

30 March 2022



EACJ Nullifies Some Provisions of the Political Parties Act

- Confirms it has jurisdiction
- Rules partially in favour of the Applicants, partly in favour of the Government
- Adopts three tier test
- Certain provisions of the Political Parties Act declared to be against the Treaty
- Orders Government to take necessary actions

Background

Last Friday, the East African Court of Justice (EACJ/the Court) delivered its historical judgment in relation to two References filed by six Applicants, namely Freeman A. Mbowe, Zitto Z. Kabwe, Hashimu Rungwe, Seif Sharif Hamad, Salum Mwalim and the Legal and Human Rights Centre. The said References were ultimately consolidated and one judgment rendered on 25 March 2022. The Applicants were challenging the Political Parties (Amendment) Act, No. 1 of 2019 (the Act).

The said Act which amends the Political Parties Act, Cap. 258 was contended by the Applicants to constitute an unjustified restriction of democracy, good governance and freedom of association which are fundamental and operational principles of the Treaty for the Establishment of the East African Community (the Treaty).

Specifically, the Applicants alleged that, among others, section 4(5)b of the Act, which gives the Registrar of Political Parties (the Registrar) power to monitor intra-party elections and nomination process, violates freedom of association, democracy and rule of law contrary to Articles 6(d), 7(2) and 8(1)(c) of the Treaty. Further, the Applicants alleged that section 5A which centralizes civic education and capacity building training to the Registrar is unjustifiable and contrary to the freedom of expression and access to information, hence in violation of the above mentioned Articles of the Treaty.

Also, the Applicants alleged that section 5B violates privacy, rule of law and protection of human rights in addition to section 6B(a) to be discriminatory by requiring persons who apply for registration of a political party to be Tanzanian with both Tanzanian parents.

Moreover, the Applicants alleged that section 21E violates the principles of good governance, democracy and rule of law by empowering the Registrar to suspend a member from conducting political activities. Also, section 21D of the Act, which introduces criminal sanction, was alleged to be contrary to the principles of good governance, democracy, rule of law, as well as the recognition, promotion and protection of human and people's rights in accordance with the provisions of the African Charter on Human and People's Rights, hence violates the above mentioned Articles of the Treaty.

The Judgment

The Court first held that it has jurisdiction to entertain the said Reference. The Court further held that to succeed on a claim of lack of jurisdiction, a party must demonstrate the absence of any of the three types of jurisdiction, namely jurisdiction *ratione materiae* (power of the Court to entertain and decide the subject matter); jurisdiction *ratione personae* (capacity of the parties to appear before the Court); and jurisdiction *ratione temporis* (focuses on the temporary conditions of the dispute such as time bar or limitation).

For further information on legal updates please contact:

E: info@fbattorneys.co.tz

About FB Attorneys

FB Attorneys is an all service law firm based out of Dar es Salaam, Tanzania.

We cover all aspects of the law and specialise in all corporate and commercial matters including Mining, Oil & Gas, Tax, Litigation, Competition, Banking & Intellectual Property law.

FB Attorneys has been ranked as a tier 1 law firm by the IFLR 1000 in the Energy & Infrastructure and Financial & Corporate sectors, tier 1 by Legal 500 and band 1 by Chambers and Partners General Business Law.

FB Attorneys

8th Floor, Amani Place, Ohio Street
P. O. Box 19813
Dar es Salaam, Tanzania
T: +255 22 2135994/5
E: info@fbattorneys.co.tz
W: www.fbattorneys.co.tz

Disclaimer

Information found in this legal update and any attachments are confidential and may be privileged or otherwise protected from disclosure, and intended solely for the use of the individual or entity to whom it is addressed to. If you are not the intended recipient, please notify the sender immediately and delete this message and any attachment from your system. Any views or opinions expressed in the message or its attachments are not necessarily those of FB ATTORNEYS.

© FB Attorneys 2022. All rights reserved.



FB Attorneys



PROUD MEMBER OF



LEGAL UPDATE

FB ATTORNEYS

30 March 2022

On whether the impugned sections of the Act are a violation of the above cited Articles of the Treaty, the Court applied a three tier test which originates from the case of Media Council of Tanzania & 2 Others vs. The AG, EACJ Reference No. 2 of 2017. The said test is that, the limitation must be part of the statute and should provide clearly what is prohibited; the objective of the law must be important to the society; and whether the limitation is proportional to the relative way of the state to achieve its objectives.

Based on the three tier test, the Court declared that the provisions of sections 3,4,5,9,15 and 29 of the Act violate Articles 6(d), 7(2) and 8(1)(c) of the Treaty and directed the Government to take necessary measures to bring the Act into conformity with the Treaty. However, the Court declared section 8C, 11A and 21D to have met the three tier test, hence not in contravention with the Articles of the Treaty.

To read the Judgment [click here](#).

To read the Political Parties (Amendment) Act, No. 1 of 2019 [click here](#).

For further information on legal updates please contact:

E: info@fbattorneys.co.tz

About FB Attorneys

FB Attorneys is an all service law firm based out of Dar es Salaam, Tanzania.

We cover all aspects of the law and specialise in all corporate and commercial matters including Mining, Oil & Gas, Tax, Litigation, Competition, Banking & Intellectual Property law.

FB Attorneys has been ranked as a tier 1 law firm by the IFLR 1000 in the Energy & Infrastructure and Financial & Corporate sectors, tier 1 by Legal 500 and band 1 by Chambers and Partners General Business Law.

FB Attorneys

8th Floor, Amani Place, Ohio Street
P. O. Box 19813
Dar es Salaam, Tanzania
T: +255 22 2135994/5
E: info@fbattorneys.co.tz
W: www.fbattorneys.co.tz

Disclaimer

Information found in this legal update and any attachments are confidential and may be privileged or otherwise protected from disclosure, and intended solely for the use of the individual or entity to whom it is addressed to. If you are not the intended recipient, please notify the sender immediately and delete this message and any attachment from your system. Any views or opinions expressed in the message or its attachments are not necessarily those of FB ATTORNEYS.

© FB Attorneys 2022. All rights reserved.

