Questions & Answers

on Tanzanian Law

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Vol. 2

FB Attorneys

Q&A with FB ATTORNEYS

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Dar es Salaam • Tanzania

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.

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FB

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). 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

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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.

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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

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.

Alarmingly, 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

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 difference 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 is 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

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

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

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 marring 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.

Commercial Law, Business Disputes and IP

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In an ideal world, businesses will behave honourably, and respect their legal obligations. Unfortunately, this does not always happen. Sometimes, businesses mislead their clients, copy trademarks belonging to rival companies, fall out with their suppliers even dispute the meaning of written contracts. When this happens, it may be necessary to resolve a dispute through a formal legal process, including via mediation, arbitration and litigation. In extreme cases, it may even be possible to have those who break a contract arrested, and put in prison for six months.

Breach of contract

I entered into a contract with a party that made an advance payment, and other interim payments, but then failed to pay the final instalment, which is now overdue. After following up with them for many months, and without any response, this party has referred the matter to arbitration. I find it quite shocking that the party in default is referring this matter to arbitration, and not myself. What should I do? All I want is my money.

2 January 2012

It is very likely that your contract has an arbitration clause that allows disputes to be referred to arbitration. Arbitration is the determination of a dispute by one or more independent third parties (the arbitrators), rather than by a Court. The parties appoint these arbitrators in accordance with the terms of the agreement. The arbitrator is bound to apply the law accurately, and must conform to the rules of natural justice. Depending on the arbitration clause and the 'fairness' of the decision, the award made by an arbitrator can be challenged in Court. You have not mentioned if the contract you entered into includes an arbitration clause. If it does, you will have to go for arbitration. If there is no arbitration clause, then you need not arbitrate and you can file a recovery suit.

You are shocked that the defaulting party has referred this to arbitration. Normal arbitration clauses are worded such that, if a dispute arises, any of the affected parties can refer the matter to arbitration. You have not told us if a dispute has arisen, only that payment has not been made. Is this event a "dispute" that can be interpreted into the arbitration clause? We cannot answer that question, because we do not have all the details. What we can say for sure is that the defaulting party seems to think there is a dispute somewhere hence the withholding of their payment.

In the interest of time and, depending on the amounts involved, we suggest you proceed to arbitrate. Arbitration proceedings are fast and can be disposed of within a few weeks.

Fat-free restaurant misleading

I have been in the restaurant business for the last 30 years. Six months ago, another restaurant opened next to me. The restaurant's name is the Kula Chakula bila Mafuta Restaurant. In English, this means "Come eat fat-free food restaurant". The restaurant's name may say it is fat-free food, but it sells deep-fried chicken, chips, chips mayai, everything that has fat in it. I do not mind competing with the restaurant. However, its name is creating confusion amongst people, who end up going there believing that the food is fat-free. Is this name not misleading to people, and what can I do about it? My second question is: can a company, after registration, change its name?

2 January 2012

The Companies Act may come to your protection if, in the Minister of Trades and Industries' opinion, the registered name of a company gives so misleading an indication of the nature of its activities that it is likely to cause harm to the public. If so, the Minister may direct the company to change its name.

If such a direction is not challenged in Court, then the Minister's direction must be complied with within six weeks from the date of the direction, or such longer period as the Registrar of Companies may think fit to allow.

The Companies Act further states that the company may, within three weeks from the date of such a direction, apply to the Court to set the direction aside. If this happens, the

Court may set the direction aside or confirm it. If the Court confirms the direction, then it shall specify a period within which the direction must be complied with. If a company fails to company with such a direction, it is liable to a fine and for continued contravention to a default fine.

Our advice is that you should write to the Minister of Trade and Industries. You should explain the situation, and stress the harm that, in your opinion, this misleading restaurant name is causing to the public.

We answer your second question in the affirmative: a company may, by special resolution, and with the approval of the Registrar, signified in writing, change its name. If the Registrar refuses to give their approval, they shall give their reasons for doing so. The Registrar shall enter the new name on the register in place of the former name. They shall also issue the company a certificate of change of name, and shall notify the name change in the Gazette.

It must be noted that a change of name by a company, under any of the circumstances described above, shall not affect any rights or obligations of the company. Nor shall it render defective any legal proceedings initiated by or against the company. Any legal proceedings that might have been continued or commenced against a company by reference to its former name may be continued or commenced against it by reference to its new name.

Contract by fax

My wood supplier and I entered into a contract for the supply of wood at a particular price. We agreed on the terms and, because of his location, entered into the contract by fax. The supplier now intends to increase the price of the wood. What can I do?

9 January 2012

At the outset, we must mention that we do not have enough details to answer you precisely. However, Tanzanian law allows both written and oral contracts. In your case, apart from the faxed contract, if you can prove by action or other means that this is what was agreed upon, we believe you have a good case. Additional proof, such as the faxed contract itself may be required, to prove that this is what was intended. Your attorneys can guide you further.

Arrest of a judgment debtor

I won a case against an individual, but he refuses to pay me. I have tried very hard, but it seems my softness in pursing recovery is being misinterpreted. Are there any provisions of arrest if I am not paid? What are the advantages and disadvantages of this approach?

13 February 2012

Indeed, there are provisions whereby a judgment debtor may be arrested in execution of a decree. The Civil Procedure Code (CPC) of Tanzania provides that a judgment debtor may be arrested in execution of a decree at any hour and on any day, and shall, as soon as practicable, be brought before a Court and that the Court may order their detention. The CPC further provides that, if the arrested judgment-debtor pays the amount of the decree, and the costs of the arrest, to the officer arresting him, the officer shall at once release them.

The judgment-debtor's detention period is for six months. They may only be released prior to this six month period in the following circumstances: if they pay up; on the request of the party that requested their detention; or on the omission by the person on whose application they have been detained to pay the debtor's subsistence allowance. In relation to this latter point, please be informed that

the law requires you, the decree-holder, to pay a subsistence allowance to the judgment debtor while they are in prison. Any failure to pay this subsistence allowance to a judgment debtor is a ground for their release.

The advantage of the detention approach is that the judgment debtor might pay the debt in fear of imprisonment. The main disadvantage is that, if the judgment debtor does not fear going to jail for six months, you will have to incur further expenses to keep him there and still not recover the amount you are owed. All subsistence allowances that you spend on the judgment debtor whilst they are in detention may be added to the debt owed to you.

Suit repeated

I won a case against a party 18 months ago, only to find that the other party have reinstituted another suit on the same subject matter in a different Court. They have also not mentioned anything about my victory in the other previous case. As far as I am concerned, I do not see the point of defending myself when the suit has already been disposed of. Please guide me.

12 March 2012

Whilst justice must be done and be seen to be done, there is also a well-known public policy principle in law that there must be an end to litigation. The Civil Procedure Code (CPC) of Tanzania also amplifies this point. It says that no Court shall try any suit or issue where the parties, and substance of the dispute, has already been heard and finally decided by another competent Court.

Thus, you must defend this new suit if only to request that the new case is discontinued. This concept is known as *res judicata*.

Extra zero in contract price

I entered into a contract where the contract price was supposed to be TZS 11M but we entered the contract price with an additional zero in the local purchase order i.e. TZS 110M. We paid the supplier the TZS 11M, but they are now claiming in Court that we have underpaid him and is demanding the difference. I am informed that the Courts in Tanzania always favour such persons. What should we do?

2 April 2012

First and foremost, if you had intentionally left out the zero in the contract, and the goods are indeed worth TZS 110M, then the supplier might be successful and you should pay. However, if you purchased goods that very obviously have a market value of TZS 11M and you can prove that they are worth this amount, and that it was a genuine mistake we believe that you will be successful in Court.

We suggest you check the contract again, and see if the amount has been written in words. Normally, in interpretation, the words prevail. That is, if the amount is written as TZS 100M but the words read TZS 11M, then the Courts will likely hold the amount as TZS 11M and not TZS 110M.

The above becomes trickier if the contract is for the supply of services, which can be very subjective to value. If that is the case, then you should trace back all your negotiations regarding the contract, and present them with evidence to show that the service was agreed at a value of TZS 11M, and not TZS 110M.

Courts do not normally like to interfere in what parties agree on, unless the agreement is illegal. If your documentation is in order, then we do not see why the Courts will not

rule in your favour. Your attorneys can guide you further.

Place for burial

As time goes on, the cost burying a deceased person in the city cemeteries are going up. Who owns these cemeteries? Is an individual allowed to have his own cemetery for commercial purposes? I want to start a private cemetery whereby the deceased family would pay rental every year, which would cover all upkeep of the cemetery.

16 April 2012

Under the Local Government (Urban Authorities) (Development Control Regulations, 2008 made under the Local Government (Urban Authorities) Act, the only authority that can specify an area as a cemetery is the local township, municipal council or city council concerned, whichever is appropriate. Under the above regulations, no corpse of any person is allowed to be buried at any place other than such cemetery, unless the authority gives special permission. This means all human remains of a deceased person should be buried in appointed cemeteries.

These above mentioned authorities are generally the owners of most cemeteries, and can therefore determine the charges for services available at them. However, the law is silent as to whether an individual can own his or her own cemetery for commercial purposes. Since it is possible for particular religious communities to have their own cemeteries, we do not see why a private cemetery would not be allowed, so long as the location of such cemetery is in conformity with the development controls plans of that particular location. We advise you to contact the municipal authorities for more clarifications and further guidance.

The yearly rental charge aspect of your proposal is very interesting. What you seem to be proposing is a contract that you would enter with the deceased's family, where you would get paid a fixed amount every year. We wonder what you would do if there was non-payment of the fixed amount. Surely, you will not be able to unearth the dead body, as you would be in breach of the law. Do look at your business plan in relation to this issue prior to its commencement.

International convention on sale of goods

I ordered goods from a Chinese supplier in mainland China that were seriously damaged en route to Tanzania. The contract is a "free on board" contract. The only problem is that we are unsure where to lodge our case in China or in Tanzania. The matter has been reported to the Chinese consular, who are supportive. However, they also say that this is a commercial matter and needs to be resolved between the parties. The contract is governed by the UN Convention on Contracts for the International Sale of Goods (CISG). Can we lodge a complaint with the UN? Please advise how we should proceed. Our lawyer says we should open a case here.

23 April 2012

The CISG, sometimes referred to as the Vienna Convention, is a treaty offering a uniform international sales law. As of August 2010, it had been ratified by 77 countries. The CISG, therefore, covers a significant proportion of world trade. This makes it one of the most successful international uniform laws. The CISG was developed by the United Nations Commission on International Trade Law (UNCITRAL), and came into force in 1988.

Unfortunately, Tanzania has not ratified this convention. Hence, it is not directly or automatically applicable to Tanzania.

Back to your question: you first ask us if you can report this to the UN. The answer is that is unlikely that you will be successful. This is because the UNICITRAL assisted with the development of the CISG it does not directly execute it.

Your second question is how you should proceed. If there is any way of amicably sorting this matter out, without resorting to Court or arbitration, then you should seriously consider that option. In any Alternative Dispute Resolution (ADR), there is usually some give and take. Hence, you should be flexible during negotiations.

Assuming your contract does not have an arbitration clause or, if ADR fails, then you will have no choice but to proceed to Court. The next question is where you should sue the supplier. We have not seen the sale contract. However, in our considered opinion, you should institute a suit in China. This is for the simple reason that, should you be successful in China, you will be able to execute the resulting judgment directly against the Chinese supplier. If you sue in a Tanzanian Court, the judgment of the Tanzanian Court will have no legal effect in China. This is because there is no reciprocal enforcement of judgments between these two countries. You are in a precarious position and should consult both a Tanzanian and a Chinese law firm.

Damage done by fire brigade, insurer rejects claim

I owned a beautiful and top-class restaurant in Dar es Salaam which was gutted by fire. Thankfully the fire brigades came, but the fire was very big. This led to us suffering a huge loss. My insurance company wants to pay me a very small fraction of my claim because it intends to deduct the damage to appliances caused by water from the fire brigade. My broker says that I should just take the amount because the insurance companies are very tricky and well-protected by the law. The insurer says my policy is limited to fire disaster only. Is this correct? Please advise.

25 June 2012

We have not seen your fire policy issued by the insurer. As a result, we do not know if your policy includes exclusions that limit the insurer's liability. However, in your case, we offer you some hope: there is a specific statute which deals with the eventualities you describe.

The Fire and Rescue Force Act No. 14 of 2007 under Section 26 (2) clearly provides that any damage done by the force in the execution of its duties or the occasion of a fire or other calamity or in response to a fire alarm, shall be deemed to be damage by fire within the meaning of any policy of insurance against the fire.

From the above, you will see that even if there is an exclusion of such damage in your policy, which we are quite surprised to hear about, then the law comes to your rescue. Any exclusion in your policy will be struck down, to your advantage. Remember: the law always prevails over privately-entered contracts.

Unless there are facts that you are concealing, we believe you have a good case against the insurance company. Don't rush to listen to your broker. Perhaps he wants to close the file so that he can continue with other activities.

Brokers enjoy collecting premiums. Many a time, we hear how a number of them are not happy following claims! You will need to make an informed decision on how to proceed. We recommend you consult your lawyers.

Disagreement over arbitrator

I always thought that arbitration was the best way forward in disputes only to

realise that it can sometimes take longer than the Court system. Our company is at loggerheads with another company in Dar, and our lawyers have not managed to agree on who the arbitrator should be. We are now in the ninth month, and the dispute about who the single arbitrator should be still has not been resolved. What should we do? Can we go direct to Court?

2 July 2012

The Arbitration Act provides for such a situation: the Court can appoint an arbitrator in situations where an arbitration clause provides for a single arbitrator, but the parties cannot agree on who to appoint. Hence, you can apply to Court for the Court to appoint an arbitrator. This appointment will enable you to begin your arbitration proceedings.

As to whether you can go directly to Court to resolve the matter: this is not possible, because both parties agreed to arbitration. However, if both of you are in agreement that you can skip arbitration, then the Courts will have jurisdiction to entertain the dispute. Otherwise, you will have to stick to arbitration.

Trademark registered by third party

I have been using a certain company name for the past 30 years. Recently I found out that an individual has registered my name as a trademark. My lawyers say that the period in which we had to challenge this registration has expired. What should I do?

16 July 2012

For the purposes of this question, we assume that your company is registered in the same name under the Companies Act as the trademark registered under the Trade and Services Marks Act.

Many businesspersons believe that, once they register their company under the Companies Act, there is no need to register that particular company name as a trademark. They are wrong. It is cheaper to register both than to fight a battle like the one you are about to.

For removal of the trademark, you will need to make an application to the Registrar of Trademarks to expunge that particular mark from the register. You will need to state facts upon which you base your case. The registered trademark owner has a right to reply to your application before the hearing.

Reasons you may want to adduce in your application include prior use, unfair competition and creation of confusion. It is advisable to engage the services of a trademark specialist to guide you through this process.

Duped by CT scan supplier

A supplier of medical equipment provided our hospital with a reconditioned CT scan machine, which was very costly. The supplier gave us many assurances that it would work very well. It took about two weeks to install, and we complied with all of the installation conditions. Within two hours of the foreign engineers handing it over to us, we notified both them, and the suppliers, that the scans were not as clear as we were informed and assured of. We are not a big hospital, and it took us years to save enough money to buy this machine, only to be duped. Upon investigation we found out that the machine was actually out of service, having been replaced many years ago with newer technology. How can we get our refund, as we have paid all amounts due? The supplier says that it is the contract that we should read, not the emails we exchanged prior to the contract. These emails clearly mention that the machine is a latest machine, save that it was used for a few months. Please guide us.

16 July 2012

This is not the first time we have heard

of a local hospital being duped into buying outdated and overpriced medical machines. Whilst we sympathise with you, your questions are way too specific. To be able to guide you, we need to see the contract you have entered into. However, we can try to answer your questions in the generality.

First, in a contract, certain representations and warranties are made. You need to check exactly what warranty and representations the supplier gave you. There will surely be a warranty as to the machine being in good condition. If there isn't, and you have bought the machine on an "as is where is" basis, you might find it hard to get your money back.

Secondly, you will need to check if the contract says something on the lines that "the agreement is a complete agreement between the parties as to the matters and transactions referred to and contemplated therein and replaces all other agreements in this regard, if any." This completeness clause will bar you, under the parole evidence rule, from relying on the emails that you have mentioned.

However, there are a number of exceptions to the parole evidence rule. Extrinsic evidence can always be admitted for the following: to aid in the interpretation of existing terms; to show that, in light of all the circumstances surrounding the making of the contract, the contract is actually ambiguous thus necessitating the use of extrinsic evidence to determine its actual meaning; to disprove the validity of the contract; to show that an unambiguous term in the contract is, in fact, a mistaken transcription of a prior valid agreement; to correct mistakes; to show wrongful conduct such as misrepresentation, fraud, duress or unconscionability; to imply or incorporate a term of the contract.

We recommend that you speak to your attorneys for further guidance. Getting your money back is not going to be a straightforward affair.

It would also be wise to report the matter to the Public Procurement Authority and Ministry of Health so that they are aware of this supplier's name. It is possible that your supplier might be the same one who has duped many other hospitals in Tanzania.

Shareholders rich, company poor

There is a very large and successful company in Tanzania which has opened so-called subsidiaries for each of its businesses. I supply goods to one of these subsidiaries, which is always having difficulties paying its bills. My question is twofold: how can the subsidiary be unable to pay the debt when its shareholders are very strong companies owned by very strong people? Secondly, can I directly claim my amount from the shareholders?

29 October 2012

Your first question on why the subsidiary is unable to pay its debt is a question we cannot answer. It is more of an accounting issue, that you should ask an accounting firm about. Your second question is very interesting, and we answer it below.

The shareholders of a company are distinct from the company itself. This means that the company has a legal identity that is distinct from the shareholders. The shareholders own the shares of the company, but not its assets, the assets are owned by the company. The shareholders are also generally not liable for the debt of the company. This is because it is the company that has borrowed, not the shareholders in their individual names. If you have ever borrowed, you will realise that the banks make the shareholders sign a personal guarantee. This is meant to make the shareholder liable for the debt of the company because they are normally not automatically liable.

In order for you to reach out to the

shareholders, and make them liable, you need to "pierce the veil of incorporation". In order to successfully pierce the corporate veil, you must show the following two prongs: that there is such unity of ownership and interest in the firm, which effectively means that the separate "personalities" of the corporation and shareholder no longer exist; and that the Court's refusal to allow such a piercing would promote an injustice or sanction a fraud.

The application of the above test has proven to be anything but simple, there is no list of necessary and sufficient conditions to tie down this doctrine, which might help establish what goes into the determination of the two prongs. Additionally, some Courts have, at times, only used one of the two prongs.

Factors that have been taken into consideration in order to pierce the veil of incorporation include: commingling of funds and other assets of the two entities (i.e. shareholder and company); the holding out by one entity that it is liable for the debts of the other; maintaining identical equitable ownership in the two entities; use of the same offices and employees; use of one as a mere shell or conduit for the affairs of the other; inadequate capitalization; disregard of corporate formalities; lack of segregation of corporate records; treatment by an individual of the assets of the corporation as his own; and identical or significantly overlapping directors and officers.

As to the second prong, the key appears to be proof of some form of bad faith motivation underlying the actions of the company. A number of Court judgments have offered the following clarifications as to what counts and doesn't count as bad faith. Unfortunately, simple difficulties in enforcing a judgment or collecting a debt do not satisfy this prong, nor does the fact that the shareholder provides funds to a subsidiary for the purpose of assisting the latter in meeting its financial obligations, so long as it is not for the purpose of perpetrating a fraud. Inequitable results are more likely to be found in situations where the corporate form is used to avoid the effect of a statute or regulation. By the same token, Courts are perceived to be more receptive in those contract disputes where the alleged wrong involves some sort of fraud.

Hence, for you to be able to pierce the veil of incorporation, and hold the shareholders liable for the debt of the company, you must satisfy some of the above. As stated before, piercing the veil and holding the shareholder liable for the debt of the company is not the easiest thing to do. Your attorney can guide you further.

Installation of electricity equipment on private land

I own a plot in Dar. A certain company, which produces and transmits electricity, gave me a notice that they want to have access to my land to install electricity lines. They have offered to compensate me, but I don't want them in my land, whether they pay compensation or not. Can I challenge this?

5 November 2012

The Electricity Act provides that any company which has a licence to produce and/or transmit power has the right to have access to any land to enable it to fulfil its duty to provide power. The owners of the property shall not be allowed to interfere with the rights or property of the said electricity company. Also, the company is authorised under the law, after issuing a notice to the owner of the property, to have access to the said land for purposes of repairing its equipment. However, such companies are required to pay compensation to the owner of the property. If there is any dispute, it can

be determined by the Court with the requisite jurisdiction.

Hence, you cannot prevent the owner of the company from accessing your property. However, should you have an issue with the compensation which is payable, you can consult your attorney. They will be able to help you challenge the compensation offered by the electricity company in Court.

Challenging trademark registration

I own a trademark in Tanzania. I recently came across a BRELA trademark journal advertising another trademark which, in my opinion, is very similar, almost identical, to my own trademark. I want to challenge it. Kindly guide me on what I should do.

11 February 2013

The Trade and Service Marks Act requires the Registrar of Trademarks to advertise trademarks for 60 days before registering it. The purpose of advertising the mark is to give the public an opportunity to challenge the registration of such marks, in case they are identical, or similar, to their registered or unregistered marks. Hence, it is a good idea for the public and other organisations to monitor the trademarks journal.

As for the objection, you can lodge this with the Registrar of Trademarks by filing a notice of opposition. This objection should be filed within 60 days from the date of advertisement and should be written in a prescribed format as stipulated in the regulations. Your notice of opposition must state clearly the grounds of your objections. It is highly advisable that you also provide pictures of your mark, and compare it with the mark being advertised. This will help establish the resemblance or similarity which is likely to cause confusion to the public.

Once a notice of opposition is filed with the Registrar of Trademarks, the Registrar shall serve a copy to the applicant. The applicant is then required to file a counter-statement, challenging your notice of opposition, within 60 days of receiving it.

The Registrar shall forward the counter-statement to you, and shall arrange for the hearing of the parties. Once the Registrar has heard from the parties, and considered the evidence before them, they shall make a decision about whether or not the mark should be registered. If you are dissatisfied with the decision of the Registrar, you can appeal to the High Court. For further assistance kindly consult your attorney.

Arbitration clause in contract

I am entering into a supplies contract with a company in Tanzania. My question is why should there be an arbitration clause in the contract when Tanzania has a Court system? The clause says there will be one arbitrator, jointly appointed by the parties, with costs shared by the parties. What happens if we do not agree on the appointment of the arbitrator?

11 March 2013

Arbitration is a form of alternative dispute resolution (ADR), and a legal technique for the resolution of disputes outside the Courts. Arbitration has its advantages. Depending on the size of the dispute, it is usually cheaper, more efficient, faster, less stressful and quite effective when compared with going to Court. Courts are bound by strong civil procedures, which can sometimes make the process more onerous and expensive than arbitration.

By submitting to arbitration, you are not undermining the Courts. This is because you still need to go to Court to get an arbitration award registered. This step is necessary in order to turn an arbitral award into a Court order, which is capable of being executed. Additionally, arbitration has aided the Courts,

because it reduces the number of disputes being registered in Court.

In an arbitration, the parties to a dispute refer it to one or more persons, called arbitrators. The arbitrator(s) review the case and can impose a decision that is legally binding for both sides. Their decision is known as an "award".

For a sizeable contract, we would prefer that the arbitration clause have a total of three arbitrators. Each of the parties should appoint one arbitrator. Together, these two arbitrators should then jointly appoint a third arbitrator, called an umpire. Sometimes it may be too expensive for the contracting parties to appoint three arbitrators, and they appoint only one instead.

In Tanzania, arbitration falls under the Arbitration Act. This Act grants the Court the power to appoint an arbitrator, umpire or third arbitrator in any of the following cases (a) where a submission provides that the reference shall be to a single arbitrator and all the parties do not, after differences have arisen, concur in the appointment of an arbitrator; (b) if an appointed arbitrator neglects or refuses to act or is incapable of acting the vacancy should not be filled and the parties do not fill the vacancy; (c) where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator and do not appoint him; (d) where an appointed umpire or third arbitrator refuses to act or is incapable of acting or dies or is removed and the submission does not show that it was intended that the vacancy should not be filled, and the parties or arbitrators do not fill the vacancy, any party may serve the other parties or the arbitrators, as the case may be, with a written notice to concur in appointing an arbitrator, umpire or third arbitrator.

The law further states that, if the appointment is not made within seven clear days after the service of the notice, the Court may, on application by the party who gave the notice, and after giving the other party an opportunity of being heard, appoint an arbitrator, umpire or third arbitrator. That individual shall have the power to make an award, just as if they had been appointed with the consent of all parties.

We also suggest that you insert arbitration terms into your contract which specify the venue of the arbitration and the language to be used during arbitration proceedings.

Submitting to arbitration does not take away from you the right to file any sort of urgent application in Court. However the Court, in arriving at any decision, shall always take cognizance of the fact that the parties have agreed to arbitrate.

Outstanding debt with Ministry

I supplied a Ministry in Tanzania with some medical equipment. I have not been paid, despite a dozen promises. My lawyer says that suing the Ministry directly is not possible. I cannot understand why. Does the government normally defend such cases? Please guide me.

25 March 2013

Suing the government is possible, and is subject to the Government Proceedings Act (GPA). Section 6 of the GPA unambiguously states that, notwithstanding any other provision of the Act, civil proceedings may be instituted against the government, subject to the provisions of the section. Sections 6 (2) of this Act further states that 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 90 days of his intention to sue the government. The notice shall specify the basis of the claim against the government. A copy of the notice must be sent to the Attorney General.

Hence, from the above, you can see that you need to issue a 90 days' notice prior to the institution of a suit.

Arbitration clause says non appealable

I entered into an agreement with a company that inserted an arbitration clause. This arbitration clause says that the award is final, binding and non appealable. The arbitration was conducted in Kenya. From reading the award, it is apparent that it is against public policy, and in violation of the laws of Tanzania. The agreement required our company to perform the contract in Tanzania and we succumbed to the laws of Tanzania. How can the award be executed in Tanzania if it is in non-conformity with the laws here? My lawyer says that the non appealability of the award puts our company in a bad position. Please guide.

1 April 2013

Arbitration is meant to accelerate justice. Generally, awards cannot be challenged except for under the principles of natural justice and where the arbitrator(s) have misconducted themselves. Awards also cannot be executed if they are against public policy and are in contravention of the laws of the land in which they are to be executed.

With the above in mind, since you claim that the award is against public policy and in contravention of the laws in Tanzania, the award can be set aside. This is also provided for under the Arbitration Act of Tanzania. Section 16 of this Act explicitly states that, where an arbitrator or umpire has misconducted themselves, or an arbitration or an award has been improperly procured, the Court may set aside the award.

Section 30 of the Arbitration Act further states as follows: Conditions for enforcement of foreign awards (1) In order that a foreign award may be enforceable under this Part, it must: (a) have been made in pursuance of an agreement for arbitration which was valid under the law by which it was governed; (b) have been made by the tribunal provided for in the agreement or constituted in manner agreed upon by the parties; (c) have been made in conformity with the law governing the arbitration sufficient to enable that party to take the necessary steps to have the award annulled by the competent tribunal.

We must point out that you have not stated in your question what you might have done wrong for the matter to be referred to arbitration procedure; (d) have become final in the country in which it was made; and (e) have been in respect of a matter which may lawfully be referred to arbitration under the law of Tanzania, and its enforcement must not be contrary to the public policy or the law of Tanzania. (2) Subject to the provisions of this subsection, a foreign award shall not be enforceable under this Part if the Court is satisfied that: (a) the award has been annulled in the country in which it was made; or (b) the party against whom it is sought to enforce the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case or was under some legal incapacity and was not properly represented; or (c) the award does not deal with all the questions referred or contains decisions on matters beyond the scope of the agreement for arbitration: Provided that if the award does not deal with all the questions referred the Court may, if it thinks fit, either postpone the enforcement of the award or order its enforcement subject to the giving of such security by the person seeking to enforce it as the Court may think fit. (3) If a party seeking to resist the enforcement of a foreign award proves that there is any ground other than the non-existence of the conditions specified in paragraphs (a), (b) and (c) of subsection (1) of this section, or the existence of the

conditions specified in paragraphs (b) and (c) of subsection (2) of this section entitling him to contest the validity of the award the Court may, if it thinks fit, either refuse to enforce the award or adjourn the hearing until after the expiration of such period as appears to the Court to be reasonably Before you overconfidently embark on our opinion, you should get your lawyer to guide you further.

Bank not following instructions

I deal in mobile vouchers, and deposit my funds with a large bank in Mtwara. Whenever I go to the bank, I depend on the teller to sort the notes of TZS 500, 1,000, 2,000 and 5,000. The new bank manager has told me to do the sorting myself, because it is wasting the teller's time. I fail to understand why the bank is unwilling to do its job. Can I sue the bank?

3 June 2013

If you have entered into such a "sorting agreement" with your banker, then the bank is in breach of its obligations. However, knowing the market practice in Tanzania and elsewhere, we have not come across a bank that will accept money in a sack and will sort it for you, prior to depositing.

The normal client-bank relationship is for the bank to safeguard your funds. You should consult your lawyers but it is quite unlikely that you can take the bank to task.

Termination of a contract

I want to get out of a contract that I executed. What are the legal grounds that I can use to get out of it?

8 July 2013

Contracts are meant to be honoured, and the law intends to ensure that parties who execute contracts obey the word of those contracts. This helps ensure that businesses do not collapse.

However, the Law of Contract Act gives parties several grounds to terminate a contract, provided that such grounds exist. You can terminate the contract if there was duress, misrepresentation, i.e. the other party misrepresented the core facts of the contract; illegality of the contract or subject of the contract; mistake of fact, i.e. the minds of the parties to the contract did not meet; you are a minor, i.e. below 18-years-old; breach of the terms and/or conditions of the contract; the condition precedent have not been fulfilled to mention a few. We recommend that your attorney takes a look at your contract before you make any moves.

Assignment of trademark

I own a certain trademark which is picking up pace in the market. I have been approached by foreign nationals who want to use my trademark, and have requested me to sell it to them. I do not wish to sell my trademark. Can I give these companies my trademark on lease, so that I still continue to own it and can enjoy it after the lease is over? Please guide.

1 July 2013

You have a good idea. Helpfully, the Trade and Services Marks Act allows the proprietor of a trademark to assign its use to another person. Please note that assignments of trademarks must be registered with the Registrar of Trademarks. The assignment is not a very complicated process. Your attorneys can guide you further.

Mediation at Commercial Court

I have filed a suit at the High Court Commercial Division at Dar es Salaam against a party that I do not want to see in my life again. I am surprised that the Court has ordered that we try to sort this

by mediation. Is this compulsory as I don't want to mediate with these rogues? Please guide.

22 July 2013

The Commercial Court Rules state that a party to a mediation session shall have authority to settle any matter during the mediation session. The rules also state that a party who requires the approval of another person before agreeing to a settlement shall, before the mediation session, arrange to have ready means of communication to that other person throughout the session, irrespective of whether that session takes place during or after regular business hours.

Where the suit is not settled or dismissed under the provisions of these rules, the rules allow the Court to direct the parties to submit to mediation. Upon making such order, the Court shall appoint a mediator. That mediator shall, within seven days of his appointment, set a date for the first session of mediation.

From the above, you can see that mediation is compulsory. However, the Court allows you to send a representative, if you do not wish to attend the mediation in person. That representative must be able to stay in touch with you, so that you can agree or disagree to a settlement. Also note that the mediation is without prejudice to your case. This means you need not worry, because the outcome of the mediation is confidential.

Misrepresentation by foreign banker

A foreign banker came to Tanzania and promised great returns for a new investment product that it was launching in the Far East. I initially found the product quite lucrative only to then find myself losing 30% of my investment. There were some crucial points not disclosed to me by the banker. Can I sue?

28 October 2013

First and foremost, the soliciting of business by the banker in Tanzania is illegal. If you are Tanzanian, it is also illegal for you to bank outside the country without the approval of the Bank of Tanzania.

Subject to the above, if you believe that the banker misrepresented to you, you will have a cause of action against the bank and may sue. However, the suit will be subject to the "choice of law" clause in the agreement you entered into. This is likely the laws of where the bank is registered in. Before instituting the suit, we suggest consulting with a lawyer who specialises in foreign banking practices. You should also be aware that there is no such thing as a risk-free investment, the old adage of "the higher the risk, the higher the return" still holds true.

Party's failure to appoint arbitrator

We are in a dispute with a party whereby the agreement stipulates an arbitration, with three arbitrators. I have appointed my arbitrator but the other party is dilly-dallying appointment of its arbitrator for the past two months. What should I do?

9 December 2013

The Arbitration Act clearly states that, where an arbitration provision provides for three arbitrators, each party will appoint one arbitrator each. The third arbitrator will then the appointed by the first two, unless the submission expresses a contrary intention.

The Arbitration Act also provides that, where one party has appointed an arbitrator, but the other party has not, the party who had appointed an arbitrator can serve a "default with notice" on the other. If the second party then fails to appoint an arbitrator within seven days, then they lose the right to do so. The decision of the sole appointed arbitrator will then be binding on both parties, as if he had been appointed with their consent.

This is despite the original arbitration clause providing for the appointment of three arbitrators. Your lawyer can guide you further.

Threatened with economic sabotage

I am a supplier of some key drugs and machines to some government hospitals. For the past year, I have not been paid. The amount that is owed to me is now running in the millions of dollars, and all I am getting is empty promises. I gave the relevant authority an ultimatum only to be asked to go see a senior person. This person first told me that I would be paid. But, after I responded that I do not believe this and that I would cut supplies and sue, he threatened me. He said that, if I did so, I would be charged under the Economic and Organised Crime Control Act (EOCCA). He said that, under the laws of Tanzania particularly this Act, because these products are vital for hospitals, I have no choice but to continue supplying. I was also told that this offence is not bailable. What do I do?

3 February 2014

This is the first time we have heard of such an approach regarding a party's contractual obligation to pay. If what the official was telling you is true, then any supplier of equipment vital to the economy be it power, water, or security can never sue and can never demand. It would defy basic principles of contract law, and nobody would be willing to supply to the government of Tanzania.

Economic sabotage is defined in the EOCCA, and includes acts done or committed without lawful excuses and for a purpose prejudicial to the economic safety or interests of Tanzania or is likely to damage, hinder or interfere with a necessary service or its operation.

From the above definition, you cannot be charged under the EOCCA, because you are lawfully demanding your money under a contract you entered into to supply. If you were unlawfully doing so, and for a purpose prejudicial to the economic safety or interests of Tanzania, then this Act might have applied. So, to answer your question assuming, of course, you have given the right facts: there is nothing to stop you from cutting supplies, demanding payment, suing and/or proceeding, as per the contract of supply.

As for bail, please be advised that this is a bailable offence. The law states that bail shall not be granted in any of the following circumstances: (a) it appears to it that the accused person has previously been sentenced to imprisonment for a term exceeding three years; (b) it appears to it that the accused person has previously been granted bail by a Court and failed to comply with the conditions of the bail or absconded; (c) the accused person is charged with an economic offence alleged to have been committed while he was released on bail by a Court of law; (d) it appears to the Court that it is necessary that the accused person be kept in custody for his own protection or safety; (e) the offence for which the person is charged involves property whose value exceeds ten million shillings, unless that person pays cash deposit equivalent to half the value of the property, and the rest is secured by execution of a bond; (f) if he is charged with an offence under the Dangerous Drugs Act.

Arbitration award enforceability in Tanzania

We are in negotiations with the government on a project worth billions of dollars. We intend to include an arbitration clause in the agreement, which would be based on either the ICSID or ICC rules. Does the government normally agree to arbitration and, if so, can this be enforced in Tanzania? What grounds can be used to reject a foreign arbitral

award? If we win against the government, can the government claim that the award is against public policy simply because it does not have funds to pay? How seriously does the government take arbitration?

17 February 2014

The government of Tanzania enters into many contracts where arbitration is the preferred mode of dispute resolution. Tanzania is also a signatory to international conventions that recognise the enforcement of arbitral awards.

Section 30 of the Tanzanian Arbitration Act provides for conditions for enforcement of foreign awards. These conditions are as follows: (1) In order that a foreign award may be enforceable under this Part, it must: (a) have been made in pursuance of an agreement for arbitration which was valid under the law by which it was governed; (b) have been made by the tribunal provided for in the agreement or constituted in manner agreed upon by the parties; (c) have been made in conformity with the law governing the arbitration procedure; (d) have become final in the country in which it was made; and (e) have been in respect of a matter which may lawfully be referred to arbitration under the law of Tanzania, and its enforcement must not be contrary to the public policy or the law of Tanzania. (2) Subject to the provisions of this subsection, a foreign award shall not be enforceable under this Part if the Court is satisfied that (a) the award has been annulled in the country in which it was made; or (b) the party against whom it is sought to enforce the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case or was under some legal incapacity and was not properly represented; or (c) the award does not deal with all the questions referred or contains decisions on matters beyond the scope of the agreement for arbitration: Provided that if the award does not deal with all the questions referred the Court may, if it thinks fit, either postpone the enforcement of the award or order its enforcement subject to the giving of such security by the person seeking to enforce it as the Court may think fit. (3) If a party seeking to resist the enforcement of a foreign award proves that there is any ground other than the non-existence of the conditions specified in paragraphs (a), (b) and (c) of subsection (1) of this section, or the existence of the conditions specified in paragraphs (b) and (c) of subsection (2) of this section entitling him to contest the validity of the award the Court may, if it thinks fit, either refuse to enforce the award or adjourn the hearing until after the expiration of such period as appears to the Court to be reasonably sufficient to enable that party to take the necessary steps to have the award annulled by the competent tribunal.

One of the grounds for refusing to enforce an arbitral award is, as you have spotted, is that of public policy. This is a commonly-used ground for non-enforcement. However, non-availability of funds is generally not an issue of public policy that can be raised by the government to stop enforcement of an arbitral award. Tanzania would be in breach of international arbitration conventions and treaties if it attempted to do that.

As for how seriously the government takes arbitration, please note that the Attorney General's chambers are involved in a number of arbitral matters outside the country. It does, therefore, take such matters seriously. If the government did not give this appearance or did not manage the arbitration process well it would be a huge reputational risk for the country in the international business arena. This is not something that Tanzania can afford at this stage of international competitiveness.

We suggest you get specialised advice

from your lawyer.

Boundary dispute in gas exploration

We have a dispute with a neighbouring block owner and he has threatened to refer the matter to the Commissioner of Energy and Petroleum affairs. Can this Commissioner determine the dispute and if so, is their decision appealable?

24 February 2014

The answer to your questions is "yes" to both. The Commissioner for Energy and Petroleum Affairs is allowed to determine such disputes. And yes, their decisions are appealable.

This is provided for under the Petroleum (Exploration and Production) Act of 1980. This Act states the following:

The Commissioner may inquire into and decide all disputes between persons engaged in exploration or development operations, either among themselves or in relation to themselves and third parties (other than the government) not so engaged, in connection with: a) the boundaries of any exploration area or development area; b) any act committed or omitted, or alleged to have been committed or omitted, in the course of, or ancillary to, exploration or development operations; c) the assessment and payment of compensation pursuant to this Act; or d) any other matter which may be prescribed.

Any person aggrieved by a decision, decree or order of the Commissioner made or given pursuant to this part may appeal to the High Court within 60 days after the decision, decree, or order is given or made.

Africa backwards, misled by scientists

I am a scientist and have found out the secret that the West has used to ensure we in Africa remain backwards. I am about to unleash an article in a leading research magazine that states that the formula Force = Mass X Acceleration (F=MA) is incorrect and does not apply to Africa. Our usage of this formula makes us not progress. What can I do to rescue Africa? Can I sue the inventor?

4 August 2014

First, we thank you for writing to us from Gaborone. As is our style, we shall tell you the truth, or what we believe is the truth. We hope our usual frank responses will not offend you, and that you will continue reading our column. The formula F=MA has existed for hundreds of years and was derived by Sir Isaac Newton. Newton's laws were verified by experiment and observation for more than 200 years. They are an excellent approximations at the scales and speeds of everyday life. This formula has worked in all major engineering projects that we have read about. In fact, the formula is one of the widest used formulae, and has worked across the world. It has no geographic or political barriers, and it works in any region of the world.

What we are unable to make sense of your assertion that the formula leads to Africa's purported backwardness. You have not provided any facts to support your contention. We find your assertion farfetched, to say the least.

Sir Isaac Newton did not impose the formula on us. This means you don't really have a cause of action against him. The possibility of you suing his estate is also very remote. We suggest that, apart from your research on F=MA, you also look at other factors that have led to Africa's problems.

We also recommend you speak to other professionals in your field who can connect F=MA to Africa's problems. We are unable

to think of any relation whatsoever and are confused.

No local insurance capacity

We are a large company in Tanzania. The total risks we wish to insure are greater than the balance sheets of all the local insurance companies combined. We are not comfortable insuring locally here. Is local insurance mandatory? Can we proceed insure directly ourselves? How can we work around this?

25 August 2014

The Insurance Act is clear in that it requires a mandatory placement of insurance risks in Tanzania. Section 133 of this law states that (1) The Minister shall, by regulations, direct that any or all insurances effected by Tanzanian residents or Tanzanian resident companies of any class or classes shall be placed with Tanzanian insurers. (2) Where a class of insurance required to be placed with a Tanzanian insurer is not available to a person seeking insurance, that persons may place that insurance with a non-resident insurer provided that: (a) he obtains the prior written approval of the Commissioner; and (b) he complies with the provisions of Section 140.

Furthermore, Section 140 states that any general insurance business policy effected by a Tanzanian resident or Tanzanian resident company, other than an insurer registered under this Act, with any non-resident insurer shall be effected through the offices of a Tanzanian registered insurance broker.

From the wording above, whilst it is mandatory to insure through local insurance companies, you have the option of getting an exemption from doing so. You can obtain this exemption by writing to the Commissioner of Insurance for approval, stating the reasons why the risk is not insurable locally here. Lack of local capacity might be a good reason but the local insurance company can still front the risk through a local broker.

Hence, you cannot proceed to insure the risk directly yourself. We strongly suggest that you contact your broker and/or the Commissioner of Insurance to ensure that the risk is covered according to local laws. If you do not do so, you may face a challenge if you lodge a claim.

You must also be notified that, without the approval of the Commissioner, the amounts you might get from a foreign insurance company as a claim payment might become taxable in Tanzania. This is because the insurance was placed in breach of the local Insurance Act.

Lastly, one way to work around local insurance challenges is for the holding company to insure its insurable interest in the local asset overseas. That will not be captured under our law, because the interest is outside the country. However, this option must be analysed on a case by case basis. Your insurance expert can guide you on this.

Commissioner directs claim to be paid

Can the Commissioner of Insurance force an insurance company to pay a claim, even though it is not payable? What options does an insurance company have against any such decision? Can the Commissioner overrule the decision of the CEO or the board?

22 September 2014

The Commissioner of Insurance has a role in overseeing the insurance sector in the country, amongst other functions as provided that are provided for under the Insurance Act No. 10 of 2009. However, the Commissioner is neither the manager of an insurance company, nor a director of it. Hence, they cannot overrule any decisions pertaining to a non-playability of a claim by an insurance

company, its CEO or its board.

This is the first time we have heard such complaints against the Commissioner. But, if you are being forced to pay, you can appeal such a decision to the Insurance Tribunal under Section 126 (4) of the Insurance Act. This section states that: "a person aggrieved by the decision of the Commissioner under this Act may, within one month from the date on which the decision is communicated to him in writing, appeal by a petition in writing to the Tribunal which may, uphold, reverse, revoke or vary that decision. This must be done within two months of presentation of the petition."

If you are further aggrieved with the decision of the Tribunal on a point of law, you may appeal to the High Court within one month of such decision being communicated to you.

If what you are saying is true, which we find quite surprising, we believe you have a good chance of succeeding. Please note that the decision of the Commissioner that you intend to appeal against must be a decision in writing. It is unlikely you can go to the Tribunal based on any telephonic pressure that may have been exerted on you by the Commissioner.

Consumer and Claimant Rights

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There are many ways in which consumers can have their legal rights violated by businesses who should know better. Equally, in some instances, consumers trying their luck, and attempt to claim for legal redress when none is due. In this chapter, we include many examples of both behaviours. And, in both situations, what people claim are their legal rights and what those legal rights actually are, are not always the same thing.

Suing on foreign ground

Upon reaching our destination overseas, we had to take a shuttle from the landing strip to the designated terminal. In the shuttle, I held on to the handle for support which snapped when the driver braked sharply. I fell on my back and hit my head on the ground. This resulted in me sustaining serious back and head injuries. I contacted my travel agent, who said that I could not sue anyone because I was in a foreign country and had no contract at the time of the incident. What should I do?

20 February 2012

Your travel agent is not your legal advisor and should perhaps limit its advice to travel matters. We say so because they are absolutely wrong. Being in a different country does not mean that you cannot sue someone. Not having a contract is also no ground for not being able to sue.

You travelled with an airline. You will have to refer to the terms of carriage and see at what points the airline is responsible for your journey. Is it from terminal to terminal or is it from the rail of the aircraft when you enter, to the time you disembark? If it is from terminal to terminal, then you have a contract with your airline, which means you can sue them for these injuries. They would likely be in breach of safely transporting you.

If the airline's contract is from the point of entry into the aircraft to the point of exit, you can still sue under the law of tort. Under tort, you do not need a contract. The simple questions to ask are: a) whether the person who caused the injury had a duty of care and b) whether there was a breach of that duty, that resulted in the injury or harm. In your case, we answer all these questions in the affirmative and believe you have a good case. Your attorneys can guide you on whom to sue but it could be the shuttle owners, airport/airport authority, airline and/or even the driver.

Hair cut too short

I went to my barber and asked him to slightly trim my hair and moustache. He trimmed my hair too short and ended up cutting half of my moustache. I had no choice but to get the other half removed. When I threatened him with legal action, he said I had no contract with him. I tried reporting it to the police, who surprisingly refused to even record my statement. I am getting married soon and am not sure if I should proceed with the ceremony. What should I do?

26 March 2012

Whilst we sympathise with you, we do not understand why you are unsure about getting married after this mishap at the barbers' shop. Surely, both your hair and moustache will grow back. We are also unclear as to what the connection is between your marriage and the haircut, and cannot comment on whether you should or should not proceed with your marriage.

As for the police complaint, our opinion is that this is not a criminal matter. If the police start entertaining such matters, they would be flooded with complaints. The police actions are justified.

We now come to the main issue, the cutting of your moustache and the hair. We believe that, when you sat on the barber's chair, you entered into a contract with them: it was agreed that you would have a haircut, and it would be paid for. We therefore believe that you can sue your barber under the law of contract. However, this might not be as simple as it sounds, because you will have to prove that there was a breach of the contract, and you suffered damages.

We did not find any local precedents on

this. We are therefore unsure how far the Courts in Tanzania will entertain this matter. Your lawyer can guide you further.

Spider bite on board aircraft

I flew outside Tanzania in a very popular airline. When using the toilet in mid-air, I felt a strong pinch in my feet which, at first, I thought was a muscle pull. My foot felt heavy and, upon landing, I went straight to the airport airline clinic. Here, I was informed that I had received a very uncommon spider bite. I found out that, apparently, one of the biggest challenges on board aircraft toilets are spiders, some of whom are deadly. The airline clinic treated me, but I had to undergo severe pain and was admitted to hospital for three days. The airline paid for my medical expenses but has refused to compensate me further. Can I sue?

26 March 2012

You bought a ticket and hence established a contract with the airline to ensure you were transported safely. A spider in an aircraft is a serious breach of your and other passengers' safety. If you can prove that the spider was indeed in the aircraft, and that you did not carry it onboard in your shoes or elsewhere, then you have a good case.

The normal principle in law is the one who alleges is the one who has to prove. You need to work on the proof before you decide to sue. Your lawyers may provide further advice.

Theft on my mobile

I got a message from a cell number informing me that I had won a lottery of TZS 50M. I was also told that I should send a certain message to a particular number. I was quite excited and proceeded to do as instructed. I then got another message, asking me to reload my phone with TZS 100,000 as my contribution towards my award. I therefore sent another message to the same number. It turned out that the two messages I sent were for the transfer of credit, and I lost quite a bit of money. The phone number I transferred credit to is now constantly switched off. What should I do? Can the mobile company replace the credit, because it was their network that caused this incident?

9 April 2012

There is a saying that says there is no free lunch. There is always a catch somewhere, and you seem to have been caught in this one. This is a sham that is spreading fast in the marketplace. To put it simply, your money has been stolen by a professional who is using your mobile operator's network to steal.

Stealing is a criminal offence, and we suggest you report this incident to the police. It is unlikely to bring your money back but it will, at the very least, open a police file that you can refer to at any time.

As for the replacement of your money, no mobile operator will agree. To do so would open a can of worms. The operator will also argue that you were entirely reckless in reloading credit, and transferring it for the second time, expecting to get TZS 50M. How can you win a lottery if you have not bought a ticket? It beats common sense for a lottery to ask for a contribution towards the prize. These are the questions that will be put to you, if you decide to take your mobile operator to task. We recommend you address these questions with your attorneys before instituting any suit against the mobile operator.

Cheat in school

I am a senior executive in a very successful company in Dar es Salaam. I am taking evening lectures, which I go to with my assistant, who takes my notes during

class. It is just more convenient. My fellow students reported me to the teachers, and my assistant has now been disallowed from entering the class with me. Is this fair? What can I do?

23 April 2012

Your question is 'what can I do'? The answer is 'wake up to reality.' We presume that you are the student and not your assistant. Why would you take your assistant to class to take your notes, when you can take the notes yourself? The next thing you will ask is permission for your assistant to do your assignments or write your exam for you.

Your assistant also ceases to be your assistant after office hours. Attending class with you is surely not part of his job profile. He can even sue you at the Labour Courts for taking him to class with you. Our piece of advice: go to class alone and use your own brain. And yes, on a lighter side, if your assistant is as smart as you are, you might end up becoming his assistant one day.

Penal interest exorbitant

I have defaulted on a loan, and the bank is charging me a ridiculous interest rate on the default. I have been trying my best to cooperate, but my business is just not doing well enough. Is there a maximum limit on the interest that I can be charged? What should I do?

21 May 2012

In Tanzania, interest rates are market driven. In other jurisdictions, usury laws specifically target the practice of charging excessively high rates on loans by setting caps on the maximum amount of interest that can be levied. These laws are designed to protect consumers. Unfortunately, there are no such laws in Tanzania.

The best way to get out of this is to negotiate a restructuring of your loan. You will have to pay a 10% down payment but it will, at least, give you relief from the penal interest.

Account debit, bank refusing to reimburse

I withdrew an amount of TZS 20M on 31 October last year. The very next day, i.e. 1 November, a further amount of TZS 20M was fraudulently debited from my account. When I initially reconciled my account, it somehow did not strike me. But now that my annual audit has been done, this fraud has been picked up. The bank is saying I waited too long to report it to them and, hence, I cannot be refunded. What should I do?

28 May 2012

This is an interesting fraud, with one amount debited at the end of one month, and the same amount debited the beginning of the next month. The bank owes you a contractual duty to safeguard your money. While it is true that you have been very late in reporting, the very fact of informing them late cannot entirely absolve the bank of liability. The bank might say that the fraud might have been recoverable had you reported it earlier, but this will not hold much water, except to the extent of perhaps reducing the amount that they will be held liable to pay. If all that you are telling us is true, then you have a good case. Your attorney can guide you further.

Suing daladala driver

Can I sue a driver of a daladala who causes an accident on Salender Bridge? Because of his negligence, thousands of people are blocked in traffic and late getting to work, which costs the country billions of shillings worth of time? If I was the President of Tanzania, I would allow such a claim against

the daladala driver and his owner. Does our law allow that?

11 June 2012

Under the rule of negligence and law of tort, there are a few questions you must ask yourself. Does the daladala driver owe you a duty of care? If he does, then the next question is, was he in breach of that duty? If he was in breach, and it caused you damages, then you can recover from him.

When the daladala driver causes an accident, he does not do so intentionally. It is an accident just like any other accident. He does owe a duty to the person he has hit, but does that duty extend to you who has not suffered any physical damage? The answer is in the negative. Generally, in the law of tort, you can only extend him having a duty to you if you were injured. You can claim that it was an economic injury to you but such economic loss is far too remote, and it would lead to absurdity and opening of the floodgates. If Judges accepted such cases, the poor daladala driver would have to compensate billions of shillings to all those affected. Both public policy and fairness principles would be defied if that were the case.

In the upshot, and very unfortunately so, you have no claim against the daladala driver. We are not aware of any jurisdictions that would allow your suggestion. When you become President, you might want to consider enacting a special law on this. However, at present, the law does not support your thoughts.

HIV / AIDS cure, now duped

I am a woman aged 36 years and living with HIV / AIDS for the past four years. Last year, I met a friend who is living in Shinyanga, who told me about a person who was treating the disease. She said that he is a famous and well-known traditional healer, who would need to physically see me to determine my treatment plan. I was very happy to hear that, and arranged for my trip to Shinyanga. The doctor said my disease would be cured in two months, and insisted I stop all medicine I was using from the hospital. Hence, I stopped using all the ARVs.

It is now one year later, and the disease has not gone away my condition is even worse than before. I have now heard that the traditional healer is a conman who wanted to get our money. There is no record that anyone has been cured by him. Indeed, quite a number of patients who have been attended by him have died. I have resumed clinics, and my doctor says that my CD4 count has dropped tremendously due to the stoppage of ARVs. What legal steps can I take against this man?

25 June 2012

Under our laws, what the traditional medicine man has done is a criminal offence. Section 27 of the HIV and AIDS (Prevention and Control Act) 2008 states that, if anyone wants to make any statement or information regarding the cure of HIV / AIDS, their claim shall be subjected to scientific verification before such announcements are made. The law states that the publication or information about any such cure of HIV / AIDS shall be attached with evidence of pre and post-cure HIV test results.

The Acts says that any person who makes or caused to be made any misleading statement or information regarding curing, preventing or controlling HIV / AIDS, contrary to this section, commits an offence. On conviction, that person should be subject to a fine of not less than TZS 1M, or to imprisonment for a term of not less than six months or both.

We advise you to report this healer to the police. Additionally, under contract and/or law of tort principles, you may be able to sue

him for recovery and damages. Your attorneys can further guide you.

Medicine but still fat

A pharmacy advertised that, if I drank a cup of some powder in hot water every day, I would lose weight. My weight before I bought the expensive product was 128 kgs. I have spent over TZS 1M on the product but my weight is still the same. Whenever I meet the pharmacist, she says that there is some improvement, but the weighing scale doesn't seem to agree. Are there any regulations that govern such behaviours by pharmacists?

23 July 2012

We are sorry to hear that you are finding it difficult to lose weight. This is a challenge that many face in this time and era. Apart from the medicine, which is not working, it is important to increase your activity level and decrease your intake of foods. Your sole dependence on this magic powder might not work. Either way, your doctor can guide you. We now answer your question.

Under the Pharmacy Act of 2009, a person shall not promote and advertise medicines, medical devices or herbal medicines in a manner that is false, misleading, deceptive or that is likely to create an erroneous impression regarding its character, value, quantity, composition, merit, safety or efficacy. An individual who does the above shall have to pay a fine of not less than TZS 2M and not more than TZS 10M or be imprisoned for a term of not less than six months but not more than three years or both. If it is a body corporate, it shall be subject to a fine of not less than TZS 5M but not more than TZS 15M.

If you believe that you have been misled, under this Act you may report the pharmacy to the Pharmacy Council

Injury in gym

Having joined this gym in Dar, I thought I was going to lose weight and get back in shape. Hardly two weeks into the training, I reported to the head instructor that one of the machines I used to work out on was falling apart. I actually identified to the instructor what the problem was, and he told me they would fix it.

I continued training and, on the third week, the wire holding the pulley snapped and injured my spinal cord. The injury was so serious that I had to be ambulanced to the hospital. The local hospital in Dar referred me to a good hospital in Nairobi, where I underwent surgery. I still walk with a limp and am really depressed.

When I got back to Dar, I politely went to the gym to find out what they had done after the incident. To my utmost disgust the gym owner, even before I opened my mouth, told me that if I was there to threaten them, they would defend themselves in Court. They also said that I was careless in using the machine and that I have signed a disclaimer that said the gym is not responsible for any injuries to its users. Does that mean they cannot be touched? What should I do? I want to teach them a lesson.

17 September 2012

If the gym owners are so arrogant, and you suffered such a serious injury, the best thing to do is to sue the gym. You need not ponder over this for too long. It is high time such matters go to Court, and the parties who are responsible are taken to task.

Having signed a disclaimer does not mean you cannot sue the gym. The disclaimer is a way that the gym is trying to reduce its liability. It should not worry you. The gym had a contractual obligation to provide safe training equipment, which they failed to do. A report from your doctor in Dar and Nairobi

will be very helpful. You should also consider the possibility of bringing a doctor as an expert witness during the trial, to show the extent of the injury and the possible cause of it.

You can also be creative in what you claim. Everything is claimable, so long as you can justify it. You can claim medical bills, travel, lost income, lost future income, emotional distress etc, if it can be quantified. We recommend you get a lawyer to assist you.

Confiscation of title by bank

I borrowed money from a bank to purchase a vehicle. I have defaulted in paying the last seven instalments, and the bank wants to seize my vehicle from me. Knowing that, I asked a friend of mine who banks with the same bank to borrow money based on one of my title deeds. When this friend applied for the loan, the bank saw my name on the title deed, rejected the loan and are not returning the title, saying they will now proceed to sell both the car and the property under the title. Can the bank do this?

24 September 2012

We cannot answer this question without seeing your loan documentation for the vehicle. However, with our experience of such matters, we think it is unlikely that you will have provided your title as a security in that loan vehicle agreement. If that is the case, the bank cannot hold onto the title, let alone sell the property.

Your lawyer should write a demand note to the bank. If it does not cooperate, you can proceed to sue the bank. Withholding of your title can be construed as a denial to your property rights, and you can sue for various damages.

Contaminated fuel, engine bursts

I bought fuel from a petrol pump in Mikocheni, which resulted in my car engine bursting. My fundi has confirmed that it was due to the fuel, which was mixed with kerosene. I now found out that the particular petrol station is known for such activities. What should I do?

24 September 2012

We advise you to report this matter to the Energy and Water Utilities Regulatory Authority (EWURA). EWURA was established by the EWURA Act. The regulator is known for its efficiency.

The EWURA investigates claims referred to it, where it decides that the complainant has an interest in the matter, and where the complaint is not frivolous.

After following certain procedures, prescribed under statute, EWURA may make an order: (a) requiring a party to pay money; (b) requiring a party to supply goods or services for specified periods; (c) requiring a party to supply goods or services on specified terms and conditions; (d) requiring a party to pay the costs of another party or of a person appearing at the hearing or producing documents; (e) dismissing a complaint.

Your lawyers can guide you further.

Faulty organ, no refund

I am a professional organ player and teacher. When I bought an organ for myself in one of the electronic shops, little did I know that the keys were all mixed up. Only two of the keys sound proper, and the rest sound totally different. I went back to the shop, and they showed me a sign that once goods are sold, they are non-returnable. I tried explaining to the shop owner, but he is not cooperating. How do I handle this?

8 October 2012

A mere sign that the goods are non-returnable is no bar for you to return the goods if they are not of the required quality. The sign is meant to reduce and mitigate potential claims against the shopkeeper such signs cannot eliminate his liability or remedy a breach of contract.

When you bought the organ, you entered into a contract, albeit an oral one, whereby you paid for the organ and he supplied it to you. One of the reasons you bought the organ is to use it, not merely keep it as a showpiece. With the keys in a mess, you are not able to use it. An organ with such issues with its keys is no use to you, and the shopkeeper is in breach of his contract.

If the shopkeeper does not understand this reasoning, you can proceed to send a demand note to him through your lawyers. If that does not work, you have the right to sue the shopkeeper in Court.

Our opinion is based on the fact that you have not spoiled the keys yourself. That is likely what the shopkeeper will claim. You should, therefore, be prepared to bring evidence to counter such a claim by the shopkeeper. The issue of electronic gadgets malfunctioning is not uncommon in the market in Tanzania and elsewhere.

Non-delivery of service by mobile company

I am using a mobile company in Tanzania whose services have become worthless. Most times you cannot reach anyone and, when you are calling my phone, it will say "unreachable" despite the phone being switched on. I also get unsolicited SMSs inviting me to buy ringtones amongst others. How can I stop this?

22 October 2012

The authority which is responsible for mobile companies in Tanzanian is the Tanzania Communication Regulatory Authority (TCRA). Hence if you have a complaint, you can file it with TCRA. You can also appeal to the Fair Competition Tribunal, should you still be dissatisfied with the TCRA's service. This complaint mechanism is provided for by the law.

The less exciting option is for you, perhaps, to consider changing your mobile operator.

Cosmetic products with mercury

There are certain beauty products that have mercury in them, and are being imported in Tanzania. Whilst other countries have banned such products, that are used mainly by women to fight anti-ageing and to lighten skin, some of the leading Tanzanian beauty shops sell them. How can this be stopped? Who is responsible for this irresponsible behaviour? Is there no law that can come to the rescue?

12 November 2012

The Tanzania Food and Drug Authority (TFDA) is responsible for regulating the quality and safety of food, drugs, cosmetics and medical devices. You can report your concerns to the TFDA, which should be able to take immediate action. If you also visit the TFDA website, it contains a list of all cosmetic products that it has registered.

Importing mercury products is also illegal under the East African Community Customs Management Act (EACCMA). In Schedule 2 of the EACCMA, it is specifically provided that all soaps and cosmetic products containing mercury are prohibited from being imported.

According to the EACCMA, anyone who imports such products shall be liable on conviction to imprisonment for a term not exceeding five years, or to a fine equal to 50% of dutiable value of the goods involved, or both. Hence the importers of these products can be sentenced to jail.

And for general interest, the EACCMA is an Act applicable across the East African Community partner states, which applies a common customs structure for goods that are imported. Hence, when one partner state imports a particular item, the duty that the importing party pays is the same across all the five partner states.

Serious injury in pool

A graduation party was organised by some students at a private residence. Everyone enjoyed the pool without knowing that the cover of one of the pool water suckers, which circulates water in the pool, was missing. This resulted in a serious injury to a student. Can I sue the pool owner, even though we got the pool for free?

10 December 2012

From your question, it seems that you are not the student who got the injury. Hence, it is quite unlikely that you will be successful in suing the pool owner. However, the injured friend has a good case against the pool owner. It does not matter that the pool was given to you for free.

Whilst the pool owner was not under any contractual obligation to give you the pool, he had a tortious responsibility to ensure that it is safe for usage. If a pool water sucker cap is missing, it can lead to loss of life, because a swimmer can actually get trapped in the pool.

The questions you have to ask yourself is whether the pool owner had a duty of care, even though he gave you the pool for free. We believe so. The second question is whether the pool owner was in breach of such duty. The answer is again yes. And lastly, because of this breach, there was an injury. Based on the evidence you adduce, the chances of success is quite high.

Fake malaria drug

My 2-year-old child was diagnosed with malaria and was given drugs manufactured by a local manufacturer. The drugs proved ineffective, which led to further complications that I had to get treated outside the country. Luckily my child survived. Can I sue the manufacturer?

24 December 2012

You can definitely sue the manufacturer. The most critical element of your suit is to prove what you have alleged above. You should also consider reporting this to the Tanzania Food and Drug Authority, which can take action in parallel. Your attorney can guide you further.

Failure of birth control

I got a copper device inserted in me to avoid getting pregnant because I already have five children. Unfortunately, I am pregnant yet again. I am sure this happened because the device was not properly inserted. Can I sue the manufacturer of the device? Can I abort, since I cannot take of all the children?

21 January 2013

Generally, the manufacturer can only be liable if one can prove that the device itself had some defect. From the above facts, it seems that the problem was with the insertion which led to this unplanned pregnancy. The best cause of action will be to proceed under tortuous liability and sue the medical practitioner and, perhaps, the hospital, which may be liable under the employer's liability.

You must, however, remember that this type of contraceptive is not 100% effective there have been many cases around the world where women have gotten pregnant with this copper device. Your doctor should have explicitly explained this to you. If he did not, that is a good ground for you to sue him.

Usually, the quantum of damages in such cases, if at all, is not very high. You also cannot sue the doctor and make a prayer for abortion as, in your case, abortion is illegal. Abortion in Tanzania is only allowed if it is certified by a medical practitioner as being necessary to protect the health of the mother. Your ground of aborting because you already have five children will not hold any strength in a Court of law. Before you take any action, please consult your lawyer.

Shower too hot

I came to Dar and stayed at a top-notch hotel. When taking a hot shower, I burnt myself very badly because the shower water was very hot. I talked to the hotel boss that, as part of compensation, he allows me to stay free for one week but he is refusing. I have reported him to the Tanzania Tourist Board but they have not taken any action. What should I do?

28 January 2013

In the showers we know of, there are two knobs, one for cold water and the other for hot water. We are sure the "top-notch" hotel you stayed in would have the same facility. Hence, we are unsure how you burnt yourself in the shower. That is probably what the hotel owner is asking himself. Whilst we do sympathise with you, it is unlikely that you will receive any compensation if it was your fault.

If the shower, on its own, suddenly changed from hot to extremely hot, then you might not be responsible. In that case, a cause of action against the hotel would exist. You can then surely sue. We suggest you consult your attorney before making any moves.

Power cut in operating theatre

One of my relatives was being operated upon when the power failed. The hospital's generator was not working, and it was by mere luck that our relative survived. He had to be flown out for treatment, and spent about six weeks in hospital. Can we take the hospital to task?

28 January 2013

It is known that there are frequent power shortages in Dar. For a hospital that has a theatre not to have a backup generator, or to have a generator that does not work, is extremely dangerous and also highly negligent.

From the facts you have given us, we believe you have a very good case in which you can claim all kinds of damages. However, Tanzanian Courts are not known to give large amounts in damages. Your lawyer can guide you further.

Poor customer care by mobile company

I am a subscriber to a mobile company in Tanzania whose customer care system is very poor. I have to call customer care repeatedly and am put on hold for ages. Sometimes it takes ten calls to get through the standard message is "all our customer representatives are presently busy, stay online, and you will be attended by the next available representative." It sometimes takes up to 30 minutes before I get attended to. In between the call, the customer care rep also hangs up, and I have to start all over again. Do I have any rights, and how do I defend myself against this mobile company? They are bullying me.

4 February 2013

Your bullying can be intervened by the Tanzania Communication Regulatory Authority (TCRA), which is the institution responsible for managing all mobile companies in Tanzania. The Electronic and Postal Communications (Quality of Service) Regulations, 2011 provide that the average waiting time before a customer is attended

by a call centre operator should be less than five minutes. Hence you may complain to the mobile company, explicitly stating your complaint and the mobile company is required to reply to your complaint within 21 days of its receipt.

If you are unsatisfied with the mobile company's reply, you may proceed to complain to the TCRA. The TCRA shall investigate the complaint, and may request the mobile company to submit documents. Once the TCRA finalises its investigation, it shall write to both parties, advising them on the need for a hearing of the complaint. This communication will stipulate the date of the hearing or, if there is no need for a hearing, it will advise the parties on how the TCRA will proceed to determine the matter. After a hearing, the TCRA shall proceed to determine the complaint. It shall make a directive including, as appropriate, payment of a fine.

Many people do not know about their rights against mobile companies, some mobile operators are also unaware of this.

It also seems like you are always calling your mobile operator, we do hope that the problem is now solved.

5% service charge at restaurant

I took some friends to dinner and was charged 18% VAT on the bill, plus a 5% service charge. From what I am told, food does not attract VAT. Are the above charges not illegal?

11 February 2013

There are certain items that are not subject to VAT, for example, bread and other food items. However, when you are in a restaurant, the food has been cooked and is being served to you. This means that you are effectively being provided with a catering service. Hence, 18% VAT applies.

The more interesting question is the 5% service charge. We have looked at the tax statutes and have not found this anywhere. We conclude that the 5% is thus a mandatory tip that the restaurant is charging you.

This concept of tips revolves around the assumption that everyone follows the US practice of leaving tips for the waiting staff. In the US, this practice occurs because waiting staff are not well paid, so have to make up the difference through their tips. It is also perhaps the reason why many US waiting staff pay close attention to their customers.

We opine that the 5% cannot be mandatorily charged to you. You can refuse to pay unless, at the beginning of the meal, you were put on notice about the 5% and accepted it. If so, you entered into a contract with the restaurant owner where you agreed to pay the 5% service charge irrespective of the service. We also wonder if you also paid a tip in addition to the 5% that would amount to double payment.

Lip piercing leads to infection

I went to this clinic which pierces you anywhere you want. The piercing technician, who claims to have trained in Europe, told me all about his machine and talent including how they do tattooing in the body. He somehow convinced me to pierce my lip, which I did. He told me that sometimes this could lead to infection but added that even the air sometimes causes infections, so there was nothing to worry about. I proceeded with the piercing which has now resulted in my mouth swelling to the size of a golf ball. I cannot eat, cannot talk and am in constant pain. I have had three doses of antibiotics and creams, but nothing seems to be working. I have been referred to a specialist, and would like to know if I can sue the clinic and technician for this. My legal consultant says that I will be wasting my time since this is part and

parcel of getting piercings done in such weird places. What should I do?

18 February 2013

Your legal consultant is wrong. Merely by informing you that the procedure might have some side effects of infection, amongst others, does not absolve the clinic and/or technician of liability. It may mitigate the damages that you may get in Court, because you were notified about this. However, it cannot totally absolve the clinic and/or the technician.

There seems to be gross negligence somewhere along the treatment line. Perhaps the equipment was not properly sterilised or was not properly used? There was surely a duty of care, which was breached and has resulted in your infection. We are of the strong opinion that you send a demand note to the clinic and technician asking them, as a minimum, to foot your medical bills. If they fail to agree, you should consult a lawyer who can guide you on steps to take to institute legal proceedings.

Flying to wrong city

I checked in at the Nyerere airport for a flight to Kilimanjaro. On that day there were flights to many other destinations by the same airline. Having not been directed properly, a fellow passenger and I ended up flying in the wrong aircraft to Mtwara. The return flight was full, and I had to spend one whole day in Mtwara where I was forced to buy a ticket before I returned to Dar. Can I sue the airline?

25 March 2013

You can surely sue the airline. Your success would depend on the evidence that you will adduce during the trial, and you proving the damages you suffered.

Prior to suing, we would recommend you put the airline on notice that you intend to do so and consider settling the matter off Court. We believe you have a good case, but are unsure what amounts in damages you will be able to succeed on. Your lawyer can guide further.

Bad debt written off, why pay?

I was offered an overdraft facility to the tune of TZS 100M for a period of 12 months. I provided personal guarantee and, in addition, mortgaged my landed plot in Mbezi area Dar es Salaam. Following business troubles that were beyond my control, and which the bank knows about, I failed to service the loan. Eventually, the bank wrote off my loan account, which now reads as a zero balance. Surprisingly, the bank's lawyer has recently sent me a demand notice, claiming for the outstanding principal sum and the accrued interest. Is this proper? I thought the loan was already written off and the bank understood my position that, although I did not pay back the loan, it was unintentional. This is very unfair. Please advise.

22 April 2013

Your loan has been written off by the bank in line with Bank of Tanzania guidelines, regulations and best practice principles of banking. This does not mean that the loan is not to be repaid. The writing off is an accounting entry in the bank's books, so that the bank's true financial position can be determined.

If, by writing off bank debts, the borrower is absolved of his liability to pay, banks would be out of business by now, everyone would become a defaulter. Not only is your thinking totally wrong, but your mortgaged plot is at risk of being sold. Also remember that, when you default, the longer you wait to clear your debt the more you will end up paying in

interest. This is because penal interest kicks in for defaulters. Your lawyers can guide you further.

Anaesthetist made fun of me

I had been having serious issues with my stomach. Upon arrival at the hospital, the doctor told me I would immediately need surgery of the abdomen, and that I would be put to sleep during surgery. I was prepared for theatre and taken into the surgery room. The anaesthetist asked me my name, then asked me my second name, then asked me my middle name, he seemed more interested in me than in doing the surgery. After a while, he repeated the same, and asked me my names again. I am of Asian origin, and my names are not easy to pronounce. Then he remarked that I should not worry I will not die. This led me to be very anxious during the surgery, and that anxiety still exists in me. Weren't the anaesthetist's remarks defamatory? Can I sue him for making fun of me?

29 April 2013

If we have understood your question properly you want to sue your anaesthetist for making fun at you. You also wish to sue him for asking your name several times. According to you, both these actions led to anxiety during surgery and after.

We are not sure how you could have been anxious during the surgery, because you were put to sleep. It also seems to us that the anaesthetist was doing his job. Normal protocol dictates that questions are asked to the patient, in order to ensure that the right patient is being operated on. For you to be asked your name a few times does not mean that the anaesthetist was "interested in you", whatever you mean by "interested in you." As an anaesthetist, he is obviously interested in the patient on the operating table. Does that give rise to a cause of action to sue him? We don't think so. The remark that you will not die, or you will be fine, are certainly not defamatory. We believe they were meant to ease your tensions.

Unless you have not told us anything else, we don't see how you can sue the anaesthetist. However, your lawyers can guide you further.

Life insurance for military personnel

I am a soldier in the Tanzanian armed forces. I recently visited a European country whereby all soldiers have private life insurance contracts to protect their families. When I came to Tanzania, I approached an insurance broker for a life insurance policy. He said that, since I was in the army, I could not be covered. He further added that life insurance policies also don't cover deaths that are self-inflicted. Is this true? How do I get cover?

27 May 2013

The Insurance Act of 2009 (IA) clearly states, in Section 111, that (1) A life policy in which it is stated that the policy shall be void in the event the insured whether sane or insane dying by his own act or suffering capital punishment within a stipulated period shall be void: (a) in respect of any period that exceeds two years from the issue of the policy notwithstanding any policy conditions to the contrary; or (b) Where the insured dies by his own act or suffers capital punishment after the expiration of that stipulated period or after two years from the issue of the policy, whichever is sooner. (2) A life policy in which no provision such as referred to in subsection (1) is contained shall not be void by reason of the insured, whether sane or insane, dying by his own act or suffering capital punishment at any time after the issue of the policy.

You can see from the above, that if one

dies by his or her own act within two years of taking out the life policy, the policy may not cover you. However, the law protects the insured person by saying that, after a policy has been in force for two years, any such wording in the policy that does not provide cover for a death caused by one's own act, is void. This means you are covered. It is true that many insurers are unaware of this. Therefore, their policies sometimes illegally provide such a clause.

Section 112 (1) of the IA states that a life policy which states that the policy shall be void in the event of the policy-holder dying in the course of or as a result of any military service which he performs under the government of Tanzania in any military action against a common enemy shall be void.

In Subsection 2 the IA further states that (2) No insurer shall refuse to issue to any person a life policy on the grounds that he is performing or likely to perform military service in Tanzania.

Hence the refusal by your broker and/or your insurer is illegal. An insurer cannot decline to insure you simply because you are a member of the armed forces.

Bag falls on passenger

I flew with an airline in economy class, where a man put in a very heavy bag in the overhead cabin compartment. The bag was half open, because he had squeezed in perfumes bought from duty free shops. I told him about this, and that he should ask the air hostess to place the bag elsewhere, but he was adamant. Finally, he managed to push his bag into the compartment. I complained to the air hostess, but she did not pay attention to my request. Halfway along the flight, whilst I was asleep, another man opened the compartment. Two big bottles of perfumes fell on my head, which resulted in bleeding. I was attended to expeditiously by a first aider and a doctor on board the flight. I want to take action. Who should I sue and how?

13 May 2013

There is a maximum luggage allowance, usually about 12 kgs, that a passenger is allowed to carry with him or her as hand luggage. This is mainly for security reasons, including that the overhead compartments cannot take more than a certain weight.

It is quite likely that the passenger's bag weighed more than the normal allowance. Hence, the airline is in breach of your air travel contract, and you can sue it. Another avenue for your lawyer to explore is to sue the air hostess for her negligent response to the call you made. You could obviously also sue both the person who carried the overweight bag and the passenger who opened the overhead cabin during the flight.

The next question is where should you sue? We do not have enough detail to answer this, but it is likely you can sue in Tanzania or the country you departed from. Obviously, before suing, you should consider your legal costs and the potential damages that you may recover.

Hairdresser changes hair to red

I am getting married in two weeks, and went to the saloon to get my hair done. I made it very clear to the hairdresser that I wanted light strips of "light red" colour. The hairdresser put so much dark red on my head that I look like a redhead. It has spoilt my mood and I am depressed. I look uglier than one can imagine. Can I take the hairdresser to task?

3 June 2013

We believe that, if you were clear in what you wanted and the hairdresser understood your instructions, then you can sue under

your oral contract with the hairdresser. The challenge will be on the evidence part. You will claim as per your question, and the hairdresser will likely say exactly the opposite.

You might want to try get witnesses who were in the saloon that day, and also investigate the hairdresser's track record. For all you know, he or she might have turned others into redheads as well. It is crucial that this evidence be gathered before the filing of the case. Your lawyers can guide you further.

Child injured on jumping castle

I sent my child to a party. Due to poor supervision, he fell off a jumping castle and had to be airlifted for specialised treatment abroad. The injury was severe, and my son now has a permanent limp and requires another round of surgery. I do realise that this was a party and fun-filled, but surely there is some law that requires such organisers to take care of persons especially young children. Whom should I sue?

3 June 2013

Your lawyers can consider suing the party organisers as individuals, the company that organised the party, the security company responsible for security, the medical personnel on duty (in case they did not manage this well), the person in charge of taking care of the jumping castle, the company that leased the jumping castle and any other person who directly or indirectly might have contributed to the injury suffered by your child. This could include any parent who was there at the time, and might have taken the role of overseeing the jumping castle.

It is true that this was merely a party. However, that does not exonerate the guilty parties from taking care of the persons they invited. Even if your child was not invited and showed up, the party organisers would still be responsible for taking care of him.

The inviting party had a duty of care. From your question, it is clear that they were in breach of this duty which resulted in the injury. With proper evidence in Court, including an expert medical witness, you have a strong case, unless you have exaggerated something.

Faulty mosquito coils

Tanzania has many products that are fake which shamefully includes malarial tablets. I have now realised that the mosquito coils that we burn around our houses to keep mosquitoes away are also fake. I have been using a particular brand for many years. But, in the last few months, I have changed to this new mosquito coil brand, which has resulted in three bouts of malaria for my children. I decided to take this company's coils to a chemistry student at the University of Dar es Salaam. The student ran some tests and concluded that two key ingredients that are the major causes of making the mosquitoes run away were missing in these mosquito coils. That means I have been using fake mosquito coils. No wonder we have contracted malaria so many times. What should I do as I bought these from a small duka nearby?

1 July 2013

Just because you have bought these from the duka does not mean that you cannot sue the manufacturer and/or the importer. You can sue, as we show below.

Manufacturer's liability is a legal concept or doctrine that holds manufacturers or sellers responsible, or liable, for harm caused by defective products sold to consumers. A manufacturer's liability is usually determined on any of three bases. The first base is negligence, which is the failure to exercise reasonable care to prevent product defects arising out of the manufacturing process, or which is the failure to give consumers

appropriate warning of a danger attending the use of a manufactured product. The second base is for breach of warranty, which entails failure to fulfil the terms of a claim, or promise concerning the quality or performance of a particular product. Lastly, there is the base of strict liability, under which a seller or manufacturer can be held liable for a defective product, even if the conditions of negligence or breach of warranty do not apply. Hence your lawyer can guide you on how to proceed with the initiation of the suit.

Furthermore, the quality of products into the country related to such mosquito coils falls under the jurisdiction of the Tanzania Food and Drugs Authority (TFDA), which authorises the importation of these. The TFDA also has laboratory services. You can report these fake coils to the TFDA, which has very wide powers and is known to be very strict, when such instances are reported to it. All such coils may be seized by the TFDA. We encourage you to report this to the TFDA, so that others are not affected by these fake mosquito coils.

Hairdresser burns bride's hair

A few days before my wedding, I went to my friend to get my hair done. During the course of ironing my hair, the iron clung to my hair and burnt a large portion on the front. It was the most awful experience, which resulted in great unhappiness for me during the wedding. I don't look like a bride and my photos are horrible. How can I take this woman to task? I really want to teach her a lesson and put a claim of billions on her.

15 July 2013

There are a couple of interesting points here. To begin with, if your friend was not a trained hairdresser and was doing this for free, it is going to be quite hard for you to be able to succeed in a lawsuit against her.

If your friend is a trained hairdresser, and was nonetheless doing your hair for free, you can sue her. If so, she will be judged at the standard of care that a hairdresser is expected to be judged, taking into account the expertise required of a hairdresser.

Lastly, if your friend is a hairdresser and was being paid for doing your hair, then you can also sue under the law of contract and file for damages too.

We must bring to your attention that Tanzanian Courts are not very liberal in awards for damages. This means you shouldn't expect the billions you are talking about. Your lawyers can guide you further.

My airspace being used by airline

I own a big piece of land near that airport. A particular airline always flies above my land when entering Dar es Salaam. I believe this is tantamount to trespass on my land, and that I need to be compensated for this. How do I go about charging the airline for my airspace that it is taking up so frequently?

2 September 2013

If all airlines were forced to pay what you are demanding, they would be spending more time sorting out invoices of individuals like yourself than running an airline business. Further, it would make air travel uneconomical.

Coming back to your question, the answer is simply no, you cannot claim anything from the airline. The airspace above your land, which is currently unused. That which you will not use does not belong to you. There is no trespass by the airline. Your lawyers can guide you further.

Fat man, small seat

I took a flight out of Dar to an overseas destination and was made to sit next to a

man who was extremely fat. He was easily over 160 kgs. I am not sure how he managed to actually sit in economy class. When he slept, he snored and his hands would touch mine. Is there no weight restriction for economy class? I must confess that it was a really bad experience for me. Whilst I feel sorry for the fat passenger, I think the airline should have a fat man's cabin somewhere. After the plane ride, whenever I see even a thin air hostess, she looks fat to me! What can I do?

16 September 2013

You have not disclosed to us what airline this was but, generally speaking, there is no rule that requires a fat person to buy two tickets or upgrade to business class. However, quite a few airlines now require such passengers, in the interest of safety and comfort of the passenger and others, to buy two tickets. If the plane is not full, the second ticket is then reimbursed. In fact, some airlines have stricter policies, which state that would not be able to board if you have an economy class ticket and the size of the seat does not fit you.

In view of the above, and since you had a contract of carriage with the airline, we suggest you ask for a refund from the airline for the discomfort you suffered. Likely, the airline will give you a free ticket. Your lawyer can guide you further.

Disciplining a nurse

A nurse who was attending to my relative literally dumped the patient and left the hospital whilst still on duty. The nurse did not administer critical drugs that the doctor had prescribed, resulting in a prolonged stay in the hospital. The same nurse is known to misbehave in the hospital, and is a ticking bomb for people who will be attended by her. Is there a central register that I can complain and get this nurse de-registered?

7 October 2013

Many people are not aware of this, but there is a specific law that governs the conduct of nurses. The Nursing and Midwifery Act (NMA) has a register maintained by the council established under the Act. What you have stated above amounts to serious professional misconduct which, if true, may result in the nurse being struck out of the Registrar.

The procedure is for you to lodge a written complaint to the council. The council will then call for more evidence if required, and investigate the matter. The nurse will have a right to reply to your allegations. The council will then make a decision, which may include deregistration the nurse.

The NMA states that any person who is aggrieved by the decision of the council may, within three months from the date of notification of the decision, appeal to the Minister. The Minister may dismiss or allow any appeal or alter or vary the decision of the council or make any order, as he deems fit. Further, the Minister shall, within one month after determination of the appeal, serve a notice of such determination to the concerned person. Any person aggrieved by the decision of the Minister may within three months refer the matter to the High Court. Your lawyers can guide you more.

Fingerprints by bank

I am a director in a company in Tanzania but reside outside the country. Being a foreign national, and wanting to establish more businesses in Tanzania, I decided to open a bank account in Dar. I was quite shocked when the bank asked me for my fingerprints, saying it was a requirement under the law. This is the first time I am

hearing of this. I was quite astonished at the way the bank treated me when my fingers were placed on an ink pad. In fact, the ink stained one of my shirts. Another banker told me they don't take such fingerprints. What can I do? On a different note, when I spoke to my banker about getting an inward remittance of about one million dollars, he said that there were reporting rules for such a transfer into my account. I find all this weird and am worried about investing here.

21 October 2013

Section 5 of the Anti Money Laundering Regulations (AMLR) of 2012 states that a reporting person, a bank is a reporting person, shall obtain from, or in respect of, an individual who is a citizen of another country and is not resident in the United Republic, that person's: (a) full names and residential address; (b) date and place of birth; (c) nationality; (d) passport; (e) visa; (f) Tax Identification Number, if such number has been issued to that person; (g) any or all of, telephone number, postal and e-mail address; and (h) signature and thumbprint.

From the above, you can see that it is mandatory under the regulations to obtain your fingerprints. Hence, if your complaint is about the taking of the fingerprints there is nothing that you can do. Your astonishment is also not very clear to us. Many countries, with the vast issues related to money laundering, terrorism, narcotics, trafficking and the like, require that individuals have their fingerprints taken.

If your complaint is about the spoilage of your shirt, you might have a cause of action against the bank. However, the damages, if any, will be very limited. Your legal fees to pursue such a case might be much more than what you will recover.

In response to information from the "other banker", please be informed that he or she is misguiding you. The Anti Money Laundering Act and its regulations are very strict. In the case of non-compliance, the Act provides for custodial sentences for both the banker and yourself.

As for unusual activity in an account, it is true that the AMLR provide for such transactions to be reported to the Financial Intelligence Unit.

Hence, your opening of an account, your reluctance to have your fingerprints taken, and the fact that immediately upon opening an account you want to transact a million dollars, would be deemed to be highly suspicious and a transaction that your banker must report. Non-reporting of such transactions can lend the banker into jail. For further information, we advise you contact your lawyers.

Beer brand misleading

I have been drinking a particular beer because their adverts show all those drinking it surrounded by beautiful women. In the last year that I have been drinking it, I have not been successful even once. Can I sue the beer company for misrepresentation and financial loss?

18 November 2013

Suing is not very difficult, but we believe you are taking this a little too far. We have not seen any adverts in Tanzania by beer companies where they explicitly say that by drinking more of a certain beer brand, you will be surrounded by beautiful women.

The adverts you see are a publicity tool that uses beautiful people to attract one to purchase a product. From the facts provided, we believe you have a very weak case. We are also unsure what financial loss you have suffered, especially now that you have consumed all the beer. Your attorney can guide you further.

Airline cancellation, big deal missed

I was flying for a very important meeting in South America, and the airline cancelled the flight at the last minute. I was forced to take another airline but did not make it on time for the meeting. As a result, I lost a deal worth a lifetime. I want to sue the airline for at least USD 10M. Please guide.

25 November 2013

Much as we sympathise with you missing a deal of a lifetime, there are specific international conventions which limit the liability of airlines in such circumstances.

Specifically, the Montreal Convention limits the liability for such claims. It is therefore very unlikely that you will be able to claim what you are stating. Tanzania also ratified the Montreal Convention some ten years ago. Hence, the Convention has the full force of the law in Tanzania.

The underlying reason for the Convention is to protect airlines from being held liable for unlimited amounts. Otherwise, it would make airlines operations even more expensive. We recommend you consult your lawyer.

Cockroach in food

I went to a top-notch restaurant that everyone believes has the cleanest kitchen in Tanzania. Whether you believe it or not, I ate a cockroach unknowingly. It came out the next day when I went to the toilet. I want to sue the restaurant owner. How do I proceed?

2 January 2014

It is hard for us to believe that a cockroach that you ate came out when you went to the toilet the next day. From the biology that we know, it is quite apparent that any cockroach you eat would be digested by your digestive system. Our research shows it is virtually impossible for it to have been excreted the next day, unless it was made of silver. We also find it hard to believe how you would know that you excreted a cockroach unless you were monitoring your stool, which very few people would normally do.

That said, should your ingestion of a cockroach be true, you do have both a contractual and tortious claim against the restaurant. If the restaurant is a limited liability company, then it is the company that you would sue, not the owner. If the restaurant is a sole proprietorship, you can sue the owner him / herself.

Finally, one challenge you have is proving that you ingested a cockroach. How would you go about proving that the cockroach you seemingly excreted was from the restaurant you visited?

Your lawyers can provide more guidance.

Lottery won overseas

I won a luxury car in a lottery competition outside of Tanzania. I intend to bring it to Tanzania and am told that I will have to pay some astronomical amounts in import duty. Is there no provision for a poor man like me to get exempted? What other options do I have? Can I offload this car in Kenya and drive it to Dar, will that work out cheaper?

13 January 2014

It is true that your luxury car will be liable to large amounts in import duty. Another tax that you have forgotten to mention is the applicability of 18% VAT, which you will have to pay.

Importation falls under the East African Community Customs Management Act, which is a common Act across East Africa. This means that, whether you import the car through Tanzania or Kenya, the same taxes will apply.

Another option you have is to sell the car wherever it is now. However, please note that

under our Income Tax Act you are likely liable to pay income tax on your worldwide income. This means that, if your income from the car sale comes to the notice of the TRA, you will likely get taxed for the sale even though it is out of the country.

Under the Income Tax Act, there is a provision whereby the Minister for Finance may exempt you from such taxability of income. However, that option is discretionary. It is unlikely that you will get the exception for a lottery win. Your tax advisor can guide you further.

Toothpaste with flies

I bought a toothpaste from a supermarket in Dar. When brushing my teeth, I found that there was a fly in the toothpaste. I was quite shocked, and decided to remove all the toothpaste from the packing, only to find more flies and other particles in the toothpaste. I have become paranoid ever since, and do not trust packed products, no matter how beautifully designed they are. What can I do?

3 February 2014

In case you believed that "beautifully packed products" cannot be tainted with flies and other particles, then you are greatly mistaken. There are many cases where some of the top brands have had major goof ups, bottled drinks having cockroaches, lipstick having pig hair, cars having wrong brake pads, aircraft with malfunctioned engines, sofas with dead rats inside the lining, drugs wrongly packed, CD players where the rotating CD slips out, computers that burn the user's thighs, to mention a few. You must remember that it is your fellow humans who are packing and manufacturing the goods you buy. Much as we would not want this to happen, such occurrences do happen.

The fact that you bought the toothpaste from a supermarket does not mean that you cannot sue the manufacturer, wherever they are. In fact, you can also sue the supermarket, the wholesaler who supplied the supermarket and the importer, if different from the wholesaler. You will need concrete evidence to prove this, mere assertions will not take you far. Your lawyer can guide you further.

Payment of water bills after moving

I used to own and live in a certain house in Dar es Salaam. A few months ago I moved to another place and sold the house. To my surprise, I have received the water bills for the water used in the house post-selling. I informed the water authority of this and tried to explain that I moved and sold the house months back and that they should claim the amounts from the current occupier. However, the water authority is adamant that I should pay. Is this legal? How do I challenge this?

10 March 2014

Water Supply Regulations GN No. 90 of 2013 states that if and whenever any consumer ceases to occupy any premises supplied with water or cease to use the water supplied by the water authority, such consumer shall give a prior notice of not less than three days in writing to the water authority and upon receipt of such notice the water authority shall disconnect the water supply at the expense of the consumer.

The GN further states that the owner, occupier or consumer of any premises liable of any water rate and who has given notice of his intention to vacate the premises or cease to use the water supplied by the water authority shall pay the rates up to the end of the calendar month in which such removal or discontinuance takes place. From the foregoing provisions of the regulations, it is clear that you should have given notice that

you are vacating the premises. The water authority would then have disconnected the water, in order to ensure that the new occupant introduces himself to the water authority and executes a contract for the supply of water.

Since you did not issue a notice, the said bills are accumulating in your name. This is because the water authority isn't aware that you have sold the premises. We are of the opinion that you should consider paying the related costs, then proceed to claim the amounts from the current occupier. Your attorney can provide you with further options.

Misbehaving nurse

I frequently attend a government hospital to take my old man, who goes for special medication there. Strangely, there is one nurse who uses extremely offensive language with patients. There are a lot of complaints by the other patients, but it seems all these are falling on deaf ears. Is there a regulatory framework against unprofessional conduct of nurses?

31 March 2014

We are alive to the existence of the Nursing and Midwifery Act, No. 1 of 2010. This Act makes provision for the protection, promotion and preservation of the public health, safety and welfare through regulation and control of nursing and midwifery education and practice. This is the specific law which regulates conduct of nurses.

Among the reasons where a person's fitness to practice as a nurse is impaired includes abusing a client verbally, physically, sexually or emotionally, among others as provided under this Act. The remedy for this is for one to present a complaint to the Tanzania Nursing and Midwifery Council. The Registrar of the council, who also serve as the Chief Executive Officer, will then put the law in motion by dealing with the complaint appropriately. This law provides for serious penalties against nurses, including striking them off the register. We are informed there are very few such complaints lodged, as people are unaware of this mechanism. Your lawyer can explore this avenue further.

Pen results in failure in exam

I am a college student and want to take up a case against a certain company whose pens I have been using for some time. I went to the exam room with such a pen, and it failed to write. I panicked, couldn't write the exam, and failed. I have to now resit the paper. Can I sue the pen manufacturer?

31 March 2014

We are quite shocked at how you failed to write the exam at all for not having a pen. Surely there were other students with extra pens. You have an interesting case, but there are many hurdles that you will have to overcome. As a result, we believe your case is very weak. For example, a pen may not work because of the way you have stored it, carried it, and the like. It is not easy to pin the blame on the manufacturer.

However, if the manufacturer's pens have a history of not writing, you have a cause of action. However, the damages will be minimal. We are quite certain that you will not succeed in blaming the pen manufacturer for not being able to write the exam and failing. We suggest you consult your lawyer.

Kids photo in school publication

My son goes to a premier school in Dar. This school gives an option to parents about whether their child's photo is included in the school's advertising material. Due to personal reasons, I did not want my child's photo published. I was therefore shocked to see that the school went ahead and

published it. I approached an aggressive head teacher, who told me off and actually started questioning why I even had declined in the first place. What should I do? Can they fire my child because of my refusal?

28 April 2014

You have a cause of action against both the school and the aggressive head teacher. If you had declined for the photo to be published, your child's rights to privacy, amongst other rights, are to be fully respected. The fact that the head teacher is trying to dilute this situation does not change the fact that the photo was published when you did not want it to be.

Depending on how aggressive you want to be, we don't see much of a reason to kowtow the head teacher. Put the school on notice immediately that they should not circulate the publication, and that they should recall those that are in circulation, which, we admit, is very difficult to do. If they don't comply, you can proceed file a suit against the school.

Amongst your prayers in the suit should be that the school be directed in a specific manner, and that you be compensated financially for the harm done to you. As to whether they can fire your child because of this, the answer is that they absolutely cannot. In the event they do, the school will not get the sympathy of any Magistrate or Judge in such a matter. Consult your lawyer for more details.

Beauty product burns skin

I visited a mall in Dar where there was a team of people giving out skin whitening cream for free. I used the product, which permanently burnt the lower part of my face. I don't know who the distributor is but the manufacturer's contact details are on the packing. My lawyer says that I need to know who gave me the product to establish a cause of action, but I am unable to recall the name of the distributor. My lawyer seems to think that I don't have a contract with the seller as it was free, meaning that the quantum of damages will suffer. Please guide me as I seriously want to take someone to task?

28 April 2014

It is true that you do not have a contract with the seller, but that does not stop you from suing the distributor and/or manufacturer for this faulty skin product. In fact, the quantum of damages might actually end up being higher than under a contract, so this is not a deterrent in any way whatsoever.

Your rights as a consumer are fully protected under the principles of tort in law. The manufacturer had a duty of care towards you, he breached that duty, resulting in this damage to you. We believe you should proceed directly against the manufacturer, who you have managed to identify. Your lawyer can guide you further.

Computer software malfunctioned

I bought accounting software online, which has an error in it. It overstates profits and doesn't capture all expenses. The software looks very good when you purchase it one only realises these errors when you start using it. With my profits suddenly looking good, I was making investments in other areas, only to get into a cashflow crunch. What should I do?

28 April 2014

The first thing you need to do is change the software. The problem with buying products online is that a quality control test is sometimes hard to perform. That said, before buying products, you can often review other users' experiences.

You do have a cause of action against the maker and seller of the software. However,

we are not sure how successful your recovery will be. It depends on where the supplier company is registered, and whether it exists at all. We recommend that you consult your lawyers to do some research for you.

Defective electronic product

I bought a DVD player from a store in Kariakoo which was faulty. I returned it, and had to force my way in to push for a replacement as they were declining. After an hour's tussle, the shopkeeper agreed and gave me a replacement, which also did not work. The next day, I returned This time, the storekeeper totally declined to replace or refund my money. They showed me a sign saying that anyone buying was doing so at their own risk, and that goods once sold were non-returnable and non-refundable. They then produced a piece of paper with what, they said, were their standard trading terms. These terms stated that goods once sold cannot be returned or refunded. My friend, who knows the law, says that this condition puts my case on a weak footing. What should I do? It is so unfair for the shopkeeper to keep my money without me enjoying the DVD player.

5 May 2014

What comes automatically to your rescue is the Fair Competition Act 2003 (FCA). This Act promotes and protects effective competition in trade and commerce, and protect consumers from unfair and misleading market conduct.

The FCA provides for quality of products. It states, in Section 31 (l) Where a person supplies, otherwise than by way of sale, by auction, goods to a consumer in the course of a business, there is an implied condition that the goods supplied under the contract for the supply of the goods are of merchantable quality, except that there is no such condition by virtue only of this section: (a) as regards defects specifically drawn to the consumer's attention before the contract is made; or (b) if the consumer examines the goods before the contract is made, as regards defects which that examination ought to reveal.

Hence, if the defect was brought to your attention, or the defect was revealable during examination of the product, then you are not eligible for a refund. However, in your case, it seems more likely that this was not brought to your attention and you could not have known that there was a defect.

Furthermore, Section 35 of the FCA states that (l) Where: (a) a person supplies goods to a consumer in the course of a business; and (b) there is a breach of a condition that is, by virtue of a provision in this Part, implied in the contract for the supply of the goods, the consumer is, subject to this section, entitled to rescind the contract by: i) causing to be served on the supplier a notice in writing signed by him giving particulars of the breach; or (ii) causing the goods to be returned to the supplier and giving to him either orally or in writing, particulars of the breach.

Subsection (3) further states (Where a contract for the supply of goods by any person to a consumer has been rescinded in accordance with this section: (a) if the property in the goods had passed to the consumer before the notice of rescission was served on, or the goods were returned to him, the property in the goods re-vests in the supplier upon the service of the notice or the return of the goods; and (b) the consumer may recover from the supplier as a debt, the amount or value of any consideration paid or provided by him for the goods. (4) The right of rescission conferred by this section is in addition to, and not in derogation of, any other right or remedy under this Act or any other Act.

From the above, you can see that, notwithstanding the standard terms that

the shop is using to inform you that it will not refund you, the law provides for such a refund. You may, therefore, sue the shop to recover your money.

The FCA has established a strong body under it, the Fair Competition Commission (FCC). It is therefore worth reporting these sub-standard products to the FCC.

You must also note that any standard terms and conditions must be registered with the FCC. Section 36 of the FCA states that, whenever the terms and conditions which are to govern any consumer transaction are to be included, whether wholly or in part, in a standard form contract, then the terms and conditions shall be registered with the Commission in accordance with the regulations under this Act.

We have not seen such specific regulations. However, the FCC can be contacted to find out if the shop has indeed registered its standard terms and conditions.

All in all, we don't agree with your friend's opinion. We therefore opine that, from our reading of your question, you are likely have a cause of action against the shopkeeper. Your lawyer can guide you further.

Dissatisfied with benefits from NSSF

I have been a member of the NSSF (National Social Security Fund) for many years now. However, I am not happy with the benefits that I will soon be entitled to. I would have earned more had I saved that amount in a fixed deposit, in a bank, or with the Bank of Tanzania in treasury bills. No one seems to be questioning these benefits from NSSF. Everyone just looks at the amounts they have saved, but don't realise that it is not the NSSF that has saved the money for them, rather the employee and employer. What can I do to challenge this?

23 June 2014

The NSSF is known to be one of the star performers amongst the pension funds in Tanzania, and we are quite surprised at this. However, we have not seen any quantitative analysis from you to be able to comment further on whether or not the benefits are adequate.

Section 81 of the NSSF Act provides the following (1) All claims to benefit shall be determined in the first instance by the Director General. (2) Where entitlement is dependent on a medical question reference shall be made to a medical board, for determination. (3) Where the Director General or an insured person is dissatisfied with the decision made by the medical board, he may refer the decision to the Tribunal established by Section 84. (4) All decisions on claims to benefit shall be notified to the claimant in writing.

Section 83 further states that, under the NSSF Act, there is established a Social Security Appeals Tribunal. This tribunal shall have jurisdiction to adjudicate appeals against decisions of the Director General on claims for benefits under Section 81.

From the sections above, we recommend that you write to the Director General on your concerns. If you are dissatisfied with his decision, you can then proceed to appeal to the tribunal. You can indeed challenge the benefits you receive.

Scholarship for US university

I am an average student and had approached a person locally to get a scholarship into a university. He said he can get me a full scholarship, but I would need to part with USD 8,000 as an advance. This, he said, would show the university that I had at least some money to convince them to fund the rest. I complied but, till this date, I do not have either an admission or a scholarship. My contact claims he is at the

university and is still working on my issue. What should I do?

7 July 2014

From the facts above, it seems you have been conned. Getting a university scholarship is determined, amongst other factors, on your grades, extra-curricular activities, references and the like. We don't see how the USD 8,000 is relevant to you getting a scholarship. Your contact makes it sound like getting a scholarship is like buying it from a grocery store. In fact, your contact doesn't need to be physically present at the university to get you a scholarship. These are the signs that you have been taken for a ride.

To recover the funds, you can consider suing. However, before doing so, you might also want to consider criminal action based upon which he might refund the funds.

No toilet in aeroplane

I flew from Dar to Mwanza in a small aircraft. I had great problems in mid-air, because there were no toilets in the aircraft. Much to my embarrassment, I had to use a bottle to relieve myself. Is there no law that requires aircraft to have toilets?

14 July 2014

Section 3 of the Tanzania Civil Aviation (Economic Regulation) Regulations, 2006 can help your case. It states that (1) An undertaking whose principal place of business is within the United Republic shall establish a scheduled air service within the United Republic or between the United Republic and any State, if it meets the following requirements: (a) have reservation premise and facilities for ticket sales in each area to be served; (b) operates a sufficient number of aircraft to cope with the proposed route-schedule, must have a minimum of two aircraft; (c) for aircraft operating on a sector with duration of 90 minutes or more, there shall be toilet facilities; (d) have a timetable approved by the Authority and shall adhere to it.

You can see from the above that, if this was a scheduled air service, and if the flight time was longer than 90 minutes, then it is mandatory that the aircraft have toilets.

You have a cause of action. You can report your claim to the Tanzania Civil Aviation Authority, which may take appropriate action.

Hopeless internet service provider

I am subscribed to a very inefficient and unreliable internet service provider (ISP). The internet is not working most of the time, and when it is working, it is slow. The ISP gives a thousand reasons for this and sweet talks me all the time out of taking any action. Who monitors the ISPs and why is such a body not taking action?

21 July 2014

The Tanzania Communications and Regulatory Authority (TCRA) is the statutory body that oversees ISPs in Tanzania. Apart from your option of terminating the ISP agreement and seeking damages, there is a specific Regulation called the Electronic and Postal Communications (Quality of Service) Regulations 2011 which addresses quality of ISP services. This Regulation entitles you to report this ISP to the TCRA for action. You cannot blame TCRA if this ISP has not been reported to it.

Regulation 11 provides that the licensee providing internet services shall be required to meet targets on quality of service parameters, as specified in the Fourth Schedule to these regulations. The Fourth Schedule states that, when both the access network and the ISP network are available in full working order for dial-up users, users must be able to connect at least 90% of the time; and for leased line

users must be able to connect at least 99% of the time.

Furthermore, the Fourth Schedule states that the data transmission rate that is achieved separately for downloading and uploading should be at least 80% of that advertised by the service provider. These speeds should be tested by reference to specified test files, sent between a remote web site and a user's computer.

The scary part for the ISP provider is Regulation 15. This Regulation states that any person who contravenes any provision of these Regulations commits an offence. Anyone convicted of such a crime shall be liable to a fine of not less than TZS 5M, or to imprisonment for a period not exceeding three months or both. We recommend that you take this up with TCRA, who should be able to help you fix your problem with the ISP. You will have noticed that the regulations are very strict, and provide for imprisonment of any ISP which contravenes its provisions.

Mobile company mass SMSs

My mobile company sends me mass SMSs that are not beneficial to me. These messages waste my time and discharges my battery. How can I stop this?

21 July 2014

These unsolicited mass SMSs or even phone calls are illegal under our laws. Regulation 7 of the Electronic and Postal Communications (Consumer Protection) Regulations states, in subsection (4) A licensee shall not engage in unsolicited telemarketing, SMS-marketing and any other electronic methods unless (a) customer consents to the service. From the above, you can see that mass SMSs without your consent are illegal. You should report your mobile company to the Tanzania Communications Regulatory Authority, who will take appropriate action, which includes imprisonment.

Car parking disclaimers

I drive a vogue which I love as much as I love my family. I take care of it as being part of my family. In order to protect it, I pay exorbitant monthly fees to park in one building in town, which has an exclusive parking lot. To my surprise, the owner of the building has kept signs everywhere in the building that "parking is at the owner's risk". I am surprised as I pay exorbitant fees for the parking. Do I now also have to also hire a security company to guard my car? What does the law provide? How can the owner exempt himself from liability while at the same time he demands so much for parking?

3 November 2014

The law of tort requires owners of the buildings to ensure that the buildings are safe for the persons who are invited therein. The owner of the building where you park your car is in the business of renting spaces for parking. He also charges fees on every person who parks in that building. Hence, he is responsible to take all reasonable measures to ensure that the cars which are parked in his business place are safe from theft or damage.

If the cars are damaged or stolen due to owner's negligence, or his employee's negligence, he may be held liable under the law of tort. The signs that "parking is at owner's risk" will not exempt him from tortious liability unless he can prove that he had taken all reasonable measures to ensure that the cars are safe, and that any damage or theft of the car or spare parts was not due to his or his employee's negligence.

The signs that "parking is at owners' risk" are usually attempts by such building owners to limit or reduce potential future liability. However, such a sign should not deter you to seek compensation from the owner if something does get stolen or damaged.

Similarly, you see such signs in gyms, where gym owners also state that those working out at gym's do so at their own risk. As explained above, these signs are just attempts to limit liability.

Sonara cheating in grammage

I have bought gold ornaments for years from a particular goldsmith (sonara) in Dar, who has always given me great discounts. Three months ago, I went and bought two sets of earrings. After I left the sonara, I was unsure of the grammage of the earrings. I therefore I went back to get each of the earrings labelled with their actual weight. Fortunately, or unfortunately, I went into the neighbouring sonara, believing it to be the one I had just come out of. Luckily, the person there was very cooperative, and agreed to measure the earrings for me. To my dismay, the grammage was much less than what the seller's scale showed me. This means that his scale is deliberately calibrated to show more grammage, and therefore cheat customers. I think I have been cheated by this sonara for the past ten years. Is there no law that regulates the weighing scales that such sonaras use?

10 November 2014

There is a specific Act, the Weights and Measures Act that protects you. In fact, such scales should be regularly inspected. You have the right to report the sonara to the Weights and Measures Agency (WMA), who will take appropriate action. The WMA can both fine and imprison the sonara. You also have the right to report this to the police for investigation, because this is a cause of concern for all purchasers of gold from such sonaras. Such a behaviour amounts to a criminal offence, which is imprisonable.

Torn bank notes

I was given torn bank notes which my banker has refused to change for me. What options do I have and what are my rights?

1 December 2014

Replacement of torn notes is the prerogative of the Bank of Tanzania (BoT). The Bank of Tanzania Act provides for this, and states in Section 29 (1) that no person shall be entitled to recover from the Bank the value of any lost, stolen or imperfect bank note or coin, or of any bank note that has been mutilated or of any coin that has been tampered with. (2) Without prejudice to subsection (1), the Bank may decide on any value that may be awarded to any person who presents to the Bank a bank note which is the subject of any events referred to in subsection (1). (3) The circumstances in which and the conditions and limitations upon which, the value of any lost, stolen or imperfect notes or coins, mutilated notes or coins which have been tampered with may be refunded as of grace by the Bank shall be within the absolute discretion of the Bank.

From the above, you can see that the BoT has the discretion to decide what torn notes to accept. For example, if you have both pieces of the note, then the BoT usually allows for such change. We suggest you consult the BoT. It is a very efficient organisation, and usually responds in a timely fashion.

Corporate and Banking Law, Shareholder Disputes

Owning or running a company can give rise to many legal problems. Creditors can be difficult, shareholders can fall out, and the disposal of company assets can result in surprise liabilities for the unwary. Thankfully, many of these problems can be avoided so long as company leaders familiarise themselves with their rights and responsibility, and put in place agreements that minimise the risk of legal conflicts.

Company with one shareholder

I want to register a company in my name and wish to be the sole shareholder. Is this allowed?

30 January 2012

The Registrar of Companies will not allow you to register a company with less than two shareholders. One of the Companies Act sections reads as follows: If at any time the number of members of a company is reduced below two, and it carries on business for more than six months while the number is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and knows that it is carrying on business with fewer than two members, shall be liable (jointly and severally with the company) for the payment of the whole debts of the company contracted during that time.

The Business Laws (Miscellaneous Amendments) Act 2011 is a new Bill that is being debated in parliament. Once approved by parliament, this new law shall allow a company to have a single shareholder/ member. This new change states as follows:

A limited liability single shareholder company shall be formed by one member.

The company's list of members shall contain: (a) the name and address of the sole member; and (b) identification and a statement that the company contains only one member.

The planned law further states that, where the membership of a limited liability single shareholder company increases from one to two or more, the occurrence of that event shall be entered into the company's register of members with (a) the name and address of the person who was formerly the sole member; (b) a statement that the company ceased to have one member; and (c) the date on which that event occurred.

The amendment also adds that a company, or any officer of the company, who contravenes the provisions of this section commits an offence. Anyone convicted of this offence shall be liable to a fine of TZS 5M, or to imprisonment for a term of two years, or both.

If this Bill passes parliament, you will be able to register a company with only one shareholder.

Meanwhile, you have the option of registering a business under your own name as a sole proprietor. This will give you full control of the company. The major drawback of this approach is that the liability of the sole proprietor is not limited. This means that any claims against this sole proprietorship company will spill over to all of your personal assets.

Purchase of shares or assets

I am negotiating with a party to purchase a certain company that produces a famous product. When negotiating I am unsure whether it is to my advantage to purchase all of the shares in the company or only purchase the company's assets. Is this one and the same thing?

13 February 2012

Your decision on whether to buy the shares of the company, as opposed to the assets alone, or vice versa, will largely be dependent on tax considerations. For example, when shares are sold, the seller must pay the capital gains tax and the buyer must pay the stamp duty. When you purchase the shares of the company, you become the company's member. You then carry the burden of both the assets and liabilities of the company.

The biggest fear for business people are tax consequences. The Tanzania Revenue Authority (TRA) is allowed by law to reopen

your books for up to five years. That means that, after you take over the company, the TRA can hold your company liable to pay additional taxes. Consequently you, as a member of the company, may end up suffering.

If you want to buy the shares of the company, it is advisable that the book of accounts of the company be properly looked at and re-audited, to ensure compliance. In the sale of shares agreement, you should also insert a provision where the seller covenants with the company, and you as an individual member, to indemnify you both against any tax liabilities incurred in previous years but imposed after the transfer of shares.

Coming to the sale of assets: this allows you to carry on the business under the umbrella of your own company, with fewer taxation hassles. This type of transaction does not come with the liabilities of the company and, hence, is the preferred way of taking over a company's assets in Tanzania. Value Added Tax (VAT) may apply. Liability for this tax will depend on the type of assets involved and the nature of the business you are engaged in.

If you're buying a company that produces a famous product, don't forget to also buy the trademarks of those products. Many a time, a company's value is tied up in its trademarks, rather than its assets. You should consult your auditor and/or tax consultant for further information.

MEMARTS of a company

I have worked with my bank and, with increased borrowing, have been advised to convert myself into a limited liability company, which I do not mind. My accountant drafted a long document called Memorandum and Articles of Association (MEMARTS). What are MEMARTS and how will they help? What else can you tell me about MEMARTS?

27 February 2012

We have noticed that very few companies have tailor-made MEMARTS. Instead, many of them copy and paste from previous drafts, which can result in mistakes. Many persons do not know the consequences of poorly-drafted MEMARTS.

To begin with: MEMARTS are two separate documents, although they seem to be clubbed into one.

The Memorandum of Association contains the fundamental conditions upon which alone the company is allowed to be incorporated. No company can be incorporated without the filing of this Memorandum. This document confines and defines the areas of operation of the company, and no action of the company can go beyond the Memorandum's terms. Its purpose is also to enable a company's shareholders and creditors, and anyone else who deals with it, to understand its permitted range of enterprises. It must be stated that a company Memorandum cannot limit the power of the provisions that are set out in the Companies Act or any other law.

On the other hand, a company's Articles of Association are its *Magna Carta*, whereby each shareholder is irrefutably attributed with notice of their purpose and content. These articles contain the regulations which govern a company's internal corporate affairs and the conduct of its business.

A company's Articles of Association are subordinate to, and controlled by, the Memorandum of Association, which is the dominant instrument, and contains the company's general constitution. If there is a conflict between the Memorandum and Articles, then the Memorandum prevails. However, if there is any ambiguity in the Memorandum, then the Articles can be used to explain that ambiguity. The Articles are normally regarded as a business document and should be construed as such, in order to give them reasonable business efficacy. These

Articles prescribe the regulations, or by-laws, for the conduct of a company's corporate affairs.

Company refuses to transfer shares of late husband

My husband was the majority shareholder of a company in Arusha and died early last year. In his Will, I was the executor and beneficiary. After a few months, I managed to get probate from the High Court in Arusha. I used that to transfer his shares into my name, as per the Will. However, the company is refusing to accept the transfer, claiming they were not informed of this. What should I do?

27 February 2012

We have greatly truncated the length of the actual question you sent us. All of your revolving thoughts, some of which were quite impressive, are not necessary here. Legally, your matter is quite straightforward.

The Companies Act states, very clearly that, so long as a person can produce documents that prove, to a standard required by law, that probate has been granted to that person, this amounts to sufficient evidence of such a grant or undertaking. The Companies Act gives you full protection.

You have not stated the grounds that the other shareholders, and/or directors, are refusing to transfer the shares. We do not see them having any justifiable reservations, especially when these shares have been inherited by you under your husband's Will. If this behaviour continues, your attorney can consider taking the matter to Court, in order to compel the other shareholders to recognise your shareholding. Meanwhile, there might be major pilfering going on within the company. For this reason, you might not want to prolong this situation any further.

Shareholder not paying share capital

We registered a company, into which each of the four shareholders was supposed to inject TZS 10M. Three of us have injected the money, as part of the share capital and the shares. However, the fourth shareholder is refusing to pay, saying that he does not have the money. He also hinted to us that, by operation of law, since the company has already been registered, he is already a shareholder in the eyes of the law. It seems that he is trying to get away with a free shareholding. What can we do?

5 March 2012

In most articles, especially if you have adopted Table A under the Companies Act, the following provision appears: The company shall have a first and paramount lien on every share (not being a fully paid share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this regulation. The company's lien, if any, on a share shall extend to any amounts payable in respect of it.

The Act further states that the company may sell, in such manner as the directors determine, any shares on which the company has a lien if a sum in respect of which the lien exists is presently payable and is not paid within fourteen clear days after a notice in writing has been given to the holder of the share, or the person entitled thereto by reason of the death or bankruptcy of the holder, demanding payment and stating that if the notice is not complied with the shares may be sold.

To give effect to any such sale, the directors may authorise some person to transfer the shares sold to, or in accordance with the directions of, the purchaser thereof

shall be registered as the holder of the shares comprised in any such transfer, and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

The net proceeds of the sale shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue, if any, shall (upon surrender to the company for cancellation of the certificate for the shares sold and subject to a like lien for sums not presently payable as existed upon the shares before the sale) be paid to the person entitled to the shares, at the date of the sale.

From the above, it is quite clear that the company has a lien over the shares that are unpaid for. You can hence proceed to call a board meeting, and proceed to transfer or sell the shares. The fourth shareholder cannot own something he has not paid for. This is a fundamental principle in law that applies here.

Dispute with fellow shareholders

We founded a company that is now a market leader in Tanzania. Initially, we were only two shareholders, but we later added each of our children as shareholders. This made a total of four shareholders. We are now having issues with the company, the original shareholder is very old, and is unwilling to enter into a very lucrative sale agreement. Even his son is not siding with his father. How can we sort this matter out? What should we do, in order to make sure that we don't enter into such turmoil in the future?

28 May 2012

It is quite unfortunate that, after building such a successful company, you are in this situation. Many companies in East Africa face similar issues. Companies forget the difference between management and governance. Many companies also do not understand the importance of maintaining separate company and individual accounts. The drawing of funds from a pool of assets or cash is extremely risky, yet is a widely prevalent behaviour in the market. As they grow, such companies will face various challenges in the future.

You have asked us two questions. We don't have enough details to guide you on the first. The second question is what could you have done that would have assisted you in not getting into such a situation?

Apart from ensuring that you are well governed and managed, it is critical for the company's shareholders to enter into a shareholders' agreement. A shareholders' agreement is an agreement between the shareholders of a company, which supplements and, in some instances limits, some of the provisions of the company's Memorandum and Articles (MEMARTS).

There are a number of reasons why you would want to enter into such kind of an agreement. First, the shareholders' agreement is a private document, and not open to public inspection like the MEMARTS. Secondly, a shareholders' agreement is easier to update than a company's MEMARTS. This ease of updating can make it more attractive to revise than trying to do the same via the MEMARTS. Finally, the shareholders' agreement may also provide additional rights or protection measure to the company's minority shareholders.

A shareholders' agreement will typically have, amongst others clauses, provisions regarding when, and to whom, the shareholders can sell their shares to. It might state the number of shareholders that have

to agree to certain proposals, in order for those proposals to be accepted. It might set out "tag along rights", i.e. the rights that exist for minority shareholders, when a majority of shareholders wish to sell their shares. There may also be clauses on how management is to be appointed, the appointment of auditors and an arbitration clause, whereby the shareholders agree what to do and where to go in the event that there is a dispute.

It is always recommended that a shareholders' agreement should be put in place right at the incorporation stage of the company, in order to avoid disputes going forward. Unfortunately, most local companies have no such agreements in place. This makes them vulnerable to shareholder disputes.

As to what your rights are: we need to know what your percentage your shareholding is, whether there is a shareholder's agreement in place, who is managing the company, and how the deal is going to benefit the company and its shareholders. We suggest you seek the advice of your attorneys, who can guide you after they have reviewed your situation and your company's documents.

Protection of company secrets

There is a company that I am negotiating a takeover with. However, the terms of the agreement are not concluded yet, because they need to look at my books and understand how I operate. What happens if they back out, after knowing all my secrets? How can I protect myself?

4 June 2012

This is a very interesting question and is a dilemma for most boards. How do you balance between giving away too much information and not being able to close a deal because of being too conservative, which can lead to the buyer's frustration?

The most common method of protecting yourself is by entering into a confidentiality agreement, sometimes referred to as a Non Disclosure Agreement (NDA). In such an arrangement, you will provide information in return for the other side agreeing not to use that information in any way, including in competing against you.

This agreement is of primary concern to you, the seller. This is because you will have confidentiality concerns about the potential transaction. You may also have concerns regarding the disclosure of sensitive, proprietary and /or confidential information about your business.

A confidentiality agreement is usually signed in the early stages of a potential Mergers and Acquisition (M&A) transaction. This will normally happen before a potential buyer is permitted to access the seller's data, or otherwise receiving any non-public information.

In drafting this document, you need to make sure that "confidential information" is defined broadly, and that the agreement states a limited purpose with which the confidential information may be used.

Some exclusions might be demanded by the buyer, for example, information already in the possession of the recipient; information that becomes publicly available other than through any breach by the recipient of the confidentiality agreement; and information independently developed by the recipient. The problem is that if such a demand is made, how would you know what information the buyer had before it came to negotiate with you?

There is typically always an exception, which allows for the disclosure of confidential information when required by law or Court order, provided that the recipient of information gives the disclosing party prompt notice of such a request.

As the disclosing party, you may seek the

recipient's agreement to be responsible for any breach of the agreement by any of its representatives (typically including officers, directors, employees, affiliates, lenders and legal and financial advisers). You may also seek to constrain access to confidential information to a limited group of persons at the buyer's company, plus the buyer's representatives who need to know the information. Your agreement should provide that confidential information should not be shared with third party representatives unless those representatives agree to be bound by the terms of the confidentiality agreement.

During the buyer's due diligence, the buyer will also come across your key persons. Hence, your agreement should contain an express provision that prohibits the buyer from soliciting or hiring your employees for a specified period.

Another clause that is usual in such agreements is for you to have the right to demand the return or destruction of confidential information, should discussions be terminated. Finally, a long-shot is for you to ask for a non-refundable amount to be forfeited if the transaction collapses. Your attorney can guide you further.

Purposes of representations and warranties

I am closing an asset sale agreement, and there seems to be a difference from the time I sign the agreement and the closing. Why would there be a difference? Also, there are many representations and warranties that the buyer of my company has inserted in the agreement. What should I do?

4 June 2012

The signing of the agreement is when you put your pen to the paper. The closing is when the transaction is actually consummated, which may be subject to some conditions. This is normal in contracts, especially when substantial assets or a large acquisition is involved. There is nothing to worry about regarding the time difference between the two.

As for the representations and warranties, these provide the buyer with disclosure via the seller's disclosure schedule. This schedule sets forth the information required by, and exceptions to, the representations and warranties. The buyer uses this document to check the results of its due diligence review. It also serves as a closing condition, because the accuracy of the seller's representations and warranties will be a condition for the buyer's obligation to proceed with the transaction, and vice versa. In addition, the representations and warranties form the basis for indemnification claims if the buyer can prove a representation or warranty was untrue.

You had better read every word of the representations and warranties, especially since they have been drafted by the buyer. Any inaccuracies in this document at the time of signing or closing can potentially thwart the deal. Such inaccuracies may provide the other party with a right not to consummate the transaction, to walk away from the agreement, and to sue you for damages. When a transaction involves a gap between the signing and closing, a buyer will typically require that the seller's representations and warranties, which were made at the time of signing, be "brought down" at closing.

It is strongly recommended that your lawyer be involved in this process, to guide you through it.

Company shareholder a company

If I form a new company, do the shareholders have to be natural persons, or can I have another company as a shareholder? Who would be appointed as directors?

2 July 2012

A company can have another company as its shareholder, and there is no restriction as to that. The company that holds shares would then be eligible to appoint the appropriate number of directors in the new company that you form. The law, as it stands today, requires that you have at least two shareholders in the newly-formed company.

Change from proprietorship to limited company

I had been operating an international agency for a European brand for the past 25 years. I was recently asked to convert this sole proprietorship into a limited liability company. This change was made to ensure the continuity of the business. I complied, and the company now has a board of directors and shareholders. It has been about a few years since the conversion, and the company has been sued. Also sued are the shareholders. What is the point of having a limited liability company if the shareholders can also be sued? What should I do?

10 December 2012

You cannot stop anyone from suing anyone. It is for the Court to decide whether there is merit in any case or not.

However, under very old English principles in the case of Solomon v Solomon, which remains good law, a limited liability company is a separate legal personality from its shareholders. The effect of the Court's unanimous ruling in this case was to firmly uphold the doctrine of corporate personality, as set out in the Companies Act. The outcome of Solomon v Solomon meant that the creditors of an insolvent company could not sue the company's shareholders to recover the company's outstanding debts. The shareholders were not liable for the company's debts, even though they owned it. That is precisely why one forms a limited liability company.

You have not told us what the cause of action is against your company in the lawsuit. However, the principles set out above are very likely to hold true for you. It is also quite unlikely that the case against you as a shareholder would succeed. Your lawyer can guide you further.

Transfer of shares

I transferred my shares in a company to another party by signing on an agreement and surrendering my share certificates. The buyer tells me that I was supposed to sign on some other papers. Is this true? My signature is expensive, and I want to charge him more money to sign these papers. Can you help me?

11 February 2013

A transfer of shares is only recognised in law when the relevant taxes on the transfer are paid. Hence, merely signing an agreement and surrendering the share certificates does not mean anything. We describe the transfer process below.

You should submit to the TRA the financial statements of the last three years of the company whose shares you wish to transfer. This will allow the market value of shares to be estimated. Once you obtain this value, you should then submit a share transfer agreement, and a share transfer form. You should also provide the certificate of incorporation of the company whose shares are being transferred, its Memorandum and Articles of Association, and its TIN certificate.

The TRA will then assess the capital gains tax payable, based on the difference between the price at which you had bought the shares and the price at which you are selling, or the market value, whichever is higher. The seller is liable to pay the capital gains tax whereas,

generally, the buyer pays the stamp duty. It is at this stage that the shares are transferred.

In your case, it seems like you have been paid the purchase price and have signed an agreement to sell your shares. However, it is also likely that you have not paid the capital gains tax. This means that shares are still in your name. Before you get funny ideas, please be informed that, since you have already received the purchase price, it is unlikely that you can be paid anything further. In fact, if you do not sign the share transfer forms, the buyer has a cause of action against you and may file an application in Court for specific performance i.e. to force you to sign the share transfer form.

Your expensive signature might turn out to be even more expensive, if the buyer files an application in Court. If the financial matters are in order, you are guided to either sign the share transfer forms or seek the assistance of a lawyer, or both.

Bank too tough on me

I have borrowed money from a bank and mortgaged one of my buildings as security. Every time I want to do anything to the building, the bank says that I have to get their permission. When I seek permission, they take forever to reply. The CEO, who I am told is the one who is supposed to sign on the so-called consent, is always travelling. This has been hurting my business. When I was intending to extend the back part of the building, I wrote to the bank. After waiting for 21 days with no reply, I proceeded to construct the extension. The bank has now written to me, telling me that I am in breach of the mortgage deed. As a result, the bank intends to call in the loan. What should I do? At one time, the bank told me not to paint my building a certain colour, because it will reduce the value and hence the bank's security will be affected! How can I get out of this mess?

18 February 2013

The mortgage deed likely provides for you to seek consent from the bank for any extensions, renovations or otherwise that affect the mortgaged property. However, it is a standard business term that such requests for consent should not be unreasonably delayed or denied to the applicant. Hence, the delay is actionable by you.

As for the current calling in of the loan, if all you have said is true and there are no misrepresentations by you, then we believe that the bank cannot call in the loan. In fact, the construction of the extension will increase the value of the mortgaged property and is in the best interest of the bank. You may wish to consult your lawyer who can guide you further.

Choosing the colour of your building is your prerogative. It is unlikely that your bank can dictate this under the mortgage deed.

From our experience in banking in Tanzania, this is the first time we have heard of a bank acting like this. As for how you should get out of this mess, the simplest recommendation is to change banks, there is no shortage of them in Tanzania. If you have a good cash flow and good security, the banks in Tanzania are looking for customers like you.

Foreign bankers in Tanzania

For the last few years, foreign bankers have called upon me to meet them in Dar. I find it quite surprising as these bankers, from some of the leading banks around the world, do not have offices in Tanzania. Nonetheless, I met one of them, who gave me different options of products that they offer in Europe, from fixed deposit to foreign currency products. Is this legal?

24 June 2013

There are a couple of interesting comments and questions you have raised. We start with the easiest. These foreign bankers,

under the laws in which they are registered, are allowed to open accounts and to offer products to foreign nationals. This means that, in their jurisdiction, what they are offering you is legal.

However, for you, assuming you are a Tanzanian national, our foreign exchange legislation places restrictions on what you can and cannot do with your foreign exchange. For example, there is a limit on the amount of foreign exchange you can carry with you when you leave the country. This is protective legislation, which ensures that our currency, due to the smaller size of our economy when compared with industrialised powers, is not exposed.

On whether you can open an account overseas, the answer is yes, but only if the Bank of Tanzania (BoT) allows you to. This is clear from the Foreign Exchange Circular of 1998, which provides that the opening of accounts or any outward movement of funds is a restricted activity, which requires the approval of BoT. Hence, for you to open an account offshore, you will require the approval of the BoT. Be warned: approval is not easy, unless you adduce proper reasons.

We also wish to mention our anti-money laundering legislation and, in particular, the offences referred to in Section 12. Money laundering activities are very widely defined under this Act, and include the engagement of a person or persons, direct or indirectly in conversion, transfer, concealment, disguising, use or acquisition of money or property known to be of illicit origin and which engagement intends to avoid the legal consequence of such action. Both you and the bank officials you meet with can be charged under this legislation, if the funds you process are known to be those that are not properly taxed, and are generally deemed to be "not clean." If found guilty, both of you can be imprisoned, so beware. Your attorneys can guide you further.

Change of company name

I am one of the owners of a company which is not doing very well. I contacted a spiritual leader, who told me that we need to change the name of the business. The other 50% shareholder is not agreeing to this. What is the procedure for change of name? Can I change the name on my own as I am running the show? The new name I want to register is quote similar to another company's name. What should I do?

22 July 2013

The above is covered under Section 31 of the Companies Act, which states (I) A company may by special resolution and, with the approval of the Registrar signified in writing change its name. If the Registrar refuses to give his approval, he shall give his reasons. (2) If, through inadvertence or otherwise, a company on its first registration or on its registration by a new name is registered by a name which, in the opinion of the Registrar, is too like the name by which a company in existence is registered, the first mentioned company may change its name with the sanction of the Registrar and, if he so directs within six months of its being registered by that name, shall change it within a period of six weeks from the date of the direction or such longer period as the Registrar may think fit to allow. (3) Where a company changes its name under this section, it shall within fourteen days give to the Registrar notice thereof and the Registrar shall, subject to the provisions of Section 30(2), enter the new name on the register in place of the former name, and shall issue to the company a certificate of change of name, and shall notify such change of name in the gazette. (4) A change of name by a

company under this section shall not affect any rights or obligations of the company or render defective any legal proceedings by or against the company, and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

From the above, you can see that you require a special resolution to change your company's name. This means it is a shareholders' matter, and you alone cannot change the name. Your lawyers can guide you further.

General Memorandum of company

If I am dealing with a company that is focused on manufacturing, but whose Memorandum talks about the company being allowed to engage in almost anything, is such Memorandum valid?

19 August 2013

The Companies Act provides that where the company's Memorandum states that the object of the company is to carry on business as a general commercial company: (a) the object of the company is to carry on any trade or business whatsoever, and (b) the company has power to do all such things as are incidental or conducive to the carrying on of any trade or business by it.

From the above, you can see that it is legal for the company's Memorandum to have general objects. You can, however, consult your lawyers for further guidance.

Peculiar insurance law

I own 15% of an insurance company in Tanzania. My questions are three-fold. Is there a specific requirement that the shareholders cannot solely appoint directors in an insurance company? If I decide to sell my shares, do I need consent of the Commissioner of Insurance? I find all this quite peculiar, and against the free market principles. If required, how long do such approvals take?

7 October 2013

The answer to the two of your first questions is yes. The Insurance Act clearly states that an insurer shall satisfy the Commissioner that one third of its directors are unaffiliated directors. The Act further defines "an affiliated director" as individual who: (a) owns 25% or more of shares in the insurance company; (b) is employed by the company or an affiliated company; or (c) is a director or owner of twenty 5% of an affiliated company. Hence, in the case of your company, one third of the directors appointed should not in any way be affiliated. The reason for having independent directors is to ensure that the governance of a business is not affected by conflicts of interest.

The Insurance Act also states that any transfer of ownership of an insurer, that involves 10% of the voting shares, amalgamation, merger, or another similar arrangement, shall be subject to the prior written approval of the Commissioner. The Commissioner may, as a condition for the granting of his consent, require that their recommended amendments be inserted into the transfer, sale, amalgamation, merger or other similar arrangements. The Commissioner may, in writing, require the information as may be necessary for the applicant to file when making an application for consent.

We are unsure what you find peculiar about the Insurance Act. You are aware that insurance is a regulated business in almost all parts of the world. In that sense, the provisions in Tanzania's insurance laws are standard. Hiding behind the notion of free market principles does not mean that a sector

should remain unregulated.

The Tanzania Insurance Regulatory Authority, the statutory body overseeing insurance business, is known to be an efficient and well-organised body, and its decisions are made expeditiously. Your lawyers can guide you further.

Reducing share capital

Our company was involved in some mining contracts, which have now come to an end. We intend to reduce our share capital as we are scaling down our operations. Does Tanzanian law allow this, and how do we proceed?

6 January 2014

The Companies Act has a special section for this. Section 69 provides that (I) A company limited by shares or a company limited by guarantee and having a share capital may, if so authorised by its articles and as provided herein, by special resolution reduce its share capital in any way, and in particular, may, extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or (a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or (b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid up share capital which is lost or unrepresented by available assets; or (c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid up share capital which is in excess of the requirements of the company, and may, if and so far as is necessary, alter its Memorandum by reducing the amount of its share capital and of its shares accordingly. (2) The notice given of the intention to propose the special resolution to reduce the company's share capital shall be accompanied by a directors' certificate of solvency given in accordance with Section 70 and, where appropriate, the auditors' report thereon prepared in accordance with Section 70. (3) Subject to Section 71, a special resolution passed reducing the share capital of a company shall not take effect until after the resolution has been filed with the Registrar and the resolution shall not, in any event, be filed with the Registrar until thirty-five days from the date that it was passed. (4) A special resolution reducing the share capital of a company shall be advertised in the Gazette and, in the case of a public company, one national newspaper, in each case within five working days of the resolution having been passed. If the company fails to comply with this subsection, the directors shall be liable to a fine.

Please note that the advertisement for such a reduction of share capital is mandatory. Your lawyers can guide you further.

Confused between shareholders and directors

I am a director of a company, but not a shareholder. However, the decisions I take in the quarterly board meeting sound like I'm the owner. I'm also unable to understand what my role is if I am not a shareholder. Is there no law that a director must be a shareholder? Please guide.

10 February 2014

As a director, you do not own the company, you are merely part of the governance structure of the company, to whom the management reports. You are neither a manager of the company, nor a shareholder. Rather, you are the structure in between.

Unless your company constitution provides otherwise, there is no law that specifies that a director must be a shareholder. Just because you are taking such a large responsibility, it doesn't mean that you should automatically become a shareholder. Hence, you attend

board meetings but not shareholders meetings.

Board directors, such as yourselves, are appointed by the shareholder and represent the interests of the shareholders in board meetings. As a director, unless there are special provisions, you are generally not entitled to dividends or any other shareholder benefits, although you might be getting allowances to be a director.

It is crucial that, as a director, you understand what your role is. You need to be able to demarcate between your role, and the role of your management and shareholders. As a director, you do not run the company. Instead, you appoint the company's management, who take charge of the company's operations. Hence, a director cannot directly get involved in operational matters pertaining to a company.

Our experience in Tanzania is that most companies and directors do not have, or have not heard of, director's liability insurance. We cannot understand why this is the case and suggest you insist that your company provides you with such insurance. This insurance will cover you, in case of a decision by directors causes losses or other damages to anyone. For example, many of our laws provide that directors can be charged in Court for the actions or inactions of the company. In such a circumstance your legal fees, deposit for bail and the like must be covered by insurance, otherwise, a director may not be able to satisfy bail conditions, and may end up going to remand prison. We are aware of several occasions where directors have been unaware of the serious responsibilities that come with their role.

Your lawyers can guide you further.

Audit by shareholder of a company

I own a quarter of the shares in a company, but I am not sure if it is undergoing proper audits. As a shareholder, can I demand an audit to be performed on the company?

17 February 2014

The company must appoint an auditor in its annual general meeting. If you are not satisfied with your auditor, you can invoke Section 171 of the Companies Act and demand an audit. Section 173 states that (l) Any member or members holding not less in the aggregate than 10% in nominal value of the issued share capital or any class of it of a private company qualifying as exempt under Section 171 or, if such company does not have a share capital, not less than 10% in number of the members of that company, may, by notice in writing deposited at the registered office of the company during an accounting period but not later than one month before the end of that accounting period, require the company to obtain an audit of its accounts for that accounting period. (2) Where a notice has been deposited under subsection (1), the company shall be obliged to appoint an auditor in respect of the accounting period to which the notice relates.

Hence, you can proceed to conduct a parallel audit. Another solution is to ensure you change your auditor in the next annual general meeting. In any case, normal business practice requires you to change your auditor every few years. Your lawyers can guide you further.

Taking over a loan

We are a relatively new bank in the country, and want to take over a loan from another bank for one of their borrowers who intends to move to us. The problem we face is how we pay that bank, get the title discharged, and re-register the title in our name. There will be a point at which we will be unsecured, and our board does not want that to happen. Please guide us.

28 July 2014

If your board is so conservative, then you might find it hard to make money in the market. The transaction is not as complicated as you think it to be. We would guide you, or your attorneys, to follow the following steps: (1) get a confirmation from the other bank on what amounts are payable to them as full and final discharge of the loan; (2) meanwhile, ensure that all your other loan documentation are in place and executed; (3) write to the other bank informing them that you intend to take the loan over and that, upon payment of the outstanding amounts in full, they should commit to release the original security documents (including title deed if one) directly to you, including all signed discharge of mortgage forms; (4) once the other bank confirms that it shall comply with 3 above, you proceed to loan the money to the borrower, by paying of the other bank (5) thereafter proceed to discharge the previous mortgage that was in favour of the other bank and, at the same time, register your mortgage.

The transaction above is quite standard in the market. In our experience, banks have kept their commitment when it comes to the release and discharge of securities. One cautionary suggestion for you to follow is to ensure that the other bank is holding a valid mortgage and title. This can be verified by the Registrar of titles at the Ministry of Lands. We recommend that you do this, just in case the other bank is holding on to a fake title, of which there are many in the market. Your lawyers can provide more details.

Directors' names on company letterhead

I have established an information technology company and have already started the business. Is it a requirement of the law that every company should have a letterhead? What should be the contents in the said letterhead? I find this to be expensive to print and thus am looking for a way to avoid this. What should I do?

29 September 2014

You will certainly need letterheads when you are writing formal letters. Hence, we are unsure of what you really mean. Printing letterheads are not expensive, and you always have the option of printing them directly from your printer.

On the contents of the letterheads, Section 213 of the Companies Act provides that: every company shall, in all business documentation on or in which the company's name appears and which is issued or sent by the company to any person in any part of the territory, state in legible letters with respect to every director being a corporation, the corporate name, and with respect to every director being an individual, the following particulars: (a) his present name, or the initials thereof, and present surname; (b) any former names and surnames: Provided that, if special circumstances exist which render it in the opinion of the Registrar expedient that such an exemption should be granted, the Registrar may by order grant, subject to such conditions as may be specified in the order, exemption from all or any of the obligations imposed.

Also, if a company defaults in complying with this requirement, every officer of the company who is in default shall be liable on conviction for each offence to a fine, and for the purposes of this subsection, where a corporation is an officer of the company, any officer of the corporation shall be deemed to be an officer of the company. The expression "director" includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act, and the expression "officer" shall be construed accordingly. The expression

"initials" includes a recognised abbreviation of a name.

We must point out that a lot of the companies in Tanzania fail to comply with the explicit provisions of the Companies Act, which provides that, on letterheads, the name of directors, amongst others, must be mentioned.

Loans from foreign banks

I am borrowing USD 300,000 from a foreign entity. I was informed that there is a restriction in taking foreign loans, and that one must borrow from within the country. Is it true? Do I have to register this arrangement anywhere? I would rather keep it confidential.

24 November 2014

The law does not restrict people from borrowing money from foreign entities, so long as those foreign entities are legally registered in the country they are operating from. The Foreign Exchange Circular No. 6000/DEM/EX.REG/58 of 24th September, 1998 mandatorily requires all foreign loans to be registered with the Bank of Tanzania (BoT), and for a debt registration number to be obtained. You will be required to provide the BoT with the full details of the loan, and the entity of the organisation that is advancing money to you.

Unfortunately, without a debt registration number, you will not be able to remit the money back to the lender. This is the reason why it is so important to register your loan. You will appreciate that this arrangement was introduced by the BoT in order to monitor the loans that are coming into the country, and to ensure that the loans can be smoothly remitted back to the lender.

Foreign loans into the country have tax consequences at the time of remitting interest, by way of a withholding tax on interest. We recommend that you consult a tax expert to guide you on this.

Liable for seller's debt

My friend's business was in trouble. To salvage the situation, I bought all the assets of his company, but not his shares. I did this on the guidance of the tax consultant, who told us that the assets were transferable. It has been three months since we closed this arrangement, and some creditors, including the TRA, are after me for my friend's company's debts. Why should I pay those debts, when I only bought the assets? Am I liable in any way? Please guide.

24 November 2014

The Transfer of Businesses (Protection of Creditors) Act provides that, every person who acquires the goodwill or the whole or substantially the whole of the property of any trading or manufacturing business or any business of a like nature shall, notwithstanding any agreement to the contrary, be liable for all the debts and obligations for which the transferor thereof is liable in respect of that business at the date of the transfer unless notice of the intended transfer has been published in accordance with the provisions of Section 4 not less than two months nor more than six months before the date when the transfer is to take effect. Section 4 of this Act requires the full details of the transaction to be advertised in the Gazette, and in newspapers, and should be signed by both the seller and purchaser.

Hence, if you had advertised the sale, then you should not expect any legal issues. But, if you did not, then the creditor and the TRA have the right to come after you. However, the Act provides that you shall be entitled to be indemnified by the seller as regard to all amounts for which you are made liable under this Act.

Voluntary winding up of a company

I want to voluntarily wind up my company as it has more liabilities than assets? Is there any law that stops me from doing so?

1 December 2014

The Companies Act, Act No. 12 of 2002 states that, where it is proposed to wind up a company voluntarily, the directors of the company or, in the case of a company having more than two directors, the majority of the directors, may, at a meeting of the directors make a declaration in the prescribed form to the effect that they have made a full inquiry into the affairs of the company, and that, having so done, they have formed the opinion that the company will be able to pay its debts in full within such period not exceeding twelve months from the commencement of the winding up as may be specified in the declaration.

Hence, and as one would expect, a company which has more liabilities than assets cannot be voluntarily wound up by the members of the company. Such a company can only be wound up by order of the Court. If you attempt to do so, you may be criminally liable. For further legal assistance, please consult your attorney.

Payment in Tanzanian shillings outside Tanzania

I live in the US, and entered into a contract of sale of certain items of mine in the US in Tanzanian shillings. The deal was that I would pay the sums in the US in Tanzanian shillings. Someone told me that this is disallowed. Can one leave the country with Tanzanian shillings? Please guide.

8 December 2014

We find it hard to understand why you are dealing in Tanzanian shillings whilst in the US for items that are in the US.

Unless we have misunderstood your question, the dealing in Tanzanian shillings outside of Tanzania, where the movement will involve transacting in Tanzanian shillings, is illegal, unless you get the permission of the Bank of Tanzania (BoT) Governor.

You will appreciate that dealing in currencies in Tanzania is not entirely free, and is governed under the Foreign Exchange Act. We recommend that you contact the BoT for such approvals.

It is also illegal, without express permission from the BoT, to leave Tanzania with Tanzanian shillings more than the equivalent of USD 50. Hence, at current exchange rates, you cannot go out of the country with more than TZS 85,000.

Cross-border Trade, Mining Law, International Investments

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As a country, Tanzania welcomes large-scale infrastructure investment. However, there are specific limitations and restrictions in place in relation to certain parts of the economy, which may catch out the unwary. In the discussions below, we highlight some of the most important legal rules, which both domestic and international investors should be familiar with.

Purchase of shares outside Tanzania

There is a company in the UK, which has advertised for the sale of shares. It is a very reputable company, and I wish to invest in it. Do I have to get consent from any authorities in Tanzania prior to investing? I am going to use my funds and don't understand why permission is required.

23 January 2012

Under Tanzanian law, if a person wishes to invest in a non-Tanzanian company, which is out of Tanzania, he or she must notify and get consent from the Bank of Tanzania (BoT). Yes, it is your money, but such provisions are there to ensure that there is no flight of capital from Tanzania. As a developing country, Tanzania is trying to get its people to invest in its homeland to boost the local economy. And yes, the BoT has the power to disallow you to invest overseas.

Non-Tanzanian purchasing prospecting licence

I intend to purchase a prospecting licence (PL) for gold in Tanzania. An individual is ready to sell me this right. My only worry is whether the law allows the transfer of this right to a company owned 100% by non-Tanzanians. What other measure should I take to ensure that the PL is genuine, so that I will not get into trouble later on?

13 February 2012

According to the Mining Act 2010, a Prospecting Licence (PL) is a mineral right. Section 9 of this Act further states that the holder of a mineral right or, where the holder is more than one person, every person who constitutes the holder of that mineral right, shall, subject to subsection (2), be entitled to assign the mineral right or, as the case may be, an undivided proportionate part thereof to another person.

Subsection (2) states that no special mining licence, mining licence or any undivided proportionate part thereof shall be assigned to another person without the written consent of the licensing authority.

In your case, the PL for gold can be transferred and there is no restriction as to who can hold it.

To answer your question on the genuinity, we strongly recommend that you perform an in-depth due diligence exercise in relation to the identity of the mineral rights holder. You should also check whether he or she is in default of any of the terms of the PL. The starting point is to conduct a search of the PL at the Ministry of Energy and Minerals, to ensure that there is no default. You should also consider paying a visit to the area itself, to see what activity is ongoing there.

The biggest challenge is the identity of the PL owner. Unfortunately, Tanzania does not have a national identity system. This means that verifying the identity of persons is quite challenging. Whilst you can request the seller provide his or her passport and/or copy of their voter ID card, these are not 100% foolproof. Your lawyers can guide you further.

Production sharing agreement interpretation

I have been looking at the production sharing agreements (PSA) that Tanzania is offering to investors, and do not understand why the Tanzania Petroleum Development Corporation (TPDC) should be given a share of the oil as a share of the profit? It is also hard for us to understand why there should be a limit on the amount of contract expenses that can be recovered?

27 February 2012

We are unsure why you don't want the TPDC to be given a share of the oil. The oil would be drilled and extracted from

Tanzanian soil, so the TPDC and the people of Tanzania have the right to participate through this agreement. This is what is currently being advocated. Perhaps you mean that the TPDC should get a share of the profits in cash terms, and not oil terms. This may not be acceptable, as oil is also required locally here.

As for the contract expenses that can be recovered from the crude oil produced: the PSAs do not limit you to any such recovery. The only exception would be if the production of crude oil in a year was quite low. In such a situation, only a maximum percentage of expenses could be recovered during that period, with the rest being carried forward to the following year. This seems quite fair to us

Buying mining licence

Our company is a large mining company. We are negotiating with a primary mining licence owner to purchase his mining licence. How long will it take to transfer the licence?

21 May 2012

Unfortunately, the Mining Act 2010 does not allow you, as a foreign company, to purchase the Primary Mining Licence (PML). The law is clear: a PML for any minerals shall not be granted to an individual, partnership or body corporate unless (a) in the case of an individual, the individual is a citizen of Tanzania; (b) in the case of a partnership, it is composed exclusively of citizens of Tanzania; (c) in the case of a body corporate, it is a company and (i) its membership is composed exclusively of citizens of Tanzania; (ii) its directors are all citizens of Tanzania; (iii) control over the company, both direct and indirect, is exercised, from within Tanzania by persons all of whom are citizens of Tanzania.

This requirement may sound restrictive to some. However, it is intended to ensure that the local population to benefit from mining, so is not so strange. Other countries also have similar policies to promote local mining.

The best way to purchase the PML is to have it converted to a Mining Licence (ML), which can subsequently be transferred to your company. The conversion from a PML to a ML will require amongst others, an assessment of technical and financial capacity to be conducted, together with a feasibility and environment impact assessment.

Foreigner in Tanzania

I am a foreign citizen currently in Dar for some business exploration. I would like to start a business in Tanzania, as I see a lot of potential. I wish to import items from my home country to sell here. My desire is to operate through a limited company. However, a new friend of mine had advised that I must have a partnership with a local, because it is a pre-requisite before forming a company. Is it true that other nationals cannot register a company in Tanzania? Can I start and register a company which is exclusively mine?

18 June 2012

Registration of companies in Tanzania falls under the Companies Act, which contains no such restriction that your friend is talking to you about. Yes, there are certain areas of the economy where local shareholding is required, but surely not for importation and trading as you have indicated. Perhaps your new 'friend' wants to partner with you, hence his inclination.

If we understand your second question correctly, you want to form a company that is a limited liability company but with you as the only shareholder. At the moment, that is not possible. However, the Companies Act is being modified to allow for one shareholder companies. This law is awaiting presidential approval. At the moment, you need to have a minimum of two shareholders.

Renewal of prospecting licences

I am a Tanzanian national, who owns many prospecting licences (PL) in the western region of Tanzania. Some of these PLs are about to expire. Is the right to renewal automatic? What do I need to do?

3 September 2012

Under the Mining Act of 2010, a PL is valid for an initial period of four years. Where the first application for renewal has been made by the holder in the prescribed form, it is possible to extend the PL for a period of not exceeding three years. The second renewal is for a further period of two years. Hence, your PL may be renewed as above. However, in order to obtain an extension, you must not be in default of the conditions of the PL.

The PLs also require the holder, amongst other conditions, to spend a minimum amount on the area he or she has the PL rights over. This is one of the conditions that most PL holders are likely to be in default of. You should carefully look at this issue, because the Ministry may raise it as a ground to deny renewal.

Your renewal for the PL must be made one month before the expiry date of the PL. The obligation of the licensing authority to renew a prospecting licence is subject to the condition that the holder is not in default, and that the holder has relinquished, in the case of a first renewal, 50% of the area held during the initial prospecting period. Hence, on renewal, the area you will get under the PL will be halved.

Export processing zone

How do I set up a company in an export processing zone (EPZ) in Tanzania? What are the advantages and what do I get out of it? What law governs this zone?

17 September 2012

You can set up in the EPZ if at least 80% of your goods are for export, and your annual export turnover is not less than USD 500,000 for foreign investors and USD 100,000 for local investors. The EPZ authority also requires you to invest in modern technology and to employ local persons.

The incentives, as provided under the EPZ Act 2002 which governs the zones, include: remission of customs duty, VAT and any other tax charged on raw materials and goods of capital nature, exemption from payment of corporate tax for an initial period of ten years, exemption from payment of withholding tax on rent, dividends and interest for first ten years, exemption from payment of all taxes and levies imposes by local government authorities for goods and services produced in the EPZs for the period of ten years, accessing the export credit guarantee scheme, exemption from pre-shipment or destination inspection requirements, on site customs inspection of goods in the EPZs, provision of temporally visas at point of entry to key technical, management and training staff for a maximum period of 60 day, remission of customs duty, VAT and any other tax payable in respect of importation of one administrative vehicle; ambulances; firefighting equipment vehicles; and up to two buses, treatment of goods destined into EPZs as transit cargo, exemption from VAT on utility and wharfage charges.

The Export Processing Zone Authority has a very informative website www.epza.co.tz

Conversion of EPZ licence

I have invested in one of the Export Processing Zones (EPZ) in Dar es Salaam. With the current international market in crisis, I intend to supply more goods in the local market. However, I have been told by the EPZ authorities that I will lose my EPZ status. Please guide.

24 September 2012

The license you are holding was granted to you under the Export Processing Zones Act [CAP 373 R.E. 2002] as amended by Export processing Zones (Amendments) Act, 2006 which promotes exports. The focus of this law is also on the creation of international competitiveness for export growth in our country.

Changing business to be locally oriented would patently defeat the very purpose for which your license was issued. Should you wish to focus on the local market, you will not be fit to enjoy the EPZ investor's rights. Moreover, the Export Processing Zones Act has, under Section 7(2)(c), endowed powers to the Export Processing Zones Authority to cancel a licence where an investor, carrying out business in an export zone, assigns to another person a license without obtaining the prior approval of the Authority.

In short, you cannot convert to a local supplier, over the permitted local suppliers' 20% quota, without losing your EPZ status.

Production sharing agreement review

We are a large company that has entered into a Production Sharing Agreement (PSA) with the Tanzania Petroleum Development Corporation (TPDC) for the prospecting of oil in Tanzania. We have recently come across reports that the government is intending to review all PSAs. What are the chances that this can happen, and what is our remedy under the PSA? How likely is this to happen? Our other question is that the Tanzania Revenue Authority (TRA) is causing our subcontractors havoc in taxation, although we are exempt. Can we sue the TRA, to stop it harassing us?

1 October 2012

There were reports in the press that the Ministry for Energy and Minerals had ordered the new TPDC board of directors to review all PSAs, that were not beneficial to Tanzania. However, this was not the case, and the Ministry clarified the matter.

A PSA, like any other agreement, is something that cannot be changed once you have entered into it. The only exceptions to this general rule are if there is a breach and, hence, a termination, or there is a mutual agreement to amend. The Ministry has committed to fully respecting the rule of law. Hence, at least for now, the Ministry has assured investors that their PSAs will not be reviewed.

You ask us how likely this is to happen. Our response is that it is very unlikely that the PSAs that you have entered into will be reopened. Investments in Tanzania are guaranteed against nationalisation and expropriation. Tanzania is also a signatory of several multilateral and bilateral agreements on protection and promotion of foreign investment. Among other international agreements and membership, Tanzania is a member of Multilateral Investment Guarantee Agency (MIGA) and International Centre for Settlement of Investment Disputes (ICSID). By re-opening its PSAs, Tanzania would receive very bad publicity internationally, which is something the country cannot afford at this stage of its development. It would send the wrong signals to the investor community.

As for your tax issue, we cannot answer whether you are correct or not in your interpretation of the exemption, without seeing your PSA. However, generally speaking, the exemption applies to you and not your subcontractors. Unless they have been specifically mentioned in the PSA, your subcontractors will be liable to pay taxes.

Suing the TRA for harassment will not help either you or TRA. It is for that very purpose that the TRA has set up a department that deals with taxpayers' education and which clarifies tax matters even before importation.

Our observation is that many investors merely import goods without consulting TRA on their eligibility for exemption. It is critical that your tax consultants fully engage with the TRA in areas that are ambiguous, before you make any moves. The law allows for advance private rulings, which can be utilised.

Refusal to register foreign company

I went to the Business Registrations and Licencing Agency (BRELA), and was told that I could not register a company where a majority of shareholders were foreign. I am quite shocked that Tanzania is still practising such restrictive practices in business. What should I do?

28 January 2013

You could not have gone to BRELA and gotten this information. Registering a company with a majority of foreign shareholders is allowed in Tanzania. In fact, Tanzania is inviting companies to come register here and start a business.

Tanzania does not have any restrictive practices in business. You probably either went to the wrong office or met the wrong person at BRELA. We suggest you meet any of the deputy registrars or the Registrar himself. A lawyer can also guide you on the steps to take to register your company. The process is quite straight forward.

Primary mining licence ownership

We are a foreign company that has entered into a 25% stake in a joint venture company (JV), whereby the other 75% is locally owned. Our JV has started to purchase primary mining licences (PML) so that we can mine in a large way. We will be employing thousands of people. Is it possible to convert a PML into a mining licence?

3 June 2013

The Mining Act unambiguously states that a primary mining licence for any minerals shall not be granted to an individual, partnership or body corporate unless (a) in the case of an individual, the individual is a citizen of Tanzania; (b) in the case of a partnership, it is composed exclusively of citizens of Tanzania; (c) in the case of a body corporate, it is a company and (i) its membership is composed exclusively of citizens of Tanzania; (ii) its directors are all citizens of Tanzania; (iii) control over the company, both direct and indirect, is exercised, from within Tanzania by persons all of whom are citizens of Tanzania.

From your description above, you must note that PMLs are exclusively for Tanzanian held companies or Tanzanian individuals. As such, although you only have a 25% stake in the JV company, your JV's acquisition of the PMLs contravenes the Mining Act. This means your company may be fined and/or its directors / managers imprisoned for a period not exceeding 12 months.

Also note that if you start large scale mining with a PML, i.e. without converting the PML to a ML, the Mining Act states that any minerals obtained in the course of unauthorised prospecting or mining operations, together with any equipment involved in such operations shall, be forfeited.

No consent mentioned in PSA

We have a production sharing agreement (PSA) with the TPDC and the Ministry . Our PSA does not contain specific provisions about whether and when we need to get the consent of the Ministry if we part with some control over the PSA. Aren't our terms of operations governed by the PSA, which is what we have signed?

24 June 2013

The PSA is governed by the Petroleum (Exploration and Production) Act, 1980

(PEPA). Section 54 of PEPA contains a broad requirement to seek ministerial consent with respect to any instrument by which a legal or equitable interest in, or affecting, a licence is created, assigned, effected or dealt with. The Act states that: "Unless the Minister approves (a) the transfer of a licence; or (b) an instrument by which a legal or equitable interest in, or affecting a licence is created, assigned, effected or dealt with, whether directly or indirectly, the transfer, or the instrument (in so far as it operates as provided in paragraph (b), shall be of no effect. Section 54.2 further states that an application for the approval by the Minister under subsection (1) of transfer of an instrument shall be made to the commissioner in accordance with the regulations.

From the above, depending on how much control is being parted with, and whether it will affect the PSA, you will be required to apply for consent. Most PSAs do have provisions related to control change. However, if your PSA does not, then the law has stated that consent must be sought as above. Your PSA cannot override the law and, hence, the consent provision above must be read into your PSA. The same applies with all other provisions of the PEPA, that must be automatically read into your PSA, whether they are explicitly stated in the PSA or not. Your attorneys can guide you further.

Granting of mineral rights

I am a director in a company that owns many prospecting licences under the new Mining Act. There are certain licences which have gone into default because of non-payment of the yearly rent, which has been increased by over 100% in the last few years. I have registered a new company and am in the process of acquiring new mineral rights over an area where the previous PL owner relinquished his rights. Can I proceed with the application?

22 July 2013

The Mining Act is clear: mineral rights shall not be granted to an individual, or to any partnership or body corporate or to any one of the partners, shareholders or directors of the partnership or body corporate which is in default in another mineral rights or in an expired or cancelled mineral rights: Provided that: (a) an individual who or partnership or body corporate which is in default; or (b) a partner, shareholder or director of a partnership or body corporate which is in default, may be granted a mineral right upon rectifying the default.

From the above, you can see that since you are in default, you cannot apply for these new mineral rights unless you rectify the default.

We also wish to remind you that the Mining Act states that a prospecting licence shall not be granted to an individual, partnership, body corporate, or any one of the partners, shareholders or directors of the partnership or body corporate who owns more than twenty other valid prospecting licences, unless the cumulative prospecting areas of such other prospecting licences do not exceed 2,000 square kilometres.

You stated that you own a number of other PLs. Hence, if you own more than twenty PLs and the cumulative area of these licences is more than 2,000 square kilometres you are automatically barred from being granted any more PLs. Your lawyer can guide you further.

Oil and gas company land ownership

We are a large oil and gas company in Tanzania, looking at investing in a plant that is going to cost us tens of billions of dollars. We have a number of questions.

First, can an oil and gas company own land in Tanzania? Can any other type of investor own land in Tanzania? We are not comfortable with entering into a long lease with the landowner, as the long lease can be terminated. Please guide.

29 July 2013

The Land Act of Tanzania specifically disallows foreign companies from owning land (leasehold ownership) unless they have a certificate of incentives under the Tanzania Investment Act. Hence, a foreign company who has a certificate of incentives can own land.

The catch here is that this Act only applies to oil and gas and mining companies to the extent of guaranteeing transfer of capital, profits and dividends and guaranteeing against expropriation. Other than this, the Act does not apply to oil and gas and mining companies. This means that such companies cannot qualify to apply for a certificate of incentives within the meaning of this Act. Hence, they cannot own land.

Your concerns about investing billions on a piece of land and not owning it need to be raised with your sector Ministry and the Tanzania Petroleum Development Corporation (TPDC). Unless the legislation is specifically changed to allow such large investors and investments to own land, the current law, as it stands, disallows you from owning land.

If you decide to go by way of a long lease, you must make sure the lease is long enough for your needs, and that the termination clause is very tightly worded in your favour. You may also want to check that your landlord is not in breach of the covenants under the right of occupancy. This is important because, if their right of occupancy is revoked, your lease will also automatically terminate because it will have no legal legs to stand on. Your lawyers can guide you further.

Renegotiate oil and gas agreements

I am a veteran civil servant, and have been involved in the oil and gas sector for many years now. I want to know why the government has entered into such loose agreements with these oil companies, and whether the government can renegotiate the terms of such contracts. I am told Qatar took over some assets of private companies when gas was discovered. This is our gas, and why should we be denied access to it? Why should our citizens not benefit from the discoveries of the gas in Tanzania? On a different note, I believe that oil has been discovered but the companies are hiding the truth from the government. Please guide on both the above.

16 December 2013

The agreements that the government and the TPDC have entered into with the oil and gas companies are called Production Sharing Agreements (PSA), which are provided for under the Petroleum (Exploration and Production) Act of 1980. These PSA's are special type of agreements that, from the outset, and even before the companies start exploration activities, have terms agreed on sharing of the resource, tax exemptions, employment, training, level of investment, profit sharing to mention a few. These agreements have a very strong force of law, because they are made under a specific provision of the PEPA.

It is based on these terms that the oil and gas companies, as contractors under the PSA, invest their hundreds of millions of dollars. What you are suggesting is possible but only if these companies agree to renegotiate. If these companies refuse to do so, which is likely, then the government has no right to strip them off their PSAs.

Just because there have been huge discoveries, does not mean the goalposts should be changed for these companies. In fact, Section 22 of the Tanzania Investment Act provides against such kind of expropriation. It states: (l) Subject to subsection (2) and (3) of this section: (a) no business enterprise shall be nationalised or expropriated by the government, and (b) no person who owns, whether wholly or in part, the capital of any business enterprise shall be compelled by law to cede his interest in the capital to any other person. (2) There shall not be any acquisition, whether wholly or in part of a business enterprise to which this Act applies by the State unless the acquisition is under the due process of law which makes provision for: (a) payment of fair, adequate and prompt compensation, and (b) a right of access to the Court or a right to arbitration for the determination of the investor's interest or right and the amount of compensation to which he is entitled. (3) Any compensation payable under this section shall be paid promptly and authorisation for its repatriation in convertible currency, where applicable, shall be issued.

From the above, it is clear that investors are given full protection when on Tanzanian territory. Any expropriation moves, such as the ones you are suggesting, will cost the country dearly in terms of reputation and funding.

As for oil discoveries, at the time of writing our answer to your question, we have not heard of any such discoveries. However, should any oil be discovered, both the PEPA and individual PSA's require that such information be relayed to the Minister for Energy and Minerals (MEM) within 30 days. You will have also noted that the MEM is transparently handling such matters with the public. We believe that, should there have been such a discovery, news of it would be in the public domain by now.

If you are hinting that the oil and gas companies are hiding such information from the government, this would amount to a breach of the PEPA and their PSAs. Such a failure could lead to huge problems for these companies.

Lastly, we are not aware of Qatar having taken over assets of such private oil and gas companies. What we know is that, in all the areas where the government has conducted such expropriation, e.g. South America, it has landed the government in big problems. As a veteran civil servant, we are quite shocked at your hard-core approach to the PSAs. You might want to reconsider your stance. Your proposals would be very costly for Tanzania.

PSA not being respected

We have a Production Sharing Agreement (PSA) with the government, which has various exemptions. The TRA is refusing to grant us some of these exceptions. This is putting us in a very serious crisis as far as our financials are concerned. We fail to understand why the government has entered into such agreements that are not being respected. Can you guide what options we have?

14 April 2014

The PSA's have a very strong force of law under the Petroleum (Exploration and Production) Act 1980 as they are clearly provided for thereunder. Hence the PSA cannot be challenged so long as it is properly executed, and you have a right to sue the Government for either specific performance or damages based on what you have suffered. If the PSA has an arbitration clause, which likely it has, then the issue can be referred to arbitration after following all the procedures under the dispute resolution clause. Before you rush this way please read the below.

The TRA is not mandated to grant any exemptions and is sometimes hence seen to be aggressive. TRA is the collecting body and is bound to follow the tax laws. For example, if you do not have special relief under the VAT Act you will be bound to pay VAT and claim it back. If you are not formally exempted under the East African Community Management Act then you will be liable to pay import duty. For you to enjoy the benefits of the PSA, you must apply for the exemptions attaching the PSA to such tax waiver application. The only Ministry that has the power to grant you the tax exemptions is the Ministry of Finance. Hence before seeking any recourse in arbitration we suggest you try formalize the exemptions in the PSA, and if those are denied whilst the PSA provides for it, the issue becomes a dispute and arbitrable. TPDC is fully aware of this and our experience is that they are usually quite cooperative.

The Government is quite keen to avoid any disputes with investors in areas it has entered into agreements and we advise you to also contact senior Ministers in the relevant sector(s) who may be able to intervene and resolve this. Your lawyers can guide you further.

Amount to spend on Prospecting Licence

I applied to renew my Prospecting Licence (PL) only to be told to submit, with my application, details of how much money I had spent on the PL area. This is the first time that I have been asked this. I also do not have any accounts, because I am waiting for foreign investors to join hands with me. Are there any minimum expenditure regulations associated with a PL?

9 June 2014

Section 30 of the Mining Act 2010 states that the amount per square kilometre which the holder of a prospecting licence shall expend annually on prospecting operations shall be prescribed and for that purpose the Regulations may prescribe different amounts in respect of prospecting licences for building materials and gemstones minerals groups from those for prospecting licences for metallic, energy, kimberlitic diamonds or industrial minerals group.

Furthermore, the Mining (Mineral Rights) Regulations clearly state that the prescribed amount where the PLis for all minerals other than gemstones and building materials, be: (a) in the case of the initial prospecting period an amount per square kilometre of five hundred US Dollars (USD 500); (b) in the case of the first renewal period an amount per square kilometre of two thousand US Dollars (USD 2,000); in the case of the second renewal period amount per square kilometre of six thousand US Dollars (USD 6,000). (3) The prescribed amount for the purpose of sub-regulations (1) shall in the case of a prospecting licence for building materials be an amount per square kilometre of hundred US Dollars (USD 100). (4) The prescribed amount for the purpose of sub-regulation (1) shall in the case of a prospecting licence for gemstones be an amount per square kilometre of two hundred and fifty US Dollars (USD 250).

It is clear that the amounts stated above are mandatory. Failure to spend such amounts can result in your PL not being renewed, because you will be in breach of the minimum expenditure requirement. Your advisors can guide you further.

Relaxed after retention licence

We are prospecting for a certain mineral and are unable to proceed with mining because of the current market conditions. Financing is also challenging presently, because of the downslide in mining

generally. Our consultant says we can now apply for a retention licence and relax. Is that a possibility? What are the threats even after a retention licence?

20 October 2014

Your consultant is right in that you can apply for a retention licence, which allows you to retain an area until the economics of the project improve. A retention licence is granted for five years and can be renewed for a further five. The exact terms for the preservation rights shall be stated in the retention licence. Hence, you cannot totally relax once you have it.

Furthermore, the Minister may, by notice in writing, require the holder of a retention licence to show cause why the company should not apply for a special mining licence in respect of the area of land subject to the retention licence. The Mining Act also states that, where the holder of a retention licence fails to show cause within a reasonable time, specified in the notice or adduces reasons which the Minister considers insufficient the Minister may, by a further notice, require the holder to apply for a special mining licence within a period of 60 days from the service of that further notice. If the licence holder does not comply with that obligation, they can be required to surrender their retention licence. This situation may occur, for example, if another company is willing to mine in the area that you have a retention licence over.

There is, of course, a process that the Ministry must follow, before it can revoke a retention licence. However, this does not mean you can go on a honeymoon after getting such a licence. Instead, you must comply with the terms of the licence.

More generally, the PSAs have a very strong force of law under the Petroleum (Exploration and Production) Act 1980. Hence, a PSA cannot be challenged so long as it is properly executed. If the government attempts to breach the terms of a PSA, it can be sued. There are two main causes of action either specific performance or damages, depending on the loss suffered. If the PSA has an arbitration clause, which likely it has, then any dispute can be referred to arbitration, by following all of the procedures under the dispute resolution clause. But, before you rush this way, please read the following.

The TRA is not mandated to grant any exemptions. Hence, while the TRA is sometimes seen to be aggressive, it is merely fulfilling its statutory purpose. The TRA is our country's tax collecting body, and is bound to follow our tax laws. For example, if you do not have special relief under the VAT Act, you will be bound to pay VAT and claim it back. If you are not formally exempted under the East African Community Management Act, then you will be liable to pay import duty. For you to enjoy the benefits of the PSA, you must first apply for the exemptions attaching to your PSA via a tax waiver application. Only the Ministry of Finance has the power to grant you your tax exemptions. Hence, before seeking any recourse in arbitration, we suggest you first try to formalise the exemptions in the PSA. Only if you are denied those exceptions which your PSA provides for does your issue become a dispute, and therefore arbitrable. The TPDC is fully aware of this. In our experience, this department is usually quite cooperative.

The government is quite keen to avoid any disputes with investors in areas it has entered into agreements. For that reason, we advise you to also contact senior Ministers in the relevant sector(s), who may be able to intervene to resolve your problem. Your lawyers can guide you further.

Dispute with adjacent oil block owner

We are in the exploration of deep-sea blocks, and might have a boundary dispute with the adjacent owner. Is there a formal mechanism I can follow to sort this?

17 November 2014

You are governed under the Petroleum (Exploration and Production) Act of 1980. Section 76 (1) of this Act provides that: (1) that the Commissioner may inquire into and decide all disputes between persons engaged in exploration or development operations, either among themselves or in relation to themselves and third parties (other than the government) not so engaged, in connection with 76.1.a the boundaries of any exploration area or development area; 76.1.b any act committed or omitted, or alleged to have been committed or omitted, in the course of, or ancillary to, exploration or development operations; 76.1.c the assessment and payment of compensation pursuant to this Act; or 76.1.d any other matter which may be prescribed. 76.2 the Commissioner may, in his discretion, refuse to decide any dispute referred to him under this Part and, if he does so, he shall notify the parties to the dispute in writing accordingly. 76.3. the Commissioner may make any decree or order which may be necessary for the purpose of giving effect to his decision in proceedings pursuant to this Part, and may order the payment, by any part to a dispute, of such compensation as may be reasonable, to any other party to the dispute.

Furthermore, Section 78.1 of this Act states that any person aggrieved by a decision, decree or order of the Commissioner may appeal to the High Court. This appeal must be lodged within 60 days of the decision, decree, or order being given or made.

Surprisingly, Section 78.2 of the same Act states that no appeal lies to a Court against a decision of the Commissioner, made under Section 76 (2). Hence, for your boundary dispute, you can refer the matter to the commissioner of energy. This Commissioner can make enquiries, and has the power to make decisions which are appealable to the High Court. Alternatively, you can go directly to the High Court or other Courts with jurisdiction to have this matter resolved.

Disputes between individuals

Friends, families and neighbours can fall out for many reasons, but not all disputes can be resolved in Court. Here, we outline some of the situations where our legal system is likely to help an aggrieved party and also some situations where it will likely not.

Amount paid without loan agreement

A friend of mine, residing in Mwanza, wanted a small loan from me of TZS 2M. Being the gentleman that I am, I remitted the funds through his bank account, whereby I got a deposit slip. He also called me and acknowledged receipt of the funds. It is now six months later and, there are no signs of being paid back. He now denies that there was any loan agreement between us. Can I use the bank slip in Court?

20 February 2012

Contracts may be written or oral, although it is always advisable that one enters into a written contract for clarity and evidence purposes. Whilst you can use your bank slip in Court, we believe your underlying question is how you can go about taking the matter to Court and prove that the funds were indeed a loan.

In the absence of a loan agreement, it becomes difficult, but you can produce witnesses, which may include friends and family, who knew about this transaction. Unless he admits the amounts in Court, your pay in slip alone will very unlikely be sufficient evidence. Your attorneys can guide you further.

Recovery of a debt from deceased

I lent a lot of money to a friend, who is now dead. I was not aware of his death only to find out that probate was granted by the Court and all the assets of the deceased have been distributed. How can I recover the money, considering that all the properties are in the hands of the beneficiaries?

23 July 2012

The Probate and Administration of Estates Act allows the creditor to follow the assets of the beneficiaries and recover his or her debt. However, under the law, the executor is required to advertise whether there is any person who has a claim against the creditor before he or she distributes the assets of the deceased. If the executor advertised as required under the law, you will have to explain to the Court why you did not present your claims to the executor when the same was advertised. Your lawyer can guide you further.

Refusal of creditor to accept money

A few years back I borrowed money from a friend of mine, payable with interest six months down the line. When the payment date came, I went to him but he refused to take the money for unclear reasons. At first, it seemed like a friendly gesture, but then it did not seem to be so. I continued to pursue him to take his money as it was payable under the agreement, but he did not accept the funds. He then travelled, and has recently returned. He has now filed a suit against me in Court claiming the principal sum, interest, penal interest and mesne profit for loss of gainful use of the money due to the delay and/or failure to pay him, which is untrue. The interest claimed under the suit is three times the principal. Upon investigation, I have found out that it was his strategy not to accept the payment from me, so that he can claim additional interest. How do I go about this matter? The money was always there for him to receive, but he refused. Is there a need for me to pay now?

5 March 2012

This is the first time we are hearing that a creditor refuses to receive sums under a loan agreement especially if the sums being paid back include the interest. We answer this question on the basis that you are not hiding any material facts from us.

Generally, refusal by the creditor to receive money does not discharge the debtor from the obligation to pay the debt. This is because

the debt is not extinguished by the mere refusal. It is the debtor's duty to look for the creditor and pay back the debt, which seems to be what you did. If the creditor will not take payment when tendered, the debtor must nevertheless continue to be ready and willing to pay the debt.

Your defence should encompass all that you have said above, including the fact that you have always been ready to pay the debt save for the creditor not accepting it. During the trial, you will have to adduce evidence to that effect.

As for the need of paying now, it is unlikely that he will receive the funds now. If you are hinting to us that with the suit the debt is extinguished, please be informed that, that is not the case. You must still be prepared to pay the original sum, including the interest that was due at the original time. Should you be successful, you will be required to make the payments as per the original plan. You may also be entitled to costs of suit.

We also suggest that you once again recheck your facts. We find some of them very hard to believe.

Civil imprisonment

A friend of mine borrowed money but never repaid me, despite numerous efforts to recover the same. I sued him in Court, where he admitted that he is indebted to me. Judgment was then entered against him. It has been almost a year since the judgment, and not a penny has been paid to me. This is really frustrating. It is not that he does not have the money but rather that he is stingy and selfish. Can he be sentenced to jail as a civil imprisoner?

16 April 2012

If you have not already done so, you must first obtain a Court decree to enforce the decision of the Court. The decree is made from the judgment that you have. You can then make an application in Court for execution of a decree of payment of money by arrest and detention as a civil prisoner. You should note that the Court is not obligated to issue the warrant of arrest. Instead, it can choose to call the judgment debtor to appear before the Court, and provide reasons as to why he should not be committed as a civil prisoner. If the Court is satisfied that the judgment debtor has no intention to pay, especially if he has the means, it will issue an arrest warrant. The judgment debtor will then be detained in prison as a civil prisoner.

During his civil imprisonment, you will be required to deposit monthly allowance for his upkeep in prison. The said maintenance allowance must be deposited at the beginning of every month until the judgment debtor is released from prison, or until he pays the loan. The costs you incur in such allowance can also be recovered from the judgment debtor.

Ex using my name in song

My ex-boyfriend is a well-known singer in Tanzania. In a recent song, that is a big hit, he is using my name. What can I claim from him? It is quite unfair that, after using my name, he should be making money. Please suggest how I can capitalise on this?

18 February 2013

We read your whole question sent by e-mail and the name you mentioned therein which we have not printed, as the name of the singer and yours would be revealed. Our opinion is that your name, which is only the first name, is in use by millions of women around the world. The song, which we were forced to hear to answer this question, also did not mention a second name or give a hint of who you are. In fact, the first name is used in a very constructive manner. As a result, it is

hard for you to prove defamation.

We also find it quite striking that you think it is your name in the song, and not the singer's voice and fame, that have made it a great hit. You may want to get a second opinion from another lawyer. However, in our opinion, your imagination is a little too farfetched unless there is more information that has not been disclosed to us.

Breach of contract in hair supply

There is a wig maker who has come to town making wigs for the young and the old. When at my hairdressers, I was approached by him, and he promised to pay me some amount if I gave him my hair. After three cuts, he has refused to pay me anything, saying that I would have let the hair go anyways. What should I do? I am told the fellow is a witch doctor and I should stay away from him.

4 March 2013

This is a breach of the wigmaker's covenant to pay you under the contract. The fact that you were going to throw the hair away anyways, which is probably true, does not change the fact that you have not been paid under the contract.

It is unlikely that you have a written contract but, under our laws, an oral contract is also allowed. Should you decide to sue him, whoever heard you and him enter into this contract, can be brought as a witness to Court to testify. Your lawyers can perhaps start by sending a demand note to him, before taking the matter to Court. You will have to do a cost benefit analysis in terms of your outgoings, and the potential amount you may get before rushing this to Court.

As for the wig maker being a witch doctor, we are unable to comment. Practising witchcraft in Tanzania is an offence, and you can report him to the police.

Validity of certificate of disposition

In 2009, I sold my house located in Kinondoni District. I successfully applied for the certificate of approval of disposition from the land commissioner. However, before paying statutory dues, I was transferred to Kigoma region as my new working station. I stayed there for two years, and never came to Dar. I got my annual leave this year and came to Dar to complete the process of transfer. Surprisingly, the land officers have told me to re-start the process. Is this proper? Please advise.

12 March 2013

From the above facts, it is quite clear that you have delayed paying your statutory dues under the certificate of approval issued to you. The certificate of approval of disposition is limited by time under the law. This time-limit is one year from the date it was issued.

The Registrar cannot make any entry on the register in respect of any disposition unless and, until all premia, taxes and dues have been paid. Since the certificate of approval of disposition has expired, you have no choice but to restart the process again.

Taping of bedroom noises

I have reason to believe that my neighbour has been secretly taping noises and movement in my bedroom. Can I sue my neighbour? This is causing a strenuous relationship with my boyfriend who has found out about this and is now artificially in love. What should I do?

18 March 2013

You are entitled to your privacy, and this recording of your bedroom scenes is in direct breach of privacy. The behaviour is actionable, and you can surely sue your neighbour for damages. You will, however, need to prove

that he has recorded you, and that might be a challenge. Further if the evidence needs to be tendered in Court, then the same recording might have to be played in Court. If you do not want further embarrassment, you should hence plan your move carefully.

As for what you can do, apart from suing: you can either move out, reduce the level of noises, or add layers to the wall. Bedroom noises are quite normal, and we surely cannot advise you to stop making them. The legal strategy can be finalised by your lawyers, whom you should contact.

Termination of a contract

I want to get out of a contract that I executed. What are the legal grounds that I can use to get out of it?

8 July 2013

Contracts are meant to be honoured. The law intends to ensure that parties who execute contracts honour the word of the contract. This will help ensure that businesses do not collapse.

However, the Law of Contract Act gives the parties several grounds to terminate their agreement, provided that such grounds exist. You can terminate the contract if there was duress, misrepresentation i.e. the other party misrepresented the core facts of the contract, illegality of the contract or subject of the contract, mistake of fact i.e. the minds of the parties to the contract did not meet, you are a minor i.e. below 18-years-old, breach of the terms and/or conditions of the contract, the condition precedent have not been fulfilled, to mention a few. We recommend that your attorney takes a look at your contract before you make any moves.

Stray dog bit me

I was happily walking down a street and a stray dog bit me. I got some serious injuries and want to sue? Please guide me.

15 July 2013

We are not sure what guidance you need. Surely you cannot sue the dog. If it is stray, this means you cannot find the owner of the dog.

However, if you do locate the owner, he can be sued and/or charged criminally under our laws for not ensuring the safety of others around the dog. We recommend you consult your lawyers.

Defiance to pay despite Court order

My friend supplied some cereals to a certain man who never paid him. They wrangled in primary Court, where my friend was successful. The primary Court ordered the man to make payment of a certain amount of money within one month. The amount awarded was not that big, and I am 100% sure that, to the debtor, the amount is peanuts. My friend wrote to this man requesting for the payment. Strangely, however, this man replied in writing saying that he would rather die than pay the money. I do not understand why he behaves this way, while he is capable of paying. To the best of my knowledge, there is no appeal against the decision offered by him, and the time for appeal has expired. Is this not against the law?

17 March 2014

Section 114 (1) (j) of the Penal Code [Cap 16 R.E. 2002] provides that any person having the means to pay compensation or costs or any other sum in civil or criminal proceedings awarded against him by a primary Court, and wrongfully refuses or neglects after due notice to make payment in accordance with any order for payment whether or not by instalment is guilty of an offence. Anyone convicted of this offence is liable to imprisonment for six months or to a fine not exceeding TZS 500,000.

Perhaps the man who was supplied cereals is unaware of the above provision which, in itself, is inexcusable. But the behaviour portrayed by this man is uncalled for, and undermines the majesty of the Court. So long as this is a criminal offence, we call you to set in motion the criminal justice machinery, so that rule of law is observed. Your attorney can guide you further.

Embarrassing relative in party

I am a famous and well-off man in Dar es Salaam. I organised a party in a prestigious hall to celebrate my wedding anniversary. In this party, I invited many celebrities in Dar including musicians, politicians and corporate personalities. In the invitation cards, I specifically provided for the dress code for the event. On the invitation list was an uncle of mine from upcountry whom I had invited as a formality but was not expecting to show up. Unfortunately, he did attend and was dressed in slippers and mismatched cheap clothes. He was taken as an invader by the guards, until I intervened and let him in. To add salt to injury, he went moving around introducing himself to guests as my uncle, and that he was proud of my achievements. I am deeply disappointed with all this, since the guests will think I come from a poor background. I want to teach my uncle a lesson now. Is there a way I can do this legally?

19 May 2014

As a matter of principle, you should understand that you need to have a "cause of action" in order to bring a successful claim. To do this, you should first plead that you have a right of claim against the person you are suing; second that your right has been infringed; third that the person you are suing is the one who infringed your right; and fourth, that you have suffered damages or loss.

Coming back to your grievances. You have admitted that you let your uncle in. Thus, he cannot be a trespasser in your party. This implies also that you accepted him as he was, in terms of dressing. At that juncture, you had the opportunity of not letting him in, in view of the party dress code.

As for the fact that he informed the guests that he is your uncle, we do not see the problem here from your question, it is quite evident that this is the truth. Unfortunately, your ego or wealth will not change the fact that he is your uncle, and he will remain so for life.

We suggest you get a mediator to reconcile your differences. When you die, both you and your uncle will be buried six feet below the ground. From what we read in the scriptures, there will be no-one to distinguish between the rich and poor.

You need the services of both a lawyer and a social advisor.

Beehive in neighbourhood

My neighbour has placed a number of bee hives in a tree, whose shade gets into my house. I am very conscious about my beauty and thus use perfumes and lotion with strong scents. I am worried the bees might attack me because of this scent. What can I do legally?

30 June 2014

The law which provides for beehive keeping is the Beekeeping Act, 2002. This Act protects equally those with, or without, beauty. This law states that if the director or authorised officer is satisfied that in particular premises the keeping of bees or a number of beehives are public nuisance or a danger to public health or public safety; or for any other specified reason, those premises are unsuitable for beekeeping, he may, by order served on the person who is keeping the

beehives prohibit the keeping of bees on those premises; or order the said person to keep a specified number of beehives on those said premises.

If the person does not implement the order of the director or authorised officer, the Act states that, where the director or an authorised officer is satisfied that a person has failed to comply with directives contained in an order under the director or the authorised officer, this shall be reported to Court.

Hence based on the above, you can report your concern to the director regulating the beekeepers. The director shall send his authorised officer to inquire about the issue. They will then decide a way forward. If the above is not decided in your favour, you can institute a tortuous case on the ground of nuisance, and seek the Court to grant a permanent injunction against your neighbour. Kindly consult your attorney for further guidance.

Employment and Immigration Law

Many of us spend much of our lives at work. And, invariably, the workplace can be a source of conflict. Can a bonus agreement, written on a menu, be relied on by employees? Can employers insist on visiting their employees at home? And is the boss' preference for taking a newspaper to the toilet a suitable basis for a legal complaint? In this section, we answer all of these questions, and many more including those relating to the immigration law consequences of trips into space.

HIV compulsory testing

I applied for a job as a receptionist in a company in Dar and was accepted after undergoing a vigorous interview. I was then informed to go to a designated hospital and get my blood tests done. When I went to hospital, the attending lab technician took my blood and attached it to a form that showed what tests were to be done. I realised that I was to be tested for HIV and immediately refused to proceed. I took the blood sample with me and left the hospital. Can the company test me without my consent? Is this not illegal?

30 January 2012

The HIV and AIDS Prevention Act provides that HIV testing shall be done at the consent of the person concerned. No person is under obligation to undergo HIV testing without his or her consent, unless the Court has ordered so or the person is donating blood or organs, or the person is a sexual offender. To the best of our knowledge, you are neither of these.

What the company did is illegal because the Employment and Labour Relations Act prohibits any kind of discrimination among employees of the company. Hence, the issue of whether the employee is HIV positive or not should not, generally, interfere with his or her employment.

The hospital may also be liable in that they proceeded, or nearly proceeded, to test you for HIV without getting your consent. You have a cause of action against both your prospective employer and the hospital. Your attorney can guide you further.

Conscience clause in contract

I am a doctor from overseas, and am negotiating my contract with a hospital in Dar. The hospital expects me to do all kinds of work, and is unwilling to heed to my demand for the insertion of a conscience clause in my contract. What should I do?

7 May 2012

A conscience clause allows you to be excused from certain duties that you morally disapprove of. This clause has been widely used in contracts with doctors who oppose abortion. In Tanzania, abortion is illegal and a criminal offence. Therefore, you need not worry about that issue as, by operation of law, you cannot perform an abortion unless it is for medical reasons. However, should you have other moral concerns, you can perhaps discuss this with your employer. Alternatively, you can look for another employer, as parties are free to negotiate terms as they deem fit in their contracts.

Employment contract says can't work for anyone else

I am an accountant working in Dar for a company engaged in distribution and manufacturing. It is my 17th year with the company, and I don't see any growth potential anymore. My salary has remained the same for the past six years. Recently, my medical benefits were also removed. Overall, I am not happy with the job. I hinted to my boss that I would like a raise. As usual, he said as they all do that the business was very slow, and that I should be patient. I am nearly 55 and don't know how much more patient I can be.

A competitor company has now approached me to go work for them. They have also issued me with an offer letter. When I gave my notice to the current employer, he showed me my contract that I had signed many years ago, which said that I am not to work for anyone else. The company lawyer also threatened me that they would sue me for breach of contract. How do I survive if I cannot work for anyone but my current

employer? This is modern times slavery. I feel very foolish for having agreed to sign such a contract. What do I do?

16 July 2012

Our answer is not very long. From the vague facts you have given us, we don't see why you cannot work for anyone else. Who will feed your family if you stop working? Is there a clause in there that also says you will get paid, even if you don't work since you cannot work for anyone else? Your contract is likely in restraint of trade and not enforceable against you. It is also an unreasonable clause to have in a contract, and is likely to be struck down by a Court.

Work on a public holiday

I work with a certain Ministry in Dar es Salaam. During the Easter holidays, my boss called me to the office for some urgent work. I had no choice but to comply. Can I be called on a public holiday like this?

3 September 2012

The Public Holidays Act states clearly that it shall be lawful for the head of any government department to open offices and works thereof, and to call any persons employed in such department to perform such of their duties on a public holiday as he may deem fit. Thus, if it was the head of your department who called you, he or she is entitled under the law to open the offices and call any person employed in the department to work. You also mentioned that the work was urgent. This gives your head of department even more of a reason to call you in.

Fired and acquitted

In 2007, my boss suspected me of having stolen some office property. The matter was reported to the police, and I was charged with stealing from the employer. The case went on for three years when I got acquitted. I contacted my former boss about being paid compensation for the allegations levelled against me, but he has flatly refused. What can I do to recover my income for the last three years?

1 October 2012

First and foremost, stealing from an employer is a bailable offence. Hence, for you to claim that you were just waiting for the acquittal to claim for lost income for the past three years might be a long shot.

You have the option of filing a civil case against your boss and/or his company, and demand damages for malicious prosecution. Malicious prosecution is the malicious institution of unsuccessful criminal proceedings against another without reasonable or probable cause. This tort balances competing principles, namely the freedom that every person should have in bringing criminals to justice and the need for restraining false accusations against innocent persons.

The tort provides redress for those who are prosecuted without cause and with malice. In order to succeed, you must prove that there was a prosecution without reasonable and just cause, initiated by malice and that the case was resolved in your favour, without there being any appeals. It is necessary to prove that damage was suffered as a result of the prosecution.

From what you have stated, it is hard to tell if there was malice in your employer reporting you, and if it was without just cause or whether it was reasonable. Whilst filing your case, you must be reminded that should your malicious prosecution suit fail, you will be hit with costs. Hence, it is paramount that you seek expert opinion of a lawyer before embarking on this course of action.

Double jeopardy in employment

I am a senior human resource officer in one of the leading mining companies in Tanzania. Recently, a theft occurred in our company which was reported to the police. Several suspects, some of whom are our employees (guards), were arrested and taken to Court. They still stand charged for stealing from their employer. My boss wants their employment terminated, because they orally asked him for forgiveness and admitted contributing to such theft. In fact, they have pleaded not guilty to the theft charges in Court. Can I proceed to take disciplinary action against them? Please advise.

8 October 2012

The law governing employment matters specifically the Employment and Labour Relations Act No. 26 of 2004 can guide you. Section 37 (5) of this Act says, in unambiguous words, that no disciplinary action in form of penalty, termination or dismissal shall lie upon an employee who has been charged with a criminal offence which is substantially the same until final determination by the Court and any appeal thereto.

Hence, any action you intend to take against the employees, if at all it relates to the issue of theft, shall then be against the provision of the law we have quoted. The said provision was meant to protect employees from double jeopardy. However, there are still some grey areas of law, that have yet to be fully clarified. A labour consultant can guide you further, as you are unlikely to want to continue employing persons who have admitted to your boss that they were involved in this incident.

Severance pay during termination

I was working with a construction company until the termination of my employment recently. I was paid all my dues, except severance pay, which I believe I was underpaid. My employer said that he computed it on the basis of the employment law, not following the clause in my employment contract, which states that severance pay will be payment of six months of my salary at the time. The challenge is that the amount I was paid based on the employment law is lower than what I would get paid if the employment contract was to be followed. Can the employer do this? What should I do?

22 October 2012

Severance pay is among the payments which an employer is supposed to pay an employee on termination of employment. This payment, however, is only for those who have completed 12 months continuous service with an employer, when they have not been terminated on the grounds of misconduct, capacity compatibility or operational requirements of the employer.

The computation of the severance pay is set out in the Employment and Labour Relations Act No. 6 of 2004 (ELR). This figure amount to at least equal to seven days' basic wage for each completed year of continuous service with that employer, up to a maximum of ten years. Hence, if one works for a five-year period, the severance pay would be 35 days of the basic wage. If one works for 20 years, then the severance pay is 70 days of the basic wage.

In your case, we think your employer was wrong to resort to the statutory computation if the severance pay in the contract of employment was clear, and not below the seven days.

In short, the law merely provides for minimum computation standards. It does not preclude the employer from opting for higher standards in favour of the employee. In that

regard, and subject to time limitation under the law you may refer this dispute to the Commission for Mediation and Arbitration. This organisation can compel your employer to honour the contract of employment and pay you a severance pay accordingly.

One more note. There is a common doctrine that the law prevails over a contract that parties may enter into. This statement must be construed in the circumstances of the law and the contract. For example, the ELRA provides a minimum of seven days of severance pay. Had this been a maximum of seven days, the severance clause in your contract would be illegal. The law provides for a safety net, hence your severance clause in your contract is legal.

Contract on restaurant menu card

I am the assistant of a leading businessman in town. We went out to lunch one day, and he said that I deserved a bonus. He took the restaurant's menu card and, behind it, wrote down how the bonus would apply and what targets I needed to meet. I beat all the targets. Now, he has turned around to say that the contract cannot bind him as it is not on legal paper. Is that true? Why do rich people breach contracts?

21 January 2013

It is quite interesting to note that you have a contract on the back of a restaurant menu card. Some important contracts have been made in weird places around the world we have heard of contracts being written on the bark of a tree, on the seashore, on tissue paper signed in the bathroom, and contracts entered into when people are sky diving we are not sure how they signed this.

The key contents of a contract are that there must be an offer, acceptance, intention to create legal relations, consideration and the contents of the contract must be legal. It seems to us that all these are present in your contract. Thus, your contract is binding on your boss. There is no mandatory requirement for the contract to be on legal paper.

Your last question on why the rich breach their contracts more often is not a legal question, and we are unable to answer it. However, a quote by well-known German inventor Robert Bosch comes to our mind, it says: "I don't pay good wages because I have a lot of money; I have a lot of money because I pay good wages.

Residency permit and change of employment

I am a foreigner employed in a certain company. This company assisted me to get a permit class B, which allows me to work in Tanzania. Whilst in employment in the country I got a better offer from another company, and wish to move on. How can I go about this?

4 February 2013

The Immigration Act provides explicitly that, if a person to whom a class B residency permit has been granted fails or ceases to be engaged in the employment specified in the permit, or is engaged on any terms in any employment other than the employment specified in the permit, the permit shall immediately cease to be valid. If that happens, the presence of that person in Tanzania shall be unlawful. Hence, once your employment ends with the current company, the residency permit is also automatically terminated. You will then have 30 days to leave the country. You must appreciate that, as an expatriate, the law here does not allow job hopping. Job hopping is not in the interest of the Tanzanian registered entity that you work. Nor is it in the interest of public policy.

However, it must be stated that the Director of Immigration has the discretionary

power to vary the conditions of the permit as he deems fit. You may make such an application to the Director to authorise you to work for the other company. This consent is also subject to a "no objection" letter from the current employer.

Employees forming a trade union

I own a big company with about fifty employees. Grapevine has it that the employees want to establish a trade union mainly because of one employee who is masterminding this. I don't support this idea as it is hard to control. How can I prevent them from forming this trade union? I also want to fire this employee for gross indiscipline. How should I go about this?

4 February 2013

The Employment and Labor Relations Act provides that, every employee has the right to form or join a trade union and participate in the lawful activities of the trade union. The Act also provides that no employee shall be discriminated against because he is a member of a trade union or he participates in the lawful activities of the union.

With the above, you can neither stop your employees from forming or joining a trade union, nor can you fire the employee for asking for his rights. If you do so, you are surely going to end up in the commission for mediation and arbitration and are likely to lose the case. Move with caution as in Tanzania, as in other countries, generally speaking you can only fire if you follow the right procedure and have grounds to terminate employment. Your attorney can guide you further.

Time to file labour disputes

I was terminated in my job and feel the termination is unfair. I have taken some time to think of what to do and have been told that I can refer the matter to a Labour Court within 30 days. I am afraid that I may be time-barred by a day or two. Do I need to count Saturdays, Sundays and public holidays? Please guide.

4 February 2013

You seem to want to challenge this unfair termination, and are not sure how the 30 days to file this complaint are to be counted. Provisions of the Labour Institutions (Mediation and Arbitration) Rules, take care of how to count days. The rules provide that, in calculating any period, the first day shall be excluded and the last day shall be included. However, the last day must be excluded if it falls on Saturday, Sunday or a public holiday. In the event the time has expired, the law allows you to file an application for extension of time/condonation, provided you give sufficient reasons for your delay. You are advised to consult labour practitioners for further guidance.

Employee disappears with company data

We are a software company that has employed many computer programmers in Dar es Salaam. One of the key components of our contract is that our employees cannot leave the office with company data or programming keys. However, one senior employee has left the company with the laptop and has joined a competitor. What can we do?

18 March 2013

This is happening very often now, and it is high time an employer takes stern action against such employees, in order to send a signal to other employees. The operation below might sound costly but is something you should consider so as not to set a bad precedent.

We suggest you put the new employer on

notice about this breach, and the potential breach that the new employer is engaged in. If the new employer does not remedy, we suggest you sue both your former employee and the new employer under contract and/or tort. You can claim damages amongst others. You should prepare your evidence well, for example, the fact that he has left with the laptop is a strong piece of evidence that can be corroborated. Your attorneys can guide you further. You can also look into the possibility of reporting the matter the police, as it also sounds like a criminal matter.

Overtime in banks

I was a branch manager with a bank in Tanzania. Recently I was fired and wish to claim for all the many hours I spent working beyond official hours. Do I have a valid claim?

22 April 2013

The Employment and Labour Relations Act generally states that an employer shall not require or permit an employee to work more than 12 hours in any day. The Act also provides that the maximum number of ordinary days or hours that an employee may be permitted or required to work are (a) six days in any week; (b) 45 hours in any week; and (c) nine hours in any day.

However, the same Act disapplies the above provisions to employees who manage other employees on behalf of the employer, and who report directly to a senior management employee. Hence, in your case, it is unlikely that the overtime is claimable. Your lawyers can guide you further.

My birthday, my worst day

I have been working with a company for the past ten years and have always been allowed to take the day off when it is my birthday. My boss changed recently, and the new boss disallowed me this statutory leave of mine. This has really upset me, as it is my special day, as it is for anyone else. What can I do about this denial of my birthday holiday rights?

13 May 2013

The answer we are about to give you will not please you: there is nothing like birthday holiday rights under our law. If your contract specifically provides for such a holiday, then you might have a claim, but we have also never seen such a contract. It seems to us that your birthday holiday rights were more custom-based than contract-based. We have never heard of any country which has such holidays. Your lawyers can guide you further, as we don't believe you have any claims against your employer.

Outsourcing of employees

We entered into a contract with a company to supply employees. However, the Tanzania Revenue Authority (TRA) has come back and said that the amounts we have paid to this service provider are, in fact, the salaries of the persons who have been supplied to us. Hence, this money should have been taxed, a pension paid for including skills and development levy. How does the law define an employee? Does the TRA have a valid claim on us? Is it legal for our company to enter into such an arrangement?

27 May 2013

The Employment and Labour Relations Act defines an employee as an individual who: (a) has entered into a contract of employment; or (b) has entered into any other contract under which (i) the individual undertakes to work personally for the other party to the contract; and (ii) the other party is not a client or customer of any profession, business, or undertaking carried on by the individual; or (c) is deemed to be an employee by the

Minister under Section 98 (3).

Section 98 (3) provides that "the Minister may after consultation with the council, may, by notice in the Gazette, deem any category of persons to be employees for the purpose of this section, any provisions of this Act or any other written law in respect of which the Minister is responsible". Under the Tanzania labour laws, a person who renders service to any other person, including for specific tasks is presumed to be an employee, until the contrary is proved. This will occur if one or more scenarios itemized under Section 61 of the Labour Institutions Act exists.

Section 61 of the Labour Institutions Act (LIA) Act No. 7 of 2004 provides the following: For the purpose of a labour law, a person who works for, or renders services to, any other person is presumed, until the contrary is proved, to be an employee, regardless of the form of the contract, if any one or more of the following factors is present: (a) The manner in which the person works is subject to the control or direction of another person, (b) The person's hours of work are subject to the control or direction of another person, (c) In case of a person who works for an organisation, the person is a part of that organisation. (d) The person has worked for that other person for an average of at least 45 hours per month over the last three months. (e) The person is economically dependent on the other person for whom that person works or renders services. (f) The person is provided with tools of trade or work equipment by the other person; or (g) The person only works for or renders services to one person.

From your brief summary above, it seems that the service provider employs these staff who are stationed in your premises. We do not see any illegality with the contract you have entered into so long as the service provider is registered for tax purposes and is paying its taxes. However, if the service provider is not tax registered, the TRA might end up coming after you. Your attorneys can guide you further.

Mandatory retirement of directors at age 70

I have been a director of a company in Tanzania since I was 30 years. The appointment was made by the majority shareholder, who was a friend of mine. I have now been enjoying allowances for the past 40 years. The majority shareholder passed away, and his son has not been as nice to me. Due to my seniority, he has not fired me as a director. However, now that I have reached 70 years, he has requested me to step down, as the law does not allow a director to serve above the age of 70 years. I know of hundreds of people who are above the age of 70 and serve as directors. This law, if it is true, is obsolete. Is there such a law? I have checked the MEMARTs of the company and they also provide retirement at 70. Can I get a Court order to stay on, as I really need my director's fees?

10 June 2013

Section 194 of the Companies Act states inter alia that (I) Subject to the provisions of this section, no person shall be capable of being appointed a director of a company which is subject to this section if at the time of his appointment he had not attained the age of twenty-one or he has attained the age of seventy. (2) Subject as above, a director of a company which is subject to this section shall vacate his office at the conclusion of the annual general meeting commencing next after he attains the age of seventy.

This section, when read with the MEMARTs that you say have a limit of 70 years, makes it mandatory for you to retire.

Section 194 (5) is a salvaging section for you: it provided that nothing in the foregoing provisions of this section shall prevent the

appointment of a director at any age above the age of eighteen, or require a director to retire at any time, if his appointment is or was made or approved by the company in general meeting. Hence, if the company does pass a resolution to the effect that it is changing the age limit of 70 years, then you may continue. You may want to try to convince your former friend's son to let you stay.

With reference to getting a Court order to stay on as a director, please note that directors are appointed by the shareholders and the shareholders also have the full power to terminate directors. It is very unlikely that a Court would be willing to intervene in your favour, just because you want to continue your steady stream of director's fees. Your lawyers can guide you further.

Employee refuses to work during notice period

I own a consulting company, which has a big clientele. Recently, one of my employees issued a notice to terminate his service. However, after issuing the said notice the fellow has not been working on the tasks assigned to him on the ground that he is leaving my company. He has ultimately started coming late, and sometimes not coming at all. Can an employee refuse to work only because he has given notice of termination? What does the labour law say?

17 June 2013

The Employment and Labour Relations Act clearly provides that, where an employee refuses to work during the notice period, an employer may deduct from the employee any money due to the employee for the period that the employee did not work. Therefore, you still have an opportunity of not paying him / her the salary for the days which he has not worked.

Had the period for notice not been for such a short time, you would be justified to terminate the employment contract on the basis of such misconduct, as per the proper procedure under the law. The fact that an employee is leaving a workplace does not mean that he / she can do as they like. Both caselaw and labour laws require that the employer and an employee should respect the contract of employment, which subsists during the notice period.

Leakage of information from company

I own a company and have senior officials in the company for contract negotiations. Over the last two years we have been making losses, for reasons which weren't clear.
Recently, I found out that two of my senior employees have been leaking information to our competitors for financial gain. I want to fire them, will it be legal? What is the procedure to fire such an employee?

8 July 2013

Our labour laws provide that termination can arise only if there is a valid and fair reason which calls for termination. Even then, fair procedures before termination have to be observed. As per the information you have provided to us, the senior employee is in breach of his employment contract. Hence, he is guilty of misconduct, which is a valid reason for disciplinary action.

The fair procedure before termination calls for the employer to conduct a thorough investigation on the allegations and give a report to the employee in question. A disciplinary hearing must then be conducted. Upon hearing the parties, you can decide to terminate him. It is important that you have enough evidence to support the allegations you have stated. If not, and if the employee sues you for unfair termination, you may have to pay 12 months' salary as compensation.

It is not unwise to get a labour consultant

to assist you through the process.

Inequality of notice period in employment offer

I am an accountant in a public corporation, and have received an offer of employment from one foreign company in the mining sector. While I am still contemplating whether I should accept it or not, I have noted a few strange things in the letter of offer. One of these is that if I wish to terminate my employment contract, I should give three months' notice. However, when the company wishes to terminate the contract, it shall only give two months' notice, or two month's salary in lieu of notice. Is this proper under the labour laws? I find the company stands in a more advantageous position than me? I have attached the employment letter for you to review and respond to. Please guide.

15 July 2013

Section 41 of the Employment and Labour Relations Act No. 6 of 2004 is very clear in answering your question. This section provides that, if a contract of employment can be terminated on notice, the period of notice shall not be less than 28 days if the employee is employed on a monthly basis, four days if the employee is employed on a daily or weekly basis, and seven days if notice is given during the first month of employment.

This law further allows a longer notice period than the aforementioned, provided that the agreed notice period is of equal duration for both the employer and the employee. This means that the notice period is not in compliance with the provisions of our labour laws. Should the employer want the notice period to be longer, then it has to be an equal month for both the employer and the employee.

You might want to bring this to the attention of your prospective employer, as it might have been an oversight on their part. We are not able to review the entire employment letter. However, we wish to alert you that, on a cursory reading, we notice that the employment letter clearly states that this is not supposed to be circulated, which is exactly what you have already done. You should consult your lawyers for an in-depth opinion.

Business versus economy class

My boss discriminates against me although I am head of finance. He is the CEO of the company I work for. When we travel for work, he travels business class whilst I am dumped uncomfortably in economy class. Is this not discriminatory behaviour by my employer? I want to sue my employer?

15 July 2013

Before you jump to conclusions about discrimination, which we agree is recognised under our labour laws, you must understand that discrimination must be looked at in the context of each case. Otherwise, it will open floodgates of litigation.

In your case, you need to look at the company policies on travel, including what class other heads of department travel in to mention a few. It is not abnormal for the boss to travel business class and the others to travel economy class. It is one of the perks that comes with being the boss. For example, the boss might have a bigger desk and office, a bigger car, a personal assistant, and a larger salary. None of these would likely be discriminatory.

Before you get excited about suing your company, we recommend you look at the situation in its entirety and consult a labour expert.

Hazardous work for pregnant woman

I am a technician in a company, where I have been working for about four years. The foreman knows that I am presently expecting, and that my due date is in the next two months. Despite this, he assigned me very hard jobs, where I have to stand for long hours. I know he is intentionally doing this, as my sister had turned down his proposal to marry him. Is there anything I can do to address this?

5 August 2013

We wish to point out that the Employment and Labour Relations Act clearly provides that no employer shall require or permit a pregnant employee, or an employee who is nursing a child, to perform work that is hazardous to her health or the health of her child.

The test above is subjective, and depends on what exact job is assigned to you. All in all, if the assignments given to you are hazardous to your pregnancy then that is against the law. If so, the foreman needs to desist from such behaviour.

As a matter of creating a good atmosphere at the workplace and preventing abuse of powers, you may report this to your superior. Otherwise, the matter is actionable under the law above.

Employer strict on breastfeeding time

I am a mother of twins staying in the suburb of Dar, and have resumed to my workplace following completion of maternity leave. However, the difficulties I am now facing are intolerable. The human resources officer has informed me that our company's policy allows only two hours of breastfeeding, including a lunch break. Thus, should I go for breastfeeding, is my lunch break of one hour also inclusive? Is this as per the labour laws? Please guide.

19 August 2013

Section 33 (10) of the Employment and Labour Relations Act No. 6 of 2004 is very clear. This provision states that, where an employee is breastfeeding a child, the employer shall allow the employee to feed the child during working hours up to a maximum of two hours per day. The law has not said that the two hours shall include lunchtime. If it would have meant that, it would expressly have stated so. The policy of your company is not in accordance with the foregoing provision. The breastfeeding time was meant for a child, and lunchtime was for the employee. You may bring this to the attention of the HR officer, so that your company policy may be aligned in line with the law's provisions. Otherwise, you may seek further assistance from a lawyer and/or labour officer, should the company continue to maintain such a position.

I love my boss

I work for a big company, and am in love with my boss. He is the best person I have ever met. He also likes me, and we have spent some time together. The only problem is that he says that, since he is the boss, and I am his secretary, it is illegal for him to get involved with me. Does the law stop him from doing so? How do I get him to date me?

23 September 2013

We are not aware of any law that disallows a boss to date his secretary. In fact, there are many fairy-tale stories whereby the boss marries the secretary. The problem is that some companies regard such relationships as inappropriate, and have internal regulations which disallow it. For example, if you and your boss are dating, it might affect your performance at work and you might not be able to stay focused on your job. In answering this, we assume both of you are single.

Unfortunately, as lawyers we are not

qualified to answer your second question on how we can assist you in getting him to date you.

Transport allowance to place of recruitment

I was employed with a certain mining company, and my duty station was in Dar es Salaam until my contract was terminated. I was recruited from Kigoma, where I was working and living. This mining company has now refused to pay for my family's transport allowance back to Kigoma, even though it clearly knew that me and my family moved to Dar when I was employed. Is this employer right in this decision?

23 September 2013

Section 43 (1) of the Employment and Labour Relations Act No. 6 of 2004 is very clear: it says that, where an employee's contract of employment is terminated at a place other than where the employee was recruited, the employer shall either transport the employee and his personal effects to the place of recruitment. Alternatively, the employer shall pay for the transportation of the employee to the place of recruitment or pay the employee an allowance for transportation to the place of recruitment. The employer shall also pay a daily subsistence expenses during the date of the termination of the contract and the date of transporting the employee and his family to the place of recruitment. Transportation of the family is explicitly stated, so a refusal will entitle you for subsistence allowance from the date of termination to the date of payment/repatriation.

The law has further clearly stated the transport allowance should be equal to at least a bus fare to the bus station nearest to the place of recruitment. However, for the subsistence allowance, caselaw provide that the fairest and most appropriate subsistence allowance would entitle an employee to his monthly salary pending repatriation. Caselaw also require employees who claim that the package paid to them as repatriation or amount paid as subsistence allowance is inadequate should mitigate the loss that is likely to occur with their continued stay at the working station. Your lawyer can guide you further.

How to prove I'm Tanzanian

I was born in Mwanza region a few decades ago. Since then, I have lived and stayed in Tanzania. Both my father and mother are Tanzanians, though of different tribes. I am a businessman and my business requires me to travel in different places within the country, especially regions near other country's borders. Having heard that illegal immigrants are now being expelled in the country, I am worried I might be a victim. This is because most of my friends tell me I resemble people of a certain neighbouring country. How can I prove that I am a Tanzanian? Please guide.

30 September 2013

The fact that you resemble people from a neighbouring country does not mean that you are not a Tanzanian. In this country, matters of citizenship are legally governed. In this regard, the Tanzania Citizenship Act [CAP 357 R.E. 2002] is relevant. There is no law that states what a Tanzanian must look like.

Generally, our laws recognise three types of citizenship, by birth, by descent and by naturalization. Any person born in Tanzania is deemed to be a citizen of the United Republic if, at the time of his birth, one of his parents is, or was, a citizen of United Republic of Tanzania. Also, any person born outside the United Republic on or after Union Day is deemed to be a citizen of the United Republic by descent, if one of his parents is a citizen

of the United Republic of Tanzania by birth or naturalization. Lastly, any person who is not a citizen of Tanzania, whether by birth or descent, may apply for Tanzania citizenship by naturalization. This application should be made to the Minister responsible for citizenship matters.

All in all, the Tanzania Citizenship Act also provides for a possibility of issuance of a certificate of citizenship in cases of doubt. Section 21 of this Act provides that the Minister may, in any cases which he thinks fit, on the application of any person with respect to whose citizenship of the United Republic a doubt exists, whether on a question of fact or law, certify that, that person is a citizen of the United Republic; and a certificate issued under this section shall, unless it is based on false representation or concealment of any material fact, be conclusive evidence that, that person was a citizen on the date of the certificate, but without prejudice to any evidence that he was such a citizen at an earlier date.

With the foregoing, we believe it should not be difficult to prove that you are a Tanzanian, your facts speak for themselves. However, we advise you to further process for the birth certificate and your identity from the respective authorities, if you have not done so already. Your lawyers can guide you further.

Firing a receptionist because of weight gain

I am a renowned businessman in Tanzania, and have retail operations in different regions within the country. In my sales offices, I have employed models as receptionists, knowing that whoever comes into my offices will be attracted such that I will strike deals. One of my employees, who is a receptionist, has gained so much weight that her attraction no longer exists. Unfortunately, she has a permanent contract of employment with me. How do I get rid of her, as I know she is going to grow fatter by the day?

14 October 2013

You may have deployed models to work for you as part of your marketing strategy. However, when it comes to terminating a person's employment, the labour laws continue to apply and these laws should be followed. The Employment and Labour Relations Act requires every termination of contract of employment to be fairly done, anything short of this shall be unlawful. By fair termination, the law firstly requires the observance and following of its fair termination procedures. Secondly, the law requires a good reason to terminate. Coming to the question you have posed, we do not see how you can successfully terminate this employee. You have not stated whether the weight gained by the employee has made her incompatible with her duties, or has led to poor performance in work.

We think that, apart from being discriminatory, your move to terminate the lady is uncalled for. This is due to lack of good reasons to justify termination. Should you wish her not to be a receptionist, we think you can still speak to her and assign her other tasks, if at all acceptable. Otherwise, you might have to be open with your employee about her weight, get her some weight control classes including getting her to join the gym, dieting etc.

That said, should you for example run a modelling agency, then you can, prior to giving the employee a chance to slim down, proceed to terminate her. This would allow in relation to such a specific work situation, because your employees' weight gain does not allow her to perform her duties unfortunately, fat people are generally not as attractive as thinner individuals. But, even if

this specific situation applies to you, you must still follow the right procedures under the law. Your lawyers can guide you further.

Employer secretly monitoring messages

I was employed in a certain company as marketing and sales officer. The company gave me one of the latest mobile phones for use, and my personal mobile number was used. I did not know that the company was monitoring my messages in the phones until I entered into a wrangle with one of the bosses. This was after the boss started accusing me of going out with a co-worker, who is his mistress which I was not aware of. I am now served with a show cause notice that I have used the office's phone to cause havoc in the workplace, by interfering in my boss's love relations. I am afraid that I might get fired due to this. Can the company get such information from the mobile company, even on private issues like one's love life, which is unrelated to work? Please guide me properly as the boss is all out to get me?

14 October 2013

We believe the company gave you the phone so that your duties may be performed effectively. We are unsure how the company obtained these messages. Very likely, the mobile service provider, who is the only custodian known to us of such details, provided a print out to your boss.

All in all, this is indeed an intrusion to privacy and results into liability under the Electronic and Postal Communication Act and the Electronic and Postal Communications (Consumer Protection) Regulations, 2011 which are made under the Act. This intrusion of privacy is a serious issue. You may consider and proceed to lodge a complaint with the Tanzania Communications Regulatory Authority TCRA against the telecom company and your employer.

On the show cause notice issued to you: first, we wish to observe that, unless there are other missing details in your question, the notice is based on facts which are quite remote from the employment issues. This is, of course, unless you have been having the affair in the office during office hours. It seems it is the boss that is after you, rather than the company that you work for.

Lastly, you have not told us if the allegations of dating the boss's mistress are true or not. If true, you should be careful about your resulting performance at work. Many a time, with office affairs, your work output suffers. If this happens, this can turn into grounds for termination. We believe you have not given us all details to guide you effectively. We recommend you disclose all facts to your lawyer for proper guidance.

Visa to visit the moon

I was told that, since the United States went first to the moon, and with their flag hoisted there, you require an American visa to go to the moon. Is that true?

21 October 2013

Your question is far too farfetched. To the best of our knowledge, no-one has claimed ownership of the moon. In fact, the two nations who spearheaded the moon hunt, Russia and the US, are party to the Outer Space Treaty. This treaty defines the moon, and all outer space, as the province of all mankind. There also exists a 1979 Moon Agreement, that was created to restrict the exploitation of the Moon's resources by any single nation.

Whilst it is true that, in 1969, the US hoisted their flag on the moon, that does not entitle the US ownership of it. Neither is the US claiming any exclusivity or ownership of the moon.

In relation to your question: first, getting

to the moon is a challenge; enforcing a visa requirement on the moon would likely, in today's era, be impossible. Hence, if you plan on going there, you can proceed it is a visa-free territory. We wish you good luck.

Two union reps in one company

I am a foreign investor who owns a factory in the outskirts of Dar es Salaam, where I employ a large number of people. Recently, three people identifying themselves as officials from a certain trade union showed up in my office. They said that they are allowed to speak to my employees and recruit them in their trade union. I turned down this request because there is already an existing trade union in my factory. They have now formally written to me, requiring me to inform them about the date, and venue when they can have time to speak to the employees. I have not replied to this as a caution until I am legally advised. Is this a request normal? Please advise.

28 October 2013

This request is not uncommon, since the requesting trade union is exercising its right under the Employment and Labour Relations Act (ELRA). The ELRA clearly provides that any authorised representative of a registered trade union shall be entitled to enter the employer's premises in order to recruit members, communicate with members, meet members in dealings with the employer, and hold meetings of employees on the premises. Apart from the foregoing rights, a registered trade union may establish a field branch at any workplace where ten or more of its members are employed.

In your case, you only need to satisfy yourself whether the so-called officials are really coming from such a trade union there is no shortage of those who are not and, if yes, whether the said trade union is duly registered. As an employer, you cannot prevent them from recruiting members even though there is another trade union already existing. After all, membership in a trade union is a matter of employee's choice and not an employer's choice.

Further, it is the employees who will decide whether they should join the trade union or not. You can contact your lawyers for further guidance.

Denied air hostess job

I am a tall well-presented woman, who applied for a job as an air hostess in a local airline. I know that my aptitude test results were the highest amongst the 20 girls who applied. In the practical, I also scored the second highest. However, I was seemingly refused employment because the aircraft aisle would not fit me, because my hips are wider than the aircraft aisle. Isn't this discrimination? If that was the case, I could have served in the business class? I want to sue. Please guide.

25 November 2013

Every employer is required by the Employment and Labour Relations Act No. 6 of 2004 to ensure that he promotes an equal opportunity in employment and strives to eliminate discrimination in the workplace. It is also an offence if an employer directly or indirectly discriminates against employees on the basis of colour, nationality, tribe or place of origin race, national extraction, social origin, political opinion, gender, pregnancy, marital status, disability, HIV / AIDS status, age or station of life. However, as an exception to the foregoing rule of thumb, it is not discrimination to distinguish, exclude or prefer any person on the basis of an inherent requirement of a job.

Coming back to your question: we are of the view that your situation falls within

the exception provided under the law. It is not discrimination to distinguish, exclude or prefer any person on the basis of an inherent requirement of a job.

Hence, if an aisle is not wide enough for a prospective employee, there are only two options. The first, which you will appreciate is uneconomical, is for the airline manufacturer to increase the size of the aisle. The second option is to decline employment, as the airline has done. You should consult your lawyers, who can guide you further.

Insulting and abusive language

My boss is a foreigner and uses very abusive language on me. It is his style, and everyone in the office is a witness to it. Is such language not an offence under any of our laws in Tanzania?

30 December 2013

Section 89 of our Penal Code states that (1) Any person who: (a) uses obscene, abusive or insulting language to any other person, in such a manner as is likely to cause a breach of the peace; or (b) brawls or in any other manner creates, a disturbance in such a manner as is likely to cause a breach of the peace, is guilty of a misdemeanour and on conviction therefore is liable to imprisonment for six months.

From the above, you will note that such abusive language which can lead to a breach of peace is a criminal offence. The law does not provide for an option of a fine. Once convicted, no matter what position he holds, a person may end up in jail for six months.

Immigration in Dar

I entered the JK Nyerere Airport a few months ago and was asked whether I was here for tourism purposes or business. I responded business, to which I was asked to pay about USD 200. However, I was given the option of taking a tourist visa, which I told was cheaper and faster to process but that I had to pay an administrative charge of USD 50. I complied, only to find out that, whilst the total amount was cheaper than getting the business visa, I did not get a receipt for the administrative charge. I tried asking for it but, with the big queue for visas, I gave up, otherwise, I would have wasted a lot of time arguing. Can I get this receipt?

13 January 2014

We are not aware of an administrative fee payable for visas, especially for tourist visas. Effectively, you have bribed the immigration officers without knowing that it was a bribe although we think it was quite obvious. You cannot get such a receipt, as there is no such receipt for administrative charges.

Further, by using a tourist visa while you were on a business trip, you were not legally doing whatever business you were doing in Tanzania. This is also an offence under our immigration laws. Your lawyers can guide you further.

Dressing in government office

I work for a certain government office and my boss has told me to stop wearing short dresses. He probably likes me, and that is the reason. He doesn't look at his own wife who wears shorter dresses, and sometimes tight jeans, when she comes to visit him. Does my boss have a right to tell me what to wear and not say anything to his wife? Please advise if his thoughts on the length of my skirt and his eyes on my skirt are legal or is this a sexual offence?

24 February 2014

We have not come across any law that says a sexual offence is committed when a man, under normal circumstances, briefly looks at a woman, especially in a public area. In fact,

if you are wearing a short skirt, it is likely that a man's eyes will fall on it. If he continues looking at the skirt, and not you, this might create an offence but this is not what your question states, and hence we do not discuss it here.

If looking at a woman in a short skirt is an offence, then most men would have been charged by now, including the public prosecutor and police.

Your boss' thoughts on the length of your skirt have the force of a government circular. The Public Service Recruitment Secular No. 3 of 2007 provides on how public service employees should dress at work. Some of the prohibited outfits include short and tight clothes, jeans, t-shirts, slippers and transparent clothes. Hence, since you are working for the government, you are automatically disallowed to wear short skirts in your workplace. There is, however, no ban on you wearing a short skirt outside of work.

Your boss' wife is not a government employee. As such, she is not bound, at least in your workplace, by the circular mentioned above. If you are thinking of changing from wearing a short skirt to wearing tight jeans, like your boss's wife, please be informed that, that is also not allowed under the circular.

If you want to continue working in the government, we recommend you consider changing your wardrobe. Your lawyers can guide you further.

Employees with disability demand higher out-of-station allowance

In my company, employees travel a lot in order to service our upcountry clients. We have been paying them out of station allowance as one of their travel benefits, among others. Recently, we have run into difficulties with two of our employees who are disabled. They have come up with a claim that they should be treated differently from others when it comes to out-of-station allowances. They want this allowance to be increased to them, only on the ground that they are disabled. They are telling us that this is a statutory requirement. We are stranded and are unsure whether this is a legal requirement and what we should do?

14 April 2014

Perhaps for clarity purposes, legally, a person with a disability means a person with a physical, intellectual, sensory or mental impairment and whose functional capacity is limited by encountering attitudinal, environmental and institutional barriers. There are no provisions under the labour laws, including the Employment and Labour Relations Act and other subsidiary legislation made thereunder, which compels employers to pay persons with disability different rates from other employees, particularly when it comes to out-of-station allowances.

More akin to the above observation, Section 33 of the Persons with Disabilities Act, Act No. 9 of 2010 requires that an employer shall not treat a person with a disability different from a person with non-disabilities in relation, to among others, provision of any other benefits or other matters related to employment. This applies both ways.

With the above in mind, there are no legal provisions which require you to succumb to the additional demands of these employees. However, depending on the ability of the company, you may listen to their problems / difficulties which they encounter whenever they travel. If they have a valid point, you should consider assisting as a matter of courtesy. Your lawyers can guide you further.

Immigration too aggressive

We are a foreign company, registered and operating in Tanzania. Recently, immigration officers stormed into our offices and started

searching and asking for passports and work permits of our foreign staff. The immigration officers were extremely rude and aggressive to an extent that they were threatening us when one of the workers said he needed to go next door, where he lived, to get his permit. Is such a search allowed under the law? Immigration Tanzania needs to undergo public relations training, are such courses not offered to civil servants in Tanzania? All the action described above has been captured on our CCTV.

21 April 2014

Under our law, immigration officers have the power to enter upon any premises at all reasonable times and investigate any matter related to immigration. Further, the immigration officer may, without a warrant, arrest any person who they reasonably suspect to be a prohibited immigrant, or who has contravened the immigration laws of the land. Also, for the purpose of discharging their functions, the law has given power to the immigration officers to stop, enter, board and search any aircraft, train, vehicle, vessel, ship, building, premises, godown, container, boat or any part of Tanzania. The law also requires that any person arrested, searched or detained by the immigration officers should be informed as soon as it is reasonably practicable, and in a language he or she understands, of the reason for their arrest, search or detention.

Coming to your question: the search by the immigration department is lawful. What seems to be bothering you is the way the department approached your company, and the aggression with which the immigration officers have acted.

You have a right to be treated properly. Should you believe, as you do, that you were ill-treated you have every right to lodge an official complaint with the director of immigration services. Hopefully, you have noted the names of the immigration officers. We are unable to answer your last suggestion/question on PR skills but this could also be the subject matter of your query to the director of immigration.

Personal loan deduction in terminal benefits

I resigned from my employment a few weeks ago. During my employment, I had taken a loan on condition that I will ensure repayment in three years, but I resigned before the three years. My employer has retained some of my terminal benefits for loan repayment. He insists, and has shown me a clause in the loan agreement, which says that "the loan shall fall due upon termination of the contract of employment and the employer is entitled to deduct terminal benefits for realization of the loan." Is this allowed under our laws? I feel that this is improper as I can still pay the loan for the remaining duration.

12 May 2014

Perhaps for clarity purposes, you should understand from the outset that, under Section 28 of the Employment and Labour Relation Act, No. 6 of 2004 (ELRA), an employer is entitled to deduct employees' remunerations. Although there are a number of conditions to be fulfilled for such purposes, in your case the requirement will be satisfied if there is consent in writing (ERLA Section 28 (1) (b)). We understand that such consent is in place in your case.

The fact that a) you signed a loan agreement b) there is an express term that the loan shall fall due upon termination of the contract of employment and c) that the employer is entitled to deduct terminal benefits for realisation of the loan, confirms our conclusion. Many employers dish out

loans without such conditions which, unfortunately, becomes a sticky point when an employee resigns or is terminated before the loan is repaid. In fact, we act for many employers and we always recommend that this clause be expressly provided for in the loan agreement.

As a matter of practicability, put yourselves in the shoes of the employer. How would you expect to recover such a loan in a situation where you do not have security and are not sure of the borrower's fixed abode? There is no doubt that the loan was advanced to you by virtue of your service to your employment. The fact that you are no longer there allows your former employer to demand payment. Your lawyers can guide you further.

Right to work

Our constitution guarantees the right to work and the right to be paid remuneration for the work done. I am a recent graduate, and have been applying for work for almost two years now, with no avail. I even applied for jobs in the government. However, with the nepotism there, they never call me. I think this provision in the constitution is being breached, especially for recent graduates. Can I file a suit in Court against the government and force them to get us jobs? What is the procedure?

19 May 2014

We do understand that employment has been challenging as there are more graduates than the available employment. The right to work and right to remuneration for the work done are protected in the constitution to ensure that those two rights are protected. You, however, cannot sue the government because it has failed to employ you. Employment can either be through self-employment or employment by the government or private sector. Hence, if you are not employed by the government, the other employment options should be looked at.

The provision in the constitution on the right of employment does not mean that the government has to guarantee that every person has employment. We urge you to seek creative ways to earn an income legally, because such a suit against the government is unlikely to succeed. You can consult your lawyer for further guidance.

Recruitment of fat police

Is there no minimum standard when the police force is recruiting officers? One of my friends, who is totally unfit physically and weighs over 180 kgs, has been recruited. My other question is why do police officers behave so rudely, and is it necessary for a police officer to carry a gun when escorting a prisoner?

9 June 2014

Police General Orders (PGOs) dictate police behaviour in general. The procedure used for recruitment of police officers is prescribed under the PGOs whereby reference is made to the age, education, physical fitness and criminal record.

It is true that an unfit police officer will be able to do little good on the streets, but you must realise not all police officers are on the field. Some of the current heads of police are even heavier and remain in the forces because they are involved mainly in desk work and strategy. Your friend might be recruited because of his expertise in a particular area, and before you complain to anyone, you should check.

The PGOs also states that a police officer, whether on or off duty, is required to be courteous to the public. If a police officer is not courteous or is rude to any member of the public, action can be taken against them.

Furthermore, under the PGO, police

officers escorting prisoners are expected to carry guns and they are also responsible for conveying the prisoners by police transport.

Leave during World Cup

My team is playing in the World Cup and, although I have exhausted my leave for the year, I requested my employer to allow me four weeks extra this year. After all, this is an event that I will not see again. My employer has disallowed me to go, and my tickets will now be wasted. Can I sue my employer for this unfair treatment accorded to me? Can I complain to the Minister about this? How can I make my bosses life miserable?

23 June 2014

We read your question a couple of times over, to ensure we had not missed anything. And even after reading it over and over again, our answers are not going to please you.

First, we don't understand why this is the last World Cup you are going to watch. You have not disclosed that to us and you are surely aware that the World Cup is played every four years. Secondly, if you have exhausted your leave for the year, you cannot forcefully get unpaid leave without permission of your employer, who can deny it. In short, such leaves are discretionary. Third, the World Cup is no good reason for your employer to agree for you to go. Fourth, unless your employer had said you could proceed with the purchase of the tickets, suing them on the grounds that your tickets will be wasted is very unlikely going to succeed.

Writing to the Minister is possible, but there is very little the Minister can do. The Minister doesn't run the business, but your boss does. If you attempt making your bosses' life miserable, the boss can take you to task. We therefore advise you not to make any hasty moves, the World Cup is soon going to end, but you will have to continue living with your boss.

Without sounding like social advisors, we recommend that sensibility should prevail over any short-term irrational exuberances.

Flying to the international space centre

I have a new cheaper way to fly to the International Space Centre and want to know whether I can be stopped by anyone. From my reading, this is an object in no man's land and every human has the right to go out into space and to the Space Centre. When I pass immigration in Dar what should I tell them?

30 June 2014

We have received a number of your space questions and believe that we answered one about a year ago. Unfortunately, you have about 20 pending difficult space questions, most of which are not legal in nature. Hence, we have not answered them. We have however selected this one question that has a legal component.

To begin with, the International Space Centre was funded by the US, Russia, Canada and some other countries. No African country, including Tanzania, have funded this and understandably so. Hence, you have no automatic right to just walk in there. We are also not sure how you intend to get there. If you have devised a new way of cheaply getting into space, we recommend you contact both the American and Russian space agencies, amongst others, as they will be interested in this new invention of yours. You should also consider a patent, so that no one can steal your invention.

The Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, states that all space exploration will be done with good intentions

and is equally open to all states that comply with international law. No one nation may claim ownership of outer space or any celestial body. Activities carried out in space must abide by these international laws. The nations undergoing these said activities must accept responsibility for the governmental or non-governmental agency involved. Objects launched into space are subject to their nation of belonging, including people.

Objects, parts, and components discovered outside the jurisdiction of a nation will be returned upon identification. If a nation launches an object into space, they are responsible for any damages that occurs internationally.

From our research, which we recommend you also verify, we believe Tanzania has not signed the above treaty. Nonetheless, we believe that the treaty would likely apply to Tanzania if you decided to go up there. Hence, whilst you might not be automatically welcome to the International Space Station, you are free to go to space if you have the means, which you claim you do have.

As for immigration, it is likely they will not believe you. However, they cannot stop you going to space and will stamp an exit stamp from the United Republic. When you come back from space, you will not have any entry stamp into any nation. We therefore recommend that you explain the circumstances of your arrival to the immigration officers. In fact, on the day you arrive using this new method of yours, you might be the first person in Africa to have gone up to space as a tourist for a quick trip. With such a milestone, immigration will not cause you much of a hassle.

John F Kennedy stated the following, when encouraging NASA employees to go to the moon: "We choose to go to the moon. We choose to go to the moon in this decade and do the other things, not because they are easy, but because they are hard, because that goal will serve to organise and measure the best of our energies and skills, because that challenge is one that we are willing to accept, one we are unwilling to postpone, and one which we intend to win, and the others, too."

It is not a bad idea to dream because dreams do come true. The impossible becomes possible, and we wish you all the best in your mission.

Severance pay for misconduct

My company has been sued at the Commission for Mediation and Arbitration by one ex-employee, who was terminated for stealing certain equipment. After termination, we paid him his terminal benefits except for severance pay. Although he admits having been fairly terminated, this ex-employee now demands his severance pay as he worked for ten years. Is this employee legally entitled to this payment? Please advise.

7 July 2014

Section 42 of the Employment and Labour Relations Act, Act No. 6 of 2004 as well as Rule 26 of the Employment and Labour Relations (Code of Good Practice) Rules, 2007 Government Notice No. 42 of 2007 recognise severance pay as one of the terminal benefits. Severance pay is defined to mean an amount at least equal to seven days' basic wage for each completed year of continuous service with that employer, up to a maximum of ten years.

However, the same law does not place an obligation to an employer to pay severance to an employee who is terminated on grounds of misconduct. Your decision not to pay severance to the said ex-employee cannot be faulted, and the claim by the said ex-employee shall, on all fours, fail. We advise you to present your case well at the Commission

for Mediation and Arbitration in line with the aforesaid provisions of the law.

Sending refugees back

Is there a law that protects refugees when they enter a country? Can Tanzania afford accommodating refugees? Why can they not be sent back home? Is it legal for a refugee to enter Tanzania?

8 September 2014

There is a convention relating to the Status of Refugees. The convention was approved at a special United Nations conference in 1951. It entered into force on 22 April 1954 and was initially limited to protecting European refugees from before 1 January 1951 (after World War II), though states could make a declaration that the provisions would apply to refugees from other places.

A 1967 Protocol removed the time limits and applied to refugees "without any geographic limitation", but declarations previously made by parties to the convention on geographic scope were "grandfathered" in. Tanzania has ratified this treaty, and it has the force of law in Tanzania.

Article 1 of the Convention, as amended by the 1967 Protocol, provides the definition of a refugee and states a person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

The Organisation of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa adopted a regional treaty based on the Convention. The OAU adds to the definition that a refugee is a person compelled to leave his / her country owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality.

In the general principle of international law, treaties in force are binding upon the parties to it, and must be performed in good faith. Countries like Tanzania that have ratified the Refugee Convention are obliged to protect refugees that are on their territory, in accordance with its terms.

There are a number of provisions that states who are parties of the Refugee Convention and 1967 Protocol must adhere to. One of the most important provisions that states must be cooperative with the United Nations High Commissioner for Refugees (UNHCR) in the exercise of its functions. States must also help the UNHCR supervise the implementation of the provisions in the Convention.

A refugee has the right to be free from penalties pertaining to the illegality of their entry to or presence within a country, if it can be shown that they acted in good faith, that is, if the refugee believes that there was ample cause for their illegal entry / presence. Justifications can include the need to escape threats upon their life or freedom, so long as they swiftly declare their presence. This right is protected in Article 31 of the UNHCR, which states that the contracting states shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorisation, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

A refugee's right to be protected against forcible return, or refoulement, is set out in the 1951 Convention relating to the Status of Refugees. This convention states that no Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social or political opinion. Hence, refugees in Tanzania cannot be turned away. Tanzania also gets good technical and financial support from the UNHCR to assist such refugees.

Tanzania also has in place a national refugee policy which is line with the above. According to the UNHCR, from 1997 to 2002, Tanzania hosted the maximum number of refugees and gained international recognition for this.

Boss takes newspapers to toilet

My boss takes newspapers to the toilet to read. Is that not illegal and can I sue him? It's very unfair on the fellow employees and shows how discriminative our company is.

13 October 2014

We are unsure as to how the taking of papers to the toilet is unfair on you. What do you want to sue your boss for? Is it a deprivation of reading the papers that you are concerned about? The best approach to this is to look at this habit from a health laws perspective, although we do not see any specific law that deals with this.

An easier way is to perhaps consider buying your own newspapers, or get your HR team to speak to the boss to stop taking the papers to the toilet. Reporting this to the Occupational Health and Safety Association is also a possibility.

Furthermore, we are not sure how the reading of papers shows discrimination at the workplace. Unless there are other facts that you have not mentioned to us, your comments on discrimination are baseless and delusionary.

Boss forces to visit families

I work in a certain company, which operates both locally and internationally. A few months back a new expatriate has been seconded to Tanzania as our managing director. This new boss has come up with many changes, including a condition that he must visit all his senior managers' residences and homes. I am one of those managers, and feel this is completely a non-employment issue and which is none of my employer's business. Is there a requirement for the employer to visit employees' homes? Is there no law that takes care of this? I feel this is an interference on personal affairs.

3 November 2014

Of course what your boss is doing may sound strange in local context and on the basis of what you might have been used to. Equally, the labour laws have no requirement for an employer to visit employee's homes and or residences. Your boss might be doing this as a courtesy, as a tactic of getting closer to his senior staff. However, from a human resources point of view, knowing where your employees are staying is crucial. It is normal for human resources officers to verify, amongst others, employees' particulars including residence and physical addresses.

However, you cannot be penalised for failure to entertain your boss at your home. Since the labour laws are to ensure harmony at your workplace, you may raise this with the human resources office, trade union in your office and/or in the higher chain internally for it to be resolved.

Choice of social security scheme

I am employed in a private company in Tanzania. My employer has an agreement with one of the social security schemes registered in Tanzania to register all its employees in that scheme. I don't want to be a member of the scheme, as I have a scheme of my own choice in another pension fund. Am I bound to accept the social security scheme that my boss has a contract with?

10 November 2014

The Social Security (Regulatory Authority) Act, 2008 provides that, every employer in the formal sector shall be required to register his employees with any of the mandatory schemes, provided that it shall be the right of the employee to choose a mandatory scheme under which the employee shall be registered. Based on the foregoing provision, you are not bound by the contract that your employer has executed with the social security scheme. You can choose your own scheme.

Environmental and National Heritage Law

Protecting the environment and enabling economic development is a difficult balancing act for any country, and Tanzania is no exception. Often, development can take place, so long as the correct permits are obtained, and procedures followed. It is when these rules are not known about, or ignored, that business leaders can find themselves in trouble with the law.

Powers under Antiquities Act

I live in Musoma, in a very historic area that is surrounded by various structures that were built or came into existence decades ago. About four months ago, officers from the Antiquities Department of the Ministry of Natural Resources and Tourism came to our place to inspect what they said was a monument on my property. I wish to know what my rights are if there is, indeed, a monument on my site.

16 January 2012

The Antiquities Act provides for preservation and protection of sites that have an archaeological, historical or natural interest. Under this Act, the Minister is empowered to declare, by order in the Gazette, any place, site or structure to be a monument. Hence, the antiquities department cannot one day wake up, appear on your plot and claim that an area is a monument. The gazettement of the place, site or structure must happen.

Under the Antiquities Act, the Director of Antiquities and any person authorised by them may, at all reasonable times (a) enter and inspect any monument; (b) fence, repair and otherwise protect or preserve any monument; (c) search and excavate for relics in any monument and remove any relics hitherto undiscovered provided that: (i) where the monument is a place of ordinary habitation or occupation, the director and any such person aforesaid shall give the occupier not less than forty-eight hours' notice in writing of his intention to exercise any of the powers specified in this subsection. The Act further states that any person who wilfully obstructs the director, or any other person authorised by him under the Act, shall be guilty of an offence.

If your property does contain a monument then, under the Act, the director has the power to enter to view it, after giving you 48 hours' notice. In your case, it seems like you had no such prior notice.

We wish to point out that monuments and areas that fall under the Antiquities Act are well known and gazetted. It is therefore very unlikely that department officials would merely appear one day on your property. We strongly suggest that you verify the identity of these so-called officials with the Ministry.

Permit for borehole

I own a big triple story house in Upanga, and wish to construct a borehole in my property. My question is: why should I have to get a permit for something I want to do on my own land? Is it not in breach of my constitutional freedom? What should I do?

16 January 2012

You are taking your so-called constitutional rights a little too far. Merely having a right of occupancy doesn't entitle you to be the king of the land you live on. The rights you have are surface rights within boundaries of the law. Anything you do beyond that requires permission and rightly so. For example, if you believe your land has gold, and you intend to conduct mining operations, there is a whole process you would need to follow that may also end up in the revocation of your title to enable the mining to take place. Additionally, the gold does not belong to you either, even though it might be under your land.

To construct a borehole, the water authorities must permit you to do so. This is because boreholes can have adverse effects on other water supplies, including other bore halls next door and beyond.

The Water Resources Management Act (WRMA) specially provides for this. It says that any person who, contrary to the Act's provisions, constructs, sinks or enlarges a well or borehole without a groundwater permit duly granted by the Basin Water Board

commits an offence. Anyone convicted of such an offence shall be liable to a fine of not less than TZS 500,000, or imprisonment for a term not exceeding six months or both.

You must also note that the Water Utilisation (Control and Regulation) Act of 1974, which was repealed by the WRMA, set strict conditions on borehole. This Act required a minimum distance between boreholes of 230 metres and stated that the maximum amount of water that could be extracted per day was not to exceed 22,700 litres. This is in the interest of equitable distribution and the efficient usage of water.

The law applies equally to all: it does not matter whether you own a triple storey house in Upanga, or elsewhere.

Hunting during closed season

Does Tanzania have months where hunting is not allowed? How does one get permission to hunt during that season?

16 January 2012

In Tanzania, the hunting seasons lasts for about six months of the year. The rest of the year is known as the closed season. According to the Wildlife Conservation Act 2009, the Director of Wildlife may issue a permit for one to hunt during the closed session or season. However, this permit will only be granted with the consent of the Minister. The Act provides that any person who hunts during the closed session or season without a permit may be fined and/or imprisoned.

Motor in bicycle

I have fitted my bicycle with motor so that it runs on kerosene. Do I need to register it as a vehicle?

23 July 2012

In law, a bicycle is referred to as a vehicle which has at least two wheels, and which is propelled by means of pedals or hand cranks solely by the physical energy of the person riding it. Your bicycle, when fitted with a motor that uses kerosene, becomes self-propelling. As a result, it turns into a motorcycle, as defined under the Road Traffic Act. Hence, it will be liable for registration. You will also need to insure your converted bicycle.

Aquaculture in Tanzania

I have returned to Tanzania after completing my studies in one of the Scandinavian countries. During my studies, a friend and I agreed to start a large-scale fish farming project. Is this sector regulated? What do I need to do? Please advise, as I am eagerly waiting to start the venture with my potential partner.

27 August 2012

The fishing industry is regulated under the Fisheries Act, among other laws governing the sector. Under the Fisheries Act, a permit must be obtained before you start venturing into this business. If you intend to borrow money from local banks, you might want to register a limited liability company. You should also ensure that there is a proper shareholders' agreement in place.

As part of your activities and, depending on the size of the project, you may be required to conduct an environmental impact assessment and to obtain water user rights. It is wise to consult your lawyers to help you address these issues.

Founders of nation historical heritage

I am a Tanzanian activist who advocates for equality and fair treatment. I have noted that some residences of former leaders are given special treatment, and well taken care of using public funds. Is there a law which obliges the government to preserve such

places? Does the law allow public funds to be used for such undertakings?

10 September 2012

It is the duty and responsibility of the government to regulate and control the preservation, disposition and honouring of historical heritage, documentary materials and objects, including tangible and non-tangible things, of the founders of the nation. The governing law regarding this issue is the Founders of the Nation (Honouring Procedures) Act.

However, for clarity purposes, the founders of the nation are limited to the first President of the United Republic of Tanzania and first President of Zanzibar. We are not sure if the place you are referring to relate to the founders of the nation within the meaning of the Act. However, we think there is nothing wrong with the law, as it gives effect to the preservation of our nation's history. A nation without its own history is meaningless. You may wish to read the Nation (Honouring Procedures) Act. This will allow you to acquaint yourself with the regulation of the honouring procedures and preservation of historical heritage of the founders of the nation.

Mining in a forest reserve

I am a small-scale miner and wish to purchase a primary mining licence. However, the licence sits within a forest reserve. Does the forest reserve affect mining rights? Can I buy it? How is such a licence defined?

5 November 2012

The Forest Act allows mining activities within a forest reserve. However, you must get the consent of the Ministry of Natural Resources and Tourism prior to starting mining activities. There are also some fees to be paid per hector to mine in a forest reserve.

The Mining Act 2010 states that a primary mining licence for any minerals shall not be granted to an individual, partnership or body corporate unless (a) in the case of an individual, the individual is a citizen of Tanzania; (b) in the case of a partnership, it is composed exclusively of citizens of Tanzania; (c) in the case of a body corporate, it is a company and (i) its membership is composed exclusively of citizens of Tanzania; (ii) its directors are all citizens of Tanzania; (iii) control over the company, both direct and indirect, is exercised, from within Tanzania by persons all of whom are citizens of Tanzania.

As for the definition of a primary mining licence, the Mining Act 2010 provides one. According to this Act, a small-scale mining operation is one whose capital investment is valued at less than USD 100,000, or its equivalent in Tanzanian shillings.

Hotel shut down

I have a hotel in Mwanza on the shores of Lake Victoria. A few months ago, some environmental officers came to check our premises. They have now issued us a notice to shut down our hotel. They have served us with a restoration order. How can they just simply shut me down like this when there are guests occupying the hotel? Some of the restoration demands are so unreasonable that it would entail moving either the hotel from the lake, or the lake from Mwanza, in order to comply with them. This is unfair. Please guide me.

25 March 2013

The council established under the Environmental Management Act (EMA) 2004 has very wide powers to shut down areas that are a threat to the environment. Industries and hotels are included within the council's powers.

Section 151 of the Act reads (1) Subject to any other provisions in this Act, the Council may issue, on any person in respect to any matter relating to the management of the environment, an order known as environmental restoration order. (2) An environmental restoration order shall be issued to: require the person on whom it relates to restore the environment as near as it may be to a state in which it was before the taking of the action which is the subject of the order; (a) require the person on whom it relates to restore the environment as near as it may be to a state in which it was before the taking of the action which is the subject of the order; (b) prevent the person on whom it relates from taking any action which would or is reasonably likely to cause harm to the environment; (c) award compensation to be paid by the person on whom it relates or to other persons whose environment or livelihood has been harmed by the action which is the subject matter of the order; and (d) levy a charge on the person on whom it relates which, in the opinion of the Council, represents a reasonable estimate of the costs of any action taken by an authorised person or organisation to restore the environment to a state in which it was before the taking of the action which is the subject matter of the order.

The Act provides further that, in exercising the powers under this section, the Council shall (a) be guided by the principles of good environmental management in accordance with the provisions of the Act; and (b) explain to the persons against whom the order relates the right of appeal to specified appellate organs.

Your restoration order will identify specific issues that you must comply with before it can be lifted. However, please note that the EMA provides for the establishment of an environmental appeals tribunal. If the restoration order issued to you is impossible to comply with, you can appeal to this tribunal. However, prior to doing so, you might want to reread the restoration order. We find it hard to believe that the council would order you to move from the lake. Your lawyers can guide further.

Licences for animal feed

I am a lawful abiding citizen, living for gain in Dar. I want to support the government in its new policy of Kilimo Kwanza, which aims to encourage growth in the agriculture sector. I plan to focus on the business of making animal feed from various resources, which are easily available in my area. In addition, I have a friend from Europe who has offered to send me simple machines for that purpose. The local government officer tells me that I might need a licence. Is this true? It is quite disappointing that there is so much bureaucracy in the President's initiative.

15 April 2013

The fact that you want to support government efforts through Kilimo Kwanza policy is commendable. However, that does not mean that the law should not be followed. You also seem to be over-sensitive about our laws in Tanzania. Your sector, as in other countries, is regulated in Tanzania, and rightly so.

To start your business, you need to comply with the law which regulates the making of animal feeds. The law governing this area is the Grazing and Animal Feed Resources Act No. 13 of 2010. This law which provides for the management and control of grazing lands, animal feed resources and trade and to provide for related matters. In this Act, animal feed resource is defined to include animal feeds, feedstuffs and feed additives.

This law has further made it an offence

for a person to manufacture animal feeds without a permit. To obtain a permit, you must first register the premises where you shall be manufacturing such animal feedstuff.

Your application for a permit should be made to the relevant directorate within the Ministry of Livestock and Fisheries Development.

Appealing Minister's decision

I have applied for an environmental clearance and have been told that the Minister is likely to reject it. Can I go to Court?

14 October 2013

Section 204 of the Environmental Management Act has created the Environmental Appeals Tribunal. The section states that any person who is aggrieved by (a) the decision or omission by the Minister on; (b) the imposition of or failure to impose any condition, limitation or restriction issued under this Act or the regulations made under this Act; and the decision of the Minister to approve or (c) disapprove an environmental impact statement, may within 30 days after the occurrence of the event against which he is dissatisfied, appeal to the Tribunal in such manner as may be prescribed by the Tribunal.

From the above, the correct channel is first to appeal to the Tribunal, and then the High Court. In your case, you will have to wait for the initial decision from the Minister before appealing.

Stop order for building construction

I am undertaking a simple construction project, half a kilometre away from a river bank. There are other developments nearby, and this is not the first development in the area. A few weeks ago, some environmental officers issued a stop order against the development even though I have a building permit. Is this legal, and why would a development require an environmental certificate?

4 November 2013

Section 81 of the Environmental Management Act of 2004 provides that (1) Any person, being a proponent or a developer of a project or undertaking of a type specified in the Third Schedule to this Act, to which environmental impact assessment is required to be made by the law governing such project or undertaking or in the absence of such law, by the regulations by the Minister, shall undertake or cause to be undertaken, at his own cost, an environmental impact assessment study. (2) An Environmental Impact Assessment study shall be carried prior to the commencement or financing of a project or undertaking. (3) A permit or licence for the carrying out of any project or undertaking in accordance with any written law shall not entitle the proponent or developer to undertake or to cause to be undertaken a project or activity without an environmental impact assessment certificate issued under this Act.

The third schedule provides the following wide categories (a) any activity out of character with its surrounding; (b) any structure of a scale not in keeping with its surrounding; and (c) 1. Major changes in land use, 2. Urban Development, 3. Transportation, 4. Dams, rivers and water resources, 5. Aerial spraying, 6. Mining, including quarrying and open-cast extraction, 7. Forestry related activities, 8. Agriculture including, 9. Processing and manufacturing industries including, 10. Electrical infrastructure. 11. Management of hydrocarbons including the storage of natural gas and combustible or explosive fuels, 12. Waste disposal, 13. Natural conservation areas, 14. Nuclear Reactors, 15. Major development in biotechnology

including the introduction and testing of genetically modified organisms and 16. Any other activity as may be prescribed in the regulations.

You can see that any urban development needs an environmental impact assessment. Hence, you should apply for one.

Different type of waste

I have moved to Tanzania, and find it hard to believe that you still do not have policies that mandate the separation of household waste, which is then dumped into garbage trucks according to the type of waste. Collecting all kinds of waste as general waste is very harmful to the environment, and recycling is non-existent. How can this be fixed?

17 November 2014

The Environmental Management Act of 2004 has a specific provision that deals with this. Section 114 (1) states that for the purposes of ensuring minimization of the solid waste in their respective areas of jurisdiction, local government authorities shall prescribe: (a) for different types or kinds of waste or refuse or garbage to be separated at the source; (b) for standards to guide the type, size, shape, colour and other specifications for refuse containers used; and (c) for mechanisms to be put in place to involve the private sector and Non-Governmental organisations on planning, raising awareness among producers, vendors, transporters, manufacturers and others on the need to have appropriate containers and enhance separation of waste at source.

Unfortunately, to the best of our research, the local authorities in Dar es Salaam have not prescribed how the waste should be separated at source. The Act provides for the local authorities to mandatorily provide for this but, to the best of our knowledge, they have not done so.

You should rightly direct your enquiry to your local authority. If it fails to respond, or responds in the negative, you can file the matter in Court. The Court should then direct the local authority to act in compliance with the law.

Fishing in small vessel

I am an expatriate, working in Tanzania. I like to spend my weekend fishing with my son. Recently I was told by my colleague that fishing of whatever nature is not allowed without getting a licence. Without one, I was warned that I could get myself into serious legal trouble. Is this true?

22 December 2014

The Fisheries Act of 2003 provides that no person shall engage in fishing unless he applies for, and is granted, a licence by the director or any other authorised officer. The Fisheries Act provides some exemptions to the effect that no licence or permit or permission shall be required for fishing by means of any of the following methods: (a) fishing for prawns using cloth (*Kutanda Uduvi*); (b) using rod and line or hand line from the beach without using a fishing vessel whether for sport fishing, domestic consumption or sale, except in a declared trout stream or spawning ground; and (c) small cast nets.

From what we make out from your question, it is likely that you are fishing out at sea in a boat. This does not fall into any of the exemptions. Hence, a licence is required. We suggest you do, indeed, apply for such a licence.

Lawyers, Statutory Interpretation and Court Procedures

It is one thing to have a valid legal argument, it is quite another to navigate to procedural complexities of a dispute. Issues such as the law of evidence, lost paperwork, dispute limitation periods, misleading translators, Court fees even the death of a Court defendant can all catch out the unwary litigant. Here, we outline some of the more common problems faced by those involved in Court disputes, and explain how those problems can be avoided.

Proof in ex parte hearing

I sued a company in the Resident Magistrates Court, and the case proceeded without the defendant appearing. It is strange that, when delivering the judgment, the Court did not rule in my favour on the grounds that I did not sufficiently prove my case. Was this proper? Was the Court not supposed to believe me and judge in my favour as the defendant said nothing and called no witnesses as it wasn't present?

26 March 2012

It is a matter of law that every claim in a civil suit must be proved on the balance of convenience. Perhaps you did not establish your claims to the required standards. We cannot, in this instance, fault the Court as we do not know what testimony you gave and how the Court evaluated the evidence. This can only be done by examining the judgment.

Simply because you had an ex parte hearing does not mean you must win the case. It is tantamount to kicking a penalty in an empty goal, where the chances of missing still exist.

Lying in Court

The plaintiff in a case has filed an affidavit that is full of lies. In fact, some are so obvious that any smart Judge can pick up the lie. Is such lying not an offence?

6 August 2012

Lying in an affidavit is an offence of perjury. The law states that any person who, in any judicial proceeding, or for the purpose of instituting any judicial proceeding, knowingly gives false testimony touching any matter which is material to any question then depending in that proceeding or intended to be raised in that proceeding, is guilty of the misdemeanour termed "perjury".

It is immaterial whether the testimony is given on oath or otherwise. It is immaterial whether the false testimony is given orally or in writing. Furthermore, any person who aids, abets, counsels, procures, or suborns another person to commit perjury is guilty of the misdemeanour termed "subornation of perjury."

If guilty, perjury can result in imprisonment of seven years.

VAT on Commercial Court fees

My attorney filed a case worth millions of dollars. The fee was assessed as per the attorney's invoice at 2%. However, in the invoice, there is a component of VAT. Does VAT apply on fees paid into Court?

12 August 2013

No, VAT should not apply. Also, the 2% on filing at the Commercial Court is capped at TZS 10M. Since in your case you claim is in the millions of dollars, the maximum fee you will have to pay is TZS 10M, and not 2% of the amount in dispute. We recommend you relook at the calculations as you will be overpaying according to the invoice. You can also demand from your attorney a receipt of the official fees he or she paid into Court will likely give you a correct assessment.

Commercial Court fees too high

We have a matter that we intend to file at the Commercial Court only to find out that the fees are 3% of the subject matter. Our action is based on an amount in excess of TZS 20B, meaning that our Court fees assessment will be TZS 600M. Are there no ways to get a reduction on the Court fees? How can a Court charge such high fees for a matter?

13 August 2012

The High Court Commercial Division is one of the most admired Court's in East Africa, and

is manned by extremely competent Judges. The whole motto of this Court is to dispose of matters with the greatest speed possible. With speed come costs.

Your concern of Court fees has been recently addressed in the Commercial Court fees rules 2012, which came into force a few months ago. The new fees structure is as follows: 2% of the value of the subject matter, provided that the total amount of fee payable shall not exceed TZS 10M. These new rules revoke the old rules hence, the maximum amount of Court fees anyone would pay at the Commercial Court is now TZS 10M.

The same rules provide that, where a suit is successfully mediated or settled out of Court within six months from the date of filing, a Judge or a Registrar may make an order of refund of one quarter of the filing fees to a party seeking refund.

And, just to clarify, the old fees were not a straight 3%. Rather, it was 3% on the first TZS 200M, and 1% thereafter. Hence, on your TZS 20B dispute, the fees would have been about TZS 204M and not TZS 600M.

Red for blood, red for Simba

For many years our national flag contained the colours of green yellow, black and blue, with each colour having its own connotation. However, under our history there have been various wars, including the Maji Maji rebellion, where many of our forefathers died. Tanzania has also assisted many countries in their independence struggles. As such, I believe that there should be a red colour for blood in the flag. Also, most Tanzanians support Simba. Hence, red should be included. How do I go about recommending this?

20 August 2012

Your reasons for adding a colour as far as the wars and struggles are concerned are understandable. However, the reason that most Tanzanians are Simba Sports Club followers is not a very strong ground for changing our national flag. There are also other clubs, like Yanga, who have different colour schemes.

Section 5 of the Emblems Act provides that the President may, by proclamation, modify the national flag or the Coat of Arms. It is worth noting here that, despite that power by the President, the law is silent as to reasons for such modifications. It is for the President to decide whether your reasons are good or not, and whether the flag should be changed or not.

Just so that you know, our flag has not been modified since 1964. For any changes, you will have to forward your proposal to the President for consideration.

Tanzanian laws refer to males only

I have been reading a number of Tanzanian laws, which continuously refer to the male gender only. He shall do this, he shall not do that, he shall be liable to, etc. Does that mean that the law does not apply to the weaker sex, the female?

20 August 2012

You are right that the law does refer to males, but that does not exclude the females. The Interpretation of Laws Act which, can generally be read into all Acts, very clearly states in Section 8, that in any written law words importing the masculine gender shall include the feminine; words importing the feminine gender include the masculine; words in the singular number include the plural, and words in the plural number include the singular.

Hence, wherever it makes sense, the law applies equally to females as to males.

The attorney-client privilege

What is attorney-client privilege, and does it apply in Tanzania? How do I ensure that I am protected when I speak to my attorney? Can I disclose all information to my attorney?

20 August 2012

The attorney-client privilege is one of the oldest privileges recognised in law. At its most basic, the privilege ensures that one who seeks advice or aid from a lawyer should be completely free of any fear that his secrets will be uncovered. Thus, the underlying principle of the privilege is to provide for sound legal advice and advocacy. With the security of the privilege, the client may speak frankly and openly to their legal counsel, disclosing all relevant information to the attorney and creating a zone of privacy. In other words, shielded by the privilege, the client may be more willing to communicate to counsel things that might otherwise be suppressed. In theory, such candour and honesty will assist the attorney in providing more accurate, well-reasoned professional advice. The client can also be secure in the knowledge that his statements to his lawyer will not be taken as an adverse admission, or used against his interest.

For its policy considerations and justifications, the attorney-client privilege has a very real practical consequence: the attorney may neither be compelled to, nor may he or she voluntarily disclose, matters conveyed in confidence to him or her by the client for the purpose of seeking legal counsel.

Although there is no single authority on the attorney-client privilege, it has been defined as follows: "Where legal advice of any kind is sought from a professional legal adviser in his or her capacity as such, the communications relating to that purpose, made in confidence by the client, are at his (or her) instance permanently protected from disclosure by the client or by the legal adviser, except the protection be waived."

Hence, no matter how the attorney-client privilege is articulated, there are four basic elements that are necessary to establish its existence: (1) a communication; (2) made between privileged persons; (3) in confidence; (4) for the purpose of seeking, obtaining or providing legal assistance to the client.

It is also always recommended that you do a conflict of interest check, to ensure that your attorney does not represent the other party. The worst that can happen is that you and the other adversary party share the same attorney.

Just as in other common law jurisdictions, the attorney-client privilege is applicable in Tanzania.

Additional witnesses on appeal

In 2001, I was charged in the District Court along with others with two counts: stealing by public servant and being in possession of offensive weapons. After a hearing at the trial Court, I was found with no case to answer, as opposed to my co-accused. Surprisingly, the Director of Public Prosecutions (DPP) appealed to the High Court. The Judge recalled three witnesses and called one new witness to hear their evidence. In the end, the High Court reversed the acquittal order, held that I had a case to answer and decided that I should join my co-accused for defence at the trial Court. Was it right for the Judge to hear new evidence?

10 September 2012

Under the Criminal Procedure Act, the law clearly allows any Court and at any stage of the trial to summon any person, or recall any witness, if his or her evidence appears to

be essential to the just decision of the case. Again, the High Court is empowered, when dealing with appeals from the subordinate Courts, to take additional evidence (if necessary) by itself, or directly to be taken by the subordinate Court. However, the High Court must record its reasons for calling additional evidence and should not misuse it, such as turning the matter into a re-trial, filling gaps in the prosecution case, or changing the nature of the case against an accused person.

We do not have Court records in our possession. Hence, we cannot comment on whether the High Court stated its reasons for calling such evidence. Your attorneys can guide you further.

Judges wasting paper

I am a new advocate and went to Court to peruse one file that I am involved in. To my utmost dissatisfaction, I found that the trial Judge is using one page to write a few lines in a font size that even a semi-blind man could read with. Isn't this a waste of public resources? If all Judges write like that, then we will need to cut more trees to supply the paper. Why can't Judges economise on the paper they use.

17 September 2012

From what we gather above, you are dissatisfied that Judges are not using the paper space efficiently i.e. when the Judges take down the proceedings, he or she wastes a lot of the paper perhaps by writing in a very large font.

This is subjective but, if the font size is as big as you say, then perhaps you can write to the Chief Justice, giving your proposal that he writes to Judges and Magistrates to use paper efficiently. It is not unwise to show the Chief Justice some samples so that he gets a feel of your concern, which might be genuine.

Never ending case

I opened a recovery case at the Kinondoni District Court in Dar es Salaam. This is the sixth time the matter has been adjourned because the Magistrate is indisposed, whatever that means. The person postponing it also has no sense of justice, let alone a sense of calling cases on time. We go to Court and wait for hours before being informed that the Magistrate is not around. There is not one person there who thinks highly of this Court. It might be worth for it to be closed down, and the premises be used by another government institution than a by a Court that is non-functional. Due to the delay, I opened the same case at the Kisutu Court, after being informed that this was a faster Court. The other side has filed preliminary objections that I cannot open this case here. What should I do?

24 September 2012

We are sorry to hear about the delays you have faced. If you think the administration of the Court is not up to standard, you can write an official letter to the Chief Justice (CJ), who can assign someone to look into this. These matters do not always get reported to the CJ and, if they do, things may improve.

Now to answer your question: our law prohibits the filing of a suit when there is another case pending in a Court, with the same subject matter and same parties. That is provided under Section 8 of the Civil Procedure Code. The code states that no Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in Tanzania having jurisdiction to grant the relief claimed.

It is likely that the preliminary objections will succeed and that you will end up at the Kinondoni District Court. Your lawyer can guide you further.

Interpreting the law

There is a case I am involved in where the law is unclear in that there are certain words that are quite ambiguous but are critical to the success or failure of my case. Obviously, both sides are trying to construct the law in their favour. How should the law be constructed? Why can't the draftsperson draft a watertight law that will not lead to such confusion?

8 October 2012

The first and most elementary rule of construction is that it is to be assumed that the words and phrases of technical legislation are used in their technical meaning, if they have a technical meaning. Otherwise, such words are used in their ordinary meaning. The words and phrases must also be construed according to the rules of grammar. These are some of the limbs of the literal interpretation of the law. Various case law has stated that if there is nothing to modify, alter or qualify the language which the statute contains, it must be construed in the ordinary and natural meaning of the words and sentences.

The other way a statute can be interpreted is through the mischief rule, which is a rule of construction that Judges can apply in order to discover parliament's intention. In applying the rule, the Court is essentially asking the question what was the "mischief" that the previous law did not cover, and which parliament was seeking to remedy when it passed the law now being reviewed by the Court? The other commonly-used rule is the golden rule. This rule allows a Judge to depart from a word's normal meaning in order to avoid an absurd result.

It is unfortunate that you have not told us what law and what words are contentious but, when interpreting the law in question, the above rules of construction will likely apply.

Answering your second question on why the draftsperson cannot tighten the law so that there are no loopholes: you must realise that, at the time of drafting, the draftsperson may not be able to contemplate all the scenarios. What is important is that the law change as and when case law develops. This helps ensure that the law remains practical for changing times. Drafting a law is no easy task.

Interpreter misinterpreting

I appeared in a case where a party from outside the country had an interpreter. After the proceedings, I was told by someone that the interpreter was not truthful in the way he interpreted. Is this not an offence?

3 December 2012

Yes, it is an offence, the Penal Code has provided for exactly such a situation. The Penal Code states that any person who, having been lawfully sworn as an interpreter in a judicial proceeding, wilfully makes a statement material in that proceeding which he knows to be false, or does not believe to be true, is guilty of the misdemeanour termed "perjury". Section 104 further states that any person who commits perjury or suborns perjury is liable to imprisonment for seven years. However, Section 105 states that a person cannot be convicted of committing perjury or of subornation of perjury solely upon the evidence of one witness as to the falsity of any statement alleged to be false.

Exhibit disposal order in Court

A few years ago, my radio was stolen. I reported the matter to police. After an investigation, the said radio was recovered

from the accused person's house and he was charged in Court for stealing. The police kept my radio as an exhibit. After a long attendance in Court, and without any hearing, the prosecutor asked the Court to withdraw the case against the accused person. He was set free. I have been advised to apply to the same Court for an order for the police to release my radio. What documents do I need to have? And what are the possibilities of succeeding?

10 December 2012

The law allows the prosecutor to withdraw the charge but that is not always the end of the matter. The police are at liberty to re-arrest the accused person and charge him afresh. We are unsure if the police are still interested to further prosecute the accused person. Assuming the police want to re-file the case, they are justified to withhold the exhibit / radio as part of their evidence.

On the other hand, if the police have abandoned the charges against the accused person, then you are entitled to take your radio, as long as it really is yours.

In our opinion, since there is no subsisting charge in the Court against the accused person, the Court is *funtus offio* in so far as the charge is concerned. The fastest way to get back to the radio is to follow it up with the police. If that fails, your attorney can guide you on the formalities to make a miscellaneous application in Court.

Unhappy with Commercial Court Rules

I have read with great displeasure the Commercial Court Rules (CCR) that have been sent out to the banks and am unhappy at all the bureaucracies introduced therein. I think there is an agenda in trying to make the Commercial Court like the other Courts, slow and tedious.

3 December 2012

We are not sure what the question is above. In fact, when we saw your question, we were not sure how to answer it. However, after reading it, and totally disagreeing with your comments, we thought we would take this opportunity to guide you on some of the new rules in the Commercial Court. We also doubt that you have been reading the right CCRs, as everything in the current new rules of this Court are meant to avoid delays.

Rule 17 states that (1) Notwithstanding the provisions of Rules 9 to 33 of Order V of the Code, substituted services may be affected electronically by way of e-mail or facsimile using the addresses previously disclosed and used between the parties in their business transaction. (2) A copy of such service shall be simultaneously copied to the Court (3) For the avoidance of doubt, a sent status report shall be deemed as proof of service. Hence, you can see that the new rules have introduced this new form of electronic service.

Rule 32 states (1) Except for circumstances not provided for under these Rules, the provisions of Order VIIIA and Order VIIIB of the Code shall not apply in determining speed track of commercial cases. (2) All commercial cases shall proceed and be determined within a period of ten months from the date of commencement, and not more than twelve months. (3) Thirty days before the expiry of the time prescribed under sub rule (2), any party to the proceedings may orally apply to the Court for extension of life span of the case, and the Court may upon sufficient reasons adduced grant the application and the party in favour of whom the extension is made shall bear the costs of such extension, unless the Court directs otherwise. Hence here you can see that the rules advocate that a case must be completed in a maximum of 12 months which is surely beneficial to the Banks.

Rule 58 states that the Court may, on an application by a party, allow a witness to

give evidence without being present in the courtroom, through a video link at the cost of the applicant. Again, you can see here that a witness need not come all the way to a hearing. Instead, he can give evidence by a link, further saving time and expenses for a party.

Rule 67 states that (1) The Court shall, at the conclusion of hearing deliver judgment within a period of sixty days in case of a judgment or thirty days in case of ruling. (2) Where a Judge fails to comply with the provisions of sub rule (1), he shall state in the Court record the reason for such failure. (3) Every judgment shall embody at the end a summary of the reliefs granted by the Court. This is also beneficial to the banks, as they can be assured of an expeditious ruling or judgment.

Many a time advocates appearing in Courts go unprepared and start reading files in corridors. This has also been addressed in Rule 44 which states that (1) An advocate who appears in the Court shall be: (a) fully acquainted with facts of the case in relation to which he appears and fully authorised to enter into agreements, both substantive and procedural, on behalf of his client; and (b) prepared to discuss any applications that have been submitted and remain outstanding. (2) Failure to comply with this rule shall cause the advocate on record to be condemned to pay costs, unless sufficient reasons are adduced.

Rule 64 introduces skeleton arguments and states that submissions shall proceed orally, preceded by skeleton written arguments submitted to the trial Judge at least three working days before the oral submissions, provided that failure to prepare skeleton submissions shall not be a ground for adjournment or seeking extension of time to file skeleton written arguments and the hearing shall proceed notwithstanding the failure to present such skeleton written arguments.

Evidence in chief will now be given by affidavit under Rule 49 which states (1) In any proceedings commenced by plaint, evidence-in-chief shall be given by a statement on oath or affirmation. (2) The statement shall be filed within seven (7) days of the completion of mediation and served as directed by the Court: Provided that a party's obligation to serve a witness, statement is independent of any other party's obligation to file and serve its respective statement. This will further reduce time in disposing of a case.

Coming into force an Act

When does an Act come into force? I find it very hard to understand when an Act is in force and when it isn't. What about regulations under an Act? What if the regulations bring in new provisions not in the Act?

24 December 2012

The Interpretation of Laws Act (ILA) has specified when an Act would come into force. In section 14 it states that every Act shall come into operation on the date of its publication in the Gazette or, if it is provided either in that Act or in any other written law, that it shall come into operation on some other date, on that date. The ILA further says where any written law, or portion of a written law, comes into operation on a particular day, it shall come into operation at the beginning of that day.

Where a date appearing on a copy of an Act printed, or purporting to be printed, by the government printer, purports to be the date on which the President assented to such Act or to a portion of it, that date as so appearing shall be evidence that such date was the date on which the President so assented, and shall be judicially noticed accordingly. Hence, in order to understand when an Act comes into force you would

need to read the Act itself and see if there is any other date that is mentioned therein. If no such a date is mentioned, the Act will come into force on the date of its publication in the government Gazette.

As for the regulations, the ILA clearly states that subsidiary legislation shall not be inconsistent with the provisions of the written law under which it is made, or of any Act. Subsidiary legislation shall be void to the extent of any such inconsistency.

Further, where any subsidiary legislation purports to be made in exercise of a particular power or powers, it shall be deemed also to be made in exercise of all powers under which it may be made. It shall be presumed, in the absence of evidence to the contrary, that all conditions and preliminary steps precedent to the making of subsidiary legislation have been complied with and performed.

The ILA also states that, where a written law confers a power to make subsidiary legislation, it shall be deemed also to include a power exercisable in the like manner and subject to the like conditions (if any) to amend or repeal any such subsidiary legislation; and if the person on whom such power is conferred has been replaced wholly or in part by another person, the power conferred by this subsection upon the original person may be exercised by the replacing person concerning all matters or things within his jurisdiction as if he were the original person. And where a written law confers power on a person to make subsidiary legislation for any general purpose and also for any special purposes incidental thereto, the enumeration of the special purposes shall not derogate from the generality of the powers conferred with reference to the general purpose.

Electronic evidence in Court

My ex-boyfriend keeps sending emails containing threats and degrading and immoral words intending to hurt me. I persevered for a long time. However he has not stopped, and is now sending such emails about me to my family members. I wanted to report the matter to the police because I know it is a criminal offence. However, some people told me it's a waste of time because I don't have any other evidence apart from the emails. Kindly advise whether emails are admissible in Court as evidence.

31 December 2012

The Evidence Act was amended to the effect that electronic evidence is admissible in Court as evidence. Also, there are High Court judgments in which the Judge allowed electronic evidence hence the same may be admitted in Court as evidence.

However, the opposite party may object to the admissibility of the said emails on legal grounds and the Court will make a ruling on the same. We encourage you to report the matter to the police and tender the said emails to them as evidence. The law will then take its course.

Foreign lawyer in Tanzania

I lost a case at the High Court in Dar es Salaam and decided to appeal. Can my English lawyer, who practices in London, be allowed to represent me at the Court of Appeal although we have already lodged the appeal? What is the notice period that the Court of Appeal gives before the hearing is scheduled?

11 March 2013

There are many competent attorneys in Tanzania. However, if you still believe that the English lawyer can add value to the case,

then Rule 33 (4) of the Court of Appeal Rules (CAR) states that any other person entitled to appear as counsel or advocate before any Court of unlimited jurisdiction in any country in the Commonwealth shall, if licensed in that behalf by the Chief Justice and subject to payment of the prescribed fee, have the right of audience before the Court in respect of any one appeal or application, including any cross-appeal heard with it, or any two or more appeals or applications consolidated for hearing.

Hence, the English lawyer can appear at the Court of Appeal subject to getting a licence from the Chief Justice. Please note that the Chief Justice may deny this. A mere application to appear does not mean it will be granted.

On the notice period prior to hearing, the CAR provide that the Registrar shall give all parties to an appeal not less than 14 days' notice of the date fixed for the hearing of the appeal; but it shall not be necessary to give that notice to any party with whose consent the date for the hearing was fixed.

Also note that the CAR provide for a procedure when you change your advocate. They state that where any party to an application or appeal changes his advocate or, having been represented by an advocate, decides to act in person or, having acted in person engages an advocate, he shall, as soon as practicable, lodge with the Registrar notice of the change and shall serve a copy of the notice on the other party appearing in person or separately represented, as the case may be.

No legal representative of deceased's estate

Five years ago, I instituted a land case in Court for recovery of my plot on which my neighbour trespassed and built a house. During the pendency of the case my wrongdoer died. I am informed that, given the nature of the matter, my right to sue survives despite his death. The problem, however, is that there is no person who has applied to join in the case as a legal representative of the deceased's estate. Seemingly there is none. It is exactly two years since the proceedings in Court have stopped because of this. What should I do? I need this case to proceed as I will fail to develop it, especially with the increasing cost of construction.

18 March 2013

It is true that, if during the pendency of a suit the defendant dies and the plaintiff's right to sue survives, the suit will not abate. Instead, the Court may, upon application for substitution filed by the legal representative of the deceased, continue with the hearing of the suit. In your case, it is highly suspicious that the deceased has no legal representative to be joined in the case. However, assuming the facts you have given us are true, and if you can satisfy the Court that the deceased has no legal representative, the Court can proceed to hear your case in the absence of a person representing the estate of the deceased.

In the alternative, we advise you to apply to the Court for appointment of the administrator general, or an officer of the Court, to represent the estate of the deceased for the purpose of the case. Any judgment or decree that the Court will subsequently pass in the suit shall bind the estate of the deceased person to the same extent as it would have been bound had a personal representative of the deceased person had been a party to the case. In order for this rule to take effect, before the Court makes an order to Court appoint the administrator general, or such officer of the Court as the case may be, the Court should ensure that notice is issued to all persons who have an interest in the estate of the deceased person. Kindly be advised.

Electronic service in cases

I cannot locate where the defendant is in a commercial case that I have filed at the Commercial Court in Dar es Salaam. My lawyer said we can serve the defendant by e-mail. Does our law allow that? How fast is a case supposed to progress at the Commercial Court?

18 March 2013

The Commercial Division procedure Rule 17 states that, notwithstanding the provisions of Rules 9 to 33 of Order V of the Code, substituted services may be effected electronically by way of e-mail or facsimile using the addresses previously disclosed and used between the parties in their business transaction. (2) A copy of such service shall be simultaneously copied to the Court. (3) For the avoidance of doubt, a sent status report shall be deemed as proof of service.

As for the speed, the Commercial Court is all about the early determination of matters. Rule 32 (2) states that all commercial cases shall proceed and be determined within a period of ten months from the date of commencement, and not more than twelve months. Further Rule 32 (3) states that thirty days before the expiry of the time prescribed under sub rule (2), any party to the proceedings may orally apply to the Court for extension of life span of the case, and the Court may upon sufficient reasons adduced grant the application and the party in favour of whom the extension is made shall bear the costs of such extension, unless the Court directs otherwise.

Hence, the maximum time a case is supposed to be entertained at the Commercial Court is 12 months unless an application for extension is made.

Quorum in parliament

I am a foreign lawyer and was visiting Tanzania a few months ago. I was following the proceedings in your parliament and was shocked to see the parliament hall was nearly empty. I wonder how parliament can continue with its deliberations if the members of parliament are nowhere in the room. Like in other countries, and in other acts, for example companies acts, there is a minimum number required to be present before a meeting can continue. What is the position in Tanzania? Also, does Tanzania have same privileges as in other countries on suing MPs on statements made during parliamentary proceedings? What if there erupts a fight in parliament?

5 August 2013

The issue of quorum that you have addressed above has been clearly captured in the Constitution of the United Republic of Tanzania. Article 94 of the Constitution states that (1) the quorum at every sitting of the National Assembly shall be half of all the Members of Parliament (2) Except where it is provided otherwise in this Constitution, every question proposed for decision in the National Assembly shall be determined by a majority of the votes of the Members of Parliaments present and voting (3) The speaker, the Deputy Speaker or any other person presiding over the sitting of the National Assembly shall not have a deliberative vote but shall have a casting vote in the event of an equality of votes. (4) The standing orders of the National Assembly may provide that any Member of Parliament who votes on any matter in which he has a personal interest shall be deemed not to have been voted.

From the above, you can see that for parliament to proceed with its business in the house, there must be a minimum of half of the MPs present. From our reading of the

constitution, this is a mandatory provision, parliamentary proceedings or session cannot continue if the quorum, which is provided for under the constitution, is not satisfied.

As for privilege for MPs, Article 100 (1) of the constitution states that there shall be freedom of opinion, debate and procedure of business in the National Assembly, and that freedom shall not be breached or questioned by any organ in the United Republic or in any Court or elsewhere outside the National Assembly. Article 100 (2) states that subject to the Constitution or to the provisions of any other relevant law, a Member of Parliament shall not be prosecuted and no civil proceedings may be instituted against him in a Court in relation to anything which he has said or done in the National Assembly or has submitted to the National Assembly by way of a petition, bill, motion or otherwise.

There is, therefore, a blanket freedom and immunity from proceedings for an MP when in parliament as per the above. However, if there is a fight, a physical one, then that is a criminal offence. Hence, that privilege does not extend to such a fight.

Execution of decree

I lost a case at the High Court and have filed a notice of appeal to the Court of Appeal. My lawyer says that I should not worry as the plaintiff cannot execute against me since the file is at the Court of Appeal and not before the High Court. Is that true? The amounts are very large, and this makes me very uncomfortable. What should I do?

29 April 2013

The fact that you have filed a notice of appeal does not mean that you have a stay of execution. Rule 11 of the Court of Appeal Rules 2009 are clear in that (1) No sentence of death or corporal punishment shall be carried out until the time for giving notice of appeal has expired or, where notice of appeal has been given, until the appeal has been determined. (2) Subject to the provisions of sub-rule (1), the institution of an appeal, shall not operate to suspend any sentence or to stay execution, but the Court may: (a) in any criminal proceedings, where notice of appeal has been given in accordance with Rule 68, order that the appellant be released on bail or that the execution of any warrant of distress be suspended pending the determination of the appeal; and (b) in any civil proceedings, where a notice of appeal has been lodged in accordance with Rule 83, an appeal, shall not operate as a stay of execution of the decree or order appealed from except so far as the High Court or tribunal may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree or order; but the Court, may upon good cause shown, order stay of execution of such decree or order. (c) where an application is made for stay of execution of an appealable decree or order before the expiration of the time allowed for appealing therefrom, the Court, may upon good cause shown, order the execution to be stayed. (d) no order for stay of execution shall be made under this rule unless the Court is satisfied: (i) that substantial loss may result to the party applying for stay of execution unless the order is made; (ii) that the application has been made without unreasonable delay; and (iii) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

From the above, you can see that the file being at Court of Appeal, or you having preferred an appeal, is no bar to execution. It is not unwise to reconsider filing for a stay of execution, subject to fulfilling the conditions of such a stay, as noted above.

Advocate not performing

I have been involved in an issue for the past 12 years. I have now realised that my advocate made serious procedural blunders, which I believe were intentionally done so that my mater is compromised. I reported this to the Advocate Committee, but the matter has not been addressed the way it should have been. What other options do I have? Surely Tanzanian law should be able to protect clients' interests and take advocates to task. On a different note, can any advocate on the roll practice in Tanzania. Kindly guide.

12 August 2013

Apart from reporting the matter to the Advocates Committee established under the Advocates Act, Judges and the High Court have powers to discipline advocates. The Acts states that (1) Nothing in this Act contained shall supersede, or interfere with the powers vested in the Chief Justice or any of the Judges of the High Court to deal with misconduct or offences by advocates. (2) Without prejudice to the generality of the foregoing subsection, notwithstanding that no inquiry may have been made by the Committee: (a) the Chief Justice or the High Court shall have power, for any reasonable cause to admonish any advocate or to suspend him from practising during any specified period or make an order of removing his name from the Roll; (b) any Judge of the High Court shall have power to suspend any advocate in like manner temporarily, pending a reference to, or disallowance of such suspension by, the High Court; (c) any advocate aggrieved by any decision or order of the Chief Justice or a Judge of the High Court made in pursuance to paragraph (a), may, within thirty days of such decision or order appeal (i) in the case of a decision or order by a Judge of the High Court, to the Advocates' Committee; and (ii) in the case of a decision or order of the Chief Justice, to the Court of Appeal.

Provided that where the decision or order appealed against was made by a Judge of the High Court nominated by the Chief Justice to be a member of the Advocates' Committee under Section 4 (1) (a) of this Act, such Judge shall not sit at the hearing of the appeal by the Committee, and in such case, the Chief Justice may nominate another Judge of the High Court as provided under subsection (3) of Section 4 of this Act; and save further that in an appeal to the Court of Appeal against a decision or order of the Chief Justice the latter shall not sit to hear the appeal.

From the above, if you believe that the matter has not been adequately addressed by the Advocates Committee, then you may, as a last resort, write to the Chief Justice. The Chief Justice has the power to discipline advocates.

To answer your second question, we take you to another section of the Advocates Act. Section 35 of this Act clearly states that (1) Subject to the provisions of Section 3 no person shall be qualified to act as an advocate unless (a) his name is on the Roll; (b) he has in force a practising certificate; and (c) he has a valid business licence, and a person who is not so qualified is in this Part referred to as an "unqualified person".

Hence, merely being on the roll does not entitle one to act as an advocate. Each and every advocate must have a practising certificate and a valid business licence. Without this documentation, an advocate cannot practice.

Withdrawal of suit after settlement

I have sued my brother in a Court of law over a land ownership dispute. Due to our elders' involvement, we have reached a settlement and agreed to realign our boundaries. I am now advised to withdraw the suit in Court, so that everything will go on as we have

agreed. Is there a procedure for doing this? Will I be in a position to file the suit again, in case my brother does not honour what we have agreed? Please guide.

19 August 2013

As a matter of law, as similar as to one's liberty to institute a suit, a party who institutes a suit is likewise given liberty to withdraw the suit if he / she no longer wishes to prosecute it. This is more of a one-sided matter, because it only involves a plaintiff even though parties might have reached a settlement in the dispute.

Under normal circumstance, if a person thinks that he might later still wish to pursue the same matter in Court, then a prayer of withdrawing the suit with liberty to re-file it should be made. In your case, you are also free to withdraw the suit if you have reached a settlement with your brother. However, the law gives you the option to record your settlement in Court so that it becomes a decree of the Court. This will also take away your uncertainties as to honouring of the terms of settlement with your brother. We believe the second option seems to be more convenient in your case, but your lawyers can guide you further.

Additional evidence at Court of Appeal

My advocate, who left out a key piece of evidence, says that we cannot produce this evidence at the Court of Appeal although it is a case winner. Is this true? What do the rules say?

19 August 2013

As a general principle, the Court of Appeal only hears legal principles. However the Court of Appeal Rules of 2009 categorically states the following in Section 36 (1) that on any appeal from a decision of the High Court or Tribunal acting in the exercise of its original jurisdiction, the Court may (a) re-appraise the evidence and draw inferences of fact; and (b) in its discretion, for sufficient reason, take additional evidence or direct that additional evidence be taken by the trial Court or by a commissioner. (2) When additional evidence is taken by the Court, it may be oral or by affidavit and the Court may allow the cross-examination of any deponent. (3) When additional evidence is taken by the trial Court, it shall certify such evidence to the Court, with a statement of its own opinion on the credibility of the witness or witnesses giving the additional evidence, when evidence is taken by a commissioner, he shall certify the evidence to the Court without any statement of his own opinion on the credibility of the witness or witnesses.

From the above, you can see that additional evidence may be allowed at the Court of Appeal. We suggest you contact your attorney again for further guidance.

Courts wasting paper

What is the difference between striking out and dismissing an appeal? Also, in an appeal before the Court of Appeal of Tanzania, our appeal was struck out because the decree of the High Court was not attached to the records of appeal. Couldn't the justices of appeal just ask the High Court Registrar at Dar es Salaam, who is less than 500 metres away from the Court of Appeal, to submit it? This would allow the appeal to proceed, as opposed to being struck out and being filed again? Is it not a waste of paper to strike out the appeal, where the justices of appeal know that the appeal would be refiled the very next day? Is such a waste of paper not in contravention of the environmental laws of the country? It seems with technicalities, the Court of Appeal is increasing the number of trees that would be cut down in Tanzania, and adding to the

forest degradation of our beautiful country? Please advise.

9 September 2013

By definition, striking out an appeal implies that there was no proper appeal capable of being disposed of. This means it can be refiled. On the other hand, an order for dismissal implies that a competent appeal has been disposed of. In most cases, this type of appeal cannot be refiled. The right of appeal is founded in statute. A party who seeks to avail him or herself of that right must strictly comply with the conditions prescribed by the statute.

The Court of Appeal of Tanzania is guided by its rules of 2009. The said rules mandatorily require, among other things, to attach the High Court Decree in the record of appeal. It has been held by the Court of Appeal on a number of occasions that a failure to extract and lodge to the Court a copy of the relevant High Court decree is not a mere procedural or technical defect. Instead, such a failure goes to jurisdiction and crux of the appeal. Hence, it renders the appeal incompetent.

Many Courts around the world have reduced the number of procedural and technical issues so that the substantive issues in appeals can be heard. In Tanzania, many practising advocates believe that such procedural issues can sometimes be a stumbling block to the administration of justice. This is evidenced by more technical and procedure-based rulings being issued by the Court of Appeal than those on substantive issues. This strictness on procedure has also increased the number of preliminary objections that are raised at the Court of Appeal, further adding to the delay in the delivery of substantive justice.

As you have correctly said, if the appeal is struck out, you are at liberty to re-file but subject to the law of limitation. From the above explanations, the distance between the Court of Appeal and the High Court, or the alleged wastage of paper, doesn't help with the current law. In any case, these considerations will not change the requirement of the statute/rules.

However, we must add that, from a practical viewpoint, your argument is quite attractive. Likely, it would assist in expediting the dispensation of justice based on the substantive law / issues, while also reducing the costs that parties and the Court of Appeal itself would incur when hearing appeals. Your lawyers can guide you further.

Defendant dead, judgment not delivered

In the last few years, my uncle filed a civil suit in the District Court against an individual defendant. The hearing of the case was concluded on both sides and he is waiting for the Court judgment. However, we have recently been informed that the defendant has died. We are worried by this information. My uncle would like to know the fate of his case if he wins. Can we instead sue his wife? Please advise.

9 September 2013

Since the hearing of the case was concluded, the law is very clear: whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the conclusion of the hearing and the pronouncement of the judgment. The judgment will, therefore, be pronounced, notwithstanding the death. It shall also have the same force and effect as if it had been pronounced before the death took place. Therefore, should your uncle win the case, we advise you to consult your attorneys for further legal action including, but not limited to, execution of the intended decree.

As for suing his wife, if you had not done

this at the initial stages because there was no cause of action against her, it is unlikely you can do that now.

Death of the sole defendant in a civil suit

I filed my civil case against a sole defendant, based on breach of contract. Before the hearing commenced, the defendant died. What is the status of my case? Who will be the substitute of the defendant and what procedures should I follow?

28 October 2013

If the defendant dies, the law allows the plaintiff to apply for joining the legal representative of the deceased defendant within 90 days of the said death. Where no application is made within the time limited by law, the suit shall abate against the deceased defendant unless the plaintiff will have sought, and obtained, an extension of time to do so. Your attorneys will guide you on the necessary documentation for the application for joining the legal representative and/or extension of time.

Plaintiff refuses to be paid outside Court

I am a supplier of various imported items. This business makes me travel outside the country frequently. Upon my arrival in Tanzania in the last few months, I found there was a copy of documents from the Court, requiring me to file a defence within 21 days in a case filed against me by one of my customers. I have no problem with paying the customer all his claims, only that I was not aware of the claims, as the customer was used to communicating with my agents. I am very sorry for him but, upon calling him for payment, he insisted that we should meet in Court as he cannot accept payment unless the Court allows. Please guide me on how to go about this.

25 November 2013

Under rules of procedure in civil cases, whenever a suit is filed against you and you do not dispute the claims as a defendant, you are allowed to admit the truth of the whole or part of the case. Since you do not dispute the suit filed against you, and you are ready to pay, you can give a notice of admission of a case to the customer and file it in Court. You can then apply to the Court for judgment on admission. The Court may, upon such application, make such order or give such judgment as it thinks fit.

However, if you are ready to settle, you can inform your customer about this. He can then withdraw the case upon your payment. It seems likely that your customer thinks that, once he has filed a case, he cannot withdraw it. That is not true. With the current backlog of cases we have, the Courts are more than willing to expedite settlement of any such cases.

Tanzanian contract with foreign jurisdiction

I executed a contract to be performed in Tanzania. However, the choice of law is English and English Courts have jurisdiction to resolve the disputes. Now the other party has breached the agreement, I don't see the necessity of filing a case in the chosen jurisdiction. Can't I sue locally? Can I be forced to perform a local contract with a foreign clause such as this? Is there no law to protect me?

23 December 2013

Courts always endeavour to observe the exact word of the contract as agreed by the parties. This is because the intention of the parties at the time of contracting must be respected, unless the Court has reasons to

depart from the intention of the parties. This is quite rare.

It is unlikely that the Courts will agree to entertain the dispute in Tanzania while both of you expressly agreed to apply English law and chose English Courts. The best available option for you is to request the other party to agree to apply Tanzanian law and Tanzanian Courts to have jurisdiction, which we doubt they will agree to.

Such contracts are not uncommon. Even if a Tanzanian Court had jurisdiction, such a Court would not know the English laws. Hence, it would not, in any case, be able to entertain this here.

As for being forced to stick to English Courts, please note that this was the clause both of you agreed to by signing on the contract. You cannot now turn around and say that it should not apply. The four corners of a contract are to be respected. Your lawyer can guide you further.

One Court says north, other says south

There were two cases of different parties going on in two different Courts. The issues were more or less similar. One Court ruled exactly opposite of the other. How can the Courts do such a serious blunder? I have reported this to the Chief Justice. Please guide further.

30 December 2013

We are sorry for your disappointment, but it is not uncommon for such an occurrence in many Court systems around the world, Tanzania being one of them. That is the reason why there is normally one appellate Court in the country, and why parties can appeal to this Court. Ultimately, one judgment will be issued.

There is a principle of "stare decisis". This principle means that Judges are obliged to respect the precedent established by prior decisions. Generally speaking, higher Courts do not have direct oversight over the lower Court of record. In other words, these higher Courts do not normally reach out, on their own initiative, at any time, to overrule judgments of the lower Courts. Normally, the burden rests with litigants to appeal rulings, including those in clear violation of established case law, to the higher Courts. If a Judge acts against precedent and the case is not appealed, the decision will likely stand.

A lower Court may not rule against a binding precedent, even if it feels that it is unjust. Instead, it may only express the hope that a higher Court, or the legislature, will reform the rule in question. If the Court believes that developments or trends in legal reasoning render existing precedent unhelpful and wishes to evade it to help the law evolve, the Court may either hold that the precedent is inconsistent with subsequent authority, or that it should be distinguished by some material difference between the facts of the cases. If that judgment goes to appeal, the appellate Court will have the opportunity to review both the precedent and the case under appeal. The appellate Court has the power to overrule the previous case law by setting a new precedent of higher authority.

Reporting this to the Chief Justice might not help, as that is an administrative action you have taken. The matter must be appealed. Your lawyers can guide you further.

Case of 1996 still in Court

My case started in 1996 and is still in Court. It has been 18 years since I lodged it. This is a gross delay by the system. What should I do?

30 December 2013

It is true that there is a huge case backlog in Courts in Tanzania. However, it is not entirely the fault of the judiciary, as some tend

to believe. Cases get delayed because of lack of witnesses, non-seriousness on the part of the plaintiff and defendants, including the non-availability of the counsel representing the two parties. It is quite unfortunate that you have been in Court for such a long time.

We suggest you write to the Judge in charge of this and bring this to his or her attention. Just so that you know, we are informed the Chief Justice has directed that Judges should stay at work during this holiday season to clear cases that have been before them for long. You will find a number of advocates complaining about being forced to proceed with cases during the Court Vacation, that normally begins on 15 December and lasts till 1 February the following year.

Agreeing on bill of costs

I have won a civil case against a reputable company. After the judgment, we agreed that the company will pay me costs of the suit. This amounted to TZS 70M, which was reduced to in writing. When I went to Court for filing our agreement, the Court Clerk refused and told me that parties cannot agree on the costs. Instead, it is the Court which should conduct taxation to determine fair costs incurred by the winning party. Is this true under the law? Please advise.

3 February 2014

We differ with the Court Clerk advice. The Advocates' Remuneration and Taxation of Costs Rules allows, instead of filing bill of costs for taxation, an agreement to be filed between the parties, indicating costs incurred by the winning party. The parties will then request the taxing master, by letter, to record the agreement upon payment of a Court fee. When recorded, the agreement shall have the same force and effect as a certificate of taxation of a taxing master. However, if the taxing master considers the amount so agreed upon to be exorbitant, he may direct the said costs to be taxed according to the above-said rules.

We, therefore, advise you to consult your attorneys or the Registrar of the High Court / Magistrate in charge of the respective Court for further guidance.

Death sentence

If a death sentence is passed in Tanzania, does the accused have a right to appeal? If the appeal is pending, and there is no stay of execution, can the person be executed? What are the rules for stay of execution in civil appeals? How soon must a notice of appeal be filed within?

3 March 2014

Yes, the person can appeal the death sentence. Rule 11 (1) of the Court of Appeal Rules clearly states that no sentence of death or corporal punishment shall be carried out until the time for giving notice of appeal has expired or, where notice of appeal has been given, until the appeal has been determined. Hence, in criminal appeals, as soon as one files a notice of appeal, no death sentence or corporal punishment can be carried out, until the appeal has been determined.

In civil appeals, stay of execution must be applied for and granted, there is nothing like an automatic stay. Rule 11 (2) (d) states the following conditions to be satisfied for stay of execution to be granted: no order for stay of execution shall be made under this rule unless the Court is satisfied: (i) that substantial loss may result to the party applying for stay of execution unless the order is made; (ii) that the application has been made without unreasonable delay; and (iii) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

A notice of appeal must be lodged within 30 days of the date of the decision against which it is desired to appeal. Your lawyers can guide you further.

An appeal to the Commercial Court

My two colleagues and I own an IT services company, which has its operations in Arusha, Dar, Mwanza and Mbeya. We have faced difficulties in getting our payments from several of our clients, despite our numerous efforts to remind them. We sought for an opinion from our internal lawyer who advised us that on the basis of the amount we claim from these clients we should file recovery suits in the Resident Magistrates Courts.
It is very strange that we have lost some of these straight forward cases on merits, despite them taking a lot of time in Court. We think even a law student would have decided in our favour, due to the straightforwardness of the claims, including the evidence we gave. We now want to appeal against these corrupt decisions. Can we now file our appeals in the High Court Commercial Division, where we are informed cases are determined at a very fast speed? Will the amount still be an issue? Please advise us.

7 April 2014

Under the rules of procedure applicable in the High Court Commercial Division, the value of claim threshold for original jurisdiction in commercial cases should be TZS 100M for recovery of immovable property, and at least TZS 70M where the subject matter is capable of being estimated at money value.

Likewise, the High Court Commercial Division has appellate jurisdiction also on determination of appeals against the decision of the subordinate Court on commercial cases. The appeal can be against the whole or any part of the decision. You are supposed to file a notice of appeal within 14 days from the day on which the decision was pronounced. If you are not satisfied with the decision you have mentioned, you may proceed to exhaust this remedy in the High Court Commercial Division. In this Division, as you have intimated, the speedy disposal of cases is highly considered. However, you need to be well-guided by a practicing attorney in the High Court Commercial Division on the modality, timing and other technical matters involved the filing of your appeal.

Accident caused by negligence

Five years ago, I was involved in a very serious accident when I passed under a building that was under construction. It took me five years of treatment to get myself back to what I was like before. Having multiple injuries, I nearly died but thankfully, I did survive.
I now want to sue the company that was constructing the building and anyone else that is capable of being sued. Apart from the money, I want to make sure that these people are taken to task. For example, I still see building occupied in the ground floors when the top floors are being built. I still see persons on site with no helmets and, even if they have helmets, they are the cheapest quality that even a squirrel can break into. Having contacted my lawyer, I was shocked to hear that I had three years in which to sue, and since the three years have lapsed, I cannot take action against anyone. How can a law be so stringent? How can you help? Why does Tanzania have such a law?

7 April 2014

It is true that there is a law, the Law of Limitation Act (LLA). This Act provides for various time periods within which an action must be taken. Issues like yours would be covered under tort, for which the time limitation is three years. Section 44 of this

law allows the Minister to extend the time frame by another one and a half years. This extension can occur: "where the Minister is of the opinion that in view of the circumstances in any case, it is just and equitable so to do, he may, after consultation with the Attorney General, by order under his hand, extend the period of limitation in respect of any suit by a period not exceeding one-half of the period of limitation prescribed by this Act for such suit." However, this does not help you as your claim, which is about 5-years-old.

Luckily for you, Section 16 of this law may come to the rescue. This section states that "where, after the right of action for a suit or an application for the execution of a decree has accrued and before the period of limitation prescribed for such suit or application expires, the person to whom such right has accrued suffers a disability, in computing the period of limitation prescribed for such suit or application, the time during which such person is under disability shall be excluded."

Unfortunately, disability is not defined. Neither have you given us enough information on the type of injury you suffered. However, we believe your lawyers can further explore this avenue, which is likely available to you.

Furthermore, your lawyers should also consider Section 20 of the LLA. This section states that: "In computing the period of limitation prescribed for any suit or an application for execution of a decree, the time during which the defendant has been absent from the United Republic shall be excluded."

With Section 16 and 20 at your disposal, we believe you should be able to proceed.

Such statute of limitations are not uncommon in other countries. According to Halsbury Laws of England, the purpose and effect of Statutes of Limitation is to protect defendants there being three reasons that support the existence of Statutes of Limitation, namely: (a) that a plaintiff with good causes of actions should pursue them with reasonable diligence; (b) that a defendant might have lost evidence to disprove a stale claim; and (c) that long dormant claims have more cruelty than justice in them.

Losing an ex parte case

I instituted a suit against a businessman. I had contracted the businessman to supply certain goods, but he failed to deliver them. Because of his absence on the hearing date, while already notified, the presiding Judge decided to hear my case in his absence. I was the only witness. During the hearing, I presented the contract we signed before an advocate, and the Court accepted it as an exhibit. On judgment the trial Judge gave judgment against me on the grounds that I did not adduce evidence to prove that the contract was signed by parties to the agreement. I think the Judge was wrong. Please advise.

21 April 2014

Before a Court pronounces judgment in favour of either party in a civil suit, it is a matter of law that the said suit must have been proved on a balance of probabilities. This principle applies even when the case is heard ex parte, as was in your case. It is important to note that in our Courts what matters is what is proved and not what you have in your mind or believe to be true.

Not knowing the entire case history, we cannot fault the learned trial Judge on the basis of the facts you have given us. The Evidence Act specifically requires if it is alleged that a document has been signed by any person, the signature or handwriting of such document must be proved to be that person's signature. In your case, it is notable that you chose to testify alone without even calling the witness to the contract, including

the advocate you have mentioned. We believe this was what proved fatal.

The fact that the case was heard ex parte cannot give you an excuse not to meet the criteria set by law. Your next option is to appeal and suggest you consult your attorneys.

Witness memory problem

I have received a summons to testify in a civil case. My testimony is going to be based on a number of agreements. Although I am acquainted with these agreements, I cannot recall each and very term. I have started cramming the agreements in preparation, but that is taking me a long time. With my age, I am not able to remember everything. This is causing me real stress, as I am a key witness. What should I do? Is there an easy way of cramming the agreements?

12 May 2014

In this case, the law takes note that witnesses are mortal and may forget facts.

The Evidence Act is relevant, here since it governs how testimony is to be made and what qualifies as evidence in Courts of law. The law allows a witness under examination, to refresh his / her memory by referring to any writing made by herself / himself at the time of transaction. The law further allows refreshment of memory even by using photocopies, with the permission of the Court.

Hence, you do not need to start cramming the agreements. You can ask to refer to the agreement, and a copy will be given to you to refresh your memory.

However, you need to be acquainted with the facts. Your role is to assist the Court in adducing true and relevant facts, which will help the Court to do justice. Your lawyer can guide you further.

Paying debt in instalments

I have been sued for a breach of a loan agreement in the High Court, Commercial Division. I do not need to defend this suit, since I do not dispute the claim. Presently I am only waiting for payments from a certain public institution, which are expected after the budget session. What I am scared of is how the Court will react if the plaintiff refuses my request. Please guide.

19 May 2014

The High Court (Commercial Division) Procedure Rules, 2012 allows a defendant to make an admission of the claim, and request for time to pay the amount admitted. This should normally be done and filed with the admission. The rules further require the Court to enter judgment on the amount claimed and admitted upon filing of an admission of the claim.

However, when the plaintiff does not accept the defendant's offer as to the time of payment, he shall state his reasons for rejecting the defendant's proposal. In such a situation, the Registrar of the Commercial Court will decide, taking into account both submissions. The Registrar will then make an order as to the instalments payable, on such terms as he considers fit. Any party aggrieved may refer the matter to a Judge, whose decision shall not be appealable.

Also, a point worth noting is that, if permission to pay in instalment is allowed and you fail to pay as agreed then the right to pay by instalment shall be abrogated. This means the plaintiff shall be entitled to execute the decree for the outstanding sum in full, and without further notice.

In the alternative, you may also consider entering into a settlement agreement with the creditor. This can then be recorded and be made a decree of the Court.

Costs disallowed in Court

I appointed a European law firm which appointed a local counterpart in Tanzania for a dispute here. We spent a lot of money on litigation and won with an award of costs. I believe we are entitled to all legal costs, but the Court has disallowed nearly half of the amount we asked for. We have submitted all relevant receipts and are quite shocked at this. Is this normal?

9 June 2014

The Advocates Remuneration and Taxation of Costs Rules apply when it comes to taxation. The taxing officer for the taxation of bills under these Rules is known as the Registrar of the High Court.

The rules states that, notwithstanding anything contained in the rules, on every taxation the taxing officer shall allow all such fees, costs, charges and expenses as shall appear to him to have been necessary and proper. However, save as against the party who incurred the same, no costs shall be allowed which appear to the taxing officer to have been incurred or increased through over caution, negligence or mistake, or by payment of special charges or expenses to witnesses or other persons, or by other unusual expenses. These rules shall apply to both non-contentious matters and contentious proceedings.

The rules state that all bills of costs shall be taxed on the prescribed scale. Exceptions to this scale will only be granted if a High Court Judge certifies on special grounds scale. A higher scale may be granted in light of the nature and importance of the case, its difficulty or urgency. For example, in a contentious matter, the advocate can charge 3% of the amount in question.

Please note that the rules further state that in business of exceptional importance or unusual complexity, an advocate shall be entitled to receive and shall be allowed as against his client, a special fee. This fee is in addition to the remuneration prescribed in these rules. Provided that in assessing the special fee regard shall be made to: (a) the nature of the place and the circumstances in which the business or part thereof is transacted; (b) the nature and extent of the pecuniary or other interest involved; (c) the nature and quality of labour and responsibility entailed; (d) the number, complexity and importance of documents prepared or examined; or (e) any other relevant circumstances that may exist.

Appeal to apex Court

I have appealed to the Court of Appeal on a decision I was aggrieved with at the High Court of Tanzania. My lawyer did not show up and the appeal was dismissed. Is this how strict the law is? I also had an issue with the jurisdiction of the Court and wished to raise it. When is the appropriate time to do so?

7 July 2014

Your first question is covered in the Court of Appeal Rule 112. This rule states: "If on any day fixed for the hearing of an appeal, the appellant does not appear, the appeal may be dismissed and any cross-appeal may proceed, unless the Court sees fit to adjourn the hearing, save that where an appeal has been so dismissed or any cross-appeal so allowed has been heard, the appellant may apply to the Court to restore the appeal for hearing or to re-hear the cross-appeal. Provided that the appellant shows that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing."

If you want to have your appeal restored, your advocate will have to file an application for restoration and show sufficient cause for not entering an appearance. Otherwise, you

can proceed to sue her / him for professional negligence.

On the preliminary objection that you want to raise, the Court of Appeal Rule 107 explains the process. It says: "(1) A respondent intending to rely upon preliminary objection to the hearing of the appeal shall give the appellant three clear days' notice thereof before hearing, setting out the grounds of objection such as the specific law, principle or decision relied upon, and shall file five such copies of the notice with the Registrar within the same time and copies or photostat of the law or decision, as the case may be shall be attached to the notice. (2) If the respondent fails to comply with the rule the Court may refuse to entertain the objection or may adjourn the hearing thereof upon such terms and orders as to costs and as it thinks fit."

Printing error in law

There is one particular Act of parliament which has a serious printing error in it. Does it need to go back to parliament to get re-enacted or rectified? What is the process?

7 July 2014

First, we are not sure how you are so sure that there is a printing error in the law. Nonetheless, assuming you are right, the Interpretation of Laws Act (ILA) has a special provision for this. Section 26 (3) of the ILA says: "where there is any clerical or printing error in any Bill or Act published in the Gazette, the Chief Parliamentary Draftsman or any member of the Attorney General's Chambers authorised in writing in that behalf by the Chief Parliamentary Draftsman, may, by order published in the Gazette, give directions as to the rectification of such error and every such direction shall be read as one with the Bill or Act to which it relates and such Bill or Act shall, with effect from the date of its first publication, take effect as so rectified."

We recommend you write to both the Chief Parliamentary draftsman and the Attorney General for them to do look into this. In short, if it is a printing error, the law does not need to go back to parliament.

Stay of execution at High Court

I have filed an appeal at the Court of Appeal after losing at the High Court. In parallel, I also filed a stay of execution pending appeal at the High Court. My lawyer informed me that the stay of execution at the High Court would be easier to obtain. The other party has filed preliminary objections, claiming that the High Court has no jurisdiction to entertain the stay of execution. Please guide.

4 August 2014

In view of recent Court of Appeal judgments, we are of the opinion that the preliminary objection will be upheld, and your application for a stay at the High Court will be dismissed.

Rule 11 (2) (b) of the Court of Appeal Rules states that (b) in any civil proceedings, where a notice of appeal has been lodged in accordance with Rule 83, an appeal, shall not operate as a stay of execution of the decree or order appealed from except so far as the High Court or tribunal may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree or order; but the Court, may upon good cause shown, order stay of execution of such decree or order. (c) where an application is made for stay of execution of an appealable decree or order before the expiration of the time allowed for appealing therefrom, the Court, may upon good cause shown, order the execution to be stayed. (d) no order for stay of execution shall be made under this rule unless the Court is satisfied: (i) that substantial loss may result to the party

applying for stay of execution unless the order is made; (ii) that the application has been made without unreasonable delay; and (iii) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him. (e) notwithstanding anything contained in sub-rule (d), the Court, may make an ex parte order for stay of execution pending hearing of the appeal or application.

Reading the above, together with various Court of Appeal judgments, we opine that the High Court indeed does not have jurisdiction to entertain your stay. This is because your appeal has already been filed. You cannot "forum shop", and should have applied for a stay of execution at the Court of Appeal as per the Court of Appeal rules. You are now also time-barred to apply for a stay at the Court of Appeal. You will, therefore, need to file an application for extension of time to file for stay. Be aware that such applications are sparingly granted and, if they are to be successful, they must be supported with strong arguments.

We suggest your lawyers reconsider your High Court of application.

Advocates fee high

I negotiated fees with my lawyer for a certain transaction. Now that the transaction is complete, I find the fees very high. I have decided not to pay him and seek your advice on how I can achieve this. Kindly guide.

4 August 2014

We appreciate your honesty in telling us the exact reasons for not wanting to pay your lawyer. However, we believe that, apart from your proposal being unfair, you are bound by the four corners of the contract that you entered into with your lawyer. You cannot unilaterally decide to reduce the fees, you risk being sued by your lawyer for non-payment of fees.

We recommend that you discuss this issue with your lawyer and see if he or she will renegotiate. If this does not work, we recommend you pay your lawyer as agreed. Otherwise, engage another lawyer to guide you on this.

Judge making racist remarks

As a foreign attorney, I was shocked to hear the Judge presiding over a matter that I have an interest in making racist and biased remarks. This was in front of at least 10 other officers in Court. How does one lodge a complaint against the Judge? Is this how Judges behave here?

25 August 2014

Section 25 of the Judicial Service Act establishes a Judges Ethics Committee. This Committee is responsible for conducting investigations and inquiries against Justices of Appeal, the Principal Judge, Judges, Judicial Officers and Magistrates.

The functions of the committee are to receive complaints, serve a Judge with the complaint, forward a complaint to the commission, hear the complaint, warn a Judge and take any other measure as it may deem necessary in the circumstances. These racial remarks by the Judge are certainly complainable.

Any complaint against a justice of appeal, the Principal Judge or a Judge may be lodged with the commission or the committee by a justice of appeal, the Principal Judge, a judicial officer, Magistrate, law officer, government agency, advocate, person interested in the matter or in any other case, a person who can produce adequate evidence on the complaint.

You are recommended to forward your complaint to the committee for further action. The complaint should also have enough

detail for the committee to be able to work and must be signed by the complainant.

We are not sure if you have been to Tanzanian Courts but our Judges are known to be very polite. This might be a one-off scenario, perhaps spurred by events in Court. Nonetheless you are recommended to take the approach above.

Approval of new constitution

Has the new Tanzanian constitution been approved? How come we have not read it, yet it will apply to us?

6 October 2014

We have skipped many questions in the queue to answer this one, which came in only a few days ago. We answer this because of the number of similar questions we have received over the last few days and the timing of the question.

The answer is very brief. The draft constitution has been approved by parliament. However, it is now going to be submitted to the President before it is published for the public to read. Thereafter, voting will be conducted. If a majority is obtained it will be adopted, but not otherwise.

Hence there is a process that must be followed for the constitution to be adopted. You will get a chance to read it, and vote for or against it.

Law of limitation bites

We have been in Court for a certain breach of contract since 2004. It took our Courts ten years for the Judge this year to rule that he did not have jurisdiction to entertain this suit because the amount involved was above what his Court could entertain. We refiled in the Court with competent jurisdiction. The other party now says we are time-barred and has raised a preliminary objection. I am really worried as it seems we are indeed time-barred to proceed with our claim. My lawyer says that, in order to sue under contract law, you must do so within six years of the happening, which has long expired.

20 October 2014

Section 21 (1) of the Law of Limitation Act states that in computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting, with due diligence, another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is incompetent to entertain it.

You can use the above provision to get out of this trap. We believe you will be successful so long as you were prosecuting your initial case with due diligence. What amounts to due diligence will depend on a case to case basis.

Magistrate unaware of change in law

The Magistrate before whom we appeared was not aware of a change in law provision under the Criminal Procedure Act (CPA). Is this something that should be argued about when it is clear that a provision on the inapplicability of bail has been repealed?

17 November 2014

You are right. All Magistrates and Judges should take judicial notice of the law and changes thereof. Section 22 of the Interpretation of Laws Act states that every Act shall be deemed to be a public Act unless the contrary is expressly provided in the Act and shall be judicially noticed as such.

However, it is not unwise to alert the Magistrate about the change of law with a

copy of how the amendment was effected. Your lawyer has a duty to also guide the Court. We don't see why you should resist doing that. We don't see how it will entail into any arguments.

Kiswahili vis a vis English laws

There was a law drafted in Kiswahili but translated in English. However, when I read the English version, I feel some provisions have not been properly translated. What happens in such an instance?

8 December 2014

The Interpretation of Laws Act has a specific provision that deals with this. Section 84 states the following: (1) The language of the laws of Tanzania shall be English or Kiswahili or both. (2) Where any written law is translated from one language into another and published in both languages, then in the case of conflict or doubt as to the meaning of any word or expression, the version of the language in which the law was enacted shall take precedence. (3) Where any written law is enacted in both languages and there occurs a conflict or doubt as to the meaning of any word or expression, the English version shall take precedence.

Hence if the law was initially drafted in Swahili and then translated in English, then it is the Swahili version that will prevail.

However, if the law was drafted in both languages, then the English version will take precedence. Unfortunately, you have not told us which law you are referring to. We are therefore unable to guide you any further.

Documents to support your case

I supplied goods to a government agency and have not been paid. The contract provides for all disputes to be adjudicated in Tanzania. However, is straightforward non-payment of amounts under a contract really a dispute? Furthermore, there are certain documents that I will need in my trial that are in the possession of the agency. Can I get such documents?

15 December 2014

We start by answering your second question. To extract documents from the defendant is a common feature in Western country laws by way of what is called "discovery."

Discovery is the pre-trial phase in a lawsuit in which each party, through the law of civil procedure, can obtain evidence from the opposing party by means of discovery devices. These devices include requests for answers to interrogatories, requests for production of documents, requests for admissions and depositions. This might sound very peculiar, but it is possible to tap into the other party's documents that actually support your case.

The Government Proceedings Act Section 18 (1) specifically provides that subject to and in accordance with any written law (a) in any civil proceedings in the High Court or a Magistrate's Court to which the government is a party, the government may be required by the Court to make discovery of documents and produce documents for inspection; and (b) in any such proceedings as are mentioned in paragraph (a) of this subsection, the government may be required by the Court to answer interrogatories: Provided that this section shall be without prejudice to any law or rule of law which authorises or requires the withholding of any document or the refusal to answer any question on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest.

It is important to note that this law also states that documents may not be disclosed if, in the opinion of a Minister, it would be

injurious to the public interest to disclose the existence thereof.

Based on the above, you can hence use the above provision of the law to discover the documents from the government agency.

As to whether non-payment of an undisputed debt is a dispute, the short answer is that it is indeed a dispute. Should you fail to get paid, you have all the rights to access the local Courts.

Subject to the amount involved, we would recommend the High Court, Commercial Division.

Lawyer's duty to client

If I have committed a crime, say, murder, and I disclose it to my lawyer, can my lawyer lie for me? Isn't the job of my lawyer to defend me, whether I am right or wrong? After all, what am I paying my lawyer for?

8 December 2014

In criminal law, if you admit to your lawyer that you have committed a crime, your lawyer should guide you to plead guilty. Merely being your lawyer does not mean that he should misguide the Court, which will lead to a miscarriage of justice. For example, if you tell your lawyer that you committed a murder, then the lawyer, as an officer of the Court, must ask you to plead guilty. If you refuse, the lawyer under ethical and fairness principles should not take up the case. However, depending on the jurisdiction the lawyer practices in, he will likely not be allowed to testify against you in the Court of law. This is because your admission to him is protected under a concept known as attorney-client privilege.

The lawyer's job is to make sure you get a fair trial under the constitution and penal statutes. The lawyer is not supposed to lie or cook up evidence. The lawyer can be creative, but only within boundaries of the law.

Fake Notary Public and Commissioner for Oaths

I know of an individual in town who is neither a notary public nor a commissioner for oaths but pretends to be one. Is this not an offence in Tanzania?

15 December 2014

The Notaries Public and Commissioners for Oaths Act states in Section 6 that (1) subject to the provisions of Section 10, any person who holds himself out to be a notary public or commissioner for oaths or receives any fee or reward as a notary public or commissioner for oaths, unless he holds a valid certificate granted under this Act, shall be guilty of an offence. The Act also provides that anyone found guilty of the offence shall be liable to a fine not exceeding TZS 1,000. For a second or any subsequent offence, the penalties include imprisonment for a period not exceeding six months, a fine not exceeding TZS 2,000 or both.

The fake notary public and commissioner for oaths is, therefore, committing an offence which is imprisonable. Furthermore, all those documents attested by such a person will likely be held invalid.

Money Laundering and Corporate Criminality

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Like individuals, companies can sometimes behave in criminal ways. In this chapter, we offer several examples of this type of behaviour, and explain how companies can be punished either as entities, or via their employees. We also discuss Tanzania’s anti-money laundering regime, with a particular emphasis on its impact on banks.

Director involved in fraud

I am a director and shareholder in a manufacturing company in Tanzania. The Managing Director (MD), who is also a shareholder and director, has been playing with the company funds and hiding a lot of entries within the books of accounts. This was picked up recently by an independent auditor, where it was also found that the current company-appointed auditor had been colluding with the MD to hide entries and under-declare profits. Is this not a criminal offence?

26 March 2012

The criminal statute in Tanzania is called the Penal code, which provides for such an occurrence. It states that any person who being a director or officer of a corporation or company, receives or possesses himself as such of any of the property of the corporation or company otherwise than in payment of a just debt or demand, and with intent to defraud, omits either to make a full and true entry thereof in the books and accounts of the corporation or company, or to cause or direct such an entry to be made therein; or being a director, officer or member of a corporation or company, does any of the following acts with intent to defraud, that is to say destroys, alters, mutilates or falsifies any book, document, valuable security or account, which belongs to the corporation or company, or any entry in any such book, document or account, or is privy to any such Act; is guilty of a felony, and is liable to imprisonment for 14 years.

From the above, you can see that this is a criminal offence. The MD faces a stiff custodial sentence should these allegations be true.

Apart from the criminality, you also can file a suit for recovery of the funds that have been misused, including the under-declared profits. The criminal action may not automatically lead to a recovery. We therefore advise that you also consider instituting a civil suit. It is not unwise to get a legal advisor to assist you in this matter.

Keeping drivers records

I own two taxis in the city of Dar es Salaam and employ two drivers. Last month, one of my drivers was involved in an accident and ran away. To this date, he is still at large. Strangely, police officers came to me and requested written records of the name and driving license number of the driver who ran away. I do not have such records, I only know his name. The police informed me that it is an offence not to keep such written records. I feel this is more of a labour issue than a traffic offence. How can I stop this harassment?

11 June 2012

An employer should not only keep his/her employee's records for the purpose of compliance with the laws, but also for a number of other useful purposes. For instance, what if the employee steals from you, and you have no records to assist in tracing him or her?

Principally, although for different goals, both the Road Traffic Act (RTA) and the Employment and Labour Relations Act, require the employers to keep records of their employees.

In your case, reference is drawn to a provision of Section 79 of the RTA. This provision makes it mandatory for an employer of a driver of a motor vehicle or trailer to keep a written record of that driver's name and his driving license number. It is obvious that you did not do this.

Section 113 of the RTA states that any person who contravenes or fails to comply with provisions of the Act is guilty of an offence, which is punishable with a fine or imprisonment. This means that, when Section

79 is read together with Section 113 of the Road Traffic Act, you will be found guilty of committing an offence and may be fined or imprisoned.

The police are right in what they are telling you. Therefore, we don't see their behaviour as harassment. On a different note, we advise you to start keeping records of your drivers. This will help you ensure your compliance with the law, and also for your own good in running your business. Keeping employees' records is not just a matter of law, but it reflects high standards of management in a business. Keeping your drivers' records doesn't only apply to you as a taxi company owner, it applies to everyone who employs a driver.

As for the current issue, we suggest you consult your lawyers.

Bill Gates of Africa

I invented a certain business. It is in demand, and I want to know if I can legally prohibit people from doing the same business for at least 20 years. I want full dominance to make big money, just like Bill Gates.

26 November 2012

We are glad you have invented a business which is in high demand, and hope that business will be of great service to the public. We also wish you all the best in trying to become the Bill Gates of Africa.

However, the Fair Competition Act prohibits any act or conduct which aims to distort or prohibit competition. Generally, a person cannot legally dominate the market, because competition is encouraged. You should also note that there are very high penalties for doing acts or omissions, with the aim of dominating the market by preventing or eliminating competition. We recommend you get the services of a lawyer to guide you further.

Money laundering in bank

We are a large, reliable multinational bank with branches all over the country. Recently, under the Anti-Money Laundering Act (AMLA), we have been asked to produce all kinds of documents regarding the identity of certain customers. Are we bound to cooperate? The officers following us want thumbprints of these customers who have been banking with us for over ten years!? Are we supposed to retain these? Is it not primitive for such information to be asked for? How long should such information be kept? Will our insurance cover us if we are fined?

14 January 2013

Whether you are a big, reliable multi-national bank or a small undercapitalised, inefficiently-run bank does not make a difference as far as the AMLA is concerned. In fact, some of the biggest money launderings in history has been done through banks.

The AMLA has clearly defined who a reporting person is and this includes cash dealers, accountants, real estate agents, dealers in precious stones, regulator, customs officer, attorneys, notaries public and banks including financial institutions. Hence, under the Act, your bank is a reporting person. It must therefore comply with the Act and regulations made thereunder.

There are new regulations made under the AMLA. Apart from others, regulation three is pertinent to your question. Although it is lengthy, we reproduce it for you, as it is very important. It states: 3. (1) Where a reporting person is dealing with an individual who is a citizen of, or resident in the United Republic he shall be required to obtain from such person the following information: (a) full names and residential address; (b) date and place of birth; (c) in case of a citizen, voters' registration card or national identity card

or in the absence of such information, a passport, birth certificate or driving license; (d) in case of a resident, a passport, travel document, residence permit or driving license of that person; (e) an introductory letter from relevant authority such as employer or government official; (f) employee identity card with an introductory letter from employer; (g) Tax Identification Number, if such a number has been issued to that person; (h) any or all of, telephone numbers, fax number, postal and e-mail address; (i) customer residential address including important landmarks close to the prospective customer's residence; (j) where the customer is a student (k) an introductory letter from the customer's institution signed by the head of the institution or a representative of the head of institution; (l) the student's identity card; (m) nature of business activity; (n) signature and thumb print; (o) utility bills, where applicable. (2) In case a reporting person is aware or ought reasonably to be aware that the person referred to in sub-regulation (1) does not have the legal capacity to establish a business relationship or conclude a single transaction without the assistance of another person, the reporting person shall, in addition to obtaining the particulars referred to in sub regulation (1), obtain from the person rendering assistance: (a) full names and residential address; (b) date and place of birth; (c) Tax Identification Number, if such a number has been issued to that person; (d) any or all of, telephone number, fax number, postal and e-mail address; (e) residential address including important landmarks close to his residence; (f) nature of business relationship with the person he is helping; and (g) signature and thumb print. (3) Where the reporting person is taking finger prints under these Regulations, he shall use ink and pad of such quality as to enable the capturing of thumb prints. (4) The thumb prints shall be taken in the following sequence: (a) where that person has both hands, right hand thumb shall be captured; (b) where that persons has no right hand thumb, then the left hand thumb shall be captured; (c) in case that person does not have both thumbs, then the next available finger shall be used, starting with the right pointing finger; and (d) in case that person does not have fingers, the reporting person may take palm or toes print. (5) In case that person lacks both hands and feet, then an exceptional approval from the management of the reporting person shall be obtained after recording such situation.

From the above, it is clear that you must take a thumbprint of the person. Further, regulation 30 states that a reporting person shall retain records for a minimum period of ten years. Hence, your argument that this is an old customer holds no strength.

The officers who are asking you for the records have all the right to ask you for these. Under the AMLA, if your bank commits an offence, you shall be liable to pay a fine of between TZS 500M and TZS 1B or be ordered to pay a fine three times the market value of the property, whichever is higher.

As for your insurance, you will have to look at your policies. But, from the usual policies we have seen in the market, we doubt that an insurance company would have such a cover for you. Your legal counsel can guide you further.

Reporting by bank on potential money laundering

I work for a bank as a teller, and see persons and smaller companies bring in tens of millions of shillings in cash every single day. Is there no regulation that requires banks to provide such information to an authority, so that these individuals can be taxed and their transactions traced? For all you know,

these funds could be drugs money or money being washed for terrorist activities.

25 February 2013

The Anti-Money Laundering Act (AMLA), and the Anti-Money Laundering Regulations, 2012 specifically provide for this. Banks are covered in both the Act and the Regulations.

Under Information to be reported in respect of transactions, Regulation 23 states that a report to the Financial Intelligence Unit (FIU) made under sections 4 (2) and 17 of the Act, shall contain the following information: (a) date and time of the transaction, or, in case of a series of transactions the period over which the transactions were conducted; (b) type of funds or property involved; (c) amount or value of property involved; (d) currency in which the transaction was conducted; (e) method in which the transaction was conducted; (f) method in which the funds or property were disposed of; (g) amount disposed; (h) currency in which the funds were disposed of; (i) purpose of the transaction; (j) names of other institutions or person involved in the transaction; (k) bank account numbers in other institution involved in the transaction; (l) the name and identifying number of the branch or office where the transaction was conducted; and (m) any remarks, comments or explanation which the person conducting the transaction may have made or given in relation to the transaction.

Regulation 24 provides further reporting standards where a reporting person, which includes banks, makes a report concerning a property associated with terrorist financing and related activities. Regulation 25 provides specific details that are required to be filed with the FIU when a bank account is used for any suspicious activity.

In short, your bank is a reporting person under the AMLA. Should your bank fail to report any such suspicious activity with the FIU, your managers and/or directors can be imprisoned and/or fined. You should discuss this with your bank manager, who can decide what transactions are reportable.

Forfeiture of corruption proceeds

Is there a law in Tanzania whereby corruption proceeds can be forfeited by the PCCB? What is the procedure?

29 April 2013

The answer to your question is yes. Section 40 (1) of the Prevention and Combatting of Corruption Act (PCCA) provides that the Bureau may, in collaboration with the office of the Director of Public Prosecutions recover proceeds of corruption through confiscation to the government. (2) Where a person is convicted of an offence of corruption under this Act, the Director of Public Prosecutions may, apply to the convicting Court or to any other appropriate Court not later than six months after conviction of the person for forfeiture order against any property that was obtained through corruption. (3) For the purpose of this part, "proceeds of corruption" means any property that is derived or obtained by a person from the commission of corruption offences.

It should be noted that the forfeiture is not automatic, and must be sanctioned by the Court. The PCCA further states that, should a forfeiture order be made, all such property shall vest in the United Republic.

PCCA weak

I am unsure why the Prevention and Combatting of Corruption Act (PCCA) is so weak. Why is the Act not made to cover a wider net?

20 May 2013

We are unsure what you mean it is weak. If you read the PCCA, it is very strict and covers,

albeit generally, all sorts of transactions to the extent that gaining advantage is also illegal and actionable. For example, Section 23 of the PCCA states, and this is extremely wide, that (1) A person who solicits, accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any advantage without lawful consideration or for a lawful consideration which he knows or has reason to believe to be inadequate: (a) from any person whom he knows or has reason to believe to have been, or to be, or to be likely or about to be, concerned in any matter or transaction with himself or having any connection with his official functions or of any official to whom he is subordinate; or (b) from any person whom he knows or has reason to believe to be interested in or related to or acting for or on behalf of the person so concerned, or having such a connection, commits an offence and shall be liable on conviction to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding seven years or to both. (2) In addition to the penalty imposed under sub-section (1), the Court shall order that the amount of money value of any advantage received by the public officer, or any part of it be confiscated to the government.

We suggest you re-read the PCCA, to ensure that you are reading the same Act as us. If you have further questions, your attorneys can guide you.

Advertising with national flag

There is a company I know that is misusing our flag. It is selling products as if those products have been endorsed by the United Republic. Is there no law that governs this?

5 August 2013

The National Emblems Act provides very clearly on unlawful use of National Flag, Coat of Arms or any likeness thereof. It prohibits any person from using the National Flag, the Coat of Arms or any likeness of the National Flag or of the Coat of Arms: (a) as a trade mark for any article sold or offered for sale; (b) in furtherance of or as an advertisement for any trade, business, industry, calling or profession; (c) on any article which is sold, offered for sale or intended to be sold or offered for sale; (d) on any article which is used by any person otherwise than for a purpose approved by the Minister.

Hence, if the company or individual is using the flag as you claim, it is an offence. Any person who uses this symbol can be sentenced to two years imprisonment. You should proceed and report this to the police. However, please be warned that not all usage of the national flag is illegal, you should consult your attorney for further guidance.

Imprisoning corporate bodies

I have been reading the laws of Tanzania. Many times, I have come across laws that state that a corporate body shall be punished and convicted. I know that individual persons can be imprisoned, but how does one imprison a company?

10 June 2013

We are not sure what specific law you are referring to. However, there are certain laws that provide for directors to be imprisoned. This means that the company's conviction is that of the directors.

Section 71 of The Interpretation of Laws Act of Tanzania also states that (1) Every enactment relating to an offence punishable on conviction or on summary conviction shall be taken to refer to bodies corporate as well as to individuals. (2) Where under a written law, a forfeiture or penalty is payable to a party aggrieved, it shall be payable to a body corporate in every case where that body is the party aggrieved. (3) Except where otherwise

expressly provided, where the penalty prescribed in a written law in respect of an offence does not consist of or include a fine, the Court before which the offence is tried may, in the case of a body corporate, impose a fine: (a) where a term of imprisonment not exceeding six months is prescribed, a fine of two million shillings; (b) where a term of imprisonment exceeding six months but not exceeding one year is prescribed, a fine of three million shillings; (c) where a term of imprisonment exceeding one year but not exceeding two years is prescribed, a fine of five million shillings; (d) where a term of imprisonment exceeding three years is prescribed, a fine of ten million shillings.

You can see from the above that the corporate body, where the directors are not to be imprisoned, shall be fined amounts in lieu of "imprisonment".

Company suit in name of manager

I am an operations manager cum Director General of an international company operating in Tanzania. We have been sued, but it is both strange and unfortunate that the defendant in the documents served to us appears to be in my name as general manager. I am worried about this, and upon asking a friend. I was informed that, in this country, whenever a case is against an international company, then it is the general manager who should be sued. This will ensure compliance, in case the Court awards amounts. Is this true as per Tanzanian laws? Please guide.

17 June 2013

It is only a legal person, or an entity with legal personality, that can institute a suit or be sued. Our laws require suits to be instituted against proper party or parties. In your case, it is wrong for the plaintiff to sue the general manager instead of the company. This is because it is a long-established principle in law that all suits by, or against, the company shall be brought under the company's name.

Furthermore, it is not true that our laws require suits against an international company to be brought in the name of the general manager. Hence, there seems to be a wrong party sued.

Our practical experience has seen a number of cases, which are brought against parties who are not legal entities, being struck out by Judges and Magistrates. You can proceed to raise an objection to the same effect. Your attorneys can guide you further.

Foreign exchange non-disclosure

I know of exporters of goods who mis-declare amounts, and cheat the government. Is there no penal statute that can take them to task? I want to disclose these individuals, who are making a killing but understating amounts they earn. To what extent are the directors liable?

11 August 2014

Amongst the laws of Tanzania, that are very strict in such matters, is the Foreign Exchange Act (FEA). This Act clearly states the following: Any person who makes a false declaration in respect of any transaction provided for under this Act or the regulations made thereunder with a view to (a) evading the disclosure of the actual specified foreign currency earned, or (b) delaying the remittance of the specified foreign currency earned; or (c) retaining any portion of the specified foreign currency payable outside the United Republic, shall be guilty of an offence and upon conviction be liable to imprisonment for a term not exceeding ten years or to a fine equivalent, to a sum not exceeding three times the monetary value of the amount disclosed as due or owing to the person, or to both such imprisonment and fine.

The PEA also provides that the directors can be liable to the offence, even if it is committed by their company. In Section 14, the following is provided: (a) Where an offence under this Act is committed by a body corporate, then, as well as the body corporate, any person who at the time of the commission of the offence, was concerned, as a director or an officer, with the management of the affairs of such body corporate, shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly unless he proves to the satisfaction of the Court that he had no knowledge, and could not by the exercise of reasonable diligence have had knowledge, of the commission of the offence. (b) Where any offence under this Act is committed by a person as an agent or employee then, as well as the agent or employee, the principal or employer shall be liable to be proceeded against and punished accordingly unless he can prove to the satisfaction of the Court that he had no knowledge, and could not by the exercise of reasonable diligence, have had knowledge of the commission of the offence.

You can see that this law provides for both a custodial sentence and fine up to three times the amount involved. Directors may also be held liable unless they can prove that they were unaware of the offence being committed.

Based on the above, you can act as appropriate.

Monitoring of bank account

As a bank, if the police call us and ask us to give them each and every detail of someone's account on a continuous basis, are we forced to do so? They claim to be calling from headquarters.

1 September 2014

As a bank, you should not be taking verbal instructions. As a bank you also need to find out whether the person calling you is really the police, very likely, these men seem to be conmen. The police would normally formally write to you, citing the section of the law that they are using to get this particular information, and explaining the reasons who someone's account should be monitored. Please note: the monitoring of an account is a continuous exercise. It is different from the police or the Tanzania Revenue Authority (TRA) asking for a bank statement of a particular account.

For monitoring of an account, Section 65 of the Proceeds of Crime Act has a very clear provision. It states that (l) The Director of Public Prosecutions may apply to a Court for a monitoring order directing a financial institution to give information to the Inspector General of Police about financial transactions, conducted through an account held by a particular person with that financial institution. (2) A monitoring order shall apply in relation to financial transactions conducted during a period specified in the order. (3) A Court shall not make a monitoring order unless it is satisfied that there are reasonable grounds for suspecting that the person in respect of whose account the information is sought: (a) has committed or is reasonably suspected of having committed a specified offence; or (b) was involved in the commission of or is reasonably suspected of having been involved in the commission of, a specified offence; or (c) has benefited, directly or indirectly, from the commission of a specified offence. (4) A monitoring order shall specify the name of names in which the account is believed to be held and the type of information that the financial institution is required to give. (5) Any financial institution which contravenes a monitoring order of provides false or misleading information shall be guilty of an offence and liable to a fine not exceeding one million shillings.

You can see that the DPP must apply to the Court for such a monitoring order and should serve you with it before you can start providing continuous information. Your lawyers can guide you further.

Company charged criminally

Our company faced some challenges and has been criminally charged. In the first hearing, we did not appear, because the summons was served on our secretary and not on any senior officer. Our lawyer opined that we had not been properly served and, hence, did not need to attend. We agreed but are now informed that the Court proceeded without our presence, and has issued a guilty verdict against us. How can we be convicted when we did not attend? Please guide.

27 October 2014

The Criminal Procedure Act (CPA) provides that the service of summons on an incorporated company may be effected by serving it on the secretary, local manager or other principal officer of the company. This summons should be sent to the registered offices of such company or by registered letter addressed to the chief executive officer of the company. In the latter case, service shall be deemed to have been effected when the letter arrived in the ordinary course of post. You can see that you were properly served via your secretary. It is not necessary for a director or a principal officer to be served.

What comes to your rescue is where the CPA states that, at the trial of a corporation, if a representative does not appear at the time appointed in and by the summons or information or such representative having appeared failed to enter any plea, the Court shall order a plea of "not guilty" to be entered. The trial shall then proceed as though the corporation had duly entered a plea of "not guilty".

This means that, if you did not appear for the first hearing, then a plea of not guilty should have been entered on your company's behalf. Hence, if this was the first time that the case was called, then your company could not have been convicted. We recommend you alert your lawyer as to the above provisions of the Criminal Procedure Act above.

PCCB order for documents

We are investors in Tanzania. We have been asked by the Prevention and Combating of Corruption Bureau (PCCB) to supply them with our contracts entered in Tanzania and to also appear in person before them. Is this not the police's job? Is it mandatory for our CEO to appear? These contracts are confidential, and we cannot disclose them. Please guide.

27 October 2014

The PCCB is established under the Prevention and Combating of Corruption Act (PCCA), which is a penal statute that deals with corruption matters. The PCCB is, hence, independent from the police and is especially empowered to investigate corruption matters.

Section 10 of the PCCA states that (1) An officer of the Bureau investigating an offence under this Act may: (a) order any person to attend before him for the purpose of being interviewed orally or in writing in relation to any matter which may assist investigation of the offence; (b) order any person to produce any book, document or any certified copy thereof, and any article which may assist the investigation of the offence; or (c) by written notice, require any person to furnish a statement on oath or affirmation setting out such information which may be of assistance in the investigation of the offence. (2) Subject to the direction of the Director of Public Prosecutions, the Director General may assume prosecution commenced by the

police or any other law enforcement agency for an offence involving corruption. (3) Any person who, in the course of investigation of, or in any proceedings relating to an offence alleged or suspected to have been committed under this Act, knowingly: (a) makes or cause to be made a false report of the commission of an offence to any investigating officer; or (b) misleads any investigating officer, commits an offence and shall be liable on conviction to a fine of not less than one hundred thousand shillings but not more than two million shillings or to imprisonment for a term of one year or to both.

A plain reading of Section 10 above clearly allows any PCCB officer to demand any document. Hence, this Act overrides any confidentiality clauses in your contracts. You must therefore release these documents to the PCCB. Should you not cooperate or not release the documents, you will be committing an offence. If found guilty of this offence, you could face imprisonment.

Criminal liability of directors

If a company is charged under the National Security Act (NSA), can the directors or managers of the company be held liable? Are they not merely employees of the company?

10 November 2014

The NSA clearly states that where any offence under the his Act is committed by a body corporate, then, as well as the body corporate, any person who, at the time of the commission of the offence, was concerned, as a director or officer, with the management of the affairs of such body corporate shall be guilty of the offence and be liable to be proceeded against and punished accordingly unless he proves to the satisfaction of the Court that he had no knowledge, and could not by the exercise of reasonable diligence have had knowledge of the commission of the offence.

The NSA provides for sentences up to life imprisonment. Hence, you should consult your legal advisor in case you are concerned about offences under this Act.

Agreement to fix prices

There is a certain manufacturing industry where it is clear that the three big players are fixing prices. Is this not illegal?

10 November 2014

The Fair Competition Act, 2003 provides that a person shall not make or give effect to an agreement if the object, effect or likely effect of the agreement is price fixing between competitors. Price fixing between competitors means to fix, restrict or control the prices, tariffs, surcharges or other charges for, or the terms or conditions upon which, a party to an agreement supplies or acquires, or offers to supply or acquire, goods or services, in competition with any other party to the agreement.

Any person who intentionally or negligently acts in contravention of the provisions of this section commits an offence. The Act provides for massive fines for such behaviour.

Power of Attorney, Death, Probate and Wills

Regrettably, the death of a loved one can sometimes spark intense legal battles among those left behind. Wills are sometimes stolen, or can include harsh requirements that beneficiaries cannot agree to. Thankfully, both of these scenarios are governed by statute law, which provides a degree of legal protection for those affected.

Will not signed by lawyer

My lawyer has not signed my Will and is now dead. Does that invalidate my Will? I am really worried, as I do not want to leave an invalid Will. Please guide me?

2 January 2012

First and foremost, there is no requirement that your Will must be signed by your lawyer. Hence, it does not matter whether he is dead or alive. You need not panic.

Secondly, your Will can be changed at any time. This means that, even though your lawyer is no longer with us, you can still go ahead and change your Will. A Will is an evolving instrument and changeable document, and must be reviewed yearly or every two years. If you are still worried, we suggest you draft a new Will and get two witnesses to sign it in your presence.

Power of attorney in divorce

I am a Tanzanian married woman with two children. Due to my husband's infidelity, our marriage has now become unbearable. Just as he will not accept sharing me with someone, I cannot accept sharing him with someone, this is not what marriage is about. To add to the trouble, my husband has a child with this woman. Do I have any rights on this child? I have also petitioned in Court for divorce through a power of attorney, which authorises my young sister in Dar to do the needful in order to obtain the divorce. The divorce is being contested by my husband. The trial Magistrate has refused to proceed with the case, demanding that I appear in person. Is this fair? Can the holder of the power of attorney not get me the divorce?

9 April 2012

We are unsure what you mean if you have a right on the child. Biologically, you are not the mother. The commonality here is that of your husband: he is husband to you and father to the child. You have no other connection whatsoever. Hence, you can have no right over the child. The child's mother is the other woman in your husband's life.

We now address the divorce issue. From the above, we are unsure what facts your petition contains as grounds for divorce. We suspect that the facts for and against the petition require one to appear and testify. It is commonly-known that the attorney of the petitioners is deemed to be competent witnesses. Hence, they can appear in Court on behalf of the party and do the acts as specified in the power of attorney.

The holder of the power of attorney can appear in Court as a witness in respect of facts which are in his or her knowledge. He or she cannot dispose in respect of facts which are not in his or her knowledge and knowledge of which has been delivered by him from the principal without testifying the facts himself.

It seems that the trial Magistrate believes your case involves facts which are within your knowledge, but which cannot be disposed of by your attorney. This would explain the requirement that you appear personally in Court. We do not think this demand is unfair. In the interest of settling this case quickly, you may want to consider appearing.

Will stolen

My sister-in-law has stolen my husband's Will from our cupboard, I am quite certain of that. There is a property she is eyeing that belonged to my husband, that is supposed to pass to me. What should I do?

13 August 2012

The Penal Code specifically addresses this scenario. It states that, if the thing stolen is a testamentary instrument, whether the testator is living or dead, the offender is liable

to imprisonment for ten years. We suggest you report this incident to the police, who can launch an investigation. Based on the result of their enquiries, the police may wish to prosecute your sister-in-law. She can end up in prison for ten years.

Removal of tissue from dead body

Two years ago, I lost my father in a hospital after he was involved in a car accident. While in hospital, the medical officer in charge requested my mother for her consent that he should remove some body parts and tissues for the treatment of other persons. Is it legal to remove corpse's tissue? Please guide.

20 August 2012

Our law allows the medical officer in charge of a hospital to remove, or authorise the removal of, any cadaveric tissue, so long as he or she is satisfied that the tissue is required in the treatment of any other person. However, the medical officer shall be obliged to seek the consent of the spouse, parent or guardian of the deceased if they are readily available. It should be noted that the words "readily available" means available within such times as would enable the removal of the tissue to take place whilst it is still in condition to be utilised for the purpose for which is required. The basis for this law is clear: deceased tissue can still be used to save another person's life.

Hence, a request made by the medical officer to your mother was legal.

Beneficiary in Will

My husband passed away and left some important musical instruments for a friend of his, whom he mentioned in the Will. I did not know that person and, as executor, I was approached by a gentleman who identified himself as that person in the Will. After getting the probate I proceeded to give him all the musical instruments under the Will. Exactly a year later, another gentleman showed up, who claimed that he was the person mentioned under the Will.

My investigations reveal that the first person was a fraudster. By contrast, the fellow who appeared a year later was actually one of my husband's fellow band players, and rightfully entitled to the instruments. What should I do?

30 December 2013

Our Penal Code has a section that addresses this. It states that any person who, with intent to defraud any person, falsely represents himself to be some other person, living or dead, is guilty of a misdemeanour. If the representation is that the offender is a person entitled by Will or operation of law to any specific property, and he commits the offence to obtain such property or possession, then he will be liable to imprisonment for seven years.

Although it might not be easy to locate the fraudster, we suggest you report this to the police. This will allow the necessary action to be taken.

Islamic versus other Will

What are the rules for making a Will? What if I am a Muslim, and don't want Islamic laws to be applicable in the distribution of my estate when I expire? Is this possible? What can I do?

10 February 2014

Islamic laws don't have a specific format on how a Will can be drawn. However, in a Will, the following must be there: the name of the person making the Will, the names of the beneficiaries, the name of an executor including an alternate executor and the types of assets and how you intend to distribute them. If the testator can read and write, then

the Will should be witnessed by not less than two persons (it is recommended that one is related to the testator and another unrelated). However, if the testator is illiterate, then not less than four persons should witness the Will, two being related to the testator and two not related to the testator.

Furthermore, please note that the testator and the witnesses to the Will should all be in the presence of each other, and should witness each of them signing the document at the same time. Upon death, the law applicable in the distribution of the estate of the deceased can either be religious law or customary law, depending on the life of the deceased.

For Islamic estates, it is clear that the testator can only distribute one third of his estate, the rest of the estate shall be distributed as stipulated in the Quran. The Probate and Administration Act and the related regulations do not provide on whether a Muslim can opt not to have his estate distributed in accordance with Islamic laws. However, there is a judgment of the Court which provides that a Muslim testator can clearly indicate in his Will that he doesn't wish for his estate to be distributed in accordance with Islamic law.

A Will is one of the most important, yet underrated, documents you will make in your lifetime. One day it is your Will that will speak, not your mouth. Please consult your attorney for further details.

Power of attorney

If I have been granted a power of attorney, can I also give someone else a power of attorney, based on this power of attorney? In short, I want to give someone else the right to act as the attorney, not myself, although I am the original holder of a power of attorney.

3 March 2014

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A power of attorney is a written authorisation to represent or act on another's behalf in private affairs, business, or some other legal matter. The person authorising the other to act is usually the donor and the one authorised to act is the donee or the attorney.

The person who creates a power of attorney, known as the grantor, can only do so when he/she has the requisite mental capacity. In some powers of attorney, the grantor states that he/she wishes the document to remain in effect even after he/she becomes incapacitated. This type of power is commonly referred to as a durable power of attorney. To the best of our knowledge, this concept has not been tested in Tanzania. If someone is already incapacitated, it is not possible for that person to execute a valid power. If a person does not have the capacity to execute a power of attorney (and does not already have a durable power in place), often the only way for another party to act on their behalf is to either refer to the person's Will or make an application in Court for the appointment of a guardian to act in the best interests of the person.

Coming to your specific question, it is very unlikely that you can further delegate your powers under the power of attorney, unless the power of attorney specifically states so. Under the legal principle of *delegata potestas non potest delegari*, no delegated powers can be further delegated. Your lawyer can guide you further.

Husband's Will says I don't remarry

I am a beautiful and wealthy widow. My husband passed away testate in an accident four years ago. Soon after my husband passed away, a Will alleged to be his was presented. Without any other condition, my husband had said that I should not re-marry when he dies. I have tried to put up with his wishes. However, I am now deeply in love

with another man, who I want to marry. My children are grown up and finalizing their secondary education. Thus, I have no further issues. My in-laws have found out my intentions, and have warned me not to attempt to remarry. Is this condition legal? Am I obliged to follow the Will? Can these in-laws prevent my second marriage? Can this condition affect what I have inherited? Please guide.

17 March 2014

It is surprising to find such a wish in the Will. As a matter of law, the status of widows and marriages is governed under the Law of Marriage Act [Cap 29 R.E. 2002]. Under Section 68 of this Act, it is stated that, notwithstanding any custom to the contrary, a woman whose husband has died shall be free to reside wherever she may please and to remain unmarried or remarry again any man of her own choosing. However, where 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, which is a period of four months and ten days after the death. In your case, this period is long over.

Despite the factual existence of the predicament in the Will, there is nothing legally which prevents you from marrying another man. The in-laws cannot legally prevent your intended second marriage. As a matter of courtesy, you may use elders to sort this issue out for you. Our experiences show that, in the local Tanzanian cultures, widowers remarrying is not a new phenomenon.

What you have inherited belongs to you. Also, in our opinion, your inheritance will continue to belong to you, notwithstanding that there is this condition in your husband's Will. However, we recommend your attorney look at this.

Delay in probate, now out of time

It took me just over two years to get probate issued in my name after the death of my brother. I then applied to sue a certain party over a land matter. The lawyers on the defendant's side claim that more than 12 years have elapsed since the dispute arose and that, hence, under the statute of limitation, I am time-barred. What can I do?

16 June 2014

It is true that, under the Law of Limitations Act, one is supposed to sue within 12 years of the cause of action in a land matter.

However, this Act also excludes the time that it took you to obtain the probate. Section 35 states that for the purposes of the provisions of this Act relating to suits for the recovery of land, an administrator of the estate of a deceased person shall be taken to claim as if there had been no interval of time between the death of the deceased person and the grant of the letters of administration or, as the case may be, of the probate. Hence, we believe you are not time-barred.

We recommend your lawyer relook at the facts and guide you.

Will says no to marriage

I was very close to my father. When he died, he left me a substantial asset which are a number of properties. In the Will, he has mentioned that I should not marry. This is because, during his lifetime, he had agreed with me that I should become a nun. I spoke to a few friends of mine who told me that, under our laws, I cannot now get married and that, even if I do, my marriage certificate is void. Is that true? I feel threatened that if I do get married the soul of the deceased will not rest in peace.

10 February 2014

That is absolutely false. Getting married is

a universal right. Neither a Will, nor any other document, can stop you from proceeding with marriage. It does not matter what your father wanted when it comes to such personal rights, the final decision is yours. Under the law, you can hence proceed as you deem fit. Your lawyers can guide you further.

Unfortunately, as lawyers, we are unable to comment or respond on the soul of the deceased. It is not a legal question, and is best addressed by your religious leaders.

Will stolen by wife

Is it possible for a wife to steal from a husband? My brother passed away and I am sure he left a Will with his wife. She has disappeared with it, and has not been seen.

22 September 2014

Section 264 of the Penal Code states that for the avoidance of doubt, it is hereby declared that a husband may be guilty of stealing from his wife or a wife from her husband. The Penal Code further states that if the thing stolen is a testamentary instrument, whether the testator is living or dead, the offender is liable to imprisonment for ten years. Hence, the disappearance of the wife can be reported to the police. If she has stolen your late brother's Will, she can be arrested and prosecuted.

Executor neglects to pay licence fees

Our father passed away years back and appointed his friend as an executor. All formalities on the grant of probate were complied with subsequent to the death of our father. Ultimately, the Court appointed my father's friend as an executor.
Recently, we noticed that the executor did not pay rent for one of the key primary mining licenses which our late father was holding. The license has now been revoked. We have been ordered to vacate from the mining site, which has been reallocated to another person. As heirs, is there a way we can sue the executor? We had brought this matter to his attention before only to find recently that he had lied that he had duly paid the fees. My brother, who is a mining consultant, has already started following up with the Commissioner of Minerals to inquire about the revocation. However, I want to check with you if we can make the executor also liable. Please guide.

3 November 2014

The Probate and Administration of Estates Act [Cap 352 R.E. 2002] makes an executor or administrator liable for misapplication and neglect which results in the devastation of the estate. Therefore, when an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, she or he is liable to make good the loss or damage so occasioned. Also, when an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good such amount. Thus, it can safely be said that, based on the facts above, you seem to have a good cause of action against the executor. Very few people know this, but persons who are appointed as executors must know that they can be personally liable for their actions.

Property and Planning Law

Occupying a property comes with rights and obligations, some of which cannot be varied by actions, or even by agreement. The property right you truly have, and the rights you think you have, are not necessarily the same thing.

Long term lease confusion

I entered into a lease in 2009 with a landlord, who leased his premises for a period of 15 years. Hence, my lease expires in 2024. It has now come to our attention that the title deed only had 12 years to expiration, i.e it expires in 2021. Can the lease be for a period longer than the title deed expiration? On a separate note, if a landlord has accepted rent when he has also given you notice to terminate a lease, can I bind the landlord to renewal since he accepted the rent?

6 August 2012

According to the Land Act, the holder of a right of occupancy may lease that right of occupancy or part of it to any person for a definite period or for the life of the lessor or of the lessee or for a period which though indefinite, may be terminated by the lessor or the lessee. However, the maximum term for which any lease may be granted shall be ten days less than the period for which the right of occupancy has been granted where the right of occupancy has been granted for a definite period.

From the above, the lease could not have been granted for a period of more than 12 years, less ten days from the time you entered into the lease. You will need to turn to the interpretation of the lease, and what was the intent at the time of entering the lease. One of the options you have is to agree on an addendum to correct the error. Should the lessor not be cooperative, it is likely that based on severability principles, your lease may be held to be of 12 years less ten days. It surely cannot be over this period, as the law disallows such an arrangement.

Answering your second question, the Land Act states that, where a lessee remains in possession of land without the consent of the lessor after the lease has been terminated or the term of the lease has expired, all the obligations of the lessee under the lease continue in force until such time as the lessee ceases to be in possession of the land. The Land Act further holds that, when a lessor who accepts rent in respect of any period after the lease has been terminated or the term of the lease has expired is not, by reason only of that fact, to be taken as having given consent to the lessee remaining in possession of the land or as having given up on any of the rights or remedies of the lessor against the lessee for breach of a covenant or condition of the lease. However, where the lessor continues, for two months, to accept rent from a tenant who remains in possession after the termination of the lease, a periodic lease from month-to-month shall be deemed to have come into force.

Hence, acceptance of further rent does not necessarily mean that the lease has been extended.

Purchase of land in Dar

I am entering into a contract to buy a piece of land in Dar. How do I go about it, and what should I do?

30 April 2012

Firstly, make sure a proper due diligence is done of the land. Start by lodging a search at the Registrar of Titles, to make sure the seller is indeed the seller. You can also check this register to ensure there are no mortgages, caveats or other encumbrances on the piece of land you intend to purchase. Secondly, make sure that you take the original title deed to the Registrar of Titles for physical verification. There are a lot of fake title deeds available in the market. You therefore need to be extremely sure that the one you will ultimately be holding is genuine. Since the land is not developed, it is important for you to make sure with the Registrar that there is

no double allocation. A number of empty plots have disputes over double allocation, and the matter lands up in Court.

Thirdly, it is not a bad idea to speak to the neighbours to identify the seller to you. Make sure you are dealing with the seller or his duly appointed attorney. You should also avoid making cash payments for the purchase, amounts should be deposited into the seller's bank account.

With the above due diligence done, you will be required to draw up a sale agreement for the land, and fill out and sign some standard land forms. A valuation report will be required for the assessment of capital gains tax. This is usually 10%, and is paid by the seller, unless agreed otherwise. There is also a stamp duty of 1% and a registration fee of 0.25% of the value of the transaction, as approved by the government valuer. These taxes are paid for by the buyer.

All in all, if the above is cleared, the transaction should not be complicated. It is not unwise to engage the services of your lawyer.

Gold in my garden

What would happen if I dig into my garden and find gold? My neighbours say it is not mine. This land belongs to me, I wonder why that would ever be the case. Please guide me.

28 May 2012

This sounds like a fairy tale, but sometimes fairy tales do come true. Assuming that you will, and we hope that you do find gold, the gold will not belong to you. You own the surface rights of the land you live on, not the rights to whatever is below the land.

If you suspect that there is a chance you will find gold, you may apply for a prospecting licence. Whether or not that licence will be granted is another question. We suggest you contact your attorney, who can guide you through the provisions of the Land Act and the Mining Act.

Loan before security perfection

In good faith, our bank gave a loan to a customer without completing the security perfection procedures, especially the mortgage, which remains unregistered. Little did we know that the borrower's intention was to disappear with this large sum of money. We now realise that the title deed he gave us to register is an old title that was revoked but looks very original. What should we do? The property still exists but belongs to someone else.

13 August 2012

It is a banking 101 principle that you should not give out a loan without perfection. Considering the facts, you are an unsecured creditor. Apart from instituting a criminal complaint, you will have to sue the individual for recovery and attach his or her personal assets, if any.

It is likely the person also used a fake name. Therefore, you may never find this person. Our experience reveals that such loans are always given in collusion with your officers. You may want to investigate further by conducting an internal investigation. Overall, your chances of recovery look very bleak unless there are other securities you can rely upon.

At the least, we would have expected you to have taken the original title to the Registrar of titles at the Ministry of Lands for verification before disbursing. It seems you did not even do that.

99 years right of occupancy

My right of occupancy states that it shall be valid for a period of 99 years from 2005. In the belief of this, I am selling it at a premium. It seems that this is the only piece

of land that has been granted such a long period. The purchasers are worried about the period granted. What should I do?

25 February 2013

First and foremost, it is clear that land cannot be granted for a period exceeding 99 years. Hence, either you have a fake certificate of right of occupancy or there is an error and it should read 99 years. We reproduce section 20 of the Land Act, which states: (1) A granted right of occupancy shall be (a) granted by the President; (b) in general or reserved land; (c) of land which has been surveyed; (d) required to be registered under the Land Registration Act, to be valid and, subject to the provisions of that law and this Act, indefeasible; (e) for a period up to but not exceeding 99 years; (f) at a premium; (g) for an annual rent which may be revised from time to time; (h) subject to any prescribed conditions; (i) capable of being the subject of dispositions; (j) liable, subject to the provisions of this Act, to revocation; (k) liable, subject to the prompt payment of full compensation, to compulsory acquisition by the state for public purposes. (2) A granted right of occupancy shall not confer on the holder any water rights or rights over the foreshore unless those rights are expressly mentioned nor shall it confer on the holder or any person acting under the authority of the holder any rights to mines, minerals, or gas or the right to appropriate and remove from the country for gain or for purposes of research of any kind any flora or fauna naturally occurring or present on the land or any paleontological or archaeological remains found on the land.

We suggest you consult your lawyer to guide you further.

Trespass and right to compensation

My boss left a piece of land for me to guard and moved to another country. He never came back for almost nine years. Neither did he inquire about the land. I figured that maybe he does not want the land, so I constructed a house and made some developments on the property which cost me a lot of money. He came back last year and asked me to leave the property. I asked him to pay me compensation for the house, as I believe he will rent out the house. He refused on the grounds that he did not ask me to develop the property and if I could, I should carry the house with me! It is true that he did not ask me to develop the property. However, he had abandoned the land and I think I am entitled to compensation. Please advise on whether there are chances that I may win this in Court.

11 March 2013

Under the law, you were employed by the owner of the property to guard the property so nobody would trespass on the land. You were a legal occupier of the land authorised by the owner. However, you became a trespasser the moment you decided to treat the property as your own.

It is true that under the law, a person can be dispossessed of his property if: a) another person comes to occupy the land b) this other person is not aware of the existence of the owner and c) the owner does not interfere with the person's occupation over the land for a period of 12 years consecutively.

However, in your case, you were aware that the owner of the property existed, and that the owner left you in charge of the property. This means he cared for the property enough to look for someone to guard it against trespassers. Just because he did not ask about the property for over nine years, which is hard to believe, but may be true, does not mean that under the law he has lost his right to the property. Hence, when you constructed the house, you did so at your own cost and risk.

It is unlikely that the owner can be liable for compensation.

You might want to consider some other mediatory process to convince your boss. Your lawyers can guide you further.

Area planning and change of land use

I have been expecting the municipal office to prepare a detailed planning scheme over my area for the last three years, which they have not done so far. Is there a possibility for me to plan my own area? Also, because I have a certificate of title over another piece of land, can I change the use of such land?

15 April 2013

The Urban Planning Act provides that, the landholder may prepare a detailed planning scheme on their land, notwithstanding that detailed planning has been prepared by the planning authority, provided that the detailed planning scheme conforms to the general planning scheme. Hence, it is necessary for the general planning scheme to be in place before you can be entitled to prepare a detailed planning scheme. Once the same is prepared, you must lodge it at the relevant urban or rural authority for approval before you proceed to implement such a plan.

Also, it is possible to change land use. You can do this by lodging an application in a prescribed form for change of land use in the relevant urban or rural authority. You may not change the use unless, and until, the respective authority gives you written consent.

Seller dead, land not transferred

I executed a contract of sale of a house with someone who passed away before I could officially lodge the transfer with the Ministry of Lands. I am informed there are transfer forms which I have to submit but the seller is no longer alive to execute them. Who can I request to sign on behalf of the deceased?

17 June 2013

You have not informed us if there is a probate or letters of administration granted by the Court to someone with respect to the deceased's estate. If there is then that person can "wear the shoes of the deceased", and sign the relevant transfer forms. If not, you might have to wait until someone is appointed.

One other thing is that the sale to you may be challenged by the beneficiaries if the said property appears in the deceased's Will. Your lawyer can guide you further.

Government suing after 20 years

I used to be a government employee, and was occupying a house owned by the government in the early 1980s. I was required to pay some rent. However, in those days, no one used to follow up, so I never paid and enjoyed the premises until I retired and moved to my own apartment. To my surprise, in January this year, I received a demand notice from the government that I should pay the rent which is outstanding, including interest as well. I know little of law, but a friend tells me that such recoveries under contracts are limited to six years whilst this attempted recovery by the government is coming after more than 20 years. Can I successfully challenge this in Court? Please guide me, as I don't have that kind of money and am very old.

17 June 2013

Kindly note that, under the Law of Limitation Act, suits based on contract are limited to six years from the date the right of action accrued. However time limit for suits by or on behalf of the government is 60 years. Hence, the government is within the time limit. As you admit, the government has every right to claim for its rent as well as interest.

We strongly advise you to consult the relevant government entity and see if you can reach into an out-of-Court settlement. You should prepare a schedule for payment, which will allow you to pay in instalments which might be more favourable to you. Be mindful that you have been using government property without paying rent, it is only fair that the government pursues you for outstanding amounts. Your lawyers can guide you further.

Title in name of brother

I own a piece of land upcountry which is very lucrative. However, I bought it in the name of my brother for reasons that he would take care of it. He knows that it is my plot, but I am unsure if the law recognises this. I have mentioned this plot in my Will, and my wife is mentioned as the beneficiary of this plot. Please guide.

2 September 2013

If the plot is in the name of your brother, then in the absence of any other signed agreements, the plot belongs to him. What you should consider doing is entering into an agreement that clearly states what you have stated in your question above. You should also consider getting a specific power of attorney from your brother, that must be registered, that allows you to act on his behalf in any manner whatsoever whensoever. You can also get him to sign on transfer documents in case you want to transfer the said plot.

You say that you have mentioned the plot under your Will. In the absence of any formal documents showing that you are the ultimate owner of the plot, the Will cannot not come to your beneficiaries rescue in the event that your brother claims the plot. Your attorneys can guide you further.

Rent after eviction

I entered into a lease agreement with a certain old man for a period of one year. I have been paying this landlord rent at an interval of three months. Surprisingly, the landlord later imposed a number of conditions which were not provided for in the lease. One of these conditions was to not cook a certain type of food in the house. Without any notice on my nine month stay, I was forcefully evicted on the grounds that I failed to abide to these "subsequent conditions" of the old man. To avoid any problem, and after being warned by my neighbours about this old man who has a witch-like face, I looked for another place where I am currently staying. Unfortunately, my former landlord who evicted me is demanding me to pay the remaining three months of the lease duration although I did not stay for the entire 12 months, due to the eviction. He further alleges that the eviction was due to my own breach of conditions, thus I have to pay. The old man sent the chairman of the District Land and Housing Tribunal to come and inform me that the sum was payable. Should I pay? Please guide.

23 September 2013

As matter of law, a tenant who, contrary to the express or implied terms and conditions of a lease, is evicted from the whole or a part of the leased land or building is not, as from the time of the eviction, under any obligation to pay any rent or other monies due under the lease or perform any of the covenants and conditions on the part of the tenant expressed or implied in the lease in respect of the land or buildings or part thereof from which he has been so evicted. This is what Section 110 (1) of the Land Act [Cap 113 R.E. 2002] provides.

Coming to your facts, we do not see any

obligation for you to pay rent for the house which you are not staying in. The contract seized to operate when you were evicted. As from the facts you have given us, we are of the view that it is the landlord who breached the lease by unlawfully evicting you.

The fact that the lease was for 12 months cannot be raised now, taking into account that the lease has been terminated before its expiry, hence you should not pay the three months remaining rent.

As for the visit you got from the chairman, please be informed that the chairman's utterance that you need to pay does not change the position of the law. The chairman might have a vested interest in the matter. Your lawyer can guide you further.

Tax Law and the TRA

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It is said that the only certainties in life are death and taxes. Perhaps we should add “tax disputes” to that list, judging from the letters we receive. Tax law is complicated and, invariably, the source of many complaints. Some of these complaints, for sure, arise out of a genuine confusion about what a particular tax law actually means, and whether taxes should be paid. But, quite often, individuals and companies are simply trying to avoid their tax liabilities entirely. This can be a dangerous strategy: the Tanzanian Revenue Authority has formidable powers to investigate suspicious tax behaviour, including the right to conduct raids on businesses it feels are misbehaving in relation to their tax affairs.

Taxation of education loans

I have been admitted to a certain university in Tanzania and have obtained a loan from the Loans Board, which lends money to students. I am yet to receive my 1st payment. I wish to know whether the said amounts will be subjected to any taxes and, if so, at what rate.

16 January 2012

Assuming that the loan is in furtherance of full-time education, you will not be subject to taxation. This is made clear in paragraph (i) of the Second schedule of the Income Tax Act of Tanzania. The exemption is only in respect of tuition or fees for full-time instruction at an educational institution. Should you change your status to a part-time student, taxes may apply depending on the facts of the change of status.

1/3 tax deposit before case heard

I am a mobile voucher seller in Morogoro. After long debates with the Tanzania Revenue Authority (TRA) in Morogoro, they unfairly assessed me with a colossal amount of tax. The TRA claimed VAT for transactions that do not attract such tax. On the face of it, it is quite clear that there is no tax payable, yet the TRA has proceeded to issue this tax assessment. My auditor says that we may be forced to deposit one third of the assessed amount before we can appeal this matter. This does not make sense to me, as the one third amount itself is enough to take me to the grave.

6 February 2012

The Tax Revenue Appeals Act provides that any person who disputes an assessment made upon him may, by notice in writing to the Commissioner General, object to the assessment. A notice of objection shall contain a statement in precise form, explaining the grounds for which the objection to an assessment is made. The notice must be filed with the Commissioner General within 30 days from the date of service of the notice of the assessment. Where a notice of objection to an assessment is given, the person objecting shall, pending the final determination, pay the amount of tax which is not in dispute, or one third of the assessed tax, whichever amount is greater.

The Act further states that the Commissioner General may, upon being satisfied that there exist good reasons warranting reduction or waiver of tax payable, direct that a lesser amount be paid.

From the above, it is clear that you must object to the assessment within 30 days and deposit the one third, or the amount not in dispute, whichever is greater. However, the Act also gives the Commissioner discretion to grant a reduction, or waiver, of the one third sum after being satisfied that good reasons exist. Reasons of financial hardship may be entertained, but they must be genuine. Your tax consultant can guide you further.

Taxability of donation amounts

Over the many years, I have contributed to a charitable institution in Dar, which the Tanzania Revenue Authority (TRA) says has been improperly registered. I was a major donor of food items to the institution. I also supply these food items to the market, which is my main line of my business. The TRA has now disallowed the entire donation I have made over the last three years, claiming that I have been oversupplying. My second question is if I transfer an asset for free, I do not understand why I should be paying tax on that transaction. Tanzania is the only country that taxes such a transaction. Is this the correct interpretation of the law?

19 March 2012

The Income Tax Act of 2004 allows you to donate to charitable institutions. However, the Act caps the amount you are allowed to deduct from your profit and loss statement. The law states clearly that, for the purpose of calculating a person's income for a year of income from any business, there shall be deducted: (a) amounts contributed during the year of income to a charitable institution or social development project; and (b) any donation made under Section 12 of the Education Fund Act, 2001.

Subsection 2 of this law further states that the deductions claimable shall not exceed 2% of a person's yearly income from a business. Any amounts donated in excess of 2% can be donated, but not deducted as an expense.

Your second question is fascinating in the sense that you have suddenly decided to give away your asset to someone, for free, and expect there to be no taxation. Your intentions might be honest, but the TRA have no ways of determining your honesty in such a transaction. There is no 'honesty meter' that can be plugged in to determine the motives behind your actions. Hence the law has categorically provided that, where a person transfer the ownership of an asset to an associate, including by way of a gift, that person shall be treated as if they realised a value equal to the market value of the asset, or the net cost of the asset immediately before it was disposed of. Similarly, the person who acquires ownership of the asset shall be treated as if they have incured expenditure.

You are also misguided about Tanzania being the only country that taxes such transactions. We took the liberty of looking at tax statutes of Uganda, Kenya, South Africa, India, the United Kingdom and Canada. All the tax statutes from these countries also tax, some even more rigorously than Tanzania, such transactions. Hence, your claim that Tanzania is the 'only' country that taxes this way is unfounded.

Taxes are important for national development. If such transactions are not taxed, everyone will claim a free transfer to a friend, associate, cousin etc, so as to avoid taxation. Where can a line then be drawn? For further guidance, you should consult your tax consultant.

Overtaxed by second employer

I have two employments. Each company knows that I have two jobs, although I meant to keep the latest job a secret. However, when I received my first salary from the second job a month ago, it appeared that my second employer has charged a tax rate of 30% of my salary, while the tax payable is about 19% only. Is it right for this additional tax burden to be imposed on me? Hasn't the employer and the TRA stolen from me? There is some conspiracy between my employer and the TRA.

16 April 2012

Neither the TRA nor your second employer stole from you. Rather, the law entitles your employer to charge you as it did. The Income Tax regulations (Government Notice No. 464 published on 5 November 2004) regulation 18 states that, when an employee has more than one employer, he or she is under obligation to choose among the employers who will be their primary employer and those who will be their secondary employer. The primary employer will deduct income tax as per the normal rates provided under the Income Tax Act (ITA). The secondary employer is obligated to deduct the employee's salary at the highest rate stipulated in the ITA. This is 30%.

You should also note that, under the ITA, it is an offence not to disclose your two jobs to both your primary and secondary employers. If convicted, you will be liable to pay a fine.

However, you can apply to the Commissioner General of the TRA for reduction of the rate. The law allows the Commissioner General to reduce the said rate if they are satisfied that the said deduction causes you hardship.

Your conspiracy theory between your employer and the TRA is too far-fetched.

Too many tax problems

I seem to be having multiple tax problems. First, I invested hundreds of millions of shillings to protect the environment in my factory but the TRA has disallowed the entire expenditure, saying it was not necessary. Secondly, there was a delay in paying taxes. The TRA did not even know about it, and I voluntarily went to the TRA to pay, only to find myself being charged interest and all sorts of penalties. Lastly, my auditor who had adjusted my accounts for me tells me that the TRA is after me for the adjustments he made, and that he required more fees to sort things out for me. I am confused. What should I do?

14 May 2012

We are sorry to hear about your tax issues, they are, however, not as complicated as you think. We begin in relation to the expenditure you claim has been disallowed by TRA on sums paid to protect the environment. You have not stated what exactly you were protecting. The Income Tax Act clearly states that, for the purposes of calculating a person's yearly income from any business, permitted deductibles can include those that relate to agricultural improvements, research and development, and environmental matters.

The Income Tax Act also defines permitted environmental expenditure, which can be incurred by either the owner or occupier of farmland. Permitted expenditure includes expenditure incurred to prevent soil erosion, and to remedy any damage caused by natural resource extraction operations to the surface of, or environment on, land.

In arriving at its decision, the TRA will need to know if this expense was necessary and whether it related to the operation of the business. You have the right to inquire why your expense has been disallowed. If you are not satisfied with the TRA's answer, you can appeal to the Commissioner General.

Whether you went to the TRA voluntarily or not, all legal persons are presumed to know the law. You cannot blame the TRA for fining you, or charging you interest, because the law provides for this. The TRA cannot monitor everyone. Compliance, whilst left to the individual, is mandatory and is an offence not to be compliant. Your argument that TRA would have never known is also not valid, because the TRA conducts random audits of various companies. The law is clear in that any person who fails to pay tax on, or before, the date on which it is payable shall be liable for interest for each month or part of a month where the tax is outstanding. Interest charges are calculated as a statutory rate, compounded monthly, and are applied to the amount outstanding at the start of the period.

We come to the last part of your question, where it seems that your auditor has illegally either prepared your statement of accounts or has concealed some material facts to reduce your liability. You appear to be being blackmailed by your auditor, because you need to pay 'extra fees' to 'sort' the matter. We wish to answer your question in two parts. To begin with, if you have also participated in this fraud or concealment, you will have also committed an offence. This may result in you being fined and/or imprisoned. The story, however, does not end there.

It might be worth you informing your accountant of certain provisions of the Income Tax Act (ITA). These provisions clearly

state that any person who knowingly or recklessly aids, abets, conceals or induces another person to commit an offence under this Act (the "original offence") also commits an offence. Offenders shall be liable on conviction where the original offence involves a statement that, if the inaccuracy of the statement were undetected, may have resulted in an underpayment of tax in an amount exceeding TZS 500,000. The penalties for this second office can include (a) a fine of not less than TZS 500,000 and not more than TZS 2M, imprisonment for a term of not less than one year and not more than two years or both; and (b) in any other case, to a fine of not less than TZS 100,000 and not more than TZS 500,000.

Your second question relates to the delay in paying taxes. It doesn't matter: imprisonment is for a term of not less than six months, and not more than one year.

From the above, you can see that your auditor can also go to jail. You might want to remind him of his duties to act honestly and professionally, and that he can also be held liable. Many auditors have forgotten this provision of the ITA. However, the TRA is now coming down hard on auditors and accountants who fail in the performance of their duties.

Tax avoidance versus tax evasion

I took part in an asset purchase transaction and planned the taxation in a manner that I would not be liable to pay VAT. The TRA has come down on me, saying I evaded taxes. However, my approach utilised a provision in the VAT Act. Is that really evasion, even if it means that the provision works in my favour?

11 June 2012

Your issue relates to the widely-debated subject of "tax avoidance versus tax evasion".

Tax avoidance is an arrangement whereby the taxpayer offers very little, or no income to tax, without contravening the tax laws. Tax avoidance takes advantage of any loopholes and weaknesses, deficiencies and loose or vague clauses in tax legislation, in order to minimise or eliminate tax liability. Tax avoidance is not punishable in law and is permissible in almost all tax jurisdictions. However, where a transaction is a sham and not genuine, it cannot be considered to be a part of tax planning or the legitimate avoidance of tax liability.

On the other hand, tax evasion involves a taxpayer's deliberate contravention of the tax law, in order to minimise or eliminate tax liability altogether. Tax evasion is the application of fraudulent practices in order to minimise or eliminate tax liability.

What you have done is found a loophole in the tax law and taken advantage of it to reduce or eliminate your taxation on the asset purchase.

In your instance, it may be an issue of interpretation, for which the TRA can clarify its position. If you are unhappy with the TRA's decision, you can appeal to the Tax Revenue Appeals Board.

Lastly, we must state that one has to be very careful while planning their taxes. There is a very thin line between tax avoidance and tax evasion.

VAT to a foreign company

I have been consulting for a foreign company on matters related to a certain project in Arusha. I further subcontracted part of this work to a Kenyan company. My question is on the tax implications of the transaction. Firstly, do I have to raise an invoice and add VAT to it? If so, how does the foreign company claim the VAT back? Secondly, does my client have to withhold taxes on the outsourced work to Kenya?

13 August 2012

VAT applies to your invoices, and your client must pay the invoices with VAT added onto the fee. And since your client is not registered here, it will not be able to claim back the VAT from the TRA.

On the second question, no withholding tax applies to your client, since it is you who has subcontracted the work and not your client. Hence, a withholding tax of 15% on the gross value of the subcontract will apply to all remittances that you make to the Kenyan company.

Who should be VAT registered

I am a new company in Tanzania. It is very likely that I will not receive any VAT income, as I am export-oriented. Do I still need to be registered for VAT? What is the threshold limit for VAT registration? What is the significance of the electronic fiscal device? Must I use it? What if I don't?

10 September 2012

VAT is charged on any supply of goods or services in Tanzania where it is a taxable supply, made by a taxable person, in the course of, or in furtherance, of any business carried on by them. Section 19 of VAT Act states that any person whose taxable turnover exceeds, or the person has reason to believe will exceed, the turnover prescribed in regulations made under this section, shall apply to be registered within 30 of becoming liable to make such application.

All traders or businesses whose taxable turnover exceeds TZS 40M (about USD 25,000) per annum, or TZS 10M (about USD 6,250) over three consecutive months, are obliged to apply for registration to the Commissioner for Domestic Revenue within 30 days of becoming liable. Some persons and institutions are relieved from the payment of VAT on supplies or on the importation of taxable goods and services. Additionally, some goods services are specifically exempted from VAT. In your case, it is likely that you will have to register if you meet the above threshold amounts. If you have no VAT input, you will have a VAT credit, which you can claim back.

An Electronic Fiscal Device (EFD) is a machine which allows businesses to efficiently manage their stock control systems, and to undertake sales analysis. The EFD was introduced to VAT-registered traders under The Value Added Tax (Electronic Fiscal Device) Regulation, 2010. The law came into effect on 1 October 2010. Companies that fail to comply with its requirement could face fines or closure of their business.

Further, the Finance Act 2012 extends the requirement to use EFD to all taxpayers, subject to a power of the TRA to exempt certain persons from this requirement. The Finance Act also introduces a new offence under the Income Tax Act 2004, where a person fails to acquire, or use, electronic devices or fails to issue fiscal receipts or fiscal invoices. The penalty for committing such an offence upon conviction is TZS 3M, or imprisonment for not more than three years. Hence, if you have to register for VAT, you must use the EFD. If you don't, you may end up in jail.

Taxation of non-Tanzanian income

I am a Tanzanian living in Dar es Salaam. I recently acquired shares in a company in South Africa, from where I received dividends for the first time a few months ago. The TRA somehow found out about this and, to my surprise, I have been hit with an assessment. How and why should I be taxed for my investment in South Africa? It seems like the TRA can tax the whole world, and this is their scheme to make some quick money. Please guide me, I am a very poor person and cannot afford this.

1 October 2012

Just so that you know, the TRA will come after you whether you are rich or poor. Your argument that you are poor holds no water.

The Income Tax Act of Tanzania provides that, if a person is a resident in Tanzania, they are liable to pay income tax for all their income, whether they obtain it in Tanzania or elsewhere. Since you are a resident, and you have both a local income and a foreign income, both of these incomes are liable to be taxed in Tanzania. This provision means that all Tanzanian residents here are liable to pay taxes for their income, not only in Tanzania but from all over the world.

However, one avenue that you may want to explore, based on what kind of income you have received in South Africa, is the Double Tax Agreement that exists between South Africa and Tanzania. This may come to your rescue and exempt your South African earnings from being taxed again in Tanzania so long as they have been taxed in South Africa. Your tax consultant can guide you further.

Ambiguity in tax law

There is one tax law that is ambiguous on how the tax is to be assessed, and also on how it is to be calculated. How does such an ambiguity be decided? What should I do? The TRA is looking at it to its advantage, saying others have paid based on this? They are threatening me to issue an assessment. Please guide.

5 November 2012

Normally, if there is ambiguity or any uncertainty, then that advantage is to be given to the taxpayer. It does not matter if others have compromised and paid. The mere fact that others have paid does not change the ambiguity in the law. The rule of construction of a charging section is that, before taxing any person, it must be shown that he or she falls within the ambit of the charging section by clear words used in the section.

The cardinal principle is that no one can be taxed just by implication. If a person has not been brought within the ambit of the tax law, they cannot be taxed at all. In your case, it entirely depends on what the ambiguity is.

In tax law, there is little room for intendment. There is no equity about a tax, no presumption about a tax, and nothing to be implied. One has to look fairly at the language used.

You cannot stop the TRA from issuing an assessment. You can, however, challenge the assessment to the Commissioner General. And, if you are not satisfied with the Commissioner General's decision, you can further appeal to the Tax Revenue Appeals Board, and then the Tax Revenue Appeals Tribunal and ultimately to the Court of Appeal. Being issued with an assessment is not the end of the world. Your attorney can guide you further.

Tax case at Court of Appeal

We have a pending appeal at the Court of Appeal on a tax matter. The TRA has issued the same assessment as the appeal, but for a different year. We have challenged this second decision before the Tax Revenue Appeals Board (TRAB). Is it not redundant for this Board to continue hearing this appeal when we are waiting for a final judgment from the Court of Appeal on exactly the same matter? Can the TRA issue an assessment for something that is being challenged?

19 November 2012

We start by answering your second question: whether TRA can issue an assessment for a matter whose interpretation is pending before the Court of Appeal. Our reading of the relevant tax statutes is that TRA

is not disallowed to issue an assessment, even if the matter is at the Court of Appeal. Hence, we do not see anything wrong with that.

As for the TRAB entertaining this second decision by TRA, please note that there is a decision by the Board exactly on this point, where the Board adjourned proceedings "sine die" before it, pending the decision from the Court of Appeal. In this decision, the TRAB held that "we are of the opinion that indeed prudence and common sense dictates that the hearing of the present appeals be adjourned until such a time when the Court of Appeal of Tanzania will have made a decision in an appeal which is pending before it in which parties therein and the main issue involved are the same as those obtaining in the present appeals. Whichever decision is made therein, it is going to pave way for a proper finalisation of the appeals now before this Board."

Based on the above decision, you can apply for the matter at the TRAB to be adjourned, pending the appeal.

Refusal by TRA to admit appeal

I have been assessed with an astronomical amount of VAT. In fact, the amount is so exorbitant that, if I am forced to pay it, it will lead to my company's insolvency. I filed the usual objection proceedings with the TRA, and asked for a waiver against depositing the one third amount of the assessment as a deposit. The TRA has come back, strongly refusing the waiver. I don't have the money to pay, what should I do? How can I be condemned unheard simply because I don't have the cash flow to pay the deposit to fight my case. Please guide.

19 November 2012

You have followed the correct procedure by filing objection proceedings with the Commissioner General. It is also provided for under the law that one has to pay one third of the assessed amount or the tax amount that is not in dispute, whichever is higher. In your case, you are objecting to the entire assessed amount. Hence, one third of the assessed amount will apply.

You say that TRA has not accepted your application for waiver. Your next best bet is to apply to the Tax Revenue Appeals Board for a waiver. Whilst a waiver of the one third rule is sparingly granted, and you will realise why from a government collection point of view, it can be obtained from the Board.

Reasons like lack of cash flow, over-utilised bank facilities, good previous tax payment record, the strength of the appeal, the current financial position of the company, amongst others, can be used by you to get this waiver. You can also plead that the underlying policy of the government is to facilitate and encourage trade, and not to hinder it. You can argue that, if you are forced to pay this exorbitant amount, then you will be forced to shut down, people will lose jobs, and the TRA will also lose revenues. Your lawyers can guide you further.

Faulty calculator, in trouble with TRA

I bought a calculator from a street vendor for my business. When I added 18% VAT, the calculator keeps on giving me a lower figure. For example, for a sale of TZS 100,000, when I add 18% VAT on this sale, it should read TZS 118,000, but this particular calculator gives a figure of TZS 116,000. I took it to a technician, who said that the calculator was faulty, and the 18% was being calculated as 16%. Is this a good reason for me to explain to TRA who are assessing me for the remaining 2% shortfall which amounts comes in excess of TZS 150M? Can I sue someone?

26 November 2012

This is the first time we are hearing of such a calculator and find it very hard to believe. But with the current influx of substandard products in the market, you might well be right.

To begin with, it is very unlikely that TRA will accept your argument. When you complete a sale of TZS 100,000, even the trader who has not gone beyond primary school would know that the VAT amount is TZS 18,000 and not TZS 16,000. We are also quite surprised that the 2% amount has added up to TZS 150M. This must mean that you have used this calculator for a long time without noticing the defect.

As for whom to sue, you can sue the street vendor who sold you this calculator. This might not yield you the results you want. You can also sue the manufacturer and distributor of the product. You never know, some calculators in town might be adding more VAT than required, and traders may be profiting from the surplus. Hence you should, in parallel, report this to the Fair Competition Commission, the Tanzania Bureau of Standards and the TRA.

We also recommend that you contact a tax consultant who can guide you further on the VAT issue you are faced with.

Government not honouring agreement

We have entered into two agreements with the government for the construction and operation of a certain project. This is a long-term project that runs into TZS trillions. The agreement clearly spells out that the obligations and other terms and conditions. It went through the normal government process, including being vetted by the Attorney General, before being signed by the Minister.

The TRA has now started taxing us exactly the opposite of what has been agreed. They claim that the law has changed, that they are merely executors, and it is for us to contact the relevant Ministry to resolve this matter. The Ministry is making promises but not acting. What should we do? We require urgent intervention. Will the dispute resolution clause, which has arbitration as a mechanism, assist us in getting immediate relief? It is quite discouraging that the government is not honouring the very own agreement it entered into. Why doesn't TRA, being a tax collection arm of the government, sort this with the Ministry instead of asking the investor to do so?

17 December 2012

You have raised some very important points. Firstly, the law does evolve. Such evolutions cannot be stopped by your agreement.

To give you an example of tax stability clauses in the Mining Development Agreements (MDA) and Production Sharing Agreements (PSA) entered between the government and companies: both of these agreements provide that, if there is tax regime change, the government will take cognizance of these agreements and ensure they bring the investor back to the same position as they would have been, had the change in law not been passed. For example, let us say that at, the time of investing, a mining or oil/gas company might have undertaken its projections at the then prevailing corporate tax rate of 30%. If the corporate tax rate was then increased to 40%, the amendment should, in the law that introduces it, not apply to the relevant companies. Alternatively, the government may look at another way of compensating the company, to ensure that it is only liable to pay based on the 30% standard. In short, based on the MDA or PSA, the company will only have to pay the old 30% corporate tax rate and not the new 40% tax rate, even though the law has changed.

In your case, it seems you have a similar

situation where certain taxes did not apply under the agreement and, perhaps, under the law at the time you entered into the agreement. Now, with some change in legislation, the taxes apply and the TRA is proceeding to collect such taxes from you. Your question is: should the government not respect the agreement? Our answer is yes, it must. The government has no choice, irrespective of whether the law changes or not. If the new law does not provide for such respecting of agreements entered into prior to this new law, meaning that the new law would automatically not apply to you, then the government will surely be held liable directly under the agreement. The government cannot change the goal post, and scoreboard, by introducing a new law, and not respecting what it has agreed upon.

In the circumstances, we suggest you follow this up with the Ministry. If these efforts fail, you should proceed to give notice of a dispute under the agreement. Ultimately, this will end up in arbitration. We believe that, from the brief facts you give us, that you have a very strong case.

As for whether you can get immediate relief from arbitration, we are not sure what relief you specifically want. Your agreement includes an arbitration clause, which denies jurisdiction to local Courts. But, if the relief you seek is urgent and temporary, then the Courts may look at entertaining your application.

Unfortunately, we are unable to answer the internal coordination question you have raised about why the TRA doesn't sort this with the Ministry. It is, however, true that the TRA has been reluctant to sort such matters out, perhaps because it is not their mandate to do so, and because the TRA does not grant exemptions. This has led to a huge outcry, with complaints that Tanzania's tax regime is not stable, is unpredictable, and is trying to squeeze taxes from the same companies without considering increasing the tax base. You can take this up with the relevant Ministry.

VAT on property

I bought a property from an individual private person for TZS 500M. I did not pay VAT, as I am not registered for VAT and neither is the seller. The TRA has come back to me and asked me to pay VAT on this transaction. Is VAT applicable to this transaction?

7 January 2013

Section 4 of The VAT Act outlines the scope of VAT. It states that VAT shall be charged on any supply of goods or services in Mainland Tanzania where it is a taxable supply, made by a taxable person, in the course of or in furtherance of, any business carried on by him.

The Act further states that the VAT on a taxable supply of goods or services shall be payable by a taxable person at the end of a prescribed accounting period, or at any time which the Commissioner may prescribe.

Not being registered for VAT does not mean you do not have to pay it. However, it does seem to us that VAT should not apply in this particular transaction since the seller was a private person and it is very likely that the sale of the property was not in furtherance of any business carried out by them. If it is in furtherance of his business e.g. he trades in properties in his own name, then VAT is payable. Your tax consultant can guide you further.

Pay as you earn for allowances

If I earn a salary of TZS 4M, which excludes my lunch allowance of TZS 300,000, my transport allowance of TZS 600,000 and my child's additional tuition fee allowance of TZS 250,000, all monthly, how much pay as

you earn should I be paying? Are allowances included in the calculation?

21 January 2013

All benefits, whether in cash or kind, paid by an employer to employees are subject to Pay As You Earn (PAYE).

Section 7 of the Income Tax Act (ITA), 2004 provides that all individual's income from employment during a year of income shall be the individual's gains and profits from the employment of the individual for the year of income. There are certain exclusions provided in this section.

Turning first to gains and profits: the ITA states that, in calculating an individual's gains or profits from an employment for a year of income, the following payments made to or on behalf of the individual by the employer or an associate of the employer during that year of income shall be included: (a) payments of wages, salary, payment in lieu of leave, fees, commissions, bonuses gratuity or any subsistence, travelling entertainment or other allowance received in respect of employment or service rendered; (b) payments providing any discharge or reimbursement of expenditure incurred by the individual or an associate of the individual; (c) payments for the individual's agreement to any conditions of the employment; (d) retirement contributions and retirement payments.

Now turning to exclusions: the ITA further provides the following can be deducted when calculating an individual's gains or profits from an employment: on-premises cafeteria services, that are available on a non-discriminatory basis; any subsistence, travelling, entertainment or other allowance that represents solely the reimbursement to the recipient of any amount expended by him wholly and exclusively in the production of his income from his employment or services rendered; benefits derived from the use of motor vehicle, where the employer does not claim any deduction or relief in relation to the ownership, maintenance or operation of the vehicle.

Whilst your accountant can guide you further by understanding each allowance more closely, we opine that these allowances, including the food allowance, are taxable. You might be able to get away with the motor vehicle allowance, but it depends who owns the vehicle and whether your employer is claiming a deduction for such an allowance.

We will not do the math here. Consult your accountant for further guidance.

Waiver of taxes

When I started my industry in Tanzania, the Ministry of Industry and Trade gave us a letter stating that, in view of the massive investment we were doing, we would be exempted from paying income tax for the first three years. We have the original letter but the TRA does not accept it, claiming that it does not recognise the exemption. What should I do? Why don't the various organs in Tanzania coordinate such operations amongst themselves? In the interim, the TRA is forcing me to pay the taxes. How do I handle this?

4 March 2013

The TRA is correct in their interpretation of the law. Section 10 of the Income Tax Act clearly states that (1) The Minister of Finance may, by order in the Gazette, provide: (a) that any income or class of incomes accrued in or derived from the United Republic shall be exempt from tax to the extent specified in such order; or (b) that any exemption under the Second Schedule shall cease to have effect either generally or to such extent as may be specified in such Order. (2) The Minister may, by Order in the Gazette, amend, vary or replace the Second Schedule.

(3) Notwithstanding any law to the contrary, no exemption shall be provided from tax imposed by this Act and no agreement shall be concluded that affects or purports to affect the application of this Act, except as provided for by this Act or by way of amendment to this Act.

From the above, it is clear that it is the Minister of Finance who grants the exemptions, and not any other Ministry. What is more, any such exemption must be gazetted before coming into force. The letter you have from the Ministry of Industry and Trade is neither grantable by it, nor has it been gazetted. Hence, it might be treated as a recommendation for an exemption to be granted. However, it does not stand as an exemption on its own.

We request you either to contact the Ministry of Industry and Trade and/or the Tanzania Investment Centre to formalise your letter into an exemption. Much as you don't want to hear this, you cannot blame the TRA for its opinion, because its interpretation is correct.

We agree with you that, in the interest of streamlining processes, it would have been better for the Ministries and the TRA to coordinate this for you. However, this may take longer than if you personally follow this up.

In response to the TRA forcing you to pay taxes, since there is no exemption in place, the tax is indeed payable. However, if you can quickly get the Ministry for Industry and Trade to intervene, and inform the TRA of the process for the formalisation of the exemption, the TRA may delay the collection of such taxes. The TRA may, however, not agree to this. If you end up paying the taxes, and later are then granted the exemption, the taxes paid may be credited or refunded.

Exemption on stamp duty

I executed a lease agreement in London for my flat in Dar. Is stamp duty payable and by whom? What is the deadline for payment of such stamp duty? What happens if the TRA delays the assessment of stamp duty if it is applicable? Can stamp duty be exempted in Tanzania?

22 April 2013

Since the agreement is for a flat i.e. a property situated in Tanzania, it does not matter where you execute it, stamp duty will still apply. According to the Stamp Duty Act (SDA), unless otherwise agreed upon by the parties, it is the tenant who is supposed to pay the stamp duty, which is 1% of the annual rent.

As for when stamp duty is to be paid, the Act says that all chargeable instruments executed by any person in Tanzania Mainland shall be stamped within 30 days of execution: provided that: (a) where any such instrument is brought to a proper officer for adjudication under Section 42 of this Act within such 30 days, the period from the presentation of the instrument to the proper officer until the notification to the person who presented it of the decision of the proper officer, shall be excluded in computing the said period of 30 days; and (b) every receipt, acknowledgement of a debt, promissory note and bill of exchange shall be stamped on the date of execution or the date of the instrument, whichever shall be the earlier date.

From the above you can see that, so long as you have filed for assessment within 30 days of execution, the time the TRA takes in assessing it is not to be calculated. If you do not file for an assessment within 30 days of execution, you will be liable to a penalty.

As for exemptions, the SDA has a provision for the Minister to exempt stamp duty. The provision states that the Minister

may, by notice in the Gazette, exempt any chargeable instrument, or any category, class or description of such instruments, from stamp duty. The provision also allows for retrospective stamp duty exemption by stating that, where an order under subsection (1) is expressed to have retrospective effect, any instrument specified in the order or as the case may be, any instrument of the category, class or description specified in the order, and given, issued or executed on or after the date specified in the order shall be deemed not to have been a chargeable instrument.

In your case, unless there are solid reasons why stamp duty should be exempt, it is unlikely that you will get an exemption. Also remember that the stamp duty exemptions must be gazetted for it to have the force of law. Your tax consultant can guide you further.

TRA website misleading

I relied upon the Income Tax Act (ITA) on the TRA website to enter into a TZS multi-billion transaction. Shockingly, two of the three provisions I relied upon have been changed in the last 12 months. Why is the TRA website not properly updated, and what can I do now that I have relied upon it? Can I sue the TRA? One TRA official said that, if it is a mistake of the TRA, they will respect what is on the website. Please guide me. This is really causing me uneasiness.

6 May 2013

A mistake on a TRA website cannot be used to change the law. For example, if an income tax rate in the TRA's website's ITA is mentioned as 25% whilst, in effect, it is 30%, the law will not change because of the TRA website error.

If you were entering into this TZS multi-billion transaction, the least you could have done is appointed a tax consultant. Your failure to do so also resulted in this potential liability. We doubt that an error on the TRA website would result in a successful claim against the TRA. However, your lawyers can guide you further. It is also recommended that you bring this to the TRA's attention formally and await a response from it.

Indeed, after reading your question, we also checked the ITA that appears online on the TRA website. We notice that a number of old provisions appear there. This is indeed quite embarrassing, to say the least. Hopefully, your letter to the TRA will help the TRA to take care of this. It is very likely unintentional.

Farm-in farm-out tax consequence

We are thinking of selling a portion of our block (farming out) under the production sharing agreement (PSA), so that we can get an investor to inject funds into the contract block, as we are cash strapped. We are told that income tax might become payable as a result of this. Do we need to seek consent of any authority for this? Why should we? Please guide.

20 May 2013

Generally speaking, capital gains tax is assessed when there is income and, where appropriate, from deemed income. In a farm-in farm-out agreement (Fifo), generally there is no gain other than a spread of risk and to inject capital to assist with exploration operations.

Whilst is not easy for us to guide you by merely reading this short question, generally speaking, a Fifo should not attract capital gains tax. This is because there is nothing to gain on an undiscovered block. Statistics are clear that most block drillings tend to be unsuccessful. However, the wording of the Fifo, and the method of calculating past costs vis-a-vis future costs to be incurred, and the percentage that you will be farming out vis-a-vis the amount that you will be sharing in

case of a discovery in the future, are crucial to understand before we can guide you.

As for consent, the PSA is governed under the Petroleum (Exploration and Production) Act, 1980 (PEPA). Section 54 of PEPA contains a broad requirement to seek ministerial consent with respect to any instrument by which a legal or equitable interest in, or affecting, a licence is created, assigned, effected or dealt with. This section states unless the Minister approves a) the transfer of a licence; or b) an instrument by which a legal or equitable interest in, or affecting a licence is created, assigned, effected or dealt with, whether directly or indirectly, the transfer, or the instrument (in so far as it operates as provided in paragraph (b), shall be of no effect.

From the above section, it is likely that consent of the Ministry of Energy and Minerals (MEM) is required before proceeding with the Fifo. It is true that the licence holder is Tanzania Petroleum Development Corporation (TPDC), and you are merely the contractor under the PSA. However, the Fifo has implications on the work programme. It is therefore recommended that you inform, and get consent, from both the MEM and the TPDC.

On why you should apply for consent, the answer is clear, the law states that you do. Your attorneys can guide you further.

Stamp duty on contract

The TRA is forcing me to pay stamp duty on an agreement I entered into to buy a PA system. The TRA claims that I should pay stamp duty worth 1% of the value of the system, which is a huge amount. My accountant says it is not payable. Kindly guide.

12 August 2013

Your accountant is correct. Schedules in the Stamp Duty Act set out where a 1% duty would apply. Your agreement does not fall within these schedules and, hence, no stamp duty is payable. You should state this to the TRA, and consult your tax lawyer for further guidance.

Agency notice by TRA

I am one of the largest taxpayers in the country, and fully compliant with the law. I have been served with an agency notice to deduct a very large amount from a supplier of ours amounting to over TZS 600M, which the supplier has purportedly not paid duty and VAT on. What is an agency notice? What if I do not owe anything to the supplier? The TRA officials are saying that I can deduct in the future and, for now, I should pay it from my cashflow. Kindly guide me, as I am under pressure and the TRA is threatening to penalise me.

11 November 2013

Imports into the country are governed by the East African Community Customs Management Act (EACCMA). The TRA has a right to conduct what is called a post audit of imports made by an importer.

It seems like your supplier might have been importing items that the TRA seems to have audited. If your supplier has found to have under-declared, this will lead to them incurring a tax liability. The agency notice is issued to you because, if you have any payables to this supplier, the TRA wants you to remit such funds to the TRA, to set off the liability of the supplier. In short, it is a recovery measure against the supplier, not against you.

The agency notice above is governed by Section 131 of the EACCMA which states: (1) The Commissioner may, by written notice addressed to any person (in this section called the agent) appoint that person to be the agent of another person (in this section called the principal) for the purposes of collecting duty due under this Act from the principal

where the Commissioner is satisfied that the agent: (a) owes or is about to pay money to the principal; (b) holds money for or on account of the principal; (c) holds money on account or some other person for payment to the principal; (d) has authority from some other person to pay money to the principal; (e) holds goods belonging to the principal which are liable to duty and on which duty has not been paid, and the Commissioner shall in the notice specify the amount of duty to be collected by the agent, which amount shall not exceed the amount, or value of the goods, held or owing by the agent for or to the principal. (2) The Commissioner may, by notice in writing, require any person to furnish the Commissioner within thirty days from the date of service of the notice, with a return showing detail of any moneys or goods which may be held by that person from whom duty is due under this Act. (3) This section shall apply to an agent appointed as though he or she were a duly authorised agent acting on behalf of the owner. (4) An agent who is appointed under subsection (1) and who claims to be, or to have become unable to comply with the notice for any reason shall notify the Commissioner accordingly in writing stating the reasons for his or her inability, and the Commissioner may accept, amend or reject the notification as the Commissioner may deem fit.

From the above, it is clear that you are merely an agent for the taxpayer. Hence, if there are no payables, or payables that are disputed, you should inform TRA accordingly. The TRA cannot force you to pay this sum from your own cashflow. It is a debt owed to the TRA by your supplier, not by you.

If there are payables to the supplier, you have no choice but to comply with the agency notice. If you do not, you will be fined, held personally liable and even imprisoned.

Your lawyers can guide you further.

Price without VAT

There is a particular store that I go to where some labels include the price of VAT and others do not. It is very confusing. Is there no law that regulates this? What should I do?

11 November 2013

Our VAT Act has a specific provision that governs this issue, which states in Section 63: (1) Any person making or publishing an advertisement in respect of the supply of any goods or services shall, if the advertisement mentions the price at which such goods or services may be obtained, state the price inclusive of tax. (2) In this section, "advertisement" includes any label attached to the goods and any sign displayed in connection with the goods or services and any quotation of their price.

Hence, all labels and adverts should have prices on them, which must include VAT. There is no option for the store owner. The TRA, as one would expect a tax authority to be, is extremely strict about compliance. We suggest you report this to the TRA, who will take immediate action.

Government contracts not recognised by the TRA

We entered into a contract with the government, which was signed by the relevant sector Ministry. There are many terms of the contract that the TRA has to stick to but, it says the contract does not have the force of the law and that we must contact the Attorney General (AG). We do not understand why we should be doing the running around when we were invited to come invest in Tanzania. Can we sue the government?

18 November 2013

There is no law in Tanzania that disallows you from suing the government. Unfortunately, this is not the first time where we have heard that a sector Ministry has entered into a contract, only for the TRA to then decline to stick to the contract on the grounds that it has no force of the tax laws.

Regrettably, you have not told us what type of contract this is, and whether such type of contract is provided for under the law. Generally speaking, and to ensure that you can enjoy the tax benefits under the contract, appropriate tax legislation needs to be changed and, most of the time, gazetted. This will ensure that the contract benefits pertaining to tax have the force of law. However, many a time the TRA has rejected contracts that already have the force of law. Such rejections by the TRA are challengeable.

Your best option is to contact the Ministry of Finance and ask for an intervention. The Ministry will then consult with the AG and sector Ministry to address this issue.

Much as we agree with you that the TRA should assist the government by coordinating this with the Ministry of Finance, which would also be more investor-friendly, unfortunately, that is not always expedient.

Should you not get what you bargained for with the government under the agreement, you can proceed under the dispute resolution clause and either sue or refer the dispute to arbitration. Your lawyers can guide you further.

VAT on sale of business

I sold my entire business to another company that has been running it since. Our tax consultant told us at the time that there was no VAT that would apply. In a recent audit, the TRA has asked for VAT amounting to TZS billions since, with the sale of the business, I transferred the key property. The TRA claims that the property itself, not the land, should have been valued and VAT paid on it. What should I do?

2 December 2013

What the TRA is saying is true in that VAT does apply for transactions on built-up property and not on land. In your valuation, it is the component of the built-up property that is chargeable to VAT. However, from the brief facts above, we believe that the TRA still cannot charge VAT on such a transfer, as correctly spotted by your tax consultant. This is because the transfer of the business is as a going concern.

Section 62 of the VAT Act states that (1) Where a business or part of a business is assigned ("transferred"), then for the purpose of determining whether the transferee is liable to be registered, the taxable turnover of the business or part transferred shall be added to the turnover of any business carried on by the person to whom the business or part of the business is transferred ("the transferee"). (2) Any liability other than criminal liability of a person transferring a business or part of business shall on and from the date of the transfer, pass to the transferee without affecting the liability of the transferor and such liability shall include the liability to: (a) keep, preserve, or to produce records or accounts; (b) furnish a tax return; or (c) pay any tax or interest under the Act; or (d) comply with any requirement made in particular in respect of the business by the Commissioner. (3) No tax shall be charged or input tax claimed in respect of the transfer where the transferee is registered. (4) Except to the extent that the Commissioner determines otherwise and upon written request or both parties any entitlement under the Act to credit or repayment of input tax that immediately before the transfer took effect was vested in the transferor, shall vest in and become the entitlement of the transferee, and shall cease

in so far as the transferor is concerned. (5) Any person who fails to notify the Commissioner of the fact of a transfer within thirty days after it takes effect commits an offence and upon conviction is liable to a fine not exceeding one hundred thousand shillings.

If you are certain that the same business is running now, as it was running under your ownership, it would translate into a transfer of a going concern. Therefore, no VAT applies. For example, if a hotel business is sold as a going concern, i.e. it continues to run as a hotel, then no VAT can be charged on the transaction. However, if a hotel is converted to an apartment building, then the transfer is not a going concern. If this happens, VAT will likely apply as Section 62 will not get triggered.

TRA car database unfair

I imported a car directly from overseas, which I bought from an auction. I presented the TRA with the auction certificate, which was conducted online, in addition to all the actual documents of the car, the mileage, purchase price and year of manufacture. I also submitted the shipping documents, including the insurance cover. However, the TRA then uplifted the value of my car more than double, claiming that they have a system database price. They gave no further reasons for their almost robotic approach and were very aggressive in the way they handled me. Every day that I delayed clearing the goods I was paying demurrage and storage. Ultimately, I ended up paying the import duty and VAT under protest, just so that I could salvage the situation. The car is cleared and I want to take the TRA to task for this unfairness. What should I do?

9 December 2013

In our research to answer this question, we came across a judgment that is quite on point to your situation. In the judgment pronounced by the Tax Revenue Appeals Board (TRAB), the Board was critical about the way this so-called database operated, and its arbitrariness. It stated that the TRA could use its designed database for the determination of customs value of imported cars, but only in deserving cases so that the TRA could avoid arbitrary decisions. The Board, holding in favour of the taxpayer / appellant further stated that "each case should be considered and determined according to its own facts, otherwise it would be calamitous to the innocent taxpayers for the respondent to generalise from a handful of tax defaulters and impose tax so arbitrarily."

The Board, in the case similar to yours, made it clear that the database could be used but not in such a manner that it becomes a mechanical tool that works to the detriment of the taxpayer.

The East African Community Customs Management Act provides for various valuation methods. The database's comparative approach is one such valuation method that was heavily criticised by the Board in its judgment.

However, to be fair to the TRA, there is no shortage of importers who heavily underdeclared vehicle values in order to avoid paying import duty and VAT. One cannot blame the TRA with the suspicion it is forced to move with, especially considering that car values are also very subjective.

Since you truly believe that this was a genuine price, and more or less reflects what a similar brand, model and mileage car would go for, then you have a good case to take to the TRAB. With the strong judgment against the TRA on arbitrary and generalised usage of its car database, you have a good chance of succeeding. Your lawyer can guide you further.

Permanent establishment in Tanzania

We are going to start servicing some companies in Tanzania but do not want to be registered locally since we will end up paying double taxes. Is there a way we can exist in Tanzania not having to register here, for example, by supplying from outside the country? We want the minimum tax burden in Tanzania. Please guide.

16 December 2013

You have not specified the kind of business you intend to carry on in Tanzania. But, generally speaking, you will need to register locally here to be able to continue to operate from Tanzania. You can either incorporate a newly-registered entity under a certificate of incorporation or register a branch office under a certificate of compliance.

From a tax angle, a foreign entity without a head office or effective place of management in Tanzania is automatically deemed to be carrying out a taxable activity in Tanzania, provided that it is deemed to have a permanent establishment in the country. This "deemed presence" can arise where you carry on business having an agent (to avoid registering locally), are using or installing substantial equipment or machinery, or are conducting supervisory work at a construction, assembly or installation site for more than six months.

It must be noted that, should your employees or representatives stay in the country for more than 183 days per year, that will also trigger their, and likely your, tax presence in Tanzania.

The permanent establishment concept is trying to curb exactly what you are trying to achieve i.e. not to pay any taxes in Tanzania. We must also state that the TRA has come down very hard on moves that aim to avoid local taxes.

Once you are found to have a permanent establishment, whether you are registered or not, you will be obliged to pay local taxes. Your tax consultant can guide you further.

VAT evasion and search

Can TRA officers demand to see the quantity and quality of goods in my godown. They seem to think I have evaded payment of VAT? Is that not an infringement of my rights to doing business in Tanzania?

6 January 2014

We are unsure how your rights to do business would be infringed by TRA demanding to verify the quantity and quality of your goods. Section 39 (1) of the Act clearly provides for this citation, and states that: For the purpose of exercising any power conferred on him by or under this Act, an authorised officer may, at any reasonable time, enter any premises which he has reason to believe are used for or in connection with the carrying on of a business, including any premises used only for the storage of goods or documents, and shall have full and free access in it to open any packaging, take stock of any goods and do all such things as are reasonably necessary for the performance of his duties.

Section 36 of the VAT Act also allows the TRA to take samples and states: (1) Where an authorised officer has reason to believe that it is necessary to do so for the protection of the revenue, he may take, from goods in the possession of any person who supplies goods or services such samples as may be reasonably be necessary to determine how the goods or the materials from which they are made ought to be or to have been dealt with for taxation purposes.

If such samples are taken, the TRA must issue a receipt for such goods. If the goods are not returned within a reasonable time, the TRA is liable to compensate you.

Taxes in farm-in farm-out agreements

In oil and gas contracts, when a company cedes its rights under a production sharing agreement (PSA), the, what are the income tax consequences of a typical farm in farm-out agreement (Fifo) transaction? Are there specific tax rules that govern this? What guidance can you give us?

3 March 2014

The Fifo tax consequences are debated internationally. Unfortunately, there are no specific guidelines on how such agreements are to be taxed, since there are many different kinds of Fifo agreements. For example, a company that is farming out with no proven hydrocarbon reserves, and that is doing so at cost, will have little tax consequences. This can be contrasted with a company that has a discovery and that is cashing out, even if a small percentage, at a premium. Establishing the premium in such uncertain circumstances is subjective, and is the cause of many tax disputes around the world.

In this connection, it should be remembered that substance, not form, controls in the application of income tax law. However, as a practical matter, the substance of a transaction will tend to follow the form in which it is cast.

There are various types of farm-out agreements. These include the simple farm-out, the sublease, the undivided interest farm-out, the checkerboard farm-out, the carried interest farm-out, the net profit farm-out, the back-in farm-out, to mention a few.

To address ambiguity or interpretation issues in relation to the Income Tax Act in Tanzania, Section 131 of this Act specifically provides for private rulings. This provision allows a taxpayer to ask the TRA in advance of the tax consequences of a transaction. Section 131 states the following: The Commissioner may, on application in writing by a person, issue to the person, by notice in writing served on the person, a private ruling setting out the Commissioner's position regarding the application of this Act to the person with respect to an arrangement proposed or entered into by the person.

We recommend that you proceed for a private ruling under Section 131. Another tax consequence that your tax team should also consider is that of VAT on the transaction. Your lawyers can guide you further.

1% stamp duty

We are two parties that executed a certain agreement that we know required to be stamped with 1% stamp duty. However, the document was executed outside the country. We are unsure if any penalties apply, as the contract only started 90 days later and we brought it to Tanzania to register after about five weeks. Are we liable to pay any penalties? I am told the penalties are ten times the amount of stamp duty payable.

10 March 2014

If your claim of the document having been signed overseas is true, then Section 26 of the Stamp Duty Act has a specific provision for this. It states that every chargeable instrument executed out of Tanzania Mainland shall be stamped within 30 days of its first arrival in Tanzania Mainland, provided that (a) where any such instrument is brought to a proper officer for adjudication under Section 42 of this Act within such 30 days, the period from the presentation of the instrument to the proper officer until the notification to the person who presented it of the decision of the proper officer shall be excluded in computing the said period of 30 days; and (b) promissory notes and bills of exchange payable on demand or at not more than 30 days from sight or date shall be stamped within seven

days of first arrival in Tanzania Mainland.

Hence, assuming your document is not a promissory note or bill of exchange, stamp duty is only payable when the document arrived in Tanzania. We believe that you should not be paying any penalties.

Also, your fears about the penalty on stamp duty are somewhat exaggerated. Since you have voluntarily produced this document, it has not been impounded. Hence, the 10 times the amount of stamp duty penalty is not, based on the brief facts you have provided, applicable. Proper engagement with the TRA should resolve this. Your lawyer can guide you further.

Absence of transfer pricing regulations

We are a company in Tanzania with a holding company in Europe. The biggest challenge we face is that on transfer pricing, especially since these regulations don't exist at the moment. In the absence of such regulations, what should we assume? Is there case law in this area?

26 May 2014

Fortunately, as we answer this question, the Income Tax (Transfer Pricing) Regulations 2014 have been published just a few weeks back. These have been Gazetted by the Minister for Finance under power of Sections 33 and 129 of the Income Tax Act (ITA) 2004, and are now in force. Should you wish a soft copy you can e-mail us on info@fbattorneys.co.tz and we can send it out to you.

Apart from other regulations contained therein, you may want to pay particular attention to: Regulation 4(5) which states that a 100% penalty (based on underpayment of tax) shall be imposed on a person who contravenes this regulation; Regulation 5 talks of the transfer pricing methods to be applied; Regulation nine construction of these regulations to be in manner consistent with the OECD/UN Model. However, in the event of inconsistencies, the ITA and these Regulations will prevail; Regulation 12 address advance pricing arrangement that can be entered into after seeking approval from TRA.

Your tax consultant can guide you further.

TRA denies tax exemption

We are a foreign investor and were given many exemptions by our sector Ministry so that we could proceed with the project. There is a lot of outcry on exemptions, but it seems people fail to understand that Tanzania is one of dozens of countries trying to attract investors. Hence, serious investors need incentives. The misuse of exemption is by non-serious investors, who have tailored their entire business model on exemptions and tax evasion. In any case, the TRA has refused to recognise our incentives, saying that they are not legal. The recent newspaper articles that the government is going to abolish all incentives is also causing us concerns. Please guide us about what options we have.

2 June 2014

There are a number of issues you have raised above. You seem to have entered into an agreement with a certain Ministry. Unfortunately, you did not mention which Ministry. However, if it is a Ministry other than the Ministry of Finance, then chances are that whilst you have an agreement in place that grants incentives, these incentives have not been formalised by the Ministry of Finance. As a result, the TRA can give such incentives recognition. Much as you blame the TRA, the TRA is merely the implementing body, and does not grant incentives. We believe that you need to contact your sector Ministry. This Ministry will likely contact the Ministry of Finance to formalise the incentives, so that

you can enjoy them.

If your sector Ministry is not able to formalise these, or the Ministry of Finance does not agree to a granting of such incentives, then you can proceed under the dispute resolution clause of your agreement. It is indeed unfortunate that sector Ministries, the Ministry of Finance and the TRA are not synchronized, to enable you automatically enjoy the incentives. This has indeed led to huge complaints about Tanzania's investment climate which, on paper, looks very attractive, but in practice has caused nightmares to many.

On the abolition of incentives, we are not sure what article you are referring to. However, abolition of incentives can only be done by the legislation that allows such incentives to be granted. There cannot be a "wholesale" cancellation of incentives, as it would be detrimental to the investor. We believe that incentives will be abolished but those which were granted through agreements that the government entered into must be honoured, depending on the wording of the agreement. Many agreements have fiscal and tax stabilization clauses. The existence of these clauses means that you could sue the government for compensation for the loss that the removal of incentives will have caused you.

You must remember that the law does not freeze because of agreements. What we mean is that the law on incentives can be changed, and you will end up paying. However, the agreements you have entered into, depending on the wording, are valid. Hence, these agreements allow you to sue the government for compensation of the loss that the removal of damages will have caused you. Should incentives be abolished without paying thought to this, the compensation that the government will pay will likely outweigh the additional tax collected by the abolition of incentives. There are many cases, in a number of other neighbouring countries, where the impact on the government has been to its own detriment. Surely the Tanzanian authorities will pay attention to this.

Your tax consultant and lawyers can guide you further.

PSA tax term not respected

Our company has a Production Sharing Agreement (PSA) with the government. However, a tax that was stabilized got changed by the government. This is a clear breach of the terms of the PSA. In what Court can we sue the TRA for not respecting the PSA?

16 June 2014

The PSA is entered into between the Ministry of Energy and Minerals, the Tanzania Petroleum Development Corporation (TPDC) and the exploration company. The TRA is not a signatory to the PSA and cannot be sued in this instance.

It is likely that your PSA includes an arbitration clause, which you can invoke and claim compensation from the government for the damages and/or additional expense you incurred due to the change of tax. If your PSA does not have an arbitration clause, you can proceed to sue the government at the High Court. However, before you sue the government, under the Government Proceedings Act you must provide a 90 days' notice prior to suing. This 90-day notice, however, do not apply to cases where there is an arbitration clause.

The PSA tax clause does not mean that tax law cannot be changed. However, at the same time, the government has to respect the agreements it enters into, so your option of arbitration and/or local Court intervention remains. The government is also a signatory to various international arbitration agreements.

Based on the facts provided to us, we believe you have a good chance of success.

TRA threatens with one third

I have TRA officers threatening to shut me down if I don't talk to them. They claim that once they issue me with my tax obligations, I will have to deposit one third of the sum if I want to challenge it. Since they claim I am not cooperating, they have quadrupled the tax liability. This means I am unable to pay the one third. They are very malicious. What options do I have?

14 July 2014

First and foremost, the one third rule only applies to assessments, and not otherwise. Assessments are normally issued for Income tax and vat liabilities, you need to check whether your tax obligations fall into one of these categories. For example, the issue around stamp duty and withholding tax are not assessments. Hence, the provisions governing the one third do not apply to these matters.

Section 12 of the Tax Revenue Appeals Act deals with this. The Act states that (1) Any person who disputes an assessment made upon him may, by notice in writing to the Commissioner General, object to the assessment. (2) A notice of objection shall contain a statement in precise form, of grounds in respect of which the objection to an assessment is made, and shall be filed with the Commissioner General within thirty days from the date of service of the notice of the assessment. (3) Where a notice of objection to an assessment is given, the person objecting shall, pending the final determination of the objection to an assessment by the Commissioner General in accordance with Section 13, pay the amount of tax which is not in dispute or one third of the assessed tax, whichever amount is greater. (4) The Commissioner General may, upon being satisfied that there exist good reasons warranting reduction or waiver of tax payable in accordance with the requirement of subsection (3), direct that a lesser amount be paid or waive the required tax deposit. (5) On receipt of the notice of objection, the Commissioner General shall: (a) admit the notice of objection to assessment of tax; or (b) refuse to admit the notice of objection to assessment of tax. (6) The Commissioner-General shall not refuse to admit the notice of objection to assessment of tax unless (a) the notice does not comply with the requirements of subsections (1), (2) or (3); (b) the notice does not raise any question of law or fact in relation to the assessment; (c) the relief sought cannot be granted in law or equity; (d) the objection is time-barred; or (e) the objection is otherwise misconceived. (7) If the Commissioner General is satisfied that owing to absence from the United Republic, sickness or other reasonable cause the person objecting to the assessment was prevented from giving notice within the time prescribed he may, upon application by that person, and subject to his satisfying the requirement of subsection (2) or, as the case may be, subsection (3), admit the notice after the expiry of the authorised period and the notice so admitted shall be valid as if it were submitted in time. (8) Any person who is aggrieved with the refusal by the Commissioner General to admit the notice of objection may, on depositing with the Commissioner General the amount of tax assessed which is not in dispute or one third of the amount of tax assessed, whichever is greater, together with the interest due as a result of late payment of the tax in respect of which the notice of late payment of the tax in respect of which the notice of objection is issued, appeal to the Board against the refusal and the decision of the Board on whether or

not the notice of objection be admitted by the Commissioner General shall be final.

The one third rule can be waived provided you cite good reasons. Reasons that may be accepted by the TRA include that the company is highly leveraged, hasn't started making profits, hasn't started to generate revenues, and is nearly insolvent, to mention a few. Your tax consultant can guide you further.

No decision by TRA on private rulings

We are involved in a transaction where the Income Tax Act has ambiguity. Our tax advisor said we apply for a private ruling, so that the TRA can rule in advance so as to avoid any issues later on. We gave the TRA all the details but, nearly 18 months later, it has not responded. The TRA has also not cited reasons for not responding to our application for a private ruling. Can I sue my tax advisor for delaying the transaction? What else can I do?

11 August 2014

Your tax advisor has done nothing wrong and we believe you cannot sue him / her. We recommend you remind the TRA one final time. If that fails then, although this will be the first time for such an application, you can lodge an appeal / application at the Tax Revenue Appeals Board (TRAB). The TRAB can order the TRA to decide within a certain period of time.

The Tax Revenue Appeals Act allows you to lodge such applications and appeal to the TRAB directly, especially when the TRA is not responding.

TRA access to information

The TRA has asked for information about my business affairs. I gave them what they required yet they raided me. What are my rights, and do I have to give information to the TRA like this? My business is very clean, can I resist the TRA? Is this information treated confidentially?

18 August 2014

The Income Tax Act provides officers from TRA with wide powers to conduct such searches. Section 138 provides that (1) For the purposes of administering this Act, the Commissioner and every officer who is authorised in writing by the Commissioner: (a) shall have (i) at all times during the day between 9am and 6pm and without any prior notice; and (ii) at all other times as permitted by a search warrant granted by a District or Resident Magistrate's Court, full and free access to any premises, place, document or other asset; (b) may make an extract or copy, including an electronic copy, of any document to which access is obtained under paragraph (a); (c) may seize any document that, in the opinion of the Commissioner or authorised officer, affords evidence that may be material in determining the tax liability of any person under this Act; and (d) may, where a document is not available or a copy is not provided on request by a person having access to the document, seize an asset to which access is obtained under paragraph (a) that the Commissioner or authorised officer reasonably suspects contains or stores the document in any form.

Hence, the TRA need not give you any notice to raid you, otherwise it would not be a raid. This is a power that is provided for by the law, and you cannot blame the TRA for exercising it. The TRA would not exercise this right if it did not suspect some abnormality in your Such raids are quite common elsewhere in the world.

Should you resist TRA officials, have powers to request police officers to assist them in their duties. Such resistance is not only illegal but also imprisonable. After all,

if you claim you are operating such a "clean business", then why would you resist?

As for confidentiality, our tax laws provide for this very strictly, any officer of the TRA who leaks any confidential information to third parties can be fined and/or imprisoned. If you believe this is the case, you can report this to the Commissioner General for action.

We suggest your tax consultant guide you further.

TRA on PSAs and MDAs

I was quite impressed to see that there was a recent statement and adverts by the TRA in that they wanted all Production Sharing Agreements (PSA) and Mining Development Agreements (MDA) to be reviewed and renegotiated. I thought this was a good idea, only to see the TRA withdraw the advert a few days later. I am of the opinion that the country is not getting a fair value of its share from these agreements. Can the TRA unilaterally withdraw such adverts? I am flabbergasted at the lack of patriotism within the TRA in deciding not to pursue this. How can I take the TRA to task?

15 September 2014

We are unsure what causes you such flabbergastion. The TRA is the statutory tax body in the country and is a signatory to neither PSAs nor MDAs, nor will it ever likely be. The TRA's job is to administer taxation in the country. PSAs and MDAs are entered into by the government through the Ministry of Energy and Minerals (MEM). In the case of PSAs, there is one further signatory that is the Tanzania Petroleum Development Corporation (TPDC).

When the TRA made such an announcement, it was directly interfering with the role of the MEM. Surely someone at the ministerial level, or the government, must have alerted TRA that they were acting illegally, which led to the withdrawal of the adverts. Sadly, the TRA did not mention specifically why the adverts were being withdrawn, perhaps to avoid further embarrassment.

You are flabbergasted about the withdrawal of the adverts. We are sure the oil, gas, and mining communities were flabbergasted at the way the TRA suddenly, and out of the blue, decided to make such a statement. Your patriotism can be very costly to such companies. We explain to you why below.

Tanzania is a signatory to various international agreements and treaties, which protect against expropriation and nationalization. In fact there is a domestic law, the Tanzania Investment Act, that covers this explicitly. This Act states, in Section 22, that (l) Subject to subsection (2) and (3) of this section: (a) no business enterprise shall be nationalised or expropriated by the government, and (b) no person who owns, whether wholly or in part, the capital of any business enterprise shall be compelled by law to cede his interest in the capital to any other person. (2) There shall not be any acquisition, whether wholly or in part of a business enterprise to which this Act applies by the State unless the acquisition is under the due process of law which makes provision for: (a) payment of fair, adequate and prompt compensation, and (b) a right of access to the Court or a right to arbitration for the determination of the investor's interest or right and the amount of compensation to which he is entitled. (3) Any compensation payable under this section shall be paid promptly and authorisation for its repatriation in convertible currency, where applicable, shall be issued.

Amending PSAs or MDAs unilaterally could amount to expropriation, and even an indirect attempt to nationalise such companies. Most,

if not all these agreements, have arbitration clauses. Any attempt by the TRA, or any other government body, to unilaterally change such agreements becomes an arbitral issue, which would likely be ruled against the government in international arbitration.

In case the government decides to renegotiate with these companies, the general principles of contract law apply. This means that such negotiations should done consensually. If such companies refuse to renegotiate or amend any terms, which they likely will, then they cannot be forced to enter into any such renegotiations or amendment. Apart from this becoming an arbitral issue, if anything is forced upon such companies, it will create a black hole in Tanzania's ambition to be a preferred investment destination.

To answer your question: the TRA has the power to withdraw the advert, which we believe was a mature thing to do. Furthermore, on whether you can do anything to the TRA for such withdrawal, the answer is no. You have unlikely any legal standing to sue the TRA for this. Your patriotism should be balanced with realism, based on the law.

Tax Board as mediator

I am fighting a case against the TRA at the Tax Revenue Appeals Board (TRAB). In the last date that we appeared before the Board, one of our key witnesses, who is a former employee of the TRA, refused to come for testimony. Whilst adjourning the matter, the TRAB was of the opinion that the taxpayer sits with the TRA to try resolve its differences. Is that a normal process?

22 September 2014

Section 17 of the Tax Revenue Appeals Act provides that the Board has powers to mediate. Mediation is a powerful tool in dispute resolution and is widely used. Section 17 states (1) The Board and the Tribunal shall respectively have the power: (a) to take evidence on oath; (b) to resolve any complaint or appeal by mediation, conciliation or arbitration; (c) to issue warrants of arrest for failure to comply with summons; (d) to order payment of costs in relation to any matter referred to the Board or the Tribunal; (e) to dismiss any matter before it; (f) to adjourn the hearing of any proceedings before it. (2) Notwithstanding subsection (1), the Board or the Tribunal shall have the power to summon and hear any witness and receive evidence in the manner and to the same extent as if it were a Court exercising civil jurisdiction in a civil case and the provisions of the Civil Procedure Code, relating to summoning of witnesses, the taking of testimony on oath, and noncompliance with a witness summons shall apply in relation to an appeal before the Board but the Tribunal may not admit any fresh evidence save in the circumstance in which the High Court may admit fresh evidence on a first appeal in a civil case.

You can also make an application to the TRAB to summon the witness to appear. If he fails to do so, he can be arrested and brought before the Board.

Tax documents retention

Our company had entered into a transfer arrangement in 2010. In 2012, we underwent an audit by the TRA. Documents for this arrangement were handed over to the TRA audit team. Two months ago, we have been asked to resupply the same documents. Isn't the three-year rule to maintain documents applicable here, and is TRA not time-barred to make such a request?

10 November 2014

You are right to the extent that there is a time limit. However, it is for five years at the minimum not three years. Section 80

of the Income Tax Act addresses this issue. It states that, unless otherwise authorised by the Commissioner by notice in writing, every person liable to tax under this Act shall maintain in the United Republic such documents: (a) as are necessary to explain information to be provided in a return or in any other document to be filed with the Commissioner under this Act; (b) as are necessary to enable an accurate determination of the tax payable by the person; and (c) as may be prescribed by the Commissioner. (2) The documents referred to in this section shall be retained for a period of at least five years from the end of the year of income or years of income to which they are relevant unless the Commissioner otherwise specifies by notice in writing.

Hence, the TRA is not time-barred. Unless there is other information you have not disclosed to us, we recommend you cooperate and resupply the documents.

TRA claim they don't administer the PEPA Act

We have a dispute with the TRA on an exemption under our Production Sharing Agreement (PSA). The TRA say that it is not one of the acts they administer, and hence cannot grant the exemption. What should we do?

17 November 2014

It is true that the Petroleum (Exploration and Production) Act (PEPA) is not one of the acts that is administered by TRA. In any case, the TRA doesn't grant exemptions. In your cast, it is very likely that the Ministry of Finance did so.

Furthermore, the PEPA is a binding agreement that the government has entered into, and binds the government, whether the TRA recognise it or not. We advise you consult the Ministry of Energy and Minerals through the Tanzania Petroleum Development Corporation. If the matter is not resolved, we suggest you invoke either the arbitration clause under the PSA or proceed to file an application in local Courts. Your course of action will depend on the drafting of the PSA dispute resolution clause. This is a recurring problem and brings great uncertainty. The oil and gas companies need to bring it to closure.

Witness appearance in tax Court

If I am summoned to appear as a witness before the Tax Revenue Appeals Board (TRAB) in a case, am I not entitled to be remunerated for opening my mouth whilst at the Board? Why should I appear for free? Am I forced to appear?

29 December 2014

The TRAB has a special provision for this. Section 23 of the Tax Revenue Appeals Act states that (1) The Board or the Tribunal may call any person to attend at a hearing and give evidence including the production of any document if the Board or the Tribunal believes such evidence will assist in its deliberations. (2) A person summoned to attend and give evidence to the Board or the Tribunal shall be paid allowances and expenses at the rates specified by the Board or the Tribunal.

The section above clearly indicates that you are mandatorily entitled to allowances and expenses, but at the rates specified by the Board. To the best of our knowledge, such rates have not been published, but that does not mean you should not get compensated.

As to whether you are forced to appear or not, once your remuneration issue is resolved, we believe it is mandatory for you to do so.

About the book

Q&A with FB Attorneys is a compilation of answers to legal questions sent in from the public. The second volume includes questions from 2012 to 2014. Questions are selected each week and carefully reviewed. The book showcases some interesting questions spanning from Business Disputes, Immigration Law, Real Estate, Mining Law, Corporate Criminality, Environmental Law, and Tax Law and the TRA. Answers are carefully prepared by the authors from a professional and legal standpoint.

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