. The only exception to this rule is if the woman is his wife, is 15 or more years of age, and is not separated from the man.

From the above you can see that, even if your girlfriend is consenting to having sexual intercourse with you, in view of her age, this consent has no legal effect. The day she reports this to the police, you could be charged with rape, which is a very serious offence.

### **Maintenance of pregnancy**

**I am an adult and got pregnant, which I know is not unlawful in law. My boyfriend, whose child I carry, has lost interest in me because I am now big and not as pretty. He refuses to support me. He seems to have forgotten that he has a mother too, who once become pregnant with him in the tummy. What should I do?**

*25 June 2012*

Getting pregnant is normally a blessing and not a curse. It is not unlawful to get pregnant, as you have correctly stated.

The law of the child allows for an expectant mother to file for a maintenance order in Court. The Court has a reasonable cause to

believe that the man alleged to be the father of a child is, in fact, the father of that child, your application will likely succeed, so long as the maintenance order is made in good faith, and not for any purpose of intimidation and extortion. For further assistance, kindly contact your attorney.

### **Validity of marriage**

**I am Catholic, who got married to a man four years ago. We are blessed with two kids. Recently, I have discovered that my husband has another wife in Dar es Salaam, whom he married in a Christian marriage. Upon close follow up, I have discovered that he abandoned his family for me, and no divorce was granted. Can my husband be married to two women?**

*2 July 2012*

The Law of Marriage in Tanzania recognises marriage as a union between a man and a woman, intended to last for their joint lives. Furthermore, the law recognises a Christian marriage as a monogamous marriage. A monogamous marriage is a union between one man and one woman to the exclusion of all others. Also, the Law of Marriage recognises only the following ways which could bring the marriage to an end: (a) by the death of either party thereto; (b) by a decree declaring that the death of either party thereto is presumed; (c) by a decree of annulment; (d) by a decree of divorce; or (e) by an extra-judicial divorce outside Tanzania.

Since your husband did not get a divorce before he married you, his former marriage is still valid and subsists. The law also prohibits a man in a monogamous marriage to contract another marriage. Under Section 15 of the Act, "No man, while married by a monogamous marriage, shall contract another marriage." When your current husband married you, he was incompetent to do so. Your marriage

is, therefore, likely void. We recommend you consult your attorney for further guidance.

### Registering birth of child

---

**My wife and I had a beautiful boy who was delivered by a traditional nurse at home in our village. I believe my son has special powers, and I don't want to register him as having been born. What should I do? Is it necessary for me to register him?**

*9 July 2012*

The Births and Deaths Registration Act makes it compulsory for the father and mother of a child to register the birth within three months of the birth occurring. If the father and mother of a child do not register the birth, the duty of registration falls to the occupier of the house in which, to his knowledge, the child is born, to each person present at the birth, and of the person having charge of such child.

Under the Act, any person who, being under an obligation to register a birth, refuses to do so, or to state any of the prescribed particulars, will be guilty of an offence. Upon conviction, such a person will be liable to a fine not exceeding TZS 500, or to imprisonment for a term not exceeding one month or to both.

Registering your child is thus mandatory and imprisonable if you do not comply. The reason for not wanting to register your child because of 'special powers' is not recognised under the law. It is unlikely that these special powers will disappear if you register your child.

### Getting married again

---

**I was married for ten years before my husband died two years ago. We jointly acquired properties during our marriage as both of us were working in very good**

**positions. I have met someone who has an interest in me, and we intend to get married. My in-laws are trying to stop me from getting married. They claim it is not allowed, and that they would automatically have a claim on my properties. Please guide.**

*6 August 2012*

Section 68 of the Law of Marriage Act does not restrict a woman to remarry. It states that, notwithstanding any custom to the contrary, a woman whose husband has died shall be free: (a) to reside wherever she may please; and (b) to remain unmarried or, subject to the provisions of Section 17, to marry again any man of her own choosing. The one exception to this general rule is that, where the parties were married in the Islamic form, the widow shall not be entitled to remarry until after the expiration of the customary period of iddat.

As for your in-laws, if you acquired the properties as joint occupiers then, upon the death of your husband, the property automatically vested with you, as the other surviving joint occupier. However, if you acquired the properties as occupiers in common, then your portion under the title remains with you and your husband's portion will be transferred to whoever he mentioned under his Will. The distinction between joint occupiers and occupiers in common is critical. Unfortunately, most property owners don't know the difference.

### Gifts to beautiful girl

---

**I met this beautiful girl and we started going out for some time. Having proposed to her and upon her agreeing to marriage, I gave her several gifts, including one of my cars, to ensure she is comfortable. I was shocked to find out recently that she has another man, who pretended to be the driver of the car. She has a serious relationship with this**



**man, who has already paid a bride price. She is now refusing to give me back the gifts, including the car. What should I do?**

*13 August 2012*

Gifts given in contemplation of marriage are recoverable under the law if the intended marriage never happens. Section 71 of the Law of Marriage Act allows a suit to be brought for the return of any gift made in contemplation of a marriage which has not been contracted. The Court will permit this recovery where it is satisfied that the gift was made with the intention on the part of the giver that it should be conditional on the marriage being contracted but not otherwise. Your lawyers can guide you further.

### **My friend seeing my boyfriend**

**I am a young, gorgeous and well-educated girl. I have a boyfriend, whom I have been dating for three years. Recently I was tipped off by someone that my best friend is also going out with my man. I have a recollection of previous incidences of my friend praising my man and admiring him. There are also some interesting messages she has been sending my boyfriend. These messages are quite indicative that there is something fishy going on. I want to teach my friend a lesson by suing her, as she is interfering in my life. She is breaking my heart, which is equivalent to a criminal activity. Can I not get an injunction to stop her from seeing him? How can I win my man back? Please guide me.**

*27 August 2012*

We are very sorry about your heart being broken but please note: the man you are dating is your boyfriend, not your husband. Whilst it might be morally wrong for him to date both of you, there is no law that stops him from even dating another woman. Morality is different from legality. Unfortunate

for you, we have not come across a law that prevents this.

As lawyers, we are not experts on relationships. You should consider getting counselling for your boyfriend, if you think he can change his behaviour. Otherwise, you have no choice but to break up and look for another friend.

Your friend's behaviour may be cruel, unethical and perhaps unacceptable. However, your best friend is not breaking the law by dating your boyfriend. Assuming your boyfriend and best friend are sexually involved, there is no law that stops her, or anyone, in engaging in sexual activity, provided that the activity is consensual, the parties are of the required age, and there is nothing that is abnormal or unnatural about the sexual relation.

Because your friend's activities are illegal, they are hence not actionable. An injunction cannot, therefore, be issued. However, we suggest you get a new friend.

### **Mother neglecting children**

**There is a particular woman who has at least four children, but does not take care of them. They are seen hanging around the Gymkhana area and sleep somewhere around there. Is there no law that protects such children notwithstanding that it is the mother who is mistreating them?**

*15 October 2012*

The Law of Child Act (LCA) has provisions that come to the rescue of such children, so long as they are below the age of 18. This law also states that the best interest of a child shall be the primary consideration in all actions concerning a child, whether those actions are undertaken by public or private social welfare institutions, the Courts or administrative bodies.

The Act states unambiguously that a child



shall be entitled to live with his parents or guardians. It also states that a person shall not deny a child the right to live with his parents, guardian or family and to grow up in a caring and peaceful environment unless it is decided by the Court that living with his parents or family shall: (a) lead a significant harm to the child; (b) subject the child to serious abuse; or (c) not be in the best interest of the child.

Subject to the provisions of the above, where a competent authority or a Court determines, in accordance with the laws and procedures applicable, that it is in the best interests of the child to separate him from his parent, the best substitute care available shall be provided for that child.

The LCA further states that it shall be the duty of a parent, guardian or any other person having custody of a child to maintain that child. In particular, this duty gives the child the right to food, shelter, clothing, medical care, including immunisation, education and guidance, liberty and right to play and leisure.

From the above, we recommend that you report this to the social welfare officer of the area. This person can then make appropriate inquiries and, if necessary, make an appropriate application in Court for necessary orders.

### **Mistress wants my money**

---

I had a long affair with a lady with whom I broke up recently. In return for her not telling anyone about our affair, including my wife, we entered through our lawyers into a settlement agreement. This agreement stated that I would pay her TZS 2.2M every month, in addition to paying her medical insurance premium. In consideration, the lady was to keep her mouth shut and stay in a different city. I have been paying her these amounts for the past four years, and am now in deep financial crisis. She says that I have

**breached the agreement by not paying her and intends to sue me. How do I handle this? Have I not been overpaying her?**

*29 October 2012*

Our answer will address the issue of enforceability of the agreement you entered into. It seems you entered into the agreement after being blackmailed and were therefore under duress when you signed. It doesn't matter if both your lawyers were involved. Also immaterial is the fact that you have been paying her for the past few years.

Our opinion is that the agreement is illegal. This is because it is against public policy and was entered into under duress after being blackmailed. The issue of adequacy of value is therefore not relevant to your case. However, as a general rule, the Court's will not go into the adequacy of a consideration.

The chances of the lady winning the case against you, assuming you have disclosed all material facts to us, are very low. If you are sued, we recommend that you also file a counterclaim against the lady. In this claim, you should demand she repays you the sums you have paid her over the last few years.

So that you are not in a compromising position, you might want to consider informing your wife about this. That is for you to decide. You should, perhaps, consider meeting a marriage counsellor prior to disclosing this to your wife.

### **Fraudulent pretence of marriage**

---

I had a girlfriend of over four years, with whom I parted. We went our separate ways, because of huge differences. She then developed a mental condition. I decided to take care of her, as her family is not based in Dar. After she recovered, I had developed a love for her again. Since she had no memory to realise if what I was saying was the truth or not, she stayed on with me when I told

**her we had been married. We had children and now we have started having problems again. One day, after an argument, I told her the truth and asked her to leave the house. She reported me to the police. I now have a criminal case against me. How can such a matrimonial issue become a criminal matter? Don't the police have anything else to do?**

*19 November 2012*

This is a very unique scenario and, believe it or not, is provided for under the Penal Code. The Penal Code clearly states that any person who wilfully and by fraud causes any woman, who is not lawfully married to him, to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief is guilty of a felony. Anyone found guilty of such an offence is liable to imprisonment for ten years.

We recommend you get yourself legal help, as this issue is not as simple as you make it to be.

### **Woman's rights under presumption of marriage**

---

**I never married formally but lived happily with a certain man as my husband for five years until recently. During our life together, we had three children and a number of properties. Regrettably, we are now separated, and I am living in one of the houses we built together. I am advised by my best friend to sue for divorce, distribution of properties and custody of children. However, some people say I won't get a dime because there was no formal marriage. Please advise.**

*26 November 2012*

The Law of Marriage Act provides that, whenever it is proved that a man and a woman have lived together for over two years, and during such time they acquired the

reputation of being husband and wife, there shall be a rebuttable presumption that they were duly married. Hence, so long as your ex had no other formal marriage, and the community around you considered you man and wife, then the presumption of marriage principles shall apply in your case. What is required of you in this regard is to satisfy the Court of competent jurisdiction that you, in fact, cohabited with the said man for over two years, that people considered you married, and you acquired the said properties jointly.

Under the presumption of marriage, a woman shall be deemed legal wife devoid only of the legal right to petition for divorce or separation. Therefore, you cannot petition for divorce or separation in Court as your union was a presumption of marriage. However, the law vests you with the legal right to apply for maintenance for yourself and the children. You are also vested with the legal right to apply for custody of the children of the union and some other reliefs which may include division of matrimonial property acquired by joint efforts. We recommend you contact your lawyer for further guidance.

### **"S" class Mercedes for wife**

---

**I am a very beautiful woman and have many admirers. Most women don't admit this, but I will openly tell you that I decided to get married to someone rich. Before marriage, he promised to buy me a 2011 "S" class brand new Mercedes Benz which he hasn't till date bought. He says his cash position is tight. I know is not the case, and he is taking advantage of already being married to me not to fulfil his promise. Can I file for divorce, as I do not want to live with a dishonest man? Surely the law provides for beautiful women to be treated properly.**

*7 January 2013*

The Law of Marriage Act of Tanzania

provides for grounds for divorce which can be filed when the marriage has irreparably broken. The following grounds are provided for: (a) adultery committed by one of the parties to the marriage, particularly when more than one act of adultery has been committed or when adulterous association is continued despite protest; (b) sexual perversion on the part of the respondent; (c) cruelty, whether mental or physical, inflicted by the respondent on the petitioner or on the children, if any, of the marriage; (d) wilful neglect on the part of the respondent; (e) desertion of the petitioner by the respondent for at least three years, where the Court is satisfied that it is wilful; (f) voluntary separation or separation by decree of the Court, where it has continued for at least three years; (g) imprisonment of the respondent for life or for a term of not less than five years, regard being had both to the length of the sentence and to the nature of the offence for which it was imposed; (h) mental illness of the respondent, where at least two doctors, one of whom is qualified or experienced in psychiatry, have certified that they entertain no hope of cure or recovery; (i) change of religion by the respondent, where both parties followed the same faith at the time of the marriage and where according to the laws of that, faith a change of religion dissolves or is a ground for the dissolution of marriage.

From the above, it is quite unlikely that your non-delivery of the Mercedes falls into any category. Surely not buying you the Mercedes Benz cannot be deemed cruel? If you purely petition to divorce on the reason of the Benz, we think you might not be successful in the divorce.

We must mention that in other jurisdictions, unlike Tanzania, a divorce can be filed by consent of the parties. In Tanzania, the case is different: you cannot collude and go to Court to get a divorce. Yes, the Law of

Marriage Act is outdated but it remains as good law today.

Lastly, the Act does not distinguish between beautiful women and ugly women, after all, beauty is in the eyes of the beholder. Your attorney can guide you further.

---

### **Private marriage ceremony and non-issuance of notice**

---

**I want to marry but I want a very private marriage ceremony. I don't want to issue public notice of intention to marry, and I don't want anyone to attend the mass where the marriage will be held. I am simply a very private person. Hence, I would like to know whether the laws of Tanzania allow such ceremonies.**

*7 January 2013*

The Law of Marriage Act provides that where a man and a woman desire to marry, they shall issue a notice at least 21 days before the day when they propose to marry. However the Registrar General may, by licence in the prescribed form, dispense with the giving of notice, as required under the law provided he is satisfied that the parties are not within the prohibited relationships, there is no impediment of subsisting marriage, the parties are not below the minimum age of marriage and if they are under the minimum age then the required consent is obtained and the Registrar General must be satisfied that, there is some good and sufficient reason for so doing.

Hence, it is possible to dispense with the requirement to give notice as required under the law provided you fulfil the stipulated requirements and the Registrar General dispenses with the requirement to issue a notice. However, the law is clear that any person may attend the civil marriage ceremony. For that reason, we don't believe that you can have a private marriage

ceremony. Nevertheless, you can have a private reception with only a limited number of persons. Alternatively, you may decide not to invite anyone to your reception party and enjoy it yourself.

### **Husband utters girlfriend's name during dream**

**I have been married for about 12 years now. For the past three years, I have suspected that my husband has been having an affair with a certain lady that he used to work with before. It has been hard to prove this, and he has always denied this. A few weeks ago, whilst very tired and having come back from a trip overseas, my husband said the ladies name at least three times in his sleep. I want to file for divorce. What should I do?**

*4 March 2013*

The grounds for divorce, *inter alia*, are cruelty and adultery that result in the marriage breaking down irreparably. You suspect your husband of having an affair but merely by stating a woman's name during a dream is unlikely going to prove adultery. Dreams are dreams, sometimes you dream of dying, sometimes of having an accident, and sometimes of ghosts. Most dreams are not true, at least that's what we believe.

You might want to give him the benefit of doubt and discuss this with a marriage counsellor. Either way, in preparation for a potential divorce, which is what you seem to want, you may want to consult your lawyers.

### **Golden tooth marriage**

**I got married to a girl whom I gave a golden tooth. To show our affection, we had one of her teeth removed and replaced it with the golden tooth. Our in-laws have caused rifts between us, and we have started quarrelling every day. She wants a divorce. I am ready to give her one but on condition**

**that she gives me back my golden tooth or buys it from me. How can you help?**

*1 April 2013*

The tooth you gave her was likely a gift to your wife for the wedding. As a result, it became one of her personal effects. Hence, it is unlikely that you can get the tooth back. Even if you could, this would mean extracting it from your wife's mouth as it has, by now, become part of her body. There are hundreds of foreign cases that argue whether an artificial tooth is part of your body or not. Most of these are inclined towards a tooth becoming part of your body after it has been affixed.

Bearing this in mind, removal of the tooth is against public policy. For that reason, we believe it is unlikely that you can get this golden tooth back. Factors like whether it is easily removable, on what conditions you had given it to her, whether her extracted tooth is still with her, in case you win the case against her, and the like.

All in all, it seems like you have a tough case against your wife. Perhaps you can give her a discount and she can purchase it. Otherwise, it's going to be an expensive legal battle in Court.

### **Child custody battle**

**I am a woman living for gain in Dar es Salaam. Two years ago, I gave birth to a baby girl whose biological father is a teacher based in Mwanza. Eight months after giving birth to this child I had to travel outside the country for a venture. I left my baby with her grandmother (her father's mother) living in Morogoro. After my return to Tanzania, I went to take my child but the grandmother has completely refused to return my child. The answer she always gives is that the child, according to their traditions, cannot live with me unless I am married. Personally,**

**I am not interested in getting married, since I have had a bad experience before. What should I do?**

*8 April 2013*

Legally a child has a right to live with his / her own parent(s). This right is clearly provided for under the Law of the Child Act No. 21 of 2009. Equally, in the same sagacity as a parent / mother, you are also entitled to have custody of your child. If the grandmother is not willing to allow you to take your child, we advise you to make an application in Court for an order of custody of the child. Under the Law of the Child Act there is a rebuttable presumption that it is in the best interest of a child below the age of seven years to be with his mother. However, in deciding whether that presumption applies to the facts of any particular case, the Court shall have regard to the undesirability of disturbing the life of the child by changes of custody.

So long as there are no such disturbing factors for the positive upbringing of your child, we think the Court will act on such presumption and order custody of the child to you as the mother.

The traditions that the grandmother is talking about should not stop you from getting custody of the child. You remain the biological mother of the child and, unless there are other reasons that you have not shared with us, you should be able to get custody.

Furthermore, marriage as an institution is a relationship where parties have to enter out of their own free will. Therefore, the fact that you are not married to your child's father cannot outweigh your right to custody. Your lawyer can guide you further.

### **Confirmation of parentage of a child**

**I am facing a bizarre situation, which is likely to take my happiness away. I had an affair**

**with a woman for a long time, a result of which she became pregnant. Unfortunately, the woman passed away during delivery. Luckily, the child survived. After the burial, another man appeared and claimed to be the father of the new-born child and that the deceased's pregnancy was his. I believe I was the only man to her, and the one to be there for her during her delivery. Each one of us is claiming to be the father, and I believe this new man has been planted there. What does the law provide in such a situation? What about the costs I incurred during the pregnancy, how can I recover those if the child turns out not to be mine? Can I get custody of the child?**

*13 May 2013*

Matters of parentage and custody of children are dealt with under the Law of the Child Act, which is Act No. 21 of 2009. This Act provides for an opportunity to the child, parent of a child, guardian of a child, social welfare officer or any other interested person, with special leave of the Court, to make an application to the Court for an order to confirm parentage of a child.

This law provides further when this application should be made. It allows this application to be made before the child is born, after the death of the father or mother of a child, before the child is 18-years-old or, with special leave of the Court, after the child has attained 18 years.

As for recovery of costs during pregnancy, with the child's mother no more we are not sure who you will sue for recovery. It is very unlikely that such a claim will succeed against the real father of the child, but your lawyers can guide you more.

The custody question is tricky. The general spirit of the law is to ensure that the best interests of the child are taken care of. If the child is really yours, there are chances you will get custody, after taking into consideration

your ability to take care and raise the child, your financial situation et al.

It is known that a child can be raised better by a woman than a man. Hence, the presence of your mother or some lady in the family to provide guidance and support will be helpful in case a custody battle erupts.

### **Marriage papers torn**

Without my knowledge, my 20-year-old son was dating an elderly lady who was at least 15 years senior to him. She somehow convinced him to get married to her, and they went for a civil signing ceremony in Dar es Salaam. Luckily my driver, who has been with me for the last 30 years, drove my son to the place where they were to sign. Upon reaching there, he smelt something wrong and phoned me. I quickly went there and entered the office where the signing was taking place. To my disbelief, they had already signed. I took the papers and tore them into pieces, explaining to the Registrar what the issue was. I have two questions: first, can such an elderly woman take advantage of this 20-year-old? Second, with the papers torn and no evidence as to marriage, is this marriage valid?

*24 June 2013*

To begin with, your son is above the legal age to get married. With or without your knowledge, he can still get married. However, we understand your concern that he might still be young at this age, and perhaps naïve in getting married to a lady who is so much older than him.

The marriage was entered into when the parties appeared before the Registrar and signed the papers placed before them. We assume such papers were appropriately witnessed. It seems this was done. Hence, when you entered the room, your son was a married man. Merely tearing the marriage

papers does not mean that the marriage gets annulled or was never entered into. The marriage still subsists and the only way for your son to get out of this marriage is to file for a divorce. However, whether your son should or needs a divorce is your son's decision and not yours. Your attorneys can guide you further.

### **Traditional marriage conversion**

My fiancée and I are Christians, but my fiancée wants us to undergo traditional marriage before we marry in church. Is this possible? What are the consequences of this? Is traditional marriage valid in Tanzania?

*1 July 2013*

The Law of Marriage Acts recognises customary, religious and civil marriages. Customary marriages are what you refer to as a traditional marriage; religious marriages are marriages falling under a particular religion i.e. Islamic, Christian, Hindu etc; civil marriages are marriages which are conducted by the government officials who are authorised to marry persons.

Tanzania recognises traditional marriages, and they have the same status as every other marriage i.e. either religious or civil. You have to understand that customary marriages are considered to be potentially polygamous. Hence, your fiancée may marry more than one wife, and you may not be the only one. The Law of Marriage Act provides that a marriage contracted in Tanganyika may be converted, if the husband has one wife only, from potentially polygamous to monogamous, by a declaration made by the husband and the wife, that they each, of their own free will, agree to the conversion. This declaration shall be made in the presence of a Judge, a resident Magistrate or a District Magistrate. It shall be recorded in writing, signed by the



husband and the wife and the person before whom it is made, at the time of making.

You should note that no marriage shall be converted from monogamous to potentially polygamous, or from potentially polygamous to monogamous, apart from by the declaration stipulated above. Hence, should you marry under traditional marriage, you must convert the marriage into a monogamous marriage as above. Once this is done, you can then proceed to marry again in church provided that he doesn't have another wife. This is because the conversion from a potentially polygamous marriage to a monogamous marriage won't be legal if he has more than one wife.

If you marry under the Christian marriage while he has another wife, the Christian marriage will not be legal. This is because customary marriage will override the Christian marriage. We suggest you ask him why he wants to start with a customary marriage first. We also advise that both of you seek the services of a marriage expert.

### Obtaining mobile information

**I think my wife is cheating because she is always so busy with her phone. I attempted to get her text and call history from the mobile company that she is using but they refused. They said such information is confidential, and that they can't divulge the same to me. How can I get that information from the mobile company? Please note I wish to obtain them without her knowing. Also, is kissing adultery? Can the person who my wife is committing adultery with be made a party in the divorce case?**

*16 September 2013*

The Tanzania Communications (Consumer Protection) Regulations states that a licensee shall not monitor or disclose the content of any information of any customer transmitted

through the licensed systems, except as required or permitted by any written laws in force. Hence, the mobile company is right to prevent you from obtaining your wife's phone records.

You should also note that the right to privacy is protected under the constitution of the United Republic of Tanzania. Legally, the mobile company will be under obligation to divulge that information if the owner of the number requests for the same. They would also be obliged to disclose this information by order of the Court with the requisite jurisdiction, or if the police require the same for investigation purposes.

If it is necessary for you to prove whether your wife is faithful or not, we advise you to communicate with her directly. She can then request that her mobile company provides her with the required information, which you could then take a look at. Otherwise, it is unlikely that any Court will give you such order based on your cheating allegations alone. Your next remark will be that a cheating wife (or husband for that matter) will not cooperate with the other half. That is true. Unfortunately, man and wife are treated separately in as far as personal privacy is concerned.

We now turn to your second question on whether kissing is adultery. Fortunately, or unfortunately, adultery is not defined in the Law of Marriage Act of Tanzania. Kissing is also not defined, as you could have a lip kiss, cheek kiss and other forms of kissing, some of which depend on the type of tradition and culture one dwells from. Some might be very common, and unlikely to be deemed adulterous. For example, a cheek kiss is quite standard these days, whereas a lip kiss that lasts a little longer might be clear signs that an adulterous relation exists. It is hard to respond to your question without knowing the type of kiss, the duration, the frequency, the parties

involved, to mention a few. Generally, any form of sex is what constitutes adultery.

Lastly, on whether the person with whom your wife is suspected be joined in the divorce petition, the answer is yes. Subject to the directions of the Court, you may join such a person as a co-respondent. You may also claim damages from such a person. We recommend you consult your lawyer for further guidance.

### **Husband with beard, two earrings**

**I married a man whom I dated for more than ten years. We married last year. Suddenly, he decided to grow a beard and wears two earrings, which is unattractive and displeases me. Initially, I thought this was a joke, but it is now clear that it is him with his beard or a divorce. This is shocking but it is the plain truth. I have now come to terms with it and want to get on. My lawyer says getting a divorce at this stage and on such grounds is not possible. However, this is the same lawyer who my husband has been using and might be conflicted. Can this lawyer's guidance be true? Kindly guide me.**

*9 December 2013*

The Law of Marriage Act of Tanzania is indeed outdated and does not provide for consensual divorce. The law provides that there must be reasons, inter alia adultery or sexual perverseness, to mention a few that are valid grounds for divorce. Looks, or rather a change in looks, as is the case here, is not a solid ground for divorce and may not hold under our laws.

Moreover, since you are only married for less than two years, unless you can prove exceptional hardship, our law disallows divorce within that period. There is a kind of cooling off period which is, in today's era, perhaps quite outdated.

There are initiatives to change our marriage law. But, for now, the above holds

true. We suggest you meet a marriage counsellor, who might be able to talk the two of you through this. We wish you all the best.

### **Wedding photo in paper**

**I am a big shot and got married in a lavish wedding. During the wedding, some photographers sneaked in and took my photos. I appeared in all the major papers. My girlfriend is now furious about my marriage to this new woman. Can you help me? Can I sue the papers?**

*10 March 2014*

We are unsure what help you need from us. What we are confused about is that you got married and have retained a girlfriend meaning that you are engaged in an adulterous relationship outside of marriage. Notwithstanding that you are a "big shot", in case you didn't know, adultery is a ground of divorce. It is not your girlfriend who should be getting upset, but your wife. You should remember your wedding vows, and likely need the services of a marriage counsellor, not lawyers.

As for the photographers, with the limited information we have about you, we are unsure whether you have been defamed or your privacy has been breached. It seems that your major concern is that your girlfriend is unhappy with your marriage. This doesn't really give you a cause of action against the newspapers. You also claim to be a big shot. If you are as "big a shot" as you think, it may also be hard for you to sue the paper for defamation. Big shots are in the public domain and should expect such happenings. We suggest you contact both a marriage counsellor and perhaps a priest. You need to truly understand what it means to be married. Lawyers might not be the most useful, but you can try them as well.



### Long distance wedding

**I am a very busy person working in a very large company outside Tanzania. My wife insists that we get married under Tanzania laws, but I am not able to come here. Can I send in my wedding forms to the Registrar in Dar es Salaam and he gets us married? I know some jurisdictions that allow such type of wedding where you don't need to be physically present. Alternatively, my brother can attend and sign on my behalf under the power of attorney. How can I get married and not come there?**

*24 March 2014*

Much as we appreciate you are a "very busy man" working for a very "large company", you must be present in the room when you sign your marriage papers. You cannot be on a conference call, Skype or send in your papers. Marriage is a very solemn ceremony. The Law of Marriage specifically provides that you must be physically present, by stating that a marriage is void from the beginning unless both parties are present in person at the ceremony. We have not heard of jurisdictions that allow such type of "long distance weddings."

As for your brother attending the wedding, please be informed that you cannot give him power of attorney to sign the wedding papers. For all we know, if he signs the papers, he may end up becoming the husband to your current girlfriend. However, your lawyers can further guide you.

### Impotence and marriage

**I got married to a man in an arranged marriage only to find out that he is impotent. Much as I would like to help him, this is proving to be impossible because the condition is not treatable. Can this marriage stand?**

*24 March 2014*

Generally, impotence is a physical or psychological condition that makes it impossible for a spouse to engage in sexual intercourse. However, withholding sex from your spouse doesn't qualify as impotence. Nor does the inability to produce a child.

Generally speaking, if you petition your spouse for divorce on the grounds of impotence, you'll have to prove your case. This might require you to ask the Court to require your spouse to undergo a physical or psychological examination and medical experts can be called to testify.

Section 39 of the Law of Marriage Act in Tanzania states that subject to the provisions of sections 97 and 98, a Marriage shall be voidable if (a) at the time of the marriage (i) either party was incapable of consummating it; or (ii) either party was subject to recurrent attacks of insanity or epilepsy; or (iii) either party was suffering from venereal disease of a communicable form; or (iv) the wife was pregnant by some person other than the husband; or (b) the marriage has not been consummated owing to the wilful refusal of one party to consummate it; or (c) the wife had not attained the age of 18 years and consent to the marriage as required by Section 17 had not been given and the Court sees good and sufficient reason to set the marriage aside. 40. A voidable marriage is for all purposes a valid marriage until it is annulled by a decree of the Court.

From the above, you can see that since your husband at the time of marriage was unable to consummate, the wedding is voidable i.e. able to be set aside. Hence, you can apply for a divorce. The law does not say it is void i.e. invalid from the beginning which would mean that you need not file for divorce. Your lawyers can guide you further.

### **Objecting another wife in polygamous marriage**

---

**I am one of the two wives of a certain man. Our husband is highly dependant on myself and my co-wife on sustaining his own life. I am personally working hard for our family. Surprisingly, our husband now wants to add another wife. We have objected to this, but he maintains that we were all married in a polygamous marriage thus there is nothing we can raise as an impediment. I am scared about this new marriage because the woman he wants to marry has questionable health. We have been tipped that a notice of intention to marry has already been issued to the office of the Registrar. Is there a way we can avoid or prevent this marriage?**

*31 March 2014*

The Law of Marriage Act has provisions under Section 20 which covers your situation.

The said provision states that where a man married under a polygamous marriage has given notice of an intended marriage, his wife or, if he has more than one wife, any of his wives may give notice of objection to the Registrar or registration officer to whom the notice of intention was given on the ground that either having regard to the husband's means, the taking of another wife is likely to result in hardship to his existing wife or wives and infant children, if any; or that the intended wife is of notoriously bad character or is suffering from an infectious or otherwise communicable disease or is likely to introduce grave discord into the household. Once your objection is sent to the Registrar or the registration officer, the marriage shall not take place unless the said objection has been determined by the Board (Marriage Reconciliation Board).

We advise you and your co-wife to take the above approach. This might also be resolved if you involve elders in your family. Otherwise,

you may need to consult a family law attorney for appropriate steps.

### **Gay marriages in Tanzania**

---

**We celebrated gay marriage in our country and wish to visit Tanzania for holidays. Just out of curiosity, are gays marriages allowed in Tanzania?**

*31 March 2014*

Gay marriages are strictly prohibited in Tanzania. The Law of Marriage Act only recognises a man and woman union as a marriage and not a man and another man. This is even new to the people of Tanzania's local culture and it is considered as an immoral act. Relations like that, between a man and man, are also penalised in the Penal Code with serious consequences.

Whilst there is nothing that can stop you from coming to Tanzania, we advise you to be careful in your behaviour and conduct.

You might want to consult your lawyer on some of the do's and don'ts.

### **Husband and wife joint account**

---

**My husband and I jointly have an account at a bank in Dar. I am the only bread earner in the family, with my husband not doing any work and spending most of his time watching TV. Unfortunately, I have been depositing funds into the joint account for the last seven years, and now wish to draw my money. My husband is refusing to sign on the withdrawal form if I don't give him half the money. The bank does not want to release the money to me alone. Can I sue the bank?**

*21 April 2014*

You are in a very tricky situation. You seem to have deposited your hard-earned money into a joint account. In law, a joint account is simply a debt owed to the account holders

jointly. There is case law where it was held that the fact that one of the holders of a joint account does not contribute to the account does not prevent that person from having a beneficial interest.

The bank is right in that the funds are jointly held and not releasable to you alone. We don't see you having a case against the bank. You should, however, contact your attorneys for further guidance.

### **Spousal consent during separation**

---

**I approached a bank for a loan and was asked if I am married. I informed them that I was but have been separated for almost four years now. The bank has agreed to grant me a loan on condition I mortgage my house as security. However, the bank requires spousal consent from my wife. The bank doesn't want to understand that my wife and I are separated. I really need this loan. What should I do?**

*12 May 2014*

The Law of Marriage recognises that, although a landed property may be under the name of one spouse, the other spouse may have contributed to the acquisition, maintenance and/or securing of that property even though the interest(s) of the other spouse may not be registered. There is a famous case, in which the Court was of the view that even domestic services offered by a housewife are considered as a contribution in acquisition and maintenance of the family properties.

The Land Act requires financial institutions to demand spousal consent prior to taking matrimonial property as security. This requirement is intended to protect the interest of the other spouse. The Marriage Act recognises that spouses maybe separated, either by a Court or by family arrangements. However, separation is not divorce. During

separation, there is no distribution of matrimonial assets. This means that your wife's interest, if any, in the matrimonial home are still intact.

Unless you divorce, there is no legal way to go around this, unless you locate your wife and obtain her consent for you to mortgage the property. If she has no interest in the property, we don't see why she would refuse to sign the spouse consent. The other way around this situation is to locate another security which you can obtain a loan against. You could, for example, obtain a security over your chattels, or obtain a third-party mortgage from other persons. Your attorney can guide you further.

### **Doctor allows adultery**

---

**My doctor says that I have a weak heart. In order to improve my health (especially my heart) and my lifespan, he says I need to engage in intercourse with other women. However, I am in a monogamous relationship. Is my right to intercourse with other women, that will lead to better health, not protected under our constitution? I am told that the Law of Marriage Act disallows adultery, but how can this Act prevail over the constitution of our country? Are there no exceptions to adultery?**

*2 June 2014*

You seem to imply that your doctor has allowed you to have intercourse with another woman, so that you remain healthy. We are really concerned about the type of doctor you have visited and feel you might want to get a second opinion. Although we are not doctors, this is the first time we are hearing that intercourse outside your marriage will improve your heart (and your health). In fact, from the little we know about the heart, we are sure that, with too much strenuous intercourse outside marriage, you might end

up getting a heart attack.

The constitution does not talk about intercourse the way you have mentioned. Since you agreed on your own accord to a monogamous relationship, you cannot at this juncture come back with this “new medicine” of having intercourse outside your marriage. Your constitutional rights are protected and prevail over all the other laws of Tanzania. However, your interpretation is wrong, both in law and in fact.

We are quite sure your wife will also not accept such a prescription in just the same way that you would not accept this type of recommendation from your wife’s doctor. We strongly recommend you get a second opinion, and meet a marriage counsellor. There is something seriously wrong somewhere.

If you decide to follow your doctor’s advice, your wife will have the right to divorce you.

### **Naturalization of foreign husband**

---

**I am a Tanzanian woman married to a foreign man. We have agreed that we will settle and establish our family in Tanzania. However, it bothers me because my husband still has to apply and get residence permits from immigration offices in Tanzania. He has tried to apply for citizenship through my citizenship, but that seems to be difficult for reasons unknown to me. Applying and getting residence permits is a nightmare, we cannot spend our entire lives applying and reapplying. Please advise the procedures we can undertake so he can get Tanzanian citizenship by virtue of our marriage.**

*28 July 2014*

The law which provides for citizenship in Tanzania is the Citizenship Act of 1995. This Act provides that a woman who is married to a citizen of the United Republic shall, at any

time during the lifetime of the husband be entitled, upon making an application in the prescribed form, to be naturalized as a citizen of the United Republic. As per this provision, it is a Tanzanian man who can “transfer” his citizenship to a foreign woman.

Unfortunately, the Citizenship Act does not have a similar provision for a Tanzanian woman married to a foreign husband. This is quite unfortunate, and one could say it is discriminatory towards women.

Your husband can apply for citizenship but must do so like any other immigrant who wishes to get Tanzanian citizenship. He can do this attaining the qualifications stipulated in the law, which are as follows: (a) that he has resided in the United Republic throughout the period of twelve months immediately preceding the date of the applications; and (b) that during the ten years immediately preceding the said period of twelve months he resided in the United Republic for periods amounting in the aggregate to not less than seven years; and (c) that he has an adequate knowledge of Kiswahili or the English language; and (d) that he is of good character.

### **Loss of sex appeal**

---

**I married a man who was as handsome as a man could be. Unfortunately, the bank he works for makes him work till late night, under the notion that the bank’s books have to be closed. Now my man is over 150 kgs, double his initial weight, he is not appealing to me. I have lost my sex appeal towards my man. How fast can I divorce my husband, as I don’t see hope in his weight recovery? He has tried but always fails. Thanks to the fat profits the bank makes, none of which my husband gets, everyone in the bank’s payroll is becoming fat. Can I also sue the bank?**

*11 August 2014*

We start with the bank and believe that the cause of action for you to sue the bank is very remote. Hence, it is unlikely you can sue it. However, your husband can consider suing, but will need to find some solid grounds on which he can rely. For example, is he being compensated overtime for working such late nights? Is he working in the right environment? Is the bank taking care of him under the employment contract? Are there any conditions in the bank that are causing this weight gain, for example unhealthy food that is being served? These examples will help you better understand the cause of action your husband will have.

As for your divorce, the Law of Marriage Act does not allow divorce without a proper reason. Unfortunately, the decline in your sex appeal towards your husband is not a ground that is provided for in the law. Getting fatter and older is not a reason that can be used. Had it been adultery, no sexual relations or cruelty, then the law allows you to get divorced. We recommend you contact a marriage counsellor, to help you salvage your marriage. You should consider your stance, as it might be, at this juncture, that your husband needs you more than ever. And, without sounding like we are preaching, don't forget your wedding vows. You should also consider the fact that women also do, many a time, gain quite a bit of weight.

### **Husband dictates naming of children**

I am a married woman living in Dar. My husband and I are educated, and work in the public sector. God has blessed us with three children, and we soon expect our fourth child as I am pregnant. Unfortunately, my husband has been the only one giving names to our children. All of the names he has given are the names of his clan. He has even chosen a name for the child we are now expecting. This has resulted

**in arguments, as I would like to name this child. Is there a law that governs the naming of children? Please guide.**

*29 September 2014*

Section 6 of the Law of Child Act, Act No. 21 of 2009 provides that a child shall have a right to a name, nationality and to know his biological parents and extended family. It further provides that a person shall not deprive a child of the right to a name, nationality and to know his biological parents and members of the extended family subject to the provisions of any other written laws. Also, each parent or guardian shall be responsible for the registration of the birth of his child to the Registrar General.

Unfortunately, there is no law that dictates whether the father or mother should name the child. There is also no case law for us to guide you on. We suggest you get some elders to sit with you and resolve this. You might be able to resolve this dispute in Court. However, the Court system is backlogged. By the time your dispute is resolved, you might already have delivered.

### **Contract to marry**

**While I was at University, about nine years ago, I entered into a contract with a certain lady friend. We agreed that, if both of us turned 30 and were not married or seriously involved with another person, then we will marry each other. Last month we both turned 30, and she confirmed to me that she is neither married nor in any serious relationship. However, she is also not interested in me anymore even though I am rich and powerful. This is a breach of the agreement. I want to take her to Court for this, so that she can be ordered to marry me. I still want her.**

*29 September 2014*

The contract of marriage is not like any

other contract. It is ultimately governed by the love that both parties have towards each other. You may still want her, but she doesn't want you. Even if a Court forces her to marry you, which it won't, then the fundamental purpose of marriage is defeated.

The Law of Marriage Act provides that, "a suit may be brought for damages for the breach of a promise of marriage made in Tanganyika whether the breach occurred in Tanganyika or elsewhere, by the aggrieved party or, where that party is below the age of 18 years, by his or her parent or guardian. No suit shall be brought for specific performance of a promise of marriage."

Therefore, the Law of Marriage Act provides for a claim to damages if a party breaches a promise to marry. In your case, depending on further background information that you can provide your lawyers, damages might be claimable. However, we don't believe you have a strong case. What we know surely is that, if this woman doesn't change her mind about you, then you will have to start your search again. It doesn't matter whether you are rich and powerful, it is the woman who decides whether she will marry you or not.

### **Seizure of matrimonial assets**

**My husband has been working in a public corporation. During the time of our marriage, we have managed to open family investments including bars, a mini supermarket and two unisex salons. We have also managed to construct a beautiful house, in which we now live. I must admit that most of the capital has been contributed by my husband, although I have partly contributed through a loan I took from a microfinance institution in Dar es Salaam. I also am uncertain if my husband's contributions have been from other sources, apart from his lucrative**

**salary and emoluments. Unfortunately, my husband and his colleagues are currently being prosecuted for corruption offences on an allegation of embezzlement of funds in their office. I am now informed by a friend of mine that if my husband is convicted all our investments, including the house we are living in, will be forfeited by the government. I want to know if this is possible. Can I do anything to challenge this? I feel this will prejudice my rights, as I have contributed towards these investments.**

*24 November 2014*

The Prevention and Combating of Corruption Act, No. 11 of 2007 speaks about the situation facing you. The Act provides that the Prevention and Combating of Corruption Bureau (PCCB) may, in collaboration with the office of the Director of Public Prosecution (DPP), recover proceeds of corruption through confiscation to the government. This Act further provides that, where a person is convicted of an offence of corruption under the Act, the DPP may apply to the convicting Court, or to any other appropriate Court, not later than six months after conviction of the person, for a forfeiture order against any property that was obtained through corruption. By the proceeds of corruption, the law has provided the meaning to be any property that is derived or obtained by a person from the commission of corruption offences.

Hence, the aforesaid consequences upon conviction may be applicable to your husband although we don't know the exact offence he is charged with. We must state that the forfeiture is not an automatic right of the PCCB or DPP. You should be ready to prove that the investments are not proceeds of crime.



### **Secret marriage and honeymoon**

---

**I want to have a secret marriage ceremony and I don't want any person to attend our wedding. Is this allowed under Tanzanian law? Are honeymoons compulsory after marriage? My wife insists that it is a condition of marriage.**

*1 December 2014*

The Law of Marriage Act 1971 states that any member of the public may attend a marriage in civil form, so far as the accommodation in the office of the District Registrar may reasonably permit. Further to that, any person who is a follower of the religion, according to the rites of which a marriage is contracted, may attend that marriage. Also, any member of the community to which either of the marriage parties belong may attend a marriage contracted in Islamic form, or according to rites recognised by customary law.

From the above, no marriage can be contracted in secrecy under Tanzanian law. The best you can hope for is that no one shows up during the proceedings of the marriage, either at the Registrar's office or at the public place of worship wherever you choose to get married.

As for a honeymoon, we have checked our statutes and this word does not appear anywhere. It is surely not a condition subsequent to marriage. Our research reveals that a honeymoon is a traditional holiday taken by newlyweds to celebrate their marriage in intimacy and seclusion. Today, honeymoons are often celebrated in destinations considered exotic and/or romantic.

This is the period when newlywed couples take a break to share some private and intimate moments, which helps establish love in their relationship. This period provides them with the opportunity to know each

other in a soothing environment. This privacy, in turn, is believed to ease the comfort zone towards a physical relationship, which is one of the primary means of bonding during the initial days of marriage.

Hence, it is entirely your choice if you want to go on a honeymoon or not. The law does not force you to but perhaps your wife will have such an expectation. It is the expectations of your wife that you have to manage. We wish you good luck.

### **Denying medical treatment due to religion**

---

**I am a strong believer that God is a healer. My religion prohibits parents from taking their children for medical treatment in hospitals. We are told to pray if the child gets sick until the child is healed. Due to that, I have not given my children most of the vaccinations. Is there any law against such belief?**

*8 December 2014*

The law allows freedom of religion to every person in Tanzania. However, the Child Act of 2009 clearly states that a person shall not deny a child medical care because of religious or other beliefs. Hence, by denying your children medical care you are in breach of the law and may face the wrath of the law.

Our research found the following paragraph from Time magazine that is useful for you.

Religious objections to medical treatment have historical roots that can be traced back to the late 1800s in England, when a sect called the Peculiar People ended up on trial for allowing generations of children to die as a result of their decision to reject doctors and medicine. Today, many religious groups routinely reject some or all mainstream health care on theological grounds, including Christian Scientists, Jehovah's Witnesses,

Amish and Scientologists. “Fundamentalists tell us their lives are in the hands of God and we as physicians, are not God,” says Dr. Lorry Frankel, a Professor at the Stanford School of Medicine and author of *Ethical Dilemmas in Paediatrics*. “We respect people’s religious beliefs and try to compromise, but we won’t deny treatment that will save lives.” Frankel says he’s taken Jehovah’s Witnesses to Court in the past when they’ve refused blood transfusion for their children in life-threatening cases. “The Judge invariably rules in our favour and I’ve never had a child denied care,” says Frankel.

Faith healing is not proven. By not providing vaccinations to your child, you are recklessly endangering the life of your child. We recommend that you get your child vaccinated.