Fayaz A. Bhojani · Gaudiosus E. Ishengoma

Questions & Answers

on Tanzanian Law

Vol. 3

Q&A with FB ATTORNEYS

Vol. 3

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

The late Gaudiosus Evalister Ishengoma, Esq
LLB (UDSM)

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.

Vol. 3
Printed and Published in the United Republic of Tanzania.
ISBN 978-9976-5241-3-0

FB

To my friend and partner Gaudiosus Evalister Ishengoma,
may you rest in peace. 1965-2020.
FAyaz A. Bhojani

Preface

Welcome to the third 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 2 and the number of positive reviews, FB Attorneys embarked on volume 3 which covers questions and answers from 2015 to 2017 on Tanzanian and International Law. The book is a useful guide to readers, students, teachers, legal practitioners and the public. There are 13 chapters in volume 3 and topics include Business Disputes, Immigration Law, Real Estate, Mining Law, Corporate Criminality, Environmental Law, and Tax Law including 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 will enjoy reading the book.

FB Attorneys

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

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

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

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

About the Authors

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

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

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

The late Gaudiosus Evalister Ishengoma, Esq
LLB (UDSM)

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

Ishengoma was trained by the British Council under a team from the House of Lords on prosecution skills and had wide experience in relation to competition claims, shareholder disputes and tax appeals including corporate crime. He was 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 interactions are helpful and courteous, but occasionally they are not. Sometimes, state officials abuse their power, in making unreasonable decisions, and engaging in illegal behaviour. In this chapter, we offer several examples of situations where state officials may have gone too far, and behaved so badly that business owners have a right to legal redress, such as judicial review. This process allows decisions which are unfair to be struck down by the Courts by holding these decisions to be unlawful.

However, governments also act lawfully, where important principles are involved. Examples include national security where government officials have behaved lawfully, even though their behaviour upsets business owners.

Other examples look at how regulations are made, and the pace of government decisions, which can be slow. We also look at issues regarding procurement and investment, both of which are of interests to businesses which contract with government departments and their officials.

Short skirts in offices

I accompanied my female client, who was a foreign national, to visit a government ministry. She was wearing a short black skirt which was cut above the knee. The Minister's secretary was looking at her in a very awkward manner and made a remark in Kiswahili that such skirts were not allowed in the Ministry as it was against our culture. She kept on staring at my client which made me feel very awkward.

Is there such a rule? Why should she be staring at my client? When the client met the Minister, one of the senior officials made a remark to my client that she was very tall. He wondered if she had managed to get a husband equally tall, who could reach up to her! My client felt quiet awkward. What should she do?

19 January 2015

To the best of our knowledge, we have not seen any rules against clients or foreigners wearing short skirts on visits to Ministries. In fact you will note that a number of foreign dignitaries who visit our leaders in Tanzania wear stylish skirts and open dresses. Our leadership has never raised this as a problem, and continues to entertain all kinds of people.

We are unable to reply on why the secretary was staring at your client; maybe she was looking at your client in a derogative manner, or perhaps she was admiring your client. The secretary is the only one who can answer this.

As to the comment on your client's height, you have not given us the exact details of the spirit of how the comment was made but perhaps this was made as an ice-breaking remark. Tanzanian men, as can be the case with other men in other countries, may feel quite uncomfortable in the presence of taller women, especially ones wearing shorter skirts. Perhaps your client is also a little too sensitive.

All in all, if she wants to take this up, she can formally report this to the Permanent Secretary of the Ministry who can take this up with the official.

Investors' complaint bureau

We are large international investors, based in this country, and are facing challenges with a certain government ministry which is dilly-dallying with a decision that is costing us, in rental costs, millions of dollars a month. We find it hard to perform our contractual obligations under the circumstances and we seek advice on how to approach this. We are here at the invitation of the government and cannot understand why a decision such as this is taking so long. We feel that government decision making is very slow in Tanzania as everything, including genuine projects, are looked at suspiciously by officials. What should we do?

19 January 2015

In our experience, it is true that government decisions have been taking some time to be reached. However there is an Investors' Complaint Bureau that is available to entertain any such complaints that a lack of decision-making is slowing down projects. This bureau is headed by the Chief Secretary. Unfortunately, we are informed that decisions taken by this bureau are also taking time to be concluded, and if you face this situation, we suggest you escalate this to the Prime Minister who is pro-investment and will take this up with the relevant Ministry.

Government Gazette delayed

We have been affected by the passage of subsidiary legislation that came into force on a certain day, but the Government

Gazette was not released on time to reflect that fact. Can such legislation have retrospective force when it is clear that the Gazette was released late but the secondary legislation had an older commencement date? Is this not unfair?

13 April 2015

A common complaint amongst lawyers in Tanzania is that the Government Gazette is not published on time, and when it has been published, the Gazette is not released on time. Getting a copy of the Gazette when it has been published is also another challenge which we hope will be looked into by the Attorney General's Chambers and the government printer.

It seems that the subsidiary legislation that you are talking about was purportedly published in the Gazette in a certain month, but did not come out until a few months later.

Under Section 37 of the Interpretation of Laws Act, where a written law confers the power to make subsidiary legislation, that subsidiary legislation shall, unless stated to the contrary, firstly, be published in the Gazette; and, usually, come into operation on the day of publication, or where another day is specified or provided for in the subsidiary legislation, on that day, unless provided for under subsection (2).

Under Section 37 (2), subsidiary legislation shall not come into operation before the day of publication in any case where, if it did so, it would prejudicially affect the rights of a person, existing immediately before the day of publication (other than the state, or state bodies).

Secondly, if liabilities would be imposed on any person (other than the state or state bodies as before) in respect of anything done, or omitted to be done, before the day of publication, then those provisions made in contravention of Section 37 (2) shall be void.

Section 37 (3) provides that a power to fix a day on which subsidiary legislation shall come into operation does not include the power to fix different days for different provisions of that legislation unless express provision is made in that behalf.

Publication, under our understanding of the Act, as cited above, occurs when the Gazette is released. Hence if the Gazette is released late, notwithstanding that the Gazette date shows a prior month, it is likely that the Gazette was legally published when it was released. You can take this up with the Attorney General's Chambers for more clarification.

Ideally the Government Gazette should be published in a timely manner, and at the time it states on the Gazette itself.

Laws without regulations

There is a particular environmental law, which provides for many regulations to be stipulated under it. The regulations are to be made by the Minister, but to date, no such regulations have been created. How can the Act function without regulations? The Act has now been in existence for the past 10 years without these regulations being passed. This is pure lethargy by the Ministry in failing to enact regulations. What action can I take as I have a project stuck because there are no regulations in force under the Act?

27 April 2015

It is true that many Acts give discretionary powers to various Ministers to make regulations; and yet such regulations are not forthcoming. Unfortunately budgetary and lack of technical resources, alongside lethargy, has slowed down the drafting of regulations but that should not stop business from proceeding.

You have the following options: firstly,

officially write to the Ministry about this anomaly and request their intervention; secondly if that does not work you can complain to higher authorities, which includes the Prime Minister, for intervention.

Lastly, if that doesn't work, you can proceed to make an application in Court under the doctrine of prerogative writ (especially for an order of mandamus) whereby you would be asking the Court to order the Minister to perform his or her duties which includes drafting and enabling the regulations.

Suing Bank of Tanzania Governor for Shilling depreciation

I am a loyal Tanzanian and I am concerned with the fall of the value of our Tanzanian Shilling against the US Dollar. I feel frustrated every day, as my business is highly dependent on a favourable exchange rate. My business is suffering as the exchange rate is lowering my turnover with my fixed costs remaining unchanged. Margins are virtually below 5%. I understand that it is the role of the Governor of the Bank of Tanzania to ensure that the Shilling does not fall. I want to sue the Governor for the losses I have been experiencing. Please guide me how to go about this?

15 June 2015

The relevant law in question here is Section 5(1) of the Bank of Tanzania Act (No. 4) of 2006, which sets out the Bank of Tanzania's functions as a central bank. That includes the formulation, implementation, and execution of monetary policy, including exchange rate policy.

It also sets out other duties, such as issuing currency, banking regulation and supervision, the regulation of financial services, including mortgage financing, development financing, and lease financing.

It also deals with licensing and revocation of licenses and to deal, hold and manage gold and crucially, the foreign exchange reserves of Tanzania.

The Bank of Tanzania is a body corporate, and has the capability to sue or be sued. Although the Governor works for the Bank of Tanzania, he is not responsible for currency fluctuations, which operate as a result of market forces.

The US Dollar has been strengthening against almost all other currencies which led to this local currency depreciation. The Bank does not regulate how strong or weak the US currency may be, as the currency is traded on international markets; the supply and demand of the US Dollar determines the level of exchange rates. In all fairness to the Governor, he has no magic wand to stop the US Dollar from appreciating.

In addition, we draw your attention to Section 65 of the Bank of Tanzania Act, which gives immunity to the bank employees against any lawsuits. This provision prevents litigation being instituted against any board member, official or employee of the Bank for acts or omissions done in good faith under the powers conferred by the Act.

Whilst you cannot be stopped from suing anyone you want, the Governor included, we believe you have very low chances of succeeding.

Execution against the Government

If I have won a case against the Government at the High Court, and the matter is not appealed, can I proceed execute my judgement against Government properties or other assets?

28 September 2015

No. You cannot execute a judgement against Government property. The Government Proceedings Act provides for such sums to

be paid from the Treasury by addressing a demand to the Permanent Secretary of the Treasury.

This Act makes it clear "no execution, attachment or similar process shall be issued out of any Court for enforcing payment by the Government". It also makes it clear there is no individual liability under any order for payment by the Government, any Government department or any official, as to any money or costs concerned.

Tender disqualified

Our company, which is similar to a Fortune 500 company, bid for a tender in Tanzania. Our quote was the lowest and we believe our product is the best. We were however disqualified because our guarantee document had apparently not been rubber (ink) stamped by our foreign bank. We have checked with the bank and they do not stamp such documents, as a matter of routine, as this is a standard format they have. The need for stamping is also not explicit in the tender document as a requirement for something that should have been done here. The procuring entity could have checked with the banker to make sure it is genuine before disqualifying us. The company that won the tender quoted 30% higher and we believe it has no capacity to deliver. What should we do?

18 January 2016

We are not sure what stage your company is at with the award process but there is a no-nonsense body called the Public Procurement Appeals Authority that you can appeal to. This body is known to have annulled a lot of tenders and takes its role very seriously.

Unfortunately we are unsure how fatal the lack of stamping is, but from the face of it, we agree with you that if the procuring entity was unsure about the genuine nature of the guarantee, then they could have contacted the bank.

Section 47 of the Public Procurement Act states that procuring entities shall, in the execution of their duties, strive to achieve the highest standards of equity, taking into account three factors; one, equality of opportunity to all tenderers; second, fairness of treatment to all parties; and thirdly, the need to obtain the best value for money in terms of price, quality and delivery having regard to set specifications and criteria.

In line with the above, and depending what stage the procurement process is at, we believe you can appeal the decision. The appeal must be lodged within 14 days of the decision.

Economic sabotage for contract breach

I am a supplier of some key drugs and machines to government hospitals and for the past year have not been paid. The amount that is owed to me now runs to millions of dollars and I am getting empty promises as to payment. I gave the relevant authority an ultimatum only to be asked to go see some senior person. That person first told me that I would be paid, and after I responded that I do not believe this and that I would cut their supplies and sue, he threatened me that if I did so, I would be charged under the Economic and Organised Crime Control Act. In short, he said that under the laws of Tanzania, particularly this Act, since these products are vital for hospitals I would have no choice but to continue supplying the goods. I was also told that if charged with this offence, I would not receive bail? What do I do?

28 March 2016

This is the first time we have heard of such an approach to a contractual obligation to pay. If what the official was telling you is true, then any supplier of vital equipment for

the economy, whether it be power, water, or security can never sue or demand payment under a valid obligation. Nobody would then be willing to supply these services to the government of Tanzania; that approach would also defy the basic principles of our contract law.

To answer your question, assuming you have given the right facts, there is nothing that stops you from cutting the service of supplies, demanding payment, suing and/or proceeding as per the contract of supply. Economic sabotage is defined in the Act as including acts done or committed without lawful excuses and for a purpose prejudicial to the economic safety or interests of Tanzania, or those likely to damage, hinder or interfere with a necessary service or its operation.

From the above definition, you cannot be charged under this Act as you are lawfully demanding your money under a contract you entered into to supply goods and services. If you were doing so unlawfully, such as for a purpose prejudicial to the economic safety or interests of Tanzania, then this Act might have applied.

As for bail, please be advised that this is a bailable offence. However bail would not be granted in any of the following circumstances; firstly, when the person accused had previously been sentenced to imprisonment for a term exceeding three years.

Secondly, if 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; thirdly, if 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; fourthly, if it appears to the Court that it is necessary that the accused person be kept in custody for his own protection or safety.

Fifthly, bail may not be granted if the offence for which the person is charged involves property whose value exceeds TZS 10 M, unless that person pays a cash deposit equivalent to half the value of the property, and the rest is secured by execution of a bond; and lastly, if he is charged with an offence under the Dangerous Drugs Act.

Given our advice, however, it seems that bail would not be applicable in these circumstances.

Dispute under TIC certificate

We are having serious issues getting what was promised to us in writing by the Tanzania Investment Centre (TIC). There is absolutely no coordination between the TIC and other government institutions as much as the TIC is trying to do so. We have to run around begging for the promises that were made to us for our investment to be kept. Can we sue?

25 April 2016

The current government has promised that it is here to invite and continue working with genuine non tax-evading investors as there is no economic growth without investment. You may have recourse under the Tanzania Investment Act (TIA); or the contract that you may have in place should have clear dispute resolution clauses, in the event of non-performance.

Section 23 of the TIA states that business disputes between foreign investors and the TIC or the government should first make all efforts to settle the dispute through negotiations by an amicable settlement. If the dispute is not able to be settled between the investor, the TIC, or the state, through negotiations, then that dispute may be submitted to arbitration.

The Act provides for a variety of possible methods to resolve the dispute, as may be mutually agreed by the parties. It can be resolved, firstly, in accordance with

arbitration laws of Tanzania for investors; secondly, in accordance with the rules of procedure for arbitration of the International Centre for the Settlement of Investment Disputes; thirdly, within the framework of any bilateral or multilateral agreement on investment protection agreed to the Tanzanian government and the government of the investor's own country, from which it originates.

We suggest you either follow the dispute resolution clause in your contract or the above and proceed to negotiate and if that fails you may decide to refer this to arbitration.

Living above income levels

There are public officials living above their income levels. Is there no law that calls for them to be investigated?

20 June 2016

This is covered by Section 27 of the Prevention and Combating of Corruption Act. Section 27 (1) off the Act provides that it is an offence for a current, or former, public official to, firstly, maintain a standard of living above that which is commensurate with his present or past lawful income.

Secondly, it is an offence for them to own property disproportionate to his present or past lawful income, unless he gives a satisfactory explanation to the Court as to how he was able to maintain such a standard of living or how such property came under his ownership.

If convicted, then the penalty levied can be a fine, which does not exceed TZS 10 M; or a sentence of imprisonment for a term not exceeding seven years, or to both. The Court may additionally make confiscation orders if there has been any pecuniary gain or property acquired illegally.

It may confiscate property which is found to be owned by the accused; and/or it may confiscate an amount or monies, the acquisition of which is not explained to the satisfaction of the Court, provided that confiscation does not exceed the amount or value of the pecuniary gain or of the acquired property in question.

Expropriation legal in Tanzania

We have been threatened with expropriation many times by one of the authorities. They say they will expropriate our assets, because we apparently got a very good deal in an agreement we signed with the government. In fact, the agreement made was quite standard but, regardless, we are constantly being threatened. The authority says that the expropriation is provided for under Tanzanian law. They say this was done before, back in the 1970's, by Tanzania, and it can do this again.

11 July 2016

It is a known fact that when Tanzania nationalised companies and assets in the 1970's and 1980's the economy suffered. Tanzania has learnt its lesson and there has never been any expropriation since.

In fact the Tanzania Investment Act provides for a guarantee against expropriation, which can only be done in the interest of the public and under due process of the law and after full compensation is given, and not otherwise.

This is provided for under Section 22 of the Act, especially sub-sections (2) and (3) of the Act. This provides that no business shall be nationalised or expropriated by the Government.

It also makes clear, secondly that no person who owns, whether wholly or in part, the capital of any business shall be compelled by law to cede his interest in that capital to any other person.

Under Section 27 (2), acquisitions by the

state, whether in whole, or part, of businesses to which the Act applies, must take place legally, and must provide for, firstly, the payment of fair, adequate and prompt compensation, and secondly, appropriate dispute resolution; in this case, a right of access to the Courts, or to arbitration to determine the investor's interest or right and the amount of compensation to which he is entitled.

Lastly, any compensation payable under this Section shall be paid promptly and authorisation for its repatriation in convertible currency, where applicable, issued appropriately.

MP remarks in parliament

There is a particular Member of Parliament who speaks against our company and does whatever he can to make sure government policies are made against our interests. Can I sue such a MP?

1 August 2016

No. There is no scope for you to sue the MP for anything he has said in parliament. Article 100 of our Constitution guarantees freedom and immunity from proceedings for MPs.

Under that Article, MPs have freedom of opinion and debate in the National Assembly, and that freedom cannot be breached or questioned, including by the Courts; or, indeed, by any government body in the United Republic; or elsewhere outside the National Assembly.

Section 2 of Article 100 makes clear that an MP 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. Bearing the above in mind, our view is you cannot sue this MP.

Query from Minister

Our company has received a notice from the Minister of Industry and Trade raising queries on our annual accounts. Is this proper? Does the law allow the Minister to intervene with company accounts?

15 August 2016

Yes, it does. Companies in Tanzania are regulated by many laws and regulations, with each of the regulators having their respective powers under the law that grants them the right to administer such laws. For example, the Commissioner of the Tanzania Revenue Authority has powers under the Tax Administration Act, Income Tax Act, or other tax laws and regulations and he administers the same.

The same applies with the Registrar of Companies, and/or the ministry responsible for industry and trade, which has been given powers by the Companies Act. One of such powers is for the Minister to issue a notice to a company if it appears that the accounts of a company are non-compliant with the law.

Such a notice is quite uncommon, but we suspect this should be the kind of notice that you have been issued with, although we have not seen the notice in question.

Companies are required to issue annual accounts under Section 164 of the Companies Act. This requires a copy of the annual accounts, in respect of each accounting period, together with a copy of the Directors' Report and the Auditors' Report to be sent to various entitled people.

Firstly, every member of the company (whether he is or is not entitled to receive notices of general meetings), secondly, every holder of debentures of the company (whether he is or is not so entitled) and all persons other than the above, who are persons entitled to receive such accounts.

These accounts must be sent out in a period of not less than twenty-one days before the date of the general meeting at which such accounts are to be laid in accordance with the law.

Section 168 of the Companies Act stipulates very clearly that if it appears to the Minister that there is, or may be, a question whether the accounts comply with the Companies Act, he may give notice to the directors indicating the respects in which it appears to him that such a question arises, or may arise.

Further the notice will specify a period of not less than one month for the directors to give the Minister an explanation of the accounts or to prepare revised accounts.

If at the end of that period it appears to the Minister, that no satisfactory explanation of the accounts has been given and that the accounts have not been revised so as to be legally compliant with the Act, the Minister may apply for a Court order forcing the company to prepare and have revised audited accounts.

Change of law, breach of agreement

We have a very strong agreement with the Government that the law shall not be changed in respect of a certain project. Recently, the same law that we depended on to protect us has been changed. We do not intend to apply this new law as the agreement we made is clear in that the previous law remains the same for us. Please guide.

19 September 2016

Under our Constitution, our Parliament has the right to make or change the law and nothing can stop Parliament from making new laws or changing current laws. That power cannot be taken from Parliament under any circumstances as it is provided for by the Constitution, specifically, Article 62 and Article 66 of the Constitution.

These Articles make it expressly clear that only parliament has the power to make decisions under the law; in particular, Article 62 (3) provides that: "Whenever any matter requires to be decided or done by both parts of Parliament in accordance with the provisions of this Constitution, or of any other law, then that matter shall not be taken to have been duly decided or done unless it is decided or done by the Members of Parliament and also by the President in accordance with their respective authority in relation to that matter."

Parliament, therefore, consists of the National Assembly that you see on TV debating in Dodoma, as well as the President, on the other part: a fact is forgotten by many. Therefore you will see that even if the National Assembly passes a bill it must get presidential assent without which it cannot become law.

What your agreement likely provides for is that the change of law shall not apply to your project to the extent it is possible, and if the law indeed changes, you have no choice but to follow the new law and claim for damages under the agreement. Your agreement doesn't and cannot freeze the law, but would likely allow you to claim against the government in case the law is changed to your detriment.

We do realise that there have been recent changes to the laws in tax and the petroleum industry. However these new laws have tried, to an extent, to carve out and protect investors like you.

For example Section 100(3) of the Tax Administration Act 2015 provides protection to investors by stating that any international agreement made by the government, effective under the respective tax laws at the time that Act comes into effect shall continue to have effect.

International agreements like bilateral treaties between governments are also given precedence over tax laws; Tanzanian law provides that, where the provisions of an international agreement which the state is a party are inconsistent with the provisions of any tax law, that agreement, or treaty, will prevail over the tax laws.

Another example is the Petroleum Act 2015, which states that all existing licences granted or agreements for petroleum operations or petroleum supply, as licenced under the Petroleum (Exploration and Production) Act or the previous Act shall remain in force and effect until lawfully determined, having been deemed to have been granted or made - under the purposes of the 2015 Act.

We believe that the Government and the Tanzania Revenue Authority are doing everything possible to carve out the effect of any such change in laws to existing agreements. This is because the Government realises those agreements were entered into in different circumstances when times were different, in fulfilment of its intentions to attract investment and create a stable fiscal and tax regime.

Public Procurement Act applicability

Our company entered into an agreement with a public entity for the development of a farm jointly where the public entity contributed the land and I have invested all the money, and we share the profits based on a certain formula. There is now a company that is challenging this arrangement in that it was not tendered. The public entity has not spent a penny in the investment and I fail to understand if this was to be tendered?

14 November 2016

Your joint venture arrangement may fall foul of the Public Procurement Act.

Our law requires that a public entity must ensure it gets value for deals it enters into. Section 63 of the Public Procurement Act 2011 states the basic principles for public procurements and tenders.

It makes it clear, that under the Act, all procurement and disposal shall be conducted in a manner that maximises competition and achieve economy, efficiency, transparency and value for money.

Section 47 of this Act also states that procuring entities shall, in the execution of their duties, strive to achieve the highest standards of equity. The section ensures three things must be taken into account.

One, equality of opportunity to all tenderers; secondly fairness of treatment to all parties; and three, the need to obtain the best value for money in terms of price, quality and delivery having regard to set specifications and criteria.

Whilst we do not have all details, we believe the agreement may not comply with the law. Your lawyers can guide you further.

Sexual favours and corruption

There is an important man in a senior post who has been stalking me. He wants sexual favours from me, in return for continued business support from his institution. I have no interest in such barter and wish to get guidance from you. What do you recommend?

9 January 2017

We are very disappointed to hear you have been subjected to such unfortunate behaviour. What has been suggested is a form of corruption. It is a criminal offence and you can report this to the Prevention and Combating of Corruption Bureau who can investigate.

The Prevention and Combatting of Corruption Act states that any person in a position of power or authority, who in the exercise of his authority, demands or imposes sexual favours on any person as a condition for giving employment, a promotion, a right, a privilege or any preferential treatment, commits an offence.

If convicted, this individual would be liable to a fine not exceeding TZS 5 M or to imprisonment for a term not exceeding three years or both.

Repossession of sensitive equipment

We have provided some equipment to an authority in Tanzania that is using it for important purposes. Unfortunately we have not been paid and want to repossess our equipment. We are told that we cannot do so as it will amount to an offence under the National Security Act. Please guide.

8 May 2017

The relevant law here is Section 3 of the National Security Act, which governs acts which are, or may be prejudicial to the safety or interests of the United Republic. Section 3 (a) to (d) are the relevant sections and are very broad, and essentially seek to prohibit a wide variety of actions, or undertakings, that is, or might be "directly or indirectly useful to a foreign power or disaffected person".

It covers matters from entering protected places; to illegal drawings, recordings, and plans; obtaining illicit information, such as passwords, codes, documents and information; and lastly, without lawful excuse, actions which damage, hinder or interfere with, or does any act which is likely to damage, hinder or interfere with necessary services.

Necessary services are given an extremely wide definition, from power generation, supply and distribution, to fire services, waste disposal and sewage, health and related services, water supply, as well as food and fuel distribution and supply.

It also applies to mining, transport, public infrastructure, such as roads, railways, bridges, ferries, pontoons, and pipelines, as well as providing for future services to be defined as a necessary service under a 'catch-all' provision, as may be declared by the President, for the purposes of this Act.

The penalty is conviction to imprisonment for life. We are not sure whether the entity you are dealing with falls under this broad definition of a necessary service but even if it does, and depending on the wording of the contract, if you have a lawful excuse to repossess your property, then this will likely not fall under the ambit of Section 3 of the Act. However, this is a sensitive matter and you should consult your lawyer for more formal advice.

Minister's regulations unfair

Can a Minister who has been given powers under the main Act make regulations that are impossible to implement and make it unworkable in Tanzania? How can the National Assembly give away so much of its powers to an individual? What can we do?

18 September 2017

We should start by saying that no one is above the law. The Government and its institutions and authorities are all guided by, and work under, the laws of the country. They must exercise their duties within the powers provided to them under the Constitution and other respective laws. In your case, such actions can be reviewed by the Court through a process known as judicial review.

Our law provides for judicial review where a person alleges that any provision of the Constitution or any law involving a basic right or duty has been, is being, or is likely to be

contravened, in relation to his rights. He may therefore, institute proceedings for relief. That relief can be sought without prejudice to any other action or remedy available to him in respect of that same matter.

The application for judicial review can be made to the High Court for orders of mandamus, prohibition or certiorari.

Mandamus orders public authorities to perform, or not to perform specific acts, such acts must conform to the statutory authorised provisions. Prohibition acts to prohibit the authority from exceeding its powers or acting contrary to the rule of natural justice. Certiorari allows for the Court to order documents to be produced, and review the decisions of lower Courts, tribunals, or other authorities.

Through judicial review, the Courts have powers to invalidate the decision of a government authority by holding it was unlawful.

Judicial review, therefore, ensures that the Government and public authorities do not dispossess individuals of their rights by their actions, for whatever reason. Hence if regulations are beyond the powers provided in the main Act, or impose such onerous conditions that it makes them impractical, they can be challenged.

We can provide a few examples of regulations in Tanzania that have been successfully challenged. Unfortunately you have not given us the name of the regulations and how you are affected to enable us guide you further.

Relationships, Marriage, Children and Divorce Law

Mankind's favourite topic - marriages!
Engagements, marriage, and divorce can all result in bitter legal battles, as can questions over the upbringing and welfare of children.

This chapter covers questions that have been submitted by readers on a wide range of legal issues, from the legal age of marriage, to whether a man can have more than one wife, to allegations of bigamy. It also advises those who may be starting to think of marriage, or engagement, so relationships can be better informed.

Our lawyers also advise on what kind of conduct may contribute to the breakdown of a marriage, as the law sees it, in a variety of everyday situations, as well as examples of behaviour which does not qualify as grounds for divorce. The answers may surprise you.

This chapter also answers questions regarding proposals and consent to marriage, the ownership of engagement rings, and the legal status of matrimonial property, both during marriage and after divorce.

The role of the Courts in protecting children is also discussed, whether relating to legal questions over the education and upbringing of children, preventing child cruelty, and prohibiting child marriages, as well as ensuring children are legally cared for properly.

Is pre-marital sex illegal?

Is it true that in Tanzania one can only have sexual intercourse if one is married? If so, how is this enforced?

5 January 2015

There are no laws in Tanzania that disallow having consensual sex before marriage. You will also appreciate that most of the population is unmarried and such a law can have very negative consequences. What is prohibited is having sex with a minor (under the age of consent) or with a close relative

However and shockingly, after we read your question, our research reveals that a 100 year old law in the state of Mississippi in the United States makes it illegal to teach others what polygamy is, and adultery or premarital sex results in a fine of USD 500 or 6 months in prison. The law is apparently still valid today, according to our research, although some states are seeking to abolish such laws as outdated, others are unlikely to do so, including Mississippi. Your question is not weird after all.

Nameless child

I would like to have a baby girl as boys are too naughty and untrustworthy. Can I decide to keep a girl and let the baby boy be adopted? I also do not wish to name my child. How do I go about this?

9 February 2015

Children are seen as gifts from God and not commodities or objects like you seem to think. Nature doesn't allow you to choose the sex of the child, and neither does the law. You hence cannot give away your boy for adoption on the grounds stated in your question.

Furthermore, it is mandatory for identification purposes that you name your child. Without a name, we are unsure how the child can survive in today's digital era. We are also unsure why you wish to do so as it is hard to imagine how you or others would address your child.

Definition of marriage

My parents want me to get married but I am still trying to figure out what marriage is? I have searched the net for this but find it confusing. Can I marry more than one wife? Can my wife marry more than one husband? Is this an exclusive relationship? Is it true that the minimum age at which a girl can get married is 14 years in Tanzania? Why should I get married? I am confused, please help.

30 March 2015

Since you are resident in Tanzania and we assume that you will likely get married here, you will be bound by the Law of Marriage Act of 1971. Marriage is defined in Section 9 as "the voluntary union of a man and a woman, intended to last for their joint lives."

The law defines two types of marriage: a monogamous marriage, being a union between one man and one woman to the exclusion of all others, or a polygamous marriage, which is a union in which the husband may be married to or marry another woman or women.

This law clearly recognises both a monogamous marriage and a polygamous one. Section 10 states that (1) Marriages shall be of two kinds, that is to say (a) those that are monogamous or are intended to be monogamous; (b) those that are polygamous or are potentially polygamous. (2) A marriage contracted in Tanganyika, whether contracted before or after the commencement of this Act, shall (a) if contracted in Islamic form or according to rites recognised by customary law in Tanganyika, be presumed, unless the contrary is proved, to be polygamous or

potentially polygamous; and (b) in any other case, be presumed to be monogamous, unless the contrary is proved.

Either type of marriage maybe converted into the other type. Section 11 states that (1) A marriage contracted in Tanganyika may be converted (a) from monogamous to potentially polygamous; or (b) 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. (2) A declaration under subsection (1) shall be made in the presence of a Judge, a resident magistrate or a district magistrate and 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. (3) The Judge or magistrate before whom a declaration is made under this Section shall forthwith transmit a copy thereof to the Registrar-General. (4) No marriage shall be converted from monogamous to potentially polygamous or from potentially polygamous to monogamous otherwise than by a declaration made under this Section. You will note that for conversion of a marriage from one form to the other, both parties must agree to do so.

Lastly, under Section 11(5), polygamy between Christians is forbidden. Marriages made in a church between two practicing Christians cannot be converted from monogamous to polygamous, even if the parties had been married in a civil ceremony beforehand.

Lastly we must state that the law in Section 11(5) disallows any form of polygamy between Christians and states that no marriage between two Christians which was celebrated in a church in Christian form may, for so long as both the parties continue to profess the Christian faith, be converted from monogamous to polygamous and the provisions of this Section shall not apply to any such marriage, notwithstanding that the marriage was preceded or succeeded by a ceremony of marriage between the same parties in civil form or any other form.

We are unfortunately not qualified to answer your question on why you should get married. The law does not force you to get married and you can do so at your free will. We recommend you meet some counsellors who can guide you on this.

Sexual needs of disabled

I have studied all my life in Tanzania and only recently realised that a friend of mine who is disabled because of an accident is not able to get married. He is disabled, but told me that is able to be sexually active. In Europe where I studied, the state provides such services for the disabled as it is an essential and enjoyable need for all people and it is important to have happy people. Are such services available in Tanzania? Can a Tanzanian man decide with which woman the man intends to have sexual relations? Is it not fair that such people be taken care of by the state?

4 May 2015

When we read your question for the first time, we were not aware that some European countries indeed provide allowances for such needs. For example, Amsterdam's Red Light District, De Wallen, is well-known for quasi-legal prostitution, which has attracted the attention of international tourists.

We have learnt that in an effort to grant physically disabled citizens the chance to experience sexual intimacy, the Dutch government has been known to provide them with a monthly stipend with which to visit prostitutes.

Our research reveals that the Netherlands is not the only country that affords

the handicapped subsidies for adult companionship. They are also available in Switzerland and Germany, among other places, and there are movements to legalise the use of sexual surrogates in Australia and France. Whether this is right or wrong can be debated but it is indeed a very interesting concept.

To answer your question, such services are not available in Tanzania. In fact in Tanzania prostitution is illegal. There is no law in Tanzania that governs which Tanzanian man has what kind of relations with which kind of woman, and how. There is no such protocol governed by the law.

Marriage with two men

I am a woman, who wishes to get married to two men. Does legislation allow for that? If not, can I petition for the illegality of the Law of Marriage Act as the Constitution allows equality for all. I have both the men in my life ready to get married to me at the same time, although one of them is overseas. Does he need to be physically present or I can use Facetime, Viber or other technology for him to "show up"?

11 May 2015

Section 9 of the Law of Marriage Act defines marriage, which is stated as "the voluntary union of a man and a woman, intended to last for their joint lives"

Marriage can either be monogamous and or polygamous, under Section 10 of the Act. A monogamous marriage is a union between one man and one woman to the exclusion of all others. A polygamous marriage is a union in which the husband may be married to or marry another woman or women, under either Islamic law or Tanganyikan customary law and practice.

Having two husbands at the same time is called polyandry, which is a form of polygamy. Our laws do not recognise a marriage where a woman has more than one husband at the same time. In fact our law states that a married woman who is a party to a ceremony whereby she purports to marry another man shall be guilty of an offence. Such an offence can fetch up to 3 years imprisonment for you.

Having done our research across religions and countries, we found that most of them ban polyandry, so we opine that your constitutional challenge might not succeed.

As for being present, or not, at the marriage signing ceremony, our law is clear that a marriage shall be a nullity unless both parties are present in person at the ceremony. Our interpretation of presence means physical presence. Facetime, Viber or other technologies are not a substitute to the physical presence required under our law. Such proxy marriages are disallowed.

Court following unfair law

The Law of Marriage Act is one of the most unfair laws I have seen in Tanzania. For example, it allows marriage of girls below the age of 16, does not allow consensual divorces and is not specific enough when it comes to stating women's rights are when it comes to a broken marriage. My question is when everyone is making such a big noise about this, why are the judges sticking to following this law? Should they not be interpreting the law the way people want the law to be interpreted? Who should we contact to exert more pressure?

18 May 2015

The following phrase is engraved above the entrance of the United States Supreme Court building: "Equal justice under law." It is important to note that it does not say "Equal Justice" because that is limited to the context of the "law."

In other words, a Court's role is to resolve cases and controversies in accordance with the

law, and to interpret the law, if necessary. By the way, "fairness" is a synonym for "justice." One of the gravest mistakes people make is equating the law with concepts of justice and fairness.

The job of the Judges is to interpret the law and ensure that people follow the law. Judges have no responsibility in changing the law. That power is vested in Parliament. No matter how wrong a law is, the judges are bound to follow it, although they may use their creativity to interpret, dilute or circumvent certain circumstances.

We agree with your concerns on the Law of Marriage Act. Unfortunately, even if the Judges agree that the law is outdated, they are bound to follow it. It is for Parliament to change the law, and despite announcing that the law is going to "soon" change, we have seen no action over the past few years. It is unfortunate that this outdated law still persists, but it is a fact and is not something that Judges can change. With parliament soon to be dissolved, sadly it is unlikely you will see any change of this law this year.

We must add that the Law of Child Act defines a child as anyone below 18, yet the Law of Marriage Act allows a girl below 16 to get married. We recommend you contact the Ministry of Community Development, Gender and Children which we believe should be leading this change of the law of marriage act initiative.

We share your concerns and suggest you also contact the Gender Equality and Women Empowerment programme (GEWE II) being implemented by Tanzania Media Women's Association (TAMWA), Tanzania Gender Networking Programme (TGNP), the Tanzania Women Lawyers Association, (TAWLA), The Zanzibar Female Lawyers Association (ZAFELA) and TAMWA's Crisis Resolving Centre (CRC) who are all thinking along the same lines.

If the new Marriage Bill is still being drafted, it is a shame that it has taken so long despite everyone agreeing that the Law of Marriage Act, as it stands now, is prejudicial to women and outdated. Your follow up may help accelerate this process (assuming it has started).

Husband dictates what I wear

I am married to a foreigner and we live in Tanzania. Strangely my husband, who comes from a certain part of Africa, wants me to dress in his country's costumes whenever I am out of home. This is even when I go shopping in the market. He maintains that under the law of marriage he has such power. He has told me I should choose whether to obey him or he will divorce me. Does the law really say this?

29 June 2015

There is no provision we have come across in the Law of Marriage Act in Tanzania which gives a husband such right. Maybe there is one in his home country but we doubt it very much, especially in this era.

Out of the known grounds of divorce, failing to adhere to a dress code is not within their scope. Your husband might be obsessed with his customs but he cannot impose them on you. Dressing is a matter of choice and there is no law that governs it, save for dressing appropriately, so as not to outrage public decency.

We recommend both of you get some counselling and resolve this matter. Your husband has married you, not the clothing you come in, and perhaps the counsellor might be able to assist.

Suing my husband

I am a famous model married to a man who has always been very careless and unsupportive towards me. In fact this carelessness led to burns on my body when my husband negligently opened the shower when I was standing below it

and the hot water poured on me. I am now being dumped by my model agency as I am not as presentable as I once was. I have had enough of this and want to sue my husband. My lawyer thinks that I cannot. I fail to understand why I should not? Guide me.

10 August 2015

The Law of Marriage Act states in Section 65 that no husband shall be liable for the torts of his wife by reason only of his being her husband; and that a husband and wife shall have the same liability in tort towards each other as if they were unmarried.

In short you can proceed to sue your husband under tort principles.

To prove this case against your husband you have to ask yourself if your husband owed you a duty of care. We feel that he did. Secondly, did your husband breach the required standard of care? From the facts it seems so.

Did you suffer damage? We answer that in the affirmative. Lastly was the damage caused by the breach of duty by the defendant? It seems so. All in all, we believe you have a valid claim against your husband.

However, we recommend that you first talk with your husband as suing will automatically lead to serious issues in your marriage. You can even appoint a third party to assist resolve your dispute.

Wife disallows me to see her

My wife comes from a very conservative background and since we have been married she doesn't allow me to see her. I have tried all types of tactics but she says she is not ready for it as yet. How do I handle her as it is causing a lot of frustration in me?

17 August 2015

We assume when you say she doesn't allow you to see her, you mean she doesn't allow you to see her naked.

We answer the question on this basis and if that is not what you meant please excuse us.

When one marries, under our law, conjugal rights or sexual intercourse is an automatic right that one has with their partner.

If one partner doesn't allow the other to see them naked, then we assume that there is no sexual relations in the marriage, unless there is a way that the couple can have sex with their clothes on - we find it difficult to visualise this, but it may be possible with some imagination.

If you file an application in Court, a Court cannot force her to allow you to see her. If she still refuses then you need to see a marriage counsellor.

In the end, not getting your conjugal rights is a very solid ground for divorce. It is said that every person is born a conservative and then becomes liberal- you might also want to consider giving her more time.

Wife refuses to sleep with me

My wife has decided that for a period of six months, until my daughter passes exams, she will not enter into any sexual relations with me. She claims that she has been inspired by a message from the divines that if we do engage in sex, our daughter's exam results will suffer and therefore abstinence was the way forward. This is causing me sleepless night and anxiety. Can I sue my wife to cooperate?

24 August 2015

We do not see any correlation between abstinence and your daughter's results.

As for the revelation from the divines, we are unfortunately not able to comment as this is something beyond our scope.

We are not sure what you want to sue your wife for. Suing her for specific performance meaning that she be forced to sleep with you,

is something a Court will be very unlikely to grant.

One cannot be forced to have sex with another, even if it is a partner, as it would be against public policy and enforcing such an order might be a breach of the other person's privacy rights.

We recommend you to meet a marriage counsellor who can provide some expert guidance.

Canonical disability

My husband is suffering from a canonical disability. I am not sure what to do. Is this a ground for me to claim damages from him? What else can I do?

14 September 2015

Canonical disability is a phrase which refers to the inability of either party to have sexual relations with the other. It is another word for impotence. You cannot claim damages for this if this is a medical condition, which occurred after the marriage. However, if you were unaware of this condition before marriage and were made to believe that all was normal, then you may have a claim for damages.

As lawyers we are not qualified to guide you on the medical remedies available, but he should certainly seek medical advice. If, after that your husband's canonical disability is permanent and incurable, then it is a valid ground for divorce.

Obscene, pornographic messages

I am a father of three and my daughters have cell phones which I proudly bought for them. Sadly there are so many obscene and pornographic messages flying around on WhatsApp, text and e-mail including video clips of a truly disgusting nature. Isn't there a law which provide for these things?

13 October 2015

The Electronic and Postal Communications Act of 2010 makes sending obscene communications an offence, whether by using a network or an app. The penalty for such communications is serious with possible hefty fines and possible imprisonment.

If convicted, the sender is liable to a fine of not less than TZS 5 M, or to imprisonment for a term not less than twelve months, or to both. Repeat offences may lead to fines of TZS 750,000 for every day during which the offence is continued after conviction.

If you can pinpoint the persons who send such messages to your daughters, you can report the matter to the relevant authorities and proper measures can be taken against them. Even if you cannot pinpoint such a person, this is reportable as all mobile phone numbers are registered. Your lawyer can guide you further.

Pornography is also illegal under our penal statutes - very few people seem to remember that. It is an offence that is imprisonable. Furthermore, under the Cyber Crimes Act 2015, publishing pornography attracts a fine of between TZS 20 to 30 M with a custodial sentence of seven years.

Lottery tickets to underage persons

Is there a minimum age to purchase a lottery ticket? Some of these casinos that I visit are surely cheating as I am told the machines are adjusted to ensure people win small amounts, and lose bigger amounts. What should I do?

16 November 2015

The Gaming Act provides that no ticket or chance in a lottery promoted and conducted shall be sold by or to a person under the age of 18 years. It is an offence for a promoter to sell tickets to an underage person and the promoter can be imprisoned for this.

As far as cheating is concerned, the best solution not to lose any more money is not to go to the casino. Cheating is also illegal and you can report this to the Gaming Board of Tanzania who can take appropriate action. If someone is found cheating in a casino, he can be imprisoned.

Honeymoon and marriage

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 to marriage.

23 November 2015

No marriage can be contracted in secrecy under Tanzanian law. The Law of Marriage Act states that any member of the public may attend a civil marriage, as long as the district registry reasonably permits them to do so.

In the case of religious marriage, it is the position that any person who follows a religion under which the rites of which a marriage is contracted may attend that marriage.

Also, any member of the community to which the parties, or either of them, belong may attend a marriage contracted in Islamic form or according to rites recognised by customary 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 honeymoons, we have checked our statutes and this word does not appear anywhere. Having a honeymoon is surely not a condition precedent or subsequent to marriage.

Our research reveals that honeymoon is the 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.

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

Bad body odour in marriage

I got married to a friend of mine and during dating we never removed our clothes. After marriage I have realised that my husband has very awkward body odour, apart from also being extremely hairy. This is a turn off for me and I do not want to continue in this relationship any longer. My question is two fold: first, how long are marriage contracts meant to last, and secondly can I get divorced?

14 December 2015

Section 12 of the Law of Marriage Act states that marriage, whether contracted in mainland Tanzania or elsewhere, shall for all purposes subsist until it is ended for five reasons, namely, death, presumed death, annulment; divorce; or an extra-judicial divorce outside Tanzania recognised under the provisions of Section 92 of the Act.

Section 92 states that where any person has obtained a divorce, otherwise than by a Court in Tanzania, in any foreign country, the divorce shall be recognised as effective in Tanzania.

The foreign divorce must be effective according to the law of the country of domicile of each of the parties at the time of the divorce or be recognised as effective by an appropriate Court in the country of domicile of the parties or either of them.

Bearing the above in mind, you can see that

a marriage in Tanzania, as other jurisdictions, is supposed to be for the life of the individual unless a person dies, or is divorced. Marriage is not a type of contract you can enter into for say ten years, and then decide to get married again to someone else for another five years. It is a lifetime contract. In some religions the option of a short term contract of marriage is recognised but this is not provided for under the laws of Tanzania.

As for divorce, unfortunately and sadly the Law of Marriage Act does not allow divorce for convenience, which we believe in today's era it should. The law allows divorce based on adultery, sexual perversion, cruelty, neglect, desertion, a separation that continues for 3 or more years, imprisonment for more than 15 years of any of the spouses and mental illness.

Having bad body odour or being hairy or unattractive is something that the law does not provide for as a reason for divorce. If there is cruelty or neglect being derived by you, out of the odour or hairy body, then perhaps you can file for divorce. Your lawyers can guide you further.

Before we end, and without sounding like marriage counsellors, you might want to consider sorting the odour and the hairy body out. In today's high tech era, surely there are body sprays and waxing technologies including laser treatments that may assist bring back your love for your husband.

Parents agreed on marriage

Many years ago my parents and the parents of the girl next door agreed that we would get married after we turn 18. The girl now says that she wants to complete her university studies before she thinks about marriage. I am afraid that with all the guys she will meet at university, I will die a bachelor and miss the love of my life. How can you help me secure my position? I also wish to agree with her at the outset on the number of children we will have? What form of agreement should I sign with her?

21 December 2015

You have not stated in your question whether or not the girl is reciprocating the same love you have for her. Further, the agreement of both sets of parents that you will get married sometime in the future has no force of law as the contracting parties under the Law of Marriage Act of Tanzania are you and the girl, and both sets of parents cannot decide who you will get married to.

This is also not a contract of sale of goods on which you can "secure" your position. There is no legal way to secure your position other than to try and impress upon the girl that you are the man she would want to live with for the rest of her life.

Otherwise, you are right - she might just get married to someone she meets whilst at university.

As for children, even if she signs an agreement that she agrees to have a certain number of children with you, she is not bound by that agreement. She can change her mind and you will not be able to do anything about that. No Court will issue an order to the girl to start bearing children under the agreement.

You might want to think of marriage as a social bond between parties that love one another and not a commodity contract, or a feudal obligation.

With respect, we feel that your current way of thinking about women is, to say the least, a turn off for the girl and without sounding like marriage counsellors; we believe you might want to get some counselling.

14 years and married in Tanzania

Is it true that in Tanzania a girl aged 14 years can get married? How does one address this at it conflicts with international best practice.

11 January 2016

The answer, sadly so, is yes. In Tanzania, subject to permission being granted from a Court where one can prove that "special circumstances" exist, which make the proposed marriage desirable, a girl of 14 years can be denied her rights to education and get married. In fact, even if the Court does not allow a marriage at 14 years old, then if the girl waits another one year, she can marry of her own will, without asking for the Court's permission to get married.

This is in line with Section 13 of the Law of Marriage Act which states that no person shall marry who, being male, has not attained the apparent age of eighteen years or, being female, has not attained the apparent age of 15 years.

All action groups who are lobbying for this law to be amended have failed to convince the Minister in charge of women's affairs to move this amendment in parliament, although all the respective governments in power have agreed that the law needs to be amended.

We share your concerns and suggest you also contact the Gender Equality and Women Empowerment programme (GEWE II) being implemented by the Tanzania Media Women's Association (TAMWA), Tanzania Gender Networking Programme (TGNP), the Tanzania Women Lawyers Association, (TAWLA), The Zanzibar Female Lawyers Association (ZAFELA) and TAMWA's Crisis Resolving Centre (CRC) who all think along the same lines as you.

It is to be seen if the current minister responsible for women affairs will manage to, at the least, quickly amend the minimum age of marriage, before overhauling the law entirely.

Not only does this conflict with international best practice, but it conflicts with the Law of the Child Act of Tanzania which guarantees that children are not denied their rights to education. Married at 14 or 15 effectively denies the girls their right to be educated.

Whilst researching this, a shocking statistic that we came across is contained in the 2014 Human Rights Watch report titled "'No Way Out': Child Marriage and Human Rights Abuses in Tanzania," in that 4 out of 10 girls are married before their 18th birthday meaning that the practice of getting girls married early is much prevalent mainly for dowry.

We recommend you contact the Ministry of Community Development, Gender and Children which we believe should be leading this change of the Law of Marriage Act initiative.

Should any amendments take place, it is a shame that it has taken so long despite everyone agreeing that the law, as it stands now, is prejudicial to women and outdated. Your follow up may help accelerate this process.

Mother teaches child wrong stuff

My wife, with whom I am separated, intentionally teaches our child the wrong stuff, trying to prove her point. For example in maths, the mum would give all the wrong answers to the child. She recently told the child that she has the switch to turn on the sun in the morning and switch it off at night, and now he believes this.

She also told the child that she can "bring out" anything you see on television and ever since, my child has been using a pencil

on the TV set to try bring the characters out. The school teachers have disallowed my wife to go into class as last time she was there she said that fish can swim in the air, as well as in the water. When my son was injured, she decided not to take him to the hospital as she said she was trying to improve the child's immune system. I really don't know what to do with her. Please guide.

25 January 2016

We are unsure why you say that this is intentional but if it is, the Law of Child Act is clear in that it is the duty of parents to maintain the child, in particular to give the child the right to food, shelter, clothing, medical care, education and guidance, liberty, the right to play and leisure. This law is also clear that a person shall not deprive the child of any other thing required for his development.

As for not providing adequate and appropriate medical care, the Law of Child Act states that a person shall not deny a child medical care by reason of religious or other beliefs. Your wife is in breach of this law and you can proceed report her. If convicted she can be sentenced to six months imprisonment or a fine or both.

On a different note, you might want to consider getting her medical help as the behaviour is quite abnormal. What you might be thinking is intentional might actually be the result of a medical condition that you and her are unaware of.

Father objection to marriage

Can a father object that his daughter, who is of legal age, should not get married to a certain individual whom he finds ugly?

15 February 2016

As a mandatory condition prior to marriage, the Law of Marriage Act provides that where a man and a woman desire to marry, they shall, at least 21 days before the day when they propose to marry, give notice of their intention to a Registrar or a Registration Officer.

The notice must include, amongst others, the names of parties intending to get married, names of their parents, place they reside, and a statement that they are not in a prohibited relationship, a statement whether the marriage is supposed to be polygamous or monogamous.

A person may object to the marriage only to the extent that the marriage is disallowed under the Law of Marriage Act. For example, if one is married in a monogamous marriage and intends to marry again, the spouse could challenge this intended marriage.

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 a notice of objection to the Registrar or Registration Officer to whom the notice of intention was given.

Objections to the subsequent marriage may be in relation to the husband's means, in that taking another wife likely to result in hardship to his existing wife or wives and infant children, if any.

Objections may also be raised 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 made, a person who has given notice of objection may at any time withdraw it, but any such withdrawal shall be in writing, as signed by him or her.

There are hardly any grounds for a father to stop his daughter from getting married, provided she is not married at the time and has attained legal marriage age of 15 years.

The law does not require parental consent to get married for a girl over 15 years. It does not matter how handsome or ugly the husband to be is.

Engagement, no marriage

I gave my fiancée a diamond ring worth millions only for her to now change her mind apparently because she wants to study and needs more time. Can I put a claim on her? I still like her.

22 February 2016

An engagement is an agreement to get married. It is not a marriage but states an intention to do so. One cannot force your fiancée to get married to you, you can only request her to marry you, and there is nothing much you can do about her changing her mind. Since you still like her, putting a claim on her will likely cement her position of not wanting to marry you, so we suggest you move with caution.

However since you gave her the ring in contemplation of her agreeing to marrying you, and since she has changed her mind, the Law of Marriage Act allows you to bring a suit, for the return of the ring since the marriage has not been contracted.

However the Court will need to be satisfied that the ring was given with the intention on your part that it should be conditional on the marriage being contracted, and not otherwise. If you can prove so, it is likely that you are entitled to get the ring back. If she can prove otherwise, you might not get it returned.

Enforcing marriage contract

My father and his friend agreed many years ago that when my father's friend's daughter and I grow up, we will get married. My father has already paid the cattle and other sums in advance. She is now asking for more time and I want to enforce the contract. Can you help? Also under Tanzanian law is marriage defined, and if so does it have a specific duration? I would like to have a ten year relationship first and see how it goes.

29 February 2016

You will not like the answers you are about to read.

Marriage is not like buying a mobile phone over the counter. It is a special bond that is created between a man and his wife. The two fathers could not have entered into a contract for the two of you as both of you did not consent. Section 16 of the Law of Marriage Act states that that consent must be freely and voluntarily given, by each of the parties thereto.

Since there was no consent to get married, there is no agreement in place. And even if there was, the girl can still change her mind. You have no cause of action to force her to get married to you.

Marriage, as we have stated before, can be monogamous, or polygamous; in both instances, under Section 9 of the Act, it is the voluntary union of a man and a woman, intended to last for their joint lives. The former is marriage between a man and a woman alone; the latter allows a man to marry more than one woman.

Marriage subsists until terminated; either by death of either party, or a decree than presumes the death of either party; by annulment or divorce; or by extra-judicial divorce outside Tanzania which is recognised in Tanzania.

Therefore, unlike other jurisdictions, our law has no provision for a short term marriage. You can either get married with an intention of a lifelong relationship, or you don't. There is nothing in between.

Wife refuses breastfeeding to child

My wife is flatly refusing to breastfeed my child on grounds that her breasts will lose their firmness. Is that true? I am very upset about this and want to compel her by way of a Court order to feed my child as the child will starve. Can I get such an order? Is it a ground for divorce?

7 March 2016

As lawyers, we are not qualified to respond to what the causes are for the loss of "firmness" in a woman's breasts. We know that ultimately the forces of gravity do take over, be it on women or men.

From the facts, we must state that there are many women who do choose not to breastfeed as there are other formulae that are good substitutes to breastmilk. Equally there are those who prefer to feed their children naturally. Hence we do not believe that a Court would grant such an order, but your lawyer can look at all the facts and decide.

As for grounds for divorce, the Law of Marriage Act states that a Court may accept any one or more of a variety of the following matters committed by the respondent as evidence that a marriage has broken down but proof of any such matter shall not entitle a party as of right to a decree.

The grounds include adultery, sexual perversion, desertion for at least three years, voluntary separation, or Court-ordered separation, for the same period, imprisonment for life, or for not less than five years, depending on sentence and the offence, mental illness, or change of religion, where both parties formerly followed the same religion. None of these seem to apply here.

However, one of the grounds, cruelty may apply. Cruelty could be either mental or physical, inflicted by the respondent on the petitioner, or on the children, if any, of the marriage.

It is arguable that not feeding your child can be considered as cruelty on the child, it would be a ground for divorce. However we do not see it as cruelty but your lawyer can look at all the facts and decide accordingly.

Privacy of matrimonial life

Where do I turn to learn more about preservation of privacy? What law protects me?

7 March 2016

Apart from other laws, the Constitution of Tanzania gives you general protection in Article 16 and states that: "(1) Every person is entitled to respect and protection of his person, the privacy of his own person, his family and of his matrimonial life, and respect and protection of his residence and private communications."

It also states: "(2) For the purpose of preserving the person's right in accordance with this Article, the state authority shall lay down legal procedures regarding the circumstances, manner and extent to which the right to privacy, security of his person, his property and residence may be encroached upon without prejudice to the provisions of this Article."

I want my diamond ring back

I had given my wife a diamond ring for our fifth anniversary. It is worth billions. We are about to get divorced because we are two very different persons. Can I claim it back? I am ready to pay whatever it costs? On a different note can I get an injunction to stop my wife from remarrying after divorce?

21 March 2016

The Law of Marriage Act states under gifts between husband and wife that where,

during the subsistence of a marriage, either spouse gives any property to the other, there shall be a rebuttable presumption that the property thereafter belongs absolutely to the person it has been given to. In this case the diamond ring belongs to your wife.

The best option is to either request her to give it back, and you should not be surprised if she refuses. Alternatively, since you said you are ready to pay whatever it costs you to get it back, you can negotiate to buy it from her, although she may as well ask for a ridiculous price, or refuse whatever you offer her.

Getting an injunction from a Court to stop your wife from remarrying is impossible. She is not your property.

Husband married twice

I got married to a person I thought was single until when I found out that he has another wife. Under our religion he cannot have more than one wife at the same time. Can I divorce him?

18 April 2016

From the limited facts we have, it seems that you entered into a void marriage contract meaning that you were never married and hence may not even need a divorce. However, your lawyer can guide you further on steps to take. In the event that you are married, then what you have stated is a ground you can use to petition for divorce.

More seriously, our Penal Code makes this form of bigamy a criminal offence. Section 165 states that any person who dishonestly, or with a fraudulent intention goes through the ceremony of marriage, knowing that he is not thereby lawfully married, is guilty of a felony, and is liable to imprisonment for five years. You may also want to consider pursuing him under the criminal law route.

Ex-boyfriend obstructs marriage

In a wedding ceremony that was going on, my ex-boyfriend showed up and shouted that I was already married to him. He produced a fake document. My soon to be husband walked out right before the signing and I am single to date. Does the law not protect me against such people?

9 May 2016

Section 158 of the Law of Marriage Act applies here. It states that any person who, unlawfully attempts to prevent parties to an intended marriage from being married, shall be guilty of an offence.

Under subsection (2), any person who with the intention to disturb or delay the celebration of any marriage, or with the intention of embarrassing the intended parties, or any other person present at the place where a marriage ceremony is being, or is about to be, or has been, performed, causes a disturbance in, at or near such place, shall be guilty of an offence.

The penalties for such an offence on conviction can be a fine not exceeding TZS 2,000 or imprisonment for a term not exceeding three months or both.

You can see that what your ex-boyfriend did was an offence and it can lead to a fine or imprisonment or both. You can hence proceed to report him and the authorities should take appropriate action.

Husband with beard, two earrings

I married a man whom I dated for more than ten years. We married last year and suddenly he decided to grow a beard and wears two earrings, which I find is unattractive and displeases me. Initially I thought this was a joke, but it is now clear that it is the case that either I accept him with his beard or get 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.

16 May 2016

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 for divorce, inter alia adultery, sexual perversion to mention a few that are valid grounds for divorce. Looks or rather changes 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 a divorce within that period. There is a kind of cooling off period which is, in today's era, perhaps quite outdated.

There are initiatives towards changing 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.

Cohabitation before marriage

Is it an offence for me to have sexual relations with my girlfriend who is above the age of 18. I am told all the time that I can be jailed if I attempt to have sex with her?

6 June 2016

We are not aware of any law that bars consensual intercourse between two adults. Unless your girlfriend is not willing to have sex with you, we do not see an issue. Perhaps the issue is more to do with the morality of the act than the legality. You can seek some counselling on this from your religious leaders but we do not see any illegality here, at least with the facts as presented to us.

Fixed term renewable marriage

I am very scared of getting permanently married as I do not want to end up tainting myself with a divorce. Can I get into an agreement of marriage for 5 years, and if we are both happy, we can continue for another 5 years? We can provide for all terms and conditions in the agreement including what we will do with the children and assets we acquire. I believe true love will prevail if I can do this. All these jokes about women being very difficult to handle are not only true but due to the structure of women being different to men, and hence we cannot blame them either. We need to be realistic in this modern era. Please guide.

13 June 2016

This answer is being given by a female attorney, so please excuse me if you see any bias. To begin with, the Law of Marriage Act provides that the duration of marriage shall subsist until determined by death, presumed death, annulment, or divorce, whether in Tanzania or one obtained outside the country but recognised here.

There is no provision in the law that allows you to marry for five years and then decide whether you want to continue with the marriage or not. Marriage is a bond, and your wife is not a commodity that you can exchange, or discard, after five years. The only way for you to exit a marriage is by way of a divorce, or annulment, if you are both alive at the time.

As for women being difficult, you must apply an objective test. The difficulty mainly arises because of the behaviour of men. Men do not respect the workload women carry in raising the children and in working for the betterment of the family. I have read

another part of the question that we have not published and believe you might need some counselling for you to respect women before you tie the knot. Without such counselling, your short term marriage, if one was available, would not last very long either. I wish you luck.

HIV status to spouse

Is it necessary for a husband to inform his wife of the results of his HIV test? Is that not breach of his privacy?

13 June 2016

The HIV & AIDS (Prevention and Control) Act 2008 unambiguously states this to be the case.

Under the Act, any person who has knowledge of being infected with HIV after being tested shall (a) immediately inform his spouse or sexual partner of the fact; and (b) take all reasonable measures and precautions to prevent the transmission of HIV to others.

Furthermore, under subsection (2) a husband shall inform his spouse or his sexual partner of the risk of becoming infected if he has sex with such a person unless that other person knows that fact.

It is therefore mandatory for a husband to inform his spouse or sexual partner of his HIV positive status and if he does not, he could be held as trying to intentionally transmit the disease and be liable to imprisonment of between five to ten years.

Exchange of spousal blows

In an argument my husband hit me in the face that caused some serious bruises. I did not take this forward or report the matter. A few months ago, after an argument, I threw a wheel spanner at my husband and injured his shoulder. I was kind enough to take him to hospital where another argument erupted and he ended up reporting me to the police. The police are now after me wanting to charge me in Court. I told them about my incident and they are reluctant to offset what happened to me against what I did to my husband. Can I be charged?

20 June 2016

It seems you assaulted your husband and you may be charged. Depending on the type of assault you are charged with, if convicted you can be imprisoned for up to five years. In criminal law, the old saying of "an eye for an eye" is no defence in the circumstances you have mentioned.

The police are therefore right in charging you. You should also formally report your husband hitting you to the police as that is an offence, although with time having elapsed, the police may be less inclined to charge him. Husbands and wives attacking each other are both offences under our Penal Code, and both of you may end up in jail.

Since this hate has come after your love, we strongly suggest you find a mediator or counsellor to assist resolve your differences. It would be unfortunate if both of you end up in jail. As for "offsetting" this is not an accounting debit-credit where the two hits neutralise each other. They don't, and the state takes such assaults seriously. The defence of provocation, as a defence to the assault, would not seem to apply here.

Test pre-marriage before marriage

I am in love with a girl but am scared of marriage. I have heard all about how girls turn around when they get married. Both of us have agreed to have a test pre-marriage before the marriage which will have a lock out period of two years in which we cannot marry anyone else. In some countries this is allowed. Can we do this in Tanzania?

11 July 2016

This is the first time we are hearing of a test pre-marriage before a marriage. We are quite confused as to what you can achieve with this test pre-marriage and what additional rights and obligations you want to impose on each other. The lock out period sounds like an employment or sale of asset agreement, not like a marriage agreement that is supposed to be entered into with unconditional and abiding love.

Our laws do not provide for anything like this. We are also unsure if the laws of other countries have such provisions. The closest we can think of is an engagement which is an intention to get married.

You might need to have more trust in yourselves, perhaps get engaged and decide on whether you want to get married. This lock out clause is very likely not enforceable as you cannot deprive one of their rights to marry who they want to.

Two boyfriends, one child

I admit that I had two boyfriends and became pregnant with one of them. They have now come to know about my parallel relationships and are pointing fingers at each other saying what I did was illegal. I kind of know who the father is but am confused as to how to go about proving this. What should I do? Can I force the father to marry me?

11 July 2016

We are sorry to hear about the confusion but understand the stress you are going through. While morally it is usually not appropriate, or desirable, to have two simultaneous relationships, legally, at least with the facts you have provided, you have not broken the law.

To determine the biological father of the child, the Law of Child Act amongst other laws allows you to make an application into Court ordering that a DNA test be done to determine who the father of the child is. This would be an order of the Court and will give you a conclusive result.

As for marriage, you cannot force the biological father to marry you. He does become the father of your child, but can choose not to become your husband. He has the same responsibilities of being a biological father as may be in respect of a child born in wedlock and the child, subject to the religious beliefs of the biological father, will have such other rights devolving from the parent including a right to be an heir.

Marriage not recognised after 26 years

I have been married for the last 26 years and went to get a copy of my marriage certificate only to be told my marriage file had an issue. Apparently when I got married, no notice of intention to marry was published which is supposed to be statutorily given. I was asked by the officer to show proof of it being given before my marriage could be recognised. The officer said that if I cannot produce this notice, he will not recognise my marriage and no copy of my marriage certificate would be issued to me. Please guide as I am confused.

1 August 2016

This is the first time we have heard of such a problem. Whilst a notice of marriage is mandatory, we find being questioned about it after 26 years is surprising and hard to believe. Notwithstanding the above, the Law of Marriage Act states that there are matters that cannot affect the validity of marriages. This law states that a marriage which in all other respects complies with the express requirements of this Act shall be valid for all purposes.

This applies even if there is a failure to

give notice of intention to marry as required by this Act. There are also other grounds, such as the failure to comply with customs relating to dowry or the giving or exchanging of gifts before or after the marriage.

In addition, the marriage will not be invalid if; a notice of objection to the intended marriage had been given and not discharged, or the person officiating thereat was not lawfully entitled to do so, unless that fact was known to both parties at the time of the ceremony.

It also includes cases of procedural irregularity; or failure to register the marriage.

You should inform the officer attending you of the provision above otherwise escalate the matter to her/his supervisor. Please inform your wife not to worry, you are legally married and continue to be so.

Dislike of guy daughter dating

My daughter who is in university is dating this guy whom I cannot stand. After years of raising my girl, having spent so much on her, I want to use the force of the law to stop her seeing him. I have been reading your excellent columns since the beginning and I expect you to please use all your brain cells to guide me what to do.

15 August 2016

We have spent more time than we would have to think about a response that will please you. We have, after using all our brains and brain cells, not found one, and sadly the answer is you cannot do anything. Your daughter is of legal age and can date whoever she wants.

Your only option is to try and get a third party, or a counsellor involved to explain to her what you have explained to us. Our Constitution guarantees a right to personal freedom, right to privacy and personal security, right to freedom of movement and right to freedom of expression, amongst others. Just because you cared for her, which is your statutory duty, doesn't mean that you can do what you want with her or her boyfriend.

Gifts to girlfriend

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, whom she has a serious relationship with and who has already paid a bride price. She is now refusing to give me back the gifts including the car. What should I do?

22 August 2016

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, where the Court is satisfied that it 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.

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 a HIV/AIDS test before we proceed. Surprisingly he has refused on 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?

22 August 2016

The law in Tanzania does not allow compulsory HIV testing unless there is consent of the person being tested is given for them to be tested. There are, however, circumstances where HIV testing may not require consent like where there is a Court order, or they are the donor of human organs/ tissue and to sexual offenders. Your boyfriend does not fall under any of the above categories and 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 to ten years.

I want my diamond ring

I gave my wife an expensive diamond ring. We are at the verge of having a divorce as I want my freedom. I want my ring back otherwise I will not consent to divorce. How can you help?

5 September 2016

It seems you will be happier when you are in possession of your diamond ring as opposed to the freedom your divorce may give you. In any case Section 61 of the Law of Marriage Act addresses the issue of gifts between husband and wife, and states that where, during the subsistence of a marriage, either spouse gives any property to the other, there shall be a rebuttable presumption that the property thereafter belongs absolutely to the person the gift is given.

It seems very unlikely that you will get back your ring. You had given it as a gift and it becomes the property of your wife. However there may be very narrow grounds to succeed that your lawyer can explore after getting all the facts but otherwise, unless your wife consents which we doubt, as considering diamonds are a woman's best friend, your case looks weak.

You also need not give your consent to divorce. As long as the conditions for divorce are met as per the law, your wife or you are entitled to divorce.

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, which is double his initial weight, and 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 banks payroll is becoming fat. Can I also sue the bank?

26 September 2016

We start with the bank and we believe that the cause of action for you to sue the bank is very remote and 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? You need to read this to be able to 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 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, and also the fact that women also do, many a times, gain quite a bit of weight over the course of their marriages.

Objecting another wife in polygamous marriage

I am one of the two wives of a certain man. Our husband is highly depending on me 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 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 October 2016

The provisions of Section 20 of the Law of Marriage Act cover your situation.

It 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.

The objections can be 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. The objection must be decided before the intended marriage can take place.

You might also want to try and resolve this using the advice of elders in your community.

Wife reads old emails, wants divorce

My wife and I are happily married until recently when she started retrieving my pre-marriage e-mails where she 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-girlfriend after marriage. She also had boyfriends whose details I never asked on the notion that the past is buried behind you. My wife is now seeking a divorce from me. What should I do?

7 November 2016

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-girlfriend 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. The grounds of cruelty which might apply is also quite remote. For example, can your wife claim that you have been cruel by not disclosing your past relationships? 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 as it seems there might be more to this than meets the eye.

Living together when unmarried

A former boyfriend of my current girlfriend has come back from overseas and threatening me with action. I am not sure what to do. Is there anything wrong I am doing? What kind of action can be taken when a man and woman, out of their own freewill, are living together? Do we have to be married to live together and have a relationship? Can only a married couple live together? What should I do?

14 November 2016

We have read your question which is very interesting. In the absence of knowing who you are or having your number to call you, we are construing your words 'threatening to take action' as meaning threatening to file a law suit against you. In the event that it is a physical threat, our simple response is to report this to the police as it becomes a criminal matter.

Is there a law that bars an unmarried couple to live together? Our answer is no. The law does not disallow such a relationship. There is case law from other countries including the United Kingdom that supports what we are saying.

One of the most recent case laws that we came across, with facts very similar to yours, is an Indian decision in which the Supreme Court of India had to decide on whether a live-in relationship which included pre-marital sex was an offence. The Justices queried on what offence it was for two adult people to live together and the Court concluded that there was no law which prohibits live in relationship or pre-marital sex. The justices further concluded that the right for couples living together is a right to life.

You might be confusing morality with legality. Whether it is moral or not to have pre-marital sex and live together is not a legal question and we, as legal practitioners, are the least qualified to answer that part.

Our response to your question would be different if you were living with a married woman and the husband decided to take action against you.

Foreign divorce

I got my divorce in the UK few months ago. I am a Tanzanian national and wish to know if I need to get my divorce decree registered here. My first marriage was blessed in Dar es Salaam six years ago.

28 November 2016

Our Law of Marriage Act recognises divorce decrees' passed by any Court of competent jurisdiction in foreign Countries. The foreign divorce decrees are effective and registrable in Tanzania, regardless of where the contract of marriage arose. There is a standard procedure to follow for such registration.

Application for registration of foreign

decrees for divorce is made to the offices of the Registrar General in the Administrator General's offices known as RITA. It is advisable that you register the decree at the soonest possible moment.

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 that I pay her TZS 2.2 M every month in addition to paying her medical insurance premiums. 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 4 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 being overpaying her?

19 December 2016

Our answer will address the issue of enforceability of the agreement you entered into, and not the fact that it is likely, when you get sued, and if you do, that your wife will find out which was the precise reason you entered into the agreement.

It seems you entered into the agreement after being blackmailed and were 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 in that it is against public policy and was entered into under duress after being blackmailed. 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 counter claim against the lady to repay 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 and you should perhaps consider meeting a marriage counsellor prior to disclosing this to your wife.

The issue of adequacy of value does not come in as we believe your agreement was illegal from the outset. However, the Court will generally not go into the adequacy of a consideration.

Husband in breach of contract

My husband promised me when we got married, that, as part of my conditions in agreeing to marry him, that he would deposit TZS 50 million in my bank account annually. I agreed to marry him, based on such a promise. For the last 15 years, he has complied but in the last two years, he claims that he does not have the money, and has not paid me. I have asked him to borrow money to pay me these sums, as this is why I married him. He has refused to do so. I now want to divorce him, and bring a claim against him. Do I have a strong case against my husband?

2 January 2017

It seems you have made another agreement on top of the normal marriage contract with your husband. We have not seen this agreement, and hence this answer is not necessarily conclusive.

To begin with, a marriage is based on love and affection between the parties. Yours seems to be driven by cash. A fundamental element is missing in your relationship. This is a shame. This is the first time we have seen a marriage based on such a condition. If you are successful in suing your husband, then it will set a bad precedent, not only in Tanzania but

the world over. So we doubt you will succeed.

Our cursory opinion, based on the few facts given above, is that your agreement might be held to be illegal. If your husband counterclaims against you, you might be forced to return the money you have been given for the last 15 years. We also believe that failure to comply with this agreement is not a good ground for divorce.

We strongly recommend you meet a marriage counsellor who might be able to provide more solid help than we lawyers can.

I want my kidney back

I gave my wife one of my kidneys after she had kidney failure. This gave her a new life and she is still alive and healthy. After having lived with her for nearly two decades I am now divorcing her because of the way she is behaving with me. My kidney was given to her under a contract and I expected her to be married to me. As part of my divorce I want my kidney back. I am willing for her to get time to look for another donor but I want my kidney. How can I go about recovering it from her?

30 January 2017

We have not seen this contract that you are talking about. Much as we sympathise with you, we sympathise more with your wife. If you are allowed to take back your kidney, there are high chances she will die. And the law will not allow such a death, notwithstanding what your so called contract says. Based on your contract, if your wife does find another donor and it will not affect her, which we doubt, then perhaps your contract can be implemented, but we also doubt that.

Furthermore, Section 61 of the Law of Marriage Act states that where, during the subsistence of a marriage, either spouse gives any property to the other, there shall be a rebuttable presumption that the property thereafter belongs absolutely to the donee. In this instance, our cursory belief is that the kidney is a property that has been gifted by you to your wife and hence you are not entitled to claim it back.

This applies to any property gifted by a spouse to the other. Lastly we suggest you reconsider your decision of claiming your former kidney back - chances are you will not succeed.

Double divorce

My husband is intending to divorce me and has convinced my dad that he should also divorce my mum. So both my mum and I are about to get divorced. Is there no law that prevents such a double divorce? Can they file for divorce together? Is it legal for my husband to have counselled my father in this direction?

13 February 2017

We are sorry to hear these facts. Divorce is a very painful experience and we can imagine what you are going through. It is also quite awkward that both you and your mum are being divorced more or less at the same time. We have not found any statute that makes it illegal to divorce provided there are grounds of divorce. Your husband and dad cannot file a joint divorce petition. Each must stand on its own merit and be decided based on the facts presented there.

As for counselling your dad to divorce your mum, your dad is old enough to not be induced towards this. Again, we are not sure what offence your husband is committing unless we know more details but it looks like both men are not happy with their spouses.

Marriage discrimination against women

Under our constitution women are guaranteed same rights as men. I am told traditionally our men can marry more than one woman. Under our constitution would that imply that a woman can also marry more than one man? I want to attempt this and need your guidance.

1 March 2017

Polyandry is a form of polygamy, where a woman takes two or more husbands at the same time.

Under our Law of Marriage Act, the kinds of marriages that are recognised are monogamous, or polygamous. Marriages which take Islamic or customary forms of marriage under our law are assumed to be polygamous; all others are presumed monogamous.

Whilst the constitution does provide for equality, the Law of Marriage Act does not provide for a woman having more than one husband; the only way the Act can be challenged is by litigation brought under our Constitution. So far no one has challenged this and hence the current position of the law is that polyandry is illegal and not recognised under our laws.

Polyandry is practiced in other regions and was traditionally practiced among Tibetans in Nepal, parts of China and part of northern India, in which two or more brothers are married to the same wife, with the wife having equal "sexual access" to them.

According to online sources, polyandry is believed to limit human population growth and enhance child survival. It is a rare form of marriage that exists not only among peasant families but also among elite families. For example, polyandry in the Himalayas, is related to the scarcity of land. The marriage of all brothers in a family to the same wife allows family land to remain intact and undivided. If every brother married separately and then had children, family land would be split into unsustainable small plots.

Wife forcing me to have foreign honeymoon

My wife to be says that without a proper honeymoon outside the continent she is not interested in getting married to me. How can the law help me? I want to marry this woman but cannot afford the honeymoon condition. Is it fair?

10 April 2017

We have checked our statutes and the word honeymoon does not appear anywhere. It is surely not a legal condition precedent or subsequent to marriage. Our research reveals that a honeymoon is the traditional holiday taken by newlyweds to celebrate their marriage in intimacy and seclusion.

The only choice you have is to try and convince your future wife that you cannot afford the honeymoon, much as you would both like to go on one. It is then upon her to decide whether she still wants to get married to you or not. Should she decide that she doesn't, there is nothing much you can do about it. In fact, she can change her mind until the day she signs the marriage papers, and she only becomes your wife after the signing of such papers, not before.

We suggest you engage with her, make her understand your position and perhaps also consider seeking the services of a marriage counsellor. Whether her demand is fair or not is something we do not wish to comment on. Good luck.

Civil wedding now, big wedding later

I intend to get married in a civil ceremony now and then have a big wedding later. My future father in law says this is illegal and that I can only get married once. I also don't intend to give my wife a wedding ring as I am broke. Again my future father in law says that the law says wedding rings are mandatory. Is this true?

12 June 2017

You are getting married to your other half, not to your father in law. Getting married twice would mean that your legal marriage is the first one, and the second is merely ceremonial. You will have been married the first time when you signed on the civil papers. As for the ring, it is not mandatory but merely a tradition. We have not come across any law that says so. Perhaps it is better if your wife takes a call on this and not your father in law. She as well may call off the wedding if you don't give her a ring. It all depends on her, and not you!

Father in law wants second marriage

I have been peacefully married for the last 10 years, only for my father in law to now inform me that our marriage has not been conducted properly under the law since the religious leader who oversaw our wedding and blessed us was not properly appointed. Hence because he was not properly appointed, and should not have conducted our ceremony, it means that our wedding is invalid. I am in a state of shock as I am not sure what another wedding ceremony would do to my finances, and how I will explain this to my three children. What do I do? Why is my father in law raising this now?

26 June 2017

Whilst we find it interesting, as you do, that your father in law is raising this at this juncture, what we are unable to answer is why your father in law, to whom you are not married, is bringing this up now. You, or your wife, can perhaps ask him, especially after you read the below.

Luckily for you the Law of Marriage Act provides that a marriage which in all other respects complies with the express requirements of this Act shall be valid for all purposes. This includes the fact that any person officiating thereat was not lawfully entitled to do so, unless that fact was known to both parties at the time of the ceremony, as well as procedural irregularities.

The Act also provides that non-compliance with dowry customs, gifts given before or after the marriage, or failures to give notice of, or objections to the marriage, or in the registration of the marriage, will not invalidate it.

Hence you can inform your father in law that you need not get 'married again' since the law covers a scenario such as yours. Therefore, unless there is something you are hiding from us, you can hence continue living in peace as a married man.

Wife trespassing on my property

I was married for nearly 10 years before I left my wife as life was hell with her around me. I left her and the children in my house whose right of occupancy is in my name. We have been separated but not divorced and I need her to vacate my house as I am in need of funds and wish to rent it out. I politely asked her to leave because she is trespassing on my property but she has refused. I want to take legal action against her. Can I evict her by force?

24 July 2017

The Law of Marriage Act of Tanzania states that where any estate or interest in the

matrimonial home is owned by the husband or wife and that husband or wife, deserts his or her spouse, the deserted spouse shall not be liable to be evicted from the matrimonial home by the husband or the wife who left.

The law is clear but strict; you cannot evict your wife. Furthermore, you are not divorced and legally, you are still husband and wife; the house is hence still the matrimonial home and she has a right to live there. Division of assets like the matrimonial home can be done if either of you decides to divorce.

Even though the house is in your name, there is no guarantee that you will retain it in its entirety as under the law the wife is deemed to have contributed to building the matrimonial home simply by doing domestic chores and is entitled to a certain percentage of the value of the house. From the Court's perspective, your wife is taking care of your children and it is very unlikely that the Court will sympathise with you.

Your situation is quite delicate and you need to consult your attorney.

Divorcing a mentally disabled wife

I celebrated a Christian marriage with a girl five years ago. Our marriage is blessed with one boy who is nearly three. In January 2008 my wife fell sick with malaria and was mis-diagnosed and treated with the wrong medication. She then fell into a coma and was hospitalised for three months before being discharged.

Ever since her discharge she has suffered from a mental disability, and cannot eat, take a bath or walk on her own. I have tried very hard to adjust, but have failed to keep up with this. I wish to support her for life but I also wish to divorce her. Is this a good ground for divorce? What ground of divorce can I come up with to be successful? Please note that two of my wife's brothers are lawyers.

11 September 2017

We are sorry to hear about your wife. We remind you of the vows you made during your wedding ceremony when you undertook to live with your wife in any situation be it during happiness or sadness, sickness or good health. The same applies in law in that sickness is not a ground for divorce, separation or annulment of a marriage.

The case would have been different if your wife had this problem before you contracted your marriage and this was concealed from you. Had this been the case, your marriage would have been voidable and we could have advised you to go to Court for its annulment. Since you have revealed the truth, we as officers of the Court are duty bound not to mislead any Court and do not see the need of discussing other grounds for a potential divorce.

We have also taken note that two of your wives brothers are lawyers.This fact is relevant to the extent that she will have good guidance on this matter and you should be wary of that. Having brothers who are lawyers will not change the laws of the land.

Choice of suit for wedding

My boyfriend and I are intending to get married. He is a reasonably good guy but has no sense of formal dressing. I want to make sure that for our wedding he sticks to a black suit, and not the flashy colours that he sometimes wears. I cannot trust that he will abide by my wishes, and if this is the case I would rather not get married. Can I force him to wear a black suit? Can I sign on the marriage forms, and if I am not happy tear the forms right there?

23 October 2017

Your boyfriend can decide to wear what he wants as there is no dress protocol for weddings under our laws. It is quite common to wear a darker coloured suit, but that is a person's choice. What you can do is to enter into an agreement with him to wear a black suit, and if he doesn't, you can choose not to proceed with the wedding and also sue him for damages.

Remember that you are not his wife until you sign the forms. Once you sign, even if you tear them, you are still his wife until you get divorced. So be careful. This agreement will need to be properly drafted as it can otherwise be challenged as being against the principles of a legal union between a man and woman. Your lawyers can guide you.

No porn, no babies

I have just gotten married and I cannot seem to be fully functional in bed without first watching pornography. Surprisingly, I am told Tanzania does not allow pornographic material or movies to be imported. Is that true? Can I look at porn that is circulated via WhatsApp? Can I watch porn outside Tanzania? Please assist as I want to start making and having a family.

20 November 2017

Pornographic material in Tanzania is banned and you will be breaking the law if you try to obtain it, even if it is for your private use.

We are unsure if you are suffering from a medical condition called porn addiction which even starts like Mel Gibson and Tiger Woods suffered from and were treated for. You may want to consult your doctor.

As for using or viewing porn that is circulated via WhatsApp, Section 14 of the Cyber Crimes Act states this is illegal. If convicted, you would be liable to a fine of TZS 20 M or not less than seven years' time in jail, or both; more serious offences, for porn which is lascivious or obscene, could see you paying a fine of not less than TZS 30 M, or imprisonment for ten years or more, or both.

This means that the users of WhatsApp, most of who probably don't know about the strictness of our law, could end up in jail because of the porn that they are circulating. Nothing stops you from watching porn in a country which allows porn movies.

In fact, most developed countries and a number of developing countries have legalised pornography. At the moment we don't see that happening in Tanzania. If your problem persists, your best choice is to cohabit outside Tanzania, unless of course you can get 'anti porn' addiction treatment in Tanzania that works. We are however unaware of any such treatment being available in Tanzania.

Husband staying elsewhere

My husband is staying elsewhere and I want to get a Court order to force him to stay at home. How should I go about this?

31 December 2017

We are unsure what you mean by he is staying elsewhere. Is this a separation or not? We believe he does not seem to want to continue cohabiting with you. If that is the case, then unfortunately no proceeding may be brought to compel a husband to live with his wife. Hence you will not be able to get any order to force him to return. You can try other means of convincing him, perhaps by involving some elders to mediate between you, but the Court will not be able to intervene.

Commercial Law, Business Disputes and IP

“

In an ideal world, businesses will behave honourably, and respect their legal obligations. Unfortunately, this does not always happen.

This chapter deals with the wide range of legal disputes that may arise between businesses and clients, suppliers, or partners. It deals with insurance disputes, as well as commercial contracts; and allegations of negligence, as well as questions of how, and when, contracts can be broken – and solutions to such problems.

Disputes can arise over the poor performance of a contract, a failure to comply with a written agreement, or traders fall out with their suppliers. Goods may be sold and not delivered, or purchased and not paid for. Both sides may dispute the meaning of written contracts, or there may be no written contract at all.

Businesses may also copy each other’s patents, trademarks, or goods, seeking to gain an unfair advantage, in doing so. There are processes to protect the intellectual property a business possesses.

When this happens, it may be necessary to resolve a dispute through formal legal processes, such as mediation, arbitration and litigation. In extreme cases, it may even involve questions of criminal law, leading to prosecution and potential imprisonment. In each case, questions of procedure and process can arise.

Service of documents by post

Does the law provide for how service is to be effected on a company by post? Our post office is not reliable and is this service by post still applicable?

26 January 2015

Notwithstanding the unreliability of our Post Office, service by post is still good law. In fact under the Interpretation of Laws Act, there is a blanket clause that states in Section 82(1) that where a written law authorises or requires a document to be served by post, (or similar such expression), service shall be deemed to be effected by properly addressing and posting (by prepaid post) the document as a letter to the last-known address and unless the contrary is proved, service is deemed to have been effected at the time when the letter would have been delivered in the ordinary course of post.

Where a written law authorises or requires a document to be served by registered post, (or "sent", "delivered", or any other similar word or expression is used), then if the document is eligible and acceptable for transmission as certified mail, the service of the document may be effected either by registered post or by certified mail.

Hence, it is important that as a company you regularly check your post office box and update your records at BRELA.

Wedding car not delivered

I specialise in arranging weddings. I promised the groom that I would order a special car for his wedding. I ordered the car but was told, a few weeks later, that the car I had requested had been phased out. All the other alternative models recommended to my client were refused by the bride. Unfortunately, the groom sided with the bride. He wants to sue me. He says I have an explicit contract with him to supply the car. My lawyer says that we should pay him the value of the car. The law seems very strict, even though I admit that I breached the contract.

2 February 2015

First and foremost, remove the notion that you are in breach of contract from your mind, as we feel you have not broken the contract. Unless you really want to pay the purchase price of the car to your client, perhaps to secure future business (although the groom will be likely to only get married once), you have a solid defence in law under the doctrine of frustration.

According to a leading legal textbook: "a contract may be discharged on the ground of frustration when something occurs after the formation of the contract, which renders it physically or commercially impossible to fulfil the contract or transforms the obligation to perform into a radically different obligation from that undertaken at the moment of the entry into the contract."

Under contract law, there is a test, which derives from English law, which is persuasive in our own Courts, of whether there has been a radical change in the obligation which decides whether the defence of frustration can be used or not.

That test was first formulated by the House of Lords, where one of the Judges, in the case of Davis Contractors Ltd v Fareham U.D.C said: "Frustration occurs whenever the law recognises that, without default of either party, a contractual obligation has become incapable of being performed, because the circumstances in which performance is called for would render it a thing radically different from that which was undertaken by the contract."

"According to the old legal maxim, 'It was not this that I promised to do'…. special importance is necessarily attached to the

occurrence of any unexpected event that, as it were, changes the face of things."

The judge said: "It is not hardship, inconvenience or material loss itself which calls the principle of frustration into play. There must be as well such a change in the significance of the obligation that the thing undertaken would, if performed, be a different thing from that contracted for."

Since the car is out of production, and there is no other way for you to get the car, then it is clear this contract has been frustrated. Since you cannot perform the contract, any advance sums that you have taken from your client should be refunded back with no further liability on your part.

Car crash, airbags didn't deploy

Our office has a policy of buying brand new vehicles from a dealer in Dar es Salaam. This is purely for safety reasons as our office is based upcountry and we are on the road most times. We also service our vehicles at the same dealer's workshop so as to ensure that we get the best service. About three months ago when our car was returning from Dar, it had an accident. The airbags for both the driver and passenger next to him did deploy. Luckily, they were both wearing seatbelts and survived the crash, but the passenger who is a fellow employee and a key part of our organisation has lost part of his memory and unable to work. Can we sue the dealer in Dar for failure of the airbags to come out?

2 March 2015

You have a cause of action based on product liability. When the car was bought, the dealer and the manufacturer provided an assurance to you that the airbags would work when required to. In your colleague's case they did not, which means that you have a cause of action both against the dealer and the manufacturer. There might be all kinds of disclaimers in your car manual but a lot of those will not protect the dealer and manufacturer if you can prove that the airbags were faulty and caused this harm to your colleague.

The burden of proof is associated with a legal maxim that goes "the necessity of proof always lies with the person who lays charges." You will be required to ensure that there is enough evidence that convinces the Judge that on a balance of probabilities the dealer and manufacturer are liable.

Lastly, you might want to bring in an expert witness in this trial for her/him to connect the injury to the non-opening of the bag. You may also want to consider someone, perhaps an engineer, to testify that the airbag indeed malfunctioned. If you plan your approach well, you might have a very good case. Settlements of damages in such cases can run into the billions of schillings, and it is something your lawyer can guide you on.

Insurance against rain

Does the law in Tanzania disallow insurance companies from issuing cover against rain that may affect a function outdoors that I intend to organise? My broker says that this is gambling and the Insurance Act disallows underwriting of such events. Is this true?

16 March 2015

We have read the Insurance Act and have not seen any such provision in there. There is a saying in insurance that everything is insurable provided you are willing and able to pay the right premium for it.

Admittedly, the insurance industry is relatively new in Tanzania and is evolving so "creative covers" like the one you are looking for may not be available. Having said that, it is not impossible to get insurance cover,

but only if the insurer can get adequate reinsurance.

Overseas celebrities insure things like vocal chords, legs, smiles, breasts, that contribute to their fame. You might be surprised to hear that there are people that also cover moustaches, taste buds and even their chest hair.

Even more fascinating is that some people can apparently get insurance for alien abductions and if aliens impregnate the abductee, the claim is worth even more! We are not sure if any such claims have been paid.

We recommend you speak to a different broker or approach a number of insurance companies directly for guidance.

Launching of hamburger joint

I am a very good chef and intending to launch a brand of hamburgers in Tanzania that will be better than McDonalds. I want to use the word McDonals (not McDonalds). Some people warn me that this can become an issue. I wonder why? I am in my motherland, Tanzania and don't believe anyone can just come and "touch me." I will have protection from my people, will I not?

25 May 2015

McDonalds is a trademark registered around the world, Tanzania included. Your name McDonals removes just the "d" and is quite confusing. In fact, it is so confusing that people might think that they are eating at the original McDonalds restaurant, and our trademark laws will protect the McDonalds trademark.

In effect because of the similarity between the two brands, you will be infringing McDonalds trademark. Just because you are in your motherland does not mean that you can break the law. It is not about "touching" you but it is about upholding a principle of trademark law. In fact, some of these companies are so serious about their trademarks, that they will go to great lengths to ensure compliance.

Reading the above, please be assured that it is not people who will protect you, but the law. And in this instance, it seems very likely the law is not on your side.

Threat to be sued for guaranteeing a loan

I guaranteed my uncle to pay a loan he took from a businessman. This guarantee was made in writing and I signed it. It was clear from the agreement that my uncle was to pay back the loan in one year. My uncle failed to pay the loan. After this, my uncle went back to the businessman and entered into another agreement where my uncle put his land located in the outskirts of Dar es Salaam as security for another loan. The businessman gave him some more money and they also agreed on further interest. In this second arrangement, I was not involved at all. My uncle has further defaulted, and is unable to honour his promises and the businessman is now coming after me saying that I guaranteed the loan so I should pay. He says that the land put as security will not be enough to cater for full payment of the loan and interest. Will I have to pay for the whole amount?

29 June 2015

The Law of Contract Act of Tanzania has a provision which states that any variance, made without the surety's consent in the terms of the contract between the principal debtor and the creditor, discharges the surety for transactions that are subsequent to the variance.

Our reading of the law suggests that it may come to your rescue, on your liability following the changes made to the earlier

terms between your uncle and the said businessman. It was improper under the law to make those changes behind your back, and yet for you to be liable for the entire debt.

The businessman cannot take you to task for the changes made to the earlier agreement without your knowledge and consent. In short, he cannot import any such subsequent liability upon you. We think if you are sued, then you will have a good defence to that effect.

The question of whether you can totally be absolved of liability depends on how your first guarantee was drafted. It also depends on how the second loan was granted, what information the businessman had, whether there was collusion between him and your uncle, and the like. If there was any foul play in the granting of the second loan, then you might also be able to escape the terms of your first guarantee. Before you get too excited with this proposition, we recommend you first contact your lawyer who can study the relevant documentation.

Court during arbitration

We have a clear cut arbitration clause in our agreement but the joint venture local partner has sued us at the local Court in Tanzania. Is this case maintainable? What should we be doing?

17 August 2015

If there is an arbitration clause in the agreement then the local Court has no jurisdiction to entertain the suit.

It would only have jurisdiction if the local partner requires an injunction against you, but that injunction would be conditional upon the arbitration commencing.

Section 6 of the Tanzanian Arbitration Act clearly states that the Courts have the power to stay proceedings in cases such as these, where legal proceedings are brought by one party, and the other party seeks to stay proceedings before taking any further steps in Court against the claim made against him, by applying to the Court to do so.

The Court will grant the order, if satisfied there is no sufficient reason not to do so, provided the person seeking the stay is, at the time proceedings were brought, ready and willing to do all things necessary for the proper conduct of the arbitration.

We advise that before you file your defence, you should file an application for the matter to be stayed and referred to arbitration.

The arbitration can then commence.

Mandatory mediation at Commercial Court

I filed a case against a party at the Commercial Court and am now being forced to mediate with the other party, whom I cannot even look at. This is quite discouraging and surely someone is up to some tricks somewhere. How do I skip mediation?

5 October 2015

The law and in particular the Commercial Division's Procedure Rules of 2012 clearly provide for a mandatory mediation between the parties, under Rule 34 (1) and (2) of those rules

The Rule provides that both parties, and their lawyers if they have them, will be notified of the mediation, and should attend it, as should any relevant third party who is involved in the case, as defined under Rule 34(2), with their lawyers, unless ordered otherwise.

Further, Rule 35 states that (1) a party to a mediation session shall have the authority to settle any matter during the mediation session and (2) 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, whether it takes place during or after regular business hours.

Rule 36 states that where it is not practical to conduct a scheduled mediation session because a party fails without good cause to attend within the time appointed, the mediator may dismiss the suit, or or strike out the defence, depending on whether the party is plaintiff or defendant. They can order a party to pay costs; or make any other order that is deemed just.

From the above, you can see that you need not attend the mediation yourself but can authorise someone to appear instead of you.

Such person should either have the authority to make a decision and if you cannot give them authority, then you need to be available on mobile, skype or other communication device so that such person can contact you to get your approval during the mediation session.

Hence you cannot skip mediation and in the event you do, your case may be dismissed.

Please note that no one is playing any tricks with you; just as in other jurisdictions, Tanzania has a mandatory mediation system to assist sort differences out.

Your lawyers can guide you further.

Infringement of trademark

A company is threatening to institute criminal proceedings against me for alleged infringement of a trademark they own. My position is that the mark I am using is distinct from theirs but the threats are ongoing. Is this not a civil matter?

23 November 2015

Before enactment of the Cyber Crimes Act, the infringement of the trademark, if any, would likely have been purely a civil issue. The owner of such trademark would have to sue you in our local Courts and claim damages and stop your usage of this mark.

Under Section 24 of the Cyber Crimes Act, intellectual property rights are protected from their violation by computer misuse. A breach of this Section can lead to penalties. A non-commercial breach might lead to a fine of not less than TZS 5 M or imprisonment for three years or less, or both.

Commercial breaches of the law have stiffer fines, TZS 20 M or more, and potentially a jail term of not less than five years, or both. In both cases, you might also have to pay compensation to the victim of the crime as the Court may deem just.

Therefore a violation of an intellectual property which includes a trademark right is a criminal offence that is imprisonable.

National flag as advert

There is a company I know that is misusing our flag and selling products as if the products have been endorsed by the United Republic. Is there no law that governs this?

23 November 2015

The National Emblems Act provides very clear guidance on unlawful use of the national flag, coat of arms or any likeness thereof by prohibiting any person to use the national flag, the coat of arms or any likeness of the same.

They may not be used as a trade mark :

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 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, which we believe is hard to prove, it is an offence and the person 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 as some products use the flag to show that the product originates from Tanzania, which we believe is a sign of patriotism and is quite likely not to be an offence. We recommend you consult your attorney for further guidance.

Choice of law in contract

We are a company in Tanzania purchasing some huge machinery from a European manufacturer. We want to know what choice of law we should put in the purchase agreement as we would like to use Tanzanian law? How can we secure ourselves in the transaction? Any other guidance you can give us will be appreciated.

7 December 2015

Such purchase agreements are quite common in international trade. Considering that the manufacturer is based in Europe, and you are based here, any issues arising out of the purchase agreement will likely have to be enforced against the supplier in Europe.

European Courts will unlikely adjudicate on a matter that has Tanzanian law as the choice of law. Further, assuming Tanzanian law is agreed and the Tanzanian Courts do decide in your favour, you will still need to execute any judgment against the supplier in Europe, which will, depending on the exact European country you are dealing in, mean that you reopen the case in a European country.

We would recommend you engage a lawyer in the country of purchase, and proceed to choose the law of that country as we believe adjudication and execution in that country will be easier. Your lawyer there can also look at pros and cons of having an arbitration clause in the agreement.

To secure yourselves in this transaction, we recommend you ensure the purchase agreement is vetted or drafted by a local lawyer in the country of purchase, payment be secured through a letter of credit, and you purchase adequate insurance.

We also suggest, you conduct pre-shipment inspections and get a technical person to look at the machines, ensure you have a warranty or extended warranty for them as well, get recommendations of the supplier and do thorough background checks of both the machines and the persons you are dealing with.

Arbitration under local rules

Is it true that the Government in Tanzania cannot enter into agreements with foreign arbitration rules of procedures? If so, is the Government not in breach of the various international dispute resolution treaties it has signed?

28 December 2015

It is not true that the Government cannot enter into agreements with foreign arbitration clauses. Most of the large oil and gas supply agreements, and mining agreements provide for international arbitration under various rules of procedure, in London (at the London Court of International Arbitration) or in Paris (at the ICC International Court of Arbitration).

In fact the Tanzania Investment Act provides for arbitration between investors and the Government under local law, or under investor-state arbitration, carried out under the rules of procedure of the International Centre for the Settlement of International Disputes, or under any bilateral or multilateral agreement on investment protection.

You must be sure to differentiate between the arbitration venue, rules of procedures and the governing law as many parties end up confusing this.

The arbitration venue is the physical location of where the arbitration will take place. Lately, the Government had embarked on trying to limit the use of arbitrations made out of Tanzania but that is a matter of negotiation between the parties. The rules of procedures are the rules that the parties agree to adopt to enable the arbitration to proceed in an orderly manner.

Lastly, the governing law is the law that the parties agree to be bound to. When it comes to governing law, most contracts that the Government enters into are, understandably so, based on Tanzanian law.

Criminal actions for IP violation

We are graphics designers and want to know how the Cyber Crimes Act 2015 affects us when we are designing logos for companies. Can we be imprisoned?

18 January 2016

The Cyber Crimes Act gives the owner of IP rights, such as a trademark, a lot of protection. Section 24 states that (1) A person shall not use a computer system with intent to violate intellectual property rights protected under any written law.

(2) A person who contravenes subsection (1) commits an offence and in case the infringement is on (a) non-commercial basis, is liable to a fine of not less than TZS 5 M or to imprisonment for a term of not less than three years or both; or (b) commercial basis, is liable to a fine of not less than TZA 20 M or to imprisonment for a term of not less than five years or to both, in addition, be liable to pay compensation to the victim of the crime as the Court may deem just.

Taking the above into account, you must be careful when you copy or violate other company's logos to create new ones. You could end up being fined or imprisoned or both.

Contract breach

I entered into a contract with a fellow restaurant owner who I bought over, not to open a restaurant to compete with me. This was the deal from the beginning and we both agreed on it. It has been exactly six months and a new restaurant has mushroomed. The restaurant owner from whom I purchased denies that it is his, however it is quite clear that he is running it. He is physically there every day and I have witnessed this myself. Can I get an injunction to stop him from operating that restaurant?

29 August 2016

We have a couple of observations here. It is unclear if your contract disallowed him to open a restaurant or disallowed him to work in any restaurant. We raise this because he can easily come in and tell you that he is not in breach of the contract as he has not opened a restaurant but is merely working there. You may want to carefully look into this.

We now address the question of whether you can get an injunction against him. Our opinion is that it is very unlikely you will be successful in getting an injunction or sue the former restaurant owner. This is because that particular clause not to open a restaurant will likely be held by a Court to be in restraint of trade and against public policy. If he is an entrepreneur or chef, what do you expect him to do? Your attorneys can interpret the entire contract and guide you further but from the facts you have given us we believe your chances of success are quite slim.

Controversial default judgment at Commercial Court

I was overseas when a party sued me and told the Court that I was nowhere to be seen, despite knowing I was undergoing treatment overseas. The Court ordered a summons to be published in the newspapers which I obviously did not see. Thereafter, and shockingly, the Commercial Court proceeded to give a default judgment for an astronomical amount that is not only wrong, but is twenty times the initial demand of the plaintiff and 30 times the contract amount. My question is twofold. First, how can the Commercial Court even proceed to give such a default judgment without asking for some proof that the plaintiff deserves such an amount. And second, what can I now do?

17 October 2016

The Commercial Court of the High Court was established amongst others to serve the interests of the business community for expeditious dispensation of justice. However, expeditious dispensation of justice does not mean unfair delivery of justice.

Rule 22 of the Commercial Court states that: (1) "Where any party required to file a written statement of defence fails to do so within the specified period or where such period has been extended in accordance with sub rule (2) of rule 19, within the period of such extension, the Court shall upon proof of service and on application by the plaintiff in Form No. 1 set out in the schedule to these rules enter judgment in favour of the plaintiff."

Unfortunately, the rule does not talk about ex parte proof, which as you have correctly pointed out, can lead to a serious miscarriage of justice. The rule seems to give a 'mechanical power' to the Court to copy and paste whatever the plaintiff has asked for and enter judgment.

It is indeed a rule that is challengeable but no challenge has been mounted yet. Unfortunately until this rule is changed, you cannot do anything about it, but we agree with your concerns.

On your second question, you can file an application to set aside the default judgment. However such an application must be filed within 21 days of the date of judgment. You are very likely out of time to file this application and we advise you to first file an application for an extension of time which needs to be granted before you file an application to set aside the default judgment.

On the basis of what you have stated, we believe you have good grounds to set this default judgment aside.

Contract with non-standard definition

I am a Tanzanian businessman having entered into a contract with a British company for the supply of certain software. After signing the contract, I was surprised at how they have defined a certain term. It is a common word in the industry but their definition in the contract is not what the ordinary definition is. I would like to interpret the contract based on the ordinary definition and they are refusing, saying it is well defined in the contract I signed. What should I do?

28 November 2016

To begin with, before signing any documents, you should read every word contained in such documents. It is sad that you have entered into a contract and have then decided to challenge a definition of a word that is already in the contract document. In your question you have not mentioned what 'that' word is and what the contract defines it as.

Answering your question generally, the clearest way in which a contracting party can

give a special meaning to a word, is to include a definition of that word in the contract, as is the case in your contract.

Generally speaking, the Court will apply definitions given by the parties, no matter how different the definition may be to the ordinary meaning of that word. Even if a word is not specifically defined, the Court might decide that the parties have used the word in a special sense, and not in accordance with the ordinary dictionary meaning.

However, in coming to such a conclusion, the Court will only look at evidence found in the contract itself i.e. the particular context in which the word was used.

In your case, it is very unlikely that a Court will accept the ordinary meaning of the word, since the same word is clearly defined in the contract that you have signed.

Arbitrator not being appointed

We have a clause in a contract we entered into whereby each party will appoint an arbitrator, and the two arbitrators are required to appoint an umpire. Despite the other party having been informed of the arbitration they are not acting to appoint an arbitrator. What should we do?

23 January 2017

The Arbitration Act provides for such a scenario and states that where a submission provides that the reference shall be to three arbitrators, one to be appointed by each party and the third to be appointed by the parties, unless the submission expresses a contrary intention.

This is subject to two exceptions: (a) if one party fails to appoint an arbitrator for seven clear days after the other party, having appointed his arbitrator, has served the party making default with notice to make the appointment, then the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference and the award of the arbitrator so appointed shall be binding on both parties, as if he had been appointed by consent.

Secondly, if after each party has appointed an arbitrator, the two arbitrators appointed fail to appoint a third arbitrator within seven clear days after the service by either party of a notice upon them to make the appointment, the Court may, on an application by the party who gave the notice, exercise in the place of the two arbitrators the power of appointing the third arbitrator.

You can see that the law allows you to proceed with arbitration with the one duly appointed arbitrator. If the other party is not appointing an arbitrator then they might not even come to defend their case.

It might be worth putting the party on notice for the last time to avoid having your arbitrator proceed as the sole arbitrator, or to avoid the matter going ex parte, which can pose a problem at a later stage.

Company having no capacity to trade

A company we dealt with apparently has no authority under its memorandum to engage in trading. We supplied the company with certain goods for trading purposes and the directors are now refusing to pay stating that the company was not allowed to trade. Not only has the company bought from us, but they have sold the goods and earned funds. What can we do?

23 January 2017

Merely because the memorandum does not state trading as one of its objects doesn't mean that you cannot proceed against the company to recover your funds. Section 35 of the Companies Act states that (I) The validity of an act done by a company shall not be called into question on the ground of lack of capacity by reason of anything in the

company's memorandum. (2) A member of a company may bring proceedings to restrain the doing of an act which but for subsection (1) would be beyond the company's capacity; but no such proceedings shall lie in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the company. Hence notwithstanding what the memorandum states, you have a cause of action against the company and can sue for recovery.

Graphics designer copying designs

I know an independent graphics designer who copies designs of other companies that are protected under intellectual property laws. Is this a serious offence?

29 May 2017

Apart from certain breaches under the Trade and Services Marks Act, the graphics designer may be committing a criminal offence under the Cyber Crimes Act 2015.

Section 24 of this Act states that under subsection (1): A person shall not use a computer system with intent to violate intellectual property rights protected under any written law.

Under subsection (2) A person who contravenes subsection (1) commits an offence and in case the infringement is on (a) non-commercial basis, is liable to a fine of not less than TZS 5 M or to imprisonment for a term of not less than three years or both; or (b) commercial basis, is liable to a fine of not less than TZS 20 M or to imprisonment for a term of not less than five years or to both, in addition, be liable to pay compensation to the victim of the crime as the Court may deem just.

Since the graphics designer is violating intellectual property rights for commercial basis, she or he can be imprisoned for a minimum of 5 years or a fine of twenty million or both.

Unconscionable contract

A relative of mine entered into a contract that was signed by both parties. After the signing we realised that the terms do not make sense for us as we have to supply wooden logs to a local factory whereas we can sell them in Dar for double the price. What should we do?

26 June 2017

Normally, when a contract is signed, it is hard to simply get out of it. In law, there is a doctrine of unconscionability but it is almost always a losing argument. The doctrine was partially developed by the Courts, when the Court is sympathetic to the pleading party in that the contract is so one sided, so unconscionable, that it would be inequitable to enforce it.

Other factors including the person's education and bargaining power are also considered. In your case, we doubt if this will apply and advise you to contact your attorney.

You must also understand that whilst contracts are meant to be kept, you can get out of a contact by paying damages, either expectation damage, reliance damages or restitution. If the cost of paying damages is less than the incremental income you will make by selling the logs in Dar es Salaam, it is an option that will still turn out to be profitable and you may consider it, provided the party that has breached does not apply for specific performance in Court.

Tanzanian contract with foreign jurisdiction

I executed a contract to be performed in Tanzania but the choice of law is English law, and the English Courts have jurisdiction to resolve the disputes. Now the other party has breached the agreement and 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?

16 October 2017

Courts always endeavour to observe the exact word of the contract as agreed by the parties 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, which 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 the English Courts to resolve any dispute.

The best available option for you is to request the other party to agree to apply Tanzanian law and for the Tanzanian Courts to have jurisdiction which we doubt they will agree to.

Such contracts are not uncommon and even if a Tanzanian Court had jurisdiction, such a Court would not know the English laws and hence 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 as there may be other facts in the contract that you may not have spotted that could be used in your favour.

Registering a trademark in Tanzania

How long does it take to register a trademark in Tanzania? How does the process work? What can I not register as a trademark?

23 October 2017

A trade or service mark shall be registered if it is distinctive. The whole process of registering trademarks in Tanzania is governed by the Trade and Service Marks Act No. 12 of 1986.

The registration process in Tanzania takes between 4 to 6 months if there is no opposition.

Registration of a trade or service mark shall not be considered validly granted until the application has fulfilled the conditions for registration. Application for registration of a trade mark/service mark is made by filling a form called TM/SM 2 accompanied by form TM/SM 3.

The application forms together with not less than 6 loose representations of a mark are submitted to the Registrar who examines the mark. If the Registrar accepts the mark then the mark is allowed to proceed for advertisement in the Journal published by the Registrar on a monthly basis. If within sixty days of advertisement of the mark there is no opposition raised then the Registrar will proceed to issue the certificate of Registration upon payment of a registration fee.

According to Section 19 of the Trade and Service Marks Act No. 12 of 1986, the trade or service marks which the use would be contrary to the law or morality or which would be likely to deceive or cause confusion to the public will not be allowed for registration.

For example, trademarks which are identical with or imitate flags, initials, abbreviations, names or official sign or hallmark of any state or of any organisation created by an international convention, unless authorised by the competent authority of that state or international organisation, cannot be registered.

Consumer and Claimant Rights

There are many ways in which consumers can have their legal rights violated by businesses who should know better. This chapter advises on how to deal with unscrupulous businesses, as well as spelling out consumer rights where a business may have made a genuine, but unfortunate, mistake.

Equally, in some instances, consumers may attempt to claim for legal redress when none is due. We also advise businesses how to deal with such consumers, and the limits of consumer rights, as the law provides. Some consumer claims may appear frivolous, but they are not trivial to the business trying to resolve such a complaint, which is why they seek our advice.

What people understand their legal rights to be, and what those legal rights actually are, may not always be the same thing.

In this chapter, we include many examples of both behaviours, ranging from situations involving diets, nightclubs, customer service, tipping, passenger travel on airlines, and air conditioning, as well as social media, and many more.

Why no Kiswahili laws

I think Tanzania is still living under colonial times because all our laws are in English and most Tanzanians cannot speak English. I fail to understand how we can tolerate such injustices in our system. If you look at other countries like Turkey, Russia and European nations, they all have their laws in their own languages. Isn't something being done about this? Imagine parliament debating the English laws in Kiswahili - that beats logic, doesn't it?

5 January 2015

Simplification and translation of laws is among the Law Reform Commission of Tanzania's activities which are provided for under the Law Reform Commission Act. We are informed that due to funding issues, very few laws have been translated thus far, but such translation is in the pipeline.

To date, only the following laws have been translated: The Interpretation of Laws Act, Penal Code, Criminal Procedure Act, Proceeds of Crime Act, Labour institutions Act, Employment and Labour Relation Act, Law of contract Act, Police Force and Auxiliary Service Act, Community Services Act and the Anti-Money Laundering Act.

Your concerns should be shared with the Law Reform Commission of Tanzania for action.

Atkins diet not working

I have been very fat since I was born and doctors have always told me to lose weight. Recently I went to this special session where I was introduced to a world-renowned program called the Atkins diet. I was told to only have proteins and fats and no carbohydrates which I have religiously followed, but have not lost even a few kilos. I feel frustrated and let down by this failure and wish to sue Dr Atkins, the founder of this diet. Can you take my case and will I succeed?

2 February 2015

We are sorry to hear about your frustrations. Losing weight has been a discussion point ever since humans came on this planet. Our research reveals that the diet is highly controversial and has many critics. However it has also assisted a number of people around the world. Further research reveals that the diet is not as popular as it used to be and the company that Dr Atkins was using to promote this diet filed for bankruptcy some years back. You might have tried the diet a little too late.

The bad news. Unfortunately Dr Atkins died about 12 years ago and hence suing him, at best and if at all possible, will give you a decree that you will not be able to execute. His company also filed for bankruptcy after his death, so it looks unlikely you will be able to sue the company either.

Lastly, it was not Dr Atkins who recommended the diet to you but your doctor or dietician. Perhaps you might consider suing your local doctor or dietician but this will not be an easy case to win. You have admitted that you have been fat since birth which likely means that you have some fat genes or have bad eating habits and lack of exercise, or both. Even if the best dietician in the world recommends a diet plan, if you do not control portions, or follow the diet and exercise, losing weight will be a nightmare.

Before we end, we must stress that we are not dieticians but our research reveals that most people who go on aggressive diets do indeed lose weight, but they gain it all back (and more) after a few months. The key, we learnt, is for you to do a gradual diet reduction plan and have realistic targets as opposed to these crash programs that you seem to like. Again, and so that you don't hold

us responsible in having misguided you, we strongly recommend you verify all the facts with your doctor, dietician and lawyer. We don't want to be the target of your next law suit.

This advice is only meant to guide you. We must end by saying something you don't want to hear - you have a weak case.

Air conditioners in jail

I have a friend who has been imprisoned for a certain offence. In prison he is unable to sleep because he is used to air conditioning. Is it not unfair to imprison persons without catering to their basic needs? Can he not fit air conditioning at his own expense?

23 February 2015

When you are sent to prison, you are deprived of certain non-basic needs as a punishment for the offence you have done.

Furthermore, the imprisonment is a deterrent to others from committing an offence. If the state starts providing air conditioning and other demands that your friend has, then for some it would be more ideal to commit an offence and enjoy the pleasures of imprisonment, which is counterproductive.

Further, there is no discrimination in not being able to provide air conditioning. Air conditioning is expensive and not a basic need. Had you said that your friend is not being fed, or not being provided a place to sleep, then it would amount to not meeting the prisoner's basic needs.

As for fitting an air conditioner at his own expense, this is disallowed by the law as it would be discriminatory. Buying an AC is much cheaper than the power it consumes over its lifetime, and the prisons department cannot afford such additional power consumption. Therefore, buying an AC is not an option.

Gun in night club

We are youthful and go out to nightclubs. I do carry a gun with me and the girls really get impressed when I take it out and show it off. One police officer, who was perhaps after my money, said that I could not show off my weapon or allow the girls to hold it even if I have a licence for it. The gun allows me to defend all the girls who hang out with me. Please guide me.

2 March 2015

We take this opportunity to cite some provisions of the penal code that we call "nightclub provisions" that you should read as they might be relevant to you.

Section 89 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 imprisonment for six months. (2) Any person who (a) with intent to intimidate or annoy any person, threatens to injure, assault, shoot at (b) with intent to alarm any person discharges a firearm or commits another breach of the peace, is guilty of a misdemeanour and is liable to imprisonment for one year. If the offence is committed at night the offender is liable to imprisonment for two years.

Your showing off your weapon, and allowing the girls to hold it, is an offence and can send you behind bars. It is a known fact that when you are behind bars, apart from not being able to protect all your girlfriends, you might even lose a number of them and we advise you to make your moves with caution. If all girlfriends need armed protection in Tanzania, we would have more guns than girls. Unless there are facts that you have not

disclosed to us, we do not see the need for your overprotection for the girls.

Is tipping mandatory?

I unfortunately travelled overseas only to find myself in a very embarrassing position. The first meal I had, the waitress actually demanded a tip. When I asked her if it was mandatory she rudely went away but I still left some amount for her. As I was leaving the restaurant she came back with my tip and an extra USD 5 dollar bill and said to me "keep the change and I've added some extra for you." Not knowing what was going on, I asked my friend and he said that if you were served well, you should tip and it was not mandatory. He also said that I should have tipped a little more to keep her happy. The next time I went to a restaurant I left a tip only to find out that there was a service charge added to my bill. I am so confused. Is this tipping legal and mandatory? Is there a law that says you must tip?

16 March 2015

Unfortunately you did not tell us which country you went to but in most countries it is quite common to leave a tip of between 5 to 15% in a restaurant. It is not mandatory and has developed more as a custom and practice rather as a law. Your first incident was quite unfortunate especially that the waitress was offended at the small amount of tip and added her own funds on top of your tip to "tip" you back. We are unsure whether you decided to take both the funds but we believe it was not a very pleasant incident.

The second incident we believe you were not supposed to tip, as a service charge had already been added. This is what is now commonly called mandatory tipping, which you can challenge the restaurant about if you had not been informed about this. You hence overpaid.

In short, tipping is not mandatory in most if not all countries. It is an amount you pay for good service that you receive from waiters/ attendants who are not all that highly paid.

Suing school for sports injury

I am enrolled in a top school in Dar where I used to play in the basketball team. As a player we have to also work out in the gym and run around the field for stamina. In a game I injured my back and was given a note by the doctor that I should not train for at least 3 weeks and should also abstain from either running or going to the gym. Two weeks after, our team was playing a game and I was observing when the coach, fully knowing that I was unwell and not allowed to play, told me that I should just stand on the ground and support the team as they were one player short. I told him about my injury but he literally forced me in. After playing hardly 5 minutes, I could not stand, suffered another injury and was rushed to hospital. I was diagnosed with a severe prolapsed disc and to date am unable to walk properly and require surgery. Can I sue? I am informed that the school regulations disallow parents from suing. If I sue, can the school eject me out of class?

16 March 2015

For the first injury we do not have enough facts to guide you. It would seem unlikely that you can sue for the first injury. However, for the second injury, based on the facts that you have stated, it seems that you have a good case against both the school and the coach.

As a student, especially when you are not playing professionally, the school has a special duty of care, and if there is a breach of such duty which results in a loss or damage to you, then you have a cause of action against the school, coach and any other person directly involved, so you can sue. Suing the school is a right that you have under our statutes and it

cannot be precluded by any school regulations that states parents are not allowed to sue the school (unless of course the school has opted for arbitration).

Bottom line is - you can sue the school but must consult your lawyer and provide all facts before embarking on this.

Banks asking for too much documentation

One of the larger banks in the country has been asking me for all kinds of details before allowing me to open an account there. Is this not discriminatory?

23 March 2015

We are not sure what questions the big bank asked you to answer, or whether they were discriminatory, but under the Anti Money Laundering Regulations of 2012, the banks, as reporting persons, have to mandatorily ask the following questions before dealing with a person.

Regulation 3 states that (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, voter's 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 email 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.

You can see from the above that the law is very strict in terms of what information must be obtained from you, which includes your email address and finger prints. We are aware that other banks do not follow this but that would mean they are contravening our anti money laundering laws.

Police causing traffic jams

Are police officers allowed to overrule traffic lights? I believe they are causing traffic jams in Dar.

13 April 2015

This is what was said a few years ago and the police decided to allow the traffic lights to work on their own and the city came to a standstill! This might have changed but you might want to be careful with what you say.

The Police Force Ordinance has given powers to police officers to regulate and control traffic along the public roads, streets and thorough-fares. They can direct all or any particular kind of traffic when it is deemed to be in public interest to do so, including to keep order and prevent obstruction on public roads, streets and thorough-fares. They are hence within their powers to do what they are doing in Dar.

Creation of new English words

I am a researcher and poet and have been able to think of many new words that will help the English language which I find is not changing fast enough to meet today's rapidly changing world. Does Tanzania have a law that allows injection of such words into the English world? How are words introduced into the English language.

20 April 2015

At the outset you must note that there is no law that governs this and this is not a legal question, but we shall attempt to answer it as it is an interesting question. In answering this, we turned to the Oxford dictionary website which has a discussion on how new words are entered into the Oxford dictionary. This is what the Oxford dictionary states and we quote:

"Every year hundreds of new English words and expressions emerge: we need to keep track of them and choose which ones to add to our dictionaries.

Oxford University Press has one of the largest and most wide-ranging language research programmes in the world. It's based on the contributions of an international network of readers who are on the lookout for instances of new words and meanings or other language changes. We continually monitor the Corpus and the Reading Programme to track new words coming into the language: when we have evidence of a new term being used in a variety of different sources (not just by one writer) it becomes a candidate for inclusion in one of our dictionaries.

New terms have to be recorded in a print or online source before they can be considered: it's not enough just to hear them in conversation or on television, although we do analyse material from Internet message boards and TV scripts.

It used to be the case that a new term had to be used over a period of two or three years before we could consider adding it to a print dictionary. In today's digital age, the situation has changed. New terms can achieve enormous currency with a wide audience in a much shorter space of time, and people

expect to find these new 'high-profile' words in their dictionaries.

People often send us words they have made up and ask if we will add their invented terms to one of our dictionaries.

Unfortunately, the answer is probably no.

Removed from exit seat

I had specifically booked an air ticket and requested for the emergency exit seat as it is more spacious and would have allowed me to sleep well since it was a night flight. I was comfortably sitting there when the air hostess came and asked me if I had any problems in my body. I told her that I had a back problem. She also started to speak to me in Kiswahili and since I am an expatriate I politely told her that I did not speak Kiswahili. To my surprise I was asked to leave the emergency exit seat and they replaced me with a fat man. Is this fair?

25 May 2015

The Civil Aviation (Air operator certification and administration) Regulations 2011 which are made under the Civil Aviation Act govern this. Specifically regulation 44 states that:

(1) An air operator certificate (AOC) holder shall carry on each passenger-carrying aircraft, in convenient locations for the use of each passenger, printed briefing cards supplementing the oral briefing and containing (a) diagrams and methods of operating the emergency exits; (b) other instructions necessary for use of the emergency equipment; and (c) information regarding the restrictions and requirements associated with sitting in an exit seat row.

(2) An AOC holder shall ensure that each card contains information that is pertinent only to the type and variant of aircraft used for that flight.

(3) An AOC holder shall, at each exit seat, provide passenger information cards that include the following information in English and Kiswahili languages (a) functions required of a passenger in the event of an emergency in which a crew member is not available to assist (i) locate the emergency exit; (ii) recognise the emergency exit opening mechanism; (iii) comprehend the instructions for operating the emergency exit; (iv) operate the emergency exit; (v) assess whether opening the emergency exit will increase the hazards to which passengers may be exposed; (vi) follow oral directions and hand signals given by a crew member; (vii) stow or secure the emergency exit door so that it will not impede use of the exit; (viii) assess the condition of an escape slide, activate the slide, and stabilise the slide after deployment to assist others in getting off the slide; (ix) pass expeditiously through the emergency exit; and (x) assess, select, and follow a safe path away from the emergency exit; (b) a requirement that a passenger identify themselves to allow reseating if that passenger (i) cannot perform the emergency functions stated in the information card; (ii) has a condition that will prevent that;(iii) passenger from performing the functions; (iv) may suffer bodily harm as the result of performing one or more of those functions; (v) does not wish to perform those functions; or (vi) lacks the ability to read, speak, or understand the language or the graphic form in which instructions are provided by the AOC holder; (vii) a statement that whenever a crew member identifies a passenger who does not meet the requirements specified in paragraph (b) above, the crew member shall reseat the passenger.

If you read the above, it is evident that with a back injury and not being able to speak Kiswahili, you may not qualify to sit in the emergency exit row. The fat man, depending of course on how fat is fat, might also not qualify to sit there.

Injunction against a song

I am a music fan tuning in and following different programs on a radio station. There is one song which is played nowadays and I feel it offends morality. Can I get a stop order for this song not to be played?

29 June 2015

Injunctions or stop orders are normally reliefs given by Courts for prevention of an injury or preservation of a status quo.

The grant of these orders is purely within the Court's discretion. In order for one to succeed, the law requires you to demonstrate the following; first that there is a serious question to be tried on the facts alleged and there is probability that the complainant/ applicant will be entitled to the relief claimed for. Secondly (before this alleged right is established) that the Court's interference is necessary to protect the complainant from the kind of injury which may be irreparable. Lastly, you must, on balance of convenience, show that there will be greater hardship and mischief suffered from the withholding of the injunction than by it being granted.

Although you have not told us exactly how you believe the song "offends morality," we are of the opinion that you do not satisfy a number of the above conditions and might not be successful in getting an injunction.

You may wish to explore other forums and complain for instance at the BASATA (National Arts Council) or at the TCRA, whichever will suit you. You must appreciate that what might be offending morality 50 years ago might be normal today. It all depends on what exactly the song is depicting.

Doctor arrested during surgery

My doctor was performing a same day surgery on me and the police literally pulled him out of theatre and arrested him. I was left under anesthesia for 2 hours before another surgeon arrived. Do the police have such rights?

29 June 2015

We do not have enough facts to know what the surgeon had done but there is a protocol for the police to follow. They are also guided by the law and arresting someone like a surgeon, who is in the middle of surgery, and whom they can arrest after surgery, is in our opinion illegal. Since you were under anesthesia there is nothing you could have done.

Are you sure those who arrested him were actually police officers as this sounds very strange? We suggest you lodge a complaint with the Regional Police Commander. Your lawyer can also be consulted as to whether you can sue the police officers in their personal capacity.

Wedding dress tears

I got married to my long-time boyfriend in a lavish high-end wedding. My flower girls presented me with flowers which I dropped. Not having gotten married before, and not knowing much about how to behave as a bride, I bent down to pick the flowers and my dress tore from the backside. It was the most embarrassing experience and my husband had to use various techniques so that the dress would not disintegrate when we were taking our vows. My dressmaker is refusing to admit any liability saying that I should not have bent and that wedding dresses are cosmetic dresses that must be delicately worn. Can I sue?

24 August 2015

Wedding dresses tearing apart, and wardrobe malfunctions are not uncommon.

Your dressmaker ought to have known

that the dress has a special purpose. We do not think it is merely a cosmetic dress but rather carries a high sentimental value and thus dismiss what the dressmaker stated to you.

Not being allowed to bend when wearing a wedding dress is not something that the dressmaker informed you about.

It is also unusual for a dress to tear like this when one bends.

As for whether or not you can sue, we believe you can, and not only for the value of the dress but also for moral injury, loss of reputation and perhaps even defamation. Your dressmaker has breached the contract you entered into for the supply of a proper quality dress and you thus have a cause of action and can sue.

Radio station misled me

I was on the radio station when the commentator said that whoever answered this difficult question wins a motorbike. I quickly dialed in, got the answer right and went to the radio station the next day. Awaiting at the reception for me was a toy motorbike. I want to teach the radio station a lesson - can I sue? Any rational person would think that they would award a real motorbike.

17 August 2015

It is hard for us to guide you without getting more information on how the commentator portrayed the prize.

If he misled you into believing that a real motorbike would be awarded, and if that is what a reasonable person would have thought, you will have a good case against the radio station and can sue with a claim for specific performance or cash equal to the amount of the motorbike.

You will need to show evidence that you were misguided, a reasonable person would have thought like you and that such prizes have, perhaps, been awarded before.

For example if there is a track record of toys being given out by the radio station, and if you knew that, then there are high chances that your suit will not succeed.

IT school lied about jobs

I failed form IV and went to this IT school in Dar that guaranteed I would get a job once I pass their course. I spent 2 years in the school and have been looking for a job for the past 1 year. To date I have found no job. I went back to the IT school for my refund and they said that that was merely an advert and I needed to further upgrade my skills before I could get a job. What should I do? Is this IT school not taking everyone for a ride with their colourful advert?

17 August 2015

We have also seen such adverts in the press where schools guarantee 100% success in getting a job, only for the candidate not to manage to get placed. Although you did not send the advert to us, if we go by what you say, we believe there is a good cause of action against the school.

In fact, you might be able to find other students who have also been fooled into this job guarantee scheme who can join you in the suit.

The school might come back with a defence that this 100% assurance was for the top students only or otherwise, and you must be prepared to argue that point based on what you read.

There is also a possibility that the advert has some fine print in small font at the end of the advert.

Court's look at such fine print suspiciously but on a case by case basis.

In short, you might be able to take the IT school to task - there are no shortages of such mediocre schools in Dar.

Stolen online identity

I am a famous personality and know of a friend, who cannot stand my fame, and who has registered my name on twitter and fakes as if it is me. There are comments she makes that would entice people not to like me, whilst it is not me. How can I stop this? Is this not an offence under our laws?

14 September 2015

Twitter has some strong rules and policies that users must abide to. One of them is on impersonation which is a violation of the Twitter Rules. Twitter accounts portraying another person in a confusing or deceptive manner may be permanently suspended under the Twitter impersonation policy.

However, Twitter states that an account will not be removed if: the user shares your name but has no other commonalities, or the profile clearly states it is not affiliated with or connected to any similarly-named individuals.

Accounts with similar usernames or that are similar in appearance (e.g. the same background or avatar image) are not automatically in violation of the impersonation policy.

In order to be impersonation, the account must also portray another person in a misleading or deceptive manner.

However Twitter users are allowed to create parody, commentary, or fan accounts.

Please refer to Twitter's parody, commentary, and fan account policy for more information about these types of accounts.

In addition to the Twitter rules, our newly introduced Cyber Crimes Act states makes such impersonation a criminal offence. Section 15 states that (1) A person shall not, by using a computer system impersonate another person.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction, to a fine of not less than TZS 5 M or three times the value of undue advantage received by that person, whichever is greater, or to imprisonment for a term of not less than seven years or to both.

If you know who is impersonating you, you should report this to the police who can pursue that person under this new law.

Rumour on facebook

A young friend of mine posted on facebook a rumour that she thought was true about a certain politician who is unfit to hold office for certain moral reasons. Surprisingly she has been getting threats and calls from security personal who want to know where she is located as they want to question her. She has run away to an upcountry town. Facebook is a place of joy, nothing serious. Is our freedom of speech curtailed?

12 October 2015

The recently enacted Cyber Crimes Act 2015 has some onerous provisions, one of which is Section 16 that makes it an offence to publish any information or datain a computer system knowing that such information or data is false, deceptive, misleading or inaccurate, and with intent to defame, threaten, abuse, insult, or otherwise deceive or mislead the public.

We believe your friend has published information which is false but we are unsure if the intent as provided for under Section 16 is present. This offence is punishable by a fine of TZS 5 M or to imprisonment of not less than 3 years, or both.

It does not matter that facebook is a leisurely website. It has the capacity to do a lot of damage and this law has been enacted to address this. This applies to all facebook,

twitter and other similar website users, including WhatsApp, whereby if you publish something along the lines you stated, there are high chances state security organs can arrest and charge you.

This is the law and whether it is unconstitutional or not can be debated, but you must abide by it.

The Cyber Crimes Act also provides another section whereby if you initiate or send, whether you are the originator or not, any email to another person to intimidate, harass or cause emotional distress to that person, you can also be imprisoned.

So be careful what emails you forward to people as you might end up unknowingly in jail.

Viagra in liquor

I read that some liquor companies that sell wines and other spirits have been putting prescription drugs like Viagra into their drinks. They guarantee good results beneath the bedsheets if you drink their wine. Is this legal?

19 October 2015

Lacing of drinks is a criminal and imprisonable offence. It is true that there was an international investigation into a number of liquor companies that were doing so. This type of lacing poses a human health risk and is illegal in many jurisdictions including Tanzania.

Our research shows that a combination of viagra and alcohol can have serious unwanted health issues including heart palpitations.

The law in Tanzania can lead to the company and its officials being criminally charged if found mixing such products without approval and knowledge of those consuming the drink.

This could well apply to the distributors if they distribute such beverages knowing that the lacing is illegal.

The Tanzania Food and Drugs Authority can address this and you should write to them.

Cyber Crimes Act threat to facebook

I have been informed that with the Cyber Crimes Act in place, what we write on facebook, as a joke or comment can be used against us in Court? Can I please understand more on this law as I am a facebook addict and cannot live without it?

2 November 2015

The Cyber Crimes Act of 2015 has provided some very strict provisions that could make you liable for a fine or imprisonment, or both.

We believe the Section that affects you the most as a facebook fan is Section 16 which we have reproduced below and recommend you read carefully.

Section 16 states that: any person who publishes information or data presented in a picture, text, symbol or any other form in a computer system knowing that such information or data is false, deceptive, misleading or inaccurate, and with intent to defame, threaten, abuse, insult, or otherwise deceive or mislead the public or counselling commission of an offence, commits an offence, and shall on conviction be liable to a fine of not less than TZS 5 M or to imprisonment for a term of not less than three years or to both.

Therefore when you post on your facebook page information, it does not matter whether or not you are joking, you could still be committing an offence as long as it is false, or misleading or inaccurate, and your intention is to defame, threaten or mislead the public.

We believe this also applies to those who like or dislike the comment, and those who further add their comments to what was

initially said. Hence your friends canalso get into trouble.

For example, if you post that a certain police station had police officers sleeping at night and you were not attended to, if this information was false you would fall foul of Section 16.

Another example is when you make comments about service levels at public organisations, or how you were treated somewhere, if the information is false, or even inaccurate and it was deemed to be insulting, you could end up facing criminal charges under this law.

This is a very strict Section of the Cyber Crimes Act and all facebook fans who forward information should be careful. In fact this would apply to Twitter as well as Whatsapp amongst others.

We believe the constitutionality of this Section, amongst other sections, is being challenged in Court on grounds that they are curtailing the freedom of speech that is enshrined in the constitution.

Until the Court makes a decision, this is the law and you must be very careful of what you write in such public domains.

Aircraft crew members' drinking habits

At this famous Dar hotel, I see some crew members of an international airline boozing alcohol few hours before their flight. Is this allowed? Are they not endangering passengers' safety?

16 November 2015

Regulation 57 of the Civil Aviation (Operation of aircraft) Regulations 2011 prohibits any crew member from having alcohol 8 hours before a flight. Regulation 57 states as follows: 57.(1) A person shall not act or attempt to act as a crew member of an aircraft (a) within eight hours after the consumption of any alcoholic beverage; (b) while under the influence of alcohol; (c) while using any drug that affects the person's faculties in any way contrary to safety; or (d) while having 0.04 percent by weight or more alcohol in the blood. (2) A crew member shall, up to eight hours before or immediately after acting or attempting to act as a crew member, on the request of the Authority, submit to a test to indicate the presence of alcohol or narcotic drugs in the blood. (3) Where there is a reasonable basis to believe that a person may not be in compliance with this regulation and upon the request of the Authority, that person shall furnish to the Authority or authorise any clinic, doctor, or other person to release to the Authority, the results of each blood test taken for presence of alcohol or narcotic substances up to eight hours before or immediately after acting or attempting to act as a crew member. (4) Any test information provided to the Authority under the provisions of this regulation may be used as evidence in any legal proceedings.

You can see that to protect the safety of passengers the Tanzania Civil Aviation Authority has enacted these regulations. You can report this to them for further action.

Accident caused by negligence

Five years ago I was involved in a very serious accident while I was passing 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 did survive. I am now back and want to sue the company that was constructing the building, including 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 buildings with occupied ground floors when the top floors are still 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. Having contacted my lawyer, I was shocked to hear that I had 3 years in which to sue, and since the 3 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?

30 November 2015

It is true that there is a law - the Law of Limitation Act that provides for various time periods within which an action must be taken. Issues like yours would be covered under tort and the time limitation is 3 years.

Section 44 of this law allows the Minister to extend the timeframe by another one and a half years for you and states "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 is about five years old.

Luckily for you Section 16 of this law may come to the rescue where it 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 and neither have you given us enough information on the type of injury you suffered, but 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 Law of Limitation Act which states "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 statutes of limitation 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.

Passenger carrying bomb look-alike

If a passenger has a metallic looking device which is actually a jewellery kit but looks like a bomb, can a security officer deny boarding to such a passenger? Is this not pure harassment?

11 January 2016

You must appreciate that when it comes to flying, there is zero tolerance for taking any chances on security. Under the Civil Aviation (Security) Regulations, 2015, if a jewellery box looks like a bomb, maybe because of its shape, size or the material it is built with, you are not allowed to carry it and will not be allowed to board with it. The law empowers the security officer to either ask you not to carry it, or she/he can destroy it.

Regulation 38 in clear terms provides for this in that (1) No person shall, subject to regulation 25, possess or have with him or

her a prohibited or restricted items while (a) in a security restricted area; (b) on board an aircraft; or (c) in an air navigation installation.

(2) The prohibited items referred to in sub-regulation (1) include (a) firearms or articles appearing to be firearms, whether or not they can be discharged; (b) nuclear, chemical or biological agents adapted, or capable of being used for causing injury to or incapacitating persons or damaging or destroying property; (c) ammunition and explosives; (d) articles manufactured or adapted to have the appearance of explosives, whether in the form of a bomb, grenade or otherwise; (e) articles made or adapted for causing injury to or incapacitating persons or damaging or destroying property; and (f) any other dangerous article or substance or other item prescribed by the Authority from time to time.

Disaster at wedding

My father was invited to a wedding in Moshi where he fell down flat, due to the carpet not having properly been glued to the floor. He is very old and suffered a dislocated hip which is a very serious condition. We spoke to the wedding organisers who said that this hip dislocation would not have happened to younger people and they will not contribute for his medical bills. My lawyer says we do not have a contract with the decorator and hence cannot sue them for recovery. What should I do?

1 February 2016

You need not have a contract with the decorator or the wedding organisers to sue. Under law of tort principles, you can sue anyone down the line. There is some form of negligence that is evident - it is a matter of proving it and you will be able to claim damages.

Assuming your father was invited and not a trespasser, the wedding organisers, decorator, perhaps even the owner of the premises all owed your father a duty of care. If the carpet is not properly glued to the floor, and your father tripped, the question you need to ask yourself is whether this duty was breached. It does not matter that your father is old and others were younger - so long as he was invited, this duty of care is owed to everyone present notwithstanding age. In fact the law is clear that you take a person the way she or he is.

If you can prove that there was breach of such a duty, you will be entitled to damages which can include your medical bills. On the flip side, it is always advisable for event organisers to take specific insurance cover for the events to enable persons like you to recover from the insurers.

All in all, before you initiate Court proceedings, and considering that these might be your friends, you may want to engage with them to recover some contribution for the treatment.

Suing automobile manufacturer

A friend of mine ordered a new model vehicle from a supplier outside Tanzania. The car met an accident when he was driving it in auto drive as he enjoyed a snack. The car failed to perform as claimed in the operating manual. Can he sue the automobile manufacturer?

22 February 2016

With respect we don't see a cause of action. Auto drive does not mean that you leave your steering and have a snack in your car, as it seems your friend did. Auto drive is different from auto pilot in an aircraft and if that was the cause of the accident, then we don't see anything that the manufacturer has done wrong.

Awake during operation

I was operated on in a Dar hospital only to find myself awake during the entire surgery. I could feel some of the pain although my eyes were shut. My brain was fully functional yet I could not communicate to the surgeon as I could not move. I survived the ordeal but am suffering from post-surgery trauma. Is this a case of medical negligence?

28 March 2016

Anaesthesia awareness occurs when patients have anaesthesia that is inadequate to keep them unconscious during an operation. According to an online source, the incidence of this anaesthesia complication is variable and seems to affect 0.2% to 0.4% of patients according to the surgical setting and operation carried out. This variation reflects the surgical setting as well as the physiological state of the patient.

Unfortunately, we do not have all the facts surrounding this incident but there seems to be a good case of medical negligence here. Luckily you survived but a number of patients who go through this do not.

To prove the negligence you will have to adduce enough evidence to substantiate your claim.

Goods not available for sale after advert

I read an advert in the paper for certain phones that were on sale but the company could not sell the phones stating that they were sold out. After reading the advert and when I accepted purchase of the phones, did I not enter into a contract with the sellers? Should they not be compelled to sell to me?

28 March 2016

Generally, advertisements are not offers but are invitations to treat, so the person advertising is not compelled to sell. In a famous case Partridge v Crittenden, a defendant who was charged with "offering for sale protected birds" - cocks and hens that he had advertised for sale in a newspaper - was not offering to sell them.

The Justice said it did not make business sense for advertisements to be offers, as the person making the advertisement may find himself in a situation where he would be contractually obliged to sell more goods than he actually owned.

However, in certain circumstances called unilateral contracts, an advertisement can be an offer; as in a famous 1893 case - Carlill v Carbolic Smoke Ball Company, where it was held that the defendants, who advertised that they would pay £100 to anyone who sniffed a smoke ball in the prescribed manner and yet caught influenza, were contractually obliged to pay £100 to whomever accepted it by performing the required acts.

You did walk into the store and tried to enter into a contract but the phones were sold out and unless the facts are different no contract is in place for you to sue for breach.

Mass marketing emails

I keep on getting mass-marketing emails from suppliers of various products from cement and mobile phones, to caterers and hotels. I have never asked them to send these adverts and promotions and yet I receive them. Is sending such mass communication legal? If I buy goods or services from such online suppliers, how does one enter into a contract without signing it on hard paper?

4 April 2016

The Electronic Transactions Act of 2015, which is an important but very new law specifically addresses this.

Section (1) provides a person shall not send unsolicited commercial communication for goods or services unless (a) the consumer consents to the communication; (b) at the beginning of the communication, the communication discloses the identity of sender and its purpose; and (c) that communication gives an opt-out option to reject further communication.

Section (2) says The consent requirement is deemed to have been met where (a) the contact email of the addressee and other personal information were collected by the originator of the message in the course of a sale or negotiations for a sale; (b) the originator only sends promotional messages relating to its similar products and services to the addressee; (c) the originator offered the addressee the opportunity to opt-out and the addressee declined to opt-out; and (d) an opportunity to opt-out is provided by the originator to the addressee with every subsequent message.

Under Section (3) An originator who contravenes this Section commits an offence and shall, upon conviction, be liable to a fine of not less than TZS 10 M or to imprisonment for a term not less than one year or to both.

You can see that such unsolicited messages are illegal especially if you had not consented and are unable to opt out from receiving them.

The same law recognises formation of contracts electronically and states that for avoidance of doubt, a contract may be formed electronically unless otherwise agreed by the parties.

Secondly, here an electronic record is used in the formation of a contract, that contract shall not be denied validity or enforceability on the ground that an electronic record was used for that purpose.

Product recall offence

There is a particular product that has had an international recall except in Tanzania where the local sole distributor has not taken any action despite knowing full well of this recall. Is there no law that protects Tanzanian consumers?

11 April 2016

The Fair Competition Act provides that (1) notwithstanding the provisions of this Act, where a person voluntarily takes action to recall goods because the goods will or may cause injury to any person, he shall, within two days after taking that action, give a notice in writing to the Commission: (a) stating that the goods are subject to recall; and (b) setting out the nature of the defect in, or dangerous characteristics of, the goods.

A person who contravenes sub-section (1), commits an offence and is liable on conviction: (a) in the case of a person not being a body corporate to a fine of not less than TZS 50,000 and not exceeding TZS 1 M or to imprisonment for a term not exceeding twelve months; or (b) in the case of a person being a body corporate to a fine of not less than TZS 100,000 and not exceeding TZS 5 M.

Your concern can be reported to the Fair Competition Commission who can take appropriate action.

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 takes sometimes up to 30 minutes before I get attended to. During 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.

16 May 2016

Your bullying can be intervened in by the Tanzania Communication Regulatory Authority 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 lodge a complaint to the mobile company explicitly stating your complaint and the mobile company is required to reply to your complaint within 21 days from the receipt of the complaint. If you are unsatisfied with their reply, you may proceed to lodge the complaint to TCRA.

Airline misguiding on ticket price

There is a particular airline that advertises sales of tickets at certain prices and never has them available even if you are the first person to contact them. I have reason to believe that they are trying to attract people to call them to sell seats at higher prices. Is there no law that protects passengers who are treated like this?

8 August 2016

This is illegal and in contravention of our laws. Under Section 22 of the Fair Competition Act, it is stated that (1) no person shall advertise goods or services for supply at a specified price if there are reasonable grounds, of which he is aware, or ought reasonably to be aware, for believing that he will not be able to offer for supply those goods or services at that price for a period that is, and in quantities that are, reasonable having regard to the nature of the market in which he carries on business and the nature of the advertisement.

Any person who has, in trade, advertised goods or services for supply at a specified price shall offer such goods or services for supply at that price for a period that is, and in quantities that are, reasonable having regard to the nature of the market in which he carries on business and the nature of the advertisement.

This is reportable to the Fair Competition Commission who may make a compliance order.

Claim rejected, no insurable interest

I am a real estate broker and earn a half month's rent every year for property that I manage; leased on behalf of my clients who are ultimately the landlords. A few months ago one of the prime properties that I had been involved in was gutted by fire. I have insurance against loss of business and had fully declared the source of income. The insurance company has come back saying I did not have insurable interest in the transaction and hence my claim has been rejected. My lawyers agree with the opinion of the insurer. What are your views?

29 August 2016

The concept of insurance is that you cannot insure something that does not belong to you, or in which you do not have an interest. For example, you cannot insure someone else's house and have the insurance policy in your name. Even though initially the insurance company may collect the premium, at the time of the claim they will repudiate the claim since you do not have an interest in the property, what the insurer's term insurable interest.

Coming to your question, it seems that

you have a contract right which may actually be an insurable interest, even though you do not have rights specifically in the property that was gutted by fire. This may sound like a radical opinion but you need to look at your insurance policy from this new angle.

The problem here is to develop a working guide for determining just what interrelation between contract performance and existence of the property insured suffices to constitute compliance with the requirement of insurable interest.

There are few cases allowing an insurable interest based on contract right without property right, your case seems to be one such case. We believe you have a good chance of pursuing this matter successfully against the insurance company.

Sonara cheating in grammage

I have been buying 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 and I went back to get each of the earrings labelled with their actual weight.

Fortunately or unfortunately I went into the neighbouring sonara shop 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 sellers scale showed me meaning that his scale is deliberately calibrated to show more grammage and 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?

17 October 2016

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

Legality of hell or high water clause

Is this clause legal in Tanzania? Can I get out of a contract with a clause that is affecting my rights?

31 October 2016

A hell or high water clause is a clause in a contract which provides that the payments must continue irrespective of any difficulties which the paying party may encounter. It is intended to limit applicability of the doctrines of frustration in contracts.

The term comes from a colloquial expression that a task must be accomplished "come Hell or high water" - that is, regardless of any difficulty.

Whether or not such a clause is applicable in Tanzania, one needs to understand in what type of contract it is used, and whether it is trying to side-line any statutory provisions of the law. If it is, then it will not apply to that extent, otherwise using it should be fine.

Misleading company name

There is a company whose name suggests it is a hospital when in fact it is merely a pharmacy. Once in there, the pharmacist gives you oral medication without a prescription. In fact everyone inside calls the pharmacist doctor. Is there a way someone can force this company to change its name so as not to mislead the public?

2 January 2017

Section 33 of the Companies Act states that (1) If in the Minister's opinion the name by which a company is registered gives so misleading an indication of the nature of its activities as to be likely to cause harm to the public, he may direct it to change its name. (2) The direction must, if not duly made the subject of an application to the Court under subsection (3), be complied with within a period of 6 weeks from the date of the direction or such longer period as the Registrar may think fit to allow. You can write to the Minister who can force the name change, although the company may challenge this in Court.

Unfair term in contract

I have been constructing a house and appointed a friend of mine as the contractor. He did a below average job and we have now realised that the foundation and roofing are not done properly. We hardly moved into the house two months ago, but we have been told by another contractor that we need to do some more work on the house. I asked our contractor and he pointed me to a clause in the contract that states he is not liable for any such mishaps i.e. he cannot be blamed. I did read the contract and admittedly I signed it without properly reading it. What can I do? My lawyer said I should have contacted him before signing the contract and not after, and that there is nothing much that can now be done since the contract is clear that the contractor doesn't bear any liability? Please help.

16 January 2017

It is true that most signatories of contracts do not properly read contracts before signing them. It is with that in mind that in other countries there is a specific law on unfair contract terms whereby such clauses are not allowed, or if inserted, cannot be enforced. Unfortunately we don't have such a specific Act here.

The general principle of law is that parties are bound by what they have agreed to. This is a principle that is also widely applied here. Notwithstanding the above, it is quite clear from common sense and common law principles that having appointed a contractor who, we presume, is registered with the Contractors Registration Board (CRB), the contractor cannot run away from his obligation to properly construct your house. In contract law it does not matter if he is your friend or not.

There is also a number of interesting foreign case law that interpret such exclusion clauses of liability in your favour by holding that there is a common law provision implied in the contract whereby a contractor or specialist is supposed to perform to a minimum certain expectation, which in your case the contractor hasn't.

Your lawyer should not give up so easily and you should perhaps get a second opinion. We believe you can make a good case to hold your contractor liable. Next time do not sign contracts without properly reading them. It is these one or two lines in contracts that cost you the billions.

Insurance policy one sided

My household fire insurance policy states that I cannot make a claim 14 days after a fire or burglary. I was overseas and just came back into the country to find my house totally empty. Everything was stolen. My broker says that the 14 days have passed and I cannot now claim. What should I do?

23 January 2017

Your broker should be trying to protect your interests. At the moment he seems to

be acting like an agent of the insurer. We have not read this weird houseowner's policy but you can certainly challenge it. You might want to read the wording of the policy to check whether it is 14 days from the date you found out or from the date of the burglary. This unfair term can be reported to the Commissioner of Insurance who has powers under the Insurance Act to delete or amend any obscure or ambiguous terms in a policy. Unfortunately we do not have your policy to guide you any further but we believe you can pursue this with your broker and insurer.

Shampoo leads to hairy body

My hairdresser recommended I use a certain shampoo to assist in hair growth as he claimed I was balding. I used the shampoo for a few months in addition to using it as a body wash, which is quite normal. Apart from my head which now has more hair, my whole body is also covered in hair. I am embarrassed to wear shorts because of the additional growth on my body. Can I sue my hairdresser for misguiding me? My wife is upset and has lost her attraction towards me and wants to divorce me. Can she?

23 January 2017

Unfortunately we do not have all the facts but from what you have stated to us, it seems the shampoo has worked for your head. It also seems that you have used this specialised shampoo to wash your body resulting in the additional and abnormal hair growth. Whether you can sue the hairdresser will depend on all the facts of the matter but it seems to be clear to us that the shampoo is likely medicated and not meant to be used as a body wash, so that has caused this mishap.

Having said that and much as we sympathise with you, we believe you might not have a strong enough cause of action to sue. Our Law of Marriage Act has specific grounds that allow divorce, and hair having grown all over your body because of a shampoo, leading to reduced appeal to your wife is not a reason that our law recognises.

You should consider waxing the hair and seek the help of a marriage counsellor. Waxing is painful but the results can be quite incredible. We wish you all the best.

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?

30 January 2017

You have not disclosed to us which 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 and if the plane is not full, the second ticket is reimbursed. In fact some airlines have stricter policies in that you would not be able to board if you have an economy class ticket but 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 due to the discomfort you suffered. Likely the airline will give you a free ticket. Your lawyer can guide you further.

Arbitration clause in consumer contract

Is it legal for a large entity to insert an arbitration clause in a consumer contract? Does that in itself not act as a deterrent for the potential claimant to proceed make a claim due to the expense and venue? Is there nothing that stops companies from inserting such clauses?

6 February 2017

It is true that arbitration is fast to complete but expensive to conduct and consumers might not have the same power compared to a corporation to fight such a case. Unfortunately there is no law in Tanzania that restricts corporations from inserting arbitration clauses in contracts so long as the parties agree to this. The arbitration clauses are also inserted by large corporations to limit the possibility of class actions as all claimants would need to get together and refer the matter to arbitration, something which might not make economic sense and hence limits the possibility of the corporation getting sued! There is a case in the US that challenged the insertion of such clauses because it reduces the possibility of class action suits, which are quite common in the US, and the Supreme Court ruled that the clauses are legal and can continue to be used.

Refund of school fees

My son saw an advert from a university that said all their graduates get jobs. In fact the advert said 100% job guaranteed. I studied there and yet this is the second year I am jobless. I have paid millions of shillings to this institution and want to sue them for misrepresentation, recover my money and claim for damages. Please guide me.

20 February 2017

We would have liked to look at the advert before we answer this question. In any case, there is a chance that you can sue the university; however if your grades were not good, or you did not study when there, you cannot blame your university. Knowledge transfer unfortunately doesn't happen by way of a transfer cable, but hard work and studying. There have been similar cases in other countries where universities have marketed aggressively when seeking students, and what they have presented in their adverts has amounted to being held as misrepresentation. We suggest you consult your lawyer who can study this case in its entirety before you sue.

Restaurant food contained cockroach

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 and I want to sue the restaurant owner. How do I proceed?

20 March 2017

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 biology that we know, it is quite apparent that a 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. All in all, 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.

Advert by doctor claiming to cure AIDS

There is a traditional doctor who is gaining a big reputation for being able to cure HIV/AIDS. It is known that there is no such cure. How can he be allowed to publicise himself like this? Is there no law that prohibits such adverts? On a different note can a doctor take a patient's blood without consent to test for HIV/AIDS before he operates on her/him? If such a patient turns out to be positive, can the doctor refuse to operate on her/him?

22 May 2017

The HIV and AIDS (Prevention and Control) Act 2008 provides in Section 27 that (1) all statements or information regarding the cure of HIV and AIDS shall be subjected to scientific verification before they are announced. It further states that publication of statements or information shall be attached with both evidence of pre- and post-cure HIV test results.

This law provides that a person who makes or causes to be made any misleading statement or information regarding curing, preventing or controlling HIV and AIDS contrary to this Section commits an offence and shall be liable on conviction to a fine of not less than TZS 1 M or to imprisonment for a term of not less than six months or to both.

This witch doctor is thus in clear contravention of the above. On your second question, the same law provides that any health practitioner who deals with persons living with HIV and AIDS shall provide health services without any kind of stigma or discrimination. The law further states that no person shall deny any person admission, participation into services or expel that other person from any institution on the grounds of the person's actual, perceived or suspected HIV and AIDS status.

To sum up, the doctor cannot forcefully take blood for HIV testing from a patient and neither can he deny her/him treatment based on the HIV results.

Misbehaving nurse

I have been frequently attending a certain government hospital for the purpose of taking 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?

22 May 2017

We are alive to the existence of the Nursing and Midwifery Act, No 1 of 2010 which is an act to make provision for 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 the conduct of nurses as you have brought it up in your question.

Among the reasons where a person's fitness to practice as a nurse is impaired are included: 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, whereupon the Registrar of the council - who also serves as the Chief Executive Officer - shall 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 that there are very few such complaints lodged as people are unaware of this mechanism. Your lawyer can explore this avenue further.

Negligent operation by surgeon

I was taken on an emergency basis to a hospital in Musoma where the only doctor available to operate on me was a general surgeon and not an obstetrician. My pregnancy was overdue and there was no choice but to take me to theatre. There were also no other specialists available and the general surgeon was forced to operate on me. During the operation, my child was permanently injured as the surgeon did not have the requisite tools or experience. My lawyers tell me that apart from suing him for damages, I can lodge a criminal complaint as provided for under the Penal Code. Is that possible? I want surgeons to learn how to be responsible.

5 June 2017

It is true that the Penal Code provides for a specific section on such an eventuality, but in support of the surgeon it states that: a person is not criminally responsible for performing - in good faith and with reasonable care and skill - a surgical operation, including upon an unborn child for the preservation of the mother's life, if the performance of the operation is reasonable, having regard to the patient's state at the time, and to all the circumstances of the case.

Since there was no other choice, and he was the only surgeon available, assuming that he used reasonable care and skill, he will likely not be criminally liable. However, it all depends on the facts of the case which your lawyer can guide you on.

Fat uncle, small plane seat

My uncle is fat and over 190 kgs and is always inconvenienced when he boards an aircraft. He cannot afford flying business class and when he travels economy the seat size is not enough for him. Why don't the airlines have special seats for fatter people, who are also part of our society. Is this not a form of discrimination? Also, when my uncle walks along the aisles of the plane he is forced to brush his body past all those passengers sitting on aisle seats. How can you assist us?

12 June 2017

This has been a sensitive topic for many years and the law does not necessarily force airlines to provide special seats for fat passengers. There is also a sensitive balancing act to do for the airlines between those who are normal weight, which is the majority, and the few who are overweight like your uncle.

Airlines have policies on fat people boarding. Some of these policies differ in degree and detail, but essentially if you don't fit in a seat with an extension seatbelt and the armrest down, you will be charged for two seats or removed from the plane. This is a policy that many airlines have adopted. We are not sure what airline your uncle flew but the terms of carriage always address this.

We don't believe it is discriminatory because if the airlines start offering special seats for fatter passengers, the cost of air travel might end up going up for the other passengers. There is also the issue of security and comfort of passengers seated next to your uncle that need to be taken into account. If someone can hardly fit in a seat, getting that person out of that seat in an emergency is going to be difficult. As for the aisle brushing, most airlines allow early boarding for fatter passengers.

That we believe will solve this problem.

Unfortunately there is nothing else that we can help with.

Injury when working out

I was working out at a gym in Dar when one of the machines failed and caused me a very serious shoulder injury. The wire snapped and the whole weight came down on me. Luckily I was on medium weights and survived but the injury could have been fatal. The gym has a tendency not to service its machines. When I approached the manager, he rudely pointed out a notice that read all customers exercise at their own risk. Does that allow them to get off the hook? They have involved their lawyer. I mistrust lawyers as they are always out to get you.

7 August 2017

Just because the gym has a notice, does not mean you cannot sue them. The gym has a duty to care for its members and the snapping is proof of breach of that duty, as long as you were not involved in any way in the snapping. The severity of the injury makes us believe that you can really take the gym owners and managers to task for failing to discharge their duties.

Unfortunately, we have not seen many such examples of this kind of litigation in Tanzania, but elsewhere suing a gym or your trainer is very common.

The involvement of their lawyer also sends a message that they are concerned about the action you might take. Whether you mistrust a lawyer is irrelevant. On the contrary because of lawyers and the way they think, the world has become a more efficient place. All lawyers are not saints but neither are they as bad as you make them sound in your question.

Power cut in operating theatre

One of my relatives was being operated upon when power failed. The hospitals 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 6 weeks in hospital. Can we take the hospital to task?

25 September 2017

It is known that there are frequent power shortages in Dar and for a hospital that has a theatre not to have a back up generator - or have a generator that does not work - is extremely dangerous and also highly negligent of the hospital. 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.

Disclaimers at car parks

I drive a big 4WD which I take care of as though it is part of my family. In order to protect it, I pay exorbitant monthly fees to park in one building in town with an exclusive parking lot. To my surprise the owner of the building hassigns everywhere in the building that parking is at the owner's risk. Now do I also have to 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 demanding so much for parking?

20 November 2017

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 and also charges fees to every person who parks in that building. Hence,

he is responsible for taking all reasonable measures to ensure that the cars which are parked in his business premises are safe from theft or damage.

If the cars are damaged or stolen due to the owners negligence or his employee's negligence, he may be held liable under the law of tort. Such signs stating 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.

Signs stating 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 from seeking compensation from the owner in case something does get stolen or damaged. Similarly, you see such signs in gyms where gym owners also state that those working out at the gym do so at their own risk. As explained above, these signs are just attempts to limit liability. It is also proven that when non lawyers read such signs they tend to not want to pursue any claims thinking their claims will not succeed.

Flies in toothpaste

I bought a toothpaste from a supermarket in Dar and when brushing my teeth 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?

27 November 2017

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 packing and manufacturing and 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 he is.

In fact you can also sue the supermarket, the wholesaler who supplied the supermarket and the importer - if different from the wholesaler. Your lawyer can guide you further as you will need concrete evidence to prove this - mere assertions will not take you far.

Corporate and Banking Law, Shareholder Disputes

“

There are many legal problems associated with owning or running a company. These include issues on registering company names, complying with the relevant laws and regulations and requirements for a company’s AGM – a very important meeting.

Creditors can be difficult; directors and shareholders can fall out, or fall foul of Court judgments. Directors may also be personally liable for their actions in relation to a company in some instances. They must also respond to the reasonable requests of state bodies.

The disposal of company assets can result in surprise liabilities for the unwary, while stock market manipulation and fraud in dealings can land one in jail.

People may also need advice about how to handle bad debts, when they should be written off, while they must be careful to avoid mortgage fraud. There are also implications for banks and customers in corruption cases.

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 and procedures that minimise the risk of legal conflicts.

Mortgage of social security benefits contributions

I want to take out a loan to build a house, but I don't have any security apart from my social security benefits. I asked the bank to take all of my social security benefits as a security for the loan, but the bank says it can only take 50% and that I will have to provide additional security. Is there a legal basis for the bank's refusal?

6 April 2015

The Social Security (Regulatory Authority) Act of 2008 states that the mortgage of social security benefits should not exceed 50% of the benefits a person is entitled to at the time of collecting those benefits. The bank is right to not accept more than 50% of the benefits, because the law aims to ensure that all retired persons have some means of income to sustain them when they can no longer work. If the law did not put in this limit, most people would have taken out loans and mortgaged all of their benefits.

The law protects you and it is in your interests to not expose 100% of your social security benefits to risk. You can contact your lawyer for further guidance.

Stock market manipulation and fraud in dealings

A stockbroker convinced us to buy shares in a company that was purportedly profitable until it went public - ever since then, it has been reporting losses and we are suffering from having bought this stale stock. It is hard to believe what caused this sudden change of position after going public. It is quite evident that the broker and accountants manipulated the accounts. Is this actionable?

31 August 2015

The Capital Markets and Securities Act is very strict on this kind of market manipulation. It states that any person who is directly or indirectly involved in two or more transactions in company securities which have, or are likely to have, the effect of raising, lowering, maintaining or stabilising the price of the company's listed securities in Tanzania with the intent to induce other persons to sell, purchase or subscribe to the company's securities or those of a related entity shall be guilty of an offence.

Under the Act, a reference to a transaction involving the securities of a body corporate includes: (a) a reference to make an offer to sell or purchase securities in the entity; and (b) a reference to make an invitation that expressly or impliedly invites a person to offer to sell or purchase securities in the entity.

A person is guilty of the offence of fraudulently inducing persons to deal in securities if he: (a) makes or publishes any statement, promise or forecast which he knows to be misleading, false or deceptive; (b) dishonestly conceals material facts; (c) recklessly makes or publishes, dishonestly or otherwise, any statement, promise or forecast that is misleading, false or deceptive; or (d) records or stores information he knows to be false or misleading that induces or attempts to induce another person to deal in securities.

The Act states that any person who contravenes any of these provisions is liable upon conviction to a fine of at least TZS 5 M and/or imprisonment for at least 5 years. A person convicted of an offence will also be liable to pay compensation to any person who, in a transaction for the purchase or sale of securities entered into with him or with a person acting for or on his behalf, suffers loss because of the difference between the price at which the securities were dealt in and the price at which they might have been dealt in at the time the transaction took place if the contravention had not occurred.

If you have evidence to this effect, you

can report it to the CMSA, which can start an investigation into this matter.

Banks and corruption offences

I work for a bank and one of our borrowers is being charged with corruption. Can his assets be attached before he is found guilty? What if we have an encumbrance on one of his key assets against which we lent him large amounts of money?

26 October 2015

The Prevention and Combating of Corruption Act allows attachment of the accused's money and other property when the person is charged with corruption or related offences. However, it is for the Director of Public Prosecution (DPP) to apply for such an order. The DPP can also make an application that such assets are not to be transferred, pledged or otherwise disposed off.

The Act takes into account any encumbrances created in good faith prior to such an application and the Court may order the sale, transfer or disposal of any property by the accused if it is satisfied that this is necessary to safeguard the property rights of any other person claiming interest in the property.

We therefore, believe the bank is adequately protected so long as the encumbrance was created prior to the charge and the bank is not party to this mischief, if any.

Maximum age of directors

Is there a minimum or maximum age for company directors? Can a company require directors to own a certain amount of shares to be appointed as directors?

8 February 2016

Section 194 of the Companies Act states that only a person between the ages of 21 and 70 can be appointed as a director of a company subject to this section.

As for owning shares, if the company's articles state that directors must own some shares, then one is disallowed from being elected as a director without meeting this requirement.

Extractive industries disclosures

How can I find out about shareholding and local content planning of oil and gas players in Tanzania?

15 February 2016

The Tanzania Extractive Industries (Transparency and Accountability) Act 2015 ensures transparency and accountability in the extractive industries by requiring the committee established under this law to cause the Minister to publish: (a) in a website or through a widely accessible media all concessions, contracts and licences relating to the extractive industry; (b) the names of individual shareholders who own interests in the extractive industry companies; (c) implementation of environmental management plans; and (d) implementation reports.

We believe such a committee has not yet been formed. An alternative is for you to search the company's shareholding at the Business Registration and Licensing Agency (BRELA).

Mortgage amount increased

I guaranteed an amount of a loan to a friend by pledging my property and subsequently there were other amounts disbursed. Am I responsible for these additional amounts that the bank lent to the borrower? I am unwilling to bear responsibility for these as he has now defaulted and the bank is after me. I really feel like suing this bank.

25 April 2016

It all depends on how the mortgage deed was drafted and whether you signed for the total amount that was being disbursed in tranches. If you guaranteed the total amount, then you are responsible.

Mortgage deeds can also be drafted to allow additional amounts to be borrowed, and hence the critical document is the mortgage deed.

The Mortgage Financing (Special Provisions) Act states that when a mortgage provides for the disbursement of a specified principal sum by the mortgagee through instalments, the payment of those instalments shall not be taken to be a further advance and such disbursements shall rank in priority to all subsequent mortgages up to the amount stated in the mortgage.

Based on the above, your liability is up to the maximum of what is stated in the mortgage deed. We suggest you check the amounts stated in the deed before taking any action.

Company refuses to transfer shares of late husband

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

2 May 2016

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

The Companies Act states very clearly that the production to a company of any document which is by law sufficient evidence of probate of the will, or letters of administration of the estate, of a deceased person having been granted to some person; or the Administrator-General having undertaken administration of an estate under the Administrator-General's Ordinance (Cap. 27).

Provided that a company shall not be bound to give notice under this shall be accepted by the company, notwithstanding anything in its articles, as sufficient evidence of such grant or undertaking. The Companies Act from the above gives you full protection.

You have not stated the grounds that the other shareholders and/or directors gave for refusing to transfer the shares to you. We do not see why they would have any such reservations, especially when these shares were inherited by you under your husband's Will. If this behaviour continues, your attorney can consider taking the matter to Court to compel the other shareholders to recognise your shareholding. There might be major pilfering going on in the company and you might not want to delay this any further.

Merger control, FCC operations grounded

Our company is offloading a small property to another company and no other assets are being sold. However, our turnover is higher than the small turnover mentioned in the Fair Competition Act and its rules. Do we need to apply for merger clearance? How long does this clearance take?

9 May 2016

The answer is unfortunately yes. Since you meet the threshold, which we agree is very low, and since you are disposing of an asset, you need to apply for clearance of this merger under Section 11 of the Fair Competition Act (FCA). Under the FCA, a merger is defined very widely as an acquisition of shares, a business

or other assets (whether inside or outside Tanzania) that results in the change of control of a business, part of a business or a business asset in Tanzania.

The asset you are selling results in a change of that asset's control, making it a notifiable transaction. As for how long it takes, the FCC has so far been very efficient, but in the past four to five months, it has had no commissioners to form a quorum and some large transactions have come to a standstill. Unfortunately, the appointment of these commissioners has not been forthcoming, despite pleas to the Ministry of Industry and Trade. This has resulted in all affected transactions being put on hold in Tanzania, much to the shock of the business community.

Annual general meeting of company

What does the law say about holding an AGM? Is it compulsory to have it every year and what happens if the company does not comply? I am a shareholder and a former shareholder still attends the meetings after he sold his shares to me.

9 May 2016

Section 86 of the Companies Act states that if any person falsely and deceitfully impersonates any company shareholder and thereby obtains or tries to obtain any shareholding or money due to a rightful owner, he shall be guilty of an offence and could face imprisonment and/or a fine. It is therefore an offence for the former shareholder to pretend he is the current shareholder and he could be imprisoned for doing so.

Section 133 of the Companies Act also states how often such AGMs should be held. It states that every company should each year hold a general meeting as its annual general meeting, in addition to any other meetings held that year, and should issue notices calling for the general meeting.

At the AGM, the company should, wherever practicable and subject to the provisions of this Act: (a) lay before the members the annual accounts, directors' report and auditors' report; (b) appoint auditors for the period up until the next general meeting at which accounts are laid; (c) re-elect any directors seeking re-election in accordance with any requirement in the company's articles of association; and (d) elect or confirm the appointment of any directors in accordance with any requirement in the company's articles of association.

So long as a company holds its first AGM within 18 months of its incorporation, it need not hold it in the year of its incorporation or in the following year.

Bank name with word central

I wish to register a bank as the Central Bank of Dar es Salaam. This name is being rejected without any known reason. Can you help?

25 July 2016

Section 63 of the Bank of Tanzania Act states that, unless you have the written consent of the Bank of Tanzania, no bank should be registered with a name that includes the word "Central", "State", "Government" or" Reserve".

Your proposed bank name has the word "Central" in it, which could easily lead to it being confused with the Central Bank of Tanzania. Hence, even if you apply for consent, we believe the chance of you being allowed to use this name is minimal.

Reduction of share capital

Our company is overcapitalised and we wish to reduce the share capital. Is this allowed under Tanzanian laws?

22 August 2016

Section 69 of the Companies Act states that a company limited by shares or guarantee which has share capital may, if authorised by its articles, reduce its share capital in any way through a special resolution. In particular, it may:

(a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up; (b) cancel any paid-up share capital which is lost or unrepresented by available assets; or (c) pay off any paid-up share capital which is in excess of the requirements of the company and may, if necessary, alter its memorandum by reducing the amount of its share capital and its shares accordingly.

You can see that such reduction of share capital is allowed when it is proposed to pass a resolution to reduce the share capital of a company. The majority of the directors must certify 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 12 months from the date of the certificate or, if the company is wound up within that period, the date of the commencement of the winding up.

So long as the company is solvent and the directors are able to make such a solvency statement, you can proceed.

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.

22 August 2016

It is a banking 101 principle that you should not give out a loan without perfection. Considering the facts, you are an unsecured creditor and, 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 and you may never find this person.

In our experience, such loans are always given in collusion with bank officers. You may want to look into this further and conduct 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 the funds. It seems you did not even do that.

Bank refuses to stop LC

I opened a letter of credit (LC) in favour of a supplier in Asia who was to supply me with certain goods. The contract was a cost insurance and freight (CIF) contract. When the bill of lading and other documents were presented to the bank in Tanzania, I immediately called my bank to tell it to stop the payment, as I had information that the goods were of inferior quality. Despite having written an official letter, the bank proceeded to release the funds. The goods indeed turned out to be of inferior quality and the bank has refused to refund my money. The supplier claims that the goods I ordered were delivered. My lawyer says we cannot sue the bank, which doesn't make sense to me. What should I do?

29 August 2016

In a CIF contract, your bank is supposed to release the funds as soon as the supplier has complied with the terms of the contract,

which includes providing the original invoice, an insurance policy and the bill of lading.

Unless it is expressly stated in the contract that the bank shall not release the funds until a certificate as to quality is issued, which does not seem to be the case here, the bank is not duty bound to check or wait for any such verification.

There is a plethora of cases like this, and with the information you have given us, we agree with your lawyer that it is very unlikely that you will be able to recover the funds from your bank. Your cause of action lies against the supplier of the goods, not the bank, and we recommend that you proceed in that direction.

If you have information that the bank was involved in the mischief or that the fraud was known to the bank, you might have a parallel cause of action against the bank. Your lawyer can guide you further after understanding the entire case.

Liability of directors

My lawyer says that, if I am a non-executive director, I cannot be held responsible for the actions of the company. Is that true? What can I do to protect myself?

5 September 2016

It is not true. Directors have a fiduciary duty towards the company and its shareholders. Additionally, it is untrue that directors can walk away scot free, even if in a non-executive position, from the company's conduct.

Under the Companies Act, Income Tax Act, VAT Act, Tax Administration Act, National Security Act and Anti-Money Laundering Act, directors can be held personally liable for the actions or inactions of a company and may be imprisoned if they do not exercise reasonable diligence in their duties.

We recommend that you only be a director of a company with proper governance in place and that you get director's liability insurance, which won't cover you for any criminal actions but may cover your legal fees.

Voluntary winding of a company

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

26 September 2016

The Companies Act states that, where it is proposed to wind up a company voluntarily, the directors may at a meeting make a declaration in the prescribed form 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 12 months from the commencement of the winding up.

Hence, a company with more liabilities than assets cannot be voluntarily wound up by its members and can only be wound up by a Court order. If you attempt to do so without a Court order, you may be criminally liable. For further legal assistance, please consult your attorney.

Listing on the Dar stock market

I have started a company in Tanzania and am thinking of going public and registering it with the Dar es Salaam Stock Exchange (DSE) so that I can raise more capital and expand the business. Can a smaller company be registered at DSE or is it for big companies only? Also, is this the right time to go public?

21 November 2016

The DSE is not for big companies only, but there are legal conditions and requirements for companies to be allowed to offer shares to the public. Based on the details you provided, your company might fall under a market segment known as the Enterprise Growth

Market (EGM), which was introduced to facilitate mobilisation of capital by companies that do not meet the eligibility criteria for listing on the main investment market segment.

A company seeking a listing on the main investment market segment is required to have been operational for at least three years, to have a track record of profitability in two of the past three years, and to have at least TZS 200 M in paid-up capital.

The EGM is designed to help startup companies which have good business plans but lack capital, and it does not have minimum requirements for capital, profitability or a track record. However, before going public, you must have a five-year business plan, an independent technical feasibility report prepared by a nominated advisor and a prospectus for approval by the Capital Markets and Securities Authority. The company will also have to comply with the Capital Markets and Securities Act and the DSE's listing rules.

Our opinion is that the timing for a listing might not be the best at the moment, as all large mobile operators are required to sell 25% of their shares to the public and list on the DSE by 31 December 2016. We estimate that more than 1 billion US dollars in shares from these telecom operators will soon be coming to the market and, with the current market liquidity, it is doubtful if even these large companies will succeed in their IPOs. It's possible that these IPOs may be postponed, but you should seek the services of an investment advisor to guide you on the timing.

Shareholders rich, company poor

There is a very large and successful company in Tanzania that has opened so-called subsidiaries for each of its businesses. I supply goods to one of these subsidiaries, but it is always having difficulties paying. How can the subsidiary be unable to pay the debt when its shareholders are very strong companies owned by very successful people? Can I directly claim the amounts owed from the shareholders?

19 December 2016

We cannot answer your first question on why the subsidiary is unable to pay its debt, as this is more of an accounting issue best discussed with an accountancy firm.

Regarding your second question, the shareholders of a company are distinct from the company itself, meaning that the company has a distinct legal identity from the shareholders. The shareholders own the shares of the company, not the assets - the assets are owned by the company. The shareholders are also generally not liable for the debt of the company, as it is the company that has borrowed, not the shareholders in their individual names.

In order for you to reach out to the shareholders and make them liable for the debt, you need to pierce the veil of incorporation. To be successful in piercing the corporate veil, one must show: (1) that there is such unity of ownership and interest in the firm that the separate personalities of the corporation and shareholder no longer exist; and (2) that the Court's refusal to allow the piercing would promote an injustice or sanction a fraud.

The application of the above test has proved to be anything but simple, and there are some important caveats and inconsistencies that are worth pointing out. There is no list of necessary and sufficient conditions for assessing what goes into the determination of the two prongs, and some Courts have at times only used one of the two prongs.

Factors taken into consideration to pierce

the veil of incorporation include: commingling of funds and other assets of the two entities (ie 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 entity as a mere shell or conduit for the affairs of the other; inadequate capitalisation; disregard for corporate formalities; lack of segregation of corporate records; treatment by an individual of the corporation's assets 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 cases have provided some clarification as to what counts and doesn't count as bad faith. A simple difficulty in enforcing a judgment or collecting a debt does 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 cases where the alleged wrong involves some sort of fraud.

Therefore, 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. But, 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.

Detention of directors for non-satisfaction of decree against company

I have won a case against a company, but it has not paid me as it says it does not have the funds. Can the directors be imprisoned as civil prisoners and forced to pay me? Please guide.

6 February 2017

Under Section 44 of the Civil Procedure Code, a judgment-debtor may be arrested in execution of a decree at any time and be brought before the Court, which can order his detention. In your case, unfortunately, the judgment-debtor is not an individual but rather a company, which is distinct from its members or directors. Unless there are facts we are unaware of, it is very unlikely that you can get the directors arrested under Section 44.

Further, the Law of Interpretation Act Cap 1 states in Section 71 that an imprisonment term against a body corporate can be converted to a fine as follows: (a) if a term of imprisonment of up to six months is prescribed, a fine of TZS 2 M; (b) if a term of imprisonment between six months and one year is prescribed, a fine of TZS 3 M; (c) if a term of imprisonment between one year and two years is prescribed, a fine of TZS 5 M; (d) if a term of imprisonment of more than three years is prescribed, a fine of TZS 10 M.

Woman forced to disclose age

I am a beautiful woman and was approached to become a director of a company, a role which I accepted and got paid for. When the appointment forms were brought, the secretary asked me for my age and I inserted "adult". I told the secretary that women never disclose their age to people and that this would be a violation of my rights as a woman. The secretary said he would try convince the Business Registration and Licensing Agency (BRELA),

which have come back and insisted that I must disclose my age. What should I do? Can I sue BRELA?

6 March 2017

Regardless of whether you are a beautiful woman or a handsome man, the law requires you, upon being appointed a director, to disclose your age. You cannot write "adult" as a response in your appointment form.

Further, we do not see a so-called violation of your rights as a woman by disclosing your age. Section 195 of the Companies Act states that any person who is appointed or proposed to be appointed as director of a company before he is 21 years old, or after he has reached the retirement age applicable under this Act or under the company's articles, should give notice of his age to the company.

Subsection 2 states that any person who (a) fails to give notice of his age as required by this section; or (b) acts as director under any appointment which is invalid or has been terminated by reason of his age, shall be liable to a default fine.

You thus have two options. The first option is for you to disclose your age.

The second option is for you not to proceed as a director of the company, since you are not able to fulfil one of the requirements under the Companies Act. You will likely then have to refund the funds that were advanced to you to act as a director.

As for suing BRELA, we see no cause of action against BRELA.

The Companies Act dictates what can and cannot be done.

Further lending by bank

If a bank lends money to a company in instalments based on a facility letter for the full amount, isn't the bank making loans each time it disburses the funds and shouldn't the bank be getting consent for each disbursement? What happens if my husband has declared to a bank that he is not married?

27 March 2017

If the facility is for the entire loan amount, we do not see a need for the bank to get consent for each disbursement. For example, if the mortgage is registered for the full amount, the entire loan is covered.

As for the marital status, the law states that a loan applicant commits an offence if he, by an affidavit or a written and witnessed document, knowingly gives false information to the mortgagee in relation to the existence of a spouse or any other third party. Upon conviction, he will be liable for a fine of not less than half the value of the loan amount or for at least twelve months' imprisonment.

The latest trend which is evolving in the market is for spouses, most of whom know that their husbands are borrowing funds, to claim that they did not know of the borrowing and to try to invalidate the mortgage. Banks should protect themselves by taking affidavits from such borrowers to limit exposure.

Attaching audited accounts to annual returns

Is it true that when our company files annual returns it must also file annual audited accounts? Our company has been in existence since the late 1970s and we have never done so. Why would I have to file my annual accounts that then become publicly accessible?

24 April 2017

Section 132 of the Companies Act states that a company (other than one that is exempt from appointing auditors, which you likely are not), must attach to the annual return a copy that has been certified by both a director and the company secretary to be

a true copy of the accounts laid before the company in a general meeting during the period for which the return relates (including every document required by law to be annexed to the accounts). The company is also required to attach a copy, certified as above, of the auditors' report and the accompanying directors' report accompanying each balance sheet.

The law that governs your company dictates what you should file in your annual return. We have been told that most companies in Tanzania have not complied with this requirement of filing accounts, but that does not change the position of the law that requires all companies to file annual accounts.

Registrar refuses to register name

The Business Registration and Licensing Agency (BRELA) has refused to register a name of a company that I have proposed. What is the test for such a refusal? What options do I have to challenge this?

26 June 2017

The Companies Act states that no company name shall be reserved and no company shall be registered by a name which, in the opinion of the registrar, is the same as or too similar to an existing name in the companies index or is otherwise undesirable.

If there already exists a similar company name, then the registrar has the power to stop you from registering your proposed name. Also, if the name you have proposed is undesirable in the opinion of the registrar, then she/he has the power to decline your registration. Both these tests are based on the registrar's opinion. If you are aggrieved, you can challenge the registrar's decision in the High Court.

Bad debt written off, why pay

I was offered an overdraft facility for TZS 100 M for a period of twelve months. I provided a personal guarantee and mortgaged my land 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 the loan in my account, which now reads as zero balance.

Surprisingly, the bank's lawyer recently sent me a demand notice 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 advice.

3 July 2017

Your loan was 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, all banks would be out of business by now and 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, as penal interest kicks in for defaulters. Your lawyers can guide you further.

Registration of undesirable name

I am a Tanzanian living overseas intending to bring back my skillset and educate my fellow brothers and sisters. I wish to register some creative company names like Chuo

Cha Washamba and Chuo Cha Wahuni. I think it will spark a lot of interest to join such institutes, where I can reform and change many lives. My colleagues tell me it is not easy to register such company names in Tanzania. I fail to understand why. Please guide me, as I want to really come back.

17 July 2017

We are proud of you when you say you want to come back and share your experience and help others in Tanzania. However, we fail to understand why you want to register such derogatory names of institutes. Chuo cha Washamba means Institute for the Stupid or Uncivilised, while Chuo cha Wahuni means Institute for Hooligans.

Imagine yourself showing your prospective employer a certificate from Chuo cha Washamba or Chuo cha Wahuni. Who would employ you?

Companies in Tanzania are expeditiously registered by the companies registrar, as provided for under the Companies Act. The process takes a few days and the process is very streamlined. However, there is a specific provision in this Act that allows the registrar, based on his opinion, to refuse registration of a company name that is undesirable.

We believe that both your names are undesirable and the companies registrar will and should reject them and disallow registration. We suggest you think of other creative neutral names for your institute and proceed to register it accordingly.

Factory owners colluding in price

There are certain factories owned by some big-shot owners that have developed monopolistic behaviour. They have colluded to fix product prices and are creating an artificial shortage in supply. These are all signs of anti-competitive practices. Is there a law to protect consumers in this situation?

21 August 2017

The Fair Competition Act will protect you. This Act established the Fair Competition Commission (FCC), which oversees these activities and protects the interests of consumers. The Fair Competition Rules under the Act have provisions on how complaints are handled. As a consumer, you can complain by submitting information to the FCC in any manner, or complaining using a standard form that the FCC Rules provide.

After that, the FCC's investigation department will investigate the complaint to determine if those you have complained about have a case to answer or not. The Commission can use its discretion on whether to entertain your complaint or not, and if not entertained, it must provide its reasons. We suggest that you take the route above and fight for your rights through the FCC.

PCCB order for documents

We are investors in Tanzania and have been asked by the Prevention and Combating of Corruption Bureau (PCCB) to supply them with our contracts entered into in Tanzania and also appear in person before them. Is this not the police's job and is it mandatory for our CEO to appear? These contracts are confidential and we cannot disclose them. Please guide us.

4 September 2017

The PCCB is established under the Prevention and Combating of Corruption Act, which is a penal statute that deals with corruption matters. The PCCB is therefore independent from the police and specially empowered to investigate corruption matters.

Section 10 of this Act states that an officer

of the PCCB investigating an offence under this Act may: (a) order any person to attend before him to be interviewed orally or in writing on any matter that may assist the investigation of the offence; (b) order any person to produce any book, any document (or certified copy of the document) and any article which may assist the investigation of the offence; or (c) give written notice requiring any person to provide a statement on oath or affirmation setting out information that may be of assistance in the investigation of the offence.

Section 10 of the Act also states that, 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.

A plain reading of Section 10 above clearly allows any officer of the PCCB to demand any document. This Act therefore overrides any confidentiality clauses in your contracts and you must release these documents to the PCCB. If you do not cooperate or release the documents, you will be committing an offence and could face imprisonment.

Banker refuses to change 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?

25 December 2017

The replacement of torn notes is the prerogative of the Bank of Tanzania, which has the discretion to decide which torn notes to accept. For example, if you have both pieces of the note, then the Bank of Tanzania usually allows for the replacement of the banknote. We suggest you consult the Bank of Tanzania, which is a very efficient organisation and usually timely responds.

Section 29 of the Bank of Tanzania Act states that no person is entitled to recover from the Bank the value of any lost, stolen or imperfect banknote or coin, or the value of any banknote that has been mutilated or any coin that has been tampered with. Under the Act, the Bank may decide on any value that may be awarded to any person who presents to the Bank such a banknote, within its own discretion. A coin will be deemed to have been tampered with if the coin has been impaired, diminished or lightened, other than by fair wear and tear, or has been defaced by stamping, engraving or piercing, whether or not it has been diminished or lightened.

Name used as a director

A friend of mine wants me to act as a director in a company and says he will do everything for me, and is merely using my name to comply with the law. He has given me a letter stating that I shall never be liable for anything the company will do, notwithstanding that I am a director. This seems like a good arrangement, as I will get paid for the usage of my name. Should I proceed?

1 January 2018

You seem to be a rubber-stamp director only and hence I do not recommend that you enter into this arrangement. You could be liable in a number of ways and a mere letter cannot absolve you of this liability. You should not agree for this usage of your name unless you intend to act as a director as defined under the Companies Act.

Section 185 of the Companies Act states that a director owes the company a duty to exercise the care, skill and diligence which would be exercised in the same circumstances by a reasonable person who

has: (a) the knowledge and experience that may reasonably be expected of a person in the same position as the director; and (b) any special knowledge and experience which the director has.

Cross-border Trade, Mining Law, International Investments

Tanzania welcomes large-scale infrastructure investment, and has signed on to bilateral investment agreements and international investor-state arbitration mechanisms.

However, there are specific limitations and restrictions in place covering certain core parts of the economy, which may catch out the unwary.

In this chapter, we highlight some of the most important legal rules, (paying particular attention to recent changes), which both domestic and international investors should be familiar with.

We also explore the role of ICSID in international investor-state dispute arbitration, and the utility of bilateral investment treaties for Tanzania as a nation.

No exemptions, no investors

We have been approached by the government to undertake a large project in Tanzania. It is a solicited bid, and we are ready to go ahead with tendering if required. The problem we face is that every day we read in the papers reports by agencies on how much Tanzania is losing on exemptions. We have not read a single story on how exemptions have managed to attract investment into the country and benefitted Tanzania. Recently we saw the Minister responsible for such exemptions actually not wanting to grant them at all, for fear that such exemptions will backfire on her in the future. How can Tanzania remain competitive in the international arena if there is so much fear of granting waivers for genuine projects that have a broader benefit to the economy? How should we go about this?

19 January 2015

Unfortunately, Tanzania granted exemptions to individual companies that misused them and genuine companies, like yourselves (we hope), are suffering from this taboo. It is true that without granting of tax exemptions, it is hard to attract investments in any country. Even the developed world continues to grant exemptions or waivers to companies to attract them to invest. Our research reveals that all the 52+ countries in Africa grant exemptions.

We suggest that apart from applying to the Ministry of Finance, you need to meet the top leadership for them to understand the project and its multiplier effect on the economy. Notwithstanding the adverse reports, the government is still granting exemptions where required, and correctly so. We have noticed that this exemption outcry has indeed, and sadly so, reached a stage where investors are not comfortable with bringing big money into the country.

Prospecting without licence

I have a small farm in Western Tanzania which I visit every few weeks. My neighbour has found some rare minerals in his piece of land next door and I wish to start digging my own land to look for the same mineral. Can I do so without having a licence?

9 February 2015

Under the Mining Act, it is illegal to conduct prospecting or mining operations without a valid licence.

Section 6 of that Act states that, under sub-section (1) "No person shall, on or in any land to which this Act applies, prospect for minerals or carry on mining operations except under the authority of a mineral right granted or deemed to have been granted, under this Act."

Section 6(2) allows for geographical mapping of potential mining land, rather than prospecting. Breaches of the Act are criminal offences. If convicted under Section 6(1), individuals may be fined up to TZS 5 M, or up to three years' imprisonment, or both. Companies are liable to even stricter penalties of TZS 50 M or more. In both cases, any minerals obtained by illegal prospecting, and related machinery and equipment, shall be forfeited to the state.

The offence is so serious that it is listed under the Economic and Organised Crimes Act meaning that if arrested, getting bail will also be very difficult.

Prospecting licence holder obligations

I applied for and was granted a Prospective Licence (PL) but unfortunately I have not found a partner to develop my site. Does that put me in default? Is there no special clause that allows Tanzanians to keep the licence until I find a partner?

16 February 2015

Any PL holder, whether he is a Tanzanian or not is bound by Section 36 of the Mining Act 2010 which states the following: (1) The holder of a prospecting licence shall (a) commence prospecting operations within a period of three months, or such further period as the licensing authority may allow, from the date of the grant of the licence or such other date as is stated in the licence on commencement period; (b) give notice to the licensing authority of the discovery of any mineral deposit of potential commercial value; (c) adhere to the prospecting programme appended to the prospecting licence; and (d) expend on prospecting operations not less than the amount prescribed. (2) A person who (a) contravenes any provision of subsection (1), shall be in default; (b) makes false statement or presentation to the licensing authority regarding the obligations of the licensee under subsection (1) commits an offence, and on conviction is liable to a fine of not less than TZS 20 M.

If you are in default, your licence can be cancelled as not having found a partner is not a defence for failing to start prospecting operations.

Primary mining licence acquisition

We are foreigners and have acquired Primary Mining Licences (PMLs). We intend to develop the area and then apply for a mining licence. Although we managed to get the transfers done, we have learnt that the PMLs cannot be owned by non-Tanzanian entities. Is there a way we can cure this?

2 March 2015

Unfortunately you cannot cure this as the Mining Act 2010, which governs PMLs, is very strict. The relevant law is set out in Section 8(2) of the Act. This makes it clear there are nationality requirements which apply, whether to individuals, partnerships, or companies. In each case, they must be Tanzanian citizens, or in the case of a company, the membership, directors, and control (both direct and indirect) of the company must be Tanzanian.

Section 8(2) states that 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.

We believe that the Ministry has allowed this transfer in error meaning that you do not legally hold the PMLs. It is advisable that you get a Tanzanian entity to hold these PMLs for you whilst you apply for a ML. The Ministry is supposed to be pro mining and any conversion of a PML to a ML is always welcome.

We also caution you to approach this unwinding process with care as sometimes when you voluntarily provide information your problems escalate even further. Your lawyer should be able to guide you.

PSAs always under threat

We are players in the oil and gas sector in Tanzania and always hear of threats being made against the international oil and gas companies in that their Production Sharing Agreements ("PSAs") would be taken away or terminated and we should be removed from working in Tanzania because the PSAs are one sided. Is this the Government's policy as most of us have not yet even started production? Can changes be done by the Government to the PSAs?

4 May 2015

You must realise that apart from these being binding agreements, PSAs have the force of law under the Petroleum (Exploration and Production) Act of 1980. It is trite law that contracts should be abided with. One cannot unilaterally change an agreement, and any threats that you receive should be referred to arbitration.

Whether or not the PSA is good or bad, should the Government decide to do anything unilaterally, it will give rise to a cause of action. You can then sue for damages. The size of these damages would be severe, and we believe it would send a wrong signal to investors. Our opinion is that this is not the position of the Government.

Furthermore, the Tanzania Investment Act provides full protection against expropriation. Any attempts to change your PSA unilaterally will have severe repercussions for Tanzania as an investment destination.

Development licence for petroleum

If I am able to tell, without conducting exploration, that a certain area has petroleum, can I directly apply for a development licence for that area.

8 June 2015

As provided for under Section 35 of the Petroleum (Exploration and Production) Act (PEPA Act), you can make such an application. However, that area should not have an existing exploration or development licence and the Minister must be convinced that your "psychic" skills are real and not illusionary.

Companies spend billions of dollars in exploration to get to development if they find a discovery. If you are able to do this without having to conduct exploration, your skills can make you one of the richest persons on earth.

For your reference, Section 35 states the following:

A registered holder of an exploration licence whose licence is in force in respect of the blocks that constitute a location may, within two years after the date on which the blocks were declared to be a location, or such further period as the Minister allows, make application for the grant of a development licence in respect of such of the blocks as the holder satisfies the Minister contain a petroleum reservoir or a part of a petroleum reservoir. (2) registered holder of an exploration licence may, during the term of the exploration licence, make application for the grant of a development licence in respect of any block or blocks within the exploration area (a) if he satisfies the Minister that the block contains or the blocks contain, as the case may be, a petroleum reservoir or part of a petroleum reservoir; and (b) if the block does not or the blocks do not, as the case may be, at the time of the making of the application constitute a location. (3) A person who is not the registered holder of an exploration licence in respect of the block or blocks may make application for the grant of a development licence in respect of a block or blocks (a) if he satisfies the Minister that the block contains or the blocks contain, as the case may be, a petroleum reservoir or part of a petroleum reservoir; and (b) if the block is not a block or the blocks are not blocks, as the case may be, in respect of which an exploration licence or a development licence is in force at the time of the application.

The PEPA Act further provides under Section 38 conditions for the granting of a development licence. It states that: no development licence shall be granted to an applicant unless 1(a) the proposals of the applicant will ensure the most efficient beneficial and timely use of the petroleum resources concerned; (b) the applicant has adequate financial resources, and technical and industrial competence and experience

to carry on effective production operations; (c) the applicant would be able and willing to comply with the conditions on which the licence would be granted; (d) the applicant's proposal for the employment and training of citizens of Tanzania are satisfactory; (e) any relevant right given pursuant to Section 23 (2) has been exercised and given effect to or that satisfactory arrangements have been made for that purpose, or the right has been waived; and (f) the applicant is not default.

(2) The Minister shall not refuse an application for the grant of a development licence on a ground referred to in subsection (1) unless he has (a) given notice to the applicant of his intention to refuse, to grant the licence on that ground (giving particulars); (b) specified in that notice a date before which the applicant may make appropriate proposals to remove the ground for refusal or, as the case may be, remedy the default, or, make representations in relation thereto, and the applicant has not, before that date (i) given notice to the Minister containing proposals or representations which the Minister accepts; or (ii) as the case may be, remedied the default.

One critical element in the oil and gas industry is having the financial and technical capacity, in addition to adequate experience, to carry out such operations. You will not qualify for a development licence if you do not have all these. For example, drilling a well, which is not too dissimilar from going to the casino and playing billiards, costs hundreds of millions of dollars, which can end up being, sunk costs if the well is dry.

It is one of the riskiest businesses in the world, and much as there have been discoveries in Tanzania, not all companies have had discoveries and those that have had them, have taken huge risks to reach the stage they are at today.

VAT Act impact on PSAs, MDAs

Our company has invested billions of dollars in Tanzania and with the new VAT Act, a number of the provisions in our PSA are affected making us worse off. There are new provisions that were not in existence at the time of signing of the PSA. What can we do to address this situation?

3 August 2015

It is well known that both oil and gas and mining exploration projects are high risk projects and prone to more failure than success.

It is with that in mind that the Production Sharing Agreements (PSAs) for oil and gas companies and Mining Development Agreements (MDAs) for mining companies have fiscal stability clauses that clearly recognise this.

We have read the VAT Act and particularly Section 95 comes to the rescue of the oil and gas and mining companies as it grandfathers the PSAs and MDAS that the Government has already entered into.

Without capturing the relief granted to companies under PSAs and MDAs, which agreements are covered under their respective legislation and binding on the government from a contractual point of view, would have led to massive litigation.

This was taken into account by parliament when enacting the VAT Act and we do not see where you are offended as a company.

Section 95(1)(b) of the VAT Act clearly states that "where the Government of the United Republic… has concluded a binding agreement relating to exploration and prospecting of minerals, gas or oil with a person before the commencement of this Act, the provisions of the repealed Act relating to value added tax relief shall continue to apply to the extent provided for in the agreement."

Therefore, whatever benefits you were

getting under the old Act that were provided for in the respective agreement will continue to be enjoyed by you.

The challenging part, perhaps, is if something in the agreement was not provided for under the old VAT Act, then it is likely not provided for under this new Act.

If that is the case, we recommend you take this up with the Ministry of Finance.

If all intervention fails, and you are worse off than you would have been had the law not changed, then you can proceed to invoke the dispute resolution clause under the PSA, provided there is a fiscal stability clause in your PSA.

VAT exemption under new Act

About a decade ago our company entered into an agreement with the government for the exploration and then mining of certain minerals. The agreement provided for exemption on VAT which had the force of law as the VAT Act also had such a provision. My reading of the new VAT Act is that not all VAT is exempt. My question is what will prevail the agreement that the company entered into, upon whose reliance the company invested, or the new VAT Act which doesn't fully allow the company to enjoy the exemption? Can the government change the law to disrespect an agreement it signed?

21 September 2015

The VAT Act 2014 has provisions that ensure that any VAT exemption for companies like yourselves that you enjoyed under the old VAT Act and which exemptions were concluded through a binding agreement are respected and you will continue to enjoy such benefit.

This is provided in Section 95(2) of the VAT Act 2014 which states "the Value Added Tax Act is hereby repealed. Notwithstanding subsection (1)(a) regulations, rules, orders or notices made under the repealed Value Added Tax Act and in force shall continue to be in force until they are revoked, amended or cancelled by regulations, rules, orders or notices made under this Act; (b) where the Government of the United Republic has concluded a binding agreement relating to exploration and prospecting of minerals, gas or oil with a person before the commencement of this Act, the provisions of the repealed Act relating to value added tax relief shall continue to apply to the extent provided for in the agreement;

This is further reinforced by Regulation 33 of the Value Added Tax (General) Regulations, 2015 which states that subject to Section 95(2) of the VAT Act(a) an application by a person for value added tax relief which falls within an agreement relating to exploration and prospecting of minerals, gas or oil made before the commencement of this Act.

The Government has stated on numerous occasions that binding agreements it enters into are respected.

In a globalised economy, and where there is intense competition to attract foreign direct investment, the Government cannot afford not sticking to terms of agreements it enters into.

Banning of food exports

Can the President ban exports of any food items to nearby countries? Is this not unfair on businesses that were transacting with such countries?

28 September 2015

You will appreciate that any leader must first look at the interests of his or her own country. Banning exports of food items including maize, flour and the like has been carried out on several occasions to ensure the food security of the people of Tanzania.

To support the above, the Emergency Powers Act gives the President, or someone to whom he delegates the authority, the power to control the production, exportation, importation or supply of any commodity, water or electricity in any emergency area, if it is deemed necessary for public advantage.

The Act also provides for the way in which this must be done.

This Act is a special law that allows the President to use certain powers for the purpose of ensuring public safety and maintenance of public order during emergencies and for connected matters.

Emergency is defined in this Act and includes war, invasion, insurrection, whether real or apprehended or a breakdown of public order, which in the opinion of the President is a threat to the security of the United Republic.

It also provides for controls in the cases of riot or other disaster or a natural calamity, whether caused by natural causes or otherwise, which could achieve such a serious nature as to be of national concern.

Cessation of business by foreign company

We are a foreign company in Tanzania supplying the mining sector and have encountered intolerable amounts of bureaucracy, or red tape. We have to go to multiple bodies for multiple approvals and there is no interdepartmental communication within the government. Overall the investment climate has deteriorated and it is clear to us that Tanzanians don't want foreign investment. We are a branch office under a certificate of compliance and wish to close our office in Tanzania. How do we go about this?

12 October 2015

It is sad that you encountered such challenges. We suggest you contact the Tanzania Investment Centre which may be able to assist as Tanzania has been welcoming investors to come invest here. It is a land of opportunities, but you are right, there have been, of late, a number of complaints against the amount of bureaucracy within Government departments.

As for the relevant law applicable upon cessation of business by a foreign company in Tanzania, the Companies Act caters for your queries.

Section 441 of the Companies Act provides a way forward and states that if any foreign company ceases to have a place of business in Tanzania, it shall immediately give notice in writing of the fact to the Registrar for registration and as from the date on which notice is so given the obligation of the company to deliver any document to the Registrar shall cease, and the Registrar shall strike the name of the company off the register.

Furthermore, where the Registrar has reasonable cause to believe that a foreign company has ceased to have a place of business in Tanzania, he may send by registered post to the person authorised to accept service on behalf of the company and, if more than one, to all such persons, a letter inquiring whether the company is maintaining a place of business in Tanzania.

If the Registrar receives an answer to the effect that the company has ceased to have a place of business in Tanzania or does not within three months receive any reply, he may strike the name of the company off the register.

Another point worth noting is that where the name of a foreign company is struck off the register, the foreign company must, within three months of the date of striking off, dispose of all land held by it in Tanzania by virtue of Section 435, and if any such land is held by the company at the expiration of

such period of three months, such land shall be deemed to be bona vacantia and shall accordingly belong to the Government.

Failure to comply with the foregoing, the company and every officer or agent of the company who knowingly and wilfully authorises or permits the default, shall be liable to a fine, or in the case of a continuing offence, a default fine.

Suppliers in oil and gas projects

Should suppliers to oil and gas companies must all be Tanzanian owned companies? Has the law changed so drastically? What if the expertise is not available locally and requires extensive capital?

22 February 2016

There is a new law, the Petroleum Act 2015 which has recently been enacted. Section 219 which is relevant states that (1) licence holders, contractors and subcontractors shall give preference to goods which are produced or available in Tanzania and services which are rendered by Tanzanian citizens or local companies. (2) Where goods and services required by the contactor, subcontractor or licence holder are not available in Tanzania, such goods and services shall be provided by a company which has entered into a joint venture with a local company. (3) The local company referred to in subsection (2) shall own share of at least twenty five percent in the joint venture or as otherwise provided for in the regulations.

You can see that preference is given to Tanzanian companies or companies that have a Tanzanian shareholding of at least 25% in a joint venture, or as provided for in regulations.

We have not seen such regulations and believe they have not been published yet, but if it is a capital intensive venture, then surely we would expect the regulations to provide for this. You can contact the Ministry of Energy and Minerals for more information.

Purchase of assets from Government

Our company is negotiating with a government entity in Tanzania for the purchase of assets owned by that entity. Does this require approval from your anti-trust authorities?

29 February 2016

Depending on what entity it is, it is likelier than not that approval for this transaction under the Fair Competition Act of Tanzania will be required notwithstanding that you are purchasing this from the government.

Section 6 of the Fair Competition Act states that (I) This Act shall apply to Mainland Tanzania, state bodies and local government bodies in so far as they engage in trade. (2) Notwithstanding the provisions of sub-sections (1), the State shall not be liable to any fine or penalty under this Act or be liable to be prosecuted for an offence against this Act. (3) For the purposes of this Section, without affecting the meaning of "trade" in other respects (a) the sale or acquisition of a business, part of a business or an asset of a business carried on by the State, a State body or a local government body constitutes engaging in trade; and (b) the following do not constitute engaging in trade: (i) the imposition or collection of taxes; (ii) the grant or revocation of licences, permits and authorities; (iii) the collection of fees for licences, permits and authorities; (iv) internal transactions within the Government, a State body or a local government body.

Exclusivity of the national oil company

I am intending to invest in the oil and gas sector in Tanzania. Am I free to sell the gas I extract to anyone in Tanzania that I wish at

whatever price I want?

25 April 2016

Unfortunately, if you are a new player, after discovery, you will likely come under the ambit of the Petroleum Act 2015 which has introduced, unlike its predecessor law the Petroleum (Exploration and Production) Act 1980, the concept of an aggregator.

Section 125 states that (1) The National Oil Company shall designate one of its subsidiaries to be the aggregator. (2) The aggregator shall have exclusive right to purchase, collect and sell natural gas from producers: provided that, the exclusive rights of the aggregator shall not extend to natural gas that is preserved for export purposes in the form of Liquefied Natural Gas. (3) the aggregator has to apply EWURA for a licence before exercising its rights under sub-section (2)(4) Notwithstanding the provisions of sub-Section (2), the producers may sell natural gas to any other person after obtaining consent from the aggregator.

You can see that the aggregator has the exclusive right to purchase gas from you and then to sell it in the local market. Aggregation is a big problem for many private players since the aggregator needs to have the financial muscle to pay for the gas, and at the same time should be able to pay a reasonable price through negotiation. Hence if you are unable to negotiate the price, you might never be able to sell.

The question of aggregation is a serious issue that can affect the development of downstream oil opportunities,the problem is under examination. One solution may be to remove exclusivity as it can lead to severe mismanagement and inefficiencies, which we have seen in the past.

Frustration in contract

I ordered wood logs from a country outside Tanzania and have paid more than USD 1.5M in advance to the supplier. The delivery period was over a period of 6 months and I have yet to receive even a single log. The supplier now says to me that after signing of the contract, the contract's performance became illegal as the country authorities banned the exportation of wood from outside that country. The suppliers say that since the contract is frustrated, they cannot refund me my money. What can I do to recover?

6 June 2016

Unfortunately, you did not tell us what country you are importing from, and the laws of what country apply to this contract. We assume it is a country which has adopted common law doctrines. If not, the answer below may change, as it may if the facts change.

Frustration is an English contract law doctrine, which acts as a device to set aside contracts where an unforeseen event either renders contractual obligations impossible or radically changes the party's principal purpose for entering into the contract. Before the formulation of this doctrine, it was not possible to set aside an impossible agreement after formation.

A case that is on the point that you may use in your favour to recover sums paid in advance is in the UK decision in Fibrosa v Fairbairn Lawson Combe Barbour. In this case, the House of Lords ruled in favour of Fibrosa. Fibrosa had lost their case in the lower Courts after having paid an advance to Fairbairn, which claimed that the contract was frustrated, and refused to refund the money.

To recover, you will need to look at the choice of law and dispute resolution clauses in the contract to see where you can sue.

ICSID trying to colonialise Tanzania

A new era of colonialisation has begun by the supreme powers in Tanzania with this new ICSID award against Tanesco. Do we need to comply with such international awards? Can we challenge it? How much should we, as Tanzanians, be worried about this award? Can we refuse to pay?

3 October 2016

Despite having a long list of other outstanding questions which have come prior to the above questions which we have consolidated, our team decided to take this up as it is a burning issue in the media.

ICSID stands for the International Centre for Settlement of International Disputes, which is one of the five organisations of the World Bank Group. .

The award made against Tanesco is as a result of an international bank having opened arbitration proceedings at ICSID.

These proceedings started some years ago and have now been concluded with the decision, called an award, being made against Tanesco to the tune of nearly USD 150M. The arbitration was conducted by three arbitrators, one appointed by each of the parties and the third arbitrator appointed by the two appointed arbitrators.

Although we have not seen the award, which has now been published, it seems that all the three arbitrators, including the one appointed by Tanesco, ruled in favour of the bank. This is a standard dispute resolution mechanism and you cannot under any circumstances call it a new era of colonialisation.

You must remember that as part of the global community, we do not live in isolation and Tanzania is a member state of the ICSID. An award of a Tribunal is binding on all parties to the proceeding and each party must comply with it pursuant to its terms. If a party fails to comply with the award, the other party can seek to have the pecuniary obligations recognised and enforced in the Courts of any ICSID Member State as though it were a final judgment of that State's Courts.

In short, unless the award is challenged with the limited challenge options noted below, Tanesco will have no choice but to pay up such funds, which answers your second question on whether we need to comply with it or not. As Tanzanians, considering that this is an exorbitant amount, we should indeed be worried if our challenge fails, as party to the ICSID convention we will be obligated to pay.

Your question on challenging the award is very interesting. The answer is yes, but the grounds of challenge are quite limited and the chances of succeeding depend on the grounds raised. The media reports state that all three, including Tanesco's own appointed arbitrator, ruled against Tanesco, hence to change this decision is not by any standards easy, however not impossible.

The following post award remedies are available to parties. Firstly, seeking a supplementary decision, or rectification of the award, this is usually applied in cases of clerical, arithmetical or similar error, or to pick up a question that the tribunal may have omitted to decide. In Tanesco's case, this did not apply.

They may also ask for interpretation of the award, as to the scope or meaning of the Tribunal's award. While no time limit applies to this, we believe that this is not what Tanesco will be intending to do.

They may choose to apply for revision of the award if the company discovers a new fact that could decisively affect that award. The new fact must have been unknown to the

Tribunal and the applicant when the award was rendered, and the applicant's ignorance of the fact cannot be due to negligence. This revision application must be made within 90 days after the discovery of the relevant new fact but within three years after the award was rendered. This revision entails the arbitrators reconvening, and the parties filing written submissions followed by oral presentations.

Tanesco will also likely make an application for stay of enforcement of the award pending any revision decision, which may take another 12 to 18 months depending on the basis of the revision.

The statistics available online on revision disclose that more revisions fail then succeed as the same arbitrator panel meets to reconsider matters that form part of the revision grounds. However, each case has its own strengths and weaknesses.

The parties may apply for an annulment. This is an exceptional recourse to safeguard against the violation of fundamental legal principles relating to the process. A party may apply for full or partial annulment of an award on the basis that the Tribunal was not properly constituted, went beyond its powers and was corrupted, did not follow rules of procedure or the award does not state proper reasons.

Finally, you must remember that the ICSID award is binding on all partner states and failure to pay amounts under such awards can lead to serious downgrading of the country's credit risk rating in addition to driving away international investors. Very few countries have ever defaulted, although we are aware that some South American countries actually withdrew from the ICSID.

Automatic right to foreign arbitration

We are a foreign investor having a dispute with the Government. We believed when we invested we had an automatic recourse to international arbitration. Our lawyer thinks otherwise. Please guide.

16 January 2017

Your lawyer is right. Unless the agreements, if any, that you entered into have a specific arbitration clause, there is no automatic triggering of arbitration, unless of course the Government agrees.

The Tanzania Investment Act states that a dispute between a foreign investor and the Centre or the Government in respect of a business enterprise which is not settled through negotiations may be submitted to arbitration in accordance with any of the following methods as may be mutually agreed by the parties, that is to say (a) in accordance with arbitration laws of Tanzania for investors; (b) in accordance with the rules of procedure for arbitration of the International Centre for the Settlement of Investment Disputes (ICSID), or as provided for under the framework of any bilateral or multilateral agreement on investment protection agreed to by both our Government, and that of investor's home jurisdiction, i.e. from where they originate from.

Therefore, in the absence of an arbitration clause in your agreements, you cannot automatically trigger foreign or local arbitration alone. The Government must agree.

Arbitration under local rules

Is it true that the Government in Tanzania cannot enter into agreements with foreign arbitration rules of procedures? If so, is the Government not in breach of the various international dispute resolution treaties it has signed?

27 March 2017

It is not true that the Government cannot

enter into agreements with foreign arbitration clauses.

Most of the large oil and gas production sharing agreements, and mining agreements provide for international arbitration under the London Court of International Arbitration in London and the Paris International Chamber of Commerce rules of procedure.

In fact the Tanzania Investment Act provides for arbitration between investors and the Government under local law, or rules of procedure of the International Centre for the Settlement of International Disputes, or under any bilateral or multilateral agreement on investment protection. You must differentiate between the arbitration venue, rules of procedures and the governing law as many parties end up confusing this.

The arbitration venue is the physical location of where the arbitration will take place. The Government tried to limit the use of foreign arbitrations outside Tanzania. However, it is for the parties to agree to the use of arbitration, not the state. The rules of procedures are the rules that the parties agree to adopt to enable the arbitration to proceed in an orderly manner.

Lastly, the governing law is the law that the parties agree to be bound to. When it comes to governing law, most contracts that the Government enters into are, understandably so, based on Tanzanian law.

Bilateral investment treaties

Why does Tanzania have bilateral investment treaties with certain countries when none of our companies invest in those countries? What is the main essence of having a bilateral treaty and how does it help the country? What if the host country needs to take over an asset in the interest of public policy?

29 May 2017

Depending on the drafting of the Bilateral Investment Treaty (BIT), such treaties are entered into between countries primarily for the promotion and protection of investments. They have clauses on how investments are to be made and automatically protect companies of such countries from expropriation and compensation for losses suffered in the country they have invested in.

Whilst it is true that we have entered into a number of bilateral investment treaties when our companies have not invested in those countries, you must note that these treaties also attract companies from outside the country to invest in Tanzania. Once signed, and once relied upon by foreign companies to come and invest, it is very hard for a state party to unilaterally terminate its obligations under a BIT.

Taking over an asset is also provided for in most BITs, be it expropriation or nationalisation, but this must follow due process of the law and be compensated adequately, fairly and quickly. In short, no takeover can be undertaken without full compensation making it a very costly affair.

There are BIT arbitrations that have run into billions of dollars' worth of compensation against state parties. Venezuela, amongst many other countries, have had to compensate billions of dollars for actions it took against various companies that had invested there and that were fully protected under BITs.

Review of agreements by new law

Our company entered into an agreement in the extractive industries with the Government nearly a decade ago. Our company has been diligently complying with each and every term of the agreement only to learn that there is a new law

that might open up the agreement for negotiations. What is this new law and how will it affect us? What is the process for such negotiations?

31 July 2017

It is true that there is a new law, the Natural Wealth and Resources Contracts (Review and Renegotiation of Unconscionable Terms) Act, 2017. This new law applies to agreements going forward, and, agreements that have also already been signed. It does have retrospective effect, which brings in the unpredictability that you have mentioned.

This law defines an agreement as any contract relating to extraction, exploitation or acquisition and use of natural wealth and resources.

Natural wealth and resources is defined as all materials or substances occurring in nature such as soil, subsoil, gaseous and water resources, and flora, fauna, genetic resources, aquatic resources, micro-organisms, air space, rivers, lakes and maritime space, including the Tanzania's territorial sea and the continental shelf, living and non-living resources in the Exclusive Economic Zone any other natural wealth and resources as the Minister may by notice in the Gazette prescribe which can be extracted, exploited or acquired and use for economic gain, whether processed or not.

All future agreements that the Government enters into now must be concluded in good faith and at all times observe the interests of the people of Tanzania.

The Act states that all agreements on natural wealth and resources must be reported in the next National Assembly sitting (within the first six days). If when the report is submitted, the National Assembly finds that the agreement contains unconscionable terms, it may, by resolution, advise the Government to initiate re-negotiation of the agreement with a view to rectifying the terms.

This means that even if a party signs an agreement after this law came into force, the National Assembly can still reopen it, notwithstanding that it was signed after enactment of this law.

This Act states that where the National Assembly considers that certain terms of an agreement on natural wealth and resources or the entire agreement are prejudicial to the interests of the people by reason of unconscionable terms it may, by resolution, advise the Government to initiate re-negotiation of the agreement with a view to rectifying the terms.

An unconscionable term is widely defined as any term in the agreement on natural wealth and resources which is contrary to good conscience and the enforceability of which jeopardises or is like to jeopardise the interests of the people.

You have not stated what kind of agreement you have. If it is a Mine Development Agreement (MDA) or a Production Sharing Agreement (PSA), and notwithstanding that it was signed before this new law came into force, if the National Assembly considers it to have 'unconscionable terms,' it may proceed to renegotiate it.

After the National Assembly resolves that there is an unconscionable term in an agreement, the Government must within 30 days serve the other party a notice of intention to renegotiate such unconscionable terms and the notice shall state nature of the unconscionable terms and intention to expunge (remove) the term if renegotiation is not concluded within a specified term. This leaves very little room for renegotiation.

The Act provides, unless mutually agreed otherwise, for a maximum of 90 days to negotiate from date of service of the notice

after which the unconscionable term is automatically removed, whether negotiations are completed or not. This leaves agreements in vulnerable states and it is to be seen what the National Assembly will direct in the near future.

This new law also puts stabilisation clauses to test especially considering that the MDAs and PSAs were signed after having been provided for under their respective laws at the time they were signed.

The bottom line for agreements signed before the coming into force of this law will depend on whether or not the National Assembly will consider terms therein as being unconscionable.

Tanzania too lenient with foreign missions

We Tanzanians are having too much respect for these foreign embassies and High Commissions. They get tax exemptions, they use our VIP lounge, their bags are not searched at the airport, they cannot be charged and the list is endless. That is the reason we are not developing. How can this be stopped? If I am ever in charge, I will stop this the next day.

18 September 2017

Luckily you are not our President. And if you think like this, we hope you will not become our leader either. You are talking as if Tanzania is the only country in the world. You might want to look at the world map and see that there over 190 countries on it, most of which are signatories to an international treaty called the Vienna Convention on Diplomatic Relations. The Convention, signed in 1961, makes it mandatory for us to provide and protect certain privileges to these foreign missions.

The Vienna Convention is an international treaty that defines a framework for diplomatic relations between independent countries. It specifies the privileges of a diplomatic mission that enable diplomats to perform their function without fear of coercion or harassment by the host country. This forms the legal basis for diplomatic immunity. Its articles are considered a cornerstone of modern international relations.

As of February 2017, it has been ratified by 191 states. We take you through some of the key provisions of this convention, which we believe answers your query.

Article 22 states the premises of a diplomatic mission, such as an embassy, are inviolable and must not be entered by the host country except by permission of the head of the mission. Article 30 extends this provision to the private residence of the diplomats.

Further, article 24 establishes that the archives and documents of a diplomatic mission are inviolable. Article 27 states that the host country must also permit and protect free communication between the diplomats of the mission and their home country.

Article 29 states that 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 34 speaks about the tax exemption of diplomatic agents while Article 36 establishes that diplomatic agents are exempted from custom duties.

Lastly article 37 states that the family members of diplomats that are living in

the host country enjoy most of the same protections as the diplomats themselves.

All in all, there is not much you can do about such benefits – it is provided for under our law. We hope the above will change your mode of thinking.

Foreign company in Tanzania

I went to the business registry (BRELA) and was told that I could not register a company with majority shareholders who are foreign. I am quite shocked that Tanzania is still practicing such restrictive practice in business. What should I do?

13 November 2017

Registering a company with majority foreign shareholders is allowed in Tanzania. In fact Tanzania is inviting companies to come and 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 straightforward.

Borrowing from foreign bank

I am borrowing dollars 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.

25 December 2017

The law does not restrict people from borrowing money from foreign entities as long as those foreign entities are legally registered in the country they are operating from.

Our Foreign Exchange Rregulations mandatorily require all foreign loans to be registered with the Bank of Tanzania and for borrowers to obtain a debt registration number. You will be required to provide the Bank of Tanzania with the full details of the loan and the entity which is advancing money to you.

Unfortunately, without a debt registration number, you will not be able to remit the money back to the lender, hence the importance of such registration.

You will appreciate that this arrangement was introduced by the Bank of Tanzania 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 withholding tax on interest, and we recommend that you consult a tax expert to guide you on this.

Employment and Immigration Law

Many of us spend much of our waking 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.

Discrimination at work place

We get food during lunchtime but our bosses get dessert - which includes ice cream which we don't receive. Is this not discriminatory and a contravention of our employment laws?

26 January 2015

First you must be thankful that your office pays for the food during your lunchtime. Most companies in Tanzania do not have such a facility.

There are different categories of people in any office - there is the top management, who get more benefits than others in the company. This is normal not only in Tanzania but elsewhere in the world. It would be hard to have a company with only one level of management, and there is enough research to show that such companies will not perform.

Not getting ice cream is likely due to the company's policy of providing this additional benefit to senior management. We opine that this is likely not discriminatory. You should strive to get to senior management level with hard work, honesty and focusing on your core job rather than worrying about ice cream and dessert.

Immigration refusing to accept my citizenship

I was born in Tanzania about 50 years ago to Indian parents who had become citizens by then. I went to immigration for passport renewal some months ago and was told that since I am of Indian descent, notwithstanding that I am born in Tanzania, I would need to apply for citizenship. They said my passport was issued in error. Not only I am confused but I am flabbergasted at this. Can this be true? I have been now given forms to fill to apply for citizenship! Is this another way of extracting money?

20 April 2015

Our research reveals that this has now become an ongoing trend at the immigration department. Whether it is a money spinner or not, we are not able to answer. However, the law is clear. If you are born in Tanzania and your parent was (or is) a Tanzanian, you are automatically a Tanzanian. Your case is straightforward. In our opinion, the immigration department is wrong and you should get your renewal. You may take this up with the Minister.

Even if your parent, at the time, was not a Tanzanian but subsequently became Tanzanian, you will still be entitled to citizenship by birth. The law is clear on this.

Bags lost, can't sue

We are suppliers of various goods to an airline with whom I flew. Unfortunately my bag was lost and my boss has told me that I should not pursue the airline otherwise I will be fired by him. Is this legal? How much should I be compensated for this loss?

11 May 2015

It is illegal for your boss to fire you because you lodged a complaint against the airline. In our employment laws, there needs to be a valid reason and the right procedure must be adhered to before one can be terminated from employment. In your case your bosses would not have a valid reason.

We also don't see why you should not claim. In any case, there is a limited amount that you will be able to recover from the airline. The rest you will either have to bear yourself or claim from your insurance if you had travel insurance. Alternatively you can ask your boss to compensate you.

Gave evidence, now fired

I went to Court to give some evidence. I said exactly what I knew as my boss did not properly brief me on the issues. This ended

up getting the boss an imprisonment or fine sentence, and he obviously paid the fine. Two weeks later, I was suspended from work because my testimony was against the boss. Is there no law that protects me? I was not intending to hurt my boss but the way questions were put to me by the public prosecutor, I really could not lie without making it obvious. What are my rights?

25 May 2015

You have been suspended meaning that you are still being paid a salary. If you have been terminated, then we believe that the employer must have a reason and must follow the right procedure. If either is not followed, then an employee is entitled to get a salary of minimum 12 months.

We have also interestingly come across a provision in the Penal Code that makes such suspension a contempt of Court and your boss can be sentenced to prison for this. Section 114(g) of the Penal Code states that any person who dismisses a servant because he has given evidence on behalf of a certain party to a judicial proceeding is guilty of a misdemeanour, and is liable to imprisonment for six months or to a fine not exceeding TZS 500.

Want to become a citizen

I married a foreigner and moved to his country where I became a citizen there. After ten years of marriage, we divorced and I have now come back to Tanzania, and want to become a citizen of Tanzania. Am I allowed to revert to my original citizenship? My consultants say that because I dumped my previous citizenship, I now cannot become a Tanzanian citizen. What should I do?

1 June 2015

Section 13 of the Citizenship Act provides for exactly such a scenario and states the following:

13.(1) If any citizen of the United Republic of full age and capacity makes a declaration in the prescribed manner renouncing his citizenship of the United Republic, the Minister may cause the declaration to be registered and upon that registration the person in question shall cease to be a citizen of the United Republic. (2) The Minister may refuse to register any declaration referred to in subsection (1) if it is made during any war in which the United Republic may be engaged or if, in his opinion, it is in any other way contrary to public policy; but notwithstanding the refusal of the Minister, the person concerned shall cease to be a citizen of the United Republic at the time prescribed under this Act.

(3) Notwithstanding anything in this Act or any other written law to the contrary, any woman who is a citizen by birth of the United Republic who renounces her citizenship of the United Republic upon getting married to a citizen of another country may, where the marriage breaks down, revert to her citizenship by birth of the United Republic on such conditions as the minister may, by regulations published in the Gazette impose.

Section 12(3) allows you to once again become a citizen of Tanzania. Issues of dumping or otherwise are not an issue and unless you have withheld information from us, your consultants are misguiding you.

Termination procedure when employee dies

We are a foreign company in the supply chain services in the oil and gas industry. Our question is what procedure should we adopt after one of our local employees passes away? Is there any termination

procedure? The deceased's contract was to expire in 1 year's time . Please guide.

15 June 2015

The labour laws expressly provide that a contract of employment may be terminated automatically in certain circumstances such as death or loss of profession of the business (sequestration) of the employer.

With death, the only issue remaining is to effect payment for terminal benefits of the deceased to his estate. This amount can only be ascertained by examining terminal benefits in the deceased employee's contract of employment. We further advise you to make these payments to the legal representative of the estate of the deceased who shall in turn ensure that all true heirs of the deceased are paid.

A legal representative is normally appointed by a Court with competent jurisdiction through either grant of letters of administration or grant of probate. Your legal advisor can guide you further.

Boss refuses dog in office

I was working outside the country and recently arrived to work in Tanzania. I have a pet dog who is very close to me and part of my life. However, my boss does not allow me to bring my dog with me to the office. Is this proper under Tanzania labour laws? I feel like it is unfair and discriminatory to my dog?

15 June 2015

It is the employer who controls the work place. We understand that each work place has its own manners of controlling matters like attire, behaviour and manner of conduct to mention a few. The Tanzanian labour laws also allow employers to implement disciplinary policies and procedures that establish the standard of conduct required of their employees.

Apart from being abnormal going to work with your dog, who cannot help you in any way, we find it hard to understand where the dog would be stationed whilst you are working. Imagine the chaos if a policy was to be implemented allowing dogs and other pets at the workplace. Much as this is not what you want to hear, we believe your boss has full justification to disallow your dog.

Tanzanian against Tanzania

I live and work in North America and have noticed that one Tanzanian I know is always against whatever is done in Tanzania. There is nothing positive he says about our country. Can a person's citizenship be revoked if that person is always against the interests of Tanzania?

6 July 2015

We are unsure what exactly he is saying against the country. If he is merely being critical of certain issues, we don't see how his citizenship can be revoked. Tanzania is one country in Africa where, to a large extent, freedom of speech is reasonably well respected and allowed.

Notwithstanding the above, the Tanzanian Citizenship Act has provided a Section 15(2) that deals with your concerns. It states as follows:

(2) Subject to the provisions of this section, the Minister may by order deprive of his citizenship any citizen of the United Republic who is a citizen by naturalisation if he is satisfied that that citizen:

(a) has shown himself by act or speech to be disloyal or disaffected towards the United Republic; or (b) has, during any war in which the United Republic was engaged, unlawfully traded or communicated with, any enemy or been engaged in or associated with any

business that was to his knowledge carried on in such a manner as to assist an enemy in that war; or

(c) has, within five years after becoming naturalised, been sentenced in any country to imprisonment for a term of not less than twelve months, or

(d) has been ordinarily resident in foreign countries for a continuous period of five years and during that period has not registered annually in the prescribed manner with a United Republic consulate or by notice in writing to the Minister, indicated his intention to retain his citizenship of the United Republic.

(3) The Minister shall not deprive a person of citizenship under this section unless he is satisfied that it is not conducive to the public good that that person should continue to be a citizen of the United Republic.

(4) Before making an order under this section, the Minister shall give the person against whom the order is proposed to be made notice in writing informing him of the ground on which it is proposed to be made and of his right to an inquiry under this section.

(5) If that person applies in the prescribed manner for an inquiry, the Minister shall refer the case to a committee of inquiry consisting of a Chairman, being a person possessing judicial experience and such other members as he thinks proper, appointed by the Minister.

You will note from the above that the Minister for Home Affairs has powers to strip off the citizenship of such a person but depending on what exactly he or she is saying and doing. You may also note that a person may also lose his or her citizenship if he or she has lived away from Tanzania for 5 years without registering their names at the Tanzanian consulate overseas.

Don't like passport photo

I was lawfully issued with a passport five years back. However I feel that the photo used in the passport is not pleasing at all as I am a lot prettier now than before. Can I apply for the passport to be reissued again? Please help me.

13 July 2015

Issuance, control, cancellation of passports and travel documents as well as other incidental matters thereof are governed by the Tanzania passports and Travel Documents Act. The aforesaid law provides for why, when and how one can re-apply for a new passport. On the other hand, the Act caters for provisions on replacement of passport.

Coming back to your question, we are convinced that the mere fact that you have become prettier is not sufficient grounds to persuade the Director of Immigration Services to issue a new passport to you. Among the covered instances under the said Act where a new passport can be issued includes when the passport has expired or where the passport cannot be renewed further. More so, where a passport is full or damaged in such a way that it requires to be replaced, the holder of such passport may apply for a new passport.

At this stage it is very difficult for you to disown your passport photo. We recommend you contact the immigration department who can guide you further.

Strong perfume at workplace

I understand that it is now unlawful to smoke in public but there is another forgotten ill-behavior of people using strongly scented perfumes in public places. For instance in our work place some of my colleagues are used to applying

strong perfumes with a choking smell. As an administrator I have been sending these employees home. This is because the perfumes are causing nausea and make other employees sneeze. Some of these employees are saying my actions contravene labour laws and are discriminatory. Is this correct? Is there a law to prevent such scents at the work place? If not, can this law be enacted? Please guide.

13 July 2015

Provisions of the Tanzania labour laws mandate the employer to control work relations for the purpose of harmonising the workplace. The labour laws do not allow employers to discriminate against employees, instead they require employers to promote equality of opportunity and treatment in employment. Taking affirmative action measures to ensure the interest of employees are harmonised is not discrimination.

Imagine how chaotic and unfriendly the workplace would be if every employee starts to suffer a headache and nausea just because of a co-worker's perfume. We think a problem like this can be well managed by the employer through counselling the employees on the problems caused to fellow employees.

We are unaware of any further specific law which prohibits use of perfumes in Tanzania. As for enactment of the law, we think you can take this up with the responsible minister and/or your member of parliament and if at all viable, legislative process may be initiated. However, the government has other priorities and enacting a law on how to use perfumes is surely not one of them.

Law governing dress code in Tanzania

I have secured a contract with a large company for a position in Tanzania and wish to know if there is a law governing dress code. I am informed that there are very strict laws on what to wear, for example women are forbidden to wear trousers. Is that correct? Is it legal to get drunk in Tanzania?

10 August 2015

There is a no specific law which dictates the public on what to wear.

Traditions and customs in Tanzania require people to dress in a decent manner, as is the case in most other jurisdictions.

There however are codes of conducts in some workplaces where guidelines on dress codes are given.

For instance, public servants have their own guidelines on dress code and cannot wear short or tight skirts, see through dresses, baggy musician type pants, jeans to mention a few.

The same applies to learning institutions and religious institutions. There is no law that we are aware of that forbids you from wearing trousers in Tanzania.

Since you are joining a company here, your local staff can further guide you on the dos and dont's of dressing.

As for drinking and getting drunk, our research shows that getting drunk is not an offence but what you do when you get drunk is. For example: driving, boarding a plane, and perhaps even walking a street where you may cause an accident are offences.

On the other hand, for public servants, code of ethics and conduct for the public service dictates that out of office, an employee will conduct his/her personal life in such a manner that it does not affect his/her services or bring the Public Service into disrepute.

He/she is therefore required to refrain from becoming drunk, using narcotic drugs and any other unacceptable behaviour.

No lunch break in bank

I work for a bank in Dar and my MD says I should have my lunch whilst sitting on my cash counter so that I can continue working. Is this legal as I am not really taking a break?

24 August 2015

The Employment and Labour Relations Act clearly states in Section 21 that (1) an employer shall give an employee who works continuously for more than five hours a break of at least 60 minutes.

(2) An employer may require an employee to work during a break only if the work cannot be left unattended or cannot be performed by another employee.

(3) An employer shall not be obliged to pay an employee for the period of a break unless the employee is required to work, or to be available for work, during the break.

From our reading of the above, you can occasionally work during your lunch break and only if the work cannot be left unattended or performed by another staff.

The law also states that for such time you put in you should get paid.

Employer prohibits going home for lunch

I work in a company where we get a one hour lunch break every day. At times lunch is served in the office. Recently the HR manager has distributed a circular that prohibits employees from going home for lunch. Is this legal?

7 September 2015

The Employment and Labour Relations Act provides for a one hour lunch break and does not state where the employee should take her/his lunch.

We think the circular issued has no legal basis unless there are other convincing reasons you have not disclosed.

So long as an employee does not exceed the time for lunch, that is one hour, we feel the employee is at liberty to choose where to go for lunch.

If you are taking more than an hour for lunch, then the employer has all the right to such a refusal. You may raise this with your trade union and/or management for their consideration.

Trafficking in women

There is a group of men in Tanzania who are involved in the trafficking of poor women from Asia, who are promised jobs here, but end up being forced into prostitution. Is this allowed? How can immigration be issuing work permits to such persons?

28 September 2015

The Anti Trafficking in Person Act has a special section devoted to this offence which is termed severe trafficking in persons.

Section 6 states that severe trafficking in persons shall be considered to exist if the adoption is effected for the purpose of prostitution, pornography, sexual exploitation, forced labour and slavery, involuntary servitude or debt bondage.

If convicted of severe trafficking, the person can be fined up to TZS 150 M or imprisonment of up to 20 years, or both. If you have such information you are advised to report this to the police.

Notification of workplace accidents

I own a big workshop and consult for engineering works in the oil companies. Last month, one of our employees was unfortunately involved in an accident and got seriously injured. We assisted this fellow with his treatment but although he has recovered he is now disabled. As a

good gesture, we paid him a large sum as compensation and retained him but in a different position. Strangely, as a managing director I have been recently summoned to appear before the labour officers who are saying I have contravened the law for not reporting the accident. Are they correct?

19 October 2015

The Accidents and Occupational Diseases (Notification) Act [CAP 330 R.E.2002] under Section 3 provides that where any accident arising out of and in the course of the employment and causes loss of life to such worker or disables such worker for at least three consecutive days from earning full wages at the work at which he was employed at the time of such accident, a written notice of the accident, in the prescribed form, and accompanied by the prescribed particulars shall as soon as practicable be sent by the employer to the labour officer for the area within which the accident has occurred.

Provided that: where to the knowledge of the employer, the accident has been reported or notified pursuant to the provisions of any other law and the written notice or report required by that law complies substantially with the prescribed form and contains the prescribed particulars, the employer shall be deemed to have notified the accident in accordance with the provisions of this Act.

Also, where any accident causing disablement has been notified under this law and after such notification the accident results in the death of the person disabled, notice in writing of the death shall be sent by the employer to the labour officer for the area within which such accident has occurred as soon as the fact of the death comes to the knowledge of the employer.

This law has further stated that failure to comply with the notification is an offence and any person who commits an offence under this law for which no special penalty is provided by this Act is liable to a fine of TZS 500,000 or to imprisonment for three months, or to both such fine and imprisonment.

It is also important to take notice that under this law, if an offence is committed by a company or other body of persons is proved to have been committed with the consent or connivance of, or to have been facilitated by any neglect of the part of any: director, president, chairman, manager, secretary or other officer of the company or body of persons, shall be deemed to have committed an offence and is liable to be proceeded against individually and punished accordingly.

After reading the above you will appreciate that since you have not complied with the law, the labour officer is right in summoning you.

You should push to pay a fine otherwise the alternative is to go to jail.

Company secretary confusion

Our company always appoints a person from the legal department as a company secretary. In the last 12 months, we have lost all our legal team members and are finding it tedious having to change company secretaries all the time. What options do we have? How can we bind the employees as we do not wish to change company secretaries whenever they leave us?

26 October 2015

Your employee is an employee and not your spouse. You cannot bind an employee to stop them leaving your organisation.

All you can do is have a notice period that the person must provide before leaving.

The permanent solution is to appoint a company that specialises in such secretarial work to act as your company secretary.

That will get rid of your problems as it will

not be an individual. The Companies Act also allows such an appointment of a company to act as secretary.

Pornographic material on email

We have some managers in our office who forward very obnoxious and pornographic material on email. It is against company policy but they use their private emails to forward these. I have also started receiving these ridiculous emails. Is this not an offence?

26 October 2015

Apart from other penal statutes that address pornography, the recently enacted Cyber Crimes Act provides an answer under Section 14 of that Act.

The Act provides that (1) a person shall not publish or cause to be published through a computer system or through any other information and communication technology: (a) pornography; or (b) pornography which is lascivious or obscene. (2) A person who contravenes subsection (1) commits an offence and is liable on conviction, in the case of publication of: (a) pornography, to a fine of not less than TZS 20 M or to imprisonment for a term of not less than seven years or to both; and (b) pornography which is lascivious or obscene, to a fine of not less than TZS 30 M or to imprisonment for a term of not less than ten years or to both.

Section 23 of the same Act further adds that (1) a person shall not initiate or send any electronic communication using a computer system to another person with intent to coerce, intimidate, harass or cause emotional distress.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of not less than TZS 5 M or to imprisonment for a term of not less than three years or to both.

It does not matter whether these employees are the originators of the pornographic and other e-mails or not.

Simply forwarding such material is an offence and one that can attract both a fine and imprisonment. We suggest you inform them of the above and if this e-mailing behaviour does not stop, report them to the police who can take appropriate action.

They must be reminded that pornography in Tanzania is prohibited.

Surety for my boss

I am standing surety for my boss who has been criminally charged. I wish to remove myself from being his surety. Can I do so? Can I be fired for such withdrawal?

2 November

The Criminal Procedure Act allows a surety to withdraw. You need to make an application to the Magistrate, which you can do orally.

On such application being made the Magistrate shall issue a warrant of arrest directing that your boss be brought before the Court.

Your boss will have a chance to replace you with someone else as a surety, otherwise he will be sent to remand prison pending satisfaction of a surety.

It might be wise to inform your boss beforehand that you intend to withdraw from being his surety to allow him prepare another surety.

As for your employment, just because you removed your name as a surety to a manager, it would be no grounds for your boss to fire you. If he does, it would be an unfair termination.

Dual citizenship in Tanzania

Is dual citizenship allowed in Tanzania? I went to university outside Tanzania and have now gotten my foreign passport but am also carrying my Tanzanian passport. Can I continue to do so? What is my legal status now? If my child is born in Tanzania when I have such dual citizenship will my child be a Tanzanian?

16 November 2015

The Tanzanian Citizenship Act disallows dual citizenship. There were strong rumours that dual citizenship would soon be allowed but that has not happened. Now that you have acquired another country's citizenship, under our immigration laws you cease automatically to be a citizen of Tanzania. Hence holding a Tanzanian passport now that you have a foreign passport is illegal.

As for the nationality of your child, this will depend on the nationality of the mother since you are already not a Tanzanian (although you have the passport). If the mother of the child is Tanzanian, then the child will be entitled to a Tanzanian citizenship, but not otherwise.

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 kg 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?

23 November 2015

Police General Orders (PGOs) dictate police behaviour in general. The procedure used for recruitment of police officers is prescribed under the Police General Orders 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 in 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 PGO 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 him.

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.

Minimum age for child to work

I live in an area where there are many children who can work in my project but I am told they cannot work. Is that true?

14 March 2016

A child, as defined under the Law of the Child Act 2009 has the right to do light work. The minimum age for employment or engagement of a child shall be fourteen years. Light work constitutes work which is not likely to be harmful to the health or development of the child and does not prevent or affect the child's attendance at school, participation in vocational orientation or training programmes or the capacity of the child to benefit from school work.

As long as the child is 14 years old, and is involved in light work as defined above, you can employ such a child.

Work permits in Tanzania

How does the work permit process work? What is the difference between a work permit and residence permit? Does one automatically follow the other? How many types of work permits are there? Is it now more difficult to get work permits?

21 March 2016

The Non-Citizens (Employment Regulation) Act 2014 came into effect on 15 September 2015. The Act regulates and realigns the legal regime for employment and engagement in other occupations by non-citizens. This law puts in place the Labour Commissioner to be the coordinating authority for proper issuance, cancellation and/or renewal of work permits.

There are five types of work permits Class A (Investor and Self-employed), Class B (Prescribed Profession such as Experts in Oil and Gas), Class C (other profession), Class D (religious or charitable activities) and Class E for refugees. The fees for each type of work permit differs and depends on which class you are applying for.

The Application is made to the Labour Commissioner and must be accompanied by a prescribed fee and relevant documents as specified in the law, after which you must apply for a residence permit from the immigration department.

The work permit will allow you to work while the residence permit from the immigration services department allows residency in Tanzania. Just because you have been issued with a work permit does not mean you qualify automatically for a residence permit. Without both co-existing you cannot work and live in Tanzania.

As for the difficulty, it is the intention of the government to reduce the number of expatriates employed in jobs that Tanzanians can do and hence getting a work and residence permit is not as easy as it used to be.

Compulsory HIV testing

The company I work for wants to conduct mandatory HIV testing on staff. Can I be forced to take an HIV test?

11 April 2016

The answer is no. You cannot be forced to do this test. Section 15 of the HIV and AIDS (Prevention and Control) Act states that (1) Every person residing in Tanzania may on his own motion volunteer to undergo HIV testing. (2) A child or a person with inability to comprehend the result may undergo HIV testing after a written consent of a parent or recognised guardian. (3) A person shall not be compelled to undergo HIV testing. (4) Without prejudice to the generality of subsection (3), no consent shall be required on HIV testing (a) under an order of the Court; (b) on the donor of human organs and tissues; and (c) to sexual offenders.

Hazardous work for pregnant woman

I am a technician in a company where I have been working for about four years now. Although the foreman knows that I am presently expecting and my due date is in the next two months, he has been assigning very hard jobs to me 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?

16 May 2016

We wish to point out that the Employment and Labour Relations rules provide clearly 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 and the foreman needs to desist from such behaviour.

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

On a different note if you expect to deliver in one month we wonder why you are still at work. The same law has given you an option of commencing your maternity leave any time from four weeks before the expected date. You may hence also ask your employer to start maternity leave. Your lawyers can guide you further.

Leave if child dies

I had a child and hence I was entitled to the standard maternity leave. Unfortunately my child died 5 months later and so I applied for another leave. My employer said that if I decide to take leave, I will be terminated. Is this leave not automatic? I am quite distressed. Please guide me.

30 May 2016

The Employment and Labour Relations Act states that an employee shall be entitled, within any leave cycle, to at least (a) 84 days' paid maternity leave; or (b) 100 days paid maternity leave if the employee gives birth to more than one child at the same time.

This law further states, an employee is entitled to an additional 84 days paid maternity leave within the leave cycle if the child dies within a year of birth, notwithstanding the above entitlement. Hence you are automatically entitled to an additional 84 days and your employer has no right to deny such a request or terminate your employment.

Trafficking in humans

I am quite concerned about my neighbour who seems to bring in ladies from all across East Africa and the Far East and keeps them in his house. I see men come in and out all the time. I bumped into one of the ladies at the kiosk where she was not supposed to visit but could do so as the owner was away. She told me that the owner promised jobs to them only to end up being exploited in Dar. Is this not an offence?

25 July 2016

Section 4 of the Anti Trafficking in Persons Act 2008 states that a person commits an offence of trafficking if that person recruits, transports, transfers, harbours, provides or receives a person by means, including those done under the pretext of domestic overseas employment, training or apprenticeship, for the purpose of prostitution, pornography, sexual exploitation, forced labour, slavery, involuntary servitude or debt bondage.

The description you provided quite clearly falls under the above and this is a serious offence that can incur the owner of up to 20 years imprisonment or a fine or both.

Want to become a citizen again

I married a foreigner and moved to his country where I became a citizen there. After ten years of marriage, we divorced and I have now come back to Tanzania, and want to become a citizen of Tanzania. Am I allowed to revert to my original citizenship? My consultants say that because I dumped

my previous citizenship, I now cannot become a Tanzanian citizen. What should I do?

10 October 2016

Section 13 of the Citizenship Act provides for exactly such a scenario and states the following:

13. (1) If any citizen of the United Republic of full age and capacity makes a declaration in the prescribed manner renouncing his citizenship of the United Republic, the Minister may cause the declaration to be registered and upon that registration the person in question shall cease to be a citizen of the United Republic.

(2) The Minister may refuse to register any declaration referred to in subsection (1) if it is made during any war in which the United Republic may be engaged or if, in his opinion, it is in any other way contrary to public policy; but notwithstanding the refusal of the Minister, the person concerned shall cease to be a citizen of the United Republic at the time prescribed under this Act.

(3) Notwithstanding anything in this Act or any other written law to the contrary, any woman who is a citizen by birth of the United Republic who renounces her citizenship of the United Republic upon getting married to a citizen of another country may, where the marriage breaks down, revert to her citizenship by birth of the United Republic on such conditions as the minister may, by regulations published in the Gazette impose.

Section 12(3) allows you to once again become a citizen of Tanzania. Issues of dumping or otherwise are not an issue and unless you have withheld information from us, your consultants are misguiding you.

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 that 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?

17 October 2016

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.

Restrictive clause in employment contract

I am a chef working in a leading Dar hotel. My employment contract states that I cannot work for any competitor for a period of 24 months nor can I open my own business for the same period. Recently due to the downturn in business I have been released from work and I got a job with another hotel. My former hotel has written to me that I should stop working in my new job or they will sue me and report me to the police. This is a very large and influential hotel owner but these are tough times and I need to survive. What should I do?

24 October 2016

There is nothing to worry about and you need not do anything. Even though you have signed the employment contract, the clause

in your contract specifying not being able to work elsewhere is illegal as it is in restraint of trade.

Of course, unless your former employer is willing to pay your salary for the 24 months when they expect you not to work elsewhere, which we doubt they will agree to, then this clause will not stand in a Court of law, and unless you have not given us other relevant information, you can state this to your former employer.

As for your former employer being large and influential, the law looks at all equally and this fact has no bearing on the matter. Continue your cooking!

Sitting place for guards

Do guards need to be provided places to sit? There is an awkward demand from our guards that they cannot be standing for the full time of their shift, something which our management finds hard to understand. Please guide us as we cannot allow such lethargy to exist.

10 April 2017

We would have very much liked to know what industry you are in and to understand the primitive thinking of your management. Perhaps your management should stand non-stop for 8 to 10 hours a day and get a feel of what it feels like standing all the time. We are also unsure how lethargy would 'exist' if your guards are seated as opposed to standing all the time. Your lack of empathy towards the guards raises a lot of ethical and legal questions.

Notwithstanding the above, the Occupational, Health and Safety Act provides that, as an employer, you must provide suitable seats to your workers, which includes your guards. Hence the demands by your guards are not unreasonable and you should immediately comply with the law.

Maximum 5 years for work permit

I work as a chief chef for a hotel and have been in Tanzania for about 12 months now. I have another year left on my work permit. How many times can I renew my permit? Please guide.

5 June 2017

The Non Citizens (Employment Regulation) Act 2014 provides in Section 12(4) that unless earlier cancelled, a work permit shall be valid for a period of twenty four months from the date of issue and may, subject to the provisions of this Act, be renewed provided that the total period of validity of the first grant and its renewals shall not, in any case, exceed five years. (5) Notwithstanding the provisions of subsection (4), the total period of validity of a work permit, of an investor whose contribution to the economy or the wellbeing of Tanzanians through investment is of great value, may exceed ten years.

You will note that the maximum for normal businesses, which we believe you fall under, is a maximum of five years. Hence, your permit, if renewed, can only be renewed for another two years and a final one year, totalling five years. The government has set out to promote localisation of various positions to ensure that unemployment is reduced and skill sets are developed locally in Tanzania. Having said that, there are businesses that require specialised and experienced personnel and in such cases, the law provides for a period of work permit of more than 10 years.

Overtime in banks

I was a branch manager with a bank in Tanzania. Recently I was fired and wish to

make a claim for all the many hours I spent working beyond official hours. Do I have a valid claim?

3 July 2017

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 and 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 goes further and dis-applies 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.

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 to 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 give us jobs? What is the procedure?

17 July 2017

We do understand that seeking 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 but such a suit against the government is not likely to succeed. You can consult your lawyer for further guidance.

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 severance pay. Although he admits to 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.

17 July 2017

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 recognise severance pay as one of the terminal benefits. 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 will likely fail.

Toilet with no water

We work in a large factory with hundreds of employees. Apart from the salary challenges we face with our employer, our factory has only got a single toilet for all of us. We have to literally queue in line to get into the washroom which is in a very poor state. The boss says there is no room to construct a toilet and therefore we have no choice. What should we do? We also have no supply of drinking water.

9 October 2017

The Occupational Health and Safety Act ('OSHA Act') provides in Section 55 that (1) Sufficient and suitable sanitary conveniences shall be provided for persons employed in a factory or workplace and shall be maintained and kept clean and effective provision shall be made for lighting the sanitary convenience.

(2) Where persons of both sexes are or are intended to be employed, the sanitary conveniences shall afford separate accommodation for persons of each sex. (3) For every number of females or males the provision of sanitary conveniences shall be one toilet for every twenty five persons or part thereof up to one hundred one additional urinal for males shall be provided in excess of forty persons. (4) Sanitary conveniences shall be made separately for disabled employees.

You must note that the above is a statutory requirement and an offence under the OSHA Act. We recommend you contact the nearest OSHA office and report this matter.

As for drinking water, the OSHA Act also has a provision that mandatorily requires the employer to ensure that adequate supply of clean safe and wholesome drinking water is provided and maintained and is readily accessible to all persons employed on the premises.

Refusal to give revenue documents to labour office

I am a businesswoman now in Mwanza having opened an office here. My main business is importation and sale of myriad merchandise from China. I have seven Tanzanians who I have employed as my assistants. Recently a person who identified himself as a labour officer came over to my office and requested various books and documents. He said he was there to ensure compliance with 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 legal action against me? What does the law say?

13 November 2017

Under the Labour Institutions Act, 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 Labour Institutions Act and extend to seizure or making copies of any information, book, document or object.

However, for the purpose of clarity, the Labour Institutions Act makes 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 having declined to give the revenue books to this labour officer. We do not see the relevance of these revenue books as far as enforcement and administration of the labour laws is concerned,

unless you have not told us all the facts.

Even though under the Labour Institutions Act it is an offence to refuse to produce a document required by the labour officer, it is clearly 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 as you have a lawful ground 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 officials. If you have the name of the labour officer, don't be shy of reporting him to the labour commissioner. Your lawyers can also guide you further.

Boss wishes to visit employee homes

I work in a certain company which operates both locally and internationally. A few months back a new expatriate was 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 a completely non-employment issue 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 in personal affairs.

20 November 2017

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, and 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 work place, you may raise this with the human resources office, the trade union in your office and/or in the higher chain internally for it to be resolved.

In love with boss

I work for a big company and I 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 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?

11 December 2017

We are not aware of any law that disallows a boss from dating his secretary. In fact there are many fairy-tale stories whereby the boss actually marries the secretary. The problem is that some companies have internal regulations where such a relationship is considered inappropriate and the companies own regulations disallow it. To mention a few examples: 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.

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. The Environmental Management Act is indeed the main law for protection of our environment.

It is also important to protect shared national resources, such as by maintaining minimum water quality standards, and to protect wildlife under the Wildlife Conservation Act.

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 businesses leaders can find themselves in trouble with the law, especially where developments are destructive. There are also sometimes regulations affecting specific industries.

Water quality minimum standards

Is there any law that covers citizens on the quality of water? I see new bottled water cropping up everyday and am concerned that they might not be meeting the minimum quality standards. Who enforces water quality?

26 January 2015

This is covered under the Environmental Management (Water Quality Standards) Regulations of 2007 that are made under the Environmental Management Act.

Regulation 13 states that (1) A person who is supplying water shall comply with the chemical and physical limits for quality of drinking water supplies prescribed in the Sixth Schedule to these Regulations. (2) A person who contravenes these Regulations commits an offence.

The sixth schedule provides for what the water should taste like, the pH, what minerals should be in the water and at what levels, and the like, which sets out detailed guidance, on which your lawyers will be able to advise you.

Compliance under that Schedule is carried out by the National Environment Management Council.

Regulation 33 states that (1) For purposes of enforcing environmental water quality standards and criteria, the Council or an environmental inspector may (a) order or carry out investigations of actual or suspected environmental pollution including the collection of samples, records and data; (b) enter, inspect and examine any place, area, premise or any vehicle, vessel, boat, aircraft or any carriage of any description on which it has reasonable grounds to believe that the activity is or is likely to lead to violation of environmental water quality standards; (c) take necessary measures to ensure that industry and other facilities adopt cleaner technology to meet the requirements of water quality standards prescribed under these Regulations; (d) monitor emission concentration and nature of pollutants emitted; (e) make guidelines to minimize emissions and identify suitable technologies for minimisation of water pollution; or (f) do or perform anything or act that is necessary for the monitoring and control of environmental pollution.

Developer destroying our environment

There is a senior official of one of the city councils who is constructing a building, who dumps waste from the construction site right on the road, creating a very dangerous environmental hazard for our children. He drives a big car and you can tell he has a lot of money. Whilst I was walking my dog, I saw him and politely told him that he should at least clear the waste from the road, and he rudely told me that it was a public road and he wasn't accountable to me. My small dog also barked at him and he was kicked very hard and the dog literally flew across the street a few metres. Are there not laws that protect those who don't have the big funds and big cars?

5 January 2015

First and foremost the laws of Tanzania are non-discriminatory in that they do not differentiate between the rich and the poor, or the fat and the thin. Hence having a bigger wallet does not allow you to breach the law.

On the waste front, the Environmental Management Act provides in Section 5 that (1) every person may, where a right referred to in Section 4 is threatened as a result of an act or omission which is likely to cause harm

to human health or the environment, bring an action against the person whose act or omission is likely to cause harm to human health or the environment.

There are other municipal by laws that this "senior official" is breaching and if the city authorities turn a deaf ear you can proceed to sue this individual.

As for the kicking of your dog, the Animal Protection Act comes to the rescue of your dog. The act of kicking your dog is an offence under this Act and an offender can be imprisoned to one month in jail. Many people do not know this but Tanzanian has not lagged behind in protecting its animals having signed the Universal Declaration for Animal Welfare.

Environmental protection in Tanzania

I have read the Environmental Management Act and I don't see any specific provisions that talk about protection of the environment. Is this the main law that governs the environment in Tanzania? Can a person bring an action under this act?

16 February 2015

The Environmental Management Act is indeed the main law for protection of our environment. Unfortunately there are many regulations that are supposed to be made under this act that have yet to be released leaving a number of grey unregulated areas that provide lacunas for various persons.

Section 4 of this Act states that: "(1) Every person living in Tanzania shall have a right to clean, safe clean, safe and healthy environment. (2) The right to clean, safe and healthy environment shall include the right of access by any citizen to the various public elements or segments of the environment for recreational, educational, health, spiritual, cultural and economic purposes.

Under Section 5.-(1) of the Act, it provides "Every person may, where a right referred to in Section 4 is threatened as a result of an act or omission which is likely to cause harm to human health or the environment, bring an action against the person whose act or omission is likely to cause harm to human health or the environment."

The Act states that the action above may be brought on the following: (a) Prevent, stop or discontinue any activity or omission, which is likely to cause harm to human health or the environment; (b) Compel any public officer to take measures to prevent or discontinue any act or omission, which is likely to cause harm to human health or environment; (c) Require that any on-going activity or omission be subjected to an environment audit or monitoring; (d) Require the person whose activity or omission is likely to cause harm to human health or the environment, to take measures to protect the environment or human health; (e) Compel the persons responsible for the environmental degradation to restore the degraded environment as far as practicable to its condition immediately prior to the damage; and (f) Provide compensation for any victim of harm or omission and the cost of beneficial uses lost as a result of an activity that has caused harm to human health or the environment.

Shut down by NEMC

Does the National Environmental Management Council (NEMC) have the power to shut down a factory that is profitable and paying large taxes to the Tanzania Revenue Authority just because it releases some water into an unused stream? The NEMC also threatened to charge the directors of this company. If that is possible, what is the point of having a limited liability

company? I find this law contradicts and contravenes other laws in Tanzania.

6 July 2015

Under the Environmental Management Act, NEMC have great powers which include shutting you down if you are knowingly polluting a water stream. Section 109 states clearly that

"(1) Any person who knowingly puts or permits to be put or to fall or to be carried into any stream, so as either singly or in combination with other similar acts of the same nature or interfere with its due flow or pollute its waters, or puts solid refuse of any manufactory or manufacturing process, or puts any rubbish or any other waste or any putrid solid matter into such stream, commits an offence."

Under Section 109 (2) of the Act, it says: "Any person who causes to fall or flow or knowingly permits to fall or, flow or to be carried into any stream any poisonous, noxious or polluting liquid proceeding from any factory or manufacturing process, commits an offence.

Therefore, it cannot be disputed that one commits an offence when you release water into a stream, whether the stream is said to be unused or not. We also find it very hard to believe that there is an 'unused' stream in Dar.

On liability for directors and partners, Section 201 states that corporate bodies are liable for offences under this Act, subject to certain exceptions, namely if the Act was done without consent, or connivance, or if all the proper due diligence was undertaken that should have been, given all the circumstances.

Section 201 (2) makes clear:

"(2) Every director or partner and any other person concerned in the management of, a body corporate to which a licence or order has been issued under this Act shall take all reasonable steps to prevent that body corporate from contravening or failing to comply with the licence or order."

As per Section 201(3), a director can be made liable for such an offence and sentenced to imprisonment, or a substantial fine of not more than five million schillings.

There is also no relation between the TRA and NEMC. Just because you are a large taxpayer does not mean that you can pollute any stream you want. Even the largest taxpayer must comply with the environmental laws of Tanzania. Furthermore, the Companies Act doesn't provide any immunity to directors from prosecution if one breaches the environmental laws of the land.

We strongly recommend that you comply as NEMC is very strict in the way it conducts its business.

Killing a wild animal in defence

I was travelling upcountry from Dar and stopped at a bush where my colleague had to go for a short call. Unfortunately out of nowhere a buffalo was close to attack my friend. I shot the buffalo and it disappeared in the bush. We could have easily run away but unfortunately decided to make a report about the incident with the wildlife officers whose office was in a nearby town. We gave our statement and left our contact details. Strangely last week I received a call from one of the officers who says that the buffalo was found dead hence we are supposed to pay a large fine or else we shall be charged in a Court of law for more offences? We feel we are not responsible and all we did was to protect our lives. Please guide.

10 August 2015

Section 73 of the Wildlife Conservation Act, Act No 5 of 2009 makes it clear that it shall not

be an offence to kill any animal in defence of human life or livestock.

However the section is not applicable to the killing of an animal in defence of life if first the behaviour of the animal necessitating such killing is the result of molestation or deliberate provocation by or with the knowledge of the person killing such animal; or the person killing such animal or the person whose life is being defended was, when such defence became necessary, committing an act which constitutes an offence under the Act.

This seems to cover your case. There are other requirements to the Act, such as the

use of stakes in pitfalls, or snares likely to result in undue cruelty to animals or to endanger human life, but they do not apply here.

Owners or occupiers of property adjoining any conservation area cannot hunt in that area without first obtaining consent from a conservation officer or without prior permission having been granted for the killing of any national game.

Any person killing an animal in defence of life shall immediately remove from such animal any skin, ivory, horn, tooth or any other trophy, and report the fact and the circumstances of such killing to the nearest officer, and hand over to such officer any trophy removed from such animal, which trophy shall be the property of the Government.

They may also be required to show the officer damage caused and the place of such killing of any animal.

In this case, we think whatever is done by the said officer is likely to be for his own interest as the circumstances you have explained shows no offence has been committed.

We think this should be reported to his superior.

Extractive industries disclosures

How can I find out about shareholding and local content planning of oil and gas players in Tanzania?

15 February 2016

Under the Tanzania Extractive Industries (Transparency and Accountability) Act 2015, and in order to ensure transparency and accountability in extractive industries, the Committee established under this law shall cause the Minister to publish(a) in a website or through a media which is widely accessible all concessions, contracts and licences relating to extractive industry, (b) names of individual shareholders who own interests in the extractive industry companies, (c) implementation of environmental management plans and (d) implementation reports

We believe such a committee has not yet been formed. An alternative is for you to do a search of shareholding of the company at BRELA.

Lawyers, the Courts and Public Law

This chapter on lawyers, the Courts and public law covers a wide range of topics, from instructing and working with lawyers, including foreign lawyers, the roles of the criminal and Civil Courts, questions of civil and criminal procedure, and how to respond if you are unhappy with a Judge's ruling.

It also covers the procedural complexities of a dispute, and how civil and commercial litigation work in our great country. Plus, we advise on how to avoid problems that can 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.

The range of topics also spans questions about parliament, legislators, and questions of constitutional law, as well as a wide range of miscellaneous topics, including whether it is illegal to burp in public.

Hourly billing by lawyer

My lawyer bills me per hour, which I am agreeable to. However, can the lawyer bill me for the time he spends billing me? I have noticed that, if the lawyer spent an hour each month on preparing my bill, he adds that hour to my bill. Isn't that unfair?

19 January 2015

That depends on the engagement letter you have with your lawyer. If the engagement letter allows him to do so, then he can bill you for the time he spends on preparing his bill.

In our experience, most engagement letters do not provide for this. The time that is normally billable is the time the lawyer spends working for you. We believe that if the engagement letter does not have a specific clause providing for such billing, then he cannot bill you for the time he spends preparing his bill, because that time is not being spent working for you but, rather, working for himself.

We recommend that you look at the engagement letter and discuss this openly with your lawyer. Most lawyers are quite reasonable and would want to avoid having unnecessary issues with clients.

'Much obliged' in Court

My lawyer, whom I accompany to Court, told me that I must say "much obliged" to the judge when we leave the Court, or the judge could hold me in contempt and send me to jail. Is this how the Tanzanian legal system operates? He also says I must wear a suit to Court.

26 January 2015

There is no law in Tanzania that states you must say "much obliged" to the judge. It is, however, true that lawyers say this all the time, but it is neither mandatory nor statutorily provided anywhere. These words are borrowed from the UK, from which we have based our Court procedures and systems.

Your lawyer might want to gain the sympathy of the judge, but his comments about you being sentenced to jail for not saying "much obliged" are absurd and exaggerated. In fact, we are concerned that, with such trivial comments being made by your lawyer, you might need to monitor and ensure that he is conducting your case properly.

There is also no provision of the law that states you must wear a suit in Court. A suit is mandatory for advocates, but not for clients or witnesses.

All in all, you must be polite in Court and respect the judge's chamber.

Commercial Court judgment not delivered

We completed a hearing and final submissions at the Commercial Court six months ago, but the judgment has not yet been issued. I am disappointed. Your column has always said that this is one of the best Courts in East Africa, but it has not lived up to my expectations. What should I do?

9 February 2015

We maintain our position that this is a good Court to file cases in. Your case might be one of the few cases whose judgment is stuck somewhere.

The Commercial Court's Rule 67 states that: (1) the Court shall, at the conclusion of a hearing, deliver a judgment within 60 days or a ruling within 30 days; (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; and (3) every judgment shall embody at the end a summary of the reliefs granted by the Court.

You will note that a judgment must be delivered within 60 days. We recommend you visit the judge in charge or the registrar at the Commercial Court to address this issue.

Medical standards of care in war zones

I saw on TV with great dismay how medical staff were treating a patient in a war zone area in the Middle East. It was quite shocking the way they were attending to the victim and it was clear to me that they did not meet the medical standards of care required of doctors and nurses. How does one view such standards of care when there is a war?

23 February 2015

You must appreciate that there is a distinction between medical standards of care and legal standards of care.

While medical and legal standards of care are often regarded as interchangeable, many view them as distinct concepts. According to one view, medical standards of care describe the types and levels of medical care dictated by professional norms, professional requirements and institutional objectives. These standards of care vary among different types of healthcare facilities (such as hospitals, clinics and alternate care facilities) and based on prevailing circumstances, including emergencies.

Although existing routine medical standards of care are flexible, they do not reflect the guidance needed to assist healthcare practitioners attempting to allocate scarce resources and make difficult decisions (including the potential withholding or withdrawal of life-sustaining treatment) during severe conditions in a public health emergency.

Legal standards of care, on the other hand, may be defined as the minimum amount of care and skill a healthcare practitioner should exercise in particular circumstances, based on what a reasonable and prudent practitioner would do in similar circumstances. Legal standards of care are necessarily fact specific, flexible and subject to differing interpretations by different Courts. They may reflect medical standards, but do not always.

For example, a number of Courts assessing standards of care have determined at times that prevailing medical practice was insufficient or unacceptable in exceptional cases. In these instances, practitioners were found liable for their actions even though, based on the circumstances, their acts were consistent with the prevailing medical standards of care.

If you are a doctor, we invite you to do more research on this topic.

Foreign lawyer in Tanzania

I lost a case at the High Court in Dar es Salaam and have decided to appeal. Can my English lawyer, who practices in London, be allowed to represent me at the Court of Appeal if we have already lodged the appeal? What is the notice period that the Court of Appeal gives before a hearing is scheduled?

6 February 2015

There are many competent attorneys in Tanzania, but if you still believe that the English lawyer can add value to the case, then Rule 33(4) of the Court of Appeal Rules 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. This right of audience would cover anyone 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 request; a mere application to appear does not mean it will be granted.

Regarding the notice period prior to a hearing, the rules 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 that 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 rules provide for a procedure where you change your advocate. The rules 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 serve a copy of the notice to the other party appearing in person or separately represented.

Suit filed against dead person

I sued a certain man with whom we had a contract many years ago. We had not been in touch for some time and I was not sure about his whereabouts until recently, when I discovered that he had passed away even before the filing of this civil case. What should I do, as the case is pending in Court? Should it be heard in his absence?

15 January 2015

It is perplexing that you filed a suit against a person whose whereabouts you did not know. However, suits by or against dead persons are brought by or against the legal representative of the deceased, be it an executor or administrator of the deceased's estate. Executors or administrators are duly appointed by the Court of competent jurisdiction in probate proceedings.

In your situation, things would have been different if, at the time of filing the case, the defendant was alive. The law governing civil procedure (i.e. for civil cases) provides for procedure to be followed in case of death of the defendant. We think the best recourse in your case is to withdraw the case, with liberty to refile it.

Furthermore, case law provides that, in circumstance like yours, a decree against a dead person is a nullity and is not executable unless the executor steps in, which is unlikely. This may be argued conversely. Your lawyer can guide you further.

Suing judge for case delay

I am suing a businessman in the High Court of Tanzania for recovery of money. The presiding judge has been taking things slowly and has been adjourning my case several times. In some instances, she has not shown up in Court and the case has been adjourned before the registrar. I am stuck, since my core capital is at stake and my business is threatened.

Can I sue this judge for the manner in which she is conducting my case? What are the liabilities for judges? I want to bring work discipline to the judiciary.

22 June 2015

Judges are protected for all actions in the performance of their duties as judges.

However, this immunity does not extend to other affairs they conduct in their individual capacity. For instance, liability for personal debts or causing injury to an individual by their own negligent actions.

In your case, we do not see how you can successfully sue the judge presiding over your case. The only thing you can do, if you feel the judge is treating your case unfairly, is to push for her disqualification from presiding over the case. There must be convincing reasons to do so. You can also formally lodge a complaint to the judge in charge of the conduct of the judge presiding over your case. Furthermore, if you are still not satisfied, you can formally lodge a complaint to the Judicial Service Commission, which is established under the Judicial Administration Act 2011.

All said above, you must understand that delays in cases are not caused by one factor alone. There are a number of reasons, including the non-appearance of parties or their advocates, a backlog of cases, a heavy load on judges, delays in investigations, a low number of judges, and lawyers seeking adjournments.

Unless there are compelling reasons for us to advise otherwise, we suggest you seek the guidance of a legal practitioner on the litigation and Court systems in Tanzania so that you may avoid future frustrations.

Arrested for wearing T-shirt with offensive words

As I was walking in the city centre, a police officer arrested me for wearing a T-shirt that purportedly contains abusive language. Unfortunately, the alleged printed offensive words are not in Swahili but rather in Chinese, which language I do not know. I bought this secondhand T-shirt from a street vendor and thought it would suit me. The police officer who arrested me maintains that he was trained in China thus knows to read and speak Mandarin. I have been reporting to the police station every Monday for the past year. Is this fair?

22 June 2015

The Penal Code provides that any person who uses obscene, abusive or insulting language to any other person in such a manner as is likely to cause a breach of the peace, a brawl or a disturbance that is likely to cause a breach of the peace, is guilty of committing an offence.

In your case, you have not informed us what exactly the words in the T-shirt mean and/or what the police officer interpreted the words to mean, so it is difficult to determine whether the police officer's claims fall within the ambit of the aforesaid provision.

From the limited facts you have given us, we believe that you may have a good defence in this situation, as you were completely unaware of the meaning of the words. We advise you to seek the assistance of a lawyer.

To avoid inconvenience, we recommend that, next time, you consider checking with friends and family when you are unaware of the meaning of words that appear on your T-shirt.

Court very slow in recording evidence

I am a party in a case pending at the Resident Magistrates' Court. Our case involves long testimony and a lot of very technical documentary evidence. I am shocked by the slow speed at which the case is progressing. The magistrate is writing down what we are saying and this consumes a lot of time. Is there a possibility that some of the testimony can be written and the documents filed in Court to avoid wastage of time? Can't the magistrate use

recorders instead of writing each and every sentence, which delays the case and makes everyone tired? Please advise me on what we can do to expedite the case.

13 July 2015

The law governing the conduct of civil suits, the Civil Procedure Code, requires that the evidence of each witness be taken down in writing in the language of the Court, by or in the presence and under the personal direction and superintendence of the judge or magistrate. Writing should not ordinarily be in the form of question and answers, but in that of a narrative, and the judge or magistrate shall sign the same.

Moreover, the law empowers the judge or magistrate in the exercise of his/her discretion to direct a Court stenographer to make a shorthand record of the whole, any part or the substance of the evidence of any witness or the proceedings. A point worth noting is that, under the law, the said shorthand record shall, as soon as practicable, be transcribed and typewritten by the same or any other Court stenographer, who shall certify the resultant typewritten transcript to be correct and complete.

The avenue for each witness to get his/her testimony written down and filed in Court is only applicable in the High Court of Tanzania (Commercial Division), where witnesses' statements are allowed under the Commercial Court Rules.

Unfortunately, in the current computer era, there are at present very few stenographers left in Courts and the stenographer route suggested above is not practical. Our Courts are also not equipped to allow voice recordings that would relieve judges and magistrates from having to write down each and every word that witnesses speak. Thus, there is no choice but to handwrite every word that is said in Court, which is what is delaying your case.

You can propose electronic notes or electronic devices be used in Courts by writing a letter to the chief justice, who may be able to look into this. You are not the only affected party and introducing recording devices in Courts is a costly affair.

Death due to transfusion refusal

I am a law student and have been reading about a group of persons who will not allow any form of blood transfusion, even if this means that they will die. Is this legal in Tanzania? Can a doctor not force them to have such transfusions?

20 July 2015

This is a very controversial topic and we answer it with great caution.

A small group of people belonging to a certain religion do not accept blood transfusions or blood products, based on their reading of a holy book. It is true that, when these people are in need of healthcare, their faith and beliefs are an obstacle to their proper treatment and pose legal, ethical and medical challenges for doctors.

There is no specific guidance in Tanzania that addresses the above. In some other common law countries, if a patient refuses a blood transfusion on religious grounds, the doctor is required to respect such a wish, even if it means that the patient will ultimately die.

We draw inspiration from a recent UK High Court application, where a 63-year-old lady who had been part of this religious movement that refuses blood transfusions was found to be bleeding from a duodenal ulcer. When discussing her plight with the gastroenterologists, she was adamant that she did not want treatment with any blood products; they were sure that she had full

capacity to make this decision, and that she was aware that she could die without a blood transfusion. The conversation with the gastroenterologists was recorded in the notes, but no formal advanced decision to refuse lifesaving treatment existed.

Three days following her discussion with the gastroenterologists, the lady's condition deteriorated, requiring ventilation and sedation, and she subsequently lacked capacity for further decision making. Her doctors opined that a transfusion would improve her chances of survival. The doctors, having not received a formal advance decision in her case, approached the Court to seek a declaration that withholding a transfusion would be lawful in her case.

The Court found that the lady had capacity during her early admission to decide whether to accept or refuse a transfusion, and that the advance decision she took prior to losing her capacity (to refuse transfusion) was both valid and applicable to her later and more serious condition, when she had lost capacity. It was therefore lawful to withhold transfusion. The lady unfortunately died on the day of the judgment.

The above is one of the most recent cases on this issue in England, and we believe that a similar decision would be reached in Tanzania. We believe that a patient's religious beliefs are to be respected if the patient refuses a blood transfusion, even if that leads to the patient's death.

Motorcade obstruction

There was a motorcade passing and road traffic was stopped by the police. I immediately, parked my car on the extreme righthand side of the road. This was so I did not obstruct the motorcade. The motorcade took five minutes to pass by and, after that, I was put under arrest on the grounds that I should have parked my car on the lefthand side of the road and not the righthand side. From my knowledge, I am supposed to stop, which I did, and park my car so as not to obstruct the motorcade. I wasn't aware of which side of the road to park on. Does the law say anything about this?

3 August 2015

Unfortunately for you, the police officer was right in saying that you were supposed to park your car on the extreme left-hand side of the road and not the right-hand side. Much as you do not want to hear this, you committed a traffic offence.

The Road Traffic Act is very strict when it comes to obstruction of a motorcade. Section 43 states that it is an offence for any person to: (a) drive a motor vehicle or trailer in such a way as to obstruct, hinder or impede the progress of an official motorcade; or (b) disobey the instruction (conveyed orally, by signals or otherwise) of any police officer or other public officer in any vehicle escorting or forming part of the official motorcade, or of any police officer or other public officer on any road or other public place along which an official motorcade is passing or about to pass.

Subsection (3) also states that every driver of a motor vehicle shall, upon approach or during the passing of an official motorcade on the road, where the road is demarcated into one traffic lane for the direction of travel, draw the vehicle to a halt at the extreme left of the road.

AG, MP attendance in parliament

I am a law student and confused whether the Attorney General (AG) is a member of parliament. I see him sitting in parliament all the time and not attending to his official duties. I also see that MPs don't show up in

parliament. Can't they be removed from office for non-attendance?

3 August 2015

The Attorney General (AG) is the chief advisor to the government on legal affairs.

Article 59(5) of our Constitution states that the AG shall be a member of parliament by virtue of office, and shall hold office until his appointment is revoked by the president or immediately before the president-elect assumes office. Article 59(5) also states that the AG shall be paid a salary, allowances and other remuneration in accordance with a law enacted by parliament.

Therefore, the AG is a member of parliament and is supposed to attend parliamentary sessions. When in parliament, he is indeed attending to his duties. Without sounding sarcastic, we hope you are attending a reputable law school, as the Constitution is the first law you should have studied.

Regarding parliamentary attendance by MPs, the Constitution provides that, where a member of parliament fails to attend three consecutive meetings of the National Assembly without the permission of the speaker, he or she shall cease to be a member of parliament and shall vacate his/her seat in the National Assembly. We are unsure as to how strictly this is being enforced.

Controlling Controller and Auditor General

From whom does the Controller and Auditor General (C&G) take orders? I ask this because, to whomever he reports, the C&G will not be able to audit that person and we will get biased reports from him. What are the checks and balances in place so that the C&G can perform his job?

7 September 2015

The Constitution provides that the C&G shall not be obliged to comply with the order or direction of any other person or government department. However, this does not stop a Court from exercising its jurisdiction to inquire into whether or not the C&G has discharged his functions in accordance with the provisions of the Constitution.

In fact, on a yearly basis, the C&G must submit a report to the president, which is then submitted by the president to the National Assembly. The Constitution provides that, if the report is not submitted by the president to the National Assembly, the C&G can directly submit the report to the Speaker of the National Assembly for the report to be tabled.

Burping an offence

Is burping an offence in Tanzania? I am an expatriate working for a multinational company and the HR manager called me in and told me that my burping after a meal during my lunch break was an offence under Tanzanian law. Is this true?

21 September 2015

We don't believe that burping is an offence unless you burp all the time or intentionally on people all the time. We are unsure what exactly your action was, but if it was a one-off burp, even if you did it every day but discretely, then you should be fine.

Notwithstanding the above, we must cite the sections of the Penal Code which actually create such offences. Section 170 states that any person who does an act not authorised by law or omits to discharge a legal duty and thereby causes any common injury or danger or annoyance, or obstructs or causes inconvenience to the public in the exercise of common rights, commits the misdemeanor termed a "common nuisance", and is liable to imprisonment for one year.

It is immaterial that the act or omission complained of is convenient to a larger

number of the public than it inconveniences, but the fact that it facilitates the lawful exercise of their rights by a part of the public may show that it is not a nuisance to any of the public.

Your frequent burping could be deemed as an annoyance or cause of inconvenience to the public, hence a nuisance and an offence under our penal statute.

Furthermore, Section 185 states that it is a misdemeanour offence for any person to voluntarily vitiate the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way.

Frequent voluntary and intentional burping or farting could fall foul of the above section of the law.

When researching the above, we found that India has new legislation which makes it illegal to burp in public. The Control Your Food Habits and Flatulence Law 2014 states that burping in public can lead to seven years' rigorous imprisonment and a fine. We are unsure if this is still the position of the law.

Court of Appeal Rules

To what extent is the Court of Appeal bound by its own rules? What happens when the rules do not address something pertinent to a case before the Court of Appeal? I am stuck in a procedural issue and want to know if I have a way out.

28 September 2015

Rule 4 of the Court of Appeal Rules, which we call an umbrella rule that allows the Court of Appeal to depart from its rules, states that:

(1) the practice and procedure of the Court in connection with appeals, intended appeals and revisions from the High Court; the practice and procedure of the Court in relation to review and reference; and the practice and procedure of the High Court and tribunals in connection with appeals to the Court shall be as prescribed in these rules or any other written law, but the Court may at any time direct a departure from these rules in any case in which this is required in the interests of justice;

(2) where it is necessary to make an order for the purposes of: (a) dealing with any matter for which no provision is made by these rules or any other written law; (b) better meeting the ends of justice; or (c) preventing an abuse of the process of the Court, the Court may, on application or on its own motion, give directions as to the procedure to be adopted or make any other order which it considers necessary.

There have to be solid grounds for such a departure and you should be prepared to convince the justices that it is necessary. There is some case law on this, which your advocates can advise you on.

Arrested for wearing seatbelt

I was arrested by a police officer when we were refuelling my vehicle at a petrol station in the city centre. The officer started questioning me and my driver about where we had come from. We answered him but, strangely, he said I had committed an offence for wearing a seatbelt whilst refuelling my vehicle. I refused to go to the police station and was put under arrest. Is it necessary to remove your seatbelt when refuelling your vehicle?

12 October 2015

The law which obliges the wearing of seatbelts is the Road Traffic Act. Section 30 of this law requires that no person shall drive a motor vehicle or any other vehicle unless that person and any front-seat passenger in that motor vehicle is securely wearing a seatbelt.

We have searched all over and have not found any specific law that states a person should remove his seatbelt when fuelling his vehicle.

There are such laws in other countries, and it is generally good practice to do so, as you can jump out of the car faster in case of a fire, but in Tanzania this is the first time we are hearing of this. Unless there are other facts that you have not provided, you cannot be arrested for wearing a seatbelt when fuelling your vehicle.

Contravention of our Constitution

A friend told me that the ministers in President Kikwete's government have continued on as ministers under President Magufuli, as the former President did not dissolve his cabinet. Is that true and is this not against the Constitution? Also, how does one get appointed as a Prime Minister and minister?

9 November 2015

Your friend is misguided. Under the Constitution, ministers cease to be ministers immediately before the president-elect assumes office, meaning that the previous government's ministers are no longer ministers. The ministers in former President Kikwete's government did not retain their posts after President Magufuli assumed office.

Article 57(2) of the Constitution states that the office of minister or deputy minister shall become vacant upon the occurrence of any of the following: (a) if the incumbent resigns or dies; (b) where the incumbent ceases to be a member of parliament for any reason not connected to the dissolution of parliament; (c) where the president revokes the appointment, thereby removing the incumbent from office; (d) where he is elected as speaker of the National Assembly; (e) where the prime minister resigns or his office becomes vacant for any other reason; (f) immediately before the president elect assumes office; (g) where the Ethics Tribunal makes a decision confirming that he has contravened the law concerning ethics of public leaders.

It is now up to President Magufuli to appoint a prime minister, who will be appointed under Article 51 of the Constitution. Article 51(2) states that, as soon as possible, and in any case within 14 days of assuming office, the president shall appoint as prime minister a member of parliament elected from a constituency of a political party that has a majority of members in the National Assembly or, if no political party has a majority, who appears to have the support of the majority of the members of parliament. The prime minister shall not assume office until his appointment is first confirmed by a resolution of the National Assembly that is supported by a majority vote of the members.

Therefore, the current president has 14 days from 5 October 2015 to appoint a prime minister from the ruling party and he must be then confirmed by parliament.

As for the appointment of ministers, Article 55(1) of our constitution states that every minister will be appointed by the president after consultation with the prime minister. This means that the prime minister must be in place before ministers are appointed.

Appeal to the Commercial Court

My two colleagues and I own an IT services company that operates in Arusha, Dar, Mwanza and Mbeya. We have faced difficulties in obtaining payment from several of our clients, despite numerous efforts to remind them. Our company's lawyer advised us that, on the basis of the amount we are claiming from these clients,

we should file recovery suits in the Resident Magistrates Courts. Unfortunately, we have lost some of these straightforward 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 provided. 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.

30 November 2015

If you are not satisfied with the decision you have mentioned, you may proceed to exhaust this remedy in the High Court Commercial Division where, as you have intimated, 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.

Under the rules of procedure applicable in the High Court Commercial Division, the minimum claims threshold for commercial cases is TZS 100 M for recovery of immovable property and at least TZS 70 M where the subject matter is capable of being estimated at money value.

Likewise, the High Court Commercial Division has appellate jurisdiction 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 and you are expected to file a notice of appeal within 14 days from the day on which the decision was pronounced.

Defamatory remarks in parliament

Can a person sue a member of parliament for remarks that the MP makes in parliament? If so, isn't this unfair and doesn't it limit the MP's ability to name bigwigs in scandals?

14 December 2015

Our Constitution protects MPs from being prosecuted for any remarks they make in parliament. Article 100 states that:

(1) There shall be freedom of opinion and debate 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;

(2) Subject to this 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 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.

Article 101 further states that parliament may enact a law making provisions to enable the Court and the law to preserve and enforce freedom of opinion, debate and procedure of business in the National Assembly, which in terms of Article 100 is guaranteed by this Constitution.

Reading the above, it is clear that MPs cannot be sued for remarks made in parliament. However, MPs can be sued for remarks which may be defamatory that they make outside of parliament. Hence, if you are an MP, it is wiser to name bigwigs in parliament than outside of parliament.

Court of Appeal language

Why is English the language of the Court

of Appeal, when most Tanzanians cannot speak a word of English?

18 January 2016

Rule 5 of the Court of Appeal Rules states that the language of the Court shall be either English or Kiswahili, as the chief justice or the presiding justice may direct, but the judgment, order or decision of the Court shall be in English.

Therefore, you can speak in Kiswahili at the Court of Appeal, but the judgement or ruling of the Court will be in English, as most of our laws are in English.

Court of appeal intervention

I am involved at the High Court in proceedings. Certain interim orders are so wrong, and the judge is so misdirected, that I need to immediately alert a higher Court. I am told that the Court of Appeal can only intervene after the case is completed. What can I do?

8 February 2016

It is true that the Court of Appeal can only hear appeals after the case is over. However, for cases like that which you have stated, you have the option to seek the intervention of the Court of Appeal by way of revision.

Rule 4 of the Tanzania Court of Appeal Rules states that, for all purposes of and incidental to the hearing and determination of any appeal in the exercise of the jurisdiction conferred upon it by this Act, the Court of Appeal shall, in addition to any other power, authority and jurisdiction conferred by this Act, have the power of revision and the power, authority and jurisdiction vested in the Court from which the appeal is brought.

Further, the Rule states that, without prejudice to the above, the Court of Appeal shall have the power, authority and jurisdiction to call for and examine the record of any proceedings before the High Court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, order or any other decision made thereon and as to the regularity of any proceedings of the High Court.

Further, you can even write to the Chief Justice for His Lordship to ´sua motu' call the High Court to file and accordingly make orders and/or quash any such orders that have been made therein.

Fighting case in wrong Court

My lawyer instituted certain proceedings at the Resident Magistrate's Court which, after three years, decided it had no jurisdiction over the case. I am now time barred from filing this case at the High Court, since it is a tortious action and the time limit is three years. What should I do? Have I lost my claim without even fighting for it?

15 February 2016

The Law of Limitation Act provides for this, stating 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 against the defendant, whether in a Court of first instance or in a Court of Appeal, 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 are therefore not time barred and can proceed to file the case at the High Court.

Training school for military activity

Can I open a school to train people in military-type operations so that they can increase the security of their premises? In

this era, it is important for individuals to train in such activity. Please advise.

22 February 2016

The answer to your question is no. You cannot have a training school for military-type operations, as this type of training is only reserved for the military. Under Section 62 of the Penal Code, it is a criminal offence to do so.

Section 62 states that:

(1) any person who (a) without the permission of the minister for home affairs trains or drills any other person in the use of arms or the practice of military exercises, movements or evolutions; or (b) is present at any meeting or assembly of persons, held without the permission of the minister for home affairs, for the purpose of training or drilling any other persons in the use of arms or the practice of military exercise, movements or evolutions, is guilty of a felony and liable to imprisonment for seven years;

(2) any person who, at any meeting or assembly held without the permission of the minister for home affairs, is trained or drilled in the use of arms or the practice of military exercises, movements or evolutions, or who is present at any such meeting or assembly for the purpose of being so trained or drilled, is guilty of a misdemeanour.

Court of Appeal judgment

Can the Court of Appeal decide in a case not to give a judgment? What is the timeframe for a judgment at the Court of Appeal? I have been waiting for my case judgment for a long time now.

14 March 2016

The Court of Appeal Rules on judgments state that, at the close of the hearing of an application or appeal, the Court may give its judgment at once or reserve it for delivery within 90 days, unless the Court for reasons to be recorded orders otherwise.

As you can see, the rules require the judgment to be delivered within 90 days and the justices can delay it, but must cite reasons. Our experience is that the Court of Appeal does generally pronounce its rulings within the required times.

The Court of Appeal has no choice but to pronounce a judgment after a hearing. If your judgment is not yet pronounced, we suggest you contact the Court of Appeal registrar.

Swearing in public

Is it legal to swear in public? My boss has a tendency of swearing at me in front of people. Is that not a criminal offence? I really feel like sorting him out.

14 March 2016

If you report your boss and are able to prove that he behaved as you described, he could end up in jail.

The Penal Code states in Section 89 that 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 is liable to six months' imprisonment.

Joined in suit after seven years

There was an accident at a certain place and the owners were sued. I worked there at the time and have now been joined in the suit. Is there no limitation to filing suits? My lawyer says that, since the case was filed on time, there is no time limitation.

21 March 2016

Your lawyer is wrong. Section 3(3) of the

Law of Limitation Act states that where, after the institution of a proceeding, a person is made a party thereto, either as a plaintiff, defendant, appellant, applicant or respondent, the proceeding, shall, as regards him, be deemed to have been instituted on the date on which he is made a party.

The plaintiff in trying to join you, whether under tort or contract, is very likely time barred and that should be your first preliminary point to raise. However, you should also file a 'without prejudice' defence, just in case the judge holds the other way.

Starting my own country

Having lived in Europe for over 20 years, I would like to now start my own country. I am sick of being governed by other people, especially with some laws that I do not agree with. I believe that, in my own country, I can have the best policies and attract people to apply for citizenship, where I will ensure the safety and wealth of all my people. How do I go about doing this? What do you recommend I do?

18 April 2016

Walt Disney, founder of Disneyland, once said that "if you can dream it, you can do it. Always remember that this whole thing was started with a dream and a mouse." Much as we believe that you are dreaming, we have decided to answer your question.

We have not found any law that stops you from using your resources to start a country. However, forming a country may sound easy, but getting it recognised as one is the difficult part.

The Montevideo Convention on the Rights and Duties of States sets out the definition, rights and duties of statehood. It is a treaty signed at Montevideo, Uruguay, on 26 December 1933, during the Seventh International Conference of American States. Tanzania is not a signatory to this treaty.

Most well known is Article 1, which sets out the four criteria for statehood that have been recognised by international organisations as an accurate statement of customary international law. The state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states.

Furthermore, Article 3 explicitly states that "the political existence of the state is independent of recognition by the other states". This is known as the declarative theory of statehood and is very important for you to take note of.

A basic point should be emphasised: Article 1 is qualified by Article 11, because it prohibits using military force to gain recognition of sovereignty. Hence, you cannot start capturing another country to form your country, meaning that you first need some land.

With two exceptions that we came across, existing land has been claimed by existing countries. The main exception is Antarctica. Even then, should you brave the weather and lack of "population appeal", Antarctica is managed by the most powerful countries in the world, and it's unlikely they'll let you just plant a flag and say it's yours. Second, there is Bir Tawil, a tiny plot of land between Egypt and Sudan, which neither claim. However, there is very little appeal to this area, due to it being only a patch of sand, although it seems to be the only place on earth that is not claimed by anyone and may still be habitable.

There is the other option of you trying to buy an existing country. If you're wealthy enough, you can buy an island, though

it's unlikely that the host nation will just cede sovereignty to you. A more corrupt or destitute country might be more easily swayed, but even that is difficult. Our research, which we could not verify, reveals that a pack of libertarians tried to buy Tortuga from impoverished Haiti, but were rejected. There are some things money just can't buy.

We recommend that you look for another project. Otherwise, you will need to consult a wealth retention consultant for more guidance. This is beyond us as lawyers, who are known to have much smaller dreams than yours.

Extension in Court of Appeal

Is it permitted to apply for an extension of time at the Court of Appeal? What are the best reasons for seeking such an extension? Does it have to go to a full bench hearing?

9 May 2016

You can apply for an extension of time to lodge an appeal or revision at the Court of Appeal. One of the most solid grounds for seeking and getting such an extension is the plea of illegality. So long as you can convince the justice of appeal that there was a serious illegality in the lower Court's decision, there is a good chance that you will get the extension. Other grounds include not being aware of a decision having been passed against you, having travelled and been unaware, and delay beyond your control.

The hearing of such an application is conducted before a single justice. Rule 28 of the Court of Appeal Rules states that a single justice may exercise any power vested in the Court, which does not involve the decision of an appeal, revision, reference, review or any other proceeding whose determination requires the full Court, but if any justice rejects any application for the exercise of the power, the person making that application shall be entitled to have his application determined by the Court.

No costs in case

When one wins a case, shouldn't the judge order costs be awarded, in addition to the decretal amount? In a case that I fought for five years, the judge did not mention costs in his judgment. Please advise.

6 June 2016

If the judge has not awarded you costs, he or she must state the reasons for this. If no reasons are cited, you may file for a review and challenge this.

Section 30 of the Civil Procedure Code states that: (1) subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be at the discretion of the Court, and the Court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid. The fact that the Court has no jurisdiction to try the suit shall be no bar to the exercise of such powers; (2) where the Court directs that any costs shall not follow the event, the Court shall state its reasons in writing; (3) the Court may give interest on costs at a rate not exceeding seven per cent per annum, and such interest shall be added to the costs and recoverable as such.

Advocate not properly instructed

We are involved in a case against a party that is not present in Tanzania. I am quite certain that the advocate representing the party is not properly instructed. Can the Court demand that we see whether

or not his client has instructed him? I say this because it is quite evident that the advocate's behaviour does not reflect the character of the party that I have worked with for the past 40 years. Kindly advise.

13 June 2016

The Civil Procedure Code states that the Court may require any advocate claiming to act on behalf of any party who has not appeared in person or by his recognised agent to produce, within such time as may be reasonable, a written authority signed by such party or his recognised agent, authorising the advocate to act on behalf of such party.

Therefore, you can either file a formal application or an oral application for the advocate to provide such proof. There have been instances where advocates are actually not instructed to represent clients, yet do so for reasons best known to themselves.

Betrayal of attorney-client privilege

I went to see my advocate and disclosed all the details of a sensitive case. We agreed on fees and I paid a certain amount as an advance. It has been many months and the advocate has not performed on my case thus far. I hence withdrew instructions and transferred my file to another law firm. The previous advocate is now threatening to disclose the information that I released to him. Is this information not protected?

18 July 2016

As a general rule, whatever the client communicates with his or her advocate is privileged. This means that the advocate is generally not allowed to release this information without the consent of his client. There are circumstances in which he can be obligated to release this information, such as by order of the Court or if the information is about an intention to commit a crime. In accordance with the scenario you gave us, the advocate is legally obligated not to disclose the information unless it fits within the grounds for which he will be legally obligated to disclose.

Finally, a basic ethics rule for law professionals is to maintain client confidentiality. Whatever is communicated to the advocate by his client or comes to the knowledge of the advocate in the course of attending to that client remains privileged and cannot and should not be disclosed. What the advocate is threatening to do is illegal and, if he is a duly registered advocate, he should be aware of the basic principles of the attorney-client relationship. If he does reveal your information, you can sue him, ask for compensation and he could be suspended from practising law.

Lawyers' Rules of Professional Conduct' also grant clients the inalienable right to sack their lawyers at any time without the fear of their confidences being betrayed by the lawyer, his partners, associates, employees or firm. The basic professional ethics rule on confidentiality provides that a lawyer shall not reveal information relating to representation of a client.

In the absence of all the exceptions above, the lawyer's obligation of confidence to his client is sacrosanct. It is immaterial whether the client is a prospective, current or past client. It is also immaterial whether or not the lawyer-client relationship ended on a sour note.

WhatsApp messages defamatory

We own multiple companies in different sectors of the economy. For the past few months, people have been sending out false and defamatory messages on WhatsApp about our products and personally

attacking our families, to the extent that some are spreading rumours that we are tax evaders and should be prosecuted.
This WhatsApp program on mobile phones is very dangerous. Is there no law that controls it? People receive messages and resend messages on the basis of 'sent as received', and then claim that they are not the authors of the messages. Is secondary transmission not an offence under our laws? Someone must contain these programs and devices, otherwise there will be one rumour spread after another.

1 August 2016

One of our most controversial and heavily criticised laws, The Cyber Crimes Act 2015, comes to your rescue. Section 16 states that any person who publishes information or data presented in a picture, text, symbol or any other form in a computer system, knowing that such information or data is false, deceptive, misleading or inaccurate, and with the intent to defame, threaten, abuse, insult or otherwise deceive or mislead the public or counsel the commission of an offence, commits an offence. Upon conviction, this person shall be liable to a fine of at least TZS 5 M, imprisonment for at least three years or both.

Further, it is not only the originator of the WhatsApp message that you can take to task, but also all those who are forwarding the messages, as they are republishing the information. We have also learnt that there are many agencies and companies, locally and overseas, who can track the originator of the WhatsApp message, as a digital footprint is left every time a message is sent.

WhatsApp has some excellent uses, but it is true that it is a platform that is being utilised to defame, insult, pressurise and coerce people, and any such messages can lead to criminal prosecution. People do post messages in groups and such persons can be reported to the police, who can take appropriate action.

It is very hard for a phone user who has posted something offending Section 16 to deny it, and convicting such an offender should not be very difficult. If his or her WhatsApp message receives commentary from group members, they can also be prosecuted if they offend the above section.

In short, whether it is the primary sender of the message, or those who forward the message, both such persons can be prosecuted. Anyone else who comments in a manner that is false, deceptive, misleading or inaccurate can also be prosecuted. The group administrator who created the group can equally be held liable as the person who created the platform for such remarks.

We suggest you report this to the police, who can start making some mass arrests of all those who are spreading these false messages. Persons who are guilty may be sentenced to a minimum of three years in jail.

Translation mistake in the law

If there is a law that is drafted in Kiswahili and translated in English, and there is a translation error, which law shall prevail? I have noted a number of mistakes in translations of laws, policies and the like, and wish to understand what would happen.

10 October 2016

If a law was initially drafted in Kiswahili (there are sadly very few, if any) then, in case of translation error, the Kiswahili version will prevail over the English version. However, if a law is drafted and enacted in both English and Kiswahili (no translation), then the English version will prevail.

Section 84 of the Interpretation of Laws

Act states that: (1) the language of the laws of Tanzania shall be English, 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.

Appeal from Labour Court

I am confused as to whether one needs to apply for leave from the High Court Labour Division to appeal to the Court of Appeal. There are conflicting decisions and, in my appeal, such leave has not been applied for. What should I do?

31 October 2016

Whether leave is to be applied for or not hasn't always been clear. In a recent decision of the Court of Appeal, the Justices of Appeal cemented the position that leave from the High Court Labour Division must be obtained before an appeal can be lodged. If there is no such leave, then the appeal becomes incompetent and will be struck out. If you then show good cause on why time should be extended for you to appeal, you can then proceed to lodge the appeal.

In your case, because your appeal has not yet been called, we recommend that you proceed to withdraw it so that you can make the necessary applications for leave and extension of time at the High Court Labour Division. We must state that the High Court Labour Division will not automatically grant you leave. You must show that points of law need to be addressed by the Court of Appeal.

Traffic fine paid, stopped again

I was given a ticket to pay a fine for a traffic offence, which I accepted and paid for at the bank. I was again recently stopped by another traffic police officer, who had a list of those who had not paid. After having spent an hour arguing, I was forced to repay the fine and a penalty. Can I be charged twice?

14 November 2016

If you have truly paid the fine, you cannot be charged twice. You can report this to the head of traffic and claim a refund. A person charged once cannot be charged again for the same offence.

Meeting with Donald Trump

I am a Tanzanian and might be lucky enough to get an appointment with Donald Trump, president-elect of the greatest nation on earth (at least until today, I'm not sure about next year). You do not need to ask how I am about to get the appointment at Trump Towers in Florida, but I am surely going to meet him. My question is on his values and what he has been saying about African countries and other people in general. In my opinion, he has made racist and sexist remarks, including derogatory statements about Africa, which includes Tanzania. If I meet Trump, can I be charged under our laws for having met or having a relationship with a person who might not share Tanzania's values? I do not want to come back and get arrested in Tanzania. Please advise if I should proceed with meeting him.

28 November 2016

We see no harm in you meeting Donald Trump, as long as your meeting is not meant to harm the interests of the United Republic in any way. You have not told us what the

subject matter of your discussions are going to be, but if you stand in a press conference with him and make any threatening remarks that are unjustifiable or that make you a threat to public security in Tanzania, then you will surely be questioned or arrested upon your return to Tanzania.

Further, our little knowledge of American geography indicates that Trump Towers is in New York, not Florida, just in case you end up going to the wrong address when you get this appointment. Of course, he may not be president after the US elections in 2020. We wish you all the best.

Arrest for non-payment of debt

I lost a case against an individual for a substantial amount and have failed to pay. I have now been summoned in Court on why I should not be imprisoned as a civil prisoner. I have committed no crime, have genuinely gone under and find it hard to understand how the judgment-creditor will benefit from my imprisonment. What should I do?

9 January 2017

Our Civil Procedure Code (CPC) states 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 the Court, which may order his detention. If the judgment-debtor is arrested in execution of a decree for the payment of money, and the 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 him.

The CPC further states that, where a judgment-debtor is arrested in execution of a decree for the payment of money and brought before the Court, the Court shall inform him that he may apply to be declared insolvent. He will be discharged if he has not committed any act of bad faith regarding the subject of the application and if he complies with the provisions of the law of insolvency currently in force.

The CPC adds that, where a judgment-debtor expresses his intention to apply to be declared insolvent and furnishes security to the satisfaction of the Court, he will within one month so apply. He will appear, when called upon, in any proceeding related to the application or the execution of the decree for which he was arrested, and the Court shall release him from arrest. If he fails to apply and to appear, the Court may either direct the security to be realised or commit him as a civil prisoner in execution of the decree.

Based on the above provisions you therefore have the choice of either paying up the debt when you appear in Court, or apply to be declared an insolvent and furnish security to the Court's satisfaction or end up being sentenced to six months imprisonment. If you end up being imprisoned, this requires that the judgment creditor, person whom you have to pay, must supply you with your food and ensure it is at the same standard as what you are currently having.

Hence this is another expense he will have to incur and perhaps can be persuaded to withdraw his application.

Implementation of law leading to absurdity

I am a law student and have come across an old statute in Tanzania whose interpretation leads to a totally irrational and illogical result. How could the legislature have made such a mistake and why has this not changed until today? Can this legal provision be held illegal?

9 January 2017

Unfortunately, you have not named the law to help us assist you in interpreting it and assessing whether it should be changed or not.

Generally, as is the case elsewhere, there are a number of old statutes in Tanzania that might still exist but are not implemented or may not be implementable today. These laws have yet to be repealed and theoretically would have legal force. Hence, we would need to look at the legislature's thinking at the time of making of the law before we could conclude that it was a mistake.

Having said that, most if not all parliaments around the world, including Tanzania's, have made mistakes when formulating, debating or drafting laws. The legislators work under intense pressure and mistakes can happen, as they do in all other areas and professions. Some countries also have made mistakes in drafting their constitutions.

If there is a Tanzanian law that leads to absurdity, judges have some flexibility under the golden rule of interpretation, which dictates that a judge can depart from a word's meaning if it leads to an irrational result. Where a word can have more than one meaning, the judge can choose the preferred meaning; if the word only has one meaning, but applying this would lead to a bad decision, the judge can apply a completely different meaning.

On whether a provision of the law can be held illegal, the answer is yes. Recently, a certain provision of the Cyber Crimes Act was held by Tanzania's High Court to contravene the Constitution and the judge ordered that the provision be corrected within 12 months or be automatically repealed.

Surety for my boss

I am surety for my boss in which he has been criminally charged. I wish to remove myself from being his surety. Can I do so? Can I be fired for such withdrawal?

16 January 2017

The Criminal Procedure Act allows a surety to withdraw. You need to make an application to the Magistrate, which you can do orally. On such application being made, the Magistrate shall issue a warrant of arrest directing your boss to be brought before the Court.

Your boss will have a chance to replace someone else as his surety, otherwise he will be sent to remand prison pending satisfaction of a surety. It might be wise to inform your boss beforehand that you intend to withdraw being his surety to allow him prepare another one.

As for your employment, removing your name as his surety is no grounds for your boss to fire you. If he does, it would be an unfair termination.

Playboy magazine in Tanzania

I am a foreigner and my friends in my home country have sent me a Playboy magazine, which I like reading. Is this legal?

30 January 2017

Section 175 of the Penal Code states that any person who, for the purpose of or by way of trade or for the purpose of distribution or public exhibition, makes, produces or has in his possession any one or more obscene writings, drawings, prints, paintings, printed matter, pictures, posters, emblems, photographs, cinematograph films or any other objects tending to corrupt morals, or who advertises or makes known how or from whom any such matters or things can

be procured either directly or indirectly, is guilty of a misdemeanour offence and liable to imprisonment for two years or a fine of TZS 2,000.

The Playboy magazine, which is pornographic material, would likely be deemed obscene. Hence, you could be imprisoned if found in possession of it. Your lawyers can guide you further.

Statute on preventive law

Are there any statutes in Tanzania on preventive law? It would make lawyers poorer, but society emotionally and financially better off.

1 March 2017

Unless you mean statutes on alternate dispute resolution, for which there are provisions under our procedural laws, we are not sure what you mean by statutes on preventive law.

Preventive law is comprised of legal and practical principles for anticipating and avoiding legal problems. The goal of preventive law is to provide for the "legal health" of individuals and business entities. The concept is a familiar one in the context of medicine. There is now a clear recognition that the most successful medical treatment is prevention. While the same concept applies to the state of a person's or business' legal wellbeing, the recognition of preventive law as the most desirable model for delivering legal services is of more recent origin.

Preventive law, in its broadest sense, seeks to encourage new methods and concepts for how legal services can be delivered in the future to avoid conflict and disputes. While the emphasis in preventive law is to manage facts and events in such a manner as to avoid unwanted legal consequences, it has a natural connection with concepts of alternative dispute resolution.

Clearly, some legal services today include strong elements of "prevention". Examples of preventive law practice include planning for real estate transactions, tax and estate planning, as well as various legal services for corporate clients. Yet, the broader purpose of preventive law goes much further and includes the entire "legal health" of individuals and business entities. Preventive law techniques for individuals include such services as the individual "legal checkup".

In the book Medical Risk Management, the authors describe the relationship between preventive medicine and preventive law as follows: "Using the analogy with preventive medicine, preventive law is the legal specialty of preventing the disease of litigation. Litigation is a serious disease that leaves its victims financially and emotionally weakened and, in some cases, may lead to their economic demise. It is a contagious disease characterised by a latent state with intermittent crises (individual suits). Symptomatic treatment of the crisis phase may lead to a remission, but the disease usually recurs in a more serious form."

Fighting in public

My boyfriend's ex-girlfriend fought with me in a nightclub without me doing anything wrong. She thinks she owns my boyfriend. She also swore at me in front of hundreds of people. The DJ, instead of increasing the speaker volume, decreased it so that everyone could hear what was happening. My boyfriend also seemed to be encouraging both of us to fight. I am heartbroken.

20 March 2017

The Penal Code clearly states that any person who takes part in a fight in a public

place is guilty of a misdemeanour offence, and is liable to imprisonment for six months or a fine not exceeding TZS 500. Further, 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, is liable to imprisonment for six months.

Your boyfriend's ex can be reported to the police under the above measures and she could be imprisoned.

The Penal Code also states that any person who challenges another to fight a duel, or attempts to provoke another to fight a duel, or attempts to provoke any person to challenge another to fight a duel, is guilty of a misdemeanour. As such, both the DJ and your boyfriend might be in breach of the above provision and you could report them both to the police for investigation.

As for being heartbroken, this is not a legal question and, whilst we sympathise with you, we are unable to respond to this. You might need the services of a counsellor.

Drunk behaviour by leaders in Dodoma

After the shift of government to Dodoma, I have noticed that the bars are full of our public servants, some very senior, who after some time talk all kinds of rubbish as they are drunk. Is there no law that bars them from going to bars and getting drunk? Are they allowed to drink? Can I get a Court order to stop these individuals from coming to the bars?

10 April 2017

We are not aware of any law, regulation, rule, code or otherwise that disallows any public servant to go to a bar and drink.

However, Part III of Paragraph 3 of the Code of Ethics for Public Servants disallows drunken behaviour and states that "while out of office, an employee will conduct his/her personal life in such a manner that it does not affect his/her services or bring the Public Service into disrepute. He/she is therefore required to refrain from becoming drunk, using narcotic drugs and any other unacceptable behaviour."

We doubt if any Court will grant you an order to stop these individuals from visiting a bar. It would be quite unfair and discriminatory for a Court to rule against them in this manner.

Government document accessibility

There are certain government documents that I would like to access that date back to the 1970s and early 1980s. How do I access them and is there a statutory period within which I can access such documents?

10 April 2017

The Record and Archives Management Act of 2002 provides for the establishment of a Records and Archives Management Department, whose function is to contribute to the efficiency, effectiveness and economy of the government of the United Republic.

The department is required to do this by: (a) ensuring that public offices follow good recordkeeping practices; (b) establishing and implementing procedures for the timely disposal of public records of no continuing value; (c) advising on best practices and established recordkeeping standards for the public service; and (d) establishing and implementing procedures for the transfer of public records of enduring value for preservation in the National Archives or such other archival repository as may have been established under this Act.

The department is also entitled to receive

one copy of every publication produced by the parliament, government and higher Courts of the United Republic and of every publication and dissertation produced on the basis of archival research carried out in the United Republic, without making any payment for such publications and dissertations.

When it comes to accessing records, this Act stipulates a period of 30 years from the creation of any such document, after which such document can be accessed and inspected by the public, unless there are further reasons for the document(s) not to be disclosed. We recommend you contact the director under this Act for further guidance.

Cyber Crimes Act threat to Facebook

I have been informed that, with the Cyber Crimes Act in place, what we write on Facebook as a joke or comment can be used against us in Court. Can you please tell me more about this law? I am a Facebook addict and cannot live without it.

24 April 2017

The Cyber Crimes Act of 2015 has some very strict provisions that could make you liable for a fine, imprisonment or both. We believe the section that affects you the most as a Facebook fan is Section 16, which we have reproduced below and recommend that you read carefully.

Section 16 states that any person who publishes information or data presented in a picture, text, symbol or any other form in a computer system, knowing that such information or data is false, deceptive, misleading or inaccurate, and with the intent to defame, threaten, abuse, insult, or otherwise deceive or mislead the public or counsel the commission of an offence, commits an offence, and shall on conviction be liable to a fine of at least TZS 5 M, imprisonment for at least three years, or both.

Therefore, when you post on your Facebook page, it does not matter whether or not you are joking. You could still be committing an offence if what you post is false, misleading or inaccurate and your intention is to defame, threaten or mislead the public. We believe this also applies to those who like or dislike the comment, and those who further add their comments to what was initially said. Hence, your friends can also get into trouble.

For example, if you post that a certain police station had police officers sleeping at night and you were not attended to, if this information was false, you would fall foul of Section 16. Another example is when you make comments about service levels at public organisations or how you were treated somewhere; if the information is false or inaccurate and it was deemed insulting, you could end up facing criminal charges under the Act.

This is a very strict section of the Cyber Crimes Act and all Facebook fans who forward information should be careful. This section would also apply to content shared on Twitter and WhatsApp, amongst others.

We believe the constitutionality of this section, amongst other sections, is being challenged in Court on the grounds that the Act curtails the freedom of speech enshrined in the constitution. Until the Courts make a decision, this is the law and you must be very careful of what you publish on social media.

Impossibility of performance

I am a second-year law student and find it hard to understand how impossibility of performance can render a contract terminable. Does it not make one party richer if part of the contract has been performed?

24 April 2017

In contract law, impossibility is an excuse for the non-performance of duties under a contract, based on a change in circumstances or the discovery of pre-existing circumstances, the non-occurrence of which was an underlying assumption of the contract that makes performance of the contract literally impossible.

For example, if person 'A' contracts to pay person 'B' 100,000 TZS to renovate his house, and if the house burns down before such renovations begin, Person A may be excused from his duty to pay Person B the 100,000 TZS, who is also excused from his duty to paint the house. However, Person B may still be able to sue under the theory of unjust enrichment for the value of any benefit he conferred on Person A before the house burned down.

The parties to a contract may choose to ignore impossibility by inserting a "hell or high water" clause, which mandates that payments continue even if completion of the contract becomes physically impossible. This however would depend on the way the contract and this clause is drafted. This clause is not very commonly used in Tanzania.

In common law, for the defence of impossibility to be raised, performance must not merely be difficult or unexpectedly costly for one party, there must be no way for it to actually be accomplished. However, it is beginning to be recognised that impossibility under this doctrine can also exist when the contemplated performance can only be done at an excessive and unreasonable cost, i.e., commercial impracticability.

We must however state that some cases see impossibility and impracticability as being related but separate defences. Taylor v. Caldwell is an old English case that established this principle. We recommend that you read it to get a better feel for this defence.

Arbitration too expensive

I entered into an agreement that has an arbitration clause. However, going to arbitration is very expensive — can I sue directly in Court? Please help me.

8 May 2017

There is very little we can do to help you. You agreed to arbitration and, unless the other party agrees to litigate in Court, your Court application is unlikely to survive. Reasons such as you thought arbitration was cheaper than going to Court will not hold in a Court of law, which will direct you to arbitration.

Law only mentions males, not females

There is a Tanzanian law that mentions only the male gender and totally ignores females, who should be equally bound by the law. Isn't such a law targeted only at males discriminatory? As a male, I am very upset that Tanzania is so advanced in overprotecting women.

15 May 2017

Tanzania is playing its part in protecting women, but your interpretation in this is misconstrued. The new way of drafting a law is by using the word "person", instead of "he". There are, however, some laws that are decades old which still apply but use the word "he" instead of "person".

The Interpretation of Laws Act states that "he" in such laws refers to both genders. Section 8 states that, in any written law: (a) words importing the masculine gender include the feminine; (b) words importing the feminine gender include the masculine; and (c) words in the singular number include the plural and words in the plural number include the singular.

Hence, the law is not discriminatory, as it applies to both genders even though the male

gender may be the only one that it refers to.

Service of summons on maid

There is a case that went against me at the High Court that I was not aware of. Apparently the Court served my house when I was not there and left the summons to file defence with the maid. Is this proper service of such an important Court document?

22 May 2017

The Civil Procedure Code states that, where in any suit the defendant cannot be found and has no agent empowered to accept service of the summons on his behalf, service may be made on any adult male member of the family of the defendant who is residing with him. It further states that a servant is not a member of the family within the meaning of this rule.

Hence, service on your maid is not proper service and you can make an appropriate application to set aside the 'ex parte' or default judgment.

Bodaboda now an English word, I want 'kiboko' to be included

I have recently learnt that 'bodaboda' is one of the 1,000 words the Oxford Dictionary has agreed to include in this year's list of new English words. I want our very own word 'kiboko' to be included too. Can you help me?

5 June 2017

This is not a legal question, but it interested us and we embarked on researching this online. Various dictionary publishers state that they are never tired of being reminded of the usage of new words, since "our language is growing". Not content with the million or so words these dictionaries already have at their disposal, English speakers are adding new ones at the rate of around 1,000 a year. Recent dictionary debutants include 'blog', 'grok', 'crowdfunding', 'hackathon', 'airball', 'e-marketing', 'sudoku', 'twerk' and even 'Brexit'.

But these represent just a sliver of the tip of the iceberg. According to Global Language Monitor, around 5,400 new words are created every year; it's only the 1,000 or so deemed to be in sufficiently widespread use that make it into print. Oxford University's dictionary states that "before adding a word to one of our dictionaries, we have to see evidence that it is widely used in print or online. We tailor entries to suit the needs of the user: a dictionary for children at primary school level, for example, will contain words and definitions appropriate to that age group."

If you think the word 'kiboko' is widely used beyond Tanzania, then it may be accepted. You need to write to the dictionary's team and explain to them why you think it should be included. There is a lot of information online on how you may suggest it. We wish you all the best.

Granting of leave to appeal

I fail to understand why, after losing at the High Court, I have to apply for leave to appeal from the same Court that I am aggrieved with. How often is leave granted and what do you suggest I do?

26 June 2017

Leave to appeal is a statutory procedural requirement in some types of cases, without which you cannot appeal to the Court of Appeal. It is granted quite frequently, as long as your application is properly drafted and timely filed.

According to case law, leave is granted where the proposed appeal stands reasonable chances of success or where, but not necessarily, the proceedings as a whole reveal

such disturbing features as to require the guidance of the Court of Appeal. The purpose of the provision is therefore to spare the Court the spectre of unmerited matters and to enable it to give adequate attention to cases of true public importance.

Needless to say, leave to appeal is not automatic. It is within the Court's discretion to grant or refuse leave. The discretion must, however, be judiciously exercised on the materials before the Court. As a matter of general principle, leave to appeal will be granted where the grounds of appeal raise issues of general importance or a novel point of law where the grounds show a 'prima facie' or arguable appeal. However, where the grounds of appeal are frivolous, vexatious, useless or hypothetical, leave can be denied.

If your case is one that requires leave, you have no option but to apply for it.

Constitutionality of certain laws

We are fighting a very sensitive case at the Kisutu Resident Magistrate's Court, where the magistrate seems to be unsure about the interpretation of a certain provision of the Constitution. Who can assist with such an interpretation and how does the process work?

17 July 2017

The Appellate Jurisdiction Act has a specific provision to address this point. It states that where, in the course of any proceedings in a subordinate Court (other than one with extended powers), it appears to the Magistrate that the determination of any issue or other matter in the proceedings involves a substantial question as to the interpretation of the Constitution, he may, at any time before judgment is pronounced, reserve that question for determination by the High Court. Where a Magistrate so reserves that question, he may continue the hearing of the proceedings in respect of all or any other issues or matters in the proceedings or he may adjourn the hearing, pending the determination of the question by the High Court.

The Magistrate therefore has the above option of reserving the matter to be determined by the High Court.

Defective affidavit consequence

We made an application at the High Court where the other party raised an objection over the affidavit we filed. It was a very minor omission in that the affidavit did not show the place and date at which it was sworn. Whilst the application was meritorious, the judge said there was no application before him and did not entertain the matter. What should we do? Is the judge biased?

31 July 2017

You are undermining the role of an affidavit in pleadings. An affidavit is a declaration of facts that is made voluntarily by the declarant before an officer authorised to administer oaths. The affidavit must be confined to such statements as the declarant is able of his own knowledge to prove, but may also contain statements of information and belief with grounds stated thereon.

Apart from the statement declaring the facts, an affidavit must also contain a verification clause, a jurat and signature of the declarant. Without these, an affidavit is rendered incurably defective. In your case, the jurat was defective. A jurat is a certification that states when, where and before which authority the affidavit was made. The absence of the date and place at which the affidavit was sworn hence renders it incurably defective and would usually result in your application

being struck out.

Since there was no application before the Court because of a defective affidavit, the judge naturally cannot entertain you. On the facts, we do not see how the judge was biased and we suggest you refile the application in Court.

One Court says north, other says south

There were two cases involving different parties in different Courts. The issues were more or less similar. One Court ruled exactly opposite from the other. How can the Courts make such a serious blunder? I have reported this to the chief justice. Please guide me further.

7 August 2017

We are sorry for your disappointment, but it is not an uncommon occurrence in many Court systems around the world, Tanzania's included. That is the reason why there is normally an appellate Court in the country and the parties can appeal to this Court, where a judgment will ultimately be issued.

There is a principle of 'stare decisis', by which 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. They 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; 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 the precedent unhelpful, and wishes to help the law evolve, it 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 and may 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.

Maximum amount for overseas travel

Is there any restriction on the amount of money that I can travel with when going overseas? I was recently stopped and searched at the airport. Please advise.

7 August 2017

Foreign currency in Tanzania is regulated by the provisions of the Foreign Exchange Act 1992, the Banking and Financial Institutions (Foreign Exchange Exposure Limits) Regulations 2008 and the Foreign Exchange (Bureau de Change) Regulations 2015.

The Foreign Exchange (Bureau de Change) Regulations 2015 allow bureau de change to sell to a resident person, upon production of travelling documents and residency evidence, an amount of foreign currency not exceeding the equivalent of USD 10,000. For amounts exceeding USD 10,000 further documentary evidence is required, such as invoices in case of importation, letter or invoice from a medical or education institution, or relevant invoices in case of any charges payable in foreign currency. The regulations also provide

a foreign currency limit of USD 10,000 that a resident can carry out of Tanzania when travelling.

In short, you can only carry a maximum of USD 10,000 if travelling outside the country, unless you can provide documentary evidence that you will need more than USD 10,000. Furthermore, airport authorities, for safety, have the power to stop and search passengers, you so there is nothing new about this.

Flying drones in Dar

I am informed that it is now illegal to fly drones without a permit. Is that true and why are the authorities so stiff? These are small gadgets, not aircraft. What should I do?

14 August 2017

The Tanzania Civil Aviation Authority (TCAA) recently issued a circular on drones, which states that operation of all aircraft within Tanzanian airspace or at any point in Tanzania is subject to regulatory approval and/or authorisation by the TCAA. All those who wish to fly drones must first seek approval from the Ministry of Defence and National Service, and then seek authorisation from the TCAA.

The circular further states: "Please be guided by the current Aeronautical Information Circular (AIC) number 5/17 (Pink 62) of 1 JAN 2017 found on our website (www.tcaa.go.tz) for detailed information on limitations and conditions for the operation of Remotely Piloted Aircraft in Tanzania in accordance with the provisions of International Civil Aviation Organisation (ICAO) Circular 328 AN/190".

Drones are like small aircraft and can cause harm to larger aircraft, in addition to becoming a security risk. Flying them without permits was always illegal. With this circular now in place, anyone found flying a drone may be criminally prosecuted. Depending on what you are doing with the drone, you may also be prosecuted under the National Security Act. So be careful and comply.

Breast implants illegal in Tanzania

My boyfriend wants me to have a big chest before we marry and has requested that I get breast implants at a private hospital in Dar. I consulted a lawyer friend about this, who said that since I am a Tanzanian citizen, the state does not allow a change of body structure. How can the state monitor such operations? What can I do? Can my boyfriend still say that getting breast implants is a condition to getting married?

21 August 2017

We have personally never heard of any doctors or hospitals in Dar es Salaam who have the capacity to perform breast implants. We stand to be corrected though. There is no doctrine of the state protecting you from undergoing a change of body structure, as it would then also be illegal to go to the gym and lose weight, which would also lead to a change in body structure. Yours is a surgical intervention leading to this structural change. It is not an operation for abortion.

This is an operation that you want to undergo for a cosmetic change and, as long as it is safe and not against public policy, we don't see a problem. The state's interest is primarily your safety. What your lawyer might be saying is that you can only undergo such procedures at hospitals that have accreditation and a licence. The implant itself must also be approved by the Tanzania Food and Drug Authority (TFDA).

If the TFDA has not approved the material to be used, usage of such material is 'prima facie' illegal. We suggest you contact the TFDA to make sure the material for such surgery

is approved; the Ministry of Health should be able to guide you on whether the doctor and hospital have the licence and expertise to perform this highly intricate operation. We suggest you find this out, as it is important. As for whether your boyfriend can insist you get these implants as a condition for getting married, the answer is that you cannot stop him from doing so.

Award for costs in case very low

I am a Tanzanian businessman and a resident of Sumbawanga. In 2009, I successfully defended a suit that my customer instituted against me in the Resident Magistrate's Court at Kisutu on allegations of breach of contract. The Court awarded me costs of the suit, but with great disappointment, I have been awarded very minimal costs compared to the amount I spent defending the suit, which includes transport, taxis, food, entertainment and accommodation, including other costs for my witnesses. I feel the Court has not been fair to me. What should I do?

21 August 2017

Taxation is the legal term given to the Court's process of assessing the costs that the successful litigant incurs in prosecuting the suit. The taxing master, normally the registrar or deputy registrar or the resident Magistrate in charge in case of the lower Courts, is the officer of the Court responsible for taxation. The whole process starts by the successful litigant, if awarded costs, presenting in Court a list of costs in a tabulation form commonly known as bill of costs, of amounts he or she has spent in prosecuting the suit. This should be done in a time not exceeding 60 days from the date of judgment. Only necessary costs are entertained by the Court.

Costs as to entertainment of your lawyer or witnesses are not accepted. The bill of costs has to normally be supported by receipts and vouchers for all disbursements, together with any documents, drafts or copies thereof to be relied upon during taxation, and must be reasonable. What is reasonable depends on the judicial discretion of the taxing master who, after considering the facts, complexity and public importance, amongst other surrounding circumstances of the case at the trial, decides on what figure the bill of costs should be taxed at. Unless the taxing master erred in these principles, in which case the aggrieved party can refer the matter to a judge of the High Court, the decision of the taxing master on the quantum is final.

We are not in a position to default the taxing master, due to a lack of sufficient facts. We do not have details of the bill of costs you presented in Court, nor do we have a copy of the taxing master's ruling.

However, should you think that the taxing master erred in principles pertaining to the assessment of costs, we advise you to refer the matter to the Judge. Reference to the Judge is made by way of a Chamber Application, supported by an affidavit within 21 days after issuance of the certified copy of the taxing master's decision. In case you are out of time, you can apply for enlargement of time upon showing good cause for such delay.

When does a law come into force?

There is a particular law which was passed in the National Assembly in Dodoma on a certain day, but we are unsure when it came into force. Is it immediately after the president assents to it?

28 August 2017

Section 14 of the Interpretation of Laws Act

states that every Act shall come into operation on the date of its publication in the official 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.

Hence, the law must be published in the gazette to come into force, otherwise it comes into force as shall be stated in the law itself. For example, some laws state that the law comes into force upon an order being gazetted by the minister responsible. You therefore need to read the law itself to know when it was to come into force.

Appealing after an appeal

Is it possible for me to appeal from the Court of Appeal? How does one do that?

28 August 2017

Normally, the Court of Appeal's judgment after an appeal is final. However, there is what is called a review, based on some very narrow grounds, that one can lodge after losing an appeal.

Section 4(3) of the Appellate Jurisdiction Act and Section 66 of the Tanzania Court of Appeal Rules addresses reviews. It states that the Court may review its judgment or order, but no application for review shall be entertained except on the following grounds: (a) the decision was based on a manifest error on the face of the record, resulting in the miscarriage of justice; (b) a party was wrongly deprived of an opportunity to be heard; (c) the Court's decision is a nullity; (d) the Court had no jurisdiction to entertain the case; or (e) the judgment was procured illegally, or by fraud or perjury.

The rules state that an application for review shall as far as practicable be heard by the same justice or bench of justices that delivered the judgment or order sought to be reviewed. Where the application for review is granted, the Court may rehear the matter, reverse or modify its former decision on the grounds stipulated in sub-rule 1 or make such other order as it sees fit.

Flying to 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?

4 September 2017

We have received a number of your space questions and believe that we answered one about a year ago. You have about 20 pending difficult space questions, most of which are not legal in nature, and 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 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, and 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 international law and 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, it is responsible for any damages that occur 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 at the international space station, you are free to go to space if you have the means, which you claim to have.

Why no Kiswahili laws

I think Tanzania is still living under colonial times, because all our laws are in English and most Tanzanians cannot speak English. I fail to understand how we can tolerate such injustices in our system. If you look at countries like Turkey, Russia and European nations, they all have their laws in their own languages. Isn't something being done about this? Imagine Tanzania's parliament debating English laws in Kiswahili - that beats logic doesn't it?

9 October 2017

Simplification and translation of laws is among the Law Reform Commission of Tanzania's activities, which are provided for under the Law Reform Commission Act. We are informed that, due to funding issues, very few laws have been translated thus far, but such translation is in the pipeline.

To date, only the following laws have been translated: the Interpretation of Laws Act; Penal Code; Criminal Procedure Act; Proceeds of Crime Act; Labour institutions Act; Employment and Labour Relation Act; Law of Contract Act; Police Force and Auxiliary Service Act; Community Services Act; and Anti-Money Laundering Act.

Your concerns should be shared with the Law Reform Commission of Tanzania for action.

Obscene, pornographic messages

I am a father of three and my daughters have cell phones which I proudly bought for them. Sadly, there are many obscene and pornographic messages flying around on WhatsApp, texts and emails, including video clips of a disgusting nature. Isn't there a law which provide for these things?

16 October 2017

The Electronic and Postal Communications Act of 2010 states that any person who by means of any network services or applications service provides any obscene communication to any person commits an offence and shall, on conviction, be liable to a fine of at least TZS 5 M, imprisonment for at least 12 months or both, and shall also be liable to a fine of TZS 750,000 for every day during which the offence is continued after conviction.

As you can see, the penalties for such communications are serious, with hefty fines and possible imprisonment. If you can pinpoint the persons who are sending these messages to your daughters, you can report the matter to the relevant authorities and proper measures can be taken against them. Even if you cannot pinpoint such persons, this

is reportable, as all mobile phone numbers are registered. Your lawyer can guide you further.

Pornography is also illegal under our penal statutes, very few people seem to remember that. It is an offence that is imprisonable. Furthermore, under the newly passed Cyber Crimes Act 2015, publishing pornography attracts a fine of between TZS 20 and 30 M, with a custodial sentence of seven years.

Written submissions filed out of time

Is it true that, after filing a memorandum of appeal at the Court of Appeal, the written submissions must be filed within 60 days or the appeal will be dismissed? My lawyer has not filed anything and I am really worried.

30 October 2017

Rule 106(1) of the Tanzania Court of Appeal Rules states that a party to a civil appeal, application or other proceeding, shall within 60 days after lodging the record of appeal or filing the notice of motion, file in the appropriate registry a written submission in support of or in opposition to the appeal or the cross-appeal or application, if any, as the case may be.

It is true that one is supposed to file the submissions within 60 days, but there are rulings of the Court of Appeal that non-filing of submissions cannot necessarily lead to a dismissal.

If you can explain your position in Court, you can still proceed to submit orally during a hearing, although you will only have 30 minutes to do so. You have the option of filing an application for an extension of time to file the submissions. Your lawyer can guide you further.

Scales of justice

In many Courts that I have visited, I have seen scales of justice. Is this a sort of universal symbol? What do they depict? Are they mandatory in Court?

30 October 2017

The scales of justice are, perhaps, the most familiar symbol associated with the law, symbolising impartial deliberation in Court through the weighing of two sides in a legal dispute. There is also the book of judgment or law, which represents learning, written knowledge and judgments. Sometimes the word 'lex' (law) is shown on the book. Tablets of the law also have a long history, signifying the permanence of law when 'written in stone'.

These scales of justice are symbolic and it is not mandatory for them to be present in a Courtroom. However, many Courts have these scales.

Res judicata in law

I am a law student at the university and find it hard to fully understand all the angles to 'res judicata' as a defence. I can think of situations that seem like 'res judicata' but are not really, although the professor says they are. Can you make it easier to understand?

6 November 2017

'Res judicata' is a Latin term for a matter already judged. There is very good English judgment involving 'res judicata' that would be persuasive in Tanzania and which was cited in a Tanzanian proceeding. The following is what was said in Virgin Atlantic Airways Ltd v Zodiac Seats UK, which we hope will clarify the different situations in which 'res judicata' applies.

"Res judicata is a portmanteau term which

is used to describe a number of different legal principles with different juridical origins. As with other such expressions, the label tends to distract attention from the contents of the bottle. The first principle is that once a cause of action has been held to exist or not to exist, that outcome may not be challenged by either party in subsequent proceedings.

This is 'cause of action estoppel'. It is properly described as a form of estoppel precluding a party from challenging the same cause of action in subsequent proceedings. Secondly, there is the principle, which is not easily described as a species of estoppel, that where the claimant succeeded in the first action and does not challenge the outcome, he may not bring a second action on the same cause of action, for example to recover further damages: see Conquer v Boot [1928]. Third, there is the doctrine of merger, which treats a cause of action as extinguished once judgment has been given on it, and the claimant's sole right as being a right on the judgment.

Although this produces the same effect as the second principle, it is in reality a substantive rule about the legal effect of an English judgment, which is regarded as 'of a higher nature' and therefore as superseding the underlying cause of action: see King v Hoare (1844).

At common law, it did not apply to foreign judgments, although every other principle of res judicata does. However, a corresponding rule has applied by statute to foreign judgments since 1982: see Section 34 of the Civil Jurisdiction and Judgments Act 1982.

Fourth, there is the principle that even where the cause of action is not the same in the later action as it was in the earlier one, some issue which is necessarily common to both was decided on the earlier occasion and is binding on the parties: Duchess of Kingston's Case (1776). 'Issue estoppel' was the expression devised to describe this principle by Higgins J in Hoysted v Federal Commissioner of Taxation (1921) and adopted by Diplock LJ in Thoday v Thoday [1964].

Fifth, there is the principle first formulated by Wigram V-C in Henderson v Henderson (1843) which precludes a party from raising in subsequent proceedings matters which were not, but could and should have been raised in the earlier ones. Finally, there is the more general procedural rule against abusive proceedings, which may be regarded as the policy underlying all of the above principles with the possible exception of the doctrine of merger."

Reissuing 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 someone else to act as the attorney not myself, although I am the original holder of the power of attorney.

27 November 2017

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.

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 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 which has, to the best of our knowledge, 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.

Your lawyer can guide you further.

Effect of old forgotten laws

There are a number of laws that I have come across during my research that are old, irrelevant and forgotten, do not make sense, refer to India and Great Britain, but were passed by our parliament. Can these laws be enforced even if they are forgotten and have escaped the legal landscape? As a law student I fail to understand why these laws have not yet been repealed.

4 December 2017

This issue faces many countries, not Tanzania alone. The general principle is that, once a law comes into force, it is enforceable, whether it is 'forgotten' or not. If it is unenforceable because of changing times, then there is nothing to worry about because it is overtaken by events. However, if the law is implementable but leads to absurd results, then its implementation can be questioned and the Courts may intervene. That doesn't change the fact that the law is still in force until the Courts intervene or parliament repeals the law.

You must realise that it is also your duty as a good corporate citizen to alert relevant authorities about such laws. Unfortunately, you have not listed them for us, but we do know they exist and may have not been repealed, despite their irrelevance today. We recommend you list such laws and forward them to the Law Reform Commission of Tanzania.

Whether true or not, other countries face the same challenges that you have spotted. About 10 years ago, the Daily Telegraph ran an article on some ridiculous laws in the UK. For example, it is illegal to die in the houses of parliament; it is an act of treason to place a postage stamp bearing the British monarch upside-down; in Liverpool, it is illegal for a woman to be topless except as a clerk in a tropical fish store; mince pies cannot be eaten on Christmas Day; in Scotland, if someone knocks on your door and requires the use of your toilet, you must let them enter; in the UK, a pregnant woman can legally relieve herself anywhere she wants, including in a policeman's helmet; the head of any dead whale found on the British coast automatically becomes the property of the king, and the tail of the queen;; it is illegal to enter the houses of parliament in a suit of armour; and in the city of York it is legal to murder a Scotsman within the ancient city walls, but only if he is carrying a bow and arrow.

Other outrageous international laws that were listed in that article include the following. In Ohio, it is illegal to get a fish drunk; in Bahrain, a male doctor can only examine the genitals of a woman in the reflection of a mirror; in Switzerland, a man may not relieve himself standing up after 10pm; in Alabama, it is illegal to be blindfolded while driving a vehicle; in Florida, unmarried women who parachute on a Sunday could be jailed; in Vermont, women must obtain written permission from their husbands to wear false

teeth; in Milan, it is a legal requirement to smile at all times, except during funerals or hospital visits;; in France, it is illegal to name a pig Napoleon.

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 this not breach of his constitutional right to privacy?

4 December 2017

This issue has been debated in many countries and our research shows that it has almost always been in favour of the institute conducting the test. When your son was to take the urine test, he was likely escorted to a toilet but was unlikely to have been watched during the process.

Unfortunately, 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.

Reporting lost SIM card

Is it mandatory to report a lost SIM card to the police even if I don't intend to apply for another one with the same number?

11 December 2017

Under Section 100 of the Electronic and Postal Communications Act 2010, when a mobile telephone or detachable SIM card is lost, destroyed or stolen, the owner of that equipment or detachable SIM card shall report such loss, theft or destruction in person or through a person duly authorised by him to the police and to the application service licensee or to whose network the owner subscribed. The law further states that the customer shall, at the time of filling a report, produce the unique identity number of the lost, stolen or damaged detachable SIM card or mobile telephone.

Furthermore, should you fail to inform the authorities in line with the above, you commit an offence and may face up to six months' imprisonment, a fine of up to TZS 500,000 or both.

Defendant dead, judgment not delivered

In the past few years, my uncle filed a civil suit in the District Court against an individual. The hearing of the case was concluded on both sides and he is awaiting the Court's judgment. However, we were recently informed that the defendant has died and we are worried about this information. My uncle would like to know the fate of his case if he wins. Can we instead sue the defendant's wife? Please advise.

11 December 2017

Since the hearing of the case was concluded, the law is very clear in that, 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 be pronounced, notwithstanding the death, and shall have the same force and effect as if it had been pronounced before the death took place.

As for suing the defendant's wife, if you had not done this at the initial stages because there was no cause of action against her, it is unlikely that you can do so now.

New evidence at Court of Appeal

I wish to introduce new evidence that has just come to light in a matter that is now on

appeal. Can the Court of Appeal admit such evidence, as it is critical to the dispensation of justice?

1 January 2018

It is possible for the Court of Appeal to allow the introduction of new evidence in an appeal, although it would very sparingly allow this. Rule 36 of the Tanzania Court of Appeal Rules states that:

(1) on any appeal from a decision of the High Court or tribunal acting in the exercise of its original jurisdiction, the Court may: (a) reappraise 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 regarding the credibility of the witness or witnesses giving the additional evidence, and when evidence is taken by a commissioner, he shall certify the evidence to the Court without any statement of his own opinion regarding the credibility of the witness or witnesses.

Criminal Law and Procedure

The rule of law and adherence to correct legal procedure are crucial pillars of peace and prosperity in every society, and Tanzania is no exception to this rule.

Understanding the law and its operation is vital, especially for those who find themselves victims or witnesses of criminality, and also for those who stand accused of crime.

In this chapter we cover issues including, the rights of anyone subject to police questioning, and rights of prisoners on remand; and the difference between bailable versus non-bailable offences.

We look at the limits of any defence based on claimed kleptomania, provocation, intoxication or insanity; and discuss why there is a lack of plea-bargaining in Tanzania.

We look at changes to the law increasing penalties for rape; a most terrible crime; and the applicability of the death penalty for murder or treason, which is the ultimate penalty for anyone accused of such grave crimes. And we assess the right of appeal - particularly against a pending death sentence.

We look at the consequences of violating terms of parole; penalties for impersonating police officers or members of the army; and limits on the powers of the Prevention and Combating of Corruption Bureau (PCCB) especially concerning search of premises, and seizure of convicts' assets.

We also take a look at corporate crime, including the mandatory requirements for banks' record keeping imposed by Anti Money Laundering Regulations; legal restrictions on price fixing between competitor companies; and liability to criminal charges and potential imprisonment for managers of companies.

Defence of provocation

I am a law student and find the defence of provocation somehow too farfetched and unfair for the victim. Is this a defence that has recognition in our law or is it a common law import?

9 March 2015

The penal code in Section 201 states that when a person who unlawfully kills another under circumstances which, but for the provisions of this section would constitute murder, does the act which causes death in the heat of passion caused by sudden provocation as hereinafter defined, and before there is time for his passion to cool, he is guilty of manslaughter only. We also invite you to read Section 202 which is too long to reproduce here but defines provocation.

The defense of provocation was first developed in English Courts in the 16th and 17th centuries. During that period, a conviction of murder carried a mandatory death sentence. As such, the need for a lesser offense arose. At that time, not only was it seen as acceptable, but it was socially required that a man respond with controlled violence if his honor or dignity were insulted or threatened. It was therefore considered understandable that sometimes the violence might be excessive and end with a killing.

During the end of the 20th century and the beginning of the 21st century, the defense of provocation, and the situations in which it should apply, have led to significant controversies, with many condemning the whole concept as an anachronism, and arguing that it contradicts contemporary social norms that people are expected to control their behavior, even when angry.

Today, the defense is generally controversial especially in murder cases, because it appears to enable defendants to receive more lenient treatment because they allowed themselves to be provoked. Judging whether an individual should be held responsible for their actions depends on an assessment of their culpability. This is usually tested by reference to a reasonable person: that is, a universal standard to determine whether an ordinary person would have been provoked and, if so, would have done as the defendant did. Thus, if the majority view of social behavior would be that, when provoked, it would be acceptable to respond verbally and, if the provocation persists, then to walk away, that will set the threshold for the defense.

A controversial UK case that you should read is R v Ahluwalia which came to international attention after an Indian woman married to a British man of Indian origin burned her husband to death in 1989. She claimed it was in response to ten years of physical, psychological, and sexual abuse. After initially being convicted of murder and sentenced to life in prison, Ahluwalia's conviction was later overturned on grounds of inadequate counsel and replaced with manslaughter. The case changed the definition of the word 'provocation' in cases of battered women and brought in the defence of battered wife syndrome in criminal law.

The phrase "sudden and temporary loss of self-control" encapsulates an essential ingredient of the defence of provocation in a clear and readily understandable phrase. It serves to underline that the defence is concerned with the actions of an individual who is not, at the moment when he or she acts violently, a master of his or her own mind.

All in all, the defence has recognition in our statutes and is further reinforced by case law from around the world.

Questioning when under arrest

Can a police officer start asking a suspect questions without following some procedures? In other countries, there is a strict protocol to follow including informing the suspect their rights before one can be questioned. I ask this because one of my colleagues was arrested and was aggressively questioned without being told his rights.

4 May 2015

Questioning in criminal law is governed by the Criminal Procedure Act which states the following clearly and unambiguously in Section 53: Where a person is under restraint, a police officer shall not ask him any questions, or ask him to do anything, for a purpose connected with the investigation of an offence, unless–(a) the police officer has told him his name and rank; (b) the person has been informed by a police officer, in a language in which he is fluent, in writing and, if practicable, orally, of the fact that he is under restraint and of the offence in respect of which he is under restraint; and (c) the person has been cautioned by a police officer in the following manner, namely, by informing him, or causing him to be informed, in a language in which he is fluent, in writing in accordance with the prescribed form and, if practicable, orally (i) that he is not obliged to answer any question asked of him by a police officer, other than a question seeking particulars of his name and address; and (ii) that, subject to this Act, he may communicate with a lawyer, relative or friend.

A critical right is access to a lawyer or friend as the law does not want suspects to make statements without presence of some support for the suspect, which is their right whether or not the suspect is guilty.

Section 54 further states that (1) Subject to subsection (2), a police officer shall, upon request by a person who is under restraint, cause reasonable facilities to be provided to enable the person to communicate with a lawyer, a relative or friend of his choice. (2) A police officer may refuse under subsection (1) for the provision of facilities for communicating with a person being a relative or friend of a person under restraint, if the police officer believes on reasonable grounds that it is necessary to prevent the person under restraint from communicating with the person for the purpose of preventing the escape of an accomplice of the person under restraint; or the loss, destruction or fabrication of evidence relating to the offence.

You can see from the above that there are cases where the police officer may deny the suspect from making a call to a friend or relative.

Stay of execution at Court of Appeal

If the Court of Appeal Rules do not provide for a procedure, how does the Court proceed with it? What is the criteria to get a stay of execution, is it necessary to apply for one and, if so, within what timeframe?

11 May 2015

Rule 4 of the Court of Appeal Rules gives the justices of appeal the required flexibility to control proceedings before them.

The Rule states that: the practice and procedure of the Court in connection with appeals, intended appeals and revisions from the High Court; the practice and procedure of the Court in relation to review and reference; and the practice and procedure of the High Court and tribunals in connection with appeals to the Court shall be as prescribed in these rules or any other written law, but the

Court may at any time direct a departure from these rules in any case in which this is required in the interests of justice.

Rule 4 also states that, where it is necessary to make an order for the purposes of: (a) dealing with any matter for which no provision is made by these rules or any other written law; (b) better meeting the ends of justice; or (c) preventing an abuse of the process of the Court, the Court may, on application or on its own motion, give directions as to the procedure to be adopted or make any other order which it considers necessary.

When it comes to a stay of execution, the Court of Appeal Rules clearly state that an appeal having been filed is no bar to an execution. This implies that, in any case where the other party has a decree that is executable, and you appeal, you must file for a stay of execution. In practice, files that are moved to the Court of Appeal are not sent back for execution, but it is advisable to apply for a stay.

The rules also state that no order for a stay of execution shall be made under this rule unless the Court is satisfied that: (a) substantial loss may result to the party applying for the stay of execution unless the order is made; (b) the application has been made without unreasonable delay; and (c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

The rules have not stated a specific time in which to file a stay of execution, but the Court of Appeal in its various rulings has given a timeframe of 60 days from the judgement date.

PCCB searching without warrant

I have a received a letter signed by the head of the Prevention and Combating of Corruption Bureau (PCCB) authorising his officers to search my warehouse on the grounds that that I may be storing corruptly and illicitly acquired properties. Is this lawful? Are they not required to have a search warrant from a Court of law? This is confusing, please advise.

22 June 2015

You are required to cooperate with the PCCB's officer, unless there is a chance that the authorisation is not coming from the Bureau's director general. There is no requirement for a Court order in this case.

Under Section 12 of the Prevention and Combating of Corruption Act of 2007, the bureau's director-general may authorise any officer to: (a) search any person if it is reasonably suspected that he is in possession of property corruptly or illicitly acquired; or (b) search any premises, vehicle, boat, aircraft or vehicle in or upon which there is reasonable cause to believe that any property corruptly or illicitly acquired has been placed, deposited or concealed.

The PCCB officer authorised to conduct any search under this section may, for the purpose of conducting the search, enter any premises, vessel, boat, aircraft or any other vehicle, using reasonable force and accompanied by any other persons from whom he requires assistance.

No right to appeal

There is a law that says there is no right to appeal for me to any other body, including the Court of Appeal. Can this law be challenged? What should I do?

20 July 2015

Unfortunately, you did not tell us which law you are referring to that disallows any appeals. The right to appeal is embedded in our constitution.

Article 13(6) states that, to ensure equality before the law, the state authority shall make procedures which are appropriate or which take into account the following principles, namely:

(a) when the rights and duties of any person are being determined by the Court or any other agency, that person shall be entitled to a fair hearing and to the right of appeal or other legal remedy against the decision of the Court or of the other agency concerned; (b) no person charged with a criminal offence shall be treated as guilty of the offence until proved guilty of that offence; (c) no person shall be punished for any act which at the time of its commission was not an offence under the law, and also no penalty shall be imposed which is heavier than the penalty in force at the time the offence was committed; (d) for the purposes of preserving the right or equality of human beings, human dignity shall be protected in all activities pertaining to criminal investigations and process, and in any other matters for which a person is restrained, or in the execution of a sentence; (e) no person shall be subjected to torture or inhuman or degrading punishment or treatment.

The above is a very important article in our constitution and you have the right to appeal. Hence, you can challenge that portion of the law that disallows you to appeal. The law is drafted by humans and mistakes do occur in drafting. Your lawyers can guide you further on the process for such a challenge, as there might be a right of review provided for in the law.

Biased journalist misreporting

There is a well-known journalist who keeps misreporting certain Court proceedings, giving his opinion on what the judges should be doing and what they are not doing. It is obvious that he is being paid by someone, likely the other party, to try influence the way the judges think. Is this not an offence?

20 July 2015

This is a misdemeanour offence punishable with imprisonment of six months or a fine of up to TZS 500.

Section 114 of our Penal Code states that, while a judicial proceeding is pending, any person who publishes, prints or makes use of any speech or writing, misrepresenting such proceeding, or is capable of prejudicing any person in favour of or against any parties to such proceeding, or is calculated to lower the authority of any person before whom such proceeding is being heard or taken, is guilty of a misdemeanour.

You can report this and hopefully some action will be taken against the journalist.

Death sentences

Does Tanzania still have the death sentence for people who commit murder? If it does, what happens during the pendency of an appeal at the Court of Appeal - does the accused have to apply for a stay of execution? What are the modes of carrying out the death sentence?

31 August 2015

Yes, the Penal Code, which deals with criminal matters in Tanzania, provides for death sentences for offences like murder and treason. According to the Penal Code, death sentences in Tanzania are to be carried out by hanging. We are not aware of any other modes that have been used in Tanzania, as for the past 20+ years, no death sentence has been carried out, as the presidents at the time have not given the final sign off.

Section 26 of the Penal Code states that:

(1) When any person is sentenced to death, the sentence shall direct that he suffer death by hanging;

(2) A sentence of death shall not be pronounced on or recorded against any person who, in the opinion of the Court, is under 18 years of age, but in lieu of that, the Court shall sentence him to be detained at the president's pleasure, under which he shall be deemed to be in legal custody and may be detained in a place and under such conditions as the minister for legal affairs may direct;

(4) When a person has been sentenced to be detained at the president's pleasure, the presiding judge shall forward to the minister for legal affairs a copy of the notes of evidence taken at the trial, with a report in wiping signed by him and containing such recommendations or observations on the case as he may think fit to make.

To answer the second part of your question, Rule 11 of the Court of Appeal Rules 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 a notice of appeal has been given, until the appeal has been determined. This means that there is an automatic stay of execution that is triggered once a person convicted of, for example, murder, has appealed. One does not need to apply for a stay of execution.

Bank records for anti-money laundering

How long does a bank have to store records in case there is a money laundering allegation against any of its customers?

28 September 2015

Regulation 30 of the Anti Money Laundering Regulations states that a bank, which is a reporting person under the Anti Money Laundering Act, must maintain its records for 10 years, including its records of all large transactions.

The records must include at least the name, address and occupation or activity of the person or entity, the nature and date of the transaction, and the type and amount of currency, as stipulated in Section 16 of the Anti Money Laundering Act.

Defence of intoxication and insanity

In criminal law, are the two defences of intoxication and insanity not unfair to the victim? How can one get drunk on his or her own accord and then claim to not know of having committed the offence? The same applies for insanity. Should the law not be changed?

9 November 2015

Our Penal Code clearly states that intoxication is not a defence to a criminal charge.

Our law reads just the way that you are thinking, save that intoxication is a defence if at the time of the act or omission the accused did not know what he was doing and: (1) the person was intoxicated by the negligent or malicious intent of someone else; or (2) if, due to the intoxication, the accused was temporarily or permanently insane.

There is, therefore, a narrow defence available to those who are intoxicated, but this defence is limited, as provided above.

Tapping of phones

I am a law student and am wondering if it is legal for security organs to trace and track phones and emails of persons?

9 November 2015

Your question is very open-ended and

does not have specific details to allow us to answer it fully.

Notwithstanding that, the Prevention of Terrorism Act allows the minister under the Act to order communications providers to do anything necessary, including taping and the like, and the communications provider must comply.

If the provider leaks the information to the party it is recording, its CEO, other managers and even directors can be criminally charged. Much as this would sound like a breach of privacy, this Act is designed to curb terrorism and associated activity in the country and beyond.

Plea bargaining in Tanzania

I am informed that Tanzania has recently introduced plea bargaining in its laws. If so can you guide me to the correct statute?

21 December 2015

Please bargaining is a process whereby a criminal defendant and public prosecutor reach a mutually satisfactory disposition of a criminal case. This may be subject to a Court approval. Therefore plea bargaining can conclude a criminal case without a trial and lead to expeditious disposal of many criminal matters. Sentencing can be converted to a fine, or a reduced custodial order subject to agreement.

Unfortunately at present in Tanzania plea bargaining has no recognition under the law. We are informed that the Criminal Procedure Act (CPA) is to be soon amended to allow for such bargaining. Even the draft Plea Bargaining Rules, 2015 are in the making but will not have any force until parliament amends the CPA. We are not sure when the CPA will be amended.

Wearing military uniform

Many a times when we are travelling the highways you see personal wearing army or police uniforms but they are actually highway robbers. What are the consequences of wearing such a uniform? What about the fake seals we see of government departments especially on local purchase orders to cheat traders to supply goods. How serious are these offences?

21 December 2015

Section 6 of the National Security Act covers both these and states that (1) 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; or (f) any person who without lawful authority uses or has in his possession or under his control any die, seal or stamp of or belonging to or used, made or provided by any Government department, a specified authority or any diplomatic, naval, army or air force authority appointed by or acting under the authority of the Government, or any die, seal or stamp so closely resembling any such die, seal or stamp as aforesaid as to be likely to deceive, or counterfeits any such die, seal or stamp or uses or has in his possession or under his control any such counterfeit die, seal or stamp, commits an offence and shall be liable on conviction to imprisonment for a term not exceeding twenty years.

The above answers both your questions. Anyone found wearing an army or police uniform, or with a seal of any government department can be sentenced to up to 20 years in prison.

Advertising reward for stolen goods

Our company lost important documents when thieves stole our safe. I am not interested in the cash that we lost but really need the documents. Can I advertise this in the paper?

21 December 2015

It is legal to advertise the facts of the theft and to request that anyone with relevant information comes forward, with an offer of a reward. What it is illegal to do, which is provided for under the Penal Code, is to state that you will give a reward to the person bringing you the information and that you will not ask that person any questions whatsoever.

That would entail even the thief coming and returning your goods and claiming a reward without questions being asked, and the law does not want to encourage such rewards to the guilty party.

Bail in economic offences

Is it true that in an economic offence, just like in the charges of treason and murder, the accused cannot get bail? Is this not curtailing someone's freedom of movement before even being convicted?

11 January 2016

We suggest that you first refer to the Economic and Organised Crime Control Act and ensure that the offence is truly an economic offence as defined therein. Sometimes prosecutors tend to extrapolate minor offences into economic offences.

Coming back to your question, an economic offence is bailable, unlike treason and murder, which are never bailable.

However, the Court shall not admit any person to bail if: (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 TZS 10 M, unless that person pays a cash deposit equivalent to half the value of the property, and the rest is secured by execution of a bond; or (f) if he is charged with an offence under the Dangerous Drugs Act.

Further, and this is subject to a lot of controversy, no person shall be admitted to bail pending trial if the Director of Public Prosecutions (DPP) certifies that it is likely that the safety or interests of the Republic would thereby be prejudiced. A certificate issued by the DPP shall take effect from the date it is fixed in Court or notified to the officer in charge of a police station, and shall remain in effect until the proceedings concerned are concluded or the DPP withdraws it.

Imprisonment of corporate body

I have read various laws of Tanzania and am thoroughly confused when the law mentions that if the body corporate (i.e. the company) is guilty, it shall be sentenced to imprisonment, fined or both. How can a company be sent to prison? Are

its managers, directors or shareholders arrested?

25 January 2016

It is true that you cannot sentence or imprison a company, as it is not a human being. However, some laws provide that the directors or the managers should be sentenced to jail if they are responsible for the acts of the company.

Section 71 of the Interpretation of Laws Act provides a mechanism for a corporate body to be fined in lieu of imprisonment. It 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 an aggrieved party, it shall be payable to a body corporate in every case where that body is the aggrieved party;

(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) a fine of TZS 2 M where a term of imprisonment not exceeding six months is prescribed; (b) a fine of TZS 3 M where a term of imprisonment between six months and one year is prescribed; (c) a fine of TZS 5 M where a term of imprisonment between one and two years is prescribed; (d) a fine of TZS 10M where a term of imprisonment exceeding three years is prescribed.

Gravest offence in Tanzania

What is the gravest offence one can commit in Tanzania? How are such offences treated?

14 March 2016

The Constitution of Tanzania provides in article 28 that every citizen has the duty to protect, preserve and maintain the independence, sovereignty, territory and unity of the nation. (2) Parliament may enact appropriate laws to enable the people to serve in the Forces and in the defence of the nation. (3) No person shall have the right to sign an act of capitulation and surrender of the nation to the victor, nor ratify or recognise an act of occupation or division of the United Republic or of any area of the territory of the nation and, subject to this Constitution and any other laws enacted, no person shall have the right to prevent the citizens of the United Republic from waging war against any enemy who attacks the nation. (4) Treason as defined by law shall be the most grave offence against the United Republic.

Hence the gravest of all offences, even graver than murder, is an offence against the country, which is the offence of treason. Section 39 of the Penal Code states that if any person under allegiance to the United Republic: (a) murders or attempts to murder the president in the United Republic or elsewhere; or (b) levies war against the United Republic from within the United Republic, he shall be guilty of treason and may face the death penalty.

Police interview time limit

I was taken in for police interview and spent the entire day there from 9am to 7pm, and then admitted to bail after having to plead with the officer that I did not want to be held in custody as it was a minor bailable offence which I was denying committing. I was told that the police in charge who could allow bail was attending a function, but I finally managed to get hold of him and obtain release on bail. My question is regarding how long a police officer can interview me,

because by the end of the interview I was extremely tired and stressed. The officer kept asking the same question over and over again, slowly writing on his notepad. Is there no time limit for questioning under the law?

4 April 2016

Section 50 of the Criminal Procedure Act provides that the period available for interviewing a person who is under restraint for an offence is four hours from the time that he was taken under restraint for the offence.

This period in principle excludes the time when you are waiting for your lawyer, or the time when you are not being interviewed, but the basic four-hour timeframe for the interview can be extended by another four hours under Section 51.

Section 51 states that:

(1) where a person is in lawful custody in respect of an offence during the basic period available for interviewing a person, but has not been charged with the offence, and it appears to the police officer in charge of investigating the offence, for reasonable cause, that it is necessary that the person be further interviewed, he may: (a) extend the interview for a period not exceeding eight hours and inform the person concerned accordingly; or (b) either before the expiration of the original period or that of the extended period, make application to a magistrate for a further extension of that period;

(2) a police officer shall not frivolously or vexatiously extend the basic period available for interviewing a person, but any person whose interview is extended pursuant to paragraph (a) of subsection (1) may petition for damages or compensation against frivolous or vexatious extension of the basic period, the burden of proof of which shall lie upon him.

New manager charged with old manager's wrong

The former manager of our company had not complied with a certain law and has been summoned to appear before one of the authorities to show cause. I am the new manager, having just started my job, and the summons only reads "the manager". However, at the time of the summons issue, he was in charge, not me. Unfortunately, he was an expat and has since left the country. Who should attend this summons?

4 April 2016

What you would like to hear is that it is the manager who was here at the time of the offence who should appear. Unfortunately, unless the law under which the title "manager" is charged states so, the summons is made out on the title. It does indeed sound very unfair, but Section 66 of the Interpretation of Laws Act makes it very clear that any civil or criminal proceedings taken by or against any person by virtue of his office shall not be discontinued or abate by his death, resignation or absence or removal from office, but may be carried on by or against, as the case may be, the person currently holding that office.

Interpreter misleading Court

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 his interpretations. Isn't this an offence?

2 May 2016

Yes, it is an offence. The Penal Code has provided for exactly such a situation and states that any person who, having been lawfully sworn as an interpreter in a judicial proceeding, willfully 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 for subornation of perjury solely upon the evidence of one witness regarding the alleged falsity of a statement.

Foreign national thumbprint

I am a foreigner in Tanzania wishing to apply for a bank account. I went to a bank and was shocked to hear that they require my thumbprint. Is that normal? How do we go about this?

16 May 2016

The bank is required to take your fingerprint before opening your account. Rule 5(1) of the Anti Money Laundering Regulations of 2012 clearly states that banks and other reporting persons should obtain from an individual who is a citizen of another country and not resident in the United Republic his: (a) full name 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) telephone number, postal and email address; and (h) signature and thumbprint.

Sub rule (2) further states that, 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 the same identifying information, with the exception of his signature and thumbprint.

Community service instead of prison

Is there a law in Tanzania that allows prisoners to perform community service instead of rotting in prison? What are the conditions?

23 May 2016

The Community Service Act makes provisions for the introduction and regulation of community service for offenders in certain cases, and for connected and incidental matters.

Section 3 states that where any person is convicted of an offence punishable by: (a) imprisonment for not more than three years, with or without the option of a fine; or (b) imprisonment for a term exceeding three years but for which the Court determines a term of three years or less, with or without the option of a fine, to be appropriate, the Court may, subject to this Act, make a community service order requiring the offender to perform community service.

Hence, if the offender is sentenced to a term not exceeding three years, this Act can be invoked. You must remember that this is not an automatic right and the Community Service Orders Committee, amongst others, have discretionary power under this Act.

Questioning by police

Can a police officer start asking a suspect questions without following some procedures? In other countries, there is a strict protocol to follow, including informing the suspect of his rights before he can be questioned. I ask this because one of my colleagues was arrested and was aggressively questioned without being told his rights.

4 July 2016

Questioning in criminal law is governed by the Criminal Procedure Act, which states in Section 53 that, where a person is under restraint, a police officer shall not ask him any questions, or ask him to do anything, for a purpose connected with the investigation of an offence, unless:

(a) the police officer has told him his name and rank; (b) the person has been informed by a police officer, in a language in which he is fluent, in writing and, if practicable, orally, of the fact that he is under restraint and of the offence in respect of which he is under restraint; and (c) the person has been cautioned by a police officer in the following manner, namely, by informing him, or causing him to be informed, in a language in which he is fluent, in writing in accordance with the prescribed form and, if practicable, orally: (i) that he is not obliged to answer any question asked of him by a police officer, other than a question seeking particulars of his name and address; and (ii) that he may communicate with a lawyer, relative or friend.

A critical right is access to a lawyer or friend, as the law does not want suspects to make statements without the presence of some support, which is their right, whether or not they are guilty.

Section 54 further states that a police officer shall, upon request by a person who is under restraint, cause reasonable facilities to be provided to enable the person to communicate with a lawyer, a relative or friend of his choice. A police officer may refuse the provision of facilities for communicating with a relative or friend if the police officer believes on reasonable grounds that it is necessary to prevent the person under restraint from communicating with the person for the purpose of preventing the escape of an accomplice or the loss, destruction or fabrication of evidence relating to the offence.

You can see from the above that there are instances where the police officer may deny the suspect from making a call to a friend or relative.

Provocation as a defence

I am a law student and find the defence of provocation somehow too farfetched and unfair for the victim. Is this a defence that has recognition in our law or is it a common law import?

4 July 2016

Section 201 of the Penal Code states that when a person unlawfully kills another under circumstances which would ordinarily constitute murder but does so in the heat of passion caused by sudden provocation and before there is time for his passion to cool, he is guilty of manslaughter only. Section 202 is too long to reproduce here but defines provocation.

The defence of provocation was first developed in English Courts in the 16th and 17th centuries. During that period, a conviction of murder carried a mandatory death sentence. As such, the need for a lesser offence arose. At that time, not only was it seen as acceptable, but it was socially required that a man respond with controlled violence if his honour or dignity was insulted or threatened. It was therefore considered understandable that sometimes the violence might be excessive and end with a killing.

During the end of the 20th century and the beginning of the 21st century, the defence of provocation and the situations in which it should apply has led to significant controversies, with many condemning the whole concept as an anachronism, and arguing that it contradicts contemporary

social norms that people are expected to control their behaviour, even when angry.

Today, the defence is generally controversial, especially in murder cases, because it appears to enable defendants to receive more lenient treatment because they allowed themselves to be provoked. Judging whether an individual should be held responsible for their actions depends on an assessment of their culpability. This is usually tested by reference to a reasonable person: that is, a universal standard to determine whether an ordinary person would have been provoked and, if so, would have done as the defendant did.

Thus, if the majority view of social behaviour would be that, when provoked, it would be acceptable to respond verbally and, if the provocation persists, then to walk away, that will set the threshold for the defence.

A controversial UK case you should read is R v Ahluwalia, which came to international attention after an Indian woman married to a British man of Indian origin burned her husband to death in 1989. She claimed it was in response to ten years of physical, psychological and sexual abuse. After initially being convicted of murder and sentenced to life in prison, Ahluwalia's conviction was later overturned on grounds of inadequate counsel and replaced with manslaughter. The case changed the definition of the term "provocation" in cases of battered women and brought the defence of battered wife syndrome into criminal law.

The phrase "sudden and temporary loss of self-control" encapsulates an essential ingredient of the defence of provocation in a clear and readily understandable phrase. It serves to underline that the defence is concerned with the actions of an individual who is not, at the moment when he or she acts violently, master of his or her own mind.

All in all, the defence has recognition in our statutes and is further reinforced by case law from around the world.

In remand for three years

I am currently facing criminal charges at the District Court and have been in remand for three years, as the offence I am charged with is not bailable. After the prosecution closed its case, my defence case opened, whereby I and another witness testified. The case has since been adjourned, as my last witness is in the Democratic Republic of Congo (DRC) and has failed to attend.

The case is now on its last adjournment and the trial Magistrate has warned me to close my defence. I have on several occasions requested the Court to issue a summons for my witness, but the Court has not been forthcoming. What should I do? This is a key witness for me, as he shall testify as my alibi. Please assist, as my life is at stake.

18 July 2016

From the facts, it seems like you have been charged with murder, for which, if convicted, you will be hanged to death. Unfortunately, quite a bit of information is missing from the facts you have given us to enable us to ascertain the reasons for how and why the Court has reached this stage and why this is the last adjournment.

One reason for the Court to decide the way it has may be that, after considering the surrounding circumstances of the case, it has formed a view that the alleged witness does not exist. A well-minded magistrate or judge cannot deprive the accused of his opportunity to call his witnesses. In your question, you have not mentioned why the witness has not voluntarily come forward to testify. Why would a witness who you think will support your

defence not voluntarily come forward unless compelled to do so? You know the facts and need to do some internal soul searching to answer this.

A further problem that arises in your case is that the Court summons would be ineffective, since your alleged witness is staying in DRC and our criminal Courts have no power to issue summons for the attendance of defence witnesses residing in foreign jurisdictions. You are in a dicey situation. We suggest you get the services of a lawyer who can precisely guide you on the matter after reviewing your entire file.

Offence when out on parole

My uncle was found guilty of robbery and sentenced to 10 years in jail. After the sixth year, he was released on parole. Two years ago, he was arrested again for a minor offence and sentenced to one year's imprisonment. It is now the second year and he is not being released. How can they hold him for more than one year?

25 July 2016

Your uncle was likely released under the Parole Boards Act after having served at least half of his 10-year sentence. One of the key conditions of release under the Parole Boards Act is that, if he is arrested and imprisoned again after being released on parole, he will not only serve the new sentence for which he is arrested, but also serve the remainder of the period for which he was granted parole.

Hence, your uncle, in addition to having served the one year sentence, will now have to serve the four years that he had not served in his original 10-year sentence. This might not be the reply you wanted from us, but sadly it is what the law states. Your lawyer can guide you further.

Police after me

One of my patients bought some drugs from my pharmacy in Dar and proceeded to commit suicide. In his suicide note, he wrote that he bought the drugs from me. The police are now after me. Please guide me.

5 September 2016

Section 216 of the Penal Code states that any person who: (a) procures another to kill himself; (b) counsels another to kill himself and thereby induces him to do so; or (c) aids another in killing himself, is guilty of a felony, and is liable to imprisonment for life. Aiding someone with suicide, if that is what you did, is perhaps what the police are looking for you for.

We hope the drugs that he used to kill himself were prescribed drugs, otherwise this could brew serious trouble for you. You should consult your lawyer.

Systematic fraud in bank account

I trade in second-hand clothing in Dar es Salaam. Since late 2009, there have been systematic monthly debits from my bank account. These went unnoticed because of the high volume of transactions and the amounts that were debited, which were exactly the same as the amounts which we were depositing on certain days, which led our accountant to believe that these were normal bank reverse transactions that would then again be re-reversed.
After we had an audit, we realised the fraud and demanded that the bank refund the funds. Although the bank has refused to give us copies of the cheques that were used to transfer these fraudulent amounts, informally we managed to get these cheques, and it is quite apparent that the signatures are distinguishable. Our lawyers seem to indicate that, since the bank has clearly written on its statements that any

claims against it should be made within 30 days, and we have not claimed until recently, we don't stand a good chance against the bank. What should we do?

12 September 2016

You have employed a very weak and slippery accountant, perhaps not an accountant at all. The concept of debits and credits is the first concept that one learns when he or she enters accounting school. We are not sure how your accountant thought that a debit was a reversing entry that would subsequently be re-reversed, and not check that it had been re-reversed. The qualifications and efficiency of your accountant is not the subject matter of this question, but we found it prudent to raise.

Back to your question. Banks offer a service which is to honour their customer's cheques when drawn upon an account in credit or within an agreed overdraft limit. If the bank pays out cheques which are not the accountholder's, they are acting outside their mandate and cannot plead the accountholder's authority in justification of their debit to the account.

The general rule is that, in the absence of fraud by the accountholder, the risk of payment on forged cheques is on the bank. In your instance, the issue is that the bank has limited its exposure to 30 days after which it does not want to be held liable for such frauds. This is a self-imposed period, not a statutory period, within which an accountholder is required to get back to the bank.

It seems like the fraud in your account has been going on for many months and that your accountant has been quite unprofessional and negligent in reconciling the entries. On the other hand, you can claim that the bank has paid on a totally different signature. The questions still remain: do you get caught out by the 30-day period? This is debatable depending on the facts of each case, and there is no direct authority on this.

Case law in other countries suggests that the accountholder has a very good chance of recovering against the bank. We opine with that and suggest you pursue the bank for your funds. An issue that may crop up is that of vicarious liability; you have also been negligent and the Court may reduce the amounts it awards by taking this into account.

You claim the bank is not giving you the cheque leafs that were used in the fraud. The bank owes you a duty to release details relevant to your account. The cheque leafs fall under this category and it is your right to demand copies of them. The banks do charge for this, and rightly so, and if that is the case of their denial (i.e. your refusal to pay them to go into their back office and look for the older cheque leafs), then you cannot claim that they are refusing you.

One last point. You should also check the forms you filled out when you opened the account. It is there that you entered into a contract with the bank. Whilst most banks in Tanzania give you 30 days to respond to them in case there is any fraud in your bank statement, such 30-day notices are not captured in your agreement and are only printed on the bank statement. If that is the case, it implies it is not a term you had agreed to and this may further assist in strengthening your case against the bank.

Kleptomania as a legal defence for stealing

My friend suffers from an irresistible impulse to steal. It is a condition that he seems to have inherited. Can he use this as a defence if he is caught stealing?

19 September 2016

Kleptomania is the inability to refrain from the urge to steal items and is done for reasons other than personal use or financial gain. One gets a release of pressure following the theft.

Our research reveals that, in states or countries following the M'Naghten rule, proving kleptomania would normally be no defence. To prove the insanity defence under M'Naghten, you have to show that you had a mental defect that either prevented you from understanding the nature and quality of your act, or that prevented you from understanding that it was wrong. Kleptomaniacs generally understand perfectly well what they're doing and that it is criminal. Indeed, many suffer overwhelming guilt, or at least a fear of arrest. Hence, it is unlikely that this defence will work.

Having stated the above, we must note that a number of US states follow the American Law Institute (ALI) definition of insanity, which also allows for a not guilty verdict if the defendant "lacks substantial capacity ... to conform his conduct to the requirements of the law". This is also like the "irresistible impulse" test for insanity. However, we don't think a Tanzanian Court would take judicial notice that all kleptomaniacs are inherently unable to resist stealing at all times and places, so simply proving that you were a kleptomaniac would probably not be enough of a defence.

We strongly suggest that, instead of looking for defences for this condition, you look into treating it. Your friend needs to consult a psychiatrist.

Foreign exchange non-disclosure

I know of goods exporters who misdeclare 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 fortune but understating the amounts they earn. To what extent are the directors liable?

26 September 2016

Amongst the laws of Tanzania that are very strict in such matters is the Foreign Exchange Act, which clearly states that it is an offence to make a false declaration in respect of any transaction provided for under this Act or the regulations with a view to: (a) evading the disclosure of the actual specified foreign currency earned; (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. The offence is punishable with imprisonment of up to ten years, a fine not exceeding three times the monetary value of the amount disclosed as due or owing to the person, or to both imprisonment and a fine.

The Act also provides that the directors can be held liable for the offence, even if it is committed by their company. Section 14 provides that where an offence under this Act is committed by a body corporate, then, as well as the entity, any director or an officer who at the time of the commission of the offence was involved in the management of the entity's affairs shall be guilty of the offence and shall be liable to be 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.

Section 14 also states that, 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 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 of 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.

Agreement to fix prices

There is a certain manufacturing industry where it is clear that the three big players are fixing prices. Isn't this illegal?

17 October 2016

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, 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.

Ignorance of the law

Is Ignorance of the law a proper defence in a criminal case? If not, what are the other available defences that I may use?

7 November 2016

You have not told us what you are charged with, but it is a general principle of law that ignorance of the law is not a defence unless knowledge of the law is expressly declared to be an element of the offence. There are other defences which a person may use when charged with a criminal offence, including bona fide claim of right, mistake of fact, insanity, intoxication, immature age, compulsion, defence of person or property, compulsion by husband and necessity.

These defences require extensive explanation. Some can lead to total acquittal, while others may simply reduce the sentence or win the sympathy of the Court. Had you told us what you are charged with, we would have been able to advice you on which defence you should opt for. Kindly consult your attorney for further guidance.

Remand imprisonment dress code

My relative against whom charges have been trumped up is sitting in remand prison awaiting his bail application to be heard. I fail to understand how he can be treated like others who have been convicted. Does the law not distinguish between those who are convicted and those who are yet to have their case heard? Can we not take food and clothes to him?

21 November 2016

We agree with your observation. Under Tanzanian law, unconvicted prisoners are to receive different treatment compared to convicted prisoners.

Section 76 of the Prisons Act states that: (1) an unconvicted prisoner may be permitted to maintain himself and to purchase or receive from private sources food, bedding, clothing or other necessities at proper hours, subject to examination and to other conditions as the Commissioner may direct; (2) no food,

bedding, clothing or other necessities belonging to an unconvicted prisoner shall be given, hired, loaned or sold to any other prisoner, and any prisoner contravening the provisions of this section shall be liable to lose the privilege of purchasing or receiving food, clothing or other necessities from private sources for such time as the officer-in-charge may think proper; (3) if a civil or unconvicted prisoner is unable to receive clothing, bedding or food supplies, or if the officer-in-charge believes such food is unsatisfactory, the prisoner shall receive the regular prison diet, clothing and bedding; (4) no civil or unconvicted prisoner shall be given or be compelled to wear prison clothing unless: (a) the prisoner's dress is insufficient, improper or in an unsanitary condition; or (b) the prisoner's dress is required as an exhibit; and (c) he is unable to procure other suitable clothing from any other source; (5) any debtor may, in addition to the supply of bedding, be issued with a bedstead or be permitted to supply himself with a bedstead.

Motive in criminal law

How important is motive in the commission of a criminal offence? Can I be committed to jail even if I did not have a motive to commit a criminal act?

21 November 2016

A motive is the cause that moves people to induce a certain action. Motive, in itself, is not an element of any given crime; however, the legal system typically allows motive to be proven in order to make plausible the accused's reasons for committing a crime, at least when those motives may be obscure or hard to identify with. However, a motive is not required to reach a verdict. Motives are also used in other aspects of a specific case, for instance, when police are conducting an initial investigation.

The law technically distinguishes between motive and intent. 'Intent' in criminal law is simply explained as synonymous with 'mens rea', or the mental aspect of a person's intention to commit a crime, which is enforced by law as an element of a crime. 'Motive' describes instead the reasons from the accused's background and station in life that are supposed to have induced the crime.

Further, Section 10 of the Penal Code states that, unless otherwise expressly declared, the motive by which a person is induced to commit or omit to commit an act, or to form an intention to do so, is immaterial so far as regards criminal responsibility. Hence, not having a motive does not mean that you will be let free.

Death after one year

Two years ago, I beat my wife up badly because of an argument we had. She was admitted to hospital, where I was informed that she had some fractured ribs and a brain injury, and I ensured she received the best medical care. Immediately after the incident, I was charged, pleaded guilty and imprisoned for six months.

My wife recovered and I did not see her again until ten months after the incident, when she was found dead in her bed. A few days ago, the police showed up at my door and took me to the police station for questioning on the grounds that I caused her death due to the beating. I am now informed that they intend to charge me with murder. As far as I am aware, she went back to work and was fine. I hadn't seen her from the date she left and she never came to visit me in prison. How can I be held liable for murder in such circumstances? Please advise.

5 December 2016

The Penal Code provides that "a person is not deemed to have killed another if the death of that person does not take place within a year and a day of the cause of death". This means that it wouldn't be murder if your wife passed away 12 months and one day from the date of the physical abuse you inflicted upon her. Since you state that your wife passed away only 10 months from the date of the incident, the police have grounds to charge you with murder.

Simply because your wife was better, was released from hospital and went back to the office, it doesn't necessarily mean that the injuries you caused her did not lead to her early death. The police must have performed a postmortem on her body and may have reasonable grounds to charge you under the above provision. You should seek legal assistance.

Telling your criminal lawyer the truth

I am charged with a criminal offence and am wondering whether I should tell my lawyer the truth. What if he refuses to defend me after hearing me? What are the lawyer's duties to me as his client?

12 December 2016

Your lawyer is bound by attorney-client privilege and cannot disclose any information relating to an offence you have committed. This may not fully apply to an offence you are about to commit. Whilst a lawyer may be employed by you, he is still an officer of the Court and therefore cannot lie or misguide the Court.

Hence, if your lawyer knows you are guilty of an offence, the first thing he must do is advise you to plead guilty to that offence, unless there are factors that your lawyer can legally use to mitigate the offence or its consequences. For example, if your lawyer lies in Court, he can be detained for perjury (i.e. knowing falsity) and may face imprisonment or be barred from practicing law.

Your lawyer can attack the prosecution's evidence and come up with arguments that may be less than rock solid, so long as they are reasonably supported by the evidence. The lawyer cannot offer your testimony knowing it to be false and you will see in many trials that the accused does not testify, which however does not create a good impression on the presiding judge.

You must appreciate that every attorney is going to be different in what he/she wants to know, and things will vary based on the specific case, Court and gravity of the charges. As a general rule, you should never lie to your attorney, as this will ultimately backfire.

Lastly, after hearing the truth, the lawyer has a right to discontinue representing you. However, he cannot testify against you in Court.

Inappropriate behaviour in nightclub

After having had too many drinks in a nightclub, I must admit that I inappropriately held a woman and caused a huge disruption. Although she said that she would forgive me, she then reported me to the police. I am now being threatened with prosecution. How can she turn around me like this? How serious is the matter?

16 January 2017

What you described to us likely amounts to indecent assault and, once you have committed this, the agreement by the woman to 'forgive' you and the breach thereof has no basis under our criminal statutes.

Section 135 of our Penal Code states that any person who unlawfully and indecently assaults any woman or girl is guilty of a felony and is liable to imprisonment for 14 years.

It also states that if a person intends to insult the modesty of any woman by saying any word, making any sound or gesture, or exhibiting any object for her to hear or see or to intrude on her privacy, that person is guilty of a misdemeanour and is liable to imprisonment for one year.

This is a very serious offence and you could see yourself spending 14 years in jail. You should consult a criminal defence lawyer to guide you further.

A year and day rule

Is it true that there is a rule in criminal law that if someone you attack dies after one year, you cannot be charged?

30 January 2017

Our Penal Code states that if a person is not deemed to have killed another if the death of that person does not take place within a year and a day of the cause of death. This period is reckoned to include the day on which the last unlawful act contributing to the cause of death was done. Hence, you cannot be charged for murder but you can still be charged for other offences.

Plea bargaining in Tanzania

I understand that Tanzania recently introduced plea bargaining in its laws. If so, can you guide me to the correct statute?

13 February 2017

Please bargaining is a process whereby a criminal defendant and public prosecutor reach a mutually satisfactory disposition of a criminal case. This may be subject to a Court approval. Therefore, plea bargaining can conclude a criminal case without a trial and lead to expeditious disposal of many criminal matters. Sentencing can be converted to a fine or a reduced custodial order, subject to agreement.

Unfortunately, at present in Tanzania, plea bargaining has no recognition under the law. We are informed that the Criminal Procedure Act (CPA) is to be soon amended to allow for plea bargaining. The draft Plea Bargaining Rules 2015 are in the making, but they will not have any force until parliament amends the CPA. We are not sure when the CPA will be amended.

Wearing military uniform

Many a times when we are travelling on the highways, we have seen highway robbers wearing army or police uniforms. What are the consequences of wearing these uniforms? What about the use of fake government department seals on local purchase orders to cheat traders into supplying goods? How serious are these offences?

13 February 2017

Section 6 of the National Security Act states that these actions constitute an offence. Anyone found wearing an army or police uniform or using a seal of any government department without authorisation can be sentenced to up to 20 years in prison.

Under Section 6, it is an offence for any person without lawful authority to, for the purpose of gaining admission or helping someone gain admission to a protected place or for any other purpose prejudicial to the safety or interests of the United Republic:

(1) use or wear any uniform of the defence forces, police force or any other official uniform of the United Republic, or any uniform so closely resembling these as to be likely to deceive or falsely represent himself as someone entitled to wear or use any such uniform; or

(2) use or have in his possession or under his control any die, seal or stamp of or

belonging to or used, made or provided by any government department, any specified authority or any diplomatic, naval, army or air force authority appointed by or acting under the government's authority, or any die, seal or stamp so closely resembling any such die, seal or stamp aforesaid as to be likely to deceive, or to counterfeit any such die, seal or stamp or use or have in his possession or under his control any such counterfeit die, seal or stamp.

Prosecution of MPs

I have seen many members of parliament being prosecuted in Courts of law. Is that legal? Do they now have immunity like in other countries? Is this tantamount to prosecuting a judge?

27 February 2017

Generally speaking, an MP cannot be prosecuted for any opinion given in the National Assembly. Article 100 of our Constitution states that:

(1) there shall be freedom of opinion and debate that shall not be breached or questioned by any organ in the United Republic or in any Court or elsewhere outside the National Assembly; and

(2) Subject to this Constitution or to the provisions of any other relevant law, an MP shall not be prosecuted and no civil proceedings may be instituted against him in Court in relation to anything 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.

This immunity is limited to his actions at the National Assembly. Hence, an MP can be questioned by police and taken to Court for anything that is not a result of the MP's freedom of expression in the National Assembly.

For example, an MP can be charged with a traffic offence or any other criminal charge under the Penal Code. An MP does not have absolute immunity in the same way the president does under Article 46, which states that it is prohibited to institute or continue in Court any criminal proceedings against the president during his tenure of office, in accordance with the Constitution.

We believe that MPs in other countries do not have immunity outside their parliament for actions that are not related to their opinions and actions in parliament.

Nuremberg principles applicability

I am a law student and have read with great interest about the Nuremberg trials and the principles that were extracted from it. Are these principles still in use today?

27 February 2017

The Nuremberg trials led to the conviction of the people most responsible for the crimes committed in the Holocaust. The trial led to the seven Nuremberg Principles, which list the legal principles that were recognised by the Charter for the International Military Tribunal and its judgments. The principles were later adopted by the United Nations General Assembly and are today widely considered to represent customary international law (that is, laws that have developed through custom rather than by formal agreement or legislation).

These seven principles are still used today and ensure that, even if under internal or domestic law an action might not be considered a crime, one can still be charged under international law. Since this is a topic of wide interest, we list the seven principles in further detail below.

Principle 1: Any person who commits an act

which constitutes a crime under international law is responsible and liable to punishment.

Principle 2: The fact that domestic law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law.

Principle 3: The fact that a person who committed an act which constitutes a crime under international law acted as head of state or responsible government official does not relieve him from responsibility under international law.

Principle 4: The fact that a person acted under orders from his government or a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him. This principle can be paraphrased as follows: "It is not an acceptable excuse to say 'I was just following my superior's orders'".

Principle 5: Any person charged with a crime under international law has the right to a fair trial on the facts and law.

Principle 6: The following crimes are punishable as crimes under international law: (a) crimes against peace; (b) war crimes; and (c) crimes against humanity.

Principle 7: Complicity in the commission of a crime against peace, a war crime or a crime against humanity is a crime under international law.

Lying under oath

One person has sworn an affidavit in Court that is such a lie that it is hard to believe the extent people will go to cheat. Is it not an offence in Tanzania to lie under oath?

27 February 2017

The law states that anyone committing perjury is liable to imprisonment for seven years, but we have not seen this offence being seriously pursued in Tanzania.

Section 102 of the Penal Code states that any person who, in any judicial proceeding, or for the purpose of instituting any judicial proceeding, knowingly gives false testimony touching on any matter which is material to any question 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 under oath or otherwise.

The forms and ceremonies used in administering the oath or in otherwise binding the person giving the testimony to speak the truth are immaterial if he assents to the forms and ceremonies actually used. It is immaterial whether the false testimony is given orally or in writing. It is also immaterial whether the Court or tribunal is properly constituted, or held in the proper place, if it acts as a Court or tribunal in the proceeding in which the testimony is given. In addition, it is immaterial whether the person who gives the testimony is a competent witness or whether the testimony is admissible in the proceedings.

Under Section 102, any person who aids, abets, counsels, procures, or suborns another person to commit perjury is guilty of the misdemeanour termed "subornation of perjury".

Sentencing after change of law

What would happen if, at the time of an offence, the sentence for a certain criminal offence was less than it is now? Am I facing a longer sentence under an amendment to the law on a certain offence that makes it more serious?

1 March 2017

You would be sentenced based on what the law stated was the sentence at the time the offence was committed.

The Interpretation of Laws Act states that, where an act constitutes an offence and the penalty for the offence is amended between the time of the commission of the offence and the conviction, the offender shall be liable to the penalty prescribed at the time of the commission of the offence.

Insurance company filing inflated statements

I know that a certain insurance company is hiding losses in its financial statements. How can the Tanzania Revenue Authority (TRA) allow this company to get away with it? Aren't insurance companies regulated in Tanzania? Who can I report this to?

6 March 2017

If the company is hiding losses, that means it is inflating its statements and likely not evading but paying taxes, which the TRA would likely be happier with. What the company is likely trying to do is not show its dire financial position to its regulator, the Tanzania Insurance Regulatory Authority (TIRA), which can impose sanctions against a poorly performing insurer. If you wish to report the insurer, you must inform TIRA and provide the relevant details.

Section 157 of the Insurance Act makes false financial reporting a serious offence and states that it is an offence for a person to willfully make a false statement on material details in any statement, return, report, certificate, balance sheet or other document required by or for the purposes of this Act. Under subsection 4 of the same section, this offence is punishable with a minimum prison term of two years, a fine of TZS 5 M or both.

Counselling someone to commit crime

Is a person who is counselling someone to commit a crime but does not commit the crime himself guilty of an offence? I know someone who teaches people how to cut open stolen safes - is that legal?

20 March 2017

Section 22 of the Penal Code clearly states that, when an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it: (a) a person who commits the act or makes the omission which constitutes the offence; (b) a person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence; (c) a person who aids or abets another person in committing the offence; and (d) a person who counsels or procures any other person to commit the offence.

In the case you mentioned, he may be charged with either committing the offence or with counselling or procuring its commission. A conviction for counselling or procuring the commission of an offence has the same consequences in all respects as a conviction for committing the offence.

Sex with under 18 is rape

I have been reading about rape in Tanzania which is quite prevalent but which goes unreported, and when reported, the accused is only sentenced to five years' imprisonment. I am informed that the government is going to amend the Penal Code to make it a more serious offence with a wider definition. Is the above true and when is this new act going to be enacted? What is the legal age to have a sexual relationship?

3 April 2017

The Penal Code of Tanzania has already been amended to make rape a very serious offence, which all readers of this column should take note of.

Section 130 of the Penal Code has been amended by the Sexual Offences Special Provisions Act and states that a male person commits the offence of rape if he has sexual intercourse with a girl or woman under circumstances falling under any of the following descriptions: (a) not being his wife, or being his wife who is separated from him without her consenting to it at the time of the sexual intercourse; (b) when her consent has been obtained by the use of force, threats or intimidation or by putting her in fear of death or of hurting her while she is in unlawful detention; (c) when her consent has been obtained at a time when she was of unsound state of intoxication induced by any drugs, matter or thing, administered to her by the man or by some other person unless proved that there was prior consent between the two; (d) with her consent when the man knows that he is not her husband, and that her consent is given because she has been made to believe that he is another man to whom she is lawfully married; (e) with or without her consent when she is under 18 years' old, unless she is his wife who is 15 or more years of age and is not separated from the man.

The Penal Code has been further amended and states that, for the purposes of proving the offence of rape penetration, however slight, it is sufficient to constitute the sexual intercourse necessary for the offence. Resistance such as physical injuries to the body is not necessary to prove that sexual intercourse took place without consent, which makes it easier to prove rape. Whilst rape goes unreported because of fear and stigma (amongst others), with increased women's rights and awareness, there are more cases that are nowadays reported compared to previous years.

What is very important to note is the fact that sexual intercourse with a girl below 18 years of age, even with her consent, is rape. It does not matter that she consented, a man will still be convicted. The offence of rape now attracts a minimum of 30 years' imprisonment with corporal punishment. The amendment to the law also provides that, in addition to the above, the person will be ordered to pay compensation of an amount to be determined by the Court for the injuries caused to such person. You can thus see that rape is severely punished in Tanzania.

Finally, for the interest of readers, with the increase in rape cases, the law in India has gone a step further and now defined rape very broadly as follows: a man is said to commit rape if without a woman's consent he: (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or (d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person.

Detention orders in Tanzania

Does the president of Tanzania have the power to keep someone in custody? If these powers have not been abolished to date, why not?

10 April 2017

FB

Tanzania still bestows wide discretionary and general powers upon the president. Unlike the leaders of other African and Western countries, the president of Tanzania has sparingly used any such powers he possesses.

The president's powers are embedded in the Emergency Powers Act. Particularly on detention, which is the arrest without trial of an individual, the Act allows the president to detain someone for up to six months and a further three months.

Economic offence and seizure of property

If a person is charged with an economic offence, apart from being sentenced, can the Court confiscate his properties?

15 May 2017

Under the Economic and Organised Crimes Control Act, when a Court convicts a person of an economic offence, it may make any order in respect of the property of that person, including forfeiture. The Court shall not make an order for the forfeiture of the property of any person convicted of an economic offence if the property in question or any part of it is not proved to have been involved at all in the commission or facilitation of the offence.

Police investigating bureau de change

I own a small bureau de change and have been asked to give documents for a certain transaction that I conducted in 2008. I have informed the officers that such records are not available because of the lapse of time. Other bureau owners I have spoken to do not maintain records for more than six months. Is there a time period after which I do not need to maintain records?

29 May 2017

As a bureau owner dealing in cash, you are a reporting person under the Anti Money Laundering Act. You are thus required to retain all transactional documents for a period of 10 years, as provided for under the Regulations made under the Act.

Regulation 30 states that a reporting person shall retain records required by Section 16 of the Act for a minimum period of 10 years from the date: (a) when all activities relating to a transaction or a series of linked transactions were completed; (b) when the business relationship was formally ended; or (c) where the business relationship was not formally ended but when the last transaction was carried out.

The regulation also states that if a reporting person is required by any enactment to release a record before the period of 10 years lapses, the reporting person should retain a copy of the record. If a report has been made to the financial intelligence unit (FIU) pursuant to the provisions of the Act or the reporting person knows or believes that a matter is under investigation, that person should retain all relevant records for as long as may be required by the FIU. For the purpose of this regulation, the question as to which records may be relevant in the analysis process may be determined in accordance with the guidelines.

You can see that as a reporting person, under regulation 30, the transaction documents for 2008 are supposed to be retained for 10 years, until 2018, and you are thus in breach of your obligations under these regulations.

The 10-year retention rule applies to all reporting persons under the Act, including financial institutions, cash dealers, accountancy firms, real estate agents, dealers in precious stones, work of arts or metals, attorneys, notaries, auctioneers and other persons specified by the minister.

Seizure of corruption proceeds

Is there a law in Tanzania whereby corruption proceeds can be seized by the Prevention and Combating of Corruption Bureau (PCCB)? What is the procedure?

3 July 2017

The answer to your question is yes. The Prevention and Combatting of Corruption Act provides in Section 40 that: (a) the PCCB may, in collaboration with the office of the Director of Public Prosecutions (DPP), recover proceeds of corruption through confiscation; and (b) where a person is convicted of an offence of corruption under this Act, the DPP may apply to the convicting Court or to any other appropriate Court not later than six months after the person's conviction for a forfeiture order against any property derived or obtained through corruption.

It must be noted that the asset seizure is not automatic and must be sanctioned by the Court. The Act further states that, should a forfeiture order be made, all such property shall be vested in the United Republic.

Plea bargaining in Tanzania

My brother is accused of armed robbery. Whilst I must admit that he is guilty, he was not armed at the time of the robbery. Are there any legal provisions that allow an accused person in a criminal case to plead guilty and for the prosecutor or magistrate to reduce the charge or sentence?

10 July 2017

Plea bargaining is a controversial subject in many jurisdictions. In Tanzania, there are no provisions for plea bargains in our Penal Code or the Criminal Procedure Act. We are informed that the office of the Director of Public Prosecutions (DPP) was proposing to introduce this, but any such proposal would require parliament to amend and/or insert such a provision into our penal statutes.

It must be stated that there are provisions in our tax statutes where the Tanzania Revenue Authority (TRA) can compound offences, which effectively means that it converts (by compounding) tax evasion or other serious non-compliance crimes that carry the risk of imprisonment, to a fine and/or penalty.

A plea bargain (also known as a plea agreement, plea deal or copping a plea) is an agreement between the prosecutor and accused whereby the accused agrees to plead guilty to a particular charge in return for some reduction of his sentence or a sort of concession from the prosecutor. This may mean that the accused will plead guilty to a less serious charge, or to one of several charges, in exchange for the dismissal of other charges. It may also mean that the accused will plead guilty to the original criminal charge in return for a more lenient sentence.

A plea bargain allows both parties to avoid a lengthy criminal trial and allows the accused to avoid the risk of conviction at trial for a more serious charge. For example, in the US legal system, an accused charged with a felony theft charge, the conviction of which would require imprisonment in a state prison, may be offered the opportunity to plead guilty to a misdemeanour theft charge, which may not carry a custodial sentence but a community service sentence.

Intoxication in criminal law

I have recently moved to Tanzania and want to know to what extent is intoxication a defence in Tanzanian laws? Is this taken as seriously as in the western world?

10 July 2017

Intoxication is usually no defence in criminal law unless the intoxication is not self-induced or the person intoxicated was insane at the time of committing an offence. Section 14 of the Penal Code specifically deals with this.

We must point out that, under our laws, intoxication is taken seriously, although the implementation of such provisions is weaker than in the western hemisphere.

Arrested equipped for stealing

My son was seen acting suspiciously in a residential area. He had a torch, gloves and two screwdrivers, which he threw away when he saw a police officer. He was subsequently arrested and charged with the offence of attempting to commit burglary. What should I do?

7 August 2017

Whether or not your son will be convicted will depend on the evidence the prosecution will present to prove the charges against your son. The torch, gloves and screwdrivers are not articles which were made or adapted for use in committing theft or burglary, but Courts are entitled to draw inferences from their nature and the circumstances in which the suspect was in possession of them in order to determine intent.

The facts of the case are leading to implicating your son. You will need to seek legal assistance immediately. This is a criminal charge which could lead to a custodial sentence for your son.

Detained in police station for traffic offence

I was stopped in my car by police officers, who shockingly did an alcohol test on me. The results were positive and I was arrested and spent the night in police custody. Can they arrest me for this offence? Couldn't they have just fined me and let me go? Is this legal?

14 August 2017

The Road Traffic Act states that any person required to provide a specimen of blood for a laboratory test may thereafter be detained at a police station until it appears to a police officer that the proportion of alcohol in the person's blood does not exceed the prescribed limit. For the purposes of this Act, the "prescribed limit" means 80 milligrams of alcohol in 100 millilitres of blood.

You can see that your arrest was legal to also protect you. There is nothing shocking about alcohol tests. They are now quite common in Dar.

My son is a thief

I am a widow and have a son who is a thief. I don't support his activities, but I can't turn him in to the police either, although I am fully aware of where he keeps his stolen items. I thought I was safe until the police questioned me for hours in relation to my son's activities and I clearly refused to give him up. The police said that, if I don't tell them what I know about my son's activities, they will also arrest me for aiding and abetting. As a mother I am doing the best for my child. Please guide me on what I should do in these circumstances.

25 September 2017

As much as we sympathise with you, the Penal Code states that every person who does or omits to do any act for the purpose of enabling or aiding another person, commits an offence, and may be charged with actually committing it.

To elaborate this provision, you are withholding information to the police that your son is a thief; you even know where he

keeps his stolen items, hence you are omitting to do what is right to prevent your son from stealing again. You could be charged and convicted of aiding and abetting, to which you will be charged and convicted of theft and imprisoned as a thief, although you didn't actually commit theft.

The Penal Code further states that a person who receives or assists another who is, to his/her knowledge, guilty of an offence, in order to enable him to escape a punishment, is an accessory after the fact to the offence. A person who becomes an accessory after the fact to felony is guilty of felony, and is liable, if no other punishment is provided, to imprisonment for seven years. You could also be charged of an offence of accessory after the fact, which could land you in prison for seven years. With the above in mind, and in order for you to not get in trouble yourself, you will have to report your son to the police.

Testimony of a child

I came home drunk and I hit my wife badly in front of our six-year-old girl until my wife was admitted to hospital. I regret what I did and my wife has forgiven me. We told the police that she was beaten by thieves who attacked her on her way home, but the medical report says that it is impossible that such a beating came from thieves and the police are now reinvestigating the matter. I know my wife won't testify against me, but I am worried that our daughter will be called. Is it possible for a child as young as six years to give testimony? Will it carry any value? Please advise.

25 September 2017

Yes, a testimony of a child is acceptable in any Court of law and it carries weight, depending on the age of the child and how she testifies in Court. The child witness is normally submitted to some questioning by the judge/magistrate to establish if she understands the duty to speak the truth. If the Court is satisfied that she understands the duty to speak the truth, the Court will take her testimony and rely on it. Children's testimony mostly carries high value because it is a general belief that children are unlikely to tell a lie.

New offence in criminal law

If at the time I acted in a certain manner it was not a crime to do so, but subsequently the law changed and it became a crime, can I be charged? In short, what I did some time ago is now an offence - can I still be charged?

23 October 2017

Our Constitution protects you and you cannot now be charged for something that was not an offence at the time.

Article 13(6) states that, to ensure equality before the law, the state authority should take into account the principles, namely: (a) when the rights and duties of any person are being determined by the Court or any other agency, that person shall be entitled to a fair hearing and to the right of appeal or other legal remedy against the decision of the Court or of the other agency concerned; (b) no person charged with a criminal offence shall be treated as guilty of the offence until proved guilty of that offence; (c) that no person should be punished for any act which at the time of its commission was not an offence under the law, and that no penalty should be imposed which is heavier than the penalty in force at the time the offence was committed.; (d) for the purposes of preserving the right or equality of human beings, human dignity shall be protected in all activities pertaining to criminal investigations and process, and in any

other matters for which a person is restrained, or in the execution of a sentence; (e) no person shall be subjected to torture or inhuman or degrading punishment or treatment.

Time already spent in prison

My uncle was sentenced to 12 years' imprisonment on a manslaughter charge, but he had already spent five years in prison before he was convicted. The judge did not seem to have taken that into account. Should the years already spent in remand prison not be deducted from the 12-year sentence? The judge is dead and hence we cannot get this clarified.

6 November 2017

There was a similar case of an individual who was sentenced to 15 years in jail after he had already spent six to seven years in remand. The Court of Appeal ruled in that case that the years spent in remand prison must be deducted from the overall sentence. We believe the Court of Appeal also reduced the sentence from 15 to nine years after considering that the accused had pleaded guilty to manslaughter and other mitigating factors.

The judge does not need to be alive for the same facts to apply in your uncle's case. You might be time barred from appealing, but you might succeed in filing an application based on the illegality of the sentencing decision, which could be successful and then allow you to appeal. Your lawyer can guide you further.

Arrested for forwarded WhatsApp

A friend of mine who forwarded a WhatsApp message he received was subsequently arrested and is now in remand prison. It is clear that he is being framed as the writer of that message, as the original person who wrote it has not been arrested. What should I do?

6 November 2017

The Cyber Crimes Act is very strict when it comes to this. Section 16, which some say curtails freedom but it is a good law, states that any person who publishes information or data presented in a picture, text, symbol or any other form in a computer system, knowing that such information or data is false, deceptive, misleading or inaccurate, and with the intent to defame, threaten, abuse, insult or otherwise deceive or mislead the public or counsel the commission of an offence, commits an offence. On conviction, he will be liable to a fine of not less than TZS 5 M, imprisonment for at least three years, or both.

Whether you are the originator of a message or only forwarding it, you can still be charged, as WhatsApp under the wide definition of computer system is covered under Section 16 above. As for the person who is not yet arrested, your friend can inform the police of the situation in writing and appropriate action will hopefully be taken.

Right of appeal in 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 a stay of execution in civil appeals and how soon must a notice of appeal be filed?

27 November 2017

Yes, a person can appeal his 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, as soon as one files a notice of appeal of a criminal conviction, any death sentence

or corporal punishment cannot be carried out until the appeal has been determined.

In civil appeals, a stay of execution must be applied for and granted. There is no automatic stay. Under Rule 11(2)(d), no order for stay of execution shall be made unless the Court is satisfied that: (a) substantial loss may result to the party applying for the stay of execution unless the order is made; (b) the application has been made without unreasonable delay; and (c) 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.

Jurisdiction of criminal statute

Does the core criminal statute in Tanzania extend to offences committed outside Tanzania in an aircraft that originates from Tanzania? As a Tanzanian, can I be charged if I commit an offence against the Penal Code outside of Tanzania whilst in this aircraft?

27 November 2017

Under Section 6 of the Penal Code, the jurisdiction of the Courts of Tanzania extends to (a) every place within Tanzania and its territorial waters; (b) any offence committed by a Tanzanian citizen in any place outside Tanzania; and (c) any offence committed by any person on an aircraft registered in Tanzania.

If for example you punch someone in a Tanzanian-registered aircraft in another country, you still can be charged in Tanzania, even though you committed the offence in another country. This long arm of the Penal Code allows Tanzanian authorities to protect its people and property even if you are not in Tanzania.

MP hit me and claims immunity

I was at a bar where a member of parliament misbehaved with my girlfriend. I confronted him and we ended up in an argument. He hit me with a chair and I ended up in hospital. The MP now claims that he has immunity and cannot be arrested or reported against. What should I do?

11 December 2017

Members of parliament have some immunity under Article 100 of our Constitution, which states that there shall be freedom of opinion and debate 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.

The article states further that, subject to this Constitution or to the provisions of any other relevant law, an MP shall not be prosecuted and no civil proceedings may be instituted against him in a Court in relation to anything 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.

As the fight you described did not take place in the National Assembly or based on anything he has said therein, there is no immunity to protect this MP. You can proceed to report this to the police.

International convention on death penalty

Tanzania has signed various international conventions against the death penalty but has yet to implement these. As a convict on death row, can I exercise my rights as this should be the law?

18 December 2017

The Second Optional Protocol to the International Covenant on Civil and Political Rights aimed at the abolition of the death penalty is a side agreement to Covenant. It was created on 15 December 1989 and entered into force on 11 July 1991. As of December 2017, this Optional Protocol has 85 states that have signed it, but Tanzania is not one of them.

It is true that the Optional Protocol commits its members to the abolition of the death penalty within their borders, although Article 2.1 allows parties to make a reservation allowing execution "in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime". Since Tanzania has not signed this protocol, the death penalty is still in force in Tanzania.

However, in practice over the past 14 years, no president has signed a death warrant, hence no executions have taken place in the recent past.

Police refuses to identify himself

I was asked to give my particulars to a police officer who was extremely aggressive with me without any reason. The more I tried to be polite, the more aggressive the officer became, demanding to see my ID card. Before giving him my ID, I asked to see his badge, ID or some other form of identification. He said his uniform was enough.

I was then taken to the station and remanded without being questioned, but released by another officer the next day, who was kind enough to apologise. Don't I have a right to also question a police officer?

18 December 2017

You have the right to ask a police officer his name, rank and place of duty and it is mandatory for the police officer to give you such details. Section 46 of the Criminal Procedure Act (CPA) states that:

(1) Where a police officer believes on reasonable grounds that a person whose name and address is unknown to him may be able to assist him in his inquiries in connection with an offence that has been, may have been, or may be committed, the police officer may request the person to provide his name and address;

(2) Where a police officer requests a person, under sub-section (1), to provide his name and address and informs the person of his reason for the request, the person: (a) shall not refuse or fail to comply with the request; (b) shall not furnish to the police officer a name or address that is false in any material particular; and (c) may request the police officer to provide his name, rank and ordinary place of duty;

(3) Where a police officer who makes a request of a person under sub-section (1) is requested by the person, pursuant to sub-section (2)(c), to provide his name, rank, and place of duty, the police officer shall not refuse or fail to comply with the request.

Further, when you are under restraint, you must be told under Section 53 of the CPA, in a language which you are fluent in, that you are under restraint and the offence for which you are under restraint. This section also states that you must be cautioned that you are not obliged to answer any questions except to give your name and address, and that you have a right to communicate with a relative, friend or lawyer, unless the officer believes that, by allowing such access, an accomplice might escape or it may lead to the loss, destruction or fabrication of evidence related to the offence.

Death, Wills, and Incapacity, Inheritance and Probate

Incapacity, death, Wills, including inheritance and probate are all important considerations for ordinary Tanzanians. 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, while the Courts have given us many precedents. Here you will find the answer to your questions about how to provide for your family and dependants, as well as managing the legal aspects of those difficult family breakdowns.

Donating my dead body

I do not wish to be buried when I die and want to donate my eyes and other organs to those in need. I also want my body to be used for medical or other research. Can I provide for this in my Will and can any of my family members challenge this? Can a religious service still be held for me?

12 January 2015

A Will is the legal declaration of a man's intention, which he wishes to be performed after his death, or an instrument by which a person makes a disposition of his property to take effect after his death. Section 2 of the Probate and Administration of Estates Act, defines a will to mean a legal declaration of the intentions of a testator with respect to his property, which he desires to be carried into effect after his death.

A person making a Will is not restricted to indicate whatever he or she wishes to be done when he passes away unless it is contrary to the laws. Since there is no law in Tanzania which bars people from donating their organs and bodies for medical research, and since this is not against public policy, you are allowed to do so.

In response to whether or not your family can challenge your Will, whilst challenging a Will is not easy, it leads to delays in the granting of probates. If such a challenge is launched then you may not be able to donate any of your organs as we believe the organs must be donated within a few hours of ones death for them to be effectively used. Thus, taking the conservative side, we recommend that you inform your loved ones at the outset of your intentions and perhaps even have them sign on a piece of paper consenting to this and confirming that they will not challenge your wish.

We believe a funeral service for you can still be held, although there will be no body to bury. We recommend you check this with your religious leader to confirm.

Donor donations are really helpful for persons in need and whilst conducting our research we came across the following myths which we share with you:

(a) Qs: I'm too old to be a donor, you wouldn't want my organs!

Answer: you are never too old and in fact most organ donors are older people.

(b) Qs: I've got long term health problems, so there's no way I can donate.

Answer: having a medical condition does not necessarily prevent a person becoming an organ or tissue donor.

(c) Qs: They won't want my organs! Doctors won't do enough to save me if they know I am a donor. They'll be more interested in taking my organs to save someone else.

Answer: there is no connection between the doctor who is saving your life and the one who will do the transplant.

(d) Qs: It's against my religion to be a donor.

Answer: most major religions of the world do not object to organ donation.

(e) I don't need to tell my family that I want to be a donor because I have it written in my will.

Answer: by the time your Will is opened you will already be buried hence recommended to inform your family prior.

Perusing my fathers Will

My father died in Dar es Salaam about 10 years ago and my brother was the executor. He tells me that my father did not leave anything for me, which I am fine with, but I would like to see the original Will. Is there a way I can get a copy? My brother says he doesn't have the original.

30 March 2015

Very few people know this, but the original Will which is attached to the petition for the grant of probate is not surrendered to the executor and instead remains deposited and preserved at the High Court and is open to inspection. We suggest you contact the registrar at the High Court of Tanzania, if that is where the probate was granted from.

Divorced wife in Will

My father had made his Will prior to divorcing my mother. He said that he gives her, as his wife, a property that she is currently living in even though they were divorced. My father did not remarry but his brothers are now challenging the Will saying that it was automatically revoked once he divorced my mum. They are challenging the Will in Court saying that this is a mistake and that she should not inherit anything. What is the position of the law?

1 June 2015

When one marries, the law dictates that any Will made prior to the marriage has no legal effect. However, the law is silent on what happens to a Will when the testator, being the husband, divorces his wife having mentioned her in the Will.

We have researched case law and there is a similar case nearly 5 decades old, at the High Court in Arusha, that decided that a Will in similar circumstances as your father's, is valid even though at the time of the Will being opened and a probate being applied for, the person is not the wife of the testator, and even though the wife had remarried.

The Judge had the following to state: "It is true that the wife (beneficiary) has remarried, but I cannot see that that can make any difference. Accordingly I am satisfied that the wife is the identical person, who was described by the testator as his wife, as indeed she then was. As the Testator did not alter his Will, and as the divorce did not operate as a voluntary revocation, the wife is entitled, to the testator's property and to be appointed his sole executrix. By way of strengthening the position, counsel adduced the consents of the two children of the marriage to the wife being granted probate."

We would expect that your father's Will is still valid, and that your mum (former wife) is entitled to the house that she is currently living in. All said and done, we strongly recommend that your lawyer considers all the facts around the issue, as no two cases are completely alike.

Having two Wills

I am a foreign national and wish to make two Wills. What does the law say about having two different Wills so that I can apply for two different jurisdictions?

21 September 2015

Wills are like marriage certificates, in that they apply anywhere in the world.

For example, your Tanzanian marriage certificate is valid throughout the world.

You do not need to get married to your wife every time you settle outside the country. In a similar manner, it is not very normal to have two Wills.

Having said the above, if you have foreign assets in addition to local assets, and if the foreign assets require a separate Will, then you have no choice but to have a second Will to apply to such foreign assets.

However, we would advise that the both Wills refer to each other so that there is no confusion when probates are being issued.

In a recent English case, there was considerable confusion for the heirs of a man who died with two Wills; one made in England and the other in a foreign country where he

owned property.

The difficulty arose because his foreign Will, which was only intended to apply to the assets he owned in the foreign country, specified that it revoked all prior Wills.

If you are intending to have two separate Wills, it is strongly recommended that you contact a lawyer.

Selling of Kigamboni plot

My sister has asked me to sell her plot in Kigamboni on her behalf and send her the money as she is abroad. She has written to me, authorising me in writing me to sell it. The lawyer of the buyer insists that I do not have the power to do so. I am confused. Please guide me.

7 December 2015

As per your question, the plot belongs to your sister and not to you and therefore as the legal and registered owner she is the one with the power to sell, lease, mortgage or do anything with the plot. As for her being away and wishing to sell it by giving you the power to sell it on her behalf, she cannot do so by just writing to you. We do not know the contents and format of the written authorisation she has written to you as we have not seen it, but a written authorisation alone is not enough to give you the powers to sell the plot on her behalf.

The law requires her to issue a power of attorney to you. In this instance such power of attorney will be a specific power of attorney giving you only the power to sell that specific plot on her behalf. That power of attorney has to be dully signed by your sister as the donor and you as the donee and properly attested. It also has to have passport size pictures of both you and your sister attached.

As per the Land Registration Act, such power of attorney will need to be registered by the registrar of titles. Only after registration can we say that your sister has legally appointed you and given you the power to act for and on her behalf; to do what is specifically stated under the said power of attorney.

On a separate note: you should also know that power of attorney is not solely restricted to specific matters, but a person can give you a general power of attorney under which you would be enabled to act on behalf of that person on a wider range of things.

Public leaders' declaration of properties

Are public leaders forced to declare their properties? Is there any law which requires them to do so?

18 April 2016

The ethics of public leaders in Tanzania are guided by the Public Leadership Code of Ethics Act. This is the law which guides and directs the ethics of all public leaders in Tanzania. The code of ethics requires public leaders to declare their assets in written form to the ethics commissioner. Such declaration has to be submitted to the ethics commissioner within thirty days after being appointed, at the end of each year, and at the end of any such leader's term in office.

A public leader is supposed to declare all assets owned by him, his spouse and unmarried minor children. Further to that, a public leader is not allowed in the course of his official duties to acquire any significant pecuniary advantage or assist in the acquisition of pecuniary advantage to another person, by improperly using or benefiting from information which is obtained in the course of his official duties and which is not generally available to the public.

The ethics secretariat which was established under article 132 of the

constitution of the United Republic of Tanzania has the duty, among others, to inquire into any alleged or suspected breach of the code by public leaders. Any breach may result in a fine, imprisonment or both.

75% rule for bankers

We are in the banking industry and have been auctioning mortgaged houses that have been secured by us for loans. We are led to believe that the Land Act requires that a mortgaged property be sold at not below 75% of its market value. Is this applicable in practice and how do we go about this? With Court injunctions being issued all the time, it is very difficult for a prospective buyer of an auctioned property to buy the property at very high prices as there always are issues with getting the title transferred in addition to getting vacant possession. In short, the market reality will never meet the 75% rule because of the way Courts are treating defaulters. We are really confused. What should we do?

31 October 2016

To begin with the law is clear in that the sale of any property below 75% of its market price can be void. This will affect both you and the bona fide purchaser. In fact you may end up being sued by the bona fide purchaser, mortgagor and borrower (if different from the mortgagor). Whether this is applicable in practice or not is irrelevant as the law makes it mandatory for you to comply with the 75% rule.

We understand your concerns about Court orders and the like. What we recommend for you to ascertain the market value at the time is for a valuer to prepare a report and factor in all market conditions in the report prior to the auction, so that you can set the property price with a 75% reserved price. That will minimise the market value arguments that may be raised in the future by the mortgagor.

The law has not addressed what the banker can do if the closest offer is below 75%. That would likely entail your commissioning another valuation to match current market realities before any auctions. What we have noticed at the moment is a number of bankers are not engaging valuers to prepare fresh valuation reports prior to auctions nor setting reserve prices. Remember that the borrower and/or mortgagor has statutory rights that you must always comply with.

First right of refusal, tenant in property

I have been a tenant in a property for the past many years. Three months ago I was served with a notice to vacate the premises on grounds that the property had been sold. Is there no law that the landlord should have offered it to me before selling it in the market?

14 November 2016

As per the Land laws in Tanzania, there is no legal provision which puts the landlord under obligation to sell his/her property to the existing tenant unless that has been specifically provided for in the tenancy agreement, which is rare. If your tenancy agreement has a right to buy, or right to refusal clause, then depending on the wording of the clause, you may be able to challenge the sale of the property, but not otherwise.

If your landlord is a public body, the requirements of advertising and tendering must be met. If that condition has not been met, you may also challenge the sale. Furthermore, though the property has been sold, your right to stay remains as per the terms and conditions in the tenancy agreement. You should read the termination clause of the tenancy agreement for further guidance.

Will names me as boyfriend

I am a married man, but had a girlfriend who has named me in her Will as having been her boyfriend. Is there a way I can get an injunction from being mentioned like this? This girl is quite sick and there are chances she might not survive. How can I stop from being named? This former girlfriend says that she must name me as that is how her soul will get relieved. I'm not sure how to disclose this to my wife. Please guide.

13 March 2017

We do not see how you can stop your ex-girlfriend from naming you in her Will or otherwise. She is entitled to name whoever she wants and whatever she wants in her Will. It is her document.

Further, from the facts it seems that what she is intending to write or has written is not false, hence you cannot even sue her for defamation. If you file an application for an injunction there is a high chance that this application itself will come into the public domain as files in Court are accessible.

You need to speak to your lawyer or a counsellor for further guidance. We are not qualified to respond to you on how and whether you should self-disclose this to your wife. That remains your call. This is a good lesson for you, and other men, for the future.

Knowledge of existence of Will

I have made a Will and want to know whether there is an automatic way for the beneficiaries to be informed that they are beneficiaries after my death. I also wish to know how my executor will know that I have appointed him as my executor. I do not want the contents of my Will to leak out to anyone including my wife and any other beneficiaries. Is there a particular place that I can use to store my Will?

19 June 2017

Neither your beneficiaries nor executor(s) will know that they are mentioned in your Will if you do not inform them. It is as simple as that. There is no authority that informs them automatically. Our first suggestion is for you to make sure that you ask the executor if he is agreeable to act as the executor.

It is wise to also appoint an alternate executor should the first executor fail to act for some reason. Make sure you also inform this alternate executor. Most people forget to appoint an alternate executor. Secondly, you should make sure that the executor and/or the beneficiaries or someone very trustworthy knows where the Will is stored. The facility you use should only release the Will upon your demise. Some people store their Wills at home.

Others store them in bank vaults with instructions to their bankers to release it to particular people upon one's demise. Others use Will storage facilities. We are not aware of specific Will storage facilities in Tanzania but there are many such facilities outside the country.

Father dead, properties being misused

My father passed away a few weeks ago without leaving behind a Will. Since I am the first born and our mother predeceased my father, we agreed with my young brothers and sisters that I should apply for a letter of administration of his estate. Before the grant of the letter of administration, a woman appeared from out of the blue, who has challenged my application claiming she was also a wife of my father. I have never seen this woman in my life and the matter is before the Court. We have realised that a number of our father's properties are being misused in his absence. His other assets including his car are in the possession of his driver who doesn't seem to show good intentions. My father's business partners are

also behaving weirdly and not disclosing details of certain transactions. The Court case will take a long time. What can we do at this juncture to stop this pilferage.

11 December 2017

The letter of administration you have applied for will not be granted until the application made by this alleged wife of the deceased is disposed of. You have correctly pointed out that this will take time, and time being of the essence, you need to stop this pilferage and misuse of assets.

Our law allows granting of letters of administration with limited powers. Such a temporary letter of administration will empower the administrator with all the rights and powers of the general administrator, except for the powers of distributing the estate. In law this is referred to as grant of letters of administration pendent lite. We recommend that you immediately apply for this letter of administration to preserve your late father's estates whilst you are fighting it out in Court. This application should be filed under a certificate of urgency for it to get a quick hearing date.

Property and Planning Law

Many Tanzanians aspire to own their own property. But, whether you own it outright, rent it, or lease it, occupying a property comes with rights and obligations, some of which cannot be changed.

There are also obligations for people to treat property properly – such as trespass, and for tenants, such as the first right of refusal.

The legal aspects of property ownership are fully discussed in this easy-to-follow chapter. There are answers on farming rights and responsibilities, important for people who do not live in the city.

We also assess what property rights people have, and dispel the myths about the rights you think you have. We also offer advice on how to found your own country; should you be so interested.

Rights on my farm

I own a very large farm which has its own roads inside. Do I need to wear a seatbelt on my farm roads? Can I make my own rules for my roads? I want to get the feel of being home - can I drive on the right hand of the road. Are the police allowed into my private property? Are there any offences in the traffic laws that provide strictly for imprisonment?

9 March 2015

You must be reminded that you own a farm not a country and hence bound by the laws of Tanzania. The Road Traffic Act and the various traffic regulations dictate that one must wear a seatbelt at all times when driving on a road. Road is defined as any road, highway, way, street, bridge, culvert, wharf, car park, footpath or bridle path on which vehicles are capable of travelling and to which the public has access whether or not such access is restricted and whether subject to any condition, but does not include any road within the curtilage of a dwelling house.

Bearing the above in mind, although you own the farm, you are still bound by the Road Traffic Act and cannot have your own rules or drive on the right hand side of the farm roads. Furthermore, the police are allowed in any property, be it a farm or otherwise.

To answer your last question, Section 40 of the Road Traffic Act is one of the sections that only provides, as a punishment, only a custodial sentence of a minimum of 3 years (without an option of a fine). It states that (1) Any person who causes bodily injury to, or the death of, any person by the driving of a motor vehicle or trailer recklessly or at a speed or in a manner which having regard to all the circumstances of the case, is dangerous to the public or to any other person shall be guilty of an offence. (2) Any person who, while under the influence of drink or drugs to such an extent as to be incapable of having proper control of the vehicle, is in charge of a motor vehicle or trailer and by an act or omission in relation thereto causes bodily injury to, or the death of, any person shall be guilty of an offence.

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, and neither did he inquire on the land. I figured 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 because he did not ask me to develop the property, and if I could, I should carry the house with me! Indeed, 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 case in Court.

6 April 2015

You were employed by the owner of the property to guard the property. This was so nobody would trespass on the land. You were a legal occupier of the land as 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 another person comes to occupy the land. This other person must not be aware of the existence of the owner and the owner must not interfere with the person's occupation over the land for

twelve 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, which means he cared for the property enough to look for someone to guard it against trespassers. Just because he did not ask about it for 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, and it is unlikely that the owner can be liable for compensation.

You might want to consider some form of mediation to convince your boss he should compensate you. Your lawyers can guide you further.

Without prejudice on lease

On a lease that I am signing, the top of the document has a statement that reads "without prejudice". I find this quite awkward. What guidance can you give me?

8 June 2015

Just as you do, we also find this awkward and inappropriate, especially if you are entering into a binding lease agreement.

When used in a document or letter, "without prejudice" means that what follows:

(1) Cannot be used as evidence in a Court case.

(2) Cannot be taken as the signatory's last word on the subject matter.

(3) Cannot be used as a precedent.

The contents of such documents normally cannot be disclosed to the Courts but, when a party proposes to settle a dispute out-of-Court, it is the genuineness of the effort that determines whether the proposal can be disclosed or not, and not whether the words without prejudice were used.

Other synonyms of without prejudice are without abandonment of a claim, privilege, or right, and without implying an admission of liability.

The insertion of without prejudice in the lease means that it is not binding and cannot be used in Court. This is precisely the opposite of what is trying to be achieved. We recommend that the without prejudice term be removed, or if your landlord is obsessed with the term, then it is changed to with prejudice.

Founding a country

I have a passion to become the ruler of a country and I intend to buy a massive piece of land, and invite people to apply for citizenship. Is this something that I can do here?

3 August 2015

Sadly your dream of becoming a ruler will not come true in Tanzania. There is no such land for sale and if you even attempt to declare that any such land is under your command and not governed under Tanzanian law, your land title will very likely be revoked. You may also be charged with treason, a non-bailable offence, which might fetch you a sentence of life imprisonment.

Building structure near shore

What is the minimum distance from the shore that one can start building a concrete structure? I see some hotels and houses which have started building right on the shore and disallowing anyone from passing the beach in front of them. Is this legal?

7 September 2015

The Environmental Management Act, and other laws state that no human activities of a permanent nature, or which may, by their nature, likely to compromise, or adversely

affect conservation and, or the protection of ocean or natural take shorelines, river bank, water dam or reservoir, shall be conducted within sixty metres.

This is called the sixty-metre rule and any permanent structure that has been built within 60 days would have been built illegally. You can report this to the National Environmental Management Council and your local city council for action. Further, the beach is public property and no one can be stopped from passing the beach.

Public leaders' declaration of properties

Are public leaders forced to declare their properties? Is there any law which requires them to do so?

18 April 2016

The ethics of public leaders in Tanzania is guided by the Public Leadership Code of Ethics Act. This is the law which guides and directs as to the ethics of all public leaders in Tanzania. The code of ethics requires public leaders to declare their assets in written form to the ethics commissioner. Such a declaration has to be submitted to the ethics commissioner, firstly, within thirty days after their appointment. Secondly, it must be presented at the end of each year, and lastly, at the end of such a leader's term in office.

A public leader is supposed to declare all assets owned by him, his spouse and unmarried minor children. Further to that a public leader is not allowed in the course of his official duties to acquire any significant pecuniary advantage or assist in the acquisition of pecuniary advantage to another person, by improperly using or benefiting from information which is obtained in the course of his official duties and which is not generally available in the public.

The ethics secretariat which is established under article 132 of the constitution of the United Republic of Tanzania has the duty, among others, to inquire into any alleged or suspected breach of the code by public leaders. Any violation may result in a fine, imprisonment or both.

75% rule for bankers

We are in the banking industry and have been auctioning mortgaged houses that have been secured by us for loans. We are made to believe that the Land Act requires that a mortgaged property should not be sold at below 75% of its market value. Is this applicable in practice and how do we go about this? With Court injunctions being issued all the time, it is challenging for a prospective buyer of an auctioned property to buy the property at very high prices, as there always are issues with getting the title transferred in addition to getting vacant possession. In short, market reality will never meet the 75% rule because of the way the Courts are treating defaulters. We are really perplexed. What should we do?

31 October 2016

The law is clear in stating that the sale of any property below 75% of its market price can be void. This provision will affect both you and the bona fide purchaser. You may end up being sued by the bona fide purchaser, mortgagor and the borrower if different from the mortgagor. Whether this is applicable in practice or not is irrelevant as the law makes it mandatory for you to comply with the 75% rule.

We understand your concerns about Court orders and the like. What we recommend to ascertain the market value at the time is for a valuer to prepare a report. This report should factor in all market conditions before the

auction so that you can set the property price with a 75% reserved price. That will minimise the market value arguments that may be raised in the future by the mortgagor.

The law has not addressed what the banker can do if the closest offer is below the 75% price. That would likely entail you to commission another valuation, to match current market realities before any auctions. What we have noticed at the moment is many bankers are not engaging valuers to prepare new valuation reports before auctions, nor setting reserve prices. Remember that the borrower and/or mortgagor have statutory rights that you must always comply with.

First right of refusal, tenant in property

I have been a tenant in a property for the past many years. Three months ago, I was served with a notice to vacate the premises on the grounds that the property had been sold. Is there no law that the landlord should have offered it to me before selling it in the market?

14 November 2016

The land laws in Tanzania have no legal provisions which put the landlord under obligation to sell his/her property to an existing tenant unless that has been expressly provided for in the tenancy agreement, which is rare.

If your tenancy agreement has a right to buy, or right to refusal clause, then depending on the wording of the clause, you may be able to challenge the sale of the property and not otherwise.

If your landlord is a public body, then advertising and tendering requirements must be met. If these have not been complied with, you may challenge the sale. Although the property has been sold, your right to stay is guaranteed by your tenancy agreement. It will help if you read the termination clause of the tenancy agreement for further guidance.

Execution against a third party

In 2005 I won a case against a man whom I had sued in the High Court of Tanzania for adverse possession of my piece of land; this man died a few years later. The background to the case is that the deceased had built a house on the land in dispute, which he rented out to another family. Last year, I applied for execution for vacant possession of my land but my application failed because the occupants of the said house objected. They said they were the owners having bought the disputed land from the deceased. The judge entertained their objection despite there being a judgment against the deceased. Is the judge's decision not wrong? How can a judge make a mistake?

11 September 2017

The facts you have given us do not tell us in detail the particulars of the objection put forward by your opponents (the objectors), to enable us to understand why the judge decided the way he did.

However, from a legal point of view, we can say that as far as you and the objectors are concerned, there is no basis of treating your application for vacant possession as being executable against the decree you obtained against the deceased.

Your victory was a judgement that was good only against the deceased and anyone claiming under him. Strictly speaking, these objectors are not claiming their rights from the estate of the dead person. They allege to be lawful owners of the land in dispute. The Court cannot, based on that judgement alone, order vacant possession against the objectors.

From the facts, our opinion is that the

judge was right in entertaining the objectors' objection. Unfortunately, for you, you will now have to file a suit for trespass against the objectors.

You have also asked, how can a judge make a mistake? A judge is not superhuman. He or she is human, just like you and us. There is no shortage of case law where judges have made mistakes- some of these mistakes have embarrassed some of the most senior judges, not only in Tanzania but around the world. That is the reason there is an appeal mechanism to ensure that justice does prevail.

Tax Law and the Tanzania Revenue Authority

“

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. The taxman must be kept happy; but he must act properly and professionally.

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 Tanzania 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. Read on and learn more.

Advance pricing arrangement

To ensure profitability, we have an arrangement with our holding company to provide various services to us. Our tax consultant is unsure about the validity of certain expenditures that we incur in such transactions. Is there a way we can get more certainty on what TRA will allow and what it will not?

23 February 2015

This scenario falls under transfer pricing, whose regulations have been issued last year. The Transfer Pricing Regulations provide for an advance pricing arrangement. Regulation 12 states that a person may request the Commissioner to enter into advance pricing arrangement for establishing an appropriate set of criteria for determining whether the person has complied with the arm's length principle for certain future controlled transactions undertaken by the person over a fixed period of time.

You can therefore provide TRA with all relevant documents pertaining to this arrangement as provided for under regulation 12(2). Thereafter, TRA will either accept the transfer pricing proposal, reject it or modify it. This advance decision allows you more certainty.

Lastly we must mention that the Commissioner may cancel an advance pricing agreement with a person by notice in writing if (1) the person has failed to materially comply with a fundamental term of the agreement; (2) there has been a material breach of one or more of the critical assumptions underlying the agreement; (3) there is a change in the tax law that is materially relevant to the agreement; or (d) the agreement was entered into based on a misrepresentation, mistake, or omission by the parties.

TRA refuses to coordinate with other departments

We entered into an agreement with a ministry for us to be exempt from certain taxes. Unfortunately the TRA is not honouring this agreement and refusing to assist in liasing with the ministry directly. There is a disconnect between the ministry and TRA and neither is willing to speak to the other. This project depends on these exemptions and we are unsure how to progress the project. Kindly guide.

23 February 2015

This is not the first time we are hearing this. In fact TRA is asking investors to coordinate the exemptions themselves as they are not the granting authority but only the implementation authority in as far as revenue laws are concerned.

However, Section 5 of the Tanzania Revenue Authority Act gives a wider function to TRA than TRA's narrow interpretation.

Section 5 lists the function as (a) to administer and give effect to the laws or the specified provisions of the laws set out in the First Schedule to this Act, and for this purpose, to assess, collect and account for all revenue to which those laws apply; (b) to monitor, oversee, coordinate activities and ensure the fair, efficient and effective administration of revenue laws by revenue departments in the jurisdiction of the Union Government; (c) to monitor and ensure the collection of fees, levies, charges or any other tax collected by any Ministry, Department or Division of the Government as revenue for the Government; (d) to advise the Minister and other relevant organs on all matters pertaining to fiscal policy, the implementation of the policy and the constant improvement of policy regarding revenue laws and administration;

(e) to promote voluntary tax compliance to the highest degree possible; (f) to take such measures as may be necessary to improve the standard of service given to taxpayers, with a view to improving the effectiveness of the revenue departments and maximising revenue collection; (g) to determine the steps to be taken to counteract fraud and other forms of tax and other fiscal evasions; (h) to produce trade statistics and publications on a quarterly basis; and (i) subject to the laws specified under paragraph (a), to perform such other functions as the Minister may determine.

Therefore, there is nothing stopping TRA from coordinating activities with the ministry as is provided for under (b) above. Whilst TRA is the executing "tax collecting" body, TRA should also be assisting businesses in functioning, whether they are granted exemptions or not. There is a general negative sentiment to incentives but these sentiments are due to misused and unmonitored exemptions that were granted before, which TRA and other agencies did not monitor properly.

Currently, we see a number of genuine businesses turning away from Tanzania because of the aggressive "don't grant exemptions" drive which is, in our opinion, putting Tanzania at a disadvantage as genuine investors are shying away from Tanzania.

In the interest of time, we recommend that you get the ministry that signed the agreement to take the first step by approaching TRA. If the granting ministry is not the ministry of finance, which is usually the ministry authorised to grant exemptions, and then you may also want to consult the ministry of finance. With all fairness to TRA, TRA is not allowed to grant any exemptions and is desperately trying to ensure it meets its collection target.

TRA after me

Tanzania Revenue Authority (TRA) has been after one of our suppliers for certain VAT issues that we are not party to, nor do we want to know more about. Our supplier states that it has done nothing wrong. This time TRA has issued us with a notice to make all payments to TRA instead of the supplier. The supplier states this is illegal and it will sue us in case we make such payments as the contract is between the supplier and us and TRA does not enter into the picture. TRA has now unfairly started aggressively pursuing us for payment. Are we obliged to pay? What if the amounts are in dispute?

20 April 2015

The VAT Act is clear in that where any tax or interest due from a taxable person remains unpaid, the Commissioner may, by notice in writing, require any other person to make such payment.

The VAT Act then states that when such a notice is served, the debt is due to the Commissioner General of TRA and not to the supplier, meaning that once you pay amounts owed to the supplier you have, under Tanzanian law, already paid your supplier. This is to avoid making double payments.

If the Supplier believes it is not liable to pay VAT, it should sort this out with the TRA either by filing objection proceedings with the Commissioner General, or appealing this decision to the Tax Revenue Appeals Board. Meanwhile, you upon whom this notice is served, must comply with the notice otherwise you will be held liable. There is no illegality here either on the TRA's part nor on your part when you remit the funds.

Much as you will not want to hear this, TRA has a right to pursue these amounts from you. Unless this notice is vacated, we recommend that you pay such amounts within the time

frame on the notice. If the amounts payable to your supplier are in dispute, you should immediately pay TRA the amount that is not in dispute. In our opinion, at this juncture amounts in dispute, so long as they are genuinely in dispute and the dispute has not been arrived at to derail TRA's efforts to collect the VAT, do not form part of amounts to be paid to TRA.

If you don't cooperate, you should not expect cooperation from TRA who has the mandate and powers to aggressively pursue you to ensure taxes are collected.

Protection to embassies

I intend to file a petition that the government of Tanzania is misusing its funds by providing police and military protection to foreign embassies in Tanzania. Before writing this question I visited 20 embassies to confirm that we have our security personal guarding these foreign state embassies. This amounts to billions of shillings per year and it is shameful that we agree to such funding. What are your thoughts? What other privileges do they enjoy?

27 April 2015

We do not agree with your thoughts at all. Tanzania is a signatory to the Vienna Convention and has a specific law, the Diplomatic and Consular Immunities Act whereby it is mandatory for us to provide security to diplomatic missions including residences of diplomats. In return we also receive this treatment where we have our missions.

If you are so obsessed about government spending, there are many other areas that you can concentrate on and not on these embassies as it is mandatory for us to provide security there. There is nothing shameful about protecting embassies, a lot of whom are major supporters of the people of Tanzania.

The Vienna convention provides the following additional privileges to diplomatic missions: non-arrest of personnel, free communications between the mission and their home country, no seizure of diplomatic documents or communications and tax benefits.

Whilst you might have a right to challenge government spending, you will not succeed in your current mission.

TRA board directions not respected

There was a certain liability that TRA had assessed me with and I reported the anomaly to the TRA board which deliberated it and directed TRA to withdraw such assessments. To date no one is paying attention to the directive by this supreme body. What should I do?

27 April 2015

We are not sure how the TRA board has become a supreme body. In fact TRA board has no power whatsoever to adjust or review or even decide assessments. If it did so in your case, the TRA board would be acting beyond its powers.

Under Section 13 of the Tanzania Revenue Authority Act, the board In the discharge of its functions under the Act, may (a) direct the Commissioner-General to furnish it with any information, reports or other documents which the Board considers necessary for the performance of its functions; (b) give lawful instructions and orders in a prescribed legal notice to the Commissioner-General in connection with the management, performance and operational policies of the operating departments; (c) except as is otherwise provided in this Act, the Board has no power to intervene in the determination of

tax liabilities of particular taxpayers.

Once an assessment is raised, if aggrieved, the taxpayer must file objection proceedings before the Commissioner General, paying a mandatory one third of the tax amount or the amount not in dispute whichever is greater. We are not aware of any procedure where one can go to the TRA board for its intervention.

You have used a wrong channel and we suggest that you consider rechanneling your issues to the Commissioner General under objection proceedings for determination.

Tax offence as an economic offence

If am charged in a domestic tax offence, does that amount to an offence under the Economic and Organised Crimes Act (Act)? How does one get charged under this Act?

27 April 2015

Generally a domestic tax offence would, in our opinion, not constitute an offence under the first schedule of the Act unless it is an offence under Section 146 and 147 of the Customs (Management and Tariff) Act. Hence an offence under, say, the VAT Act, Income Tax Act or Stamp Duty Act would likely not qualify as an offence under the Act.

Furthermore, TRA would require special permission from the DPP to prosecute any such matter. Section 26 of the Act states that (1) Subject to the provisions of this section, no trial in respect of an economic offence may be commenced under this Act save with the consent of the Director of Public Prosecutions.

Under Section 26 (2), The Director of Public Prosecutions shall establish and maintain a system whereby the process of seeking and obtaining of his consent for prosecutions may be expedited and may, for that purpose, by notice published in the Gazette specify economic offences the prosecutions of which shall require the consent of the Director of Public Prosecutions in person and those with the power of consenting to the prosecution of which, may be exercised by such officer or officers subordinate to him as he may specify, acting in accordance with his general or special instructions.

You should refer to the first schedule of the Act for a list of all offences that are economic crimes.

Reference to Hansard for interpretation

There are certain tax laws that have clear ambiguities and can be interpreted either way. How does one possibly get some form of certainty? Can one use the Hansard?

18 May 2015

If the tax issue is related to Income Tax, you may invoke Section 131 of the Income Tax Act to get what is called a private ruling which is made in advance of a transaction. Section 131 states the following: (1) 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. (2) Where prior to the issue of a ruling under subsection (1), the person makes (a) a full and true disclosure to the Commissioner of all aspects of the arrangement relevant to the ruling; and (b) the arrangement proceeds in all material respects as described in the person's application for the ruling, the ruling shall be binding on the Commissioner with respect to the application of this Act to the person with respect to the arrangement. (3) A ruling shall not be binding on the Commissioner under subsection (2) to the extent to which the Act as in force at the

time the ruling is issued is changed.

We now come to your question on the usage of Hansard for interpretation purposes. For the benefit of readers, Hansard is the name of the transcripts of Parliamentary Debates in Tanzania. Everything that is said in Parliament, including introductions and purposes of Bills, is recorded in Hansard, which is publicly available. The question is whether or not, after the Bill becomes law, one can use the Hansard to try and interpret any area in the law that is unclear. The answer is yes, but to an extent.

We have not found a reported Tanzanian case law on this point but the general authority that is widely used in commonwealth jurisdictions is a British case, Pepper versus Hart, a landmark decision of the House of Lords whereby the Justices ruled that Hansard could be used in statutory interpretation. The Court established the principle that when primary legislation is ambiguous then, in certain circumstances, the Court may refer to Hansard in an attempt to interpret the meaning of the legislation. Before this ruling, such an action would have been seen as a breach of parliamentary privilege.

TRA refuses massage expense

I regularly go for massage to increase my performance at work. My job entails my concentrating for long hours and without a proper rub I cannot work at full efficiency. TRA have disallowed this weekly expense that I genuinely incur. TRA is unfair to me. What should I do?

24 August 2015

Section 11 of the Income Tax Act provides for what you can deduct as an expense and states that (1) For the purposes of calculating a person's income no deduction shall be allowed (a) for consumption expenditure incurred by the person or excluded expenditure incurred by the person; or (b) otherwise, except as provided for by this Act. (2) Subject to this Act, for the purposes of calculating a person's income for a year of income from any business or investment, there shall be deducted all expenditure incurred during the year of income, by the person wholly and exclusively in the production of income from the business or investment.

The test is that TRA will only allow an expense that is wholly and exclusively incurred in income production. In your case we are unsure what kind of massage you go for, nor have you disclosed what profession you are in that entails you going for this weekly massage.

If it is a pleasure massage, you certainly cannot deduct this expense. If it is a prescribed medical massage, and one that is critical for you in your job, then perhaps TRA can consider this as being wholly and exclusively incurred for production of income, although we very much doubt that TRA will entertain this.

If you are dissatisfied with this disallowance of massage as an expense, you can file objection proceedings before the TRA, and if TRA do not budge and issue you with the final assessment, then you can appeal to the Tax Revenue Appeals Board.

We must pre-warn you that the TRA have a right, as do you, to call your massage therapist for cross examination so bear that in mind. Hopefully, the masseuse is tax registered, and if not, you both may face further scrutiny. Lastly, we do not believe that TRA has been unfair to you.

Questions during hearing at TRAB

As an auditor I appeared for the first time at the Tax Revenue Appeals Board (TRAB) and was quite shocked that I was being asked questions by the Chairperson and Members during hearing. There were adhoc

questions being fired some of which I could not answer. In the end, the TRAB allowed both TRA and us to try resolve this matter amicably out of Court. Is this appropriate?

7 September 2015

You must remember that this is a tax dispute and the TRAB is not bound by rules of civil procedures.

Proceedings at the TRAB are inquisitorial in nature.

The TRAB rules provide that the Chairman and members of the Board shall be entitled at any stage of hearing to ask such questions as they consider relevant to the matter involved.

The rules also specifically provide that in hearing the appeal, the Board may determine the matter through mediation, conciliation or arbitration, but the rules of procedure under the Civil Procedure Code and the Arbitration Act with regard to the conduct of mediation and arbitration shall not apply in relation to the proceedings under the rules.

In order to determine tax disputes expeditiously, the rules further state that: (1) In any proceeding before the Board, the procedure of the Board shall, subject to the Act and these Rules be within the discretion of the Board; (2) Proceeding before a Board shall be conducted with as little formality and technicality as possible, and the Board shall not be bound by the rules of evidence but may inform itself on any matter in such manner as it thinks appropriate; (3) Where the Act and these rules are silent in relation to any practice or procedure, the proceedings of the Board shall be conducted in accordance with such rules of practice and procedures as the Board may specify.

Therefore, the Board is entitled to ask you questions and has powers to order that the matter be resolved out of Court, on failure of which you can go back to the Board.

Local law inconsistent with double tax treaty

Our company is registered in a country which has a double tax treaty with Tanzania. There are provisions of the Income Tax Act which collide directly with the provisions of this treaty. In such a case what prevails - the local law or the treaty? How can we be sure?

19 October 2015

Section 7 of the newly enacted Tax Administration Act of 2015 which came into force on 1 August 2015 states that the provisions of an international agreement which the United Republic is a party shall, to the extent that the provisions of the agreement are inconsistent with any tax law, prevail over the provisions of the tax laws. The Act also defines international agreement as a treaty or other agreement which the United Republic signed with a foreign government for the purpose of providing reciprocal assistance for the administration or enforcement of tax laws.

Our reading of the above is that the double tax treaty is covered under the definition of international agreement.

The Income Tax Act is also one of the tax laws administered by the Tanzania Revenue Authority and we hence opine that any inconsistent provisions between the two will be ruled in favour of the international agreement which stands superior to our local tax laws.

To be sure of whether your interpretation and that of TRA is consistent, this newly enacted Act allows you to apply for a private ruling where you can disclose all the facts of the matter and TRA will respond to you with their opinion in a ruling that is binding on the TRA. If the ruling is not in your favour, you may proceed to appeal the ruling at the Tax Revenue Appeals Board.

Liability of managers in tax law

I am CEO of a large company and am of the opinion that my company cannot, and will not, meet its tax obligations. In fact, although there is a tax manager in place, I am worried that the company is not tax compliant. I am only an expatriate so fully protected but is there something I should be aware of?

26 October 2015

Under the old tax regimes there was confusion in different tax laws as to the personal liability of managers like yourselves. However, with the new Tax Administration Act 2015 in place, there is no longer any ambiguity.

Section 65 of this newly enacted law states that where an entity fails to pay tax on time, a manager or a person who was the manager of that entity within a period of twelve months prior to the entity default shall be jointly and severally liable with the entity for the payment of tax.

The law, however, states that such liability on managers shall not apply where the manager has exercised the degree of care, diligence, and skill to prevent failure of tax.

You can see that you will be personally liable to the tax authority for payment of such taxes. The Act allows you then to hold any asset of the company to the amount not exceeding the amount you will have paid on behalf of the company.

Being an expatriate does not mean you have extra protection as the Tax Administration Act does not distinguish managers who are local and those who are expatriates. In fact, the Act allows the Commissioner General to order the Director of Immigration Services to stop you from leaving the country for a period of 14 days after which the Commissioner General must have a Court order in place to restrain you from leaving.

It is important you contact your tax consultants and auditors to discuss how your company can become tax compliant.

Withholding tax appeal

For foreign services that my company had used, TRA are demanding withholding taxes. I intend to appeal to the Tax Revenue Appeals Board and wish to know if I can do that. There are conflicting views I am getting from my consultants. One says I can directly appeal, whilst the other says I have to first go back to TRA, before I go to the Board. Please guide.

16 November 2015

The newly enacted Tax Administration Act has deleted a provision of the Tax Revenue Appeals Act that allowed a tax payer to go directly to the Tax Revenue Appeals Board for tax disputes in skills development levy, withholding tax stamp duty, and pay as you earn, to mention a few. The Tax Administration Act came into force on 1 August 2015. This is the material date that decides whether you need to go direct to the Board or back to TRA under objection proceedings.

If these taxes were imposed after 1 August 2015, you will need to go to TRA, otherwise and provided you filed your notice of appeal before 1 August you can go directly to the Board.

Unfortunately, if you are going back to TRA under objection proceedings, you will be required to deposit one third of the disputed amount, or tax not in dispute whichever is higher. This is a requirement that TRA can waive based on your cashflow, and other reasons, but it has become increasingly difficult to get this waiver nowadays.

The Act also deletes Section 6 of the Tanzania Revenue Authority Act which was

another route that was used to go directly to the Board. All in all, the direct route to the Board has been removed, and one must pay one third of the tax, or seek a waiver, and go to the TRA first before going to the Board. This will impact the taxpayers cashflow.

Tax authority powers to search

Is the tax authority allowed to search my office for tax documents? What about searching my house? I am deeply concerned as am informed that the powers of the Tanzania Revenue Authority have been expanded. What can I do? My last concern is on challenging a tax decision at TRA. I am informed that I can pay an amount of one third of the tax in dispute, or the tax not in dispute whichever is higher. My question is on whether or not the TRA can forcefully proceed collect the remaining tax after I have made such deposit and before my objection is determined?

7 December 2015

It is true that the TRA have powers to not only search your office but also your dwelling house, although they can only search your dwelling house without a Court order between 9am and 6pm. Section 42 of the Tax Administration Act of 2015 states that the Commissioner General shall, without a prior notice, be granted free access to any premises, documents, goods, vessels, vehicles, aircrafts or any other assets. You can see that the wording is very wide, and the powers can be delegated to any tax officer.

Your second question has a specific section in the Tax Administration Act which provides in Section 51(7) that where a taxpayer files an objection and makes payment under subsection (5), the liability to pay the remaining assessed tax shall be suspended until the objection is finally determined. The suspension of tax would mean that the TRA cannot forcefully collect the remaining disputed tax until the objection proceedings are concluded. Clearly, the law comes to the protection of the taxpayer to ensure an equitable and just collection system.

Failure to use EFD device

As a trader is it mandatory for me to use the Electronic Fiscal Device (EFD)? A TRA officer is threatening to ensure I go to prison for not using it. The taxman is very unfair on my business. Is a manager of the company liable for tax offences of the entity? Please guide.

14 December 2015

The Tax Administration Act, amongst other tax statutes, make it mandatory for the use of the EFD. The Tax Administration Act in Section 86 provides that any person who fails to acquire an EFD or fails to issue an EFD receipt can be fined between TZS 1,500,000 up to TZS 2,250,000, or subject to imprisonment for 3 years, or both. Hence what the taxman is telling you is the truth and we recommend you comply by immediately using the EFD device. We don't see how the taxman is being unfair as the law clearly provides for this.

As for liability of managers and directors, under the Tax Administration Act it is provided that where an entity has committed an offence under a tax law, every person who is a manager of the entity at the time of commission of that offence shall be treated to have committed that offence, unless the manager has exercised the degree of care, diligence, and skill that would have been exercised by a reasonable person in preventing the commission of that offence.

Taxes discriminatory against constitution

I am a law student and after reading the constitution I find that our tax laws are discriminating against our people by having higher tax rates for come classes of people and lower rates for others. Does our constitution not guarantee against discrimination?

18 January 2016

This is a very interesting question you have raised. Article 13 of our Constitution states that:

(1) All persons are equal before the law and are entitled, without any discrimination, to protection and equality before the law.

(2) No law enacted by any authority in the United Republic shall make any provision that is discriminatory either of itself or in its effect.

(3) The civic rights, duties and interests of every person and community shall be protected and determined by the Courts of law or other state agencies established by or under the law.

(4) No person shall be discriminated against by any person or any authority acting under any law or in the discharge of the functions or business of any state office.

The constitution further goes to define discrimination, which means to satisfy the needs, rights or other requirements of different persons on the basis of their nationality, tribe, place of origin, political opinion, colour, religion, sex or station in life such that certain categories of people are regarded as weak or inferior and are subjected to restrictions or conditions.

It makes the distinction between them and how persons of other categories are treated differently or are accorded opportunities or advantage outside the specified conditions or the prescribed necessary qualifications, except that the word "discrimination" shall not be construed in a manner that will prohibit the Government from taking purposeful steps aimed at rectifying disabilities in society.

Although what we will now say is debatable, we believe that progressive taxation where the rich are taxed at a higher rate than those who are poorer does not fall under the definition of discrimination as enshrined in the constitution. Since you are a law student, we recommend you do more research on this as well. You will note that most advanced economies have highly progressive taxation rates even though they have similar provisions of anti-discrimination in their constitutions.

Legality of 7 day notices by TRA

Does TRA have powers to come and search taxpayers' premises? Can this be a fishing expedition for them? If the answer is yes, is this provision not unconstitutional and can it be amended? Can TRA give me only 7 days to pay up after they issue assessments or demand notices? What are my rights? TRA has written to me demanding taxes in Kiswahili which I do not understand - do I still need to comply?

1 February 2016

Under the Tax Administration Act and other tax laws, including the East Africa Community Customs Management Act, the Tanzania Revenue Authority has wide powers to search premises of taxpayers. This is similar to other jurisdictions where tax revenue collection must be protected. We do not see anything unconstitutional about this provision.

Of course, the search needs to be for tax related matters and not a general fishing expedition, however the taxpayer cannot stop a tax official from doing his/her job. This

provision can only be amended by parliament and we see no reason why parliament would wish to amend this especially in Tanzania where the tax base is very narrow and tax compliance very weak.

We sometimes find TRA being blamed for powers that they actually do possess, with taxpayers calling it harassment and TRA calling it tax evasion!

As for the 7 days notices, we have indeed seen such deadlines being given and opine that the taxpayer has 30 days to object to any decision by the commissioner, or if an objection has been determined by the TRA to go to the Tax Revenue Appeals Board (Board) as an appeal. Hence the 7 days are, in our opinion, not justified as they fall within the objections or appeals period that is clearly provided by our tax laws.

If you are issued with such a deadline, it is prudent that you inform TRA about your rights existing for 30 days and TRA cannot enforce collection measures when the time frame for you to object or appeal has not expired. Notwithstanding the above, if all objection and appeals periods have lapsed, and you have neither objected nor appealed, then TRA may proceed with recovery measures as there are no proceedings pending before them or the Board.

Kiswahili is our national language and the Tax Administration Act provides for Kiswahili as one of the languages of communication. In fact in some jurisdictions the tax authority only writes to you in the national language. Fortunately or unfortunately, in Tanzania TRA writes mostly in English.

You seem to know the contents of the Kiswahili TRA letter although you claim not to understand Kiswahili, perhaps because there are taxes to be paid. We see absolutely no grounds why you should use the language of the letter to avoid paying taxes. This would constitute bad faith on your part and you could face serious consequences including further penalties, fines, and/or prosecution.

Donating to charitable organisation

We are a large industry and wish to start donating to a charitable organisation in the country. Are such amounts deductible from our profit and loss statement?

15 February 2016

Yes such expenses are deductible as long as such amounts do not exceed two percent of the person's income from the business.

For the purposes of the Income Tax Act a charitable organisation means a resident entity of a public character that satisfies the following conditions: (a) the entity was established and functions solely as an organisation for: (i) the relief of poverty or distress of the public; (ii) the advancement of education; or (iii) the provision of general public health, education, water or road construction or maintenance; and (b) the entity has been issued with a ruling by the Commissioner under Section 131 currently in force stating that it is a charitable organisation or religious organisation.

We have noticed that the TRA disallows, correctly so. Many such amounts to charitable organisations because some of these charities are actually not even registered.

Tax exemption for oil and gas companies

Is it true that the Petroleum Act 2015 provides tax exemptions to oil and gas companies? How does one qualify?

15 February 2016

There are no automatic exemptions granted by the Petroleum Act to oil and gas companies.

What you might be referring to is Section 226 of the Act which grants automatic tax exemptions to the Petroleum Upstream Regulatory Authority (PURA) which states that PURA shall be exempted from payment of import and other duties, taxes and levies in respect of its operations, capital, properties, documents or any other transactions, deeds, agreements, fees or promissory note in accordance with the relevant tax laws.

Notwithstanding subsection (1), employees of PURA shall be liable to pay relevant taxes in accordance with any other relevant laws.

Permanent establishment in Tanzania

Is it true that under Tanzanian law a permanent establishment is deemed to exist if you have an appointed agent in Tanzania?

22 February 2016

The Income Tax Act defines permanent establishment as a place where a person carries on business and includes (a) a place where a person is carrying on business through an agent, other than a general agent of independent status acting in the ordinary course of business as such; (b) a place where a person has used or installed, or is using or installing substantial equipment or substantial machinery; and (c) a place where a person is engaged in a construction, assembly or installation project for six months or more, including a place where a person is conducting supervisory activities in relation to such a project.

Hence, depending on the type of agency, you could be deemed to be a permanent establishment in Tanzania and hence under the ambit of our Income Tax Act.

Timing of paying VAT

I am a supplier of certain goods and have not been paid by my customer. Do I still have to pay the VAT? What can I do to avoid paying it until I get paid? Can I delay raising the invoice? If I am dealing with an international agency which is exempt what should I do? Please guide me.

14 March 2016

The VAT Act 2014 is clear in that such tax imposed on a taxable supply shall become payable at the earlier of (a) the time when the invoice for the supply is issued by the supplier; (b) the time when the consideration for the supply is received, in whole or in part; or (c) the time of supply.

Therefore, it does not matter whether you invoice or not, the VAT is payable at the time of supply whether or not you have raised an invoice.

As for VAT chargeable on an international organisation, the VAT states that: where an agreement approved by the Minister is entered into between the Government of the United Republic and another Government or an international agency listed under the Diplomatic and Consular Immunities and Privileges Act, and such agreement entitles a person to an exemption from tax on the person's purchases or imports, the exemption shall be effected under this Act by (a) exempting the import of goods imported by the person; or (b) refunding the value added tax payable on taxable supplies made to the person upon application by the person.

You will hence need to inquire if there is such an agreement before deciding on the imposition of the VAT.

Charged in Court by TRA

I have been charged in the Court by TRA for failure to pay certain taxes on certain dates that I had committed to pay and failed because of cashflow. I am now ready to do so but the TRA say this is beyond their control as it is in Court. Is that true? How can I resolve this without going through Court proceedings?

25 April 2016

The Tax Administration Act has a specific section that deals with compounding offences i.e. converting a criminal offence to a civil one. However, you must admit in writing that you have committed the offence so that you can pay fines as provided under that agreement. This is an option that TRA usually prefer as TRA's ultimate aim is to collect taxes and not to imprison you.

The problem we see is that TRA are now not allowed under the law to solely enter into this agreement unless they seek consent of the Director for Public Prosecutions. Subject to this consent from the DPP, TRA have all the power to compound this offence and we strongly recommend you do so, especially considering that it seems you are admitting your non-compliance. Remember TRA as a tax authority has a lot of power to proceed against you.

Taxing IFC officers

I am a tax expert and find it difficult to grasp why the employees of the International Finance Corporation (IFC) are exempt from paying taxes in Tanzania? Can that be changed? If I were the leader of this country I would like to see no exemptions being issued to anyone and further I would like all such exemptions to be revoked with immediate effect. Guide me as to how this can be achieved?

23 May 2016

We are glad that you are not the President of the country otherwise you could take all of us to the verge of bankruptcy. Perhaps you are not the President because of your primitive thinking. We shall explain to you why:

Exemptions are not always bad for the country. There are certain industries and companies that you will never be able to attract without giving them certain incentives to come and invest. Do not be blinded by immediate taxation vis a vis the long term growth of an economy. We are unsure what your background is but a few courses on international business, international trade, finance and economics might help you to understand the economics of a country better. In today's competitive arena we are competing for investments against 200+ countries from around the world.

As for the IFC: as is the case for other multilateral or bilateral agencies, it came into being in 1955 and there is a specific Act in Tanzania, the International Finance Corporation Act Cap 207 (R.E. 2002) which clearly states that the provisions of the Agreement that formed the IFC overseas has the force of law in Tanzania.

One such article in the Agreement is Section 9 on immunities from taxation which states unambiguously that the corporation, its assets, property, income and its operations and transactions, authorised by this Agreement, shall be immune from all taxation and from all customs duties. The Corporation shall also be immune from liability for the collection or payment of any tax or duty.

The Agreement further states that no tax shall be levied on or in respect of salaries and emoluments paid by the corporation to directors, alternates, officials or employees of the Corporation who are not local citizens, local subjects or other local nationals. It is this

provision, which has the effect of law, which allows the TRA not to impose any taxes on IFC employees. The same types of provisions protect the employees of other agencies as well.

Whilst theoretically you can repeal this Act and start imposing taxes, no person in their right senses would want to repeal the Act as it would have dire consequences. Remember we are part of an international community and cannot afford to jeopardise relationships with them.

Since you are a tax expert we recommend that you use your expertise in suggesting broadening of the tax base and improvement of tax collection measures amongst others that can be more beneficial to the country.

Over aggressive TRA officers

Are TRA officers allowed to storm into your offices and demand to see your books of accounts? Can they make copies of documents? In a recent raid, the officers were extremely aggressive, made demeaning remarks about the company in front of our employees, and were throwing files around and kicking them with their legs. Is this legal? The officers were trying to dig into incentives that we have received and documents relevant to processing of such incentives? They said the government was removing all incentives. Please guide.

30 May 2016

As administrators of tax laws in Tanzania, and as is the case in many other countries, TRA officers have powers to search, without prior notice, and demand information, make copies of your documents for tax compliance purposes. Hence what you call a raid is allowed under the Tax Administration Act 2015 and there is nothing alarming or illegal about that. TRA can decide who they wish to go after based on information and other related factors.

On the aggressive behaviour, throwing and kicking files is against the TRA Taxpayers charter. TRA talking about your company in front of employees is also breach of confidentiality and the charter, as the taxpayer has a right to be presumed honest unless evidence to the contrary exists. The Charter states that taxpayers have the right to plan their tax affairs so as to obtain incentives and exemption allowed under the tax laws and that TRA shall apply the tax laws in a consistent manner to all taxpayers.

This aggressive behaviour by the TRA officer can be deemed not to have been in the course of employment of the officer and you may have the choice of suing him as an individual for trespass, breach of peace amongst others. You can also lodge a formal complaint with the Commissioner General.

In short a TRA officer, be it from the investigations team or a normal audit team, has no right to throw files and/or kick them in your office.

Revocation of a private ruling

There was ambiguity on whether or not VAT applies in a certain continuous trade that we are engaged in. We applied for a private ruling so that there would be certainty. The ruling by TRA was in our favour that VAT did not apply. After just six months, the TRA have decided to withdraw the private ruling on which we have been relying. What rights do we have?

13 June 2016

A tax ruling allows you certainty without having to indulge in litigation or disputes with the TRA as TRA sets out its understanding of whether or not tax applies based on facts you present it with.

Section 13 of the Tax Administration Act provides for private rulings. Section 14 however states that a private ruling can be revoked by the TRA in whole or in part by issuing a notice in writing, hence allowing the TRA to revoke its own ruling.

Notwithstanding the above, our understanding is that the revocation cannot be retrospective meaning that it would come into force from the day or from a period going forward that TRA will have stated in its letter.

We also believe that this revocation is a decision that is appealable to the Tax Revenue Appeals Board under part VII of the Act. There is a clear dispute resolution mechanism that you can trigger to attempt to resolve this impasse.

Receiver to inform TRA of appointment

I was appointed as a Receiver in a company few months back and have been informed by the Tanzania Revenue Authority that I should have notified them of my appointment. Is that a legal requirement as the Companies Act is silent on this?

11 July 2016

The newly enacted Tax Administration Act in Section 66 makes it mandatory to inform the TRA of your appointment within 14 days of such appointment.

The TRA may also then serve you a notice specifying an amount that appears to be sufficient to provide for any tax due or that will become due by the company.

As Receiver, and after liquidating the company, you must ensure that (subject to any debts having priority over the tax referred to in the TRA notice), the tax amount is remitted to the TRA.

Should you fail to set aside an amount as required by the TRA, you will be personally liable to pay to the TRA on account of the company, although you can then claim this back from the company.

Uncertainty in tax law

If there is a an uncertainty in a tax law, how can I proceed with the transaction if I am not sure how the Tanzania Revenue Authority will treat it? This is really preventing growth in the economy. How can you help?

8 August 2016

This cannot prevent any growth as the Tax Administration Act caters for situations like this. You can apply for a private or class ruling ahead of the transaction. Section 11 states that the Commissioner General may, on application in writing by a person, issue a private ruling or a class ruling setting out the position on the application of a tax law to an arrangement proposed or entered into (a) in the case of a private ruling, by that person; or (b) in the case of a class ruling, by persons in a specified class.

The law further states that where the Commissioner General issues a private or class ruling in respect of the application of a tax law to a proposed arrangement in favour of the applicant or a person in a specified class, such ruling shall bind the Commissioner General.

What can hinder you is if the Commissioner General takes time in responding. Surely if you follow this carefully you should be able to get your ruling earlier. We wish you all success.

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?

8 August 2016

It is true that your luxury car will be liable to some large amounts in import duty. One other tax that you have forgotten to mention is the applicability of 18% value added tax which you will have to pay.

Importation falls under the East African Community Customs Management Act, which is a common Act across East Africa; meaning 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 going to be held liable to pay income tax on your worldwide income meaning that if this comes to the notice of TRA, you will get taxed for the sale as well, even though it is outside 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 and unlikely that you will get it for a lottery win. Your tax advisor can guide you further.

TRA powers to stop me leaving country

We have some tax issues under the Income Tax Act and I am worried that the Tanzania Revenue Authority may stop me from leaving the country for my holiday. We are following all the procedures under the law but with the aggressive tax stand being taken I am worried. Please guide.

15 August 2016

You have not provided enough details on the dispute, and what stage of the dispute you are at and what steps you have taken. As is the case in other jurisdictions with revenue authorities from there, TRA's job is to ensure that it safeguards government revenue and it does have powers to stop one from leaving the country.

Section 114 of the Income Tax Act states that (1) Subsection (2) applies where a person fails to pay tax on or before the date the tax is payable. (2) Where this subsection applies, the Commissioner may, by notice in writing to the Director of Immigration, order the Director to prevent the person from leaving the United Republic for a period of 72 hours from the time the notice is served on the Director. (3) The Commissioner shall withdraw a notice under subsection (2) where the person pays the tax or makes an arrangement for payment satisfactory to the Commissioner. (4) On application by the Commissioner, the High Court may extend the period referred to in subsection (2).

TRA have thus a mandate to stop you from leaving the country after informing the Director of Immigration, but that only applies if you have failed to pay tax. For you to pay tax, it should either be undisputed, or the Appellate Court rules that it is payable. We have not seen cases of TRA trying to apply this section when the tax is disputed, as seems to be the case here.

In conclusion, it is very unlikely that you will be stopped from leaving the country but you need to disclose all details to your tax consultant who can give you the final opinion.

Charter of aircraft under tax laws

I am a charterer of aircraft and have leased on a long term to a certain Tanzanian operator. I wish to know whether there has been any change of tax law that will affect my rights over my aircraft, and how I can circumvent this?

24 October 2016

Under Section 69 of the Tax Administration Act 2015, and to protect Government revenue, a taxpayer who charters an aircraft or ship, under a charter for a period exceeding three years, shall be treated as the owner of the aircraft or ship during that period, and the captain of any aircraft or ship shall be treated as being in possession of the aircraft or ship.

This section implies that the charterer or lessee of the aircraft that is leased for a period exceeding three years, may have the aircraft seized by the tax authorities for the charterers or lessees personal tax liabilities as they are deemed to be the owner of the aircraft or ship.

There is no provision for such taxpayers who enter into leases shorter than three years and you are guided accordingly to enter into such shorter leases to protect your aircraft.

TRA letters in Kiswahili

We are a foreign company which has started receiving correspondences on our tax affairs in Kiswahili. We find that rather strange and are unable to respond because of the language barrier. Can we force TRA to write to us in English? What options do we have?

28 November 2016

The Tax Administration Act is clear in Section 29 that the official languages for the purposes of tax administration shall be both Kiswahili and English language. It further states that where any communication or document which is relevant in applying a tax law to a taxpayer is not in an official language, the Commissioner General may, in writing require the taxpayer to provide an official translation of the communication or document.

You can see that the tax laws allow the TRA to write to you in Kiswahili, notwithstanding that you are a 'foreign company.'

Further, we find it strange that you are unable to respond to TRA when you surely employ local Tanzanian employees who can translate the letters. If you don't, you might be in breach of Tanzanian immigration and labour laws. All in all we think your reasons are flimsy and not defendable.

You have no options but to respond to TRA and we strongly recommend you do that.

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?

5 December 2016

Fortunately, as we answer this question, the Income Tax (Transfer Pricing) Regulations 2014 have been published. These have been gazetted by the Minister for Finance under power of sections 33 and 129 of the Income Tax Act 2004 and are now in force.

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 9 states that construction of these regulations to be in manner consistent with the OECD/UN Model. However, in the event of inconsistencies, the Income Tax Act and these Regulations will prevail; Regulation 12 addresses advance pricing arrangements that can be entered into after seeking approval from TRA. Your tax consultant can guide you further.

Witness appearance in tax Court

If I am summoned to appear as a witness before the Tax Revenue Appeals Board 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?

12 December 2016

The Tax Revenue Appeals Board has a special provision for this and states in Section 23 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 appear.

Tax avoidance versus tax evasion

Is it right to say that tax avoidance is legal whereas tax evasion is not?

12 December 2016

Tax avoidance is the legitimate minimising of taxes using methods approved by TRA under our statutes. For example, businesses may avoid paying larger taxes by taking all legitimate deductions and by sheltering income from taxes by setting up employee retirement plans and other means, all legal which are provided for under our tax statutes.

Tax evasion, on the other hand, is the illegal practice of not paying taxes, by not reporting income, reporting expenses not legally allowed, or by not paying taxes owed, to mention a few. Tax evasion is also a criminal offence and is usually punishable by imprisonment, a fine or both.

At times there is a very thin line between tax avoidance and tax evasion and it is paramount that your tax consultant guides you on this.

In fact Section 35 of the Income Tax Act specifically provides that (1) Notwithstanding anything in this Act, where the Commissioner is of the opinion that an arrangement is a tax avoidance arrangement, he may by notice in writing make such adjustments as regards a person's or persons' liability to tax (or lack thereof) as the Commissioner thinks appropriate to counteract any avoidance or reduction of liability to tax that might result if the adjustments were not made.

You can see that the Commissioner can unwind what he believes is a tax avoidance scheme that he believes is disallowed under our tax statutes.

All said and done, we must admit that there is a grey area in Tanzania on what amounts to tax avoidance.

Body search by TRA officers

In a certain raid that TRA officers conducted on our office premises, a male TRA officer actually put his hands into my skirt pocket saying I was hiding a backup drive of my computer. . The officer also tried to search me physically. Can they do that?

30 January 2017

This is a very serious allegation against the TRA which itself has a service charter that all its officers must follow. One of the

obligations clearly stated in the charter is that TRA officers should show respect when they are performing their duties of assessing and auditing taxpayers' records. They are also supposed to show respect and dignity when performing their duties. We suggest you write to the Commissioner General about this serious issue and also contact your lawyers to consider suing the individual officer who searched you, as at the time of conducting this illegal search he was not acting in his official duty.

Dinner receipts disallowed by TRA

I have been taking my clients out for dinner as is customary in my trade and all such input VAT has been denied by the TRA. Is this not unfair?

1 March 2017

The VAT Act states that a taxable person shall not be allowed an input tax credit for the acquisition of goods, services, or immovable property, to the extent that it is used to provide entertainment. This is unless the person's economic activity involves providing entertainment in the ordinary course of that person's economic activity.

Unfortunately, you have not told us what your economic activity involves for us to give you more insight. We recommend your tax consultant addresses this, but we must warn you that TRA, like tax authorities in other parts of the world, is very strict in what input they will allow for entertainment expenses.

Tax case, member's opinion differs

I had a case at the Tax Revenue Appeals Board where one of the members of the board ruled in my favour although the decision was against me as the Chairman had a different opinion. The member who ruled in my favour properly explained his reasoning for doing so, but the board's decision is not on point. What can I do?

13 March 2017

You have the option of appealing to the Tax Revenue Appeals Tribunal within 30 days of the decision. Section 20 of the Tax Revenue Appeals Act states that for the purposes of determining any matter, the chairman or the vice-chairman as the case may be, shall not be bound by the opinion of any member but, if he disagrees with the opinion of any member, he shall record the opinion of such member or members differing with him and reasons for his disagreement.

The chairman or vice-chairman should have stated reasons in the judgment for her/his disagreement, and that can also form grounds of appeal to the Tribunal.

Tanzanian wanting to invest overseas

I am a Tanzanian businessman intending to invest in other African countries. My accountant says that this is restricted because of some tax regulations. Is that true?

20 March 2017

There are no tax laws or regulations that we are aware of that restrict you from investing your money in other countries. You might want to get your accountant to provide you with the exact regulation he or she is referring to. Perhaps what your accountant is pointing out is that you can invest in other countries but these must be funds that are taxed here in Tanzania and for which approval has been obtained from the Bank of Tanzania.

For example, if you are investing large amounts in other countries as equity, and since you are Tanzanian, these amounts should have been legitimately obtained in Tanzania or elsewhere with taxes having been

paid, and the investment and remittance declared to the BoT.

The compliance level of many businesses in Tanzania is poor and maybe your accountant is worried that you will end up in trouble if you are not declaring all your income in Tanzania, because TRA and/or the Bank of Tanzania can inquire as to where you got such funds from to invest in other countries.

Advance pricing arrangement

To ensure profitability, we have an arrangement with our holding company to provide various services to us. Our tax consultant is unsure about the validity of certain expenditures that we incur in such transactions. Is there a way we can get more certainty on what TRA will allow and what it will not?

12 June 2017

This scenario falls under transfer pricing, whose regulations have been issued last year. The Transfer Pricing Regulations provide for an advance pricing arrangement. Regulation 12 states that a person may request the Commissioner to enter into an advance pricing arrangement, which will involve establishing an appropriate set of criteria for determining whether the person has complied with the arm's length principle for certain future controlled transactions, undertaken by the person over a fixed period of time.

You can therefore provide TRA with all relevant documents pertaining to this arrangement as provided for under regulation 12(2). Thereafter, TRA will accept the transfer pricing proposal, reject it or modify it. This advance decision allows you more certainty.

Lastly, we must mention that the Commissioner may cancel an advance pricing agreement with a person by notice in writing if (1) the person has failed to comply with a fundamental term of the contract materially; (2) there has been a material breach of one or more of the critical assumptions underlying the agreement; (3) there is a change in the tax law that is materially relevant to the contract; or (d) the agreement was entered into based on a misrepresentation, mistake, or omission by the parties.

TRA sent demand notice to wrong address

Tanzania Revenue Authority sent an assessment of taxes to our old post box address. We only recently found out now that they want to execute against us. What is the protocol for service?

19 June 2017

Unfortunately, you have not told us what type of tax it is but usually the TRA serve you in person as there is a tax officer who visits you. It seems that either your company does not have a physical address and is dormant or the company has had no engagements with TRA over your tax affairs, which by the way is your statutory responsibility. In the absence of a physical address, the TRA would normally use your last known address.

The key here is whether you had informed TRA of your new address and whether or not your BRELA file is updated with the new address. If you have done neither, under Section 82 of the Interpretation of Laws Act, what TRA have done is correct. Section 82 states that (1) where a written law authorises or requires a document to be served by post, whether the word "serve" or any of the words "give", "deliver", or "send" or any other similar word or expression is used, service shall be deemed to be effected by properly addressing and posting (by prepaid post) the document as a letter to the last-known address and unless the contrary is proved,

to have been effected at the time when the letter would have been delivered in the ordinary course of post. (2) Where a written law authorises or requires a document to be served by registered post, whether the word "serve" or any of the words "give", "deliver", or "send" or any other similar word or expression is used, then, if similar word or expression is used, then, if the document is eligible and acceptable for transmission as certified mail, the service of the document may be effected either by registered post or by certified mail.

In order for you to challenge the assessment, you will need to apply for extension of time to file an objection. If you have reasonable grounds, the TRA may consider this application.

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 and what if TRA delays the assessment of stamp duty if it is applicable? Can stamp duty be exempted in Tanzania?

3 July 2017

Since the agreement is for a flat, i.e. a property situated in Tanzania, it does not matter where you execute it, and stamp and stamp duty will still apply. According to the Stamp Duty Act, unless otherwise agreed, the tenant 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 thirty days of execution. The Act says, specifically that (a) where any such instrument is brought to a proper officer for adjudication under Section 42 of this Act within such thirty 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 thirty 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, if TRA delays in assessing stamp duty, so long as you have filed for assessment within 30 days of execution, the time that TRA takes in assessing is not to be included in the calculation. In short, you must file for assessment within 30 days of execution otherwise you will be liable to a penalty.

As for exemptions, the Stamp Duty Act has a provision for the Minister to exempt stamp duty. The said 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 exemption must be notified in the Gazette for it to have the force of law. Your tax consultant can guide you further.

Donation to charitable institution

If I donate sums to a charitable institute can I deduct this as an expense in my profit and loss statement for income tax purposes?

17 July 2017

Section 16 of the Income Tax Act states that (1) 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 referred to in subsection (8) of Section 64 or to a social development project; (b) any donation made under Section 12 of the Education Fund Act; and (c) amounts paid to local government authority, which are statutory obligations to support community development projects.

Under subsection (2), the deduction available under subsection (1)(a) for a year of income shall not exceed two percent of the person's income from the business calculated without a deduction under that subsection. Therefore, the maximum that is deductible is 2% of your business income.

Tax Revenue Appeals Board

We had objected to an assessment by the Tanzania Revenue Authority (TRA) and the matter is now at the Tax Revenue Appeals Board (TRAB). TRA is trying to prove that we are supposed to pay some colossal amount of tax. How does the TRAB work and what should we be doing?

24 July 2017

We are sure that prior to filing your objection and subsequently the appeal, you as the appellant would have been guided on how the procedure works. Nonetheless we will repeat it here. First and foremost it is not TRA that has to prove what they have assessed but it is you who must disprove the assessment.

The Proceedings of the TRAB are under the Tax Revenue Appeals Act which states that proceedings shall be of judicial nature and be conducted on such occasions and at places as the Chairman may direct.

In every proceedings before the Board and before the Tribunal,

(a) the appellant shall appear either in person or by his duly authorised agent on the day and at the time fixed for hearing of the appeal

(b) the onus of proving that the assessment or decision (in respect of which an appeal is proferred) is excessive or erroneous shall be on the appellant;

(c) the appellate authority may confirm, reduce, increase or annul the assessment concerned or make such other orders thereon as it may think fit;

(d) the costs of the appeal shall be in the discretion of the appellate authority;

(e) the appellate authority shall, within fifteen days of its decision, cause a notice of such decision and of the date thereof to be issued and such notice shall be served on the parties to the appeal;

(f) where the decision of the appellate authority results in any amendment to an assessment, the assessment shall be amended accordingly and the Commissioner-General shall cause a notice setting out such amendment and the amount of tax payable to be served on the person assessed.

The Board may also call any person to attend at a hearing and give evidence including the production of any document if the Board believes such evidence will assist in its deliberations. Your tax consultant can guide you further.

Confidentiality of documents submitted to TRA

I submitted some very sensitive documents including business and feasibility plans to the Tanzania Revenue Authority (TRA) for them to look at my tax affairs. Can the TRA share such documents with my competitors as these documents contain our business secrets and how we conduct our affairs. We have no issues with TRA reviewing them, but what are the chances the TRA will share these with other companies to gather further intelligence? We even forgot to put a stamp reading confidential on the documents. Can I sue TRA if they leak my information?

14 August 2017

What you submit to the TRA becomes confidential with or without your stamp on it. The TRA cannot use this for any other purposes than tax collection. For example, TRA cannot share the document with your competitors; although the TRA can appoint third party experts to assist it in the carrying out of its duties, the third party will also be bound by confidentiality.

In fact Section 8 of the TRA Act states that the Revenue Commissioner, or any other Commissioner or person employed in the carrying out of the provisions of this Act shall regard and deal with all documents and information relating to the income, expenditure or other financial dealings or status of any tax payer or other person involved in any operations in furtherance of the purposes of this Act, and all confidential instructions in respect of the administration of this Act which may come into his possession or to his knowledge in the course of his duties, as secret to any unauthorised person.

The TRA is a corporate body with a seal and can be sued and can sue. If it engages at all in such information leakage you have a right to sue it. Having said that and to be fair, we must state that we have not heard of any such instances where the TRA has leaked information to the taxpayer's competitors.

Private ruling with wrong assumptions

To be sure that our project does not get into trouble in the future, we applied for a private ruling with the TRA. I provided all the details and a private ruling was issued. In the ruling, the TRA has inserted assumptions that are not only unrealistic but not relevant. I find it hard to understand what the ruling says although it seems to agree with our analysis. What should we do? My tax consultant says since it seems to be in our favour, we should start the project, as TRA is not predictable and may end up drastically altering the ruling if we go back to them. Please guide.

14 August 2017

We are as confused with your question as you are with the TRA's ruling. On one hand you say there is a ruling that has certain inserted assumptions that are not relevant; on the other hand, you say it agrees with your analysis. Unless we see it, we are unable to answer in the affirmative or negative.

Having said that, regulation 28 of the Tax Administration (General) Regulations 2016 states that: (1) Where the Commissioner General considers that the correctness of a private or class ruling would depend on an assumption to be made on a future event or other matters, the Commissioner General may (a) make the assumptions he considers to be the most appropriate; or (b) decline to make the ruling.

Furthermore, under subsection (2), the Commissioner General may not make

assumptions on information which the applicant can provide.

Predictability and transparency are some of the key pillars that large companies require and we suggest that you contact the TRA for clarification, and get a properly worded tax ruling so that it does not cause any interpretation issues in the future.

Threats by TRA

We were assessed for a colossal amount of tax by the Tanzania Revenue Authority. I gather that there is tax non-compliance in the market which TRA is curbing, but we are a very compliant foreign company listed in a foreign stock exchange. The assessment was unreasonable yet when we objected we paid the 1/3rd deposit as required by law. The objection was decided against us and we filed an appeal to the Tax Revenue Appeals Board, which we are informed has no members and hence is not functional with no hearings taking place.

The TRA recently stormed into our offices with the police and other officers demanding we pay up the remaining 2/3rds otherwise we face penal sanctions including imprisonment of directors and managers. This special force went to the extent of taking our key accountants to the police. My question is what this special force is and can I be forced to pay tax that is still under dispute awaiting a hearing at the Tax Board? In my 30 years in Tanzania I have never experienced such behaviour by a tax authority. What are my rights?

18 December 2017

You have rightly stated that there is some serious non-compliance in the market, especially related to tax evasion, that the TRA is addressing including having formed some task forces to do so. These tax forces are not above the law and are administrative machinery to assist in collecting taxes and curbing tax evasion.

In your case, since you have paid 1/3rd, and the matter is still in the dispute resolution machinery established by the Tax Revenue Appeals Act, we are unable to find a provision under which the TRA can demand the 2/3rds, unless of course you have not disclosed the full extent of the matter. Had you lost the case at the Board or the Tribunal, that would be a different scenario.

If you continued to be threatened, you have a right to file for a stay of execution at the Board, unfortunately the Board is not functional. Alternatively, you can file for Judicial Review and/or a stay of execution at the High Court, where the TRA might challenge the Court's jurisdiction. However, before doing so, we suggest you engage with the TRA managers in your region, and refer them to the TRA Taxpayers Charter and the fact that you have already paid the 1/3rd deposit amount pending determination of your matter.

About the book

Q&A with FB Attorneys is a compilation of answers to legal questions sent in from the public. The third volume includes questions from 2015 to 2017. 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 including the TRA. Answers are carefully prepared by the authors from a professional and legal standpoint.

The Q&A columns are published every Monday in the Daily News, one of the leading English Newspapers in Tanzania.

ISBN 978-9976-5241-3-0

fbattorneys.co.tz

FB ATTORNEYS