

22 March 2024



Powers of Minister to Extend Time Declared Unconstitutional

- Powers of Minister to extend time held void
- Principles of natural justice clarified
- Separation of Powers discussed
- International legal instruments relied upon
- Government ordered to rectify law within 12 months

Recently, the High Court of Tanzania at Dar es Salaam (the Court) delivered its judgement in a constitutional matter challenging the provisions of section 44(1) and 44(2) (section 44) of the Law of Limitation Act, 1971 (LLA) in Civil Cause No. 12 of 2023. The above mentioned section empowers the Minister responsible for legal affairs (the Minister) to extend time to file suits in Courts of law.

Background

The Petitioner moved the Court by challenging the provisions of section 44 and according to the Petitioner, the said section is unconstitutional, absurd, violates rules of natural justice, fundamental rights and contravenes the doctrine of separation of powers. The Respondents who are the Minister and Honourable Attorney General (AG) opposed the petition by citing the Hansard of 1971 on the Law of Limitation Bill which indicates the purpose and rationale of that law. The cited Hansard shows that the Minister was given powers to extend time limitation because cases were dismissed for being time barred and a number of people lost their rights.

In response to the point above, the Petitioner asserted that there is lack of due process such as fair hearing, right to appeal and transparency in exercise of the Minister's power under section 44 of the LLA. Further, the Petitioner argued that while applications for extension of time to file suits are dealt with by the Executive arm of the State under section 44 and determined without due process protection, applications for extension of time to file appeal are determined by Courts of law under section 14 of the LLA. In that regard, section 14 of the LLA allows Applicants to enjoy effective legislative and judicial protection, and due process.

In determining the petition, the Court raised the following core issues, among others: (i) whether the provisions of the LLA granting power to the Minister

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to extend time is unconstitutional for contravening the Constitution of the United Republic of Tanzania (the Constitution); (ii) whether the impugned provisions of the LLA contravene international human rights instruments ratified by Tanzania; and (iii) whether the Respondents should be directed to rectify the mischief in the impugned provisions of the LLA, if any.

The Judgment

In determining the first issue to the petition, the Court held that section 44 contravenes the Constitution, hence void. The Court further stated that section 44 lacks procedural safeguards to control abuse of discretionary powers given to the Minister. Also, section 44 infringes the rules of natural justice on the right to be heard and rule against bias, hence against the Constitution. The Court emphasized that a law or decision by an authority that ignores the rules of natural justice is legally invalid.

Furthermore, on the second issue, the Court ruled that the cited international legal instruments providing for fundamental rights and principles such as equality before the law, right to be heard, and procedural fairness have been domesticated in Tanzania which makes them a part of the Constitution. Therefore, any law that contravenes the said international instruments cannot be spared because violation of International Instruments is a violation of the Constitution.

On top of the analysis of the issues above, the Court declared that section 44 is void for contravening the Constitution due to possible bias, lack of right to be heard, and being discriminatory as the opposite party to the application for extension of time is not involved at all. As a result, the said section was ruled to cause lack of equality before the law. The Court also stated that section 44 poses absurdity for lacking procedural safeguards against abuse of powers granted to the Minister. Moreover, the said section was held to lack due process, and above all, the section does not provide for the right of appeal.

Finally, regarding the third issue, the Court ordered the Government through the Office of the AG to rectify the mischief identified within 12 months from the date of the judgment. Failure to comply with the above order will render section 44 inoperative and the same will be struck out from the statute book.

To read the judgment [click here](#)

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