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QUESTIONS & ANSWERS ON TANZANIAN LAW

VOL. 4

FB ATTORNEYS

Q&A with FB Attorneys

Vol. 4

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Dar es Salaam • Tanzania

The information contained in this book is intended to provide a general overview of the law and does not constitute legal advice. Responses to the questions included reflect the legal position of the date the questions were addressed in the Daily News Column, not the publication date of Volume 4. Readers are encouraged to verify the current legal status of any information provided. For assistance with specific legal matters, please consult your legal advisor.

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To the entire FB Attorneys team.
Thank you for your unwavering support and being part of our family.

Dr. FAyaz A. Bhojani *Timon Vitalis*

Preface

Welcome to Volume 4 of Q&A with FB Attorneys - a legal odyssey crafted for lawyers and anyone navigating the complexities of modern life under the law.

What began in 2009 as a bold column in the Daily News (www.dailynews.co.tz), one of East Africa's pioneering legal Q&A platforms, has now become an eagerly awaited series. Thanks to the overwhelming response to Volumes 1 through 3, we are thrilled to present this latest edition, which features legal questions and answers from 2018 to 2021, drawn from real-life situations involving Tanzanian and international law.

Like its predecessors, this volume bridges the gap between legalese and lived experience. Across 13 rich chapters, we unravel everyday encounters with the law, from business disputes and corporate crime to immigration, mining, real estate and family and inheritance battles. Each chapter demystifies the black-and-white letter of the law and the often-grey areas where human lives, emotions and expectations collide with bureaucracy, policy and procedure.

What makes this book stand out is its fearless honesty and subtle wit. Legal dilemmas are explored with empathy, humour and sharp commentary, making it a legal reference and an engaging Monday morning read, especially when paired with a strong cup of kahawa (coffee).

This volume is for everyone: business owners, students, legal professionals, civil servants and anyone who has ever asked, "Can they really do that?" or "Do I have a right here?" Our aim is simple yet vital: to promote legal literacy and awareness. Because knowing your rights is not just useful; it's empowering.

We extend our deepest thanks to the Daily News for its consistent support and for offering us a national platform every Monday to educate, debate and connect with Tanzanians through law.

We hope this book informs, challenges, entertains and equips you.

Happy reading.

Dr. FAyaz A. Bhojani Timon Vitalis

FB Attorneys

"A Leading Force in East African Legal Excellence"

FB Attorneys is a top-tier full-service law firm based in Dar es Salaam, Tanzania, distinguished by over 70 years of combined legal experience and a deep-rooted understanding of the East African legal and business landscape. Built on a legacy of excellence, the firm offers a sophisticated approach to legal advisory, delivering high-impact solutions to regional and international clients. The firm's multidisciplinary team combines law, finance, economics, criminology and accountancy expertise. This unique blend of knowledge enables FB Attorneys to craft tailored legal strategies that address the complexities of today's commercial environment with precision and foresight.

FB Attorneys offers a comprehensive suite of legal services across a broad spectrum of practice areas. These include Corporate and Commercial Law, Mining, Oil & Gas, Tax, Litigation and Arbitration, Banking and Finance, Competition Law, Compliance and Regulatory Affairs, Criminal Law, Real Estate and Land Law, Intellectual Property, Employment Law, Telecommunications, Project Finance and International Trade. Whether advising on high-stakes transactions or representing clients in complex disputes, the firm is widely regarded for its strategic acumen and unwavering commitment to excellence.

Recognized as a leading law firm by global legal directories such as Chambers and Partners, Legal 500 and IFLR1000, FB Attorneys has cemented its status as one of Tanzania's top legal firms. The firm's regional influence is further amplified through its membership in LEX Africa, the first and largest legal alliance across the African continent. This affiliation and strong relationships with international law firms enable FB Attorneys to provide seamless cross-border legal services and support clients operating globally.

At the heart of FB Attorneys lies a culture that values diversity, collaboration and inclusion. The firm is committed to cultivating an environment that encourages innovation and reflects the communities it serves. By championing diverse perspectives, FB Attorneys strengthens its ability to provide insightful and impactful legal solutions. With visionary leadership, a client-first philosophy, and a track record of landmark successes, FB Attorneys stands as a beacon of legal excellence in Tanzania and across the African continent. It continues to set standards for quality, professionalism, and integrity in legal practice.

About the Authors

Dr. FAyaz A. Bhojani, Esq

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Dr. FAyaz A. Bhojani is the Managing Partner at FB Attorneys, bringing over two decades of extensive experience in corporate legal affairs. He co-leads the firm's litigation team, demonstrating a hands-on approach by actively engaging in drafting and negotiations. Dr. FAyaz's academic credentials are distinguished. He holds a Doctorate in Mining Law and Development from the University of London and is an alumnus of the prestigious Berkeley Law School at the University of California. His undergraduate studies in Actuarial Science under the Society of Actuaries have endowed him with sharp analytical and mathematical skills.

Dr. FAyaz has consulted leading multinational corporations throughout his career, bringing strong commercial acumen to legal transactions. He has successfully negotiated and completed several large-scale transactions in the energy and extractive industries, including mergers in the oil and gas and mining sectors, with a total value exceeding USD 50 billion. He has handled tax disputes involving sums over USD 120 billion. His practice spans multiple sectors, including financial services, telecommunications, energy, mining, tax, competition, mergers and acquisitions. Dr. FAyaz is recognized for his ability to navigate complex corporate and litigation matters that require careful judgment.

Dr. FAyaz has been consistently ranked as a leading lawyer in Tanzania by esteemed legal directories such as Chambers and Partners, IFLR1000 and The Legal 500. Clients and peers have described him as an "excellent strategist" and "legal genius" and praised his "market intelligence and legal knowledge." Beyond his legal practice, Dr. FAyaz is a prolific legal author, contributing to FB Attorneys' publications like "Legal Update" and the weekly "Q&A with FB Attorneys," published in the Daily News, and reaches over 50,000 readers electronically each week.

Timon Vitalis, Esq
LLB (UDSM)

Timon Vitalis is a seasoned litigator with over twenty years of experience in civil and criminal litigation at trial and appellate levels. As Head of the Litigation Department at FB Attorneys, he has represented clients before all tiers of Courts and tribunals in Tanzania, including the Court of Appeal, with an impressive track record of success. Timon's expertise spans various practice areas, including civil and criminal litigation, labour and public laws, environmental and tourism laws. He is also a highly experienced mediator and arbitrator with extensive involvement in complex, high-value local and international disputes. His legal acumen has seen him handle significant commercial cases across diverse sectors such as extractive industries, banking, telecommunications, employment, competition and contract law.

Before joining FB Attorneys, Timon was a Principal State Attorney in the Attorney General's Chambers. He prosecuted numerous high-profile and sensitive cases, ranging from serious economic offences such as corruption, bribery and fraud, to organised and transnational crimes. In addition to his courtroom capabilities, Timon is a recognised authority in legal advisory and legislative drafting. He has led reforms and amendments to key national laws related to international cooperation in criminal matters, wildlife and forest conservation and procedural law.

Timon is also passionate about legal education, professional development and he is a regular contributor to the Tanganyika Law Society Journal. As a skilled advocacy trainer, he frequently mentors legal professionals, including state and corporate counsel, on trial preparation, legal drafting, evidence presentation and ethics. His training background includes certifications from the International Law Institute in Kampala, Uganda. Further reflecting his commitment to leadership and global best practices, Timon is a proud graduate of a leadership programme at the International Law Enforcement Academy (ILEA) in Roswell, New Mexico, USA, an experience that deepened his strategic insights in international law and transborder collaboration.

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Business Disputes with Agencies

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In this powerful opening chapter, voices across Tanzania rise with a shared cry: Can we hold our institutions accountable? From corporate giants entangled in the inefficiencies of Agencies to an aspiring airline operator blocked by technicalities at the Civil Aviation Authority, a broke university student asking if poverty itself is grounds for a lawsuit, and a businessman trying to navigate shifting legal procedures, these are more than complaints. They are case studies of the clash between citizens and state machinery.

This chapter weaves together a tapestry of everyday legal dilemmas, offering insight into how legislation, red tape, and government reform impact real people. Whether it’s confusion over who can be sued or how and when justice can be pursued, the legal terrain appears ever-shifting, raising the question: Is the system built for justice or merely for control? What unfolds is a rare window into individuals grappling with institutions too big to ignore and, often, too complex to challenge.

Delays caused by TASAC

As a company in the extractive industry, we are forced to use Tanzania Shipping Corporation (TASAC) as our clearing agent. There have been instances of misplaced documents, instructions not being followed, emails and letters not being responded to, and massive delays by TASAC in clearing our consignment. I cannot pay demurrage and storage for TASAC's inefficiencies. My consultant says TASAC cannot be sued. Another consultant says that whilst you can sue, you cannot recover these demurrages or storage as damages from TASAC. Is this true? How can this be the case? We are introducing inefficiencies in our systems if we cannot hold TASAC responsible for the way it is operating. Please guide.

4 May 2020

The Tanzania Shipping Agencies Act (the Act) established a corporation known as Tanzania Shipping Agencies Corporation, also known by its acronym TASAC.

The Act states in section 4 that this body corporate (TASAC) will have perpetual succession and a common seal and shall, in its own name, be capable of: (a) suing and being sued; (b) acquiring, holding, investing and alienating movable or immovable property; (c) exercising the powers and performing the functions conferred upon it by or under the Act; (d) borrowing and lending; (e) entering into any contract or other transaction and doing or endeavouring to do all such other acts and things which a body corporate may lawfully perform, do or endeavour to do.

Section 5 of the Act lists the objectives and states that it shall be the underlying objective of the Corporation in carrying out its functions and exercising its powers provided for under the Act, to enhance the benefits of maritime transport in Mainland Tanzania by: (a) promoting effective management and operations of shipping agencies; (b) promoting effective operations of ports and shipping services; (c) maintaining cargo safety and security; (d) promoting and maintaining maritime environment, safety and security; (e) promoting efficiency, economy and reliability; (f) fostering the development and expansion of the maritime transport sector; (g) promoting competition in the shipping agency business; and (h) entering into contractual obligations with other persons or body of persons in order to secure the provision of quality and efficient shipping agencies services, whether by means of concession, joint venture, public, private partnership or other means and to delegate its own functions of providing shipping agency services to one or more parties. You will note that the quality of service and efficiency are some of the key objectives.

The main aim of TASAC was to increase and not decrease efficiency and transparency in the sector. If your claim of inefficiencies is valid, it would be counterproductive to the broader economy if TASAC remained inefficient. As you can see from section 4, you or any stakeholder can sue TASAC as it has no immunity.

What your consultant might be referring to in terms of limited or no liability is referred to in sections 41 to 44 of the Act, but these will not likely apply here. Whether to sue or not is up to you. Your lawyers can guide you further.

Aggrieved by the decision of TCAA

I applied for several air operating licences to the Tanzania Civil Aviation Authority (TCAA). All applications were denied on financial grounds, but I have appealed to the High Court against such decisions. The TCAA has raised preliminary arguments in Court to delay the case. What can I do?

28 January 2019

Under the Tanzania Civil Aviation Act, if a decision of the TCAA aggrieves you, you need to go before the TCAA internal review committee. It is this committee

that will review the decision of the TCAA and make further decisions. You cannot go straight to the High Court as this Court has no jurisdiction before you exhaust internal dispute resolution mechanisms per the Act. If the arguments raised relate to objecting jurisdiction of the Court, then the TCAA is right in its preliminary objections, which are not meant to delay Court proceedings.

The review should have been filed 14 days after receipt of the record of the decision. We suggest that you succumb to the preliminary objection or withdraw your case at the High Court and proceed to apply for an extension of time to file the review before the internal review committee. If you provide sound grounds, you might be granted such an extension and then you can file the review.

If you are still aggrieved by the decision of the internal review committee, you can appeal this to the Fair Competition Tribunal.

Broke university student

I am a university student who faces a lot of hardship. I have been broke more times than I can remember. I am closer to poverty than in my dreams, and I believe none of this is my fault. Can I sue the society or the Government?

16 November 2020

Your frustration and disappointment are quite understandable. However, your allegations are misconceived. The government must establish various schemes, facilities, and projects to stimulate economic development. The Government has to establish schools, build hospitals, manage public facilities and make all essential services like transport, electricity, etc., available to the general public. The Government is not duty-bound to bring development to your door steps. The onus is upon you to use the opportunities that are made available. All the best.

Procedure to institute suit against public corporations or agencies

I am a businessman. I deal with public corporations, parastatal organisations, executive agencies and local government authorities in my businesses. I am told the Parliament has recently changed the procedure for instituting suits by or against these Government legal entities and enforcing decrees against them. Can you explain what change was made by the recent law?

28 September 2020

You are correct. In February 2020, the Parliament passed the Written Laws (Miscellaneous Amendments) Act, No.1 of 2020, to include all the suits by or against public corporations, parastatal organisations, executive agencies and local government authorities in the list of Government suits. Before the amendment, suits by or against public corporations and parastatal organisations like NHC, TANESCO, ATCL, and TANAPA were not treated like Government suits. The procedure did not bind such entities under the Government Proceedings Act. Executive agencies or authorities like TAA, RITA, SUMATRA, and EWURA had semi-autonomy to sue or be sued without joining the Attorney General in disputes arising from contracts. Local government authorities were free to sue or be sued without joining the Attorney General. After the amendment, any suit by or against such public legal entities is treated like a government suit. The procedure for the institution of such proceedings must conform to the provisions of the Government Proceedings Act, regardless of the nature of the claim.

Under the current procedure, before suing a public corporation, parastatal organisation, executive agency, or local government authority, the claimant has to serve such public legal entity which is alleged to have committed the civil wrong with a 90 days'

notice of intention to sue. The notice should articulate the factual basis of the claim and the relief(s) sought. A copy of that notice must be served upon the Attorney General and the Solicitor General. Only upon expiration of the notice period may the claimant institute a suit. Failure to make the Attorney General a co-defendant in a suit vitiates the proceedings. A copy of the plaint should be served on the defendants and the Solicitor General.

According to section 6(5) of the Government Proceedings Act as amended by Act No.1 of 2020, any Government suit should be instituted in the High Court as the Court of first instance, irrespective of the nature of the suit or monetary value involved. Of course, this amendment will increase the unnecessary backlog of civil suits in the High Court. For example, a simple tenancy dispute between NHC and a tenant that would have been instituted in the District Land and Housing Tribunal should now be instituted in the High Court irrespective of the value of rent or nature of the tenancy dispute involved because NHC is a public corporation and a suit by or against it is now treated as a Government suit which should originate from the High Court.

Apart from the requirement to give 90 days' notice and institute the suit in the High Court, the amendment has affected section 16 of the Government Proceedings Act by adding parastatal organisations, public corporations, local government authorities and executive agencies to the list of public entities whose properties or bank accounts cannot be attached to execute the decree against them.

Hence, a decree holder against such public legal entities can only execute a decree by presenting the decree to the Permanent Secretary of Treasury (PST), who must satisfy the decree. Hence, recovery may not be easy either.

Bid seal in tender opened prematurely

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

14 September 2020

If the tender seal was opened, the relevant tender might be cancelled. However, this will depend on each case's circumstances and evidence.

Assuming you are correct, the person who opened the seal is guilty of an offence as provided under the Public Procurement Act (the Act). Section 128 (c) of the Act states that a person who opens any sealed tender, including such tenders as may be submitted through electronic systems and any document required to be sealed or divulge their contents before the appointed time for the public opening of the tender documents commits an offence and on conviction shall be liable to a fine of not less than Tanzanian Shillings (TZS) 10M or to imprisonment for a term of not less than seven years or both. In addition to the penalty imposed in this section, the Court shall order that the amount of loss incurred by the complainant be compensated, failure of which, the Court shall issue an order of confiscation of personal property of the person convicted to recover the loss.

Love, Law and Life

Empower yourself with the tools to navigate life's most challenging legal and emotional crossroads.

The chapter dives into a compelling exploration of marriage, family dynamics, and legal rights in Tanzania with this essential guide. "Love, Law, and Life" unravels the complexities of relationships through real-world dilemmas, expert legal insights, and culturally nuanced advice. From heart-wrenching custody battles to the intricacies of polygamous unions, this chapter addresses the pressing questions we face in their pursuit of justice, stability, and happiness. It covers questions such as:

- Can a Court force a spouse to return home? What if love fades or a partner hides their HIV status? Explore grounds for divorce, annulment, and the legal limits of marital obligations.
- Uncover laws on custody, maintenance, and parental rights. Learn how to protect children from neglect, misinformation, or financial abandonment.
- From digital privacy breaches (intercepted calls) to long-distance weddings and pandemic-induced separations, see how Tanzanian law adapts, or struggles, to contemporary issues.
- Navigate tensions over attire, naming traditions, and interfaith marriages. Discover how Courts balance individual rights with cultural expectations.
- Can a spouse stop a bank from selling the family home? What happens when cohabitation ends without a marriage certificate? Demystify property rights and financial claims.

Husband staying elsewhere

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

1 January 2018

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

Biological father not supporting child

I was dating a man who impregnated me. We had a child and apart from deserting us, he has not provided a penny for the child's maintenance. Is there a law that allows me to make a claim from him? How long would such an order be valid and what else do I need to succeed?

5 February 2018

Indeed, there is a law that comes to your rescue. Section 42 of the Law of the Child Act (the Act) allows you to apply to the Court for a maintenance order as a parent of the child. Section 43, among other things, adds that an application for a maintenance order may be made against the biological father by the expectant mother at any time before the birth of the child or at any time within twenty-four months from the birth of the child.

You must prove that he is the father of the child and that he has refused to make any payments when requested to do so. In making the maintenance order, the Court will normally consider the income and wealth of both parents, any impairment of the earning capacity of the person with whom the child is, the cost of living of the area where the child is resident, and the rights of the child under the Act. Generally speaking, the maintenance order expires when the child attains 18 years, is gainfully employed, or dies before attaining 18 years.

Long-distance wedding

I am a very busy person working in a large company outside Tanzania. My wife insists we marry under Tanzania laws, and I cannot come there. Can I send my wedding forms to the registrar in Dar es Salaam and he gets us married via Skype? Some jurisdictions allow such weddings where you don't need to be physically present. Alternatively, my brother can attend and sign under a power of attorney on my behalf. How can I get married and not come there?

26 February 2018

Much as we appreciate you being a 'very busy man' working for a 'huge company,' you must be present in the room when you sign your marriage papers. You cannot be on a conference call or Skype or send in your papers. Marriage is a solemn ceremony, and the Law of Marriage states that you must be physically present. It states that a marriage is void from the beginning unless both parties are present in person at the ceremony. We have not heard of jurisdictions that allow such types of long-distance weddings.'

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

Impotence and marriage

I got married to a man in an arranged marriage only to find out that he was impotent. Much as I would like to help

him, this is proving impossible because the condition is not treatable. Can this marriage stand?

26 February 2018

Generally, impotence is a physical or psychological condition that makes it impossible for a spouse to engage in sexual intercourse. However, withholding sex from your spouse doesn't qualify as impotence. Nor does the inability to produce a child. If you petition your spouse for divorce on impotence grounds, you'll have to prove your case. This might require you to ask the Court to require your spouse to undergo a physical or psychological examination, and medical experts can be called to testify.

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

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

Rights to name a child

I am a married woman living in Dar. My husband and I are educated and work in the public sector. God has blessed us with three children, and we will soon expect our fourth child as I am pregnant. Unfortunately, my husband has been the only one giving names to our children, and he has always used names from his clan. He even chose a name for the child we expected, which has resulted in arguments about what I would like to name this child. Is there a law that governs the naming of children? Please guide.

12 March 2018

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

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

A child taught the wrong stuff

My wife, with whom I am separated, intentionally teaches our child wrong stuff, trying to prove her point. For example, in math, 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 could "bring out" anything she saw on television, and ever since, my child has been using a pencil on the TV set to try to bring out the character. The school teachers have disallowed my wife from attending classes, as she was there the last time. 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 don't know what to do with her. Please guide.

14 May 2018

We are unsure why you say that this is intentional. But if it is, the Law of the Child Act (the Act) clarifies that the parent must maintain the child, particularly to give the child the right to food, shelter, clothing, medical care, education and guidance, liberty, and play and leisure.

This law also clarifies that a person shall not deprive the child of anything else required for his development. As for not providing adequate and appropriate medical care, the Act states that a person shall not deny a child medical care because of religious or other beliefs. Your wife is in breach of this law and you can proceed to report her. She can be sentenced to six months imprisonment, a fine, or both if convicted.

On a different note, you might consider getting her medical help as the behaviour is quite abnormal. What you might think is intentional might be a medical condition that both of you are unaware of.

Old emails leading to divorce

My wife and I were happily married until recently when she started retrieving my pre-marriage e-mails, where she found some romantic emails from my previous girlfriend. She says that I should have told her about this before marriage. I responded that she had never asked, and I have never communicated with the ex 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?

4 June 2018

The Law of Marriage Act of Tanzania provides specific grounds to be adduced in a petition seeking a divorce. For example, one cannot get a divorce in Tanzania without the consent of the husband and wife. Some of the common grounds for divorce are cruelty, adultery and desertion. It is quite clear that you do not fall under the category of adultery, assuming that you have told us the truth in that you have never met the ex after marriage. We find it hard to believe that your wife would, just out of the blue, decide to check your emails from 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 believe does not apply in this case. Cruelty, which might apply, is also quite remote. For example, can your wife claim that you have been cruel by not disclosing your ex? We doubt it unless other extraordinary circumstances 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.

Marriage for a fixed period

Can I agree to get married for a few years, and if I am happy, we can extend the marriage for another few years? We can provide all terms and conditions in the agreement, including what we will do with the children and assets we acquire. We must be realistic in this modern era, especially

with these difficult women. Please guide.

18 June 2018

To begin with, the Law of Marriage Act provides the following under duration of marriage: A marriage, whether contracted in Mainland Tanzania or elsewhere, shall for all purposes of the law of Mainland Tanzania subsist until determined – (a) by the death of either party thereto; (b) by a decree declaring that the death of either party thereto is presumed; (c) by a decree of annulment; (d) by a decree of divorce; or (e) by an extra-judicial divorce outside Tanzania which is recognised in Tanzania under the provisions of section 92.

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

For the case of women being difficult, as a female attorney answering this, I must state that an objective test must be applied. However, the difficulty mainly arises because of the behaviour of some men who do not respect and appreciate the role of women in raising children and working for the betterment of the family. Also, I have read your other part of the question that we have not published and believe you might need some serious counselling regarding your respect for women before you tie the knot. Without such counselling, your short-term marriage, if one were available, would not last very long either. I wish you luck.

Revealing HIV status to spouse

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

18 June 2018

The HIV & AIDS (Prevention and Control) Act 2008 unambiguously states that (1) 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. (2) The person referred to under subsection (1) shall inform his spouse or his sexual partner of the risk of becoming infected if he has sex with such person unless that other person knows that fact.

It is, therefore, mandatory for such a person to inform his spouse or sexual partner of his HIV-positive status. If he does not, he could be held as trying to intentionally transmit the disease and be liable to imprisonment of between 5 to 10 years.

Tension in marriage because of dressing

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 attires whenever I am out of the home. This is even when I go shopping in the market. He maintains that he has such power under the Marriage law, and I should choose whether to obey him or get a divorce. Does the law say this? On a different note, can my husband marry another woman?

2 July 2018

We have not encountered any provision in Tanzania's Law of Marriage Act that gives a husband such a right. It may exist in his home country, but we greatly doubt it, especially in this era.

A dress code is not within the scope of the known divorce grounds. Your husband might be obsessed with his customs but cannot impose them on you. Dressing is a matter of choice; no law governs it except for dressing appropriately.

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.

Whether or not he can marry another woman depends on whether or not the first marriage was monogamous or polygamous. If monogamous, he must divorce you before getting married; if polygamous, he can proceed to marry another woman without divorcing you.

Court order to monitor wife's phone

I want to monitor my wife's phone calls and movements. How can I achieve this? If she enters into a contract with me, can I enforce it? Or should I get a Court order to force her to do so? Please guide me.

20 August 2018

We are not sure why you want to monitor your wife so much. She is your wife, not your asset. We opine that it will likely be an illegal arrangement even if your wife enters into such an agreement with you. Thus, the agreement can be declared void ab initio, meaning it did not have legal effect from the beginning.

We are not sure what basis you will get a Court order on. How will you convince the Court that you want to sue your wife and ensure that you monitor her 24 hours a day, seven days a week? What reasons will you provide to invade her privacy and personal space? You might need the help of a marriage counsellor, not a lawyer. We hope your marriage survives should you attempt to do the above.

Husband wants a third wife

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

10 September 2018

Section 20 of the Law of Marriage Act covers your situation. The said provision states that where a man in 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 provide notice of objection to the Registrar or Registration Officer receiving the notice of intention on the ground that either having regard to the husband's means, the taking of another wife is likely to result in hardship to his existing wife or wives and infant children, if any; or that the intended wife is of notoriously bad character or is suffering from an infectious or otherwise communicable disease or is likely to introduce grave discord into the household. Once your objection is sent to the Registrar or Registration Officer, the marriage shall not occur unless the Marriage Reconciliation Board has determined the objection.

We advise you and your co-wife to take the above approach. This might also be resolved if you involve elders in your family. Otherwise, you may need to consult a family law attorney for appropriate steps.

Suing parents for poverty

My parents had me when they knew or ought to know that they were poor and could not provide me with the luxuries of life that I was constitutionally entitled to. I have been reading about the law and want

to take them to task by suing them both so that other Tanzanians will be scared of having children when they don't have money. How do you suggest I move forward with this? Also, do I have the choice of parents, or can I switch to richer parents?

17 September 2018

First and foremost, the luxuries of life are not provided by our or any other constitution that we are aware of. You live in a dreamland, not even Disneyland, and might need additional research before concluding the way you have.

We don't see any cause of action arising from the facts you provided. Most parents do, indeed, struggle to bring up their children, and unless there is something you have not disclosed to us, we believe you have no chance of succeeding in this case. Unsuccessfully suing your parents will not scare Tanzanians from having children. We are a proud nation and will remain so.

Unfortunately, we are unsure what you mean by 'switching to new parents'. Do you mean if you can switch to richer parents to have the luxuries you want? You sound like you are willing to be displayed on a supermarket shelf waiting for a wealthy couple to take you with them. Apart from this being impossible, it is illegal. We suggest you work on enriching yourself by educating yourself. A notable leader once said, ' struggle is the meaning of life; defeat or victory is in the hands of God.'

Girl breaches promise to marry me

I dated a girl from high school for five years and she promised to marry me once she returned from her university studies. We kept in touch, and I turned down offers from wealthy girls waiting for her to return, meaning I lost millions as I could be well settled now. Upon her return, she says she has found a rich foreign man and will marry him, not me. I want to stop her from betraying me. I know our laws will come to my rescue. Please guide me. Can I write to one of our Ministers to assist me? Or is there someone else in the Government? As far as I know, they are now very serious and honest.

1 October 2018

There is not much you can do. You are not yet married to this girl, and she has the liberty, as you do, to change your mind until you get married. There is no order that we can think of that can assist you. Even when married, couples can divorce, so it is not that you cannot part at any time.

The opportunity cost that you 'lost' by not marrying a rich girl is also not claimable from this girl. We recommend you be practical, leave this girl alone (unless she has changed her mind) and proceed to look for a new partner- rich or poor (whatever that means).

No Minister or Government official will be able to force this girl to marry you legally. This government also has priority areas, and we believe they will not pay attention to this.

Polygamy for a man is natural

I want to challenge this global concept of marriage, which states that a man must marry one wife. It is impossible, considering the nature of a man's structure and natural tendencies. Tens of hundreds of years ago, this concept of 'one man, one woman' did not exist where a man would only have one wife. It is the feminists who have managed to bring this into existence and it has proven a disaster. Women are unhappy (they used to be happier), and men are also unhappy. Who can I sue, and how can you assist?

26 November 2018

Your question is more philosophical than legal and we can only answer it to the extent of Tanzania's Law of Marriage Act.

The Act provides the meaning of marriage: (1) Marriage means the voluntary union of a man and a woman, intended to last for their joint lives. (2) A monogamous marriage is a union between one man and one woman to the exclusion of all others. (3) A polygamous marriage is a union in which the husband may, during the subsistence of the marriage, be married to or marry another woman. This law also provides for two kinds of marriage, that is to say, (a) those that are monogamous or are intended to be monogamous, and (b) those that are polygamous or are potentially polygamous. This law states that a marriage contracted in Tanzania, whether contracted before or after the commencement of the Act, shall (a) if contracted in Islamic form or according to rites recognised by customary law in Tanzania, 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.

Hence, depending on your religious or cultural background, you have the option of entering into a monogamous or polygamous marriage contract. We do not see the need for you to sue anyone.

Suing father-in-law

I got married in a very lavish ceremony, and we agreed that the costs for the hotel that hosted us would be paid directly to the hotel and split between my father-in-law and me. I have paid my portion, but my father-in-law hasn't. Can I sue my father-in-law?

26 November 2018

Apart from the friction, the lawsuit will cause a conflict between you and your wife and her family. We see no reason why you cannot sue your father-in-law. However, if the agreement was between him and the hotel, we don't see how you can sue him as there is no cause of action or harm caused to you. We are not sure what you intend to claim.

You might want to contact a marriage counsellor and a lawyer before embarking on this 'suing journey.' It might prove to be an unexciting journey than you think.

Bank intending to sell our matrimonial house

Bank officers visited our house and informed me of their intention to sell it following my husband's default on a loan agreement. I was informed that the house was mortgaged, and a spousal consent was presented. After inquiry, I learned that the second wife, who resides at my husband's other house in Kigamboni, signed the spousal consent form. Is this mortgage legal?

26 November 2018

In Tanzania, our Law of Marriage Act clearly states that a spouse cannot dispose of or encumber an interest in a matrimonial home unless the other spouse consents. Section 59 provides that where the husband or wife owns any estate or interest in the matrimonial home, he or she shall not, while the marriage subsists and without the consent of the other spouse, alienate it by way of sale, gift, lease, mortgage or otherwise. The other spouse shall be deemed to have an interest therein capable of being protected by caveat, caution or otherwise under any law for the time being in force relating to the registration of land title or deeds.

Further, the Land Act (amended in 2004) reflects the same position by imposing a duty on the mortgagor to disclose any spouse's existence. The Act further requires the consent of the mortgagor's spouse residing in the matrimonial home, which is the subject of a mortgage. Section 114(1)(a) stipulates that a mortgage of a matrimonial home, including a customary mortgage of a matrimonial home, shall be valid only if any document or form used in applying for such a mortgage

is signed by or there is evidence from the document that it has been assented to by the mortgagor and the spouse or spouses of the mortgagor living in that home.

Based on the circumstances of this case, your husband was duty-bound to disclose the presence of both wives to the bank. Also, he was supposed to present your spousal consent since you reside in the mortgaged home. The failure to do that renders this mortgage invalid. Furthermore, the law has advanced to the stage where the mortgagee must exercise due diligence in ascertaining whether the mortgagor has a spouse(s) and whether she/they have consented. The law further requires the mortgagee to ensure that the spousal consent obtained is genuine. This duty is imposed under the Land (Mortgage) Regulations of 2005.

However, if your husband knowingly gave a false statement to the bank on your nonexistence and swore an affidavit to prove the same, then the mortgage might be deemed valid. From the facts you have presented, we cannot gauge what the Court might hold, as it seems there has been some serious mischief that your husband has engaged in. Your lawyer should look at all the facts and guide you accordingly.

Conversion of marriage

Fifteen years ago, we were married in a Church, after which I was posted to a country where men can marry more than one wife. After reading about male behaviour, I now desire to be able to marry more than one wife, which will not please my wife, but it is something I desperately want. How do I approach my wife and how should I proceed?

7 January 2019

You are currently in a monogamous marriage, meaning you can only have one wife. The Law of Marriage Act does provide for conversion of marriages and states that (1) A marriage contracted in Tanzania 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. The law further states that (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 its making.

This law also provides 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.

Considering that you practice the Christian faith, the law does not allow you to convert from a monogamous marriage to a polygamous marriage. This means you cannot marry any other woman. You must also note that even if you were not a Christian, the law requires that your wife consents to such conversion from a monogamous to a polygamous marriage.

Custody battle with millionaire husband

Unfortunately, I come from an extremely poor family and married a millionaire against my parents' wishes. Due to our differences in family wealth, my husband has constantly abused my parents and me. We are consistently undermined and reminded of how poor I was when I came into the family. I always have to hear about this from my in-laws because I went twice

with my husband on a foreign trip. When my father was seriously ill, I took some of my husband's money to fund his hospital bill. I am now always under attack for having used funds without authority but have since paid back the funds. I want to end this marriage, but my daughter must stay with me. Lawyers say that the father is wealthy, and there is a high chance that I will lose custody. What does the law say? I am ready to fight this out with my husband, no matter what.

21 January 2019

We are sorry to hear about this. Income disparity should never come between a relationship, but sadly, this has happened. Before taking any steps, you and your husband might want to consider meeting a marriage counsellor for an open discussion.

Fortunately for you, the law doesn't distinguish between rich and poor. Everyone is equal before the law, so your husband's stronger balance sheet will not be a determinant factor for child custody.

The Law of Marriage Act empowers the Court to order custody. The Court may, at any time, by order, place an infant in the custody of his or her father or his or her mother or, where exceptional circumstances are making it undesirable that the infant be entrusted to either parent or any other relative of the infant or of any association the objects of which include child welfare.

According to this law, in deciding in whose custody an infant should be placed, the paramount consideration shall be the welfare of the infant and, subject to this, the Court shall have regard to (a) the wishes of the parents of the infant; (b) the wishes of the infant, where he or she is of an age to express an independent opinion; and (c) the customs of the community to which the parties belong.

However, we must state that under the law, there is a rebuttable presumption that an infant under seven years should be with his or her mother. But in deciding whether that presumption applies to the facts of any particular case, the Court shall have regard to the undesirability of disturbing the infant's life by a change of custody.

Custody orders may be made subject to such conditions as the Court may think fit to impose, and subject to such conditions, if any, as may from time to time apply, shall entitle the person given custody to decide all questions relating to the upbringing and education of the infant. For example, an order for custody may contain conditions as to where the infant is to reside, the manner of his or her education, and the religion in which he or she is to be brought up. Such an order can also provide for the infant to visit a parent deprived of custody or any member of the family of a parent who is dead or has been deprived of custody at such times and for such periods as the Court may consider reasonable.

In your case, considering that the child is below seven years and you can maintain her, there is a higher chance that you will be granted custody up until your daughter turns seven years. Of course, you cannot completely deny access to your husband, who will also be entitled to visitation rights or partial weekend custody, depending on the exact facts of the case. We suggest you meet a lawyer who can guide you further.

Marriage with fiancé absent

I intend to marry a man who works abroad. Unfortunately, he cannot make it to the wedding and wants to send a representative to appear at the wedding. I am worried about whether or not this marriage will be valid. What are the legal consequences and is this allowed?

28 January 2019

In Tanzania, the Law of Marriage Act recognizes marriage as a voluntary union of a man and a woman intending to last for their

joint lives, and it is built on mutual consent and the understanding of the two parties. In the country, marriages can be contracted in civil form or where both parties belong to a specified religion according to the rites of that religion. In essence, a marriage is a contract between a man and a woman.

This law requires the parties to a marriage to be present in person at the ceremony. Otherwise, such a marriage can be regarded as a nullity. However, the marriage will not be void if another person represents a party to a marriage and there is a witness who was present when that party gave his/her consent. Therefore, the fact that your fiancé won't be present at your wedding should not get you worried; only the witness before whom the consent was given must be present during the wedding.

Although the law does not clearly state how consent should be given to the representative, the wording of section 38 (2) of the Law of Marriage Act can be interpreted to mean the witness should be physically present when the consent is given.

In your case, if the witness present is the same one who was present when your fiancé appointed the representative, your marriage will be valid. Please note that you will be marrying your fiancé and not his representative.

This is a very rare provision that has ever been used, and you may want to ensure that you also consult your lawyers.

Wife to reject me

I got engaged to a woman who has now changed her mind. I have spent much time planning the marriage, only to meet this new resistance. How can you help me? I could have married a wealthy girl had it not been for this engagement. I need to get this sorted.

25 February 2019

We are unsure how to assist you other than providing legal guidance. To break the bad news, first, you cannot force your fiancé to marry you. She has a right to break the engagement; all you can do is claim damages from her.

The Law of Marriage Act provides for this in section 69 and states: right to damages for breach of promise of marriage (1) a suit may be brought for damages for the breach of a promise of marriage made in Tanzania whether the breach occurred in Tanzania or elsewhere, by the aggrieved party or, where that party is below the age of eighteen years, by his or her parent or guardian: Provided that (a) no suit shall be brought against a party who, at the time of the promise, was below the age of eighteen years; (b) no damages shall be awarded in any such action above loss suffered as a result of expenditure incurred as a direct result of the promise. (2) A suit may similarly be brought regarding the breach of a promise of marriage made in any other country but only if such an action would lie under the law of that country and under the Act. (3) No suit shall be brought for specific performance of a promise of marriage.

Having read the above, you will observe that the maximum you can do is claim damages from your fiancé for actual damages suffered. Hence, if the rich girl 'you missed' would have bought you a mansion, that would not be part of the damages you suffered under our laws. However, you can claim back the amounts spent on planning a wedding in the suit.

Wife refuses to sleep in same bed

I have married a woman who used to be a former model. Whilst we have a healthy relationship, she wants us to sleep in separate beds and rooms. There are no issues with cohabiting; the issue is simply the sleeping part. She also doesn't let me enter the bathroom when she is in there. Is it legal for her to sleep in a separate room, and is this a ground for divorce if she

continues to do so? Can I get a Court order to force her to sleep in one room with me?

11 March 2019

The law is silent on what rooms a husband and wife should sleep in. If everything was addressed in our marriage laws, including what to wear, eat, and what to do and not do, marriages would become robotic. We are, thus, not surprised that this has not been provided for under our laws. Based on what you are telling us, we believe there is no illegality in you two sleeping in separate rooms and beds, provided that it is mutual.

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

Whether you can use cruelty or wilful neglect to divorce will depend on further facts that you should provide your lawyer. However, before meeting a lawyer, we suggest you meet a marriage counsellor as you might get a more practical solution.

Lastly, it is very unlikely that any Court will grant you an order that she sleeps in the same room as you.

Marriage in High Commission overseas

I am a Tanzanian national living in the US for the past three years, and I wish to get married to an American woman. What is the fastest way to get married, as we want to close this immediately?

25 March 2019

It seems you want to get married under a certificate of urgency. We are sure that American laws will allow you to do so. However, as Tanzanian practitioners, we cannot guide you under American law. We will, thus, focus on Tanzanian law and the Law of Marriage Act of Tanzania (the Act).

The law provides that marriages in Tanzanian Embassies, etc., abroad (1) A marriage may be contracted in the presence of the Registrar in an Embassy, High Commission or consulate of the United Republic in any country which has been designated by the Minister subject to the following conditions, that is to say, that the registrar shall be satisfied– (a) that at least one of the parties is a citizen of the United Republic; (b) that each party has capacity to marry according to the provisions of the Act; (c) that in the case of the intended wife who is a citizen of the United Republic or is domiciled in Tanzania, any consent required by Section 17 has been obtained; (d) where either party is not domiciled in Tanzania, that the proposed marriage, if contracted, will be regarded as valid in the country where

that party is domiciled; (e) that notice of the proposed marriage has been given at least twenty-one days previously in accordance with the requirements of section 18 and that no notice to objection has been received; (f) where a party is not a citizen of the United Republic and the law of the country of which he or she is a citizen provides for the issue of certificates of no impediment that such certificate has been issued in respect of that party. (2) The procedure for contracting marriage in a Tanzania Embassy, High Commission or consulate shall be similar to that for contracting civil marriages under the Act. The provisions of the Act relating to the issue of marriage certificates and the registration of marriages shall apply as if the registrar appointed for that foreign country were a district registrar, and the marriage shall be valid under the Act. (3) References in the Act or any other written law to a marriage contracted in Tanzania shall, unless the context otherwise requires, include references to a marriage contracted under this section.

You can, thus, contact the Tanzanian High Commission in Washington, who can, subject to the above, contract your marriage under our Tanzanian laws.

Children, when not married

Is it illegal to have children if you are not married? Do you have to be married to have a sexual relationship? How many kinds of marriages are there? How long are marriages supposed to last?

25 March 2019

Before we answer your questions, you must understand what a marriage is. Luckily, it is defined in the Law of Marriage Act of Tanzania (the Act). Section 9 defines it as (1) Marriage means the voluntary union of a man and a woman, intended to last for their joint lives. (2) A monogamous marriage is a union between one man and one woman to the exclusion of all others. (3) A polygamous marriage is a union in which the husband may, during the subsistence of the marriage, be married to or marry another woman.

Your questions have raised some very interesting points; the answer is no. You don't need to be married to have children. However, you would be better off if you were married for certain rights like custody and child support.

Also, to have a sexual relationship, you don't need to be married so long as you are of legal age. Sexuality, as addressed by you, is not regulated under our laws, although we are told there are a few laws of other countries that regulate it but which are not applicable here.

Our law also recognises two main forms of marriage: (a) those that are monogamous or are intended to be monogamous and (b) those that are polygamous or are potentially polygamous. (2) A marriage contracted in Tanzania, whether contracted before or after the commencement of the Act, shall (a) if contracted in Islamic form or according to rites recognised by customary law in Tanzania, 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.

Further, a marriage contracted in Tanzania 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.

Notwithstanding the above, 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.

A marriage shall subsist until terminated – (a) by the death of either party thereto; (b) by a decree declaring that the death of either party thereto is presumed; (c) by a decree of annulment; (d) by a decree of divorce; or (e) by an extra-judicial divorce. These are the only ways a marriage comes to an end. Hence, any thoughts you might have about a short-term marriage that automatically expires like a contract are not legal in Tanzania. Although we know other countries allow such relationships.

Marrying divorce lawyer

I intend to marry a divorce lawyer and need your tips on what to do so I am protected. I don't want to end up on the streets if we get divorced. Please tell me all the tricks that I can apply. Hopefully, you will not be biased towards my fiancé, considering you are in the same profession.

1 April 2019

There are no special tricks that apply to lawyers or any particular group. People get into prenuptial agreements that are very effective and assist quite a bit in the event there is a divorce or a claim after the divorce.

Generally speaking, a prenuptial agreement is a private agreement between couples, signed before marriage. The agreement sets forth assets' distribution in the event of a divorce or even upon death. Each country has its laws on such agreements.

Unfortunately, there is no such guidance in the law in Tanzania, and neither have such agreements been tested in the country's Courts. Thus, the validity of such agreements is not yet known. However, most countries have moved towards recognising such agreements. Also, they have become a good form of planning for couples, and it is advisable to sign them.

Deciding number of babies before marriage

I don't want to get into issues with my husband after marriage. As a pre-condition to marrying, I want to agree on several issues, especially how he will maintain me and the number of children I will bear for him. Otherwise, I will not want to continue the relationship. I also want to make it clear that I will not accept being beaten up, which is what many women endure. Can you guide me on what steps I should take and how to draft the agreement?

15 April 2019

The Law of Marriage Act does provide for the maintenance of a spouse but considers your soon-to-be husband's means. Hence, if he lives in a small shack, your entitlement is to the same accommodation and you cannot then expect to be living in a mansion. This law states that except where the parties are separated by agreement or by decree of the Court and subject to any subsisting order of the Court (a) it shall be the duty of every husband to maintain his wife or wives and to provide them with such accommodation, clothing and food as may be reasonable having regard to his means and station in life; (b) it shall be the duty of every wife who has the means to do so, to provide similarly for her husband if he is incapacitated, wholly or partially, from earning a livelihood because of mental or physical injury or ill-health.

On being beaten up, the law states that for the avoidance of doubt, it is declared that, notwithstanding any custom to the contrary, no person has any right to inflict corporal punishment on his or her spouse. Hence, the law protects you against being hit, flogged, canned, and the like. You do not need to provide this in a separate agreement, as the law automatically protects you.

We have not seen any provisions to this effect on the number of children. We are

unsure if you can provide this in an agreement without offending the underlying basis of marriage. Having said that, if you end up delivering more children than you expected or agreed to, under our law, that is not a ground for divorce. So, any agreement to that effect will be illegal to that extent.

Marriage agreements are not like regular agreements where there are warranties and representations or termination clauses without cause. Before getting married, we suggest you have an open dialogue with your spouse and involve a marriage counsellor. We wish you all the best.

Husband married twice

I married a person I thought was single until I found out that he had another wife. Under our religion, he cannot have more than one wife simultaneously. Can I divorce him?

13 May 2019

From our limited facts, you entered into a void marriage contract, meaning you were never married and may not even need a divorce. However, your lawyer can guide you further on steps to take. If you are married, you can use what you have stated as a ground to petition for divorce.

More seriously, our Penal Code makes this a criminal offence. Section 165 states that any person who dishonestly or with a fraudulent intention goes through the marriage ceremony, 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 route.

Spouse trespassing on my property

I was married for nearly ten years before leaving 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 need funds and wish to rent it out. I politely asked her to leave because she was trespassing on my property, but she refused. I want to take legal action against her. Can I evict her by force?

24 May 2019

The Law of Marriage Act of Tanzania states that where any estate or interest in the matrimonial home is owned by the husband or by the 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 or at the instance of the husband or the wife who left. You can see from the above that the law is strict, and you cannot evict your wife. Further to that, you are not divorced; in the eyes of the law, you are still husband and wife. Hence, the house is still regarded as matrimonial, and she has a right to live there. The division of matrimonial properties can be done if either of you divorce petition.

However, be advised that even though the house is in your name, you will not be guaranteed to retain it. Under the law, the wife is deemed to contribute to building the matrimonial home simply by doing domestic chores and is entitled to a certain percentage of the house. Also, looking at this 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.

Changing dressing style for mother-in-law

I am a Westerner happily married to a Tanzanian and living in Europe. We intend to visit my mother-in-law in Tanzania and my husband wants me to change how I dress because of cultural differences. I am very unhappy about this and might want to consider a divorce. What are my rights?

1 July 2019

We fail to understand one thing. On the one hand, you claim to be happily married, but on the other, you are talking about a divorce simply because you are visiting, we believe, for a short time, your mother-in-law in Tanzania. Tanzania is not backward in its dress style; people freely dress in whatever clothing they like.

Under Tanzanian law, a divorce would not be allowed for the reasons you cited. However, you will likely be entitled to a divorce under European law or in your country of residence. A divorce might annoy your mother-in-law more than your dress, and you might want to reconsider your strong stance. Your lawyers can guide you further.

Age restriction for marriage

I am an 80-year-old man and have a 29-year-old girlfriend. Just as I was planning to get married, my cousin, a self-proclaimed bush lawyer, said I was above marriage age, especially considering the 51-year gap between us. He says a recent change in the law intends to discourage elderly persons from getting married like this. Is there such an age restriction for marriage? If so, how can I work around it? It is high time I settle down.

2 September 2019

You are unquestionably energetic for an 80-year-old person. We have gone through various amendments to the Law of Marriage Act. Still, we have not come across any such restriction that disallows you, as an 80-year-old, to get married or remarried in a heterosexual marriage. There is a minimum age to get married, which doesn't apply to either of you.

Whilst it is indeed encouraging that a person of your age can get a girlfriend 51 years younger, we must warn you that not being able to cohabit is a ground for divorce. Understandably, medicines are available to ensure you can do so, but we thought informing you of this risk was pertinent. We wish you all the best.

Affair with boss

I work for a big company and am in love with my boss. He is the best person I have ever met. He also likes me, and we have spent some time together. The only problem is that he says 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?

21 October 2019

We are unaware of any law that disallows a boss to date his secretary. There are many fairy-tale stories whereby the boss marries the secretary. The problem is that some companies have internal regulations that consider such a relationship inappropriate and disallowed. For example, if you and your boss are dating, it might affect your performance at work and you might not be able to stay focused on your job, to mention a few. To answer 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.

Recovery of girlfriend's gifts

I met this beautiful girl, and we went 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 was comfortable. I was shocked to find out recently that she has another man with whom she has a serious relationship 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?

28 October 2019

The Law of Marriage Act addresses this. Gifts given in contemplation of marriage are recoverable under the law if the intended marriage never happens. Section 71 of the Act allows a suit to be brought for the return of any gift made in contemplation of a marriage that 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. There is a good chance she will fight back, but your lawyers can guide your chances of success based on other facts.

Promise of marriage

My fiancée of many years has now decided that she needs time to think about marrying me. I have taken her on trips to the Far East, Europe and South America, which is what I get. She is the one I want, and I want to put a claim on her for the ring given to her during the engagement. Can I put a claim on her? I still like her and my lawyer wants an order to force her to marry me. Please help me.

9 December 2019

An engagement is an agreement to get married. It is not a marriage but rather an intention to do so. One cannot force your fiancée to get married to you. You can only request her; you can do nothing if she changes her mind. Since you still like her, claiming her will likely cement her position of not wanting to marry you. So, move with caution.

However, since you gave her a ring in contemplation of her agreeing to marry you, and 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, you are likely entitled to get the ring back. If she can prove otherwise, you might not get it. As for the trips, we believe these are deadweight losses to your account, and you cannot claim them.

As for getting an order to force her to marry you, it is nearly impossible to get this. We recommend checking your lawyer's credentials, as he lives in a dreamland. An engagement or marriage is a very different type of contract and cannot be enforced this way.

Pre-marriage test before marriage

I am in love with a girl but am scared of marriage. I have heard everything about how girls change when they get married. We have agreed to have a test pre-marriage before the actual marriage. The pre-test will have a lockout period of two years in which we cannot marry anyone else. In some countries, this is allowed. Can we do this in Tanzania?

6 January 2020

We are quite confused about what you can achieve with this test pre-marriage and what additional rights and obligations you want to impose on each other. The lockout period sounds like an employment or a sale of asset agreement, not a marriage agreement that should be entered into with unconditional 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, an intention to get married.

You both need to trust yourselves. Perhaps get engaged and decide whether you want to get married. This lockout clause is likely not enforceable as you cannot deprive one of their right to marry who they want to.

Husband dead, wife remarries

My brother passed away and his wife got remarried in an Islamic ceremony 30 days after his death. Is there no statutory waiting period, or is everything allowed in this dot-com era? It has destroyed the sanctity of marriage and is a classic example of why people might not get married in the future. Further, in his will, my brother explicitly ordered that if anything happened to him, she should marry me. Please guide.

13 January 2020

The Law of Marriage Act provides for a specific period called Iddat, during which period the wife of the deceased cannot get married. Section 68 of the Act states: notwithstanding any custom to the contrary, a woman whose husband has died shall be free: (a) to reside wherever she may please; and (b) to remain unmarried or, subject to the provisions of section 17, to marry any man of her choosing again: Provided that where the parties were married in the Islamic form the widow shall not be entitled to remarry until after the expiration of the customary period of iddat.

This iddat period varies from sect to sect, but it is certainly more than 30 days, meaning that her new marriage may likely be void from the outset.

The other question is whether or not the woman could have defied what was stated in her husband's Will. The answer is yes. She is not bound by what the Will says as far as marriage is concerned. Her deceased husband cannot force her to marry someone she does not want to marry. Even the law protects her, and the Will is ineffective to that extent.

Wedding bliss disappeared

I was deeply in love with a woman and we married nine years ago. Over the years, the love sparks I once had for her has disappeared. My wife, although still reasonably attractive, is a different person. How do I deal with this in law? What does the law say about this? I don't mind her taking care of the kids and for me to support them, but I want to live like a free bird again. Please guide me.

10 February 2020

The main law that governs marriages is the Law of Marriage Act, which does not contain the words spark or bliss as used above. Unfortunately, the law also does not address issues of love as such. You might need to meet a marriage counsellor or equivalent to guide you further.

As for living like a free bird, we are unsure what you fantasize about, but you owe total honesty to your wife under marriage principles. You cannot turn your wife into a maid and start living a bachelor's life. You can only do so if you divorce your wife, and with the reasons you have given us, we are unsure if you have reasonable grounds for divorce.

Brother, sister-in-law sleep separately

My brother and his wife sleep in separate rooms. I find this quite awkward and it puts me in a bad situation. I have tried engaging them about this, but they do not want to discuss it. I am concerned about their well-being. Is there something I need to be aware of? If they have a problem, are these grounds for divorce that I can file on their behalf? They should part ways rather than sleep in different rooms, which is quite uncommon. Please guide me.

24 February 2020

To begin with, it is not your marriage, so you need to be careful what you say and what you intend to do. You are a mere third party in the house and have no locus to file for a divorce on their behalf. Unless we start reading between the lines, we are unsure how

they put you in a 'bad situation' if they sleep separately.

Having stated the above, indeed, one of the grounds for divorce is a denial of conjugal rights during the pendency of marriage. However, just because they are sleeping in separate rooms doesn't mean there is a denial of conjugal rights unless there are things you know but likely shouldn't and haven't disclosed to us.

Child without husband

Is any law stopping me from having a child without getting married? I don't want a husband's connection as they tend to be troublesome and unpredictable, which I am sure you will agree. I have developed a hatred toward such men.

9 March 2020

We are not aware of any law that stops you from executing your plan to have a child without getting married. As for the 'character' of the husbands, they seemingly have similar sentiments about their wives. It seems to be a worldwide trend that wives complain about their husbands, and the husbands complain about the wives, not to mention the in-laws, who are the other source of complaints.

Finally, much as you have hatred towards men, to get a child, you will need one. We wish you all the best.

Wife driving me crazy during Coronavirus

Six years ago, I married a woman I truly believed I loved. It was bliss until this Corona crisis broke out. Having stayed at home for about four weeks, I am going crazy. My apartment is small and I cannot stand one more minute of my wife. Everything that can go wrong is going wrong. The smallest issue becomes a big issue. I cannot express my disappointment and need immediate help. Staying indoors leads to insanity. How can you help me get an online consent divorce? What if my wife refuses?

13 April 2020

You both need marriage counselling as this might be a phase that will hopefully end soon. Everyone needs space, and you and your wife might be missing this space, leading to a huge incompatibility issue. The first piece of advice is not to rush into making hasty decisions.

We have researched online for consent divorces. In Tanzania, these are not available. The same applies to most other jurisdictions. You cannot order a divorce online on eBay or Amazon and pay for it with your credit card. Before a divorce petition is granted, there is a physical Court process that you must follow and likely be present in Court.

The Law of Marriage Act of Tanzania provides specific grounds to be adduced in a petition seeking a divorce. For example, one cannot get a divorce in Tanzania without the consent of the husband and wife. Some of the main grounds are cruelty, adultery and dissertation, which likely don't yet apply in your case. We suggest you seek sound legal advice.

Boyfriend intending to get married

My boyfriend intends to get married to another woman. I have all the information. He decided five days after we broke up, and I am sure there was a parallel relationship. It shows how unreliable men are. My lawyer says I can object to this marriage because he is mine. How do I do this? What are my rights?

27 April 2020

We are sorry to hear about your 'unreliable' former boyfriend. Indeed, the Law of Marriage Act (the Act) provides a process to object to a marriage. Section 20 states that (1) Any person may give notice of objection to the registrar or registration officer to whom the

notice of intention was given on the ground that he or she is aware of facts which, under the provisions of the Act, constitute an impediment to the intended marriage.

This section further states that (2) 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 provide notice of objection to the registrar or registration officer to whom the notice of intention was given, on the ground that (a) 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 (b) 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.

Unfortunately, you do not fall under any of the complainants listed above. The law doesn't talk about former girlfriends objecting to their former boyfriends getting married. We are unaware of such a law in any jurisdiction. If it exists, it would attack marriages, just like the coronavirus is an attack on humans. You have little choice but to live with the fact that he doesn't want to marry you. You can surely find another boyfriend. We wish you all the best.

Secret marriage and honeymoon

I do not want anyone to attend our wedding as I want to keep it a secret. How can I go about this? Can my wife dictate having a honeymoon in addition to choosing a location? I am struggling with funding, but I also want to marry a woman with big expectations of me. Guide me, please.

11 May 2020

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

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

As for a honeymoon, we have checked our statutes and this word does not appear anywhere. It is surely not a condition precedent to a marriage. Our research reveals that honeymoons are traditional holidays taken by newlyweds to celebrate their marriage in intimacy and seclusion. Today, honeymoons are often celebrated in exotic and/or romantic destinations, but very few are open due to the coronavirus pandemic.

Hence, it is entirely your choice if you want to go on a honeymoon or not. The law does not force you to, but perhaps your wife will have such expectations. Your wife expects you to manage, which is not a legal question. We wish you good luck.

Sister doesn't wish to name child

My sister likes to be very different from others. For example, she got married, and the dress code was swimwear. She then went for her honeymoon to a village without power or water. She is now expecting and wishes not to name her child. Is that possible?

20 July 2020

You have a very peculiar sister, and seeing the wedding photos would be interesting. However, her peculiarity has limits under the Law of Child Act, which clearly states that a child shall have the right to a name and nationality and to know her/his biological parents and extended family. She is also

required to register the child's birth with the Registrar General, and the first thing to be asked about is the child's name. She has no choice in this instance but to choose a name.

Prohibited relationships in marriage

Are there any prohibited relationships in our Law of Marriage Act? What does it state? What can such persons do?

3 August 2020

Section 14 of the Law of Marriage Act has listed the prohibited relationships as follows: (1) No person shall marry his or her grandparent, parent, child or grandchild, sister or brother, great-aunt or great-uncle, aunt or uncle, niece or nephew, as the case may be. (2) No person shall marry the grandparent or parent, child or grandchild of his or her spouse or former spouse. (3) No person shall marry the former spouse of his or her grandparent or parent, child or grandchild. (4) No person shall marry a person whom he or she has adopted or by whom he or she was adopted. (5) For the purposes of this section, a relationship of the half-blood shall be as much an impediment as a relationship of the full blood and it shall be immaterial whether a person was born legitimate or illegitimate. (6) For the purposes of this section, grandparent, grandchild, great-child, great-uncle and great-aunt include, as the case may be, grandparent, grandchild, great-uncle, and great-aunt of any degree whatsoever. (7) Persons who are, by this section, forbidden to marry shall be said to be within the prohibited relationships.

Such persons can marry, but only outside such prohibited relationships. Any marriage within the above-prohibited categories is void, meaning that it is assumed such a marriage never came into force. Please note further that the Penal Code criminalizes marriages between close relatives as incest.

Non-consummation of marriage due to COVID-19

I am a Tanzanian married to a Kenyan. When the Kenyan and Tanzanian Governments imposed COVID-19 travel restrictions, my wife got stuck in Kenya and I in Tanzania. We have thus not consummated our marriage for over six months now. I once heard if a marriage is not consummated for such a period, it can be considered dissolved. Is it true? Can I proceed to remarry, or will it be against the law?

17 August 2020

We are sorry the COVID-19 travel restrictions have left you far from your wife. We understand that such travel restrictions have affected people intending to travel for family and business issues. You have not mentioned whether you got married in Kenya or Tanzania, but we shall respond to you based on our Tanzanian laws, assuming the marriage was contracted in Tanzania.

Under our Law of Marriage Act, a marriage does not legally end or get annulled just because the parties to such marriage have not consummated the marriage, even if they are both willing to do so. The marriage can be considered voidable and further annulled if, at the time of the marriage, either of the parties was incapable of consummating the said marriage or if one of the parties wilfully refuses to consummate the marriage. In such circumstances, a marriage can be voidable and annulled after following the legal procedures provided under our law.

In your case, both of you can consummate the marriage, as your explanation indicates, and are also willing to do so, but only if you are far apart and unable to do so. Therefore, this cannot be a reason for annulling the marriage.

Even if it had to, there is a legal procedure to follow before being annulled, and after that, you can marry again. As for now, your marriage is legally existing and based on it

being a monogamous marriage, you cannot contract any other marriage.

We hope you are not trying to use the COVID-19 crisis and the '6-month' rule, which doesn't apply, to seek an annulment, as this will not work.

Stopping my wife from flying

My wife loves to fly. She will go on a trip for work at the first chance. How can I control her? Can I get an order from Court to get her to sit at home?

17 August 2020

The answer is no. You cannot get an order to stop your wife from flying. Your wife is not an asset on your balance sheet that you can control as you deem fit. Also, flying is legal, and you cannot stop her from doing so. She has all the right to continue to fly. However, you can consider a divorce with her if she is abandoning you or you have other grounds for divorce. Remember, the law gives partners equal rights; hence, those olden days when the wives were made to sit at home and cook were far gone. We suggest you both seek the services of a marriage counsellor.

Marital rape

If my wife refuses to give me my conjugal right, will it amount to rape if I force her to have sexual intercourse with me?

2 November 2020

Marital rape is generally defined as forced intercourse with your spouse without her consent. Most countries criminalised marital rape from the late 1970s. Newer, improved and redrafted laws have assisted in bringing in the concept of marital rape, which many countries have now adopted. Criminalisation in these countries has occurred in various ways, including the removal of statutory exemptions from the definitions of rape, judicial decisions, and explicit legislative reference in statutory law preventing the use of marriage as a defence, or the creation of a specific offence of marital rape.

Our penal laws pertaining to newer offences have not been updated, and unfortunately, under section 130(2)(a) of the Penal Code [Cap.16 R.E 2019]; a man does not require the consent of his wife to have sexual intercourse with her unless the two are separated at the time of sexual intercourse.

Hence, if you are not separated from your wife and forcefully have intercourse with her, that cannot amount to rape in Tanzania.

Division of assets acquired during subsistence of cohabitation

I have been cohabiting with a man for ten years and have three children with him. I knew he had a wife and children before we began this relationship. We made joint investments, established many businesses during our relationship, and acquired many properties. However, they are all registered in his name. Recently, our relationship has turned sour, and I want to quit and move on. Can I petition the Court for divorce and division of properties acquired during our cohabitation period?

23 November 2020

Cohabitation for 10 years or having children with a man does not necessarily create a lawful marriage. However, in the absence of a marriage certificate, a man and a woman can still be presumed to have been duly married if it is proved that they lived together in such circumstances that it can reasonably be concluded by neighbours, friends, relatives and other members of the community around them that the two have acquired the status of a wife and a husband. That is what Section 160 of the Law of Marriage Act terms as the presumption of marriage.

For the Court to order the division of matrimonial assets, it must first be satisfied

that there is proof of marriage or an irrefutable presumption of marriage. The two are not married if the presumption of marriage is rebutted despite long cohabitation. This will mark the end of it, and the Court will not grant a decree for divorce or separation without proof of marriage between the parties. Division of matrimonial assets is the aftermath and follows the grant of a decree for divorce or separation. Therefore, if there is no marriage, there is no divorce and if there is no divorce, there is no division of matrimonial assets.

A concubine is not entitled to a share of matrimonial assets and an illicit relationship cannot create a right. That is how the Court of Appeal and High of Tanzania have interpreted Section 114(1) of the Law of Marriage Act in several cases, for example, Richard Majenga v. Specioza Sylvester, Civil Appeal No. 208 of 2018, CAT at Shinyanga; Antony Felician v. Shani Kakuru, PC Civil Appeal No.16 of 2020 HC at Mwanza.

In your case, if you cohabited for a long time and people presumed that you were married, you can claim your share of the properties acquired during such cohabitation by way of an ordinary civil suit instead of a matrimonial cause. Your lawyers can guide you further.

Husband intercepting telephone communication of wife

I have discovered that my husband is intercepting my mobile telephone communications. He thinks I am cheating on him. Is this allowed by the law? Please guide me.

14 November 2020

We assume your question wants us to answer the question of the legality of mobile phone interception and not cheating. Unlawful interception of telephone communication is an offence under section 120 of the Electronic and Postal Communications Act, 2010. The law prohibits procuring someone to intercept telephone communications. This offence is punishable with a fine not less than TZS 5M or imprisonment for a term of not less than 12 months.

Only law enforcement agents are allowed to intercept telephone communications for investigations of criminal offences. A spouse intercepting the communications of another spouse is committing a crime irrespective of the reason for the interception.

For your information, even law enforcement officers are prohibited by section 121 of the Act from disclosing the contents of the information obtained through a lawful interception during criminal investigation to anyone other than law enforcement officers. A law enforcement officer who discloses the contents of information obtained by a lawful interception to another person is guilty of an offence and is liable upon conviction to a fine of not less than TZS 5M or imprisonment for a term of not less than 12 months.

Husband with ponytail

I married a man whom I dated for more than ten years. We married 18 months ago, and suddenly, he decided to grow a ponytail, which is unattractive and displeases me. Initially, I thought this was a joke, but it is now clear that he will not budge. This is shocking but plain truth. I have now come to terms with it and what to get on. My lawyer says getting a divorce at this stage and on such grounds is impossible. However, this is the lawyer my husband has been using and I might be conflicted. Can this lawyer's guidance be trustworthy? Can I secretly cut his ponytail at night? Kindly guide me.

21 December 2020

Indeed, Tanzania's Law of Marriage Act is outdated and does not provide for consensual divorce. The law provides that there must be reasons, like adultery and

sexual perverseness, that are valid grounds for divorce. Looks, or instead change in looks, as is the case here, is not a solid ground for divorce and may not hold under our laws.

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

There are initiatives to change our marriage law, but the above position stands. We suggest you meet a marriage counsellor who can talk the two of you through this.

When cutting your hair, we cannot see how you can do this 'secretly' and how it will help you. Moreover, cutting someone's hair without consent can likely amount to an assault under our penal statutes, and you could be fined, imprisoned, or both. Hence, move with caution.

Enforcement of foreign maintenance orders

I was married to a Tanzanian. Our marriage was contracted in the United Kingdom, and we ended up having a matrimonial dispute, which ended up in Court in the UK. The UK Court granted me a judgment and divorce and ordered my former husband to pay a maintenance allowance to me and our three children. Immediately after the Court issued the decree, my former husband left and travelled back to Tanzania, where he works for a multinational company. How can I enforce the maintenance order issued by an overseas Court against my former husband, who lives and works in Tanzania?

1 March 2021

Section 141 to 144 of the Law of Marriage of Act [Cap.29 R.E 2019] prescribes the procedure for executing maintenance orders issued by Courts of foreign jurisdictions. The first condition for executing maintenance orders issued by a foreign Court is a reciprocal arrangement between Tanzania and the foreign country whose Court issued the maintenance order that sought to be executed in Tanzania. A reciprocal arrangement is an undertaking that the foreign nation undertakes to give assistance it seeks from Tanzania in case Tanzania needs similar assistance from that foreign country. The arrangement does not necessarily need to be a bilateral treaty.

If such a reciprocal arrangement exists, and in the case of the UK, we believe it does (your lawyers should also double check), the maintenance order issued by the UK Court can be sent by the foreign Court, which issued it to the Minister responsible for foreign affairs of that foreign country for transmission to the Tanzanian Embassy/ High Commission in that country or neighbouring country. Our Ambassador/High Commissioner will transmit the order to our Minister for Foreign Affairs, who will then send it to a Court in Tanzania for registration.

Where the foreign maintenance order was issued by a superior Court of the foreign country, the Minister will send it to the High Court, Main Registry, or District Registry serving the area where the judgment debtor resides or works for registration. Suppose a lower Court of foreign jurisdiction issued the order. In that case, the minister will send the order to the resident magistrate's Court, which has jurisdiction within the area where the judgment debtor resides or works through the High Court Registrar.

Once a local Court registers the maintenance order from a foreign Court in Tanzania, it becomes an order of the local Court. It can be executed like an order of the local Court against the former husband. Similarly, where a spouse obtains a maintenance order from the Tanzanian Court, and he or she wants to execute the order against a spouse living or working overseas, the same diplomatic channel is used to transmit the decree or order to the Court of a foreign country for execution.

Divorced spouse continues to use NHIF beneficiary card

I was married to a public servant, but we have now divorced. My spouse is an NHIF member, and I have an NHIF beneficiary card given to me as a member's spouse. Despite the divorce, my former spouse has not demanded the return of the NHIF card. Am I allowed to continue using the NHIF despite not being the spouse of the NHIF member?

16 August 2021

Under section 11 of the National Health Insurance Act [Cap. 395 R.E 2015], a member of NHIF is covered by her/his spouse. Once someone ceases to be a spouse, she/he is disqualified from holding and using the NHIF beneficiary card as a spouse. The member must return the beneficiary identification card of the divorced spouse to the Fund. Under regulation 7(4) of the National Health Insurance Regulations of 2002, as amended by Government Notice No.11 of 2010, it is an offence to use an unreturned card to obtain health services.

Investment, Commercial & IP Laws and Business Disputes

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This chapter offers a compelling deep dive into the practical legal challenges investors and entrepreneurs in Tanzania face. Through real-life scenarios and incisive legal commentary, it unpacks the complexities of stabilisation clauses, changes in legislation, the limits of foreign ownership in mining, and the risks of assuming arbitration is always an option. It explores how directors, even non-executive ones, can face personal liability, the hidden consequences of signing without reading, and why contract fine print matters more than ever.

You'll gain clarity on the enforceability of foreign judgments, the pitfalls of unfair contract terms, and the true implications of clauses like “without prejudice” or “hell or high water.” Whether you're dealing with disputes under TIC certificates, struggling with local content requirements, or simply wondering about the legality of exemption clauses, this chapter arms you with sharp legal insights and practical guidance.

A must-read for investors, legal practitioners, and business leaders alike, this chapter navigates the turbulent legal waters of investment, compliance, and corporate governance in Tanzania.

Change of law affects investment agreement returns

I have a stability clause in my agreement with the government, but it is now being affected by introducing new legislation. This situation is costing me more funds for compliance, reducing profitability, and changing the project's economics as envisaged when starting the investment. Does such legislation apply to me, and if so, how do I invoke the stabilisation clause?

5 February 2018

Your question raises a crucial point regarding international investment law. We are sorry that the new legislation has negatively impacted your business. Since the stabilisation clauses are usually pure contractual matters between the Government and an investor, they do not fetter the powers of the Parliament to amend laws or enact new ones. For this reason, the new legislation you had not envisaged when investing applies to you.

Whilst we have not seen the exact wording of your stabilisation clause, you will likely be entitled to be brought to the position you would have been in case the law had not changed. Hence, if you lose out on profitability because of the change in law, you would likely be entitled to compensation for such loss based on the agreement.

You will need to read the agreement on what you must do and notify the Government about this law change and how it affects you. You should not delay relaying such information as it can affect the damages you might be awarded.

Further, most such investment agreements have international arbitration clauses inserted, and if everything fails, you will have to invoke this clause. Before arbitrating, we strongly recommend that you try resolving this amicably, as arbitration is costly and can be time-consuming.

Acquisition of Primary Mining Licences

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?

12 March 2018

Unfortunately, you cannot cure this as the Mining Act 2010, which governs PMLs, is very strict. Section 8(2) states that a primary mining licence for any minerals shall not be granted to an individual, partnership, or body corporate unless (a) in the case of an individual, the individual is a citizen of Tanzania; (b) in the case of a partnership, it is composed exclusively of citizens of Tanzania; (c) in the case of a body corporate, it is a company and- (i) its membership is composed exclusively of citizens of Tanzania; (ii) its directors are all citizens of Tanzania; (iii) control over the company, both direct and indirect, is exercised, from within Tanzania by persons all of whom are citizens of Tanzania.

We believe the Ministry has allowed this transfer in error, meaning that you do not legally hold the PMLs. You should get a Tanzanian entity to hold these PMLs while applying for the ML. The Ministry is supposed to be pro-mining, and any conversion from the PML to the ML is always welcome.

We also caution you to approach this unwinding process with care. Sometimes, when you voluntarily provide information, your problems escalate even further. Your lawyer should be able to guide you.

Dispute under TIC certificate

We have issues getting what was promised in writing under our Tanzania Investment Centre (TIC) certificate. There is no coordination between the TIC and other

institutions as much as the TIC is trying. We have to run around begging for promises made to us for our investment. Can we sue?

22 April 2019

The Government has promised to continue working with genuine non-tax evading investors as there is no growth without investment. Also, section 23 of the Tanzania Investment Act or the performance contract you may have has clear dispute resolution clauses.

Section 23 states that (l) where a dispute arises between a foreign investor and the Centre or the Government regarding a business enterprise, all efforts shall be made to settle the dispute through negotiations for an amicable settlement. (2) 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; (c) within the framework of any bilateral or multilateral agreement on investment protection agreed to by the Government of the United Republic and the Government of the country the Investor originates.

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

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?

2 September 2019

The Bilateral Investment Treaty (BIT) is entered between two countries primarily to promote and protect 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.

While we have entered into several bilateral investment treaties when our companies have not invested in those countries, you must note that these treaties also attract companies outside the country to invest in Tanzania. Once signed and 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 until at least expiry or notice periods expire.

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 very costly.

BIT arbitrations have run into billions of dollars' worth of compensation against state parties.

Amongst many other countries, Venezuela has had to compensate billions of dollars for its actions against various companies that had invested there and were fully protected under BITs.

Right to foreign arbitration

We are a foreign investor having a dispute with the Government. We believed we had an automatic recourse to international arbitration when we invested. Our lawyer thinks otherwise. Please guide.

11 November 2019

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; (c) within the framework of any bilateral or multilateral agreement on investment protection agreed to by the Government of the United Republic and the Government of the Country the Investor originates.

Therefore, without an arbitration clause in your agreements, you cannot automatically trigger foreign or local arbitration alone. The Government must agree.

Primary Mining Licences (PML)

A PML owner is going bust and I want to rescue his business and buy into this venture. The issue is that I am not a national of Tanzania but a neighbouring friendly Swahili-speaking nation. Can I directly buy in? My consultant says I cannot hold the PML, but he can set up a trust and a nominee to hold this venture for me. Please guide me as I want to set the most efficient structure.

24 February 2020

You may not like our bold answer, but unfortunately, no structure will work for you. As a non-Tanzanian, you cannot own or hold a PML. Further, these trusts, nominees, or other structures are not recognised under our laws in Tanzania. PMLs are exclusively for Tanzanians for a reason. You can look for prospective or mining licences but not PMLs.

Section 8(2) of the Mining Act 2010 has made it very clear that a primary mining licence for any minerals shall not be granted to an individual, partnership, or body corporate unless (a) in the case of an individual, the individual is a citizen of Tanzania; (b) in the case of a partnership, it is composed exclusively of citizens of Tanzania; (c) in the case of a body corporate, it is a company and (i) its membership is composed exclusively of citizens of Tanzania; (ii) its directors are all citizens of Tanzania; (iii) control over the company, both direct and indirect, is exercised, from within Tanzania by persons all of whom are citizens of Tanzania.

You may need to consider your strategy, considering the strict nature of section 8 concerning PMLs.

Name used as a director

A friend of mine wants me to act as a director in a company. He promises to do everything for me; my name is merely used to comply with the law. He has given me a letter stating that I shall never be liable for anything the company does, notwithstanding that I am a director. This arrangement seems reasonable as I will get paid for using my name. Should I proceed?

1 January 2018

You seem to be a rubberstamp director. We do not recommend that you enter into this arrangement. You can still be liable in many ways and a mere letter cannot absolve you of liability. You should not agree to such name usage unless you intend to act as a director as defined under the Companies Act. Section 185 of the Companies Act addresses this issue by stating that a director owes the company a duty to exercise the care, skill and diligence that would be exercised in the same circumstances by a reasonable person having both – (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.

Arbitration too expensive

I entered into a lease, which is now in dispute. I have rushed to Court to sue my landlord, and the proceedings are still pending. To my surprise, the lease has an arbitration clause, but I seek to go to Court as it is cheaper. I agreed to arbitration, thinking it would be cheaper and faster, but the quotation I received for arbitration is three times higher than that for going to Court. How can you help me?

1 January 2018

There is very little we can do to 'help'. You agree to arbitration, and unless the other party consents to be ready to litigate in ordinary Courts, your Court application will unlikely survive. Reasons like you thought arbitration was cheaper than going to ordinary Courts will not hold in a Court of law, which will direct you to arbitration. Please note that arbitration is an alternate dispute resolution mechanism and is binding on the parties, and Tanzanian Courts strictly enforce such clauses.

Without prejudice on lease

On a lease that I am signing, the top reads without prejudice. I find this quite awkward. What guidance can you give me?

1 January 2018

Just as you do, we find this awkward and inappropriate, especially if you enter a binding lease agreement. When used in a document or letter, without prejudice means that what follows (a) cannot be used as evidence in a Court case; (b) cannot be taken as the signatory's last word on the subject matter; and (c) cannot be used as a precedent.

Contents of such documents normally cannot be disclosed to the Courts. However, when a party proposes to settle a dispute out-of-Court, the effort's genuineness determines whether the proposal can be disclosed, and words without prejudice are not 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' be removed, or if your landlord is obsessed with the term, then it be changed to with prejudice.

Non-appealable arbitration clause

I entered into an agreement with a company that inserted an arbitration clause that says the award is final, binding and non-appealable. The arbitration was conducted in Kenya, and it is quite apparent from reading the award that it is against public policy and violates Tanzania's laws. The agreement required our company to perform the contract in Tanzania, and we succumbed to the laws there. How can the award be executed in Tanzania if it does not conform to the laws? My lawyer says our company is in a bad position since the award is not appealing. Please guide us.

12 February 2018

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

With the above in mind, since you claim that the award is against public policy and contravenes the laws in Tanzania, the award

can be set aside. This is also provided for under the Arbitration Act of Tanzania. Section 16 explicitly states that where an arbitrator or umpire has misconducted himself or arbitration or award has been improperly procured. The Court may set aside the award.

Section 30(1) of the Arbitration Act further states for a foreign award to be enforceable under this Part, it must– (a) have been made in pursuance of an agreement for arbitration that was valid under the law by which it was governed; (b) have been made by the tribunal provided for in the agreement or constituted in a manner agreed upon by the parties; (c) have been made in conformity with the law governing the arbitration procedure;(d) have become final in the country in which it was made; and (e) have been in respect of a matter which may lawfully be referred to arbitration under the law of Tanzania, and its enforcement must not be contrary to the public policy or the law of Tanzania.

(2) Subject to the provisions of this subsection, a foreign award shall not be enforceable under this Part if the Court is satisfied that– (a) the award has been annulled in the country in which it was made or (b) the party against whom it is sought to enforce the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case or was under some legal incapacity and was not properly represented; or (c) the award does not deal with all the questions referred or contains decisions on matters beyond the scope of the agreement for arbitration: Provided that if the award does not deal with all the questions referred the Court may if it thinks fit, either postpone the enforcement of the award or order its enforcement subject to the giving of such security by the person seeking to enforce it as the Court may think fit.

(3) If a party seeking to resist the enforcement of a foreign award proves that there is any ground other than the non-existence of the conditions specified in paragraphs (a), (b) and (c) of subsection (1) of this section, or the existence of the conditions specified in paragraphs (b) and (c) of subsection (2) of this section entitling him to contest the validity of the award the Court may if it thinks fit, either refuse to enforce the award or adjourn the hearing until after the expiration of such period as appears to the Court to be sufficient to enable that party to take the necessary steps to have the award annulled by the competent tribunal.

We must point out that you have not stated in your question what you might have done wrong for the matter to be referred to arbitration. Before you overconfidently embark on our opinion, you should get your lawyer to guide you further.

Letterhead with directors' names

I have established an information technology company and have already started operations. Is it a requirement of the law that every company must have a letterhead? What should be the contents of the said letterhead? I find this to be expensive to print, so I am looking at ways of avoiding this. What should I do?

12 March 2018

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

On the contents of the letterheads, section 213 of the Companies Act provides that every company shall, in all business documentation on or in which the company's name appears and which is issued or sent by the company to any person in any part of the territory, a state in legible letters concerning every director being a corporation, the corporate name, and with respect to every director being an individual, the following particulars (a) his present name, or the initials thereof, and present surname; (b) any former names and surnames: Provided that, if special circumstances exist which render it in the

opinion of the Registrar expedient that such an exemption should be granted, the Registrar may by order grant, subject to such conditions as may be specified in the order, exemption from all or any of the obligations imposed.

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

It is important to note that many companies in Tanzania are not adhering to the explicit provisions of the Companies Act regarding the mandatory inclusion of directors' names, among other details, on their letterheads.

Local content for engineering company

We are a Tanzanian-registered engineering company, but the shareholders are non-Tanzanians. We do engineering work in the oil and gas and mining sectors. How are we affected by the new local content laws? What else should we know about local content and how to comply?

16 April 2018

The issue of local content is indeed of concern to many stakeholders in the extractive industry, such as your company. The Petroleum (Local Content) Regulations 2017 (effective from November 2017) and the Mining (Local Content) Regulations 2018 (effective from 10 April 2018) aim at promoting the maximisation of value-addition and job creation through the use of local expertise, goods and services, businesses and financing in the mining/petroleum value chain. These Regulations oblige mining/oil and gas companies (and their subcontractors) to utilize services or goods locally available in Tanzania, as well as local insurance and financial services and legal services provided only by local legal practitioners or law firms.

A local company is defined as a company to which Tanzanian citizens own more than 51% of equity shares. In this regard, your company being owned by foreigners 100% does not qualify as a local company. It will likely be unable to continue supplying services in its present state.

Regarding foreign companies such as your company, they must enter into a mandatory joint venture arrangement with local (Tanzanian) companies. In these joint venture arrangements, the Tanzanian company (or Tanzanian citizens) must hold an equity participation of at least 20% for the mining sector and 15% for the petroleum sector. Based on these local content requirements, for your company to qualify to offer engineering services in the extractive industry, it must either enter into a joint venture arrangement as required by the Regulations or change equity ownership to 51% to be owned by Tanzanian citizens or wholly Tanzanian-owned companies.

The Regulations impose several compliance obligations to subcontractors in the extractive sector. For one, your company will be required to set up a project office within the district where the mining or petroleum project is located. Further, before providing services to mining or petroleum companies, the Regulations require your company to prepare and submit a local content plan for approval by the Mining Commission, EWURA, or PURA. The local content plan should contain provisions to ensure that first consideration is given to services provided within the country and goods manufactured in the country; qualified Tanzanians are given first consideration for

employment; adequate provision is made for the training of Tanzanians on the job; guarantee to use locally manufactured goods amongst others. It is also stated that a local content plan must also contain 5 sub-plans on (a) employment and training, (b) research and development, (c) technology transfer, (d) legal services and (e) financial services. Also, within 45 days of the beginning of each year, your company will be required to submit to the regulatory authorities an annual local content performance report covering all its projects and activities.

The Regulations require the regulatory authorities to establish a Common Qualification System for registration and pre-qualification of local content in the extractive industry. Only companies registered in this system will be allowed to provide services.

Submitting false plans, returns, or reports concerning local content is also a criminal offense. It is an offence for a foreigner to connive with a citizen or an Indigenous Tanzanian company to deceive the regulatory authorities as representing a local company. All these offences attract a fine between TZS 50M to TZS 10B or a term of imprisonment of between 1 year to 5 years or both imprisonment and fine. The above is a non-exhaustive list; you are invited to read the regulations for detailed compliance requirements.

Choice of law in contract

We are a company in Tanzania purchasing 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.

25 February 2019

Such purchase agreements are quite common in international trade. Considering that the manufacturer is based in Europe and you are here, any issues arising from the purchase agreement will likely have to be enforced against the European supplier. European Courts will unlikely adjudicate on a matter with Tanzanian law as the choice of law. Further, assuming Tanzanian law is agreed and Tanzanian Courts decide in your favour, you will still need to execute against the supplier in Europe, which will, depending on the exact European country you are dealing in, mean that you reopen the case in Europe. We 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 will be easier. Your lawyer there can also examine the pros and cons of an arbitration clause.

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, the payment modality be through a letter of credit, purchase adequate insurance, conduct a pre-shipment inspection and get a technical person to look at the machines, ensure you have a warranty or extended warranty, get recommendations of the supplier and do thorough background checks of both the machines and persons you are dealing with.

Tanzanian contract with foreign jurisdictions

I executed a contract to be performed in Tanzania, but the choice of law is English, and English Courts have jurisdiction to resolve the disputes. The other party has breached the agreement, and I don't see the necessity of filing a case with the chosen jurisdiction. Can't I sue locally? Can I be forced to perform a local contract with a foreign clause like this? Is there no law to protect me?

9 July 2018

Courts always endeavour to observe the

exact words of the contract as agreed by the contracting parties. This is because the parties' intentions at the time of contracting must be respected unless the Court has reasons to depart from the parties' intention, 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 English Courts. The best option for you is to request the other party agree to apply Tanzanian law and Tanzanian Courts to have jurisdiction, which we doubt they will agree to. As for being forced to stick to English Courts, please note that this was the clause both of you agreed to when signing 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.

Unfair term in contract

I am facing a significant issue with the construction of my house. I hired a friend as the contractor, and the quality of work is poor, particularly in the foundation and roofing. A recent assessment by another contractor revealed necessary remedial work. My original contractor is invoking a clause in our contract, which I signed without fully understanding, that seemingly exempts him from liability for these deficiencies. My lawyer has indicated limited options due to this clause. What steps can I take to address this situation?

11 November 2019

Indeed, most contract signatories do not properly read contracts before signing them. With that in mind, 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 their agreement. 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 construct your house properly. In contract law, it does not matter if he is your friend.

Also, several interesting foreign case laws interpret such exclusion clauses of liability in your favour by holding that there is a common law implied term into 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. These or two-liners in contracts cost you billions.

Exemption clauses in contracts

Some contracts try and exempt one party of the contract from almost everything. You go to the gym, and it says you are working out at your own risk. If you go to the parking lot, you park at your own risk. Hospitals make you sign forms before going to surgery and even you, lawyers, make us sign documents with no liability on your side. A few days ago, a medicine instruction pamphlet said I use it at my own risk. Now, how would I know if the medicine is safe or not? Condoms also have all these instructions and disclaimers that no one bothers reading, and in any case, imagine reading the condom instruction panel in front of your girl. I find all this very crazy. Why does the law allow such strange clauses to be included? What is the position of the law?

2 March 2020

You have made some valid observations.

These exemption clauses come under greater scrutiny by Courts because they are standardised, in small prints, and quite one-sided. Just because they appear doesn't make them valid. For them to be valid, please note the following;

First, such an exemption clause must have been put forward before or when the contract came into force. Hence, if you checked into a hotel and only saw a notice in the room with an exemption clause, that exemption clause was brought to your attention after entering the contract; hence, it is not valid. Secondly, you must consider whether the clause covers the breach which occurred. Any doubt or ambiguity in interpretation will be interpreted against the person trying to rely on the clause.

Third, if this is a standard contract term, it should have been registered by the Fair Competition Commission, a no-nonsense body in Tanzania. If not registered, it makes it challenging.

Fourth, there is a test of reasonableness that applies. The more unreasonable the exemption clause is, the higher the chances that (notwithstanding your agreement) the Court may reject it. Fifth, some specific statutes disallow such blanket liability clauses in regulated industries. Hence, if there is negligence by a Doctor or a lawyer, then such blanket exemption clauses will not assist them much. Such clauses tend to assist in reducing the liability but not necessarily eliminate it.

As a last word of caution, notwithstanding that you might not want to read the condom exemption clauses because of the 'circumstances,' you cannot blame the other party if you choose not to read at all. Hence, reading and not ignoring the fine print is always advisable.

Forced mediation at Commercial Court

I filed a case against a party at the Commercial Court, and I 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?

9 July 2018

The Commercial Division Procedure Rules provide for a mandatory mediation between the parties. Rule 34 states that (1) The party or his advocate or both, where the parties are represented, shall be notified in the form set out in Form No. 3 in the Schedule and shall attend the mediation session. (2) Where a third party may be liable to satisfy all or part of a judgment in the suit or to indemnify or reimburse a party for money paid in satisfaction of all or part of a judgment in the suit, the third party or his advocate may also attend the mediation session, unless the Court orders 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 for the commencement of the session, the mediator may- (a) dismiss the suit if the non-complying party is a plaintiff, or strike out the defence, if the non-complying party is a defendant; (b) order a party to pay costs; or (c) make any other order that is deemed just.

From the above, you can see that you need not attend mediation yourself but can authorise someone to appear instead of you. Such a person should have the authority to decide. If you cannot give them authority, you must be available on mobile, Skype, or another communication device so that such a person can contact you to get approval

during the mediation session.

Hence, you cannot skip mediation; your case may be dismissed if you do. Please note that no one is playing tricks with you; just as in other jurisdictions, Tanzania has a mandatory mediation system to sort differences out. Your lawyers can guide you further.

Graphic designer violating IP rights

We own several trademarks duly registered in Tanzania and across the region. We have found the name of a particular graphics designer who uses our trademarks for gain. Is this not an offence under the law, and what can I do about it?

30 July 2018

Under the Trade and Services Marks Act, this is an offence, and you can sue the infringer of your trademark. More seriously, such behaviour constitutes a criminal offence under the Cybercrimes Act 2015.

Section 24 of the Cybercrimes Act states the following: (1) A person shall not use a computer system intending 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 5M 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 20M or to imprisonment for a term of not less than five years or both, in addition, be liable to pay compensation to the victim of the crime as the Court may deem just.

You can, therefore, report this to the Cybercrimes unit of the Police forces for their necessary action.

Threat to be sued for guaranteeing loan

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

13 August 2018

The Law of Contract Act of Tanzania has a provision that 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 as to transactions subsequent to the variance. We think the aforesaid provision of the law comes to your rescue on the liability of 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 you, yet you were liable for the entire debt.

The business person cannot take you to task for the changes made to the earlier agreement without your knowledge and consent. In short, he cannot import such subsequent liability upon you. If you are sued, you will have a good defence.

Whether you can 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, etc. If there was foul play in granting the second loan, you might also be able to get out of your first guarantee. Before you get too excited about this proposition, we recommend you contact your lawyer, who

can study the documentation and guide you accordingly.

Contract breach

I entered into a contract with a fellow restaurant owner I bought over not to open a restaurant to compete with me. This was the deal we both agreed on from the beginning. It has been exactly six months, and a new restaurant has mushroomed. The restaurant owner from whom I purchased it 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?

17 September 2018

We have a couple of observations here. It is unclear if your contract disallowed him from opening a restaurant or working in any restaurant. We raise this concern 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 look into this carefully.

We now address whether you can get an injunction against him. We believe it is improbable that you will successfully obtain an injunction or sue the former restaurant owner. This is so because that particular clause of not opening a restaurant will likely be held by a Court to be in restraint of trade and against public policy. What do you expect him to do if he is an entrepreneur or chef? Your attorney 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.

Change from proprietorship to limited company

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

19 November 2018

You cannot stop anyone from suing anyone. It is for the Court to decide whether there is merit in any case. However, under ancient English principles in the case of Solomon v Solomon, an excellent law to date, a limited liability company is a separate legal personality from its shareholders. This means that a company can be sued and sued, and it is not the shareholders who would be considered having sued or having been sued.

The shareholders are not liable for the company's debts even though they own it. This is why limited liability companies are formed. The effect of the Court's unanimous ruling in Solomon v Solomon was to uphold the doctrine of corporate personality firmly, as set out in the Companies Act so that creditors of an insolvent company could not sue the company's shareholders to pay up outstanding debts.

Although you have not told us the cause of action against your company in the lawsuit, the principles above likely hold for you. It is also quite likely that the case against you as a shareholder is unlikely to succeed. Your lawyer can guide you further.

Recognition of electronic signatures

We are entering into a contract in multiple jurisdictions, including Tanzania. Are electronic signatures recognised in Tanzania? If yes, please guide us to the law where this is addressed.

31 August 2020

The Electronic Transactions Act (the Act) addresses and states that (1) where a law requires the signature of a person to be entered, that requirement shall be met by a secure electronic signature made under the Act. (2) The requirement for an electronic signature made under subsection (1) shall be met if (a) the method is used to identify the person and to indicate the intention of that person in relation to information communicated and (b) at the time the method was used, that method was reliable and appropriate for the purposes for which the information was communicated. (3) Parties to a contract may agree to use a particular method of electronic signature as they deem appropriate unless it is otherwise provided by law.

Having said the above, please note that a secure electronic signature shall be deemed to have been applied if it is (a) applied by the holder of the secure electronic signature and (b) affixed by the holder to sign or approve the electronic communication. Hence, the person signing a document must intend to do so, not that her/his e-signature is merely used without their knowledge.

Liability of directors

My lawyer says that I cannot be held responsible for the company's actions if I am a non-executive director. Is that true? What can I do to protect myself?

31 December 2018

It is not true. Directors have a fiduciary duty towards the company and its shareholders. Additionally, it is untrue that the directors can walk away scot-free, even in a non-executive position, from the company's conduct.

Furthermore, some legislation (Companies Act, Income Tax Act, VAT Act, Tax Administration Act, National Security Act, and Anti-Money Laundering Act) stipulate that directors can face personal liability and imprisonment for corporate actions or omissions stemming from a failure to exercise reasonable diligence.

We recommend prioritizing directorships in companies with established proper governance and securing director's liability insurance. While this insurance won't protect against criminal liability, it might cover legal expenses.

New manager charged with old manager's wrong

Our former company manager 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 issue, he was in charge, not me. Unfortunately, he was an expat and had left the country. Who should attend this show cause summons?

4 March 2019

You would like to hear that the manager who was here at the time of the offence should appear. Unfortunately, the law under which the title manager is charged states that the summons is made out on the title. It does indeed sound very unfair, but section 66 of the Interpretation of Laws Act clarifies this, stating that any civil or criminal proceedings taken by or against any person by virtue of his office shall not be discontinued or abated 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 for the time being holding that office.

Audit by shareholder of company

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

1 April 2019

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

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

National oil company exclusivity in sales

I intend 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?

22 April 2019

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 as 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 shall apply to EWURA for a licence before exercising its right 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 sell it in the local market. This is a big problem for many private players since the aggregator needs to have the financial muscle to pay for this gas and, at the same time, should be able to pay a reasonable price that must be negotiated. Hence, if you cannot negotiate the price, you might never be able to sell.

This is a serious issue that can affect downstream development. However, we are informed that the issue is being looked at to remove this exclusivity, as it can lead to serious mismanagement and inefficiencies, which we have seen in the past.

Factory owners colluding in price

Certain factories owned by big-shot owners have developed monopolistic behaviour. They have colluded to fix product prices and are creating an artificial shortage. There are all signs of practices that are anti-competitive. Is there a law that can protect consumers in such a scenario?

8 July 2019

The Fair Competition Act (the Act) comes to protect you. The Act established the Fair Competition Commission (FCC), which oversees such activities and protects the interests of consumers. The Act has the Fair Competition Rules under it. Under the said

rules, there are provisions on how complaints are handled. As a consumer, you can complain by submitting information to the FCC in any manner or using a standard form that the FCC Rules provide. After that, the FCC's investigation department will investigate the complaint to determine if those against whom you have complained have a case to answer. The Commission can use its discretion whether to entertain your complaint or not. If not, reasons must be provided. We suggest you take the above route and fight for your rights through the FCC.

Company with no capacity to trade

A company we dealt with has no authority to trade under its memorandum. 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?

7 October 2019

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

Director's liability in Tanzania

I have been approached to act as a director in a Tanzanian company. I want to know what liability I might bear personally and what I can do to limit such liability. Is there an accessible summarized document containing all offenses under which directors can be charged?

18 November 2019

You have not told us what industry you intend to be a director in, as many industries have their own legal regime and statutes in Tanzania. We will thus answer the question generally.

The general approaches to corporate criminal liability are based on vicarious liability or identification approaches. The vicarious liability approach is where the master is held liable for the acts of the servant committed in the course of employment without proof of fault of the employer, i.e., a corporation is held criminally responsible for the acts of its employees, irrespective of his rank. The directing mind has deemed the corporation and is held responsible for the acts or omissions of the employee without physically committing the offence.

In the Identification approach, corporations are held liable only for the faults of the directing mind rather than for the faults of any employee. The directing minds are ones regarded as the corporation. All that needs to be proved is that the directing mind knew, assisted, encouraged, or counselled another person to commit the offence or neglected to prevent the commission. In Tanzania, both the vicarious liability and identification approach apply.

In Tanzania, some statutes provide for a person who commits an offence, whereas other statutes mention body corporates as having committed an offence. For example, the Penal Code, the Economic and Organised Crime Control Act, the Prevention and Combating of Corruption Act, the Wildlife

Conservation Act 2009, the Drug Control and Enforcement Act, the Prevention of Terrorism Act, the Cybercrimes Act, the Anti-Money Laundering Act to mention a few all either refer mainly to a person who commits an offence, although there are a few references to body corporates. However, under section 4 of the Interpretation of Laws Act, a person is defined to include a public body, company, association, or body of persons incorporated or unincorporated, meaning that a body corporate can be charged in almost all statutes in Tanzania. This makes a company's potential criminal liability exposure in Tanzania very wide.

In contrast to the above, the Petroleum Act, Mining Act and Tax Administration Act, amongst others, have a specific provision for offences that a corporate body can commit, some of which are those of strict liability. Reading these statutes, one will also realise that the burden of proof at times is on the accused and the standard of proof when the burden is on the accused is on a balance of probabilities and not beyond a reasonable doubt.

Regarding your question, as a director of a body corporate in Tanzania, any statute, except for those creating the offences of treason, murder, and rape, can be used to charge a body corporate. When a body corporate is charged, a director, a principal officer, or a manager can also be charged as the prosecutor deems fit. You cannot use any documentation, including indemnities, to stop the long arms of the law from reaching you. An indemnity might help you pay your legal and other costs but will not stop the prosecutor from going after you. Being a director in a Tanzanian entity has this serious downside, considering how our laws have been drafted.

Finally, no document lists all the charges a director of a body corporate can face. You must go through all statutes provision by provision and read for yourself. Your lawyers can guide you further, but remember that, as a general rule, the director, on behalf of the corporate body, may be charged wherever a person appears in the statute.

Imprisoning a company

Our company has been charged with a certain offence punishable by imprisonment. How can a company be imprisoned?

20 August 2018

We are unsure what statute you are talking about. Some statutes specifically provide for the directors or senior officers to be imprisoned. The Interpretation of Laws Act has the answer if no such explicit provision exists.

Section 71(3) states that except where otherwise expressly provided, where the penalty prescribed in a written law in respect of an offence does not consist of or include a fine, the Court before which the offence is tried may, in the case of a body corporate, impose a fine – (a) where a term of imprisonment not exceeding six months is prescribed, a fine of TZS 2M; (b) where a term of imprisonment exceeding six months but not exceeding one year is prescribed, a fine of TZS 3M; (c) where a term of imprisonment exceeding one year but not exceeding two years is prescribed, a fine of TZS 5M; (d) where a term of imprisonment exceeding three years is prescribed, a fine of TZS 10M.

Hence, in the absence of anything contrary to the law under which you are charged, the imprisonment of a body corporate is substituted with a fine as indicated above.

Surveillance cameras in internet cafes

I own an internet café and have been informed that I should install surveillance cameras in the café. I do not wish to do so, as the business is tiny, and I can sit at my desk and see everyone. None of the other internet cafes that I have visited have such cameras. Are such cameras compulsory?

13 January 2020

Under the Electronic and Postal Communications (Online Content) Regulations of 2018, surveillance cameras are compulsory in all Internet Cafes. Regulation 9 imposes obligations on internet cafes and states that every internet café or business centre shall have the following obligations: (a) to ensure that all computers used for public internet access at the café are assigned public static IP addresses; (b) establish and publish a safe internet use policy for safe use of the internet with regards to online content and post it on conspicuous place; computer home screen or display the same on visible areas for users to read before using the service; (c) to put in place a mechanism to filter access to prohibited content; (d) to install surveillance camera to record and archive activities inside the café; (e) to keep a proper service user register and ensure every person using internet service is registered upon showing a recognised identity card. Sub-regulation (2) also provides that the images recorded by surveillance cameras and the register of users recorded under Sub-regulation 1 shall be kept for 12 months.

Winding up of company

I am a director in a manufacturing company that has been completely drained with tax assessment from the TRA and pressure from creditors who have suddenly cropped up. Unfortunately, the company did well until the authorities took a rigorous approach. The company has one issue after another and has no hope of recovery, with the directors and owners having no interest in continuing. It is even worth it for us to pack up and go as we have no real assets left, the machinery is already being heavily depreciated, and the property is under a lease. How do we put this company to rest properly?

2 March 2020

It seems like the company is technically insolvent. That being the case, the Companies Act provides for the winding up of the company by the company. Whilst this sounds straightforward, it must be noted that third parties, including contributors, are allowed to be part of these proceedings. Banks and other interested persons may also join the petition for winding up as this is advertised.

The High Court is the Court with competent jurisdiction to entertain such a petition. After hearings, it is likelier than not that, in your case, a liquidator will be appointed with powers to sell moveable and immovable properties, to look at the ranking of creditors and the like. Remember that the liquidator becomes the all-powerful person, although she/he is subject to the control of the Court.

You must note that criminality is not an issue if this is a usual business failure. However, if the directors or management have been involved in internal mischief, they could be held liable and personally responsible, including being criminally prosecuted. Winding up is not a process that will spare any fraud or theft. It puts a company to rest, but one must also come with clean hands.

Price hikes during Coronavirus

There are shops and other business people hiking prices of sanitisers and other disinfectants during the coronavirus crisis. Is this legal and who has authority to stop them?

23 March 2020

This is indeed a cause for concern. The Fair Competition Commission of Tanzania oversees the Fair Competition Act (the Act) and has already started acting on this. Section of the Act states that (I) A person shall not make or give effect to an agreement if the object, effect, or likely effect of the agreement is: (a) price fixing between competitors; (b) a collective boycott by competitors; or (c) collusive bidding or tendering. (2) In this

section, (a) "price fixing between competitors" means to fix, restrict, or control the prices, tariffs, surcharges, or other charges for, or the terms or conditions upon which, a party to an agreement supplies or acquires, or offers to supply or acquire, goods or services, in competition with any other party to the agreement;

The Act further states that (b) "collective boycott by competitors" means (i) to prevent a party to an agreement from supplying goods or services to particular persons or acquiring goods or services from particular persons in competition with any other party to the agreement; (c) "output restrictions between competitors" means to prevent, restrict or control the production by a party to an agreement of goods or services to be supplied in competition with any other party to the agreement;

Under the Act, offences like those above can result in compliance orders being issued and/or hefty penalties imposed up to 10% of the entities' turnover. Such penalties can be imposed for up to 6 years from the commissioning of the offence and experience has shown that the FCC does not shy away from taking stern action.

If you believe there is anyone who is hiking prices and taking advantage of consumers, you can report them to the FCC. However, the FCC will also look at all the circumstances and give the sellers a chance to respond before taking action. There is always the possibility that retailers are buying goods whose prices have already been hiked by the wholesalers or manufacturers; hence, one cannot entirely blame the retailers.

Contract performance during the Coronavirus pandemic

In recent weeks, Tanzania has reported several cases of Coronavirus (COVID-19), and in response, the Government has closed learning institutions and banned some public gatherings, among other measures. In the business world, the Coronavirus pandemic has prompted a hot discussion as to whether a party to a commercial contract can be released from the performance of contractual obligation due to a 'force majeure'. What is force majeure?

6 April 2020

A force majeure (French term that means a superior force) is an unforeseeable and uncontrollable circumstance or event that prevents a person from fulfilling his or her contractual obligation. It is an 'act of God,' which parties to a contract cannot prevent from happening or occasioning losses. The event or condition in question must have been (1) irresistible, (2) unforeseeable, (3) external to the parties and (4) must have made performance an impossibility and not merely more difficult or impracticable. Below are some FAQs about force majeure for your guidance:

What are the different types of force majeure?

Force majeure events may be natural catastrophes such as hurricanes, floods, earthquakes, and volcanic eruptions or political force events such as wars, riots, and terror attacks. Epidemic or pandemic diseases such as Ebola and Coronavirus are acts of state or governmental prohibition. In some instances, the Courts and contracts have recognised a prolonged shortage of energy supplies, strikes, explosions, lockouts, fire, and slowdowns as force majeure events.

Can you show me samples of force majeure or hardship clauses?

Force majeure clauses are common in Goods and Services Contracts (GSCs), Import and Export Agreements (IEAs), Mining Development Agreements (MDAs), Production Sharing Agreements (PSAs), leases, Bilateral Investment Agreements (BITs) amongst others. Two examples of force majeure clauses are below:

"Neither party shall lose any rights

hereunder or be liable to the other Party for damages or losses on account of the failure of performance of the contract by Defaulting Party if failure is occasioned by natural calamities including but not limited to droughts, floods, hurricane, and earthquake."

"In the event, either party is unable to perform its obligations under the terms of this Agreement because of acts of God, strikes, equipment or transmission failure or damage reasonably beyond its control, or other causes reasonably beyond its control, such party shall not be liable for damages to the other for any damages resulting from such failure to perform or otherwise from such causes."

When can one declare a force majeure?

A person can declare force majeure by notice within a reasonable time on the expected consequences of the event. A contract is expected to provide deadlines for making such notices to make the claim effective.

What is the effect of a force majeure event on a contract?

When there is a temporary impossibility in the performance of a contract, the contract will be suspended for the duration of that event. When there is a permanent impossibility to performance, the contract will generally be terminated retrospectively.

What are the pros and cons of declaring a force majeure?

Concerning the advantages of invoking a force majeure clause, it protects the party who fails to perform the contract in due time because of unforeseeable and uncontrollable events. Simply put, it is essential for minimising liability in the circumstances beyond either party's control. The disadvantages of declaring a force majeure may lead to unjust enrichment from the contractual transaction, especially where one party had already performed his or her part of the contract. It may as well be invoked as a liability waiver in case of failure to perform a contract. It may sometimes lead to the termination of a contract when the event has prolonged effects.

Does Tanzanian law recognise force majeure?

The law of contract recognises force majeure. For instance, section 56(2) of the Law of Contract Act provides that 'a contract to do an act which, after the contract is made, becomes impossible, or, because of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.' The parties can also rely on the common law principles applicable in Tanzania to enforce a force majeure clause. However, the contracting parties are urged to include such a clause in the contract itself. Failure to do so may attract equal liability among parties. The force majeure clause may also be implied or read into the contract by the operation of law, or the parties can resort to the doctrine of frustration.

How do you invoke force majeure?

Any party claiming relief from the performance of obligations arising under the contract on account of any event or circumstance of force majeure, such party is normally required to give written notice to the other party of such event or circumstance as soon as reasonably practicable after becoming aware of such event or circumstance. The claiming party is obliged to reasonably mitigate the event and its consequences and prove that no alternative means of performing the contract exists.

When does force majeure not apply?

A force majeure clause may not be applicable in cases where the parties ought to have foreseen the event referred to as a force majeure or where the party could control the event. In circumstances where a force majeure clause may be premature, such as the possibility of a circumstance to change shortly, it would not affect performance. It is crucial to consider the relevance of the claimed force majeure or its effects on the contractual obligations.

What else do I need to know about force majeure clauses?

Force majeure is not automatically invoked. The parties who wish to benefit from such clauses are highly advised to include them in the contract. Further, it may work to excuse one or both parties of all or part of the obligations. However, the wording of the force majeure clause may not always cover everything. Hence, it must be carefully drafted. Not everything may qualify under force majeure and the clause provides the first line of guidance.

Force majeure due to COVID-19

Due to this pandemic, I have been unable to finish a construction project in a timely manner and am under intense pressure. I am told that the force majeure clause will assist me in case of non-performance of a contract. Please guide me.

10 August 2020

A force majeure clause relieves a party from performing its contractual obligations due to an event outside the affected party's reasonable control. Normally, force majeure is a product of contractual negotiations, and parties can negotiate force majeure clauses as appropriate. Hence, force majeure clauses vary from agreement to agreement. Depending on the drafting of the clause, the most common force majeure events include 'acts of God,' 'natural disasters,' 'labour shortages,''government action or interference,' 'national emergencies,' and 'acts of war.'

Whether a force majeure clause applies to circumstances arising from COVID-19, one must examine whether the definition of a force majeure event includes terminology such as 'infectious disease,' 'epidemic,' 'pandemic,' or something similar. It is also possible that COVID-19 could lead to other events usually included in a force majeure definition, such as 'government action,' 'national emergency,' or 'labour shortages.'

You should also consider whether the force majeure clause will be activated if any obligation is affected by a force majeure event or only applies to certain specific obligations. You should also understand how the force majeure clause applies to your obligations and whether the clause applies equally to the other party to the contract.

It should also be noted that force majeure clauses usually require notice to be given by a party affected by the force majeure event to the other party, and the trigger for when this notice is required may be unclear, especially in the current circumstances.

For example, an obligation that could be fulfilled at the onset of the COVID-19 pandemic may now be rendered impossible by restrictions on air travel and large gatherings, among other factors. Activating a force majeure clause is contingent on the contract's terms and the specific obligations impacted. The onus of proof typically rests with the party seeking to rely on this clause.

Some clauses refer to acts preventing a party from performing an obligation. This wording will likely mean an obligation must become impossible rather than more difficult or costly. Other clauses may refer to hinder,

impede, impair, or delay. Nevertheless, Courts will usually require that performance be significantly more onerous, not just more expensive or burdensome to perform or less commercially desirable. If a party's primary obligation is to pay money, it would be unusual for a force majeure provision to waive that obligation. In contrast, the other party is ready to fulfil their respective obligations.

Bearing the above in mind, we recommend you read the force majeure clause in the agreement and get the assistance of your lawyer to see how to apply it.

Records maintenance in money laundering

I own a small bureau de change that does small transactions. Recently, I have been asked to produce some documents from 2014. I never maintained such documents, but the law enforcement officers insist I have no choice but to produce them. Is the limit to retain documents not five years under our laws?

13 April 2020

As a bureau de change dealer, since you deal with cash, you fall under the Anti-Money Laundering Act's definition of a reporting person. The regulations under the Act, particularly Regulation 30, state that such a person must retain records for 10 years.

Regulation 30 is worded as follows: (1) 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. (2) Where any enactment requires a reporting person to release a record referred to in sub-regulation (1) before the period of 10 years lapses, the reporting person shall retain a copy of the record. (3) Where a report has been made to the Financial Intelligence Unit (FIU) under the Act or the reporting person knows or believes that a matter is under investigation, that person shall, without prejudice to sub-regulation (1), retain all relevant records for as long as may be required by the FIU. (4) For the purpose of this regulation, the question of what records may be relevant in the analysis process may be determined per the Guidelines. Most bureaus perhaps don't know this, but the records are to be maintained for 10 years and must be easily retrievable.

Money laundering in Tanzania is not bailable and you should do your best to locate these documents.

Winding up of insolvent company

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

22 June 2020

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

Hence, and as one would expect, a company with more liabilities than assets

cannot be voluntarily wound up by the company members. Such a company can only be wound up by order of the Court.

If you attempt to do so, you may be criminally liable. For further legal assistance, please consult your attorney.

Duties of company secretary

I was recently added as a company secretary in a company owned by my parents. Please highlight the roles, consequences and implications of acting as a company secretary.

6 July 2020

All companies in Tanzania are required to appoint a company secretary. According to section 187 of the Companies Act, No. 12 of 2002 (the Act), a company, whether private or public, must appoint a company secretary during the company's incorporation.

The company secretary is responsible for regulating and efficiently managing the company's legal and statutory requirements. The Act imposes several responsibilities on officers of the company and penalties for non-compliance. It is worth understanding that the Act defines the term "officer" as directors, managers, or secretaries.

As an officer of the company, the fundamental duties of the company secretary include filling annual returns, auditor's reports, information of the registered office, and audited financial statements; ensuring safe custody of the company seal; processing share transfer documentation and recording and maintaining the register of members and minutes book.

Given that a company secretary is an officer of the company, the same as managers or directors, she/he must act honestly, with reasonable care and in good faith, failure of which might result in offences as stipulated under the Act. Several sections in the Act provide for offences that any company officer could commit. A good example can be seen in section 22 of the Act (failure to send copies of the MEMARTS to members), section 115(4) (failure to maintain a register of members), section 55 (failure to file a return of the allotment of shares); section 205 (failure to maintain a register of directors); section 133 (default in holding annual general meeting of the company) to mention a few.

On top of that, a company secretary can also be held responsible for the failure of an entity to pay tax if he has failed to exercise the degree of care, diligence, and skill that would have been exercised to prevent the failure to pay tax. Section 65 of the Tax Administration Act makes it clear that 'where an entity fails to pay tax on time, a manager or a person who was the manager of that entity during the time of occurrence of the default shall be jointly and severally liable with the entity for payment of the tax.'

Furthermore, a company secretary may also be held personally liable if she/he acts beyond her/his authority for any loss suffered by the company or a third party on account of her/his action.

Attachment of audited accounts to annual returns

Is it true that when we file annual returns, the company must also file annual audited accounts? Our company has existed since the late 1970s, and we have never done so. Why would I have to file my annual accounts that then become accessible publicly?

13 May 2020

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 annex to the annual

return a copy, certified both by a Director and by the Secretary of the company to be a true copy, of the accounts laid before the company in a general meeting during the period to which the return relates (including every document required by law to be annexed to the accounts); and a copy, certified as above, of the report of the auditors on, and of the report of the directors accompanying, each such balance sheet.

The law that governs your company dictates what you should file in your annual return. We are informed that most companies in Tanzania have not complied with this requirement of filing accounts. That, however, does not change the position of the law that requires all companies to file such annual accounts.

Creating an artificial shortage of commodities

Is it a crime if local manufacturers or producers of commodities reduce production to create an artificial shortage to raise the price for unfair profit gain?

23 November 2020

Creating an artificial shortage of commodities in the course of production is not a crime but a shortage of commodities in the course of supply, namely hoarding commodities.

It is interesting to note that paragraph 3(1) of the First Schedule to the Economic and Organised Crime Control Act [Cap.200 R.E 2019], which creates the offence of hoarding commodities, expressly excludes manufacturers and producers from the offence of hoarding commodities. Manufacturers and producers are exempted from hoarding by using the phrase "…a person not being a manufacturer or producers," meaning that manufacturers and producers cannot be charged under this section. Only sellers or suppliers can be prosecuted for hoarding commodities by creating an artificial shortage or inflating the price during supply. The law deals only with the shortage of commodities caused by the supply or sale.

The offence of hoarding commodities is too broad in scope. It includes a broad range of unfair trade conducts. Apart from creating an artificial shortage of commodities that are in demand by the public, other conduct that constitutes the offence of hoarding is: (i) possession of commodities that are in demand by the public whose value exceeds TZS 1M in circumstances in which it can be inferred that the commodities were not intended to for sale to the public; (ii) selling or offering for sale commodities at an unlawful or unreasonable price; (iii) aggravating the actual shortage of commodities and adversely affecting the fair distribution of commodities.

For paragraph 3 of the First Schedule to the Economic and Organised Crime Control Act, the seller or supplier of commodities includes his agent or employee. It does not matter that the employee or agent found hoarding commodities for his principal or employer has no written service contract with the employer or principal.

A person accused of hoarding commodities may put up a defence that (i) there is no shortage alleged in the supply of the commodity concerned; (ii) he stocked the commodity for his personal use and not with the intent to create a shortage in the supply or cause an adverse effect in the distribution; (iii) at the time he was found in possession of the stocked commodities, he had already sold them to another person; (iv) he had kept the commodities as a reasonable precaution against imminent future shortage or famine to meet his personal future needs.

The standard of proving the defence

against a charge of hoarding commodities is a balance of probabilities. The accused's version does not need to be true. It suffices if his story creates a possibility.

Hoarding commodities as an economic offence attracts a minimum penalty of 20 years imprisonment. The penalty for hoarding commodities is provided under section 60(2) of the Economic and Organised Crime Control Act.

Legality of hell or high-water clause

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

27 May 2019

A hell or high-water clause in a contract provides that the payments must continue irrespective of any difficulties the paying party may encounter. It is intended to limit the 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," i.e., regardless of difficulty.

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

Consumer Rights, Competition and Legal Recourse

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This chapter delves into the complexities of consumer protection, fair competition, and regulatory frameworks in Tanzania. Through real-world scenarios, it addresses pressing issues such as price-fixing cartels, misleading advertisements, and unethical business practices, grounding each case in statutes like the Fair Competition Act (2003), Electronic Transactions Act (2015), and Tanzania Food, Drugs and Cosmetics Act. From deceptive airline promotions to unsafe food handling, the chapter highlights how Tanzanian law safeguards consumers against exploitation while emphasizing the roles of regulatory bodies like the Fair Competition Commission (FCC) and the Tanzania Communications Regulatory Authority (TCRA).

Readers encounter diverse dilemmas, including insurance disputes over denied claims, fraudulent online transactions, and product liabilit y cases (e.g., malfunctioning vehicle airbags). The text navigates legal nuances, such as the enforceability of electronic contracts, mandatory food safety standards, and penalties for unsolicited marketing. It also tackles unconventional scenarios, like a student blaming a faulty pen for exam failure, underscoring the balance between consumer rights and personal accountability. Practical advice guides readers on reporting violations to authorities like the Tanzania Bureau of Standards (TBS) or Tanzania Insurance Regulatory Authority (TIRA).

By blending legal rigor with relatable examples, this chapter empowers consumers to challenge unfair practices while educating businesses on compliance. It underscores Tanzania’s evolving legal landscape, where digital commerce, public health, and consumer trust intersect. Whether resolving a frustrated travel contract or confronting misleading university job guarantees, the content equips readers with actionable insights to navigate disputes, fostering a culture of accountability and informed decision-making in East Africa’s dynamic market.

Three big players fixing prices

There is a certain manufacturing industry where it is clear that the three big players are fixing prices. How can this be addressed?

29 April 2019

The Fair Competition Act of 2003 provides that a person shall not make or give effect to an agreement if the agreement's object, effect, or likely effect is price fixing between competitors. Price fixing between competitors means to fix, restrict, or control the prices, tariffs, surcharges, or other charges for, or the terms or conditions upon which, a party to an agreement supplies or acquires, or offers to supply or acquire, goods or services, in competition with any other party to the agreement.

Any person who intentionally or negligently acts in contravention of the provisions of this section commits an offence. The Act provides for massive fines for such behaviour.

Misleading adverts by company

A particular mobile company shows some of the most beautiful Tanzanian girls mingling with men. I have tried everything proposed there to look and feel 'cool', but I have not been successful in getting close to any of these girls. Such fantasies of beautiful women who are real and ready to mingle are misleading and I want to sue the mobile operator for this misleading advertisement. Can you help?

8 January 2018

It is unlikely that we can help you as we don't see anything wrong with the adverts. The mobile company is selling its products and not anything else. By seeing the advert, they are not saying that you will suddenly land into a relationship with a beautiful woman by mimicking the actors. It is very unlikely that any Court will entertain your case, but your lawyers can further study this.

WhatsApp marketing messages

I keep on getting WhatsApp messages that invite me to purchase items. Finally, I decided to try one of these online portals, but my goods have not arrived. I don't know where the supplier is, and I have already paid in advance. Is there no law to protect me from this? I am told that our laws don't recognise electronic contracts.

16 December 2019

The Electronic Transactions Act comes to your rescue as electronic contracts are fully recognised.

On unsolicited messages, section 32 states that no person shall send unsolicited commercial communications on goods or services unless there is consent for such communication, the sender's identity is disclosed and there is to be an opt-out to reject further communication.

This law further states that the consent requirement is deemed to have been met where (a) the contact of the addressee and other personal information was collected by the originator of the message in the course of a sale or negotiations for 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. (3) An originator who contravenes this section commits an offence and shall, upon conviction, be liable to a fine of not less than TZS10 M or to imprisonment for a term not less than one year or to both.

Finally, the same law provides that a supplier offering goods or services for sale, hire, or exchange electronically shall provide the following information to consumers (a) full name, legal status and place of business; (b) contact details, including physical address, telephone and e-mail addresses; (c) a full description of the goods or services offered; (d) the price of the goods or services; (e) information on the payment mechanism that complies with other written laws; and (f) any other relevant information. (2) Before a consumer places an order, the supplier shall provide the consumer with an opportunity to (a) review the entire electronic transaction, (b) correct any mistake, and (c) withdraw from the transaction. (3) Where a supplier contravenes this section, the consumer may cancel the transaction within fourteen days of receiving the goods or services.

We suggest you contact a lawyer who can guide you further.

Food confiscated at airport

I arrived at the airport with seven bags of crisps, only for a certain inspector to confiscate the items as the local authorities did not register them. It is this kind of harassment that is making it very stressful to live here. Does the inspector have such powers?

15 January 2018

The Tanzania Food and Drugs Authority (TFDA, nowadays TMDA) is established under the Tanzania Food, Drugs and Cosmetics Act. It requires that every person shall manufacture, import, distribute, sell, or expose for sale pre-packaged food unless the Authority has registered that food or food product. If the crisps were not registered in Tanzania, which seems likely the case, then the inspector had all the rights to confiscate them from you. This would be the case in any other jurisdiction and cannot amount to harassment. Further, ignorance of the law is generally not a good defence. The general presumption is that all citizens should know the law.

Food poisoning from leading restaurant

A restaurant in Dar is notorious for serving food that leads to food poisoning. How can I take it to task?

28 May 2018

You can report this to the Tanzania Food and Drugs Authority (TFDA, nowadays TMDA), who can take legal action against the restaurant owner. If intentional, it may as well be a criminal offence that can lead to imprisonment, a fine, or both.

Additionally, section 46 of the TFDA Act makes it mandatory for a medical practitioner to report such food poisoning. The section specifically states: (1) Where a medical practitioner or any other person becomes aware, or suspects, that a patient under his care is suffering from food poisoning, he shall, without delay, send to the Medical Officer of Health of the area in which the patient ordinarily resides, a report stating – (a) the name, age and sex of the patient, and the address of residence of the patient; and (b) particulars of the food poisoning from which the patient is, or is suspected to be suffering. (2) Upon receipt of the report, the medical officer of health shall immediately take all necessary measures to investigate and prevent or put to stop occurrences of food poisoning within the area under his jurisdiction and report such actions and measures to the Authority in a prescribed manner.

We have realised that many medical practitioners are unaware of the statutory

requirement to report such food poisoning, which is an offence.

Hopeless Internet Service Providers (ISPs)

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

15 March 2019

The Tanzania Communications and Regulatory Authority (TCRA) is the statutory body that oversees ISPs in Tanzania. Apart from the option of terminating the ISP agreement and seeking damages, there are specific Regulations called the Electronic and Postal Communications (quality of service) Regulations 2011, which address the quality of ISP services. Further, these regulations require you to report this to the TCRA for action. You cannot blame TCRA if this has not been reported to them.

Regulation 11 provides that the licensee providing internet services shall be required to meet targets on quality of service parameters as specified in the Fourth Schedule to these Regulations. The Fourth Schedule states that the ratio of successful log-ins to access the Internet when both the access network and the ISP network are available in full working order for dial-up users must be able to connect at least 90% of the time. For leased lines, users must be able to connect at least 99% of the time.

Furthermore, the Fourth Schedule states that the data transmission rate achieved separately for downloading and uploading specified test files between a remote website and a user's computer should be at least 80% of what the service provider advertises.

The scary part for the ISP provider is regulation 15, which states that any person who contravenes any provision of these Regulations commits an offence and shall, on conviction, be liable to a fine not less than TZS 5M or to imprisonment for a period not exceeding three months or to both.

We recommend that you take this up with TCRA, which should be able to assist in fixing the problem via the ISP. You will have noticed that the regulations are very strict and provide for the imprisonment of the ISP, which contravenes the regulations.

Transportation of meat in Tanzania

Is there a law that protects consumers on how the meat we eat is transported around the country? Where I live, I see cows being slaughtered and meat being transported in open trucks with no refrigeration or hygiene standards. The large hotels and households use the same meat. What checks and balances are in place?

30 July 2018

Meat cannot be transported in such trucks. The Tanzania Food, Drugs and Cosmetic Act has a specific section devoted to this. Section 43 (1) states that no meat can be transported in vehicles that are not approved by the Tanzania Food and Drugs Authority (TFDA, nowadays TMDA). You will have to contact the TFDA to determine how strictly this is being followed. Nonetheless, the law makes it mandatory for meat to be properly transported. This law has a fine and custodial option for not properly transporting meat.

Restaurant using too much oil

I frequently visit a restaurant that uses all kinds of fats to improve food taste. Is there

no law that prevents restaurants from acting so unethical? No wonder home food does not taste that good as it is healthier. What can I do to stop this kind of cooking?

20 August 2018

To the best of our knowledge, there is no law we have heard of anywhere that guides chefs on how much fat they can use when cooking. Generally, it is true that the greasier the food, the tastier it is.

Despite having no such law in place, as long as the restaurant does not use expired or banned ingredients, we do not see how you can stop the restaurant from serving such food. Perhaps you should stop going there.

In other countries, it is now mandatory to post on the menu how many calories one eats for a particular portion of food. This has dramatically helped some states to reduce the obesity pandemic, which is currently being witnessed. If you lobby hard enough, this could become a requirement in Tanzania. At the moment, it is not.

Insurance company rejects claim

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

24 September 2018

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 without the insurance policy in your name. Even though initially the insurance company may collect the premium (they love to do that), at the time of the claim, they will repudiate the claim since you do not have an interest in the property, in what the insurers term as insurable interest.

Regarding your question, it seems you have a contract right that may be an insurable interest, even though you do not have rights specifically regarding the property gutted down by the fire. This may sound radical, but you must examine your insurance policy from this new angle.

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

There are few cases allowing an insurable interest based on contract rights without property rights, and your case seems to be one of them. We believe you can pursue this matter successfully against the insurance company, but an expert must study the issue.

Insurance denies claim, says I admitted liability

I met with a car accident whereby I drove past a stop sign, and a car ran into me. It was my fault, as I did not see the stop sign, which was not all that visible. After the accident, I was questioned by the police, and I told them the truth. The insurance company is furious with me as I was supposed to 'deny liability,' but I fail to understand how I could not have told the truth. The loss assessor, who the insurance company appointed, has also been using different pressure tactics, like trying to convince me not to hire a lawyer and initially telling me

I wasn't covered. I have demanded a written response from the insurance company, which is delaying my writing. Please guide me on my legal rights.

31 December 2018

We assume you have comprehensive insurance coverage that should cover such accidents. Insurance companies do write on all their car stickers not to admit liability, but telling the truth to the police is important, and we do not see that as an admission. It does not mean your claim can be thrown out like this, even if it were an admission. You can write to the Tanzania Insurance Regulatory Authority, which has a unit that handles such matters. Alternatively, you can wait for the letter from the insurance company and proceed to sue them.

It would be best if you remember that no matter how sweetly the insurance loss assessors speak to you, they work for the insurance company to reduce the claim to the minimum. These pressure tactics are also quite common, as are statements like the claim not being covered to lower your expectations.

Restaurant offer, food never available

There is a restaurant that offers certain foods at special prices. But whenever you place an order, you are told that the special is out of stock. You then end up eating the more expensive food. Is this allowed in law?

7 January 2019

Under our Fair Competition Act, 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.

Further, 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 a business and the nature of the advertisement.

Whether or not the restaurant breaches this law will depend on the facts. It is surely an offence if it is trying to bait people into coming to the restaurant after seeing such special offers and selling other, more expensive foods. However, if the restaurant owner sells the food on a special offer and provides a reasonable quantity on sale, we do not see this as an offence.

From your facts, the restaurant seems more inclined towards baiting clients, which is an offence. You can report this to the Fair Competition Commission, who may decide to further investigate before making any compliance orders.

Holiday cut short

We were to cross the Rufiji to the other side for a party with a dhow. The dhow that we were to use got towed away by strong abnormal currents the previous night. We missed the party and the tour. Do we have a case to sue the dhow owner?

21 January 2019

It is very unlikely that you can sue and recover anything. In law, your contract was frustrated. A frustrated contract is a contract that, after its formation and without fault of either of the parties, is incapable of being performed due to an unforeseen event (or

events), resulting in the obligations under the contract being radically different from those contemplated by the parties to the contract.

The legal consequence of a frustrated contract is automatic termination at the point of frustration. The contract was valid during its formation (not void ab intio), but only that future obligations are discharged.

Delays can lead to a contract's discharge when the contract's commercial purpose is frustrated. Further, commercial parties will not be expected to wait until the end of a long delay to determine whether a contract binds them. A party to a commercial contract is entitled to act on reasonable commercial probabilities. It may treat a contract as discharged where an event has caused a delay, even before it frustrates the contract.

The doctrine of frustration is applied within narrow limits. For a party to succeed in claiming frustration, it must show that, in the relevant contract, the parties never agreed to be bound in the fundamentally different situation that had unexpectedly emerged. It is not because the Court thinks in its discretion that it is and reasonable to qualify the terms of the contract. Rather, it is because its true construction does not apply in such a situation.

From what you have stated, we believe your contract was frustrated. Hence, you and the other party are discharged from performing under its terms.

Recalling a product

A particular product has had an international recall except for in Tanzania, where the sole local distributor has not taken any action despite fully knowing of this recall. Is there no law that protects Tanzanian consumers?

8 March 2019

The Fair Competition Act (the Act) provides that (I) notwithstanding the provisions of the 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 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. (2) 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 fifty thousand TZS and not exceeding one million TZS or to imprisonment for a term not exceeding 12 months; or (b) in the case of a person being a body corporate to a fine of not less than one hundred thousand TZS and not exceeding five million TZS.

Your concern can be reported to the Fair Competition Commission, which will take appropriate action.

Toilet paper with one use

I have encountered a brand of toilet paper in Tanzania with a tag 'not to be used anywhere else', meaning you can only use it for its primary purpose in the toilet. This means you cannot use it to wipe your hands, blow your nose, or even wipe something. My further investigation has revealed that the toilet paper manufacturer uses recycled paper with many toxic chemicals, hence this notice. Having travelled widely, I have never encountered a toilet paper brand with such a caveat written in a tiny print. I am concerned about the consequences. Also, it seems that this was approved by the Tanzania Bureau of Standards (TBS). Who should I report this to?

10 December 2018

Whilst we have not come across such a brand of toilet paper, there seems to be a public health issue that could arise. If the manufacturer knows or ought to know that there is a danger to the public by using such chemicals in manufacturing, this becomes a criminal offence. The chemicals could likely also cause health issues in the 'main purpose area' and we do not see why it would be okay to use the toilet paper in the toilet only and not elsewhere.

We recommend you report this to the Tanzania Bureau of Standards and the Government Chief Chemist. They will conduct appropriate tests to determine the suitability of this kind of toilet paper in the market.

Faulty pen made me fail exam

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

10 September 2018

We are quite shocked at how you failed to write the exam. Surely, other students had extra pens, or you could have carried a spare pen. You have an interesting case, but there are many hurdles that you will have to overcome. Also, we believe your case is not strong enough. For example, a pen may not work because of how you store it, carry it, etc. It is not easy to pin the blame on the manufacturer alone.

However, if that particular brand of pens has a history of not writing, you might have a cause of action, but the damages will likely be minimal. With the present facts, we are unsure whether you will succeed in entirely blaming the pen manufacturer for not being able to write the exam and failing. If you sue, it will be the first case we have ever heard of.

Suing hotel with no side rails

I came specifically to Dar from the upcountry to watch a premier league game and stayed in a big hotel. After watching the game, I fell asleep on the bed, only to fall late at night, seriously injuring my left hand and leg. I want to sue the hotel for not providing side rails on the bed for safety. What are my chances of succeeding in the suit, and what should I do?

13 May 2019

We find it hard to understand why you would come from upcountry to Dar and stay in a hotel to watch a premier league football game on TV. You could have easily watched this from upcountry. We find this quite awkward, and if you decide to sue, this could be raised. So, be prepared.

Just as rolling and falling out of bed is relatively uncommon in adults, it is equally uncommon for hotels to have side rails. As such, unless you have special needs, had informed the hotel about this and they failed to act, we believe you have a weak case. Your lawyer can further investigate and guide you appropriately.

Discriminatory business class upgrade

I was flying in an airline where the person next to me and I asked for a free upgrade to business class as it was empty. I was told 'no' to the request, but the person beside me was upgraded. I find this highly discriminatory and intend to sue the airline. It has upset me and I want to show the world that discrimination has no room in our country. Please advise how I can get a business class seat next time.

20 May 2019

The best way to secure a business class seat is to pay for it in advance and then enjoy it. Normally, the price is 3 or 4 times more expensive than an economy class seat, and both the economy and business class passengers arrive simultaneously. The difference is comfort and perhaps the level of service for which you pay extra.

Regarding discrimination, Article 13 of our Constitution comes to your rescue and states that all persons are equal and entitled, without discrimination, to protection and equality before the law. In your case, we are unsure how the upgrade choice was made. Perhaps the person next to you was a frequent flyer or crew member.

You need to elaborate further on the form of discrimination you experienced before we can guide you on your chances of success. It is not an easy case, but we recommend you meet your lawyer and explain this to her/him.

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 empty with everything stolen. My broker says the 14 days have passed and I cannot claim it now. What should I do?

7 August 2019

Your broker should be trying to protect your interests. At the moment, he seems to be acting as an insurer agent. We have not read this weird house owner's policy, but you can challenge it. You might want to read the policy's wording, whether it is 14 days from the date you found out or the date of the burglary. This unfair term can be reported to the Commissioner of Insurance, who has the powers under the Insurance Act to delete or amend obscure or ambiguous terms in a policy. Unfortunately, we do not have your policy to guide you further, but we believe you can pursue this with your broker and insurer.

One-sided insurance policy

My motor vehicle insurance policy states that I cannot make a claim 30 days after an accident. I was overseas and had just returned to the country to find someone knocking on my car when it was parked. My broker says 30 days have passed, and I cannot claim it now. What should I do?

25 November 2015

Your broker should be trying to protect your interests. Currently, he seems to be acting as an insurer's agent. We have not read this policy, but you can challenge it. You might want to read the policy's wording, whether 30 days from the date you found out or the date of the accident. This unfair term can be reported to the Commissioner of Insurance, who has the powers under the Insurance Act to delete or amend obscure or ambiguous terms in a policy.

Unfortunately, we do not have your policy to guide you further, but we believe you can pursue this with your broker and insurer.

Airlines advert big lie

A leading airline flying to Tanzania advertised a certain airfare in a newspaper. I was among the first to call but was told the fare was unavailable. I checked with friends, and even those few who got that rate were asked to pay additional charges, which made the advertised rate a lie. How can Tanzanian authorities allow such a lie to consumers in Tanzania? What should I do?

9 December 2019

One of the most efficient authorities in Tanzania is the Fair Competition Commission, which administers the Fair Competition Act (the Act). The Act has a specific provision that makes this type of bait advertising, where you advertise to get people to call you and you try to sell them the service or product at a higher rate, an offence.

Section 21 states 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 a business and the nature of the advertisement. (2) 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 the business and the nature of the advertisement. (3) In a prosecution of a person in relation to a failure to offer goods or services to a person (in this sub-section referred to as the 'customer') per sub-section (2), it is a defence for that person if he establishes that: (a) he offered to supply or to procure another person to supply goods or services of the kind advertised to the customer within a reasonable time, in a reasonable quantity and at the advertised price; or (b) he offered to supply immediately or to procure another person to supply within a reasonable time, equivalent goods or services to the customer in a reasonable quantity and at the price at which the first-mentioned "goods" or "services" were advertised, and, in either case, where the customer accepted the offer, he has so supplied, or procured another person to supply goods or services.

The Act makes this an offence, and the airline can be fined colossally. We recommend you report this to the FCC, who will take this up and guide you on the next steps, including reporting this to the Tanzania Civil Aviation Authority.

Fake guarantee of jobs by university

I saw an advert from a university that said all their graduates get jobs. The advert said 100% job guaranteed. I studied there, and this is my third year of being jobless. I have paid millions of TZS to this institute and want to sue them for misrepresentation, recover my money, and claim damages. Please guide me.

9 November 2020

We would have liked to look at the advert before answering 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 while there, you cannot blame your university. Unfortunately, knowledge transfer doesn't happen through a transfer cable but through hard work and studying. There have been similar cases in other countries where universities have marketed aggressively 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 thoroughly study this case before you sue.

Mass marketing e-mails

I keep 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, yet I have received 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?

9 November 2020

The Electronic Transactions Act of 2015, which is an important law, specifically addresses this in that (1) a person shall not send unsolicited commercial communication on goods or services unless (a) the consumer consents to the communication; (b) at the beginning of the communication, the communication discloses the identity of the sender and its purpose; and (c) that communication gives an opt-out option to reject further communication. (2) The consent requirement is deemed to have been met where (a) the contact of the addressee and other personal information was collected by the originator of the message in the course of a sale or negotiations for 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. (3) An originator who contravenes this section commits an offence and shall, upon conviction, be liable to a fine of not less than TZS 10Mt 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 have not consented and cannot opt out of receiving them. The same law recognises the formation of contracts electronically and states that (1) for the avoidance of doubt, a contract may be formed electronically unless otherwise agreed by the parties. (2) Where an electronic record is used in forming a contract, that contract shall not be denied validity or enforceability on the ground that an electronic record was used for that purpose.

Insurance against rain

Does the law in Tanzania disallow insurance companies from issuing cover against the 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?

3 February 2020

We have read the Insurance Act and have not seen any such provision. 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. It is not impossible to get cover if the insurer can get adequate reinsurance.

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

Even more fascinating is that some people can 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 the insurance company directly for guidance.

Tipping in Tanzania

Is there a law that makes tipping mandatory in Tanzania? Certain hotels are now adding a 10% tip to the bill. Please guide.

3 February 2020

There is no tipping law in Tanzania. Unless the menu states that the price excludes the service charge, which will be added on as part of the bill, you cannot be forced to tip.

A tip is a gesture of good service, and in most countries, tipping is discretionary but a common practice. We are unaware of this automatic addition to the bill in Tanzania, but customers tip between 5 and 15% for good service. Again, that is for you to decide and not be forced to tip if you do not want to.

Plastic surgery on sensitive parts of body

I went overseas and got enhancement plastic surgery done on a very private and sensitive part of my body. The surgery was unsuccessful, and there was a problem with the placement and symmetry of the parts meant to look good. When I sue the doctor and the hospital, will I have to show the judge these sensitive areas? I am unwilling to do so.

10 February 2020

We are not sure which part of the body you are referring to. But considering the sensitivity and privacy issues you have raised, there is a good chance you will need to get a doctor to examine you and, at the least, produce a medical report to support your claim. Without this evidence, you might not be able to prove your case.

As for whether the Judge might want to look at the sensitive part, we doubt it as she/he is not a medical expert. We don't expect you to have to show any parts in Court to prove your case; an expert report should normally do. Although it depends on the jurisdiction you sue in, there is a chance a witty defence counsel might want to be creative and force you to, but we doubt if this will be allowed. Your lawyer can guide you.

Piercing of lip leads to infection

I went to this clinic, which pierces you anywhere you want. The piercing technician, who claims to have received training in Europe, told me about his machines and talent, including how they tattoo the body. He somehow convinced me to pierce my lip, which I did. He told me that sometimes this could lead to infections, but also added that even the air sometimes causes infections, so there was nothing to worry about. I pierced my mouth, which has now swelled to the size of a golf ball. I cannot eat or talk and am in constant pain. I have had three antibiotics and creams, but nothing seems to work. I have been referred to a specialist and would like to know if I can sue the clinic and technician. My legal consultant says I will be wasting my time since this is part and parcel of getting a piercing done in such weird places. What should I do?

12 November 2018

Your legal consultant is wrong. Merely informing you that the procedure might have some side effects, like infections, does not absolve the clinic and/or technician of liability. It may mitigate the damages you may get in Court as you were notified about this, but it cannot absolve the clinic and/or the technician.

There seems to be gross negligence somewhere along the treatment line. Perhaps the equipment was not properly sterilised or used. A duty of care was indeed breached, resulting in this. We suggest that you send a demand note to the clinic and technician. At the minimum, ask them to foot your medical bills. If you fail to do this, you should consult a lawyer who can guide you on steps to institute legal proceedings.

Insurance companies filing inflated statements

I know a particular insurance company hides losses in its financial statements. How can the Tanzania Revenue Authority let go of such a company? Are insurance companies not regulated in Tanzania? Who can I report this to?

29 June 2020

If the company is hiding losses, it likely inflates its statements, probably not evading but paying taxes, which the TRA would likely be happier with. The company is likely trying to avoid showing its dire financial position to its regulator, the Tanzania Insurance Regulatory Authority (TIRA), who can proceed to sanction such a poorly performing insurer.

Section 157 of the Insurance Act (the Act) makes false reporting a serious offence. It states that (1) a person who shall, in any statement, return, report, certificate, balance sheet, or other document required by or for the Act, wilfully makes a false statement in any material particular commits an offence. Subsection 4 of the same section makes this offence punishable for a minimum term of two years or a fine of TZS 5,000,000 or both.

Should you wish to report the insurer, you must inform TIRA and provide the relevant details.

Airbags fail in accident

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 of the time. We also service our vehicles at the same dealer's workshop to ensure we get the best service. About three months ago, when our car was returning from Dar, it was hit by an accident. The airbags for the driver and passengers beside him did not come out. Luckily, they were both wearing seatbelts and survived the crash. However, the passenger, who is a fellow employee and a key part of our organisation, has lost part of his memory and cannot work. Can we sue the dealer in Dar for the failure of the airbags to come out?

3 December 2018

You have a cause of action based on product liability. When the car was bought, the dealer and the manufacturer assured the airbags would work when required. In your colleague's case, they did not, which means you have a cause of action against the dealer and the manufacturer. There might be all kinds of disclaimers in your car manual, but many 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 the Latin maxim semper necessitas probandi incumbitei qui agit, which translates to "the necessity of proof always lies with the person who lays charges." Hence, you must ensure that you bring enough evidence that convinces the judge that the dealer and manufacturer are liable on a balance of probabilities (not beyond reasonable doubt as in murder cases).

Lastly, you might want to bring in an expert witness in this trial to connect the injury to the non-opening of the bag. You may also want to consider someone to testify that the airbag indeed malfunctioned. If you plan your approach well, you might have a perfect case. Settlement in such cases is in the billions, and it is something your lawyer can guide you through.

Advertising misleading on price

A particular airline that sent out an email advert of tickets at very competitive prices but has never made them available, even if you are the first person to contact them. I believe that they are trying to attract people to call them to sell seats at higher prices, which they are successfully doing. Is there no law that protects passengers who are treated like this? It is unfair for them to be misguiding the public like this. Can the airline also demand payment in advance, or can I ask for credit?

5 October 2020

This is illegal and in contravention of our laws. Under section 22 of the Fair Competition Act, it is stated that (I) 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. (2) 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 a business and the nature of the advertisement. This is reportable to the Fair Competition Commission, which can take appropriate action.

As for credit, no law covers how payment should be made. Most airlines indeed demand upfront payment, which is quite standard in many parts of the world. We do not see this as being a breach of any law. The airline cannot demand that you only pay in USD. A TZS option to pay at an equivalent exchange rate must also be provided.

Bajaj breakdown, refund of fare

I paid a Bajaj driver to take me to the Ubungo bus stand. The Bajaj broke down nearly halfway through, and I had to use another Bajaj to ferry me. The first Bajaj driver refused to refund at least 50% of my fare. Are there any rules I can refer to that can show me my rights in such a scenario?

18 January 2021

Fortunately, under SUMATRA, there are specific regulations called the Transport Licensing (Motorcycles and Tricycles) Regulations 2010, which has a clear provision that states if such a journey as yours is terminated because of a breakdown, then the passenger is entitled to a refund of the remaining part of the journey. Hence, you were entitled to at least 50% of the fare you had paid. If you wish to pursue this, you can report it to SUMATRA for action.

Navigating Corporate Labyrinths – Power, Liability and Compliance

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Will you be prepared in a world where a single signature can spell triumph or ruin?

Step into the intricate world of corporate governance, banking regulations, and financial compliance in Tanzania, where legal boundaries shape the fate of businesses and individuals alike. This chapter unravels the delicate dance between shareholders and directors, the weight of personal guarantees, and the high stakes of anti-money laundering protocols through gripping real-world dilemmas. From heirs battling for inherited shares to bankers grappling with stringent reporting mandates, each scenario illuminates the tension between legal obligation and practical survival in East Africa's evolving market.

Discover how Tanzania's legal framework holds corporations criminally liable, even as "mindless" entities, and why a director's signature might risk more than their reputation. Witness the fallout of forged titles, the perils of unsecured loans, and the bureaucratic maze of registering a company name under BRELA's scrutiny. Through vivid narratives, like a British heir's struggle to claim a family business or a banker's race against mortgage defaults, the chapter bridges statutory rigor with human drama, offering a masterclass in navigating compliance without compromising ambition.

This chapter transforms complex statutes into actionable wisdom. Whether confronting the ghosts of fraudulent transactions or decoding the fine print of shareholder agreements, it equips readers to wield the law as both shield and sword in Tanzania's corporate arena.

Director versus shareholder

I am both a shareholder and director in a company. I fail to understand the difference. Sometimes, we meet as a board, usually every quarter. Sometimes, we meet as shareholders. The problem is that one of us is only a director and not a shareholder. I am ashamed to ask this basic question, especially considering I have been in business for over 35 years. Can you explain the difference?

26 February 2018

Shareholders and directors have two completely different roles in a company. The shareholders (also called members) own the company, and the directors manage it through the management. Unless the articles say so (and most do not), a director does not need to be a shareholder and a shareholder has no right to be a director. These are different roles.

The separation in law between directors and shareholders can confuse private companies. If two or three people set up a company together, they often see themselves as 'partners' in the business. That relationship is often represented in a company by all of them being both directors and shareholders. The problem with this is that company law requires some decisions to be made by the directors in board meetings (what you have had quarterly) and others by the shareholders in general meetings held once every year. To further complicate matters, the directors must make some decisions, but only with the shareholders' consent.

Whether a decision has to be made by the board meeting, the general meeting, or both depends on the provisions of the Companies Act and/or the company's articles of association. For example, the appointment of an auditor can only be made by the shareholders. Some companies have reserved matters on which the directors must consult the shareholders, such as entering into a large investment that will expose the company.

In your case, you are both a director and shareholder, hence sitting at all levels. This director and shareholder confusion has existed for years and is nothing to be embarrassed about. Your lawyer can educate you more on this.

Confused between shareholders and directors

I am a director in a company but not a shareholder. However, my decisions in the quarterly board meeting make me feel like I'm the owner. Also, I would not understand my role if I were not a shareholder. Is there no law that a director must be a shareholder? Please guide.

26 March 2018

We have answered this question before but will answer it again as it arises repeatedly. As a director, you do not own the company but are a mere part of the governance structure to whom the management reports. You are neither a manager of the company nor a shareholder, but rather the structure in between. Hence, you attend Board meetings and not shareholders' meetings.

The shareholders appoint a board of directors like yourselves and represent their interests in board meetings. Unless special provisions exist, you are generally not entitled to dividends or any other shareholder benefits as a director. However, you might be getting allowances to be a director. As a director, you must understand your role and demarcate between your role and the role of your management and shareholders. As a director, you do not run the company but appoint management to take charge of operations.

Hence, a director cannot get directly involved in the company's operational matters.

It would be best if you insisted the company provide a director's liability insurance so that you are covered in case of a decision by directors that causes losses or other damages to anyone. For example, many of our laws state that directors can be charged in Court for the actions or inactions of the Company. In such a circumstance, your legal fees, deposit for bail, and the like must be covered by insurance. Otherwise, a director may not satisfy bail conditions and be remanded to prison. Several times, directors are unaware of the serious responsibilities that come with the role of a director. Hence, insist on proper insurance for your role as a director. Our experience in Tanzania is that most companies and directors do not have or have not heard of director's liability insurance.

Unless your company constitution provides otherwise, no law specifies that a director must be a shareholder. Just because you are making such large decisions doesn't mean you should automatically become a shareholder. Your lawyers can guide you further.

Company refuses to transfer shares of late husband

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

16 July 2018

We have significantly shortened the length of your question, which you sent, as the matter is quite straightforward. All your revolving thoughts, some of which were quite impressive, are unnecessary here.

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

You have not stated grounds on which the other shareholders and directors rely to refuse to transfer shares. We do not see them having any such reservations, especially when you have inherited these shares 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. You may not want to delay this as there have been many instances of remaining shareholders not working in the company's interests in such situations.

Bank 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 July 2018

We are unsure whether the big bank asked you discriminatory questions. However, under the Anti-Money Laundering Regulations of

2012, the banks, as reporting persons, must ask the questions listed below 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, voters' registration card or national identity card or in the absence of such information, a passport, birth certificate or driving license; (d) in case of a resident, a passport, travel document, residence permit or driving license of that person; (e) an introductory letter from relevant authority such as employer or government official; (f) employee identity card with an introductory letter from employer; (g) Tax Identification Number, if such a number has been issued to that person; (h) any or all of telephone numbers, fax number, postal and e-mail address; (i) customer residential address including important landmarks close to the prospective customer's residence; (j) where the customer is a student (k) an introductory letter from the customer's institution signed by the head of the institution or a representative of the head of institution; (l) the student's identity card; (m) nature of business activity; (n) signature and thumb print; (o) utility bills, where applicable. (2) In case a reporting person is aware or ought reasonably to be aware that the person referred to in sub-regulation (1) does not have the legal capacity to establish a business relationship or conclude a single transaction without the assistance of another person, the reporting person shall, in addition to obtaining the particulars referred to in sub-regulation (1), obtain from the person rendering assistance- (a) full names and residential address;(b) date and place of birth;(c) Tax Identification Number, if such a number has been issued to that person; (d) any or all of, telephone number, fax number, postal and 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 thumbprint. (3) Where the reporting person is taking fingerprints under these Regulations, he shall use ink and a pad of such quality to enable the capture of thumbprints. (4) The thumbprints shall be taken in the following sequence- (a) where that person has both hands, the right-hand thumb shall be captured; (b) where that person 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) If that person lacks both hands and feet, then exceptional approval from the management of the reporting person shall be obtained after recording such a situation.

You can see from the above elaborations that the law is stringent regarding what information must be obtained from you, including your email address and fingerprints. We know that other banks do not follow this, but that would mean they are contravening our anti-money laundering laws, a non-bailable offence.

Funds stuck as bank goes into administration

I have my savings in a bank under the Central Bank's administration. A few weeks ago, the bank's manager called me, offering an excellent interest rate and I deposited my savings there. I now require the funds for an urgent medical emergency. Can I have my funds back on humanitarian grounds? What

will now happen? Will borrowers from the bank not have to pay back?

6 August 2018

The Central Bank's administration is a burning issue; we have received over half a dozen similar questions. The Bank of Tanzania (BoT) has indeed taken one top-tier bank into its possession. This is a process where the BoT-appointed statutory manager will look into how he can rescue the bank from failing and ensure that the position of depositors and other stakeholders is not affected.

Section 56(1)(g)(iii) of the Banking and Financial Institutions Act 2006, which is the provision that the BoT has used to take possession, states that the Bank may take possession of any bank or financial institution if the bank or financial institution is conducting its business in violation of any law or regulation, or is engaging in any unsafe or unsound practice that is likely to cause insolvency or substantial dissipation of assets or serious prejudice to the interests of depositors or the Deposit Insurance Fund. Further, the BoT's circular states that the bank shall not be open for business for at least 90 days, meaning that no depositor can access any amounts from the bank for that period. There is no provision for humanitarian grounds for the withdrawal of funds that you deposited. In 90 days, you can do nothing to withdraw funds.

During the 90 days, the statutory manager will investigate the bank's affairs and books of accounts and is entitled to ask for more time. The statutory manager may also recommend that the bank be recapitalised or declared insolvent and permanently shut down, where depositors will likely lose out. It is too early to predict what will happen. It is a waiting game and it is unlikely that you will be able to sue your bank during this period.

The depository scheme on insurance covers depositors. However, the maximum amount you can get if the bank goes under is only TZS 1.5M, which is insignificant. Some people believe they have insurance for 100% of the funds deposited, which is not the case.

As for borrowers, a clause in their loan agreements usually allows the bank to recall the money lent. A borrower cannot walk away Scot-free. Borrowers will also be inconvenienced as loans may be recalled.

Personal guarantee consequences

I gave a personal guarantee to a friend of mine for a loan he took. He has disappeared, his mortgage was fake, and I am now heavily exposed to it. I gave him this guarantee as the bank insisted they would only give him the loan because they got me to sign up for a guarantee. I am neither the borrower nor have I benefitted with even one TZS from the loan. Is my matrimonial property at stake? How do I get out of this? Can I cancel my guarantee now, and how do I go about this?

27 August 2018

A famous banker once told us never to guarantee someone else's loan unless we were ready to pay it on his behalf. Hence, such guarantees should be selectively signed, and you are not signing a mere piece of paper. It may look innocent when presented to you, but your wealth and well-being could be exposed. Banks are not playing theoretical monopoly but are in serious business and will not be your 'friend' when the borrower defaults.

It is not easy to escape the personal guarantee unless you prove some form of fraud or collusion between the bank and the borrower, which might not be easy. You stated that the bank only wanted to give the loan if you signed the guarantee. Perhaps you can

investigate why that was the case further.

Your matrimonial property is unlikely at stake as there is no spouse consent, which is a mandatory requirement, but your lawyer can guide you further. Whilst you might be able to cancel the guarantee, all amounts payable until you cancel will still be your liability.

Purchase of shares or assets

I am negotiating with a party to purchase a certain company that produces a famous product. When negotiating, I am unsure whether it is to my advantage if I buy all company shares or only purchase its assets. Is this the same thing?

27 August 2018

Your decision to buy the company's shares instead of the assets alone or vice versa largely depends on tax considerations. For example, when you purchase shares, the seller must pay capital gains tax, and the stamp duty is also applicable for the share transfer. When you purchase the company's shares, you become the company's member, carrying the burden of the company's assets and liabilities.

The biggest fear for business people is tax consequences. The Tanzania Revenue Authority (TRA) is allowed by law to reopen your books for up to five years and, in some instances, more than five years. This means after you take over the company, the TRA will hold the company liable to pay tax, and you may suffer as a company member. If you want to buy the company's shares, it is advisable to properly look at and re-audit the company's books of accounts to ensure compliance. In the sale of shares agreement, you should also insert a provision in which the seller covenants with the company and you, as an individual member, to indemnify both against tax liabilities incurred in the past years but assessed after the transfer of shares.

The sale of assets allows you to carry on the business under the umbrella of your own company with fewer taxation hassles. This type of transaction does not come with the company's liabilities and is the preferred way of taking over a company's assets in Tanzania. Depending on the type of asset and business you are engaged in, Value Added Tax may apply. And yes, if it is a famous product, don't forget to buy its trademarks. The company's value is often in its trademarks than in its assets. You should consult your auditor and/or tax consultant for further information.

Student bank account overseas

Is a Tanzanian student allowed to open a bank account overseas? What about an ordinary Tanzanian citizen who has no connection to that country? Is foreign exchange still controlled in Tanzania? Is this allowed if someone has a Swiss bank account as a Tanzanian national?

25 February 2019

As in other countries, foreign exchange is still controlled in Tanzania and governed by the Foreign Exchange Act, its regulations, and various other circulars. More particularly, a circular was issued by the Bank of Tanzania in 1998.

A student who is a resident of any other country where he is studying cannot open an account there. It would paralyse the individual if there were such restrictions.

Any other citizen residing in Tanzania cannot open an overseas bank account without the approval of the Bank of Tanzania. This would not apply if that person is a resident (not necessarily a citizen) of any other country.

Generally speaking, remittances from Tanzania are allowed for medical, education, importation, imported services and staff

salary remittances purposes. Otherwise, remittances require the approval of the Governor of the Bank of Tanzania. Hence, any Swiss bank accounts, unless opened with the permission of the Bank of Tanzania, are not allowed.

Increase mortgage amount

I guaranteed a loan amount to a friend by pledging my property. Subsequently, other amounts have been disbursed. Am I responsible for these additional amounts the bank lent to the borrower? I am unwilling to bear responsibility for these as he has defaulted, and the bank is after me. I feel like suing this bank.

22 April 2019

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

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

Under the Mortgage Financing (Special Provisions) Act, where a mortgage provides for the disbursement of a specified principal sum by the mortgagee by way of instalments, whether such disbursements are conditional or unconditional obligations of the mortgagee, the payment of those instalments shall not be taken to be a further advance. Such disbursements shall rank in priority to all subsequent mortgages up to the amount stated in the mortgage.

From the above, your liability is to the maximum of what is stated in the mortgage deed. We suggest you recheck the amounts stated in the deed before taking action.

75% rule for bankers

We are in the banking industry and have auctioned mortgaged houses we have secured for loans. We are made 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 it? With Court injunctions being issued all the time, it is very difficult for a prospective buyer of an auctioned property to buy it at very high prices. This is because there are always issues with getting the title transferred and getting vacant possession. In short, the reality of the market will never meet the 75% rule because of how Courts treat defaulters. We are confused. What should we do?

27 May 2019

The law states that selling any property below 75% of its market price can be void. This will affect both you and the purchaser. You may be sued by the bona fide purchaser, mortgagor, and borrower if you differ from the mortgagor. Whether this applies in practice or not is irrelevant, as the law makes it mandatory 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 and factor in all market conditions in the report before the auction so that you can set the property price with a 75% reserved price. This will minimize the market value arguments that the mortgagor may raise in the future.

The law has not addressed what the banker can do if the closest offer is below the 75%. That would likely entail you commissioning another valuation to match current market realities before any auctions. We have noticed that several bankers are not engaging valuers to prepare fresh valuation reports before

auctions or setting reserve prices. Remember that the borrower and/or mortgagor has statutory rights you must always comply with.

Rejection of proposed name of company

BRELA Registrar has refused to register the company name that I proposed. What is the test for such refusal? What options do I have to challenge this?

12 August 2019

The Companies Act states that no 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 like a name appearing in the index of company names or is otherwise undesirable.

If a similar name exists, the Registrar can stop you from registering your proposed name. Further, if the name you have submitted is undesirable in the opinion of the Registrar, then she/he has the power to decline such registration. Both these tests are tests based on the Registrar's opinion.

Should you be aggrieved, you can proceed against the Registrar of Companies at the High Court and challenge such a decision.

New Anti-Money Laundering regulations

I am informed that new anti-money laundering regulations have introduced very stringent bank reporting guidelines. What are these and how can banks address this situation? Can you also enlighten us on the recent mortgage regulations?

10 June 2019

In May, the Ministry of Finance and Planning published the Anti-Money Laundering (Electronic Funds Transfer and Cash Transactions Reporting) Regulations, 2019 (Regulations) vide GN No 420. The Regulations are made under section 29 of the Anti-Money Laundering Act.

Under Regulation 4, every electronic fund transfer must be accompanied by the information required in the Second Schedule, and every currency transaction shall contain the information needed in the First Schedule. Information that will now be needed includes transaction information, place of transaction, the purpose of the transaction, information on the person conducting the transaction, nationality of such person, date of birth, and occupation, in addition to full particulars and address of the beneficiary person.

Under regulation 5, it is now mandatory for every Reporting Person, which includes banks, law firms, and accountants, among others to report to the Financial Intelligence Unit (FIU) (a) a currency transaction (cash withdrawals or deposits) involving TZS or any foreign currency equivalent to USD 10,000 or more in the course of a single transaction (b) an Electronic Funds Transfer involving TZS or any foreign currency equivalent to USD 1,000 or more in the course of a single transaction.

In addition, every attorney, notary, or independent legal professional is now required to report currency transactions when assisting clients in preparing or executing transactions involving the purchase or sale of property or commercial enterprises, management of funds, opening of bank accounts, buying or selling of business entities, amongst others.

Similar provisions apply to accountants or accounting firms now required to report currency transactions when receiving or paying funds, purchasing or selling securities, real properties or business assets or entities, transferring funds or securities by any means, and managing funds, among others.

For banks, you must now report every electronic funds transfer of more than USD

1000 (equivalent to TZS) to the FIU. You must also report every deposit or withdrawal of USD 10,000 (TZS). With the hundreds of thousands of transactions banks do daily, and considering the low thresholds, you must report all these to the FIU in a prescribed format. We agree it is a huge task and will put you under great compliance and administrative pressure.

However, banks should have engaged and provided input to the Ministry of Finance before these Regulations came into force. The current administration is open to such engagement, but we are unsure if that was done. If this was done, and the Ministry proceeded notwithstanding, and if you feel the threshold is low and impossible to comply with, you may file a judicial review to challenge the Regulations if the Ministry or the Bank of Tanzania cannot intervene. Your lawyers can guide you further.

Regarding mortgage regulations, to ensure proper regulation, monitoring, and supervision of the monies obtained from a mortgage, the Ministry of Lands, Housing and Human Settlements Development has issued detailed procedures for administering and enforcing section 120 of the Land Act Cap. 113 R.E 2002 vide the Land (Procedure for Mortgage of Land) Regulations 2019 (Mortgage Regulations), which came into force on 26 April 2019.

Regulation 4 of the Mortgage Regulations expands on the definition of undeveloped and underdeveloped land from that provided in the Land Act (as amended). It considers land undeveloped if it is vacant, without unexhausted improvement in, on, under, or over such land, or without any change of substantial nature in land use.

However, where land is used for agricultural, pastoral, or mixed agricultural and pastoral purposes, the land is considered to be undeveloped unless such land has not been used for cultivation or pasturage or mixed cultivation and pasturage, as the case may be, at any time for twenty-four months.

On top of that, the land is also considered underdeveloped even if it is fenced, hedged, levelled, ploughed, cleared, a cleared or partially cleared site of some former developments, or inadequately developed contrary to the conditions of Right of Occupancy. Furthermore, the Mortgage Regulations have introduced Form No. 54H, which is prescribed in the schedule specifically to declare that the mortgage money shall be invested in Tanzania.

The Mortgage Regulations submit a valuation report during mortgage registration as a mandatory requirement. The report is to be prepared by a Registered Valuer, approved by the Chief Valuer and submitted within 12 months from the date on which it is prepared.

Apart from the above, the mortgagor must submit a report to the Commissioner within six months after the mortgage registration through Form No. 551. This report shall state how the money secured from the mortgage has been utilised to develop the mortgaged land, in addition to photographs depicting the current status of the development.

The Mortgage Regulations also make it an offence for anyone who knowingly makes a false declaration or submits a report containing false information. The punishment for such an offence is a fine not exceeding TZS 1M or imprisonment for a term not exceeding two years or both.

Banks will now have to focus on complying with both these regulations, as severe penalties and even imprisonment can be imposed for not complying. Whether such regulations that ministers make and not the parliament can impose custodial sentences is questionable and challenging. A judicial review is an available remedy, and the High Court has reviewed several regulations after being challenged by stakeholders.

Corporations committing a crime

A corporation is an artificial entity that does not have a mind, so how can it commit a crime? What offence can a corporation commit, how does it get charged with a criminal offence and how does it plead to the offence? What sanctions can a Court impose on the corporation when found guilty, and who is held liable for its criminal conduct if charged and convicted?

29 July 2019

Although corporations are artificial persons who do not have a mind, they can be held criminally liable. In criminal law, the mind of the corporation's employee is generally considered to be that of the corporation.

A corporation's criminal liability covers many offences that an individual can commit, like bribery, money laundering, manslaughter and all regulatory offences. But it does not extend to offences that are punishable only by imprisonment or whose commission cannot be attributed to the offender's intent to benefit the corporation. Such offences are treason, murder, rape and trafficking in narcotic drugs.

There are two ways of taking a corporate body to Court. One, by filing a charge in Court and asking the Court to issue summons to be served on the director, manager, or any principal officer of the corporation who is concerned with the management of the affairs of the corporation requiring her/him to appear in Court on the date and time appointed in the summons. The summons must briefly state the offence of which the corporation is accused. This method is commonly used for regulatory or compliance offences such as failure to remit employees' pension contributions to a pension fund. The second method to take a corporation to Court is by arresting the director, manager, or principal officer of the corporation concerned with managing the corporation's affairs. This method is used when the corporation dishonors the summons to show cause or is accused of a serious crime.

A corporation can appear in Court by an advocate, director, corporation secretary, manager, or any principal officer by whatever designation or title he is called where the corporation's plea is taken through its representative. You must note that charges against a corporation do not abate because the corporation representative in the case is dead, as proceedings may be continued against the person for the time being holding the position. Generally speaking, since a corporation is an artificial person who cannot be incarcerated and cannot abscond, it does not need to be admitted to bail.

The most common form of sanction against a corporation is a fine. Even where the law does not provide the fine, the Court has to impose it, as you cannot imprison a corporation. Section 71(3) of the Interpretation of Laws Act guides the Courts on how to convert the custodial sentence into a fine to punish a corporate offender. Other forms of penalties against corporations are confiscation, restitution and compensation. Most regulatory statutes of Tanzania impose criminal liability on the corporation and the directors, managers, or other officers managing the corporation at the time of the commission of the offence. This means both the corporation and the director could be charged and in case both are convicted, both should be condemned to pay a fine. The fine imposed by the Court is paid by the accounting officer of the corporation and not the representative. When a director or MD pleads guilty for a corporation, he does so for the corporation and not for himself, and that does not normally establish a criminal record for the director, CEO, or employee.

Fake title, unsecured loan

We had a long relationship with a client in our bank to whom we gave a loan before the Registrar of Titles perfected his title deed. The borrower has disappeared, and our lawyers have informed us that they cannot perfect the security since the title is fake. What options do we have?

28 October 2019

It is a banking 101 principle that you should not give out a loan without perfection, even to your top clients. Considering the facts, you are an unsecured creditor. Apart from instituting a criminal complaint, you must sue the individual for recovery and attach his or her assets, if any.

The person likely also used a fake name and you may never find this person. Our experience reveals that such loans are always given in collusion with your officers and you may want to investigate further to conduct an internal investigation. Your chances of recovery look bleak unless you can rely on other securities.

At the least, we would have expected you to have taken the original title to the Registrar of Titles at the Ministry of Lands for verification before disbursing. It seems you did not even do that. Your panelled lawyers can guide you further.

Further lending by bank

If a bank lends money to a company in instalments based on a facility letter for the full amount, is the bank not making loans each time it disburses and should the bank not be getting consent for each disbursement? What happens if my husband has declared to a bank that he is not married?

25 November 2015

It seems you want to avoid paying back a loan. It might not be that easy, as we show below.

If the facility is for the entire loan amount, we do not see the bank needing consent for each disbursement. For example, the entire loan is covered if the mortgage is registered for the full amount. As for the marital status, the law provides that an applicant commits an offence who, by an affidavit or a written and witnessed document, knowingly gives false information to the mortgagee about the existence of a spouse or any other third party and, upon conviction shall be liable to a fine of not less than one half of the value of the loan money or imprisonment for a term of not less than 12 months.

The latest trend in the market is for spouses, most of whom know that their husbands are borrowing, to claim that they did not know of the borrowing and try to invalidate the mortgage. Banks should protect themselves by taking affidavits from such borrowers to limit exposure.

Bank name with word "Central"

I wish to register a bank's name, i.e., Central Bank of Dar es Salaam. This name is being rejected for no known reason. How can you help?

6 January 2020

Section 63 of the Bank of Tanzania Act states that save with the written consent of the Bank of Tanzania, no bank shall be registered hereafter under the provisions of any law by a name that includes any of the words "Central," "State," "Government" and" Reserve."

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

Loan repayment failure, imprisonment threat

If I have borrowed money from a bank and cannot pay for genuine reasons, can I be sentenced to prison if found guilty? The bank knows that I lost the money due to fraud and am not party to it, but the bank lawyer is threatening me with imprisonment of up to 10 years, as I own no other asset. Please guide me, as it is stressing me out.

16 March 2020

The bank lawyer is correct that if you lose the case against the bank, you could face civil imprisonment of up to six months, not 10 years. Notwithstanding, this is not a criminal offence; a civil prisoner arrest is provided for under our laws. When you are in prison, the person who requested you to be arrested must feed you food you would have normally eaten when you were not in prison. Nevertheless, your subsistence imprisonment costs will add up to the debt.

Forceful transfer of shares

I am British, and my father used to own a company in Tanzania that engaged in hunting activities and had several hunting blocks. He is very old and has signed all documentation to leave the company to me. I know he has Tanzanian partners in the company, although he was the majority owner. I do not trust these people, and I am sure they are not honest with my father since he was in the UK most of the time. I want to remove them and own the company fully by myself. Is it possible? Where do I start?

17 August 2020

It is strange to hear that you do not trust people who have worked or been business partners with your father for years. However, this is irrelevant for now.

When you register a company in Tanzania, which is limited by shares, the owners become shareholders as they own the shares. Shares can be transferred from one person to another based on certain legal procedures imposed by the law and the constitutional documents of the said company. Therefore, your father must own several shares (majority shares, as you mentioned), and the other partners (shareholders) must own a certain number of shares.

Unfortunately, and rightly so, you cannot just remove someone from the company while that person owns shares. He has to willingly and, per the company's constitutional documents, transfer the shares to you or another person should he wish to do so. This is not a photocopying exercise; the person must agree to make such a transfer.

Moreover, under the Companies Act of Tanzania, the company limited by shares can have a minimum of two shareholders. Hence, even if the other shareholders agree to transfer the shares, you will still need another shareholder in the company, as the law does not allow you to be the only shareholder.

In addition, apart from the above, the Wildlife laws in Tanzania require a foreign company engaged in hunting to have a minimum of 10% shareholding owned by a Tanzanian citizen. Therefore, for a company to be eligible to be granted hunting block rights, it must adhere to such law requirements.

This means that even if you are to part ways with the current Tanzanian shareholders in the company, you will still require a Tanzanian shareholder or shareholders in the company who should own a minimum of 10% of the total shareholding of the company for you to be in compliance with the wildlife laws and be able to continue doing wildlife activities including hunting in the said hunting blocks.

We advise you to consult your lawyer for further guidance as you seem to oversimplify the problem and may lose the block if you do not comply.

Bank verification on source of funds

I am a Tanzanian woman living in Dodoma. I recently went to my bank to withdraw a TZS 50M to buy land from 3 owners who preferred cash payments as none of them had bank accounts. After submitting my withdrawal request to the bank, I was made to sit in the bank meeting room for more than 1 hour. The bank officers later asked me questions unrelated to my request, such as my birthplace, place of work, TIN, etc. I was irritated by the questions, but the banker said they were following protocol and had a regulatory duty to do so. Is my banker just complicating things, or is this provided for under the law?

7 September 2020

The Anti-Money Laundering Regulations (the Regulations), which came into force in May 2019, make it mandatory for every reporting person (such as your banker) to report to the Financial Intelligence Unit (FIU) a currency transaction involving TZS or any foreign currency equivalent to USD 10,000 or more in the course of a single transaction.

Under these Regulations, every currency transaction that falls under the ambit of the above requirement shall be accompanied by information specified in the Regulations. Information that is required includes transaction information, place of transaction, the purpose of a transaction, information on a person conducting the transaction, nationality of such person, date of birth, occupation, and place of issue of identity, among others.

The Regulations further state that the FIU or regulator may, upon being satisfied that a reporting person has failed to report currency transaction or international electronic funds transfer according to these Regulations, impose administrative sanctions including warning not to repeat, reprimand, directive to take remedial action, suspension of business activity, fine up to TZS 5M, suspension or removal from office of any member of staff who causes or fails to comply.

Therefore, what happened to you appears to be a standard procedure in your bank's processes to satisfy the requirements of the above Regulations. With how money gets transferred these days and to keep everyone safe from illicit money, these Regulations are beneficial, though sometimes cumbersome.

Bank acting tough with me

I have borrowed money from a bank and mortgaged one of my buildings as security. The bank says I must get their permission whenever I want to do anything to the building. When I seek permission, they take forever to reply. The CEO is always travelling, and I am told he is the one who is supposed to sign the so-called consent. This has been hurting my business. With such a track record, when I intended to extend the back part of the building, I wrote to the bank and after waiting for 21 days with no reply, I proceeded to construct the extension. The bank has told me I have breached the mortgage deed and intend to call in the loan. What should I do? At one time, the bank told me not to paint my building a certain colour as it would reduce its value and hence the security would be affected. How can I get out of this mess?

12 November 2018

The mortgage deed likely requires you to seek consent from the bank for any extensions or renovations or otherwise that affect the mortgaged property. However, it is

a standard business term that such requests for consent should not be unreasonably delayed or denied to the applicant; hence, the delay is actionable by you.

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

Choosing the colour of your building is your prerogative and very unlikely your bank cannot dictate that under the mortgage deed.

From our years of banking experience in Tanzania, this is the first time we have heard of a bank acting like this. As for how you should get out of this mess, the most straightforward recommendation is to change banks. There is no shortage of such institutions in the country. If you have good cash flows and security, the banks in the country are looking for customers like you.

Statutory maintenance of records under anti-money laundering law

I am an accountant and assisted a client in transferring property and company shares in 2011. I kept the records for five years before storing them where I could not trace them. Recently, an inquiry arose about the transaction, and I have been asked to present some of the documents. What is the statutory period for me to have retained the documents? I cannot understand why they called upon me to present the documents in their possession. Please guide me.

13 May 2019

As an accountant, you are defined by the Anti-Money Laundering Act as a reporting person. Regulation 30 states that (1) A reporting person shall retain records required by section 16 of the Act for a minimum period of ten 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. (2) Where any enactment requires a reporting person to release a record referred to in sub-regulation (1) before the period of ten years lapses, the reporting person shall retain a copy of the record. (3) Where a report has been made to the FIU pursuant to the provisions of the Act or the reporting person knows or believes that a matter is under investigation, that person shall, without prejudice to sub-regulation (1), retain all relevant records for as long as may be required by the FIU. (4) For the purpose of this regulation, the question of what records may be relevant in the analysis process may be determined per the Guidelines.

You must have retained the records for 10 years based on the above. Your lawyer can guide you further.

Companies Act amendment for NGOs

We are a UK-based entity that generates profits, but all such profits are reinvested into social causes in Central and Southern Tanzania. We have learnt of recent amendments to the Companies Act that makes it mandatory for us to move to the NGOs Act. Otherwise, we will be struck out as a company. How does this work? And what should we be doing?

12 August 2019

The Companies Act (the Act) has indeed been recently amended whereby a company is now defined as a company formed and registered under the Act or an existing company established for investment, trade, or commercial activities and any other activity

as the Minister may prescribe by notice published in the Gazette. The amendment introduces the definition of commercial activities, investment activities, and trade, which you should refer to.

The law now states that if an entity is registered under the Companies Act and was established for investment, trade, or commercial activities, it is a company under the Companies Act (as amended). The amendment further states that companies limited by guarantee that intend to promote commerce, investment, trade, or any other activity as per the minister's order shall be incorporated under the Act, which likely applies to you.

This would mean that those companies limited by guarantee that promote commerce, investment, or trade already formed and registered in Tanzania under the Companies Act can continue to be registered under the Companies Act, provided they have not gotten a certificate of compliance under the NGOs Act.

In your case, you will need to do a self-test. Suppose you are a company registered under the Companies Act and are limited by guarantee, have no share capital, and are a company that promotes commerce, investment, or trade as defined in the Companies Act and do not have a certificate of compliance under the NGOs Act. In that case, you can remain under the Companies Act. Otherwise, you must migrate under the NGOs Act and comply with its provisions.

Suing corporation solely owned by Government

I want to sue a corporation exclusively owned by the Government for a breach of contract. Can you guide me on the procedure?

7 December 2020

Following Section 6 of the Government Proceedings Act [Cap.5 R.E 2019] amendment by Act No.1 of 2020, all suits against corporation soles like Prison Corporation Sole, Police Corporation Sole, SUMA JKT, and the like are now suits against the Government.

Before filing a suit against a corporation, you must issue a notice of intention to sue the corporation and serve a copy to the Attorney General and the Solicitor General. You can file the suit against the corporation sole and join the Attorney General as a necessary party after the expiration of 90 days.

A copy of the plaint should be served on the corporation sole, the Attorney General, and the Solicitor General. If the plaintiff wins the case, he can present the decree to the paymaster general, the Permanent Secretary of the Ministry of Finance, to satisfy the decree.

The decree-holder can no longer attach the corporation's property solely as it used to because once a suit is a government suit, the judgment debtor is the government. Section 16(3) of the Government Proceedings Act bars government properties or bank account attachments.

Forced to disclose age

I am a beautiful woman, and I was approached to become a director in a company, which I accepted and got paid for. When the appointment forms were brought in, the secretary asked me my age, and I inserted an adult. I told the secretary that women never disclose their age to people, which would violate my rights as a woman. The secretary said he would try to convince BRELA, who have come back and refused. What should I do? Can I sue BRELA?

29 June 2020

Whether you are a beautiful woman or

a handsome man, the law requires you to disclose your age upon being appointed as a director. You cannot write "adult" in the appointment form to discharge that requirement. Filling the word "adult" in the space for "age" in the appointment form does not suffice to discharge the requirement of the law. 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 (the Act) states that (1) Any person who is appointed or to his knowledge proposed to be appointed director of a company subject to section 194 at a time before he has attained the age of twenty-one or after he attained any retiring age applicable to him as director either under the Act or under the company's articles shall 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 a director under any appointment which is invalid or has terminated because 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 company director since you cannot fulfil one of the requirements under the Companies Act.

You will likely have to refund the funds paid in advance so that you can 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.

Employment and Immigration Law

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This chapter unravels complex scenarios, from workplace disputes and ethical dilemmas to citizenship reinstatement and pandemic-era labor challenges, offering clear, authoritative guidance grounded in Tanzania's legal framework.

Explore how the law intersects with everyday life: Can an employer mandate HIV testing? What rights do pregnant workers hold? How does retrenchment unfold during a crisis? Drawing from genuine concerns, each question is dissected with references to key statutes like the Employment and Labour Relations Act and Non-Citizens (Employment Regulation) Act, ensuring practical, actionable insights.

From the ethics of microchipping employees to navigating post-divorce immigration status, the chapter balances legal rigor with relatable storytelling. Whether you're an employer safeguarding operations, an employee asserting rights, or a citizen reclaiming identity, this guide illuminates pathways to justice, compliance, and fairness in a rapidly evolving legal landscape.

Checking person's immigration status

There is a person I know who I highly suspect of living illegally in Tanzania. Is there any way I can check his permit status online?

22 January 2018

Section 8 of the Non-Citizens (Employment Regulation) Act of 2014 provides a work permit register to be kept and maintained by the Labour Commissioner where information relating to work permits and certificates of exemptions, including other information, is recorded. This is not an online register but a manual one.

Hence, the work permit register is publicly available and must be mandatorily maintained by the labour commissioner. This law allows you to peruse the register and even make copies after paying a USD 50 fee. We recommend that you contact the office of the labour commissioner and look at this register, where all relevant details will be available.

Remember that he requires both a work permit and a residence permit to live legally in Tanzania, and both must co-exist simultaneously to allow the person to work here legally. Many applicants sometimes overlook or confuse this, lending them great trouble.

Employing children

We are a chain of shops and do not mind employing children during holidays or after school so they get experience and some pocket money. Our HR person says this is illegal as children are not supposed to work in Tanzania. I find it hard to understand why the law is so stiff when other countries allow children to work to save money. Kindly guide.

22 January 2018

According to the Employment and Labour Relations Act, you cannot employ a child below 14. However, a child of fourteen years and above who is on leave, has completed his studies, or is not in school for any justifiable reason may be employed to work in an establishment for not more than six hours per day and not in a job that is hazardous or hard labour.

This law further states that no child still attending school shall be required or permitted to work more than three hours per day in any establishment. A child cannot work overtime or between 8 pm and 6 am (night shifts). In terms of carrying a load, a child between 14 and 16 years is not allowed to carry a load of more than 15 kg, and a child between 16 and 18 cannot carry a load of more than 20 kg.

I want my citizenship back

I married a foreigner, moved to his country and became a citizen there. After ten years of marriage, we divorced, and I have returned to Tanzania and want to become a citizen of Tanzania. Am I allowed to revert to my original citizenship? My consultants say I cannot become a Tanzanian citizen because I dumped my previous citizenship. What should I do?

29 January 2018

Section 13 of the Citizenship Act (the 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 will misguide you.

Misconduct and severance pay

My company has been sued at the Commission for Mediation and Arbitration by one ex-employee who was terminated for stealing certain equipment. After termination, we paid him his terminal benefits except for severance pay. Although he admits to being 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.

19 March 2018

Section 42 of the Employment and Labour Relations Act, No. 6 of 2004 and Rule 26 of the Employment and Labour Relations (Code of Good Practice) Rules, G.N. No. 42 of 2007, recognise severance pay as one of the terminal benefits. Severance pay is defined as an amount equal to 7 days' basic wage for each completed year of continuous service with that employer up to a maximum of ten years.

However, the same law does not obligate an employer to pay severance to an employee terminated for misconduct. Your decision not to pay severance to the said ex-employee cannot be faulted, and his claim shall fail on all fours. We advise you to present your case at the Commission for Mediation and Arbitration in line with the aforesaid provisions of the law.

Loan deduction in terminal benefits

I resigned from my employment a few weeks ago. During my employment, I took out a loan on the condition that I would ensure repayment in three years, but I resigned before the three years. My employer has retained some of my terminal benefits for loan repayment. He insisted and showed me a clause in the loan agreement that "the loan shall fall due upon termination of the contract of employment and the employer is entitled to deduct terminal benefits for realisation of the loan." This is improper as I can still pay the loan for the remaining duration. Is this allowed under our laws?

2 April 2018

Perhaps for clarity purposes, you should understand from the outset that under Section 28 of the Employment and Labour Relations Act, No. 6 of 2004 (ELRA), an employer can deduct employees' remunerations. Although, several conditions need to be fulfilled for such purposes. In your case, the requirement will be satisfied if written consent is obtained. We understand that such consent is required for your case. The fact that you signed a loan agreement with an express term that the loan shall fall due upon termination of the contract of employment and that the employer is entitled to deduct terminal benefits for the realisation of the loan confirms our conclusion.

Many employers dish out loans without such conditions, which unfortunately becomes a sticky point when an employee resigns or is terminated before the loan is repaid. We act for many employers and always recommend that this clause be expressly provided for in the loan agreement.

Employer forcing me to shave moustache

I am a front office manager for a hotel in Dar. A new General Manager has arrived, and his so-called 'cleaning' exercise has ordered me to shave my moustache as he wants clean-shaven people in the hotel. I love my job, but I also love my moustache. Can I be forced like this and can this lead to termination? Please guide me.

30 April 2018

You have raised a very interesting question. We think the new GM wants to change or rather improve what we call a dressing code (or dress code), although your moustache is not a 'dress' as such. A dress code is an accepted way of dressing for a particular occasion or social group. We are unsure whether the GM's directive wants all men working in your hotel to shave their moustaches, whether the requirement is for the front office male staff only, or if it targets you alone.

The manner of dressing in workplaces can vary from uniforms to suits and everything in between. This is mainly due to the now-accepted casual dressing in various industries and businesses, including settings that formerly dictated formal business attire. Business owners want to maintain standards of appearance, and this is where a dress code comes in, and it is not always limited to clothing.

We must state that employers are entitled to set reasonable uniform standards and require employees to comply. Employers can introduce uniforms for various reasons, including work, health and safety, hygiene and style or branding. All these are good reasons for an employer to reasonably and lawfully direct employees concerning what they can wear and how to wear it.

We now come to your question of whether the refusal to shave your moustache can lead to termination. Non-compliance with an employer's reasonable and lawful direction about wearing the uniform or complying with the dress code can result in disciplinary action that could eventually lead to termination of employment if you refuse to trim or shave your moustache. As with all disciplinary proceedings, though, the hotel must consider all of the circumstances, including taking you through a disciplinary hearing before the dismissal.

We have no clue as to what your moustache looks like, its length, whether it is now differently styled, and whether it affects the hotel in a manner to jeopardise its business. Although the Labour Laws in Tanzania do not explicitly stipulate dressing codes, employers can set reasonable and lawful terms and conditions, generally or in individual employees' contracts, including dressing codes, commensurate to their sectoral/industrial requirements or culture.

We cannot comment on the GM's directive without having all the details. Nonetheless, we must mention that we do not see the reason for the sudden change in approach, considering you have always had a moustache. Unless, of course, it has gone through a metamorphosis that you have not disclosed to us. We must also state that a dress code should be non-discriminative and should consider people with disability and medically privileged employees, including religious beliefs.

Regarding medical privilege, we came across an interesting Australian case about dress and uniforms, the case of Virgin Australia International Airlines Pty Ltd (Virgin Australia) v David Taleski. In this case, an employee objected to being required to cut his hair in accordance with the Virgin policy referred to as the "lookbook." Virgin terminated his employment due to his refusal to comply with the policy. After a lengthy process, it was eventually held that because of Mr Taleski's medical condition, requiring him to comply with the "lookbook" was unreasonable. This is so because he had proposed compliance by another method, i.e., wearing a wig.

Work for pregnant woman

I am a technician in a company where I have worked for about four years. Although the foreman knows I am expecting and my due date is in the next two months, he has assigned me tough jobs where I must stand for long hours. I know he is intentionally doing this as my sister had rejected his proposal to marry him. Is there anything I can do to address this?

30 April 2018

We wish to point out that the Employment and Labour Relations provides 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 or her child's health.

The test above is subjective and depends on what exact job is assigned to you. Nonetheless, 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.

To create a good atmosphere at the workplace and prevent abuse of power, 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 working. The same law has given you the option of commencing your maternity leave at any time from four weeks before the expected date. Hence, you may also ask your employer to start maternity leave. Your lawyers can guide you further.

Immigration in Dar

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

7 May 2018

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

Further, you were on a business trip with a tourist visa, meaning that you were not legally doing whatever business you were doing in Tanzania, which is also an offence under our immigration laws. Your lawyers can guide you further.

Leave during World Cup

My team is playing in the World Cup and although I have exhausted my leave for the year, I requested four extra weeks from my employer. After all, this is an event that I will not see again. My employer has refused and my tickets will now be a waste. Can I sue my employer for the unfair treatment I was accorded? Can I complain to the Minister about this? How can I make my bosses' life miserable?

25 June 2018

We read your question several times to ensure we had not missed anything material. And even after reading it over and over again, our answers are not going to please you.

First, we don't understand why this is the last World Cup you will watch. You have not disclosed that to us and you are surely aware

that the World Cup is played every four years. Secondly, if you have exhausted your leave for the year, you cannot forcefully get unpaid leave without your employer's permission, who can deny it. In short, such leaves are discretionary. Third, the World Cup is no good reason for your employer to agree for you to go. Fourth, unless your employer said you can purchase the tickets, suing your employer because your tickets will be a waste is unlikely to succeed.

Writing to the Minister is possible, but there is very little the Minister can do. The Minister doesn't run the business, but your bosses do. They can take you to task if you make your bosses' lives miserable. So, don't make any hasty moves, as the World Cup will soon end, and you will have to continue living with your boss.

Without sounding like social advisors, we recommend that sensibility prevail over short-term irrational exuberances.

No mobile phones at workplace

I work for a pharmaceutical company with clear policies restricting employees from entering the premises with their mobile phones. The same policies are reproduced in employee contracts and repeated during induction sessions. In one incident, an employee took pictures of company machines with captions 'women at work' and uploaded them on Facebook without management's permission. Due to company policies, that employee's contract was terminated. However, the employee has filed a case at the Commission for Mediation and Arbitration. Please let me know whether taking pictures, adding captions and uploading them on Facebook are offences under the Electronic and Postal Communications Act of 2010.

16 July 2018

Your question raises a critical issue concerning understanding cybercrimes in Tanzania, which are new offences. The ever-increasing use of social media has made it necessary for the Government and private sector to control such uses. The aim of controlling social media use is to prevent abuse and protect innocent people from such abuses. For the employer, as it is in your case, the control of social media usage aims at, amongst others, ensuring efficiency at the workplace and protecting the confidentiality of the employer's records and data. This is because some information is not meant for public consumption, and this must be respected.

Generally, it is not an offence under the Electronic and Postal Communications Act of 2010 to take pictures, add a caption and upload them on Facebook. This means that what is prohibited is not pictures per se but rather the type and content of such pictures. The Electronic and Postal Communications Act prohibits the posting on social media of objectionable pictures that are obscene, indecent, false, menacing, or offensive with intent to annoy, abuse, threaten, or harass another person. The same conduct is a criminal offence under the 2015 Cyber Crimes Act.

Whilst the law does not object to taking photos and posting them on social media, prudence should be exercised while taking such photos. If you are not careful, you may be taken to Court for interfering with other people's privacy. It may also be, as is the case here, someone losing their job for violation of the code of conduct at the workplace.

Terminating maid who contracted HIV/AIDS

We are an expatriate family, and very unfortunately, my maid, who has been with us for over ten years, has contracted HIV/AIDS. Like all others, we are uncomfortable keeping her working here. Can we terminate? How can one terminate someone with HIV/AIDS? We are terrified

and have sent her temporarily on paid leave. I must admit that I got our doctor to do the test, stating that it was a malarial test, and we found out her status. Please guide us.
1 October 2018

Generally speaking, a maid who contracts HIV before or subsequent to her employment cannot be terminated fairly on that ground. This is because maids fall under the presumption of an employee as provided under section 61 of the Labour Institutions Act of 2004. Therefore, terminating her because of her HIV-positive status will be contrary to the standards of employment, which require non-discriminatory acts.

Under section 37 of the Employment and Labour Relations Act of 2004, it is unlawful for any employer to terminate an employee for reasons that constitute discrimination. HIV/AIDS has been covered under section 7 of the Act to be one of the grounds that constitute discrimination. Additionally, the Employment and Labour Relations (Code of Good Practice) GN No. 42 under Rule 20(1) states that no employment shall be terminated merely based on HIV/AIDS.

On top of that, The HIV and AIDS (Prevention and Control) Act of 2008 establishes the HIV law and provides a legal basis for protecting the rights of people living with HIV. Section 31 of the Act discourages all forms of discrimination, making it an offence for anyone who does the same.

Having said the above, if the HIV infection limits or renders the maid unable to perform her daily activities, she could be terminated on incapacitation as stipulated under rule 15 of the Employment and Labour Relations (Code of Good Practice).

Suppose there is a likelihood of an attempt to spread the disease to your family members deliberately. In that case, you can terminate the maid on the grounds of misconduct based on section 33(2)(a) of the HIV and AIDS Act, as is also provided under rule 12(3)(c) of the Employment and Labour Relations (Code of Good Practice).

Our law provides legal procedures for terminating the employee, depending on the nature and grounds for such termination. Moreover, each ground attracts some pecuniary procedures to be followed. Thus, each reason must be dealt with based on its merits, and a fair procedure must be applied in each case. Remember, to terminate any employee, you must have valid reasons and follow the procedures properly. Many employers fall foul of the procedures, although they have good reasons.

Also, we must state that your doctor, who did the test without your maid's consent, has broken the law. Section 15(7) provides for this. It states that 'any health practitioner who compels any person to undergo HIV testing or procures HIV testing to another person without the knowledge of that other person commits an offence.' The offence attracts a fine, imprisonment, or both.

Finally, the law deals with expatriate and non-expatriate families along the same lines. There is no difference between a maid employed by you and one employed by a local family.

Using company SIM Card

I work for a mobile operator. Can the operator's management force me to use their SIM card only?
15 October 2018

Since you have not disclosed under what circumstance you are being forced to use the SIM Card, our response will be based on some assumptions.

To begin with, if the terms and conditions of your work agreement make it mandatory for you to use the operator's SIM Card during work hours and for your office obligations, then we find it reasonable and not in conflict with our laws. We have concluded that the requirement to use the employer's SIM Card emanates from the employment policy communicated to you and accepted

when signing the employment contract. We also assume that the requirement to use the SIM Card is uniformly imposed upon all employees indiscriminately.

Suppose the management forces you to use their SIM Card regardless of whether you are at work. In that case, that will amount to privacy breach and personal freedom interference contrary to Articles 15 and 16 of the Constitution of the United Republic of Tanzania. Article 16(1) provides that every person is entitled to respect and protection of his person, the privacy of his own person, his family, and his matrimonial life, and respect and protection of his residence and private communications.

We believe that the requirement to use an employer's SIM Card only should be limited to during work hours. Restrictions beyond working hours contradict the principles and laws relating to individual liberty and freedom, as indicated above.

Police, PCCB getting involved in mortgages

I work for one of the three largest banks in Tanzania. Our core business is lending money to people, which we do effectively. Unfortunately, many borrowers do not have a good payment culture, especially now that they are all being forced to pay taxes and be compliant, which they should have been in the first place. Abnormal profits have vanished and with an increasing number of non-performing loans, we see borrowers and mortgagors creatively trying to put pressure on the bank or on those who buy assets from the bank. Recently, in the case of third-party guarantors, many borrowers or mortgagors are reporting to the police or even the PCCB that the mortgage was not properly registered or there was fraud. All this happens mostly when the borrower defaults on paying and the bank tries to proceed with a sale.

Criminal investigations are sometimes launched even after the sale is concluded. Recently, even though a case was in Court, the police have been calling key staff from the bank with excess pressure being mounted on them to settle the matter by refunding the recovered funds. My question is, can the police start interfering in mortgages when it is clear that the borrower is in default? I find it hard to understand why such organs only look at one side of the coin. I am not sure who is moving them, but the rumor is that they are only helping a few defaulters selectively. What can we do?

20 May 2019

We are unsure what the mortgagor or borrower has reported to the police or the anti-corruption watchdog. They might claim the mortgage was illegally or fraudulently signed or registered, requiring an investigation.

However, suppose pressure is being mounted on the bank or the property purchaser to resolve the matter off Court with threats of criminal prosecution or police custodial inconveniences. In that case, the police, or whoever else it is, is usurping their powers, which becomes a very serious matter of misuse of power and abuse of office.

The banking industry is a key driver of an economy. If bankers are pressured as this and defaulters get away, it will have a negative multiplier effect on the economy and interest rates will go northwards.

Based on the exact circumstances of your case, it is important that your bank formally lodges a complaint with the Inspector General of Police (IGP), who can look into this. The Tanzania Bankers Association should also be doing more than it currently does. Apart from engaging with the IGP, an engagement with the governor of the Bank of Tanzania and the Tanzania National Business Council, should be considered. If you do not act now, this will soon become the norm and an industry-wide problem. We wish you good luck.

Presidential benefits spoiling me

I was a company president and was well taken care of until I had to retire. I was used to having my car door opened, my shopping done, a personal assistant, and a fully furnished home with everything covered. After retirement, I am getting the shock of my life. I have even started doing my laundry. Isn't there an automatic law that former Presidents like myself should be taken care of for life? Please guide me as I feel very depressed and my former employer is least bothered.

27 May 2019

We are not sure if this is a dream or an honest question. We say so because you were a company's President, not a country's President. Your retirement benefits, especially the luxuries you mentioned, are decided by the company post-retirement and not the statutes. Unless the company has promised you these luxuries, you will have to live like an ordinary man again or spend your savings to buy such luxuries.

We hear it is hard to adjust when you have been pampered so much, but if you have the will, there will always be a way.

Insulting and abusive language

My boss uses very abusive language on me. It is his style, and everyone in the office has witnessed this. Is such language, not an offence under any of our laws in Tanzania?

22 October 2018

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

From the above, you will note that such abusive language, leading to a breach of peace, is a criminal offence. The law does not provide for a fine option. Thus, once convicted, no matter his position, he may end up in jail for six months.

Employer wants microchip in me, wife refuses

I work in the computer industry, and our company wants to keep track of all the key programmers because of the sensitive nature of our work. There is this microchip that they want to insert, which requires a minor incision/surgery so that I can be tracked all the time. My salary will double if I agree, but I am unsure whether to proceed. Can I be forced to insert the microchip? My wife is also against this. Please guide.

29 October 2018

We have heard of microchips being inserted in humans for various reasons, safety being one of them, the other being convenience, as you then don't need to remember all your passwords. This may be one of the newer inventions we are about to see.

The choice of whether you want the microchip or not is entirely yours. If you agree, you will need to formally agree with your company on how this microchip can be removed and under what conditions. This exit clause is essential for you.

Whether you can be forced to have a microchip, we opine that you cannot be forced unless there are facts we are unaware of. It will invade your private space. Remember that every inch of what you do, whether you are in the bathroom, spending time with your wife, or otherwise, will be traceable by a third party, and we can see the concern raised by your wife. The doubling salary is at the expense of your privacy, and you have a choice. You also don't want a bigger wallet but an unhappy

wife. Remember, like your microchip, she has an exit clause in your marriage contract. We wish you good luck.

Employees want to form trade union

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

12 November 2018

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

With the above, you can neither stop your employees from forming or joining a trade union nor fire the employee for asking for his rights. If you do so, you will surely end up in the Commission for Mediation and Arbitration and will likely lose the case. Generally speaking, move with caution. In Tanzania, as in other countries, you can only fire an employee if you follow the proper procedures and have grounds for terminating the employment. Your attorney can guide you further.

Shortage of toilets at factory

We work in a large factory with hundreds of employees. Apart from the salary challenges we face with our employer, our factory has only one toilet. We had to queue in line to get into the washroom, which was also deplorable. The boss says there is no room to construct a toilet, so we have no choice. What should we do? We also have no supply of drinking water.

3 December 2018

Under the Occupational Health and Safety Act (OSHA Act), employers must provide sufficient and suitable sanitary conveniences for all employees in factories or workplaces. These facilities must be maintained clean and effective, with adequate lighting. When both sexes are employed, separate accommodations must be provided. The Act also specifies a minimum requirement of one toilet for every 25 male or female employees (or a fraction thereof) up to 100 individuals and an additional urinal for every group of male employees exceeding 40.

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 requires the employer to ensure an adequate supply of clean and safe water to employees.

Buying water at work

Our boss is on a cost-cutting spree. He has stopped all water suppliers from providing water to our offices, and we are now required to buy water. He says that to survive, every penny counts, including not using ACs in cars. Is this entire situation legally sound?

4 February 2019

Under the Occupational Health and Safety Act, the employer must supply drinking water in suitably covered vessels, which shall be renewed daily. This law further states that all practical measures shall be taken to prevent the water and vessels from contamination, and the drinking water supply, whether laid or not, shall, in such case as an inspector may direct, be indicated in Swahili and English. Further, all containers or vessels containing harmful liquids or those used to contain

harmful liquids shall not be used to store drinking water. It is thus clear that it is the employer's responsibility to provide you with drinking water, and you cannot be charged for it.

We have not found any provision on the ACs in the car that disallows your employer, for operational reasons, to do so.

Retrenchment in banking sector in Tanzania

I am employed as a bank teller at a famous bank in Tanzania. It has now come to my knowledge that another bank intends to acquire our bank. Should I be worried about my employment status and position? What are my rights if I am terminated?

11 February 2019

You are right to be anxious and unsure about your employment status, as when two or more organisations come together, operational restructuring is inevitable. Depending on different scenarios, the target company's employees (your bank) may find themselves out of work or placed in a new role.

The law in Tanzania allows an employer to retrench on different grounds, such as financial constraints, restructuring, mergers and acquisitions, and business closing. Rule 23 (2) of the Employment and Labour Relations (Code of Good Practice) Rules (ELRR), 2007 stipulates that as a general rule, the circumstances that might legitimately form the basis of termination are- (a) economic needs that relate to the financial management of the enterprise; (b) technological needs that refer to the introduction of new technology which affects work relationships either by making existing jobs redundant or by requiring employees to adapt to the new technology or consequential restructuring of the workplace; (c) structural needs that arise from restructuring of the business as a result of several business-related causes such as the merger of businesses, a change like the business, more effective ways of working, a transfer of the business or part of the business.

The Employment and Labour Relations Act (ELRA), 2004, sets out the procedure an employer needs to follow to ensure that retrenchment is procedurally fair. Section 38 of the ELRA, read together with rules 23, 24 and 25 of the ELRR, requires an employer to follow the procedure below: give notice of any intention to retrench as soon as it is contemplated; disclose all relevant information on the intended retrenchment for proper consultation; consult before retrenchment or redundancy on reasons, measures, timing and severance pay in respect of the intended retrenchment.

The rationale behind imposing the above obligations is to ensure that all possible alternatives to dismissal are explored and that the employees to be retrenched are treated fairly. We must also state that some employment agreements may provide for other retrenchment scenarios, and an employment lawyer should read your contract in addition to the laws stated above.

Employer forcing me to take HIV test

The company I work for wants to conduct mandatory HIV testing on staff. Can I be forced to take an HIV test?

8 April 2019

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 an inability to comprehend the result may undergo HIV testing after the written consent of a parent or recognized 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.

Strong perfume at workplace

I understand that it is now unlawful to smoke in public, but there is another forgotten ill behaviour of people using strong scent perfumes in public places. For instance, some of my colleagues apply strong perfumes with a choking smell in our workplace. As an administrator, I have been sending these employees home. This is because the perfumes are causing nausea and making other employees sneeze. Some of these employees say my actions contravene labour laws and are discriminatory. Is this correct? Is there a law to prevent such scents in the workplace? If not, can this law be enacted? Please guide.
27 May 2019

Provisions of the Tanzania labour laws mandate the employer to control work relations to harmonize workplace relations. The labour laws do not allow employers to discriminate against employees. Instead, it requires employers to promote equality of opportunity and treatment in employment. Taking affirmative action measures to ensure the interests of employees are harmonized is not discrimination. Imagine how chaotic and unfriendly the workplace would be if every employee started to suffer headaches and nausea only because of a co-worker's perfume. We think the employer can manage the problem like this by counselling the employees on the problems caused to fellow employees.

We are unaware of any further specific law prohibiting perfumes in Tanzania. As for the enactment of the law, we think you can take this up with the responsible minister and/or your member of parliament. If at all viable, a 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.

Overtime pay in banking sector

I was a branch manager with a bank in Tanzania. I was recently fired and wish to claim for all my working hours beyond official hours. Do I have a valid claim?
19 August 2019

The Employment and Labour Relations Act 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 above provisions do not apply 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.

Citizenship rights for cats and dogs

There are discussions in various countries about giving pets like cats and dogs citizenship and other rights, especially considering that they have lived with humans for thousands of years. It is only fair that they are granted the same status as we do. What is the position in Tanzania?
28 October 2019

We read your question with great interest. We are unsure how cats and dogs would be granted citizenship. Unless you can communicate with them to explain their potential citizenship and other rights, we are unsure how citizenship in its real sense would be beneficial to pets.

Whilst there are a few laws in Tanzania to protect animals, we are unaware of any efforts to consider such citizenships for pets. There are many more pressing issues for the

present administration to focus on, and this is certainly not a priority area.

Having said the above, in our online research, we came across suggestions for enacting specific laws to forbid animal abuse and regulate industrial slaughterhouses, including animal mistreatment. In some European countries, Spain is one of them, where cats and dogs in a particular town have been granted similar rights to citizens where all residents born are equal and have the same right to exist. One of the relevant articles to protect the cats and dogs reads, ' No non-human resident should be exploited for the pleasure or recreation of man, and the abandonment of a non-human resident is a cruel and degrading act.'

Termination of employee during probation

I was on a 6-month probation period when my employer brought another lady to compete with me in the same position. I ultimately resigned because of the pressure and wanted to sue for unfair termination. I am told there are conflicting authorities to this effect. Please guide me on what my chances of success are.

25 November 2019

The Court of Appeal has made decisions that work against you. In the case of Stella Temu vs Tanzania Revenue Authority (2005) TLR 178, the Court held that while under probation, the Appellant was under a 'practical interview.' Moreover, the Court also concluded that since the Appellant was a probationer, she was not covered under the unfair termination provisions. Section 35 of the Employment and Labour Relations Act does not apply to employees with less than 6 months of employment with the same employer, whether under one or more contracts. Hence, constructive termination does not apply to employees on probation.

Further, in a recent 2019 decision, the Court believed that since the Appellant resigned before receiving the confirmation letter, the Appellant was still under probation. On top of that, it was stated that being on probation after the expiry of the probation period does not amount to confirmation and that confirmation is not automatic upon the expiry of the probation period. The Court also stated that confirmation of an employee on probation is subject to fulfilment of established conditions. The expiration of a set probation period does not automatically lead to a status change from a probationer to a confirmed employee.

We recommend you see a labour law expert who can guide you further.

Fate of employment due to Coronavirus pandemic

We are a legal aid provider based in Arusha. Over the past 3 weeks, we have received dozens of questions from employers and employees on the fate of employment due to the Coronavirus pandemic. Do Tanzanian labour laws expressly address the employer-employee relationship during pandemics like the Coronavirus?

30 March 2020

No specific labour laws or provisions that address the pandemics like Coronavirus, but there are provisions in the Employment and Labour Relations Act and the Employment and Labour Relations (Code of Good Practice) Rules, 2007 (Rules) that may be invoked to address common employment and labour related issues that commonly arise during the state of emergencies like the Coronavirus emergency. Below are some FAQs to further guide you:

What is unpaid leave? Who initiates it? Do the labour laws of Tanzania address it?

Unpaid leave means leave taken by the employee without being paid wages when the employee is on leave. There are no express

provisions in the ELRA, and its regulations are made under it that address unpaid leave. The law expressly addresses sick, annual, paternity, and maternity leave.

Since unpaid leave is an essential term of the employment contract, which is remuneration, it is normally initiated by the employee, but the employer should obtain the employee's consent. The employer may also initiate it as an alternative to retrenchment where there are compelling forces for retrenchment.

In a pandemic like now, when some businesses have shut down, whilst some are running under capacity and others are making losses for lack of customers, can the employer reduce the salaries or force employees to take leave without pay or terminate or retrench them?

Section 15(4) of the ELRA prohibits unilateral change of terms of employment, including the reduction of wages without consultation with the employees or their trade union. So even during the Coronavirus, if the employer cannot afford to pay salaries or other contractual or statutory allowances because of the loss of business or profit (caused by the Coronavirus pandemic), the employer must consult the employees or their trade union to get their consent to reduce their wages.

However, the employer may decide to terminate the employee if the employer's business is lost due to the coronavirus pandemic and the employee cannot even pay the reduced salary. Loss of employer's business for whatever reason, including the Coronavirus pandemic, amounts to automatic termination of the employment contract in terms of rule 5(1) of the Rules. Automatic termination does not require undergoing retrenchment procedures.

Where the company is running under its capacity and does not make a profit to afford to pay the running costs, including the salaries, the employer may think of retrenchment as a means of reducing the business loss suffered due to the Coronavirus crisis. One of the legally recognised reasons for retrenchment is the economic need of the employer to mitigate the financial difficulties they are facing. The urgency of the Coronavirus pandemic is not an excuse for employers not to follow the procedure for retrenchment.

Suppose the business is only temporarily shut down for lack of customers or to keep the employees safe and the employer cannot pay the remunerations. In that case, the employer may ask the employees to take unpaid leave to avoid retrenchment. Section 38(1)(c)(ii) of the ELRA and rule 23(3)(6) of the Rules require employers to exhaust all available alternatives before they resort to retrenchment caused by economic difficulties or other reasons. Before the employer resorts to retrenchment due to the economic crisis caused by the Coronavirus pandemic, they have to consult their employees and the trade unions to persuade them to take unpaid leave as an alternative way of avoiding retrenchment. Retrenchment should only be resorted to when the employees refuse the employer's proposals to take unpaid leave or reduce salary. Hence, options for reduced salaries or unpaid leaves are open to employers.

Another alternative to retrenchment, as mentioned above, may be a salary reduction. The employer may ask the employees to take a reduced salary when the business is temporarily shut down or is going down due to the coronavirus pandemic.

Suppose the crisis persists for a long time, and the employer totally loses the business due to a lack of customers and becomes unable to pay even the reduced salary. In that case, the employment will automatically end in terms of rule 5(1) of the Rules. The employer may serve the employees with termination notices and pay the terminal benefits.

I have worked for this highly profitable company for over 30 years. Can I force my

employer to keep me employed during the Coronavirus crisis?

Unfortunately, not. If the company cannot afford to keep you at this time, you will either be retrenched, terminated, paid a reduced salary, or forced to take unpaid leave.

Can an employer force an employee s/he suspects to be coronavirus positive to remain at home or self-isolate to avoid infecting other employees?

The employer has to make the workplace safe and force an employee he suspects to be Coronavirus positive to self-isolate, remain at home, or go to the hospital for medical check-ups to avoid infecting other employees.

My children are back home, and I must stay home to look after them. Does the law allow me to get leave during this time?

The answer is no. There is no leave to look after the children. However, an employee may approach the employer and ask for unpaid leave or take their annual leave in advance, both remaining at the employer's discretion at of the employer.

What do you recommend an employer should do?

These are challenging times. Considering that unemployment is high, as a good corporate citizen, we recommend that you allow employees to take their paid leave. If the crisis does not end, consider reduced pay followed by unpaid leave. Termination and/or retrenchment should be considered as a last resort.

Retrenchment during crisis

I worked for an oil and gas company in Dar before moving to head an aviation company department. The health crisis has hit the business hard, and the company intends to retrench me. I want to demand a 12-month salary as compensation. My contract is silent on repatriation, but I want to get paid for a ticket back to my home country. What are my rights? If I cannot leave Tanzania because of the lack of flights, I want to get paid for every month I live there. Please guide me.

27 April 2020

You have confirmed that the company is going through a tough time and wants to retrench for such operational reasons. This is bound to happen in a downturn, and considering there is no certainty on when things will pick up, we have seen a lot of such retrenchment ongoing, especially with the expatriate community.

Unfortunately, this is not a normal termination. The retrenchment is due to operational and financial reasons, which are likely very easy to prove for the company. You are entitled to seven days severance for each year you have worked and any accrued leave. You might also be entitled to a reasonable notice period pay, which we expect to be at least a month or two at the most. It is entirely discretionary if the company wants to pay you extra, such as an ex gratia.

Based on the crisis, the employer decides to release you, and you are not entitled to a 12-month pay. The company has full control over what it should give you as an ex gratia payment.

Regarding repatriation, you have been recruited in Dar; hence, you are not entitled to repatriation. Similarly, since you were recruited in Dar, the company has no obligation to keep you while you wait for international flights to resume. Your claim for monthly payments will also fail. It is unfortunate what has happened, and just like you, the company is severely affected.

Coronavirus and retrenchment procedure

We are a travel agent in Tanzania and are faced with zero business. No one is

travelling because of the Coronavirus, and I cannot afford to retain many people. What is the retrenchment procedure and retrenchment package under Tanzania's labour laws?

11 May 2020

Retrenchment is one of the reasons for termination of employment by the employer. For it to be valid and fair, the reason and the procedure should follow the law. An employer can retrench employees for economic needs such as the need to scale down or close the operation due to business failure caused by whatever reason, including the Coronavirus, technological change that has made the employees redundant, or the need to restructure the business. The unfairness of either the reason or the procedure or both vitiates the validity of the retrenchment. For retrenchment to be fair, the employer has to do the following: (i) issue a notice of intention to retrenchment to the employee or his trade union if the employee is unionised staff and (ii) issue a notice of consultation meetings and hold the consultation meetings with the employee or the trade union for unionised staff.

The notice of consultation meetings which is the key notice must contain (a) a brief reason for the intended retrenchment; (b) any measures taken by the employer to avoid or minimise the intended retrenchment; (c) the selection criteria for the employees to be retrenched the usual selection criteria being first in last out (d) timing of the retrenchment, i.e., why retrenchment is being done now (e) severance pay for the retrenchment and (f) any additional retrenchment package.

Additional retrenchment packages include notice pay, transport to the place of recruitment, any remuneration for work done before the termination, payment of any annual leave due but not taken, and any annual leave pay accrued during any incomplete leave cycle. Notice pay is calculated based on the remuneration paid to the employee monthly, including the allowance.

Suppose the employees to be retrenched are unionised and non-unionised. The employer must conduct two consultation meetings with the trade union for unionised and non-unionised staff. In case of disagreement between employees or the trade union and the employer, either party to the negotiation is free to refer the dispute to the Commission for Mediation and Arbitration (CMA). The dispute can be referred to the High Court, Labour Division, for a decision if mediation fails.

Transport and subsistence allowance after resignation

In January 2019, our Company employed a civil engineer on a two-year renewable contract. He was recruited in Dar es Salaam and posted to Morogoro, where we have a branch. Two weeks ago, he voluntarily resigned, giving a 24-hour notice. According to the employment contract and labour law, he paid the Company a one-month remuneration in lieu of notice. Two weeks after depositing the notice pay to the Company's bank account, he lodged a claim for transport allowance for himself, his family and personal effects from Morogoro to Dar es Salaam. He also claims to be paid subsistence allowance from the date of resignation to when he will be transported to Dar es Salaam or given the transport allowance. Are his claims genuine? What does the law say on these claims?

18 May 2020

Rule 3(1)(a) and (2)(d) of the Employment and Labour Relations (Code of Good Practice) Rules, 2007 (Rules) recognises resignation as one of the forms of termination of employment contracts. However, rule 6(1) of the Rules imposes a condition that an employee serving a fixed-term contract should not resign before the expiry of his fixed

contract term unless he gets the employer to agree to his resignation or he proves that the employer has materially breached the contract to the extent of forcing him to resign.

If an employee resigns without the consent of the management, he is taken to have breached the contract. He cannot be entitled to a repatriation cost or any other terminal dues, including subsistence allowance, pending the repatriation to his place of recruitment. Suppose an employee obtains management's consent to resign before the expiration of his fixed-term contract. In that case, his resignation is treated as a lawful resignation. For that matter, he is entitled to a repatriation or transport cost from a place of termination to a place of recruitment, just like a resignation by an employee with an unspecified term contract.

The employee's right to a repatriation or transport cost from his workstation to the place of recruitment is provided under sections 43 and 44(1)(f) of the Employment and Labour Relations Act, 2004. The employer has three ways of transporting the employee to the place of recruitment. The employer can use the company car to transport the employee, family, and personal effects to the recruitment location. The second method is hiring a car for the employee to repatriate him. The third way is by paying the employee a transport allowance equal to a bus fare up to the bus station nearest the employee's place of recruitment. The bus fare covers the employee, his spouse, and his children. The law is silent on the number of spouses or children covered.

Considering the discussions above, apart from the transport cost, the employer has to pay the employee subsistence allowance between the date of resignation and the date of transporting him to the place of recruitment. The law does not provide a subsistence allowance rate, but we think it should equal the employee's daily basic wage.

Work permit expiry and employment contract

Our Company employed an expatriate on an unspecified term contract. The expatriate has worked for us for five years. The Company does not intend to renew his work permit, which will expire at the end of this May. Will failure to apply for renewal amount to unlawful termination of the contract? In paying him the terminal dues, how will we compute the notice pay, severance pay and subsistence allowance pending the repatriation to his home country?

18 May 2020

Under Section 12(4) of the Non-citizens (Employment Regulation) Act, 2015, the aggregate period an expatriate can work in Tanzania is five years unless the employer for whom the expatriate is working is an investor whose contribution to the economy or well-being of the people is of great value. Unfortunately, the law does not define or provide a method of testing an investor whose contribution is of great value to the economy or the well-being of the people. It is the discretion of the Labour Commissioner to decide.

The employment contract of an expatriate is subject to the renewal of the work permit and residence permit. Suppose the two permits cannot be renewed or the application for renewal is refused because the employee has exhausted the aggregate term within which he can legally stay or work in Tanzania. In that case, the employment contract is taken to have been automatically terminated. Such automatic termination cannot amount to unlawful termination unless the Company for which the expatriate works is an investor whose contribution to the economy or well-being of people is of great value, making the renewal of the work permit possible beyond five years.

Section 41(5) of the 2004 Employment and

Labour Relations Act requires the calculation of notice pay based on the employee's gross remuneration. Section 4 of the same Act defines remuneration as the total value of all payments in money or kind that would have been due to the employee had he worked during the notice period. Employers' common mistake is calculating the notice pay based on the basic salary, excluding the monthly allowance payable to the employee.

While the computation of notice pay is based on the employee's gross income, including allowances like rent allowance, the calculation of severance pay is based on the basic wage, which does not include allowances. Section 4 of the Employment and Labour Relations Act defines basic salary, excluding monthly allowances payable to the employee. Save for notice pay, the computation of other terminal dues is based on the basic wage unless the employment contract with the expatriate provides to the contrary.

Compulsory HIV testing

I am an accountant intending to work for a company in Dar. The company insists that it is their policy that I get an HIV/AIDS test done. Can I be forced to do so? How secretive are the results?

13 July 2020

The HIV and AIDS (Prevention and Control) Act 2008 answers all your questions in sections 15 and 16 and states that 15(1) Every person residing in Tanzania may, on his own motion, volunteer to undergo HIV testing. (2) A child or a person with an inability to comprehend the result may undergo HIV testing after the 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. (5) Every pregnant woman and the man responsible for the pregnancy or spouse and every person attending a health care facility shall be counselled and offered voluntary HIV testing. (6) All health practitioners, traditional and alternative health practitioners, traditional birth attendants, and any other person attending patients shall be encouraged to undergo HIV testing. (7) Any health practitioner who compels any person to undergo HIV testing or procures HIV testing for another person without the knowledge of that other person commits an offence. (8) Without prejudice to the preceding subsections, a medical practitioner responsible for the treatment of a person may undertake an HIV test in respect of that person without the consent of the person if (a) the person is unconscious and unable to give consent; and (b) the medical practitioner reasonably believes that such a test is clinically necessary or desirable in the interest of that person.

Section 16 further states that (1) the results of an HIV test shall be confidential and released only to the person tested. (2) Notwithstanding subsection (1), the results of an HIV test may be released to (a) in case of a child, his parent, or recognised guardian; (b) in case of a person with an inability to comprehend the results, his spouse or his recognised guardian; (c) a spouse or a sexual partner of an HIV tested person; or (d) the Court, if applicable.

Cough from mining work

My brother has worked in the mining sector as an underground miner for more than 11 years. A coal mining company employed him for the first 6 years before he joined a gold mining company. Early this year, he started experiencing severe cough and tightness in the chest and could not go to work. After several tests, the doctors concluded that he had contracted pneumoconiosis due to

inhalation of dust. He wrote to his employer claiming compensation. To our surprise, the employer denied liability, alleging that my brother was more likely to have contracted the disease during his previous employment. My brother is now helpless as his health condition has deteriorated. Doesn't he have any redress? If there is any, what should we do to assist?

20 July 2020

We sympathise with your brother and your family. It is important to note that in Tanzania, the Workers Compensation Act No. 20 of 2008 (the Act) was enacted to provide employees injured or contracted diseases with insurance coverage that will compensate them for lost wages and medical care.

Eligibility for compensation hinges on meeting the Act's definition of an employee. This definition encompasses any person, including an apprentice, but explicitly excludes independent contractors working for another person or the state who receive or are entitled to receive remuneration. The legislation further clarifies that certain individuals, such as trainees who assist in the employer's business operations, are not within the scope of the workers' compensation fund.

Furthermore, the law stipulates that where the disease is due to employment, the employee or his dependents, as the case may be, shall be entitled to claim compensation. However, it is worth noting that the right to be compensated does not come naturally but upon meeting certain requirements. Among the requirements are that the diseases shall be covered under the law and related to the occupation of a person who a qualified medical practitioner has approved. Also, to support the claim, section 63 of the Act makes it mandatory for the medical practitioner to furnish a medical report to the employer concerned in a prescribed manner.

We, therefore, advise your brother to follow the procedures for claiming compensation as stipulated under the Act and to submit all necessary documents to support his claim.

Terminating employee charged in Court

A human resource manager of our company was arrested by the Prevention and Combating of Corruption Bureau (PCCB) and charged in Court with a corrupt employment transaction. He allegedly asked for a bribe from one of the applicants for a security guard position to assist him in getting a job in our company. Can we proceed to take disciplinary action against this HR Manager for contravening our Company's anti-corruption policy before the conclusion of his criminal trial?

3 August 2020

Section 37(5) of the Employment and Labour Relations Act, 2004 bars employers from terminating, dismissing, or imposing any penalty on the employee for misconduct, which constitutes both a disciplinary offence and a criminal offence if the employee has been charged in Court and his case is pending in a criminal trial. The employer has to wait until such criminal trial is concluded, and if there is an appeal, the employer must wait until the appeal is also disposed of.

Before the conclusion of the criminal trial, your company, as the employer, can interdict the employee until the criminal case is concluded. If there is an appeal, the appeal is also concluded. The employee will not be paid his salary during the interdiction period because he is not working. Suppose he is convicted and his appeal is dismissed. In that case, the Company may terminate him for the offence of corruption without necessarily conducting a disciplinary hearing because he has been heard by the Court and found guilty. If he is acquitted, the Company may conduct a disciplinary inquiry because the standard of proof in criminal trials is higher than required in a disciplinary hearing.

Additional pay for work at night

I am a security guard working for a private security company. Sometimes, I work at night and would like to know if I am entitled to any additional remuneration for work done at night.

14 September 2020

Section 20(4) of the 2004 Employment and Labour Relations Act requires an employer to pay 5% of the employee's basic wage for each hour worked at night. This means that when you work at night, you are paid 5% of your hourly wage in addition to your standard hourly basic wage. If your salary is paid monthly, the First Schedule to Employment and Labour Relations Act provides the formula for converting the monthly wage into an hourly wage. You divide your monthly wage by 433 times the hours ordinarily worked weekly.

The ordinary number of working hours in a day is nine. Hence, if you work at night for more than nine hours, the employer must pay 5% of the hourly gross wage as night allowance for each night hour worked, and in addition, he shall pay overtime allowance for each extra hour worked at night. The rate of overtime allowance might be in the collective bargaining agreement, the government notice or government circular, or the company policy, as the case may be. Extra hours worked at night attract 5% more overtime allowance. You will notice that the extra hours worked at night are more expensive to the employer than those worked during the daytime.

Effect of voluntary mediation and arbitration clause in employment contract

We are a manufacturing company based in Moshi. In 2017, we employed an expatriate in one of our departments. In his employment contract, we inserted a clause that, in case of any dispute, the aggrieved party should give one month's notice of a dispute for the parties to try to resolve the dispute amicably. But if the amicable settlement of disputes fails, each party shall appoint an arbitrator, and the two arbitrators shall appoint an umpire to arbitrate the dispute. We want your opinion on this dispute settlement clause that bars the expatriate from attending the Commission for Mediation and Arbitration (CMA). What can we do if the employee rushes to CMA?

21 September 2020

The establishment of the permanent CMA does not bar the parties from taking their employment disputes to an ad hoc mediation or arbitration if there is a clause in the employment contract allowing such a course to be taken. An ad hoc mediation and arbitration clause in the employment contract ousts the jurisdiction of the CMA to entertain a labour dispute. Suppose the employee disrespects the employment contract's ad hoc mediation and arbitration clause and proceeds to institute her/his complaint to the CMA. In that case, the employer may object to that course of action once the dispute is called before the mediator, claiming that the CMA lacks jurisdiction to entertain the dispute.

Determination of disputes between public servants and employers

I was a public servant in one of the Ministries and was terminated for what my employer termed gross negligence. I have been told that public servants are not allowed to refer their disputes to CMA or labour Courts. What options do I have?

21 September 2020

In 2016, the Parliament, through Act No.16 of 2016, amended the Public Service Act by introducing section 32A, which requires public servants to exhaust the administrative remedies provided under the Public Service

Act before resorting to CMA or Labour Courts. This amendment does not bar public servants from attending CMA or Labour Courts. It only requires you to exhaust the remedies available under the Public Service Act before resorting to the CMA or Labour Courts.

Hence, the public servant has to first appeal to the Public Service Commission against the decision of her/his employer and from there, she/he can appeal to the President. After exhausting all those remedies, you can invoke the procedure under the Employment and Labour Relations Act and go to the CMA.

Severance pay to a retired servant

I am an expatriate working for one of the companies in Dar es Salaam. My two-year contract will expire in January 2021. I would like to know how to calculate my severance pay.

28 September 2020

It is unfortunate that section 42(3)(c) of the Employment and Labour Relations Act [Cap.366 R.E 2019] expressly excludes the employees whose contract of service for a specified period has expired or ended from eligibility to be paid severance allowance. So, under the law, you do not have the right to be paid severance allowance upon the expiration of your specified term contract of employment unless you derive that right from your employment contract if there is such a clause of severance pay upon expiry of the contract.

Employer and trade union disagree on retrenchment package

Due to COVID-19, our business has been affected, and our company has been compelled to retrench to reduce the wage bill and mitigate business losses. During consultation meetings between the management and the trade union, the trade union disagreed with the retrenchment package that our Company offered. What can the Company do?

5 October 2020

Consultation with a trade union is not a consent-seeking process. Failure to negotiate with the trade union does not bar an employer from proceeding with retrenchment. However, under section 38(2)(3) of the 2004 Employment and Labour Relations Act and rule 23(9) of the Employment and Labour Relations (Code of Good Practice) Rules of 2007, where a trade union or employees refer a complaint against the ongoing retrenchment process to the Commission for Mediation and Arbitration (CMA), the employer is required to stop the implementation of the retrenchment until the expiration of 30 days from the date of referral of the dispute to the CMA. After 30 days, the Employer may proceed with the retrenchment unilaterally, but such unilateral retrenchment may still be challenged on procedure or merits. If the trade union has not referred the dispute to the CMA, your company may proceed with the retrenchment unilaterally.

Non-renewal of work permit

I am a country manager in a foreign company in Tanzania. In January 2016, we signed a ten-year employment contract with three expatriates and obtained two years' work permits for them. Their work permits were subsequently renewed, increasing their validity to five years. The last renewed employment contracts are expiring in December 2020. Is there any statutory limit on renewing work permits? What do we do if the Labour Commissioner refuses our application for further renewal? What will the fate of the ten-year employment contracts with expatriates be if they are denied an extension of their work permits?

12 October 2020

According to section 12(4) of the Non-Citizens (Employment Regulation) Act of 2015, a work permit should be valid for two years. Still, it can be renewed provided the aggregate period of the original grant and renewals does not exceed five years. Only investors whose investments have great value to the economy of Tanzania or the well-being of the Tanzanians can have their expatriates granted work permits or renewals exceeding five years. You can apply for another renewal to extend the validity of the work permits beyond an aggregate of 5 years if you can prove that your company's contribution to the economy and well-being of Tanzanians is of great value. Should the application for the renewal be refused, you have the right to appeal to the Minister for Labour, whose decision will be final.

Employment contracts of expatriates are subject to grant and/or renewal of the work permits and residence permits. Where the residence or/and work permits are refused, the contract is deemed to have been automatically terminated. The employer is not bound to give a notice of termination or pay one month's salary in lieu of notice. All the employer can do is to pay the expatriate his/her other statutory dues like repatriation cost to his country of recruitment, severance pay, leave pay if there is unused leave and payment for any work done before the refusal of the work permit. It is an offence to allow an expatriate to work after the expiry of his/her work permit.

Termination of employee convicted of criminal offence

I am an HR manager at one of the hotel companies in Arusha. Last year, one of our room attendants stole a laptop computer from a guest room. We reported the incident to the Police for investigation, and she was arrested and charged. Last week, she was convicted. Since her arrest, she has been interdicted, though she is under full pay. What is the procedure for terminating her employment? Do we need to conduct a disciplinary inquiry?

12 October 2020

There is no need to conduct a disciplinary hearing. Disciplinary inquiry was meant to afford an employee his/her fundamental right to be heard before the employer condemns him/her for misconduct. Where the employee has been heard by a criminal Court and convicted of a criminal offence that also materially constitutes misconduct, it will be superfluous to conduct a disciplinary hearing unless the offence for which the Court convicted the employee is different from the offence for which the employer intends to terminate her/him.

Where the offence for which the employee was convicted is materially the same as the misconduct for which the employer wants to terminate her/him, the employer shall be entitled to rely on the criminal conviction to terminate the employment. The standard of proof in criminal prosecution is higher than the standard of proof in disciplinary inquiry. So, a conviction on a criminal charge is enough proof of misconduct. You can proceed accordingly.

Procedure for terminating employee under probation

We have an employee under probation, but he persistently comes to the workplace late despite the management's several written and verbal warnings. Do we need to form a disciplinary inquiry committee to investigate his conduct before terminating his employment?

19 October 2020

No such procedure is required. Section 35 of the Employment and Labour Relations Act exempts employers from the requirement to form a disciplinary inquiry committee to probe into the conduct of a probationer before terminating his employment. Although

the section refers to employees with less than six months of employment, the Court of Appeal has interpreted it in Civil Appeal No. 61 of 2016 to cover even employees who have worked for the employer for more than six months but have not been confirmed.

Probation aims to assess if the employee possesses the skills and competency required to perform the job for which they were recruited. It also gives the employees time to decide whether they can enjoy working for the employer. The expiry of a probation period does not automatically confirm the position. Confirmation should be expressed, and the employees should press for it after the probation period has expired.

In short, the procedure for terminating the employment of a probationer is to give them contractual notice or salary in lieu of notice and repatriation allowance to the place of recruitment if the place of work and place of recruitment are different. You don't need to go through the disciplinary hearing process.

Overtime allowance claim by manager

I worked for a bank for ten years as a department head. Due to my work's nature, I worked about 12 hours a day, six days a week. My contract expired last month, but my employer has refused to renew my contract. Do I have the right to claim an overtime allowance not paid during my service?

26 October 2020

It seems like you have started thinking of overtime after the expiry of your contract. In any case, according to section 17(1) of the Employment and Labour Relations Act, managers or heads of departments are not entitled to a claim for overtime allowance. The reason is that the law excludes managers from the limitations of working hours set by the law. The working hours' limitations were meant to protect junior employees, not senior employees like yourself. Secondly, a complaint about overtime allowance should have been referred to the Commission for Mediation for Arbitration within 60 days from the date you were entitled to the allowance. Had you been entitled (you are not), you might still be time-barred.

Compellability of witness living abroad

We employed an expatriate whose contract expired, and he returned to his home country. We have been asking him to come back to assist us in giving evidence in one of the cases against our company, but he is refusing. How can we compel him to go and give evidence on our behalf? He is our key witness, and we would have lost the case without him.

26 October 2020

Unfortunately, a foreigner living abroad is a competent but not compellable witness. The Court cannot command a foreigner out of the territory to give evidence. The Court's power to compel a witness by summons to testify is limited to the witnesses within the country. A Court summons, in this case, will not help. You may want to re-engage and perhaps compensate him for his travel and time to convince him to appear.

Residence permit of divorced wife

What happens to the immigration status of a married woman living on her husband's residence permit in the event of a divorce? Is she forced to leave Tanzania?

30 November 2020

Section 39(2) of the Immigration Act [Cap.54 R.E 2016] allows a divorced wife living in Tanzania on her husband's residence permit to continue staying for one month after her divorce and staying beyond one month after the divorce is illegal. However, the Commissioner-General of Immigration has the power to extend the duration of stay of the divorced wife for a period he may specify. The Minister for Home Affairs also has

the power to direct that the divorced wife living on the residence permit of her husband be allowed to stay in Tanzania beyond the prescribed period of one month after the divorce.

Over-time allowance for expatriates

I am an expatriate working in one of the companies here in Tanzania. Due to the nature of my work, I normally work 12 hours a day, five days a week. Sometimes I also work on Saturdays. I would like to know if I am entitled to be paid an overtime allowance under the labour laws of Tanzania.

14 November 2020

Entitlement to an overtime allowance depends on the position held by an employee in the organisation or the person to whom the employee reports. Managers or other employees, including expatriates who report directly to the senior managers, are disqualified by section 17 of the Employment and Labour Relations Act [Cap. 366 R.E 2019] from being paid overtime allowance. The reason is that section 17 excludes managers and other employees who report directly to senior managers from the working hours' limitations. So, whether you are entitled to overtime pay will depend on the position you hold in the company or the person to whom you report. From the facts you have shared with us, it is unlikely that you are entitled to overtime.

Discrimination in salary payments

Our company has an expatriate with more or less the same education qualification as me but is paid ten times the salary that I am paid since she is the MD. Is this not discrimination in the workplace? Does the law permit this?

14 November 2020

Section 7 of the Employment and Labour Relations Act [Cap.366 R.E 2019] does not recognise the difference in wage rates per se as a form of discrimination. Paying expatriates ten times the wages of local employees with the same qualifications can amount to discrimination if it is proved that the company has designated a special salary scale for expatriates based on their foreign nationality or race. Under the Non-Citizens (Employment Regulation) Act, 2015, an expatriate is given a work permit upon proof of possession of special qualifications, knowledge and skills requisite for job performance.

You might have the same education qualification as the expatriate, but she might be more skilled, experienced, or knowledgeable in the profession of her employment than you. Thus, the company pays ten times more than you to retain her. In some companies, wages are negotiable, and expatriates might be paid more than local employees because of their bargaining power.

The top few managers who lead the company are disproportionately compensated worldwide compared to other middle and junior managers. You might want to strive to gain experience and work towards getting the MD's job. That might get you to where you want to be, but from the facts, it doesn't look like the salary scale is discriminative.

Severance pay on fixed-term contract

I am an expatriate working for the past 5 years in a manufacturing company in Tanzania. My contract expired a few months ago, and I did not want to renew it. I then approached the head of HR for my severance pay and was shocked to be told that I was not entitled to a severance allowance. What is the legal position?

4 January 2021

The Head of HR is correct. In section 42(3)(c) of the Employment and Labour Relations Act, an employee leaving his job because his fixed-term contract has expired or because he/she has attained the retirement age is not entitled to severance pay. Severance pay is given to an employee whose contract has been terminated by the employer and not to an employee whose contract has been terminated automatically or who resigned.

Cancellation of work permit

In what circumstances can a work permit be cancelled? If a work permit is cancelled before the expiry of the contractual term, can the expatriate continue to work until the expiration of his contractual term, which is what brought him here in the first place?

15 February 2021

Section 14(1) of the Non-Citizens (Employment Regulation) Act, 2015 gives the Commissioner for Labour power to cancel a work permit if the expatriate: (i) has failed to comply with the conditions prescribed in the work permit; (ii) has ceased to engage in the employment or occupation for which the permit was issued; (iii) obtained the permit by misrepresentation of the information in the application; (iv) may jeopardise the interest of the Republic if he continues to stay in Tanzania.

Once a work permit is cancelled, any subsequent engagement in any occupation is illegal. As such, the expatriate and the employer may be charged with an offence under section 9 of the Non-Citizens (Employment Regulation) Act, 2015. The employer may be charged with engaging a non-citizen in an occupation without a valid work permit. An expatriate may also be charged with engagement in occupation for reward without a work permit. The penalty for these two offences is a fine not less than TZS 3 million or imprisonment for a term not less than 2 years. The contract of employment cannot override the laws of the land.

Pension to inmates

My father worked for the Government until he retired at the age of 60 years. He was paid a lump sum and then put on a monthly pension. In September last year, he was convicted of an offence he committed after retirement, and since the third quarter of last year, the Pension Fund has stopped paying his monthly pension. How can I move the Pension Fund to resume paying my father's monthly pension? The pension fund seems to be happy not to continue paying him as that is their cash flow savings.

3 May 2021

Section 45 of the Public Service Social Security Fund Act, 2018 gives power to the Board of Trustees of PSSSF to direct all or part of the pension payable to a pensioner who is incarcerated to be paid to his/her child, spouse, or dependent. The child, spouse, or dependent has to write a letter to the Director General of PSSSF asking the Board to direct payment of all or part of the pension to be paid to him/her. After receiving the application, the Board shall consult the inmate pensioner in writing to confirm if he/she consents to divert the payment.

If the inmate pensioner is discharged from prison due to acquittal by an appellate Court or a pardon given by a Parole Board or President, the Board of Trustees must restore the pension payment to the pensioner.

NHIF scope for children born out of wedlock

I am a public servant working for one of the government agencies in the Head Office and have been a member of the National Health Insurance Fund (NHIF) for 5 years. I have a 6-year-old child who was born out of wedlock. Can I enrol this child under my NHIF insurance cover?

2 August 2021

The scope and qualification for enrolment of children under the National Health Insurance Fund is stipulated under the National Health Insurance Fund Act [Cap. 395 R.E 2015] and the 2002 National Health Insurance Fund Regulations as amended by Government Notice No.11 of 2010.

The NHIF Act and its regulations do not discriminate against children born out of wedlock. Members of NHIF are covered with their spouses and children and/or dependents up to four, irrespective of whether the child enrolled by NHIF is born within or out of wedlock. Section 3 of the Act gives a very broad definition of a child, which covers a child born out of wedlock and any child to whom a member stands in loco parentis who has not attained the age of 18. Therefore, disqualification for enrolment as a child under NHIF insurance cover is the age of the child and not the existence or non-existence of the lawful marriage between the child's parents.

The second limitation is the number of children or dependents already registered with NHIF. The law limits the number of children and/or dependents one member can enroll under his name to four. Suppose a member of the Fund has already enrolled 4 children and/or dependents. In that case, she/he cannot enrol another child or dependent, whether the additional child is born within or out of wedlock unless the member seeks and obtains leave from the Board of NHIF, which has the power to waive the conditions set under the NHIF Act.

To conclude, if you do not have more than four dependents registered with NHIF, your child is eligible for registration.

Repatriation of prostitute

I heard that a lady from a foreign country was repatriated back to her home country because she was indulging in prostitution in Tanzania. I would like to know if prostitution is a crime in Tanzania and if it was proper to repatriate the lady who entered legally in Tanzania simply because of prostitution.

8 November 2021

Section 146 of the Penal Code [Cap.16 R.E 2019] does not, as such, prohibit prostitution. It only prohibits living wholly or partly on the earnings of prostitution. It is living on the proceeds of prostitution, which is an offence and not the act of prostitution itself. This needs further explanation.

If a woman gives sexual service for free, she is not guilty of an offence. Still, if she imposes charges for the service and lives on the revenue she collects from people she serves, then she is committing an offence of living on the earnings of prostitution. Under section 23(1)(e) of the Immigration Act [Cap.54 R.E 2016], a person is deemed to be a prohibited immigrant if, at the time of entry or after entry into Tanzania, they live or receive the proceeds of prostitution. The Immigration has the authority to expel from Tanzania a woman or man who lives on the proceeds of prostitution.

Environment, National Symbols and Civic Life

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This chapter unpacks common legal questions that Tanzanians face daily, from environmental rules to respecting national symbols. Discover clear, straightforward answers about building near beaches, using the national flag, managing waste, and more.

Learn why you can't build within 60 meters of the shore, how to avoid fines for texting during the national anthem, and what to do if your neighbour's music keeps you awake at night. Explore surprising laws, like needing a permit to fish with a boat or why letting cows roam city streets can land you in trouble.

With real-world examples, this guide demystifies regulations on water usage, noise pollution, and even condoms during plastic bans. Whether you're a homeowner, business operator, or simply curious about civic duties, this chapter offers practical advice to stay compliant, protect the environment, and respect Tanzania's national identity, all in simple, easy-to-grasp language.

Building structure near shore

What is the minimum distance from the shore to build a concrete structure? I see some hotels and houses building on the shore, disallowing anyone from passing the beach in front of them. Is this legal?

25 February 2019

Amongst other legislation, the Environmental Management Act states 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 lake shorelines, river banks, water dam or reservoir, shall be conducted within sixty metres.

This is the sixty-metre rule and any permanent structure built within 60 metres 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 on it.

Advertising with national flag

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

30 April 2018

The National Emblems Act provides for the unlawful use of the National Flag, Coat of Arms, or any likeness thereof by prohibiting any person from using the National Flag, the Coat of Arms, or any likeness of the National Flag or the Coat of Arms.

Hence, if the company or individual is using the flag as you claim, it is an offence, and the person can be sentenced to two years in prison. However, please be warned that not all usage of the national flag is illegal. You should consult your attorney for further guidance.

Hoisting national flag at home

It is normal to hoist a national flag at home in some foreign countries, such as India and the USA. Is it allowed to hoist our national flag at home in Tanzania?

29 October 2018

The National Emblems Act prohibits using our national flag or Coat of Arms in any manner likely to contradict section 6 of the Act. Specifically, section 6 stipulates that no person shall use the national flag, Coat of Arms, or any likeness of the national flag or Coat of Arms (a) as a trademark for any article sold or offered for sale; (b) in furtherance of or as an advertisement for any trade, business, industry, calling or profession; (c) on any article which is sold, offered for sale or intended to be sold or offered for sale; (d) on any article which is used by any person otherwise than for a purpose approved by the Minister.

Additionally, the Minister is empowered to exempt any person or class of persons from the restrictions imposed by the above-quoted section subject to certain terms and conditions. Regarding your question about hoisting the national flag at home, the law is silent, and we believe there is no provision prohibiting the practice.

We know it is an offence to insult the national flag, which is punishable by fine or imprisonment for a term not exceeding two years or both. In implementing this law, section 14(g) of the Criminal Procedure Act permits a police officer, without having an arrest warrant, to arrest any person who does any act calculated to insult the National Emblem or the national flag.

Different types of waste

I have moved to Tanzania and find it hard to believe that you still do not have policies to ensure that households mandatorily

separate waste and dump them into garbage trucks according to the type of waste. Collecting all kinds of waste, such as general waste, harms the environment as recycling is nonexistent. How can this be fixed?

1 April 2019

The Environmental Management Act of 2004, specifically Section 114(1), mandates local government authorities establish measures to minimize solid waste within their jurisdictions. These measures include prescribing (a) source separation of different waste types; (b) standards for refuse container specifications (type, size, shape, color, etc.); and (c) mechanisms for involving the private sector and NGOs in planning and raising awareness among producers, vendors, transporters, manufacturers, and others regarding appropriate containers and source separation.

Unfortunately, according to our research, the local authorities in Dar es Salaam have not prescribed how the waste is to be separated at the source. The Act mandates that local authorities provide for this mandatorily, but to our knowledge, they have not done so.

You can directly write to your local authority and inquire. If they fail to respond or respond negatively, you can file the matter in Court to direct the local authority to act in compliance with the law.

Usage of condoms during plastic ban

I am concerned that condoms that we frequently use are also disallowed as part of the ongoing plastic ban. We cannot use paper products for such activities, can we? What do you suggest and how can I challenge this regulation? It is infringing my rights as an adult.

3 June 2019

Indeed, there is a new regulation on plastics. It came into force on 1 June 2019 and disallows mainly plastic carrier bags, just like 34 other African countries that have banned such bags. After reading your question, we reread the regulations and don't see anywhere where condoms are deemed or defined as carrier bags to fall into the ambit of the regulation. Unless you are using carrier bags as condoms, which we hope you are not, condoms are not disallowed, meaning you can continue using them as required. Please note that we are not making any representations on the safety or frequency of usage of condoms.

Had condoms been part of the ban (which is not the case), you would likely be entitled to file a petition to challenge such a ban under the Basic Rights and Duties Enforcement Act, which has been used in the past. The petition would have to be filed in the High Court before three judges, and if successful, you could strike out parts of the regulations that offend your rights under the constitution.

Finally, your question on whether we can use paper products in lieu of condoms is something we are not able to answer. Considering that we have confirmed that condoms can still be used, we believe this question dies a natural death. If it doesn't, we recommend that you seek medical help.

Texting during flag hoisting

I was attending a ceremony, and when the national flag was being hoisted and the national anthem played, I was on my smartphone messaging someone. A police officer came and told me I had committed an offence and could be arrested. Is this true?

9 March 2020

The national anthem is one of the most significant symbols of our nation. It signifies our nation's status, which we are proud of. Singing the national anthem develops and enriches our patriotism. This is why the national anthem is usually sung during

special events such as national ceremonies. For these reasons, it is disrespectful for you to SMS when the national anthem is sung.

While there is no specific offence regarding the national anthem, section 7 of the National Emblems Act (Chapter 10 of the Laws of Tanzania) makes it an offence for any person to do any act, or utter any word, or publish any writing with intent to insult, or bring into contempt, or ridicule the National Flag or Coat of Arms of the United Republic of Tanzania. This offence is punishable by a fine not exceeding twenty thousand TZS, imprisonment for a term not exceeding two years, or both. In implementing this law, section 14 of the Criminal Procedure Act permits a police officer to arrest anyone who does any act calculated to insult the national emblem or flag without an arrest warrant. Therefore, sending an SMS when the flag is hoisted, or the national anthem played is an arrestable offence.

Fishing in small vessel

I am an expatriate working in Tanzania, and I like to spend the weekend fishing with my son. Recently, my colleague told me that fishing of whatever nature is not allowed without a licence, particularly for a foreigner like me, as I could get into serious legal trouble. Is this true?

23 April 2018

The Fisheries Act of 2003 provides that no person shall engage in fishing unless he applies for and is granted by the Director or any other authorised officer a licence for such activity. The Fisheries Act provides some exemptions to the effect that no licence, permit, or permission shall be required for fishing using any of the following methods: (a) fishing for prawns using cloth - kutanda uduvi; (b) using rod and line or hand line from the beach without using a fishing vessel whether for sport fishing, domestic consumption or sale, except in a declared trout stream or spawning ground; and (c) small cast nets.

From what we make out of your question, you are likely fishing at sea in a boat, which does not fall into any exemptions. Hence, a licence is required and we suggest you apply for it.

Cows taken by authorities

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

7 May 2018

We understand your frustration, and yes, it has been, for years, a common practice for people to leave their animals wandering the streets and major roads. However, such a practice is prohibited under the municipal laws and regulations to ensure that the city is kept clean, avoid unwanted health issues and prevent accidents. We believe the municipal authorities are within the law in ordering you to stop this.

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

Use of water for unauthorised purposes

I am getting a water supply from a water authority for domestic use. I have

established a small industry near my home and now want to hire a plumber to connect water pipes from my home to my industry. Of course, I will pay for the consumption. Is this legal?

21 December 2020

Since you are licensed to use water for domestic purposes only, using water supplied to you for industrial needs is wrong. According to section 65 of the Water Supply and Sanitation Act, 2019, it is an offence to use water for purposes other than domestic needs for which the water authority licenses you. You must get permission from the water authority before your plumber connects the pipes to your industry. You will commit a crime if you connect and use water supplied for domestic and industrial purposes. If you are convicted, you will be sentenced to a fine not exceeding TZS 5M or imprisonment for a term not less than six months. Apart from the fine, the water authority will be entitled to recover from you the value of water improperly used, as water charges vary depending on the purpose for which water is supplied.

Excessive sound from halls in residential areas

My neighbour has an entertainment hall in our residential street. Over the weekends, the hall emits loud music that seriously disturbs us at night, so we hardly get sleep. When we urge him to reduce the sound, he tells us that the hall is licenced to operate as an entertainment hall. What can we do to stop this disturbance?

19 July 2021

Excessive sound is one of the environmental pollutions recognised under the 2004 Environmental Management Act. The 2015 Environmental Management (Standards for Control of Noise and Vibration Pollution) Regulations prescribe the maximum permissible noise level for places of entertainment located within residential areas. During the day, which starts from 6.00 am to 10.00 pm, the permissible noise level is 60 decibels, whereas during night, from 10.00 pm to 6.00 am, the permissible noise level is 40 decibels. Emission of sound beyond these prescribed levels requires a permit from the National Environmental Management Council.

A person who emits or causes the emission of sound beyond the authorised level for more than two minutes without a permit from NEMC, which sound disturbs, annoys, or endangers the comfort of others, commits an offence. The offence of causing emission or emitting sound pollution attracts a fine of not less than TZS 2M but not exceeding TZS 10M. The law also provides an option of imprisonment. A person aggrieved with the sound pollution may complain to NEMC, environmental inspector, or environmental officer to issue a compliance order, stop order, improvement notice, or complain to the police to arrest and charge the offender.

Permit to use water from self-dug water well

Because of the shortage of clean water in the suburb where I live, I decided to dig my own water well to get clean water for domestic consumption. The health officer from the local government is harassing me, saying that I am supposed to obtain a certificate of water quality test so that I can use water fetched from my water well. Does the law demand that a water well owner obtain a water quality certificate before using water from self-dug wells for human consumption? Please guide.

9 August 2021

Two legislation govern the construction and use of water wells: the Water Resources Management Act, 2009, and the Water Resources Management (Water Well Quality

Monitoring) Regulations, 2018. Section 11(3) of the Act exempts a shallow water well owner from the requirement to obtain a groundwater use permit if water fetched from the well is intended for family consumption and the depth of the water well does not exceed 15 meters.

While a shallow water well owner is exempted from obtaining an underground water use permit, regulation 5 of the Regulations obligates the owner to obtain a certificate of water quality test before using or permitting others to use water from a self-dug water well. This is to ensure the safety of the water that you consume.

The permission to use water from a self-dug water well for human consumption is given after a water quality test has been conducted on the water sampled from the well and the relevant local government authority or water board for the area is satisfied that water from the self-dug well is fit for human consumption. A water quality test determines the toxic chemicals in the water that might harm the human body. Using water or causing the use of water from a self-dug well before conducting a water quality test is an offence attracting a fine of not less than TZS 500,000 or imprisonment for a term not exceeding 6 months. We strongly recommend you to comply.

Lawyers, the Courts and Public Law

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This engaging chapter brings together a series of thought-provoking legal queries from ordinary Tanzanians, reflecting the pressing concerns and curiosities of citizens navigating the complexities of the legal system. Covering a wide range of topics, from the admission of new evidence in appellate Courts and the consequences of defective affidavits to cyberbullying, defamation, and judicial ethics, it offers insightful guidance rooted in real laws and statutes.

The chapter doesn't shy away from addressing controversial or culturally sensitive issues, such as the language barrier in legal texts, inappropriate behavior by public officials, and the challenges posed by outdated colonial-era laws. Through concise explanations and practical legal advice, it illuminates how the Tanzanian legal system impacts everyday lives while highlighting the need for continued reform and public legal awareness.

New evidence at Court of Appeal

I wish to introduce new evidence that has just come to light in a matter now on appeal. Can the Court of Appeal admit such evidence as it is critical to dispensing justice?

1 January 2018

Whilst the Court of Appeal would very sparingly allow this, it is possible to allow the introduction of new evidence on an appeal. 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) re-appraise the evidence and draw inferences of fact; and (b) in its discretion, for sufficient reason, take additional evidence or direct that additional evidence be taken by the trial Court or by a commissioner. (2) When the Court takes additional evidence, whether oral or affidavit, the Court may allow the cross-examination of any deponent. (3) When the trial Court takes additional evidence, it shall certify such evidence to the Court, with a statement of its own opinion on the credibility of the witness or witnesses giving the additional evidence; when a commissioner takes evidence, he shall certify the evidence to the Court without any statement of his own opinion on the credibility of the witness or witnesses.

Defective affidavit consequences in Court

We applied at the High Court, where the other party objected to the affidavit we filed. It was a minor omission because the affidavit did not show the place and date it was sworn in. Whilst the application did have merit, the Judge said there was no application before him and did not entertain the matter. What should we do? Is the Judge biased?

15 January 2018

You are undermining the role of an affidavit in pleadings. An affidavit is a declaration of facts made voluntarily by the declarant before an officer authorised to administer oaths. The affidavit must be confined to statements the declarant can prove in his own knowledge. It may also contain statements of information and belief with grounds stated thereon.

Apart from the statement declaring the facts, an affidavit must contain a verification clause, a jurat, and the declarant's signature. Without these, an affidavit is rendered incurably defective. In your case, the jurat was defective, a certification that states when, where, and before what authority the affidavit was made. Sadly, the absence of the date and place of the affidavit was sworn, which renders it incurably defective, leading to your application being struck out.

We do not see how the Judge was biased on the issue of bias. Since there was no application before the Court because of a defective affidavit, the Judge naturally cannot entertain you. We suggest you refile the application in Court.

Government gazette delayed

We have been affected by subsidiary legislation that came into force, but the government gazette was never released on time. Does this apply to us?

15 January 2018

A common complaint amongst lawyers in Tanzania is that the government gazette is not published on time, and when published, it is not released on time. Apart from that, getting a copy of the gazette when published is also another challenge that we hope will be looked into by the Attorney General's chambers and government printer. The Interpretation of Laws Act states that the law will come into operation on the day of publication or the day stated in the subsidiary legislation. You must check either of these dates to know when the law came into force.

Mistake in translation

If a law is drafted in Kiswahili and translated into English, and there is a translation error, then what law shall prevail? I have noted several mistakes in translating laws, policies, and the like, and I wish to understand what would happen.

29 January 2018

Section 84 of the Interpretation of Laws Act provides in section 84 as follows: (1) the language of the laws of Tanzania shall be English or Kiswahili or both. (2) Where any written law is translated from one language into another and published in both languages, then in the case of conflict or doubt as to the meaning of any word or expression, the version of the language in which the law was enacted shall take precedence. (3) Where any written law is enacted in both languages and there occurs a conflict or doubt about the meaning of any word or expression, the English version shall take precedence.

Therefore, if a law was initially drafted in Kiswahili (there are very few, if any, that are drafted in Kiswahili), then in case of translation error, the Kiswahili version will prevail over the English version. However, the English version will prevail if a law is drafted and enacted in English and Kiswahili (no translation).

Newspaper blackmailed me, published false story

A very notorious newspaper journalist in Dar started blackmailing me about a personal story, which is untrue, and he demanded TZS 3M from me to stop it from being published. I told him I would not pay even a cent, and he published it as a second lead story on the front page. This has caused me huge embarrassment, especially considering that the story is outrageously false. I have now learnt that it is not uncommon for this newspaper to be involved in such blackmail. I want to sue the newspaper and journalist for defamation and learn from you the advantages and disadvantages of doing so. Kindly guide me.

5 February 2018

Several defamation cases have been filed and won by private citizens in Tanzania. Many have been settled off-Court as well. As opposed to corporates, private citizens have a much lower bar to prove. You must prove that the story was factually wrong, was published and referred to you, and damaged your reputation. The advantages of suing are that you might get damages, the newspaper may never write about the same topic to you again, and you may be able to correct the record.

The disadvantages are that you may also be in the hot seat during the trial as the newspaper's lawyer can also ask you questions, some of which can be personal and embarrassing. The defence counsel may also want to investigate the factual correctness of the story further. So, you better be sure that it is untrue. Also, you will incur fees; thus, you must consider the legal costs vis-à-vis the benefits. Tanzanian Courts have not aggressively awarded large damages, but this is slowly changing.

Lastly, under our Newspapers Act, you can sue the newspaper's proprietor, publisher, printer or editor. Your lawyers can guide you on whom to sue.

Law Reform Commission reports unavailable, not acted upon

I have been trying to get reports from the Law Reform Commission of Tanzania, which sadly have not been forthcoming. Why would you have such a commission if their reports are not shared with the public? After all, it is the public for whom such organisations exist. Further, with the few reports I have read, I do not see action being taken on such reports.

19 February 2018

The Law Reform Commission Act, which establishes the Law Reform Commission of Tanzania, states that (1) the Minister shall, as soon as practicable, but not later than 12 months after receiving it, cause every report submitted to him by the Commission to be tabled before the National Assembly and its contents to be brought to the attention of the public. (2) The Minister may, either upon tabling any report pursuant to the provisions of subsection (1) or on a subsequent occasion, as the case may be, make a statement in the National Assembly indicating what action the Government proposes to take in respect of any of the recommendations of the Commission made in the report in question.

The above shows that the reports the Law Reform Commission submits to the Minister are public documents. Some are also available online, and we are unsure which report is unavailable.

On action not being taken on such reports, generally among the legal fraternity, there is concern that the Law Reform Commission recommendations are generally not acted upon expeditiously. Acting on such reports requires funding, and generally, this, amongst other reasons, remains the biggest bottleneck to the implementation of change in law, which everyone seems to hide behind. One saddest example is the total failure to change the Law of Marriage Act, which still allows young girls who are even 14 years of age to get married.

Security for costs order by Court

If a foreign Plaintiff sues a local party, can the Court, without being moved by the Defendant, order that security for costs be deposited in Court before the suit proceeds?
19 February 2018

When we got this question, we were about to answer no because a Court cannot move itself to make an order without the Defendant applying that effect. However, upon further research, we found that a Court can move itself (suo motu) and make such an order.

This is stated in Order XXV Rule 1 of the Civil Procedure Code, which says the following: 1.-(1) Where, at any stage of a suit, it appears to the Court that a sole plaintiff is, or (when there are more plaintiffs than one) that all the plaintiff are residing out of Tanzania, and that such plaintiffs do not, or that no one of such plaintiffs does, possess any sufficient immovable property within Tanzania other than the property in suit, the Court may, either of its own motion or on the application of any defendant, order the plaintiff or plaintiffs, within a time fixed by it, to give security for the payment of all costs incurred and likely to be incurred by any defendant. (2) Whoever leaves Tanzania under such circumstances as to afford reasonable probability that he will not be forthcoming whenever he may be called upon to pay costs shall be deemed residing out of Tanzania within the meaning of sub-rule (1).

This rule further states that (1) If such security is not furnished within the time fixed, the Court shall make an order dismissing the suit unless the plaintiff or plaintiffs are permitted to withdraw therefrom. (2) Where a suit is dismissed under this rule, the plaintiff may apply for an order to set the dismissal aside, and, if it is proved to the satisfaction of the Court that any sufficient cause prevented him from furnishing the security within the time allowed, the Court, shall set aside the dismissal upon such terms as to the security, costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

Cyberbullying

My son is being bullied via the internet. We more or less know who it is and what that person wants to achieve. My son has tried to commit suicide twice now until we stopped him from using Facebook and Instagram, which have proved to be a major source of his grief (and waste of his time at university). How can we address this issue?
19 March 2018

The Cyber Crimes Act is one of the stringent legislation that came under significant attack by many persons when enacted but which will assist you greatly. The Act has a specific section on cyberbullying that states that a person shall not initiate or send any e-communication using a computer system to another person with the intent to coerce, intimidate, harass, or cause emotional distress. If a person does so, they are liable to a conviction of a minimum fine of TZS 5M, a minimum jail term of 3 years, or both.

We suggest you report this to the cybercrimes unit of the police forces, which is a very effective and no-nonsense branch of the police.

Judge showing interest in my wife

There is a judge who is showing great interest in my wife. I think it is quite unusual behaviour, and I might end up losing my wife. Please guide.

19 March 2018

It may be prudent also to consider your wife's perspective regarding the judge's reported actions. Concerning the formal process for addressing concerns about judicial conduct, the Judiciary Administration Act specifies that complaints against a Justice of Appeal, the Jaji Kiongozi, or a Judge can be submitted to the Commission or the Committee by various parties, including (a) judicial officers; (b) law officers; (c) Government agencies; (d) advocates; (e) individuals with a vested interest in the matter; or (f) any other person capable of providing adequate evidence related to the complaint. A complaint should be submitted in writing to the Secretary of the Commission or the Committee, signed by the person making the complaint, and thoroughly detailed particulars of the alleged act or omission and the circumstances surrounding it should be provided. Complaints can relate to matters such as (a) the handling of cases; (b) allegations of corruption, or (c) behaviour that deviates from the Code of Judicial Ethics. Based on the information shared, the judge's behaviour could potentially be inconsistent with the ethical standards expected of a Judge, and we suggest exploring the possibility of filing a formal complaint if the behaviour continues. Given the potential complexities, seeking advice from your lawyers before taking action is recommended, as our understanding is limited to the information you've provided.

English laws, Swahili person

I am studying law at a local university and find it quite intriguing that more than 50% of Tanzanians cannot read or speak English, yet almost all the laws are drafted in English. One is supposed to understand the law to be able to comply with it, but the question that requires an answer is how do you expect a local person to comply? Do you have any research on this? I believe some parliamentarians also don't fully understand the complexly drafted laws they pass, and they raise their hands because everyone does so.

26 March 2018

This is an excellent question that does not have a straightforward answer. You have raised a very valid point, and we believe there was a drive to have the laws translated or drafted in Kiswahili, but we have hardly seen any movement on that front. The law being drafted in English in a country where most citizens do not speak or write English is indeed very concerning. Your question is pertinent: how can an ordinary citizen comply with the law? We don't have the answer, but we can only tell you what the law strictly states.

Ignorantia juris non excusat or ignorantia legis neminem excusat, Latin for 'ignorance of the law excuses not' and 'ignorance of law excuses no one' respectively, is a legal

principle holding that a person who is unaware of a law may not escape liability for violating that law merely because one was unaware of its content. European-law countries with a tradition of Roman law also use an expression from Aristotle translated into Latin: nemo censetur ignorare legem (nobody is thought to be ignorant of the law) or ignorantia iuris nocet (not knowing the law is harmful). Both these principles are firmly couched in our laws, meaning that you cannot state that you did not know the law in your defence.

The rationale of the doctrine is that if ignorance were an excuse, a person charged with criminal offences or a subject of a civil lawsuit would merely claim that one was unaware of the law in question to avoid liability, even if that person does know what the law in question is. Thus, the law imputes knowledge of all laws to all persons within the jurisdiction. Even though it would be impossible for someone with substantial legal training to be aware of every law in operation, this is the price paid to ensure that wilful blindness cannot become the basis of a defence. Therefore, it is now a well-settled principle that persons engaged in any undertakings outside what is common for a normal person will make themselves aware of the laws necessary to engage in that undertaking. If they do not, they cannot complain if they incur liability.

Witness cannot remember facts

I have received a summons to testify in a civil case. My testimony will be based on several agreements. Although I am acquainted with them, I cannot recall every term. I have started cramming the agreements in preparation, but the process is tedious, and I cannot remember everything at my age. This is stressing me out as I am a key witness. What should I do? Is there an easy way of cramming the agreements?

2 April 2018

The law always presupposes the existence of society and its people. When enacted, the law ensures that realities are accommodated; in this case, it notes that witnesses are mortal and may forget facts. Also, the Evidence Act is relevant here as it governs how testimonies are made and what qualifies as evidence in Courts of law.

In refreshing memories and production of evidence, the law allows a witness under examination to refresh their memory by referring to any writing they made at the time of the transaction. Further, the law allows memory refreshment even by using photocopies with permission from the Court.

Beyond reasonable doubt

I hear about proving a case beyond a reasonable doubt. What does that mean, and what are its consequences?

9 April 2018

Reasonable doubt is a term used in the jurisdiction of common law countries, including Tanzania. Evidence beyond a reasonable doubt is the standard required to validate a criminal conviction in most systems where the Courts adopt an adversarial approach.

Generally, prosecutors bear the burden of proof and must prove their version of events to this standard. This means that the proposition being presented by the prosecution must be proven to the extent that there could be no "reasonable doubt" in the mind of a "reasonable person" that the defendant is guilty. There can still be doubt, but only to the extent that it would not affect a reasonable person's belief regarding whether or not the defendant is guilty.

Hence, if the prosecution cannot prove its case beyond a reasonable doubt, the accused is entitled to be discharged since there is a reasonable chance that she/he did not commit a crime.

Courts have stated, "It is better that ten guilty persons escape than one innocent

suffer." The judicial systems want to make sure that no innocent man is convicted of an offence, even if it means that the guilty are sometimes let free due to this very high standard of evidence.

As a defence attorney, your job is thus to bring some doubt in the Judges' and assessors' minds that the accused is not guilty, even if there is a chance that he is, so long as there is some doubt that he might not be guilty, he cannot be convicted.

WhatsApp 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, texts and emails, including video clips of disgusting nature. Is there a law that provides for these things?

9 April 2018

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 not less than five million TZS or imprisonment for a term not less than 12 months, or to 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 per the said provision, the penalty for such communication is severe, with hefty fines and possible imprisonment. If you can pinpoint the persons who send such messages to your daughters, you can report them to the relevant authorities and proper measures will 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, and very few people seem to remember that. It is an offence that is punishable by imprisonment. Furthermore, under the newly passed Cyber Crimes Act 2015, publishing pornography attracts a fine of between twenty to TZS 30,000 with a custodial sentence of seven years.

Beachwear in place of worship

We are travelling for a destination wedding in Tanzania and wondering if it is acceptable to wear beachwear in places of worship. We will always be around the beach and I don't want to carry extra clothes. It would upset me if you said that we cannot wear whatever we wish in places of worship in Tanzania. Please help me.

16 April 2018

Let us start by upsetting you. Under Tanzanian culture, we have never seen anyone wear beachwear (i.e., bikinis, swimming trunks, etc.) when attending places of worship. Even the so-called liberal, more advanced countries will likely not allow such distractive clothing. Without sounding like a religious leader, places of worship are where humans try to unite with the Almighty. It is one place where Facebook, Instagram, Twitter, and Google are switched off (or at least an attempt is made). Beachwear takes all the attention away from this noble cause, as all eyes will be on you.

If this is a publicity stunt, we recommend you try it elsewhere. We say so because it is also a criminal offence for you to wear indecent clothes to a place of worship in Tanzania, as this may cause disturbance and will likely be insulting to the religion. Such disturbance or insult is a criminal offence under our Penal Code.

We strongly recommend carrying extra clothes with you, even if it means paying for excess luggage, as you may get into trouble here. The excess baggage may work out cheaper than hiring a local lawyer when you are in trouble. Please note that this is very likely the position in other jurisdictions, and there is nothing abnormal about the legal

position in Tanzania.

We wish you a pleasant stay in Tanzania.

Reference to Minister in law confuses me

If a law refers to the Minister, how do I know which Minister is being referred to? Can there be a reference to two Ministers in one law?

20 January 2020

The Interpretation of Laws Act clarifies that reference in a written law to the Minister shall be construed: (a) in the case of a reference in an Act, as a reference to the Minister to whom the administration of the Act, or the provisions of the Act, in which or in respect of which the term is used, is for the time being committed by the President; (b) in the case of a reference in subsidiary legislation, as a reference to the Minister to whom the administration of the Act, or provision of the Act, under which the subsidiary legislation is made, is for the time being committed by the President.

The thumb rule is that the Minister who administers the Act would be the one referred to. For example, if the law is about mineral resources, any reference to the Minister would refer to the Minister for Mining. Similarly, if there is a tax law, such a reference would refer to the Minister for Finance and Planning.

Whether two ministers could administer the same law is very unlikely, but we need to look at the law and the interpretations section before concluding.

Past tense in law

I have been reading the law and am concerned that some of the drafting of Tanzanian law has past tenses, meaning that the law will not apply today or go forward. How would a Court of law look at this? Does this need to go back to parliament? What about laws that only mention the male gender? Do they apply to females?

7 May 2018

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You have not cited the poorly drafted law, but such a "tense related" drafting issue need not go back to parliament as the Interpretation of Laws Act has a special provision that cures this. Section 6 of the Interpretation of Laws Act states that a written law shall be considered as always speaking. Whenever a matter or a thing is expressed in the present tense, it shall be applied to the circumstances as they arise so that that effect may be given to every part of the law according to its true spirit, intent, and meaning.

The same applies to the gender issue. Section 8 of the same law states that in any written law– (a) words importing the masculine gender include the feminine; (b) words importing the feminine gender include the masculine; (c) words in the singular number include the plural and words in the plural number include the singular.

Hence, to the extent it is relevant, the reference to a male also refers to the female.

Unfair Justice in Court

If there is an openly biased, unfair and wrong law, can the Courts not interpret it so that it is not applied in a particular case? How can the Courts support such a law when it is meant to be a fountain of justice?

28 May 2018

The Courts are empowered to dispense justice but within the ambit of the law. The Courts do not write the law; the parliament does that. Courts are duty-bound to interpret the law the way it is drafted. One of the gravest mistakes people make is equating law with concepts of justice and fairness. 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 only 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.

If you think there is a biased, unfair, and

wrong law, you can either lobby to get it changed by parliament or apply in Court for the law to be declared unconstitutional.

No costs awarded in case

When one wins a case, should the judge not order costs to 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 guide what options I have.

4 June 2018

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 in 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 exercising 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 any rate not exceeding seven percent per annum, and such interest shall be added to the costs and shall be recoverable as such.

If the judge has not awarded you costs, he or she must state why. And if no reasons are cited, you may file for a review and challenge this.

Informal change of name

At all times, I wished to resume the name I was using during my childhood, which I lost after I went to school. My lawyer has advised me that unless I register my desired name, I cannot meet my desire, for which he has demanded charges for the preparation of necessary documents and registration fees, which I cannot afford. Is the registration of a change of name compulsory? If yes, what should I do to achieve my goal?

2 July 2018

Although it is for some reason desirable that a change of name, to a certain extent, be formal and accompanied by the enrolment of a deed poll, there is no legal requirement to that effect. The change is complete if the person desiring to change his/her name becomes generally known by that name. Therefore, if it is desired to avoid the trouble and expense of registration or, for some reason, registration is refused, the only action that needs to be taken is to see that the new name is adopted by friends, relations, and business connections of the person wishing to adopt it.

Registration is usually made only to establish a permanent record of the proposed change for future reference and to aid inspection if any question arises. Otherwise, and considering the law is silent on this, an advertisement for a name change in a reputable newspaper should suffice. However, some regulatory offices may demand that a deed poll be passed and advertised so you stand guided accordingly.

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 how they were attending to the victim, and it was clear to me that they did not meet the medical standards of care required of such doctors and nurses. How does one view such standards of care when there is a war?

23 July 2018

It would help if you appreciated a distinction between medical and legal standards of care. While medical and legal

standards of care are often regarded as interchangeable, according to many views that we read, they are, in fact, 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 (1) among different types of healthcare facilities, such as hospitals, clinics, and alternate care facilities, and (2) based on prevailing circumstances, including during 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.

On the other hand, legal standards of care 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, several Courts assessing standards of care have sometimes determined that prevailing medical practice was insufficient or unacceptable in exceptional cases. In these instances, practitioners have been found liable for their actions even though, based on the circumstances, their acts were consistent with the prevailing medical standards of care. You might be a doctor. I invite you to do more research on this topic.

Traffic police hiding and finings

I travel a lot and do not understand the logic of why traffic officers hide to catch you for speeding or crossing red lights. Why can the driver not see them on the roads so we are reminded not to drive fast? Is it legal for traffic police to act in such a manner?

30 July 2018

We are not very sure what you have in mind. You cannot have traffic police officers lining up along streets and highways to 'remind' you not to cross red lights or drive within speed limits. As a driver, you know or ought to know the rules, and implementing your suggestion is impractical. We also see nothing wrong with traffic police hiding to catch you. That in itself is a deterrent for speeding drivers.

Validity of international driver's licence

I am new to Tanzania and have several questions about traffic laws in the country. What law prescribes the minimum age for driving a car in Tanzania? I can afford a car and want my mature 12-year-old boy to start driving a car that I intend to buy for him. Is an international licence valid in Tanzania? As an expatriate, do I need a local licence? And if I get into an accident, must I stop at the place of the accident? Please guide.

6 August 2018

The Road Traffic Act (the Act) is clear and states in section 25(4) that a driving license shall not be issued to anyone under eighteen years, except for a moped (light motorcycle). The Act further provides that in respect of a bus or a heavy commercial vehicle, the person must be over 21 years old and should have acquired driving experience for under three years.

No matter how wealthy you are and how smart your son is, he cannot get a driving license in Tanzania. We advise you to wait until he has reached the prescribed age to apply for a driving license. Otherwise, any move to get the license will be contrary to the aforesaid provisions of the law and is an imprisonable

offence.

As for the validity of international licences, the same Act provides that any person who holds a valid international driving licence or a foreign domestic licence issued in accordance with the 1949 Geneva Convention or with the 1968 Vienna Convention shall have that licence recognised as being valid under the Act. However, such validity is only for six months, and as an expatriate, you must get a local driver's licence on a two-year work permit.

To answer your last question on whether you need to stop should there be an accident. Again, the same Act states that (1) Where an accident arising directly or indirectly from the use of a motor vehicle or trailer occurs to any person or any motor vehicle or trailer or to any other property, the driver of the motor vehicle or trailer shall stop if, having regard to all the circumstances, it is safe for him to do so and shall ascertain whether any person has been injured, in which event it shall be his duty to render all practicable assistance to the injured person: Provided that where the driver does not stop because it is not, having regard to all the circumstances, safe for him to do so, he shall immediately report the accident at the nearest police station.

Hence, you must stop if you are involved in an accident unless it is unsafe for you to do so. In that case, you must report to the nearest police station.

Legality of accessing dark web

Some computer experts have guided me, and I know that there are many interesting products and services available on the dark web that I can search for. He told me to download special software to access the Dark Web and all such sites. Is this legal, and can I get into trouble for it?

13 August 2018

Before we answer your question, let us discuss what our research on the Dark Web has revealed.

A tech advisor says the internet is much bigger than you probably realise. You know about Facebook, Google, BBC iPlayer and Amazon, but many users don't know what's lurking beyond those user-friendly and respectable websites. This is a tiny corner of the internet, and the Dark Web and the Deep Web loom in much shadier corners.

The Dark Web is a term that refers specifically to a collection of websites that exist on an encrypted network and cannot be found by using traditional search engines or visited by using traditional browsers. Almost all sites on the so-called Dark Web hide their identity using the Tor encryption tool. Tor can hide your identity and activity. You can use Tor to spoof your location so it appears you're in a different country from where you're really located, making it much like using a VPN service. When a website is run through Tor, it has the same effect.

To visit a site on the Dark Web that uses Tor encryption, the web user needs to use Tor. Just as the end user's IP address bounces through several layers of encryption to appear at another IP address on the Tor network, so does the website. Thus, sites on the dark web can be visited by anyone, but it is difficult to determine who is behind them. The Dark Web is primarily used by people who want to hide their identity and enter into discussions, dealings, and illegal purchases. For example, our research discloses that persons can buy drugs, guns, and other illegal devices on the Dark Web without law enforcement knowing.

Regarding your question on whether it is legal to access the Dark Web, you have not told us what you intend to purchase or look at on the Dark Web. However, all indications are that you might end up purchasing goods or services or viewing websites that are likely not legal in Tanzania, meaning that you commit an offence.

In Tanzania, the Cyber Crimes Act provides for strict offences and penalties for illegal access to computer systems, illegal interception of data, data espionage, illegal

system interference and usage of illegal devices, computer-related forgery or fraud, pornography, hiding of identity, publication of false information, cyberbullying to mention a few. Almost all these are possible and primarily conducted through the Dark Web, and you will likely commit an offence as soon as you get onto the Dark Web. We strongly recommend you against venturing into the dark world of the Dark Web.

Arrest of judgment debtor

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

27 August 2018

Indeed, there are provisions whereby a judgment debtor may be arrested in executing a decree. The Civil Procedure Code (CPC) of Tanzania provides that a judgment debtor may be arrested in execution of a decree at any hour and on any day and shall, as soon as practicable, be brought before the Court, and the Court may order his detention. The CPC further provides that where the decree in execution of which a judgment-debtor is arrested is 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, such, the officer shall at once release him.

The detention is for six months, and he may only be released before the six months if he pays up or on the request of the party that requested his detention or on the omission by the person on whose application he has been detained to pay subsistence allowance.

Please be informed that the law requires you, the decree-holder, to pay a subsistence allowance to the judgment debtor when he is in prison, and failure to pay such amounts to the normal standard of the judgment debtor is grounds for him to be released.

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

Unprofessional nurse

I have frequently attended a certain government hospital to take my old man for special medications there. Strangely, there is one nurse who uses extremely offensive language with patients. There are a lot of complaints by other patients, but it seems all these are brushed aside. Is there a regulatory framework against the unprofessional conduct of nurses?

10 September 2018

We are aware of the Nursing and Midwifery Act, No. 1 of 2010 (the Act), which is an act to provide for the protection, promotion, and preservation of public health, safety, and welfare through regulation and control of nursing and midwifery education and practice. This is the specific law that regulates the conduct of nurses.

Among the reasons why a person's fitness to practice as a nurse is impaired includes abusing a client verbally, physically, sexually, or emotionally, as provided under the Act. The remedy for this is to present a complaint to the Tanzania Nursing and Midwifery Council. The Registrar of the Council, who also serves as the Chief Executive Officer, shall enforce the law by dealing with the complaint appropriately. This law provides severe penalties against nurses, including striking them off the register. We are informed that very few such complaints have been lodged

as people are unaware of this mechanism. You might want to explore this avenue further.

No punctuation in legal drafting

I am a proponent of complex legal drafting without punctuation. The older documents make a lawyer valued. With the current ease of drafting, I believe the profession has gone backward. I wish to embark on a campaign of change and request your opinion.

17 September 2018

Everyone has their views on this. However, punctuation and straightforward, plain English have made the law simpler to understand. After all, what is the use of a document if an ordinary person cannot understand it?

There was no punctuation in the olden times because people used to write with their hands, and having punctuation could result in someone inserting commas to change the meaning. This chance of potential forgery resulted in no punctuation at all. However, with technology, this has changed.

The legal profession has changed drastically over the past decades. We believe it is going in the right direction, and you need not embark on a campaign that, in any case, might fail.

For example, this man said the judge was a fool in the following sentence without punctuation. There are two variations to this. The first which won't please a judge is 'This man said the Judge is a fool'. The second variation would be, 'This man, said the Judge, is a fool.' By changing the position of the comma, you would know whether the judge or the man is the fool.

Same Court, two different judgments

There were two cases of different parties going on in two different Courts. The issues were more or less similar. One Court ruled the opposite of the other. How can the Courts make such a serious blunder? I have reported this to the Chief Justice. Please guide me further.

17 September 2018

We are sorry for your disappointment. It is not uncommon for such an occurrence in many Court systems worldwide, Tanzania being one of them. That is why there is usually one Appellate Court in the country where the parties can appeal to this Court, and one 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 directly oversee the lower Courts of record. In that, they usually do not reach out on their own initiative at any time to overrule judgments of the lower Courts. The burden rests with litigants to appeal rulings (including those violating established case law) to the higher Courts. The decision will likely stand if a judge acts against precedent and the case is not appealed.

A lower Court may not rule against a binding precedent, even if it feels unjust; it may only express the hope that a higher Court or the legislature will reform the rule in question. Suppose the Court believes that developments or trends in legal reasoning render the precedent unhelpful and wishes to evade it and help the law evolve. In that case, it may either hold that the precedent is inconsistent with subsequent authority or that some material difference should distinguish it 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, perhaps overruling the previous case law by setting a new precedent of higher authority.

Reporting this to the Chief Justice might not help as that is an administrative action you have taken. The matter must be appealed. Your lawyers can guide you further.

Case of 1996 still in Court

It has been 18 years since I lodged my case in 1996, and it is still in Court. This is a gross delay by the system. What should I do?
17 September 2018

There is indeed a huge case backlog in Courts in Tanzania. However, it is not entirely the fault of the judiciary, as some people tend to believe. Cases get delayed because of a lack of witnesses, non-seriousness on the part of the plaintiff and defendants, and non-availability of the counsel representing the two parties. It is quite unfortunate that you have been in Court for a long time.

We suggest you write to the Judge in charge about this and bring this to his or her attention. The judiciary has embarked on clearing old cases, and there is a movement in the right direction.

Appearance at Court of Appeal

Can any advocate in Tanzania appear at the Court of Appeal? Can my attorney from the UK appear in the Court of Appeal? What if I want to defend my appeal myself?
15 October 2018

Rule 33(3) of the Tanzania Court of Appeal Rules states that no advocate shall have the right of audience in the Court unless he has practiced for not less than five years in the High Court and Courts subordinate thereto, provided that an advocate who has not practiced for five years in the High Court and Courts subordinate may apply for a waiver in a particular matter in writing to the Chief Justice or Presiding Justice, as the case may be, and shall be made within not less than seven days to the date of hearing of the particular matter, showing good grounds for seeking the waiver.

The Court of Appeal is the apex Court in the country and requires that those advocates who appear before it have a minimum standing of at least five years. This is a formality that other countries also have. Some countries require experience of up to ten years. Also, the Court of Appeal rules allow advocates from other countries to appear before it, subject to a licence from the Chief Justice. This particular rule 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 on that behalf by the Chief Justice and subject to payment of the prescribed fee, have the right of audience before the Court in respect of any one appeal or application, including any cross-appeal heard with it, or any two or more appeals or applications consolidated for hearing.

If you wish to defend yourself, you can, but familiarise yourself with the applicable rules.

Powers of RCs and DCs

Can a Regional Commissioner or District Commissioner just walk into my property, demand to see whatever she/he wants, and then start irrationally ordering police, who seem to be now under the control of RCs/DCs and not the IGP, to arrest managers, directors and employees? What are the powers of DCs/RCs in Tanzania, and when have these powers been in existence? This kind of aggression is very new and not friendly towards investors.
15 October 2018

According to the Regional Administration Act Cap 97 (the Act), Regional and District Commissioners are the principal representatives of the government within their area and all the executive functions of government are exercised by or through them. They are responsible for maintaining law and order, overseeing the implementation of government policies, and assisting local government authorities in the region/district in undertaking and discharging their responsibilities.

Section 14(2) (b) of the Act further

empowers District Commissioners by assisting local government authorities to ensure that all persons and authorities comply with appropriate government decisions, guidelines and regulations.

Apart from that, the commissioners have the power to order a police officer to arrest and detain any individual without a charge for up to 48 hours if it is deemed that the individual is likely to disturb public tranquillity. These powers are enshrined in sections 7 and 15 of the Act.

Although the commissioners have the power mentioned above, the law is silent on whether a DC or RC can walk into any property and demand to see whatever he/she wants. However, rules of justice and practice require that whenever privacy has to be interfered with, reasonable notice must be given in advance, and such entrance is to be done within a reasonable time. There are circumstances where this might not be possible, but the RC and/or DC cannot take over the role of the police, who still need to do their jobs.

On top of that, the commissioners are prohibited from abusing their office's authority through the powers vested in them. Section 96 of the Penal Code makes it an offence to exercise power in abuse of authority, which is where you might be coming from. The commissioners do not have unlimited powers, as you might be made to believe, and must act within the boundaries of the law.

Finally, the police do not report to the commissioners; they have their reporting lines.

Flying drones in my airspace

I own a few drones that only flow within my farm and its airspace. Since this is my own space, do I require permission?

22 October 2018

To fly a remotely piloted aircraft or drone anywhere in Tanzania, whether in 'your so-called airspace' or not, requires approval/authorisation from the Tanzania Civil Aviation Authority and the Ministry of Defence and National Service. Both these are mandatory.

As far as flying objects are concerned, this is Tanzanian airspace and not your airspace, as you seem to think. Also, you must note that this approval/authorisation is required to fly and procure the drones.

This approval requirement was introduced to protect our airspace and our people. Such approval/authorisation requirements are not uncommon in other countries either.

Lastly, trying to fly a drone without such approval/authorisation can be a criminal offence as you might be jeopardizing the safety of our airspace. We recommend you tread with caution.

Mistake in drafting of law

I am studying law at the UDSM and have noted that a few of our laws, especially after amendments, have numbering mistakes. Does that make the amendment redundant? I have also noted that the marginal notes do not align with the sections you read. What prevails, the marginal notes or the wording of the sections?

22 October 2018

The amendment doesn't become redundant because of a numbering mistake. If your issue is on how to cite it, you can cite the Government Notice that changed the Principal Act and its section to ensure no confusion. In the case of marginal notes, these notes are not part of the written law but are there for guidance only. If they are a source of confusion, they can be ignored.

Section 26 of the Interpretation of Laws Act addresses the above aspect. It states the following: (1) the headings of the Parts, divisions and subdivisions into which a written law is divided form part of the written law. (2) A marginal note or footnote to a

written law and, notwithstanding subsection (1), a heading to a section, regulation, rule, by-law, or clause of a written law shall be taken not to be part of the written law. (3) Where there is any clerical or printing error in any Bill or Act published in the Gazette, the Chief Parliamentary Draftsman or any member of the Attorney-General's Chambers authorised in writing on that behalf by the Chief Parliamentary Draftsman may, by order published in the Gazette, give directions as to the rectification of such error and every such direction shall be read as one with the Bill or Act to which it relates and such Bill or Act shall, with effect from the date of its first publication, take effect as so rectified.

Selling and advertising condoms

I want to go into the noble business of selling condoms and wish to know if there are any approvals required. What about advertising condoms?

5 November 2018

Under the Tanzania Food, Drugs and Cosmetics Act of 2003 (the Act), the definition of a drug, medicine, or pharmaceutical product means any substance or mixture of substances manufactured, sold or presented for use in the diagnosis, treatment, mitigation, or prevention of a disease, disorder, abnormal physical or mental state, or the symptoms thereof, in man or animal. Condoms fall under this definition.

Section 17 of the Act prohibits individuals from manufacturing, selling, importing, distributing, or exposing drugs without a licence or permit. The application for a licence or permit is to be made in a prescribed form to the Tanzania Food and Drugs Authority (Authority), accompanied by prescribed fees.

Before granting such licence or permit, the Authority shall ensure that the applicant is equipped with the required facilities for storing and distributing the product, in your case condoms, as per section 20(1)(b) of the Act.

Further, section 22(1) of the Act prohibits individuals from selling unregistered products. Therefore, we recommend that before selling, you confirm the registration and approval of the condoms by reading the third schedule of the Tanzania Food, Drugs and Cosmetics (List of Registered Human Medicinal Products, Veterinary Pharmaceutical and Medical Devices) notice No. 283 of 2016. The referred Notice has listed all types of condoms that the Authority has already registered.

Regarding the last part of your question, section 173 of the Public Health Act of 2009 prohibits any form of advertisement on matters related to public health unless a competent authority has granted permission.

Finally, be informed that the law restricts all advertisements targeted to the general public from containing pictures of internal or sexual organs and not to induce or attract children to use such products, contravention of which is an offence.

Registration of hairdressing salons and barbershops

Are there any statutory health requirements that I need to follow to establish a simple hairdressing salon or barbershop?

5 November 2018

The Tanzania Food and Drugs Authority (Authority) is responsible for registering salons, barbershops and the like under the 2003 Tanzania Food, Drugs and Cosmetics Act. Section 152 makes it mandatory for such a facility to have a sufficient water supply, a proper storage area, maintain cleanliness, have a safe environment with adequate lighting, be adequately ventilated, have toilets and supply of approved antiseptics, use only permitted chemicals for treatment of skin and hair, has first aid facilities, ensures every staff undergo medical examinations every six months, amongst others. If the Salon breaches any of these, the Authority shall close it.

If you cannot or cannot comply with the above, you should look for another business with fewer compliance requirements, but the above are mandatory.

Injury in rent-free pool

Some students at a private residence organised a graduation party. Everyone enjoyed the pool without knowing that one water sucker that circulates water in the pool had its cover missing, which caused a serious injury to a student. Although we got the pool for free, can I sue the owner?

19 November 2018

Based on your question, it seems you are not the student injured. Hence, it is quite unlikely that you will succeed in suing the pool owner. However, the injured friend has a good case against the pool owner, and it does not matter that they gave you the pool for free.

Whilst the pool owner was not under any contractual obligation to give you the pool, he was responsible for ensuring it was safe for usage. If a pool's water sucker cap is missing, it can lead to loss of life as swimmers can get trapped in the pool.

You have to ask yourself two questions. One is whether the pool owner had a duty of care even though he gave you the pool for free, which we believe they should. The second question is whether the pool owner breached such a duty; the answer is yes. Lastly, because of this breach, there was an injury. Based on the evidence you adduce, the chances of success are relatively high.

Liability of doctor who performed emergency procedure

I am a general surgeon working in a district hospital in a remote area where we have challenges with specialist doctors. One day, I was called upon to perform an emergency caesarean section on a lady who could not deliver. Had I not intervened, both the mother and child would not have survived. Although I am not a gynaecologist, I did my best to save both lives but unfortunately lost the child. The mother is grateful to me, but the boyfriend, a famous and influential businessman in the city, threatens to sue me for negligence. He also threatens to report me to the police. Please guide me.

10 December 2018

Successfully suing under the tort of negligence requires the following to be answered in the affirmative. Did you owe a duty of care, were you in breach of that duty and did you cause damage because of that breach?

As a doctor, you owe a duty of care, but the key question is whether you breached that duty. As a general surgeon, you will be judged at the standard of a surgeon and not a regular doctor, considering that no one else would perform the emergency procedure. For example, if you arrived drunk at the operating theatre, which is what caused the death, then you could be liable. Another example is knowing that you were to use sterilized equipment but failed, which could make you liable. With the facts you have given us, we cannot conclude whether or not you have breached your duty of care. It is for the person suing you who must prove you were negligent.

Further, under our Penal Code, a person is not criminally responsible for performing in good faith and with reasonable care and skill, a surgical operation benefit or 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.

We suggest you ensure that all you have done on that day is properly documented. If you are sued, then, in addition to being a witness, you will have to bring witnesses like the nurses who helped you, amongst others.

Interpretation of laws by Courts

How do Courts interpret laws? I am studying law and find it quite interesting how Courts resort to different ways of interpreting laws that may not be clear. What are the guiding principles, and how are they generally applied?

17 December 2018

According to various books, authors, judgments, and the like, there are some settled principles of interpretation which can be summarized as follows: (i) the Court must start with a presumption that the legislature did not make a mistake (ii) the Court must adopt a construction which will carry out the obvious intention of the legislature, and (iii) if there is a defect or an omission in the word used by the legislature, the Court should generally not go beyond its aid to correct or make up the deficiency.

According to various authorities, the Court should not add words to a statute or read words that are not there, especially when the literal reading produces an intelligible result. Words may be added, altered, or modified only when necessary to prevent a provision from being unintelligible, absurd, unreasonable, unworkable, or irreconcilable with the rest of the statute. These are the guiding principles of statute interpretation, and Courts generally do not interfere with making the law; they would normally read the law and interpret it.

Suing school and teacher

I went to a school that promised that I would get good results and get into top universities. Neither happened. My grades are disgraceful and the universities I got are not the best. Can I sue the school? Can I get my fees back?

24 December 2018

In suing a school for educational malpractice, the suit must be based on principles of professional negligence that would apply in legal and medical malpractice cases. To win such a case, one must prove that the defendant owed the plaintiff a duty of care and that a breach of such a duty caused the plaintiff harm and she/he suffered damages. Unfortunately, there has not been such a case in Tanzania, and we resorted to researching such cases worldwide.

In our research, we found that in such educational malpractice cases, plaintiffs generally argue that schools breached their duty to provide students with an adequate education in basic academic skills, that schools misled students into believing that their skills were at the appropriate grade level, or that the schools didn't correctly test children or place them in the right program or class.

Some examples that we came across of unsuccessful claims by students about their schools' failures include a high school graduate argued that the school didn't give him adequate teaching and promoted him through graduation even though he couldn't understand written English well enough to complete a job application (Donahue v. Capiague Union Free School Dist.); a mother claimed that the school system ignored her concerns about her daughter's reading skills and inappropriately placed the child in a special education class. (McGovern v. Nassau County Dept. of Social; a college basketball player accused a university of failing to provide an atmosphere for learning by scheduling practices that interfered with his tutoring schedule and requiring him to enrol in easy courses to keep his academic eligibility (Jackson v. Drake University); a law student claimed that his constitutional law professor regularly came late to class, ended classes early, or cancelled them entirely, without providing make-up classes (Bittle v. Oklahoma City University).

Courts are not normally inclined to rule in favour of those suing in educational malpractice suits for some reasons, including

(a) that from a practical angle, it is difficult to come up with a uniform standard of care for providing an adequate education given the wide range of educational theories; (b) it may be practically impossible to prove that the teachers or school were responsible for a student's academic shortfalls, because so many other factors may play an important role in learning, including the student's home environment, attitude, and motivation. It is impossible to blame the school alone entirely; (c) on a policy level, Courts have expressed a concern that unleashing a flood of educational malpractice lawsuits could place a serious burden on schools, especially financially strapped public schools; (d) and finally, judges are reluctant to get involved in telling schools how to do their job – particularly in the college or university setting, where academic freedom is highly valued.

Hence, before suing the school, you must consider the above and your lawyer must consider all the facts. The same applies to suing your teacher. We wish you all the best.

Recruitment of unfit officer

Is there no minimum standard when the police force is recruiting officers? One of my friends, who is unfit physically and weighs over 180 kilograms, 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?

24 December 2018

Police General Orders (PGOs) dictate police behaviour in general. The procedure for recruiting police officers is prescribed under the PGOs, whereby reference is made to the age, education, physical fitness and criminal record.

An unfit police officer can do little good on the streets, but you must realise not all police officers are on the field. Some 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, and 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.

Wedding photo on paper

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

24 December 2018

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

As for the photographers, with our limited information about you, we are unsure whether you have been defamed or your privacy has been breached. Your major concern is that your girlfriend is unhappy with your marriage, which doesn't give you a cause for action against the newspapers.

You also claim to be a big shot; if you are as 'big a shot' as you think, it may be hard to sue the paper for defamation. Big shots are in the public domain; we should expect such

happenings. We suggest you contact both a marriage counsellor and perhaps a priest. You need to understand what it means to be married indeed. Lawyers might not be the most useful in this case, but you can also try them.

Subsidiary legislation goes beyond Act

Several subsidiary legislations have been issued beyond the Act. They are stricter than the principal legislation, bringing in self-made Ministerial laws that even the Parliament did not intend. Is this legal, and if not, what can one do? What if a law says that subsidiary legislation will be made but doesn't specify which Minister?

14 January 2019

The Interpretation of Laws Act addresses this and states that (1) subsidiary legislation shall not be inconsistent with the provisions of the written law under which it is made or of any Act, and subsidiary legislation shall be void to the extent of any such inconsistency. (2) Where any subsidiary legislation purports to be made to exercise a particular power or powers, it shall also be deemed to be made in exercising all powers under which it may be made. (3) in the absence of evidence to the contrary, it shall be presumed that all conditions and preliminary steps precedent to the making of subsidiary legislation have been complied with and performed.

Should the regulations be beyond what is provided in the Act, you can challenge this in a Court of law that can strike down such regulations. In fact, under the Interpretation of Laws Act, all regulations shall be laid before the National Assembly within six sitting days of the National Assembly next following publication of the regulations in the Gazette, and the National Assembly, if it feels the regulations are ultra vires, can disallow these regulations.

To answer your last question, if a written law provides that subsidiary legislation may or shall be made and does not provide by whom, the President shall make such subsidiary legislation under such a provision.

Restructuring of AG office

I have been informed by my friend who is studying law that the office of the Attorney General has been restructured by taking away some functions and powers, establishing the office of Solicitor General (SG), and reinforcing the Director of Public Prosecutions' Office. I always believed that I would sue the AG in a lawsuit against the Government. Is that still the position?

11 February 2019

The office of the Attorney General (AG) has been restructured through GN No. 48 Office of Attorney General (Re-Structure) Order (2018) to enhance and strengthen the legal sector's capacity to respond to challenges in emerging legal jurisprudence, among others.

The newly established office (SG) supervises civil cases, including human rights and constitutional matters in Courts of law and undertakes arbitral proceedings in tribunals. At the same time, the Order mentioned above has conferred the independence of the DPP by establishing the National Prosecutions Services, which has a mandate over all criminal litigations.

Therefore, the powers that the office of the AG has retained are the provision of legal advisory services to the Ministries and other Government institutions, legislative drafting of proposals into bills and general supervision of Law Officers, State Attorneys and other staff in the office of the Attorney General, Ministries, independent Government departments, Executive Agencies and Local Government Authorities.

However, it is important to note that order 4(2) of GN No. 50 Office of the Solicitor General (Establishment) Order, 2018 makes it clear that all suits and claims instituted on

behalf of the government and conducted in Courts of law or arbitral tribunal by the SG, Deputy SG, Law Officers, State Attorney or Legal Officers is supposed to be in the name of the AG. Therefore, any claim against the government shall be instituted in the name of the AG but will be conducted by the SG. Your lawyers can guide you further.

Colonial-era documents in possession

My father left us some old colonial-era documents that he had in his possession when he was in the Government then. We have preserved the documents for decades. A few years back, we were contacted by some people from the public records office who were trying to build archives. Can such officers take these documents away from us?

11 February 2019

The law in Tanzania categorises records into public and private records. Public records have been defined as the records and archives belonging to the United Republic created, received, and maintained in the offices of the President, official bodies and tribunals, and public offices, whether legislative, judicial, or executive. Private records are documents other than public records.

The Records and Archives Management Act empowers the Minister responsible for records and archives management to acquire any private records that are of national importance and in the public interest. After such acquisition, the Minister will declare the records to be public.

The law requires the Minister to consult the owner of private records before proceeding with the acquisition process. Furthermore, regulation 15 of the Records and Archives Management Regulation (GN No. 77 of 2007) provides for the procedure to be complied with before acquiring private records. The provisions of the regulation mentioned above make it mandatory for the Records and Archives Management Department to prepare an agreement or contract which is to be entered between the owner of private records and the Department.

The said agreement has to specify the records to be acquired and various terms and conditions to be observed by both parties. On top of that, the owner is entitled to full and fair compensation with respect to the private records so acquired. Additionally, the Minister for Finance shall determine the amount of compensation to be paid after consultation with the person entitled to that compensation.

Laws in English, most speak Kiswahili

The majority of Tanzanians speak Kiswahili and don't understand English. Yet your lawyers say that ignorance of the law is no defence. You live in dreamland, and even a blind man can challenge you with this. What do you say?

1 April 2019

You have raised a pertinent point that the highest Court of the land has not directly addressed, but you make a lot of sense in your approach. However, without you giving further details on this, for example, we cannot answer you if there has been an incident or the like.

The Interpretation of Laws Act states the following in section 84: (1) the language of the laws of Tanzania shall be English or Kiswahili or both. (2) Where any written law is translated from one language into another and published in both languages, then in the case of conflict or doubt as to the meaning of any word or expression, the version of the language in which the law was enacted shall take precedence. (3) Where any written law is enacted in both languages, and there occurs a conflict or doubt about the meaning of any word or expression, the English version shall take precedence.

Hence, our laws can be drafted in English

and Kiswahili, although most laws are in English. You can take up this with the Ministry of Justice and the Law Reform Commission of Tanzania. For the masses to read and understand the law, they either must be drafted in Kiswahili or both English and Kiswahili.

Executive powers during emergency

Is it true that the President can order the arrest of anyone who may be detained for an unspecified period?

8 April 2019

Under the Emergency Powers Act, the President has the power to order any specified authority to whom the president may delegate his powers under section 5, if satisfied with respect to any particular person with a view of preventing him from acting in any manner prejudicial to the public safety or the maintenance of public tranquillity it is necessary so to do, may arrest such person without warrant, or may direct the arrest without warrant of such person and in making such arrest any means that may be necessary may be used. (2) An arrest made by or on the direction of a specified authority under this section shall be reported forthwith to the President by the specified authority so making or so directing the arrest as the case may be, and the authority making the report may by order in writing commit any Person so arrested to such custody as the President may deem fit. (3) The President may, by order in writing, commit any person arrested on his direction to such custody as he may deem fit. (4) No person detained shall, unless the President by a special order otherwise directs, be detained in custody for a period exceeding two months. (5) No person shall be detained in custody for an aggregate period exceeding six months unless it is shown to the satisfaction of the President that his continued detention is in the public interest; in that case, he may be detained for a further period not exceeding three months. (6) The President may, by general or special order, determine the conditions as to maintenance, discipline and the punishment of offences and breaches of discipline, which shall apply to persons committed to custody by an order made under subsection (2) or subsection (3).

As is the case in other countries, the head of state in Tanzania has powers to ensure the public is adequately protected and hence can order a particular person to be arrested and held in custody for a specified period. The period is not unlimited.

Free food distributed at drama practice

A parent distributed food in good faith at a drama practice for kids. All those who ate fell seriously sick with food poisoning. Can this be an offence, considering it was done in good faith and distributed for free? Please revert as some parents are threatening this poor parent.

29 April 2019

It doesn't matter if the food was for free and at a drama practice. An offence is still committed as long as the food is unfit for human consumption. Under section 32 of the Tanzania Food, Drugs and Cosmetics Act, any person who (a) distributes, sells, or offers or has in his possession for distribution, sale, or manufacture for sale or (b) deposits with, or consigns to, any person for distribution or sale or manufacture for distribution or sale, any food intended, but unfit, for human consumption, shall be guilty of an offence. Further, where any food in respect of which an offence under paragraph (a) above has been committed if the unfit food or food products were distributed or sold to the offender by some other person, that other person shall also be guilty of an offence.

The above provision applies to any food intended for human consumption, which is offered as a prize or reward, or donation in connection with any entertainment to which the public are admitted, whether or not on

payment of money as if such food were or had been, exposed for sale by each person in the organisation of the entertainment. This law is intentionally very strict as it involves human lives.

Jeweller cheating in grammage

I have been buying gold ornaments for years from a particular jeweller in Dar who has always been giving me great discounts. Three months ago, I went and bought two sets of earrings. After I left the Jeweller, 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 Jeweller shop believing it to be the one I am used to visiting. Luckily, the person there cooperated and agreed to measure my earrings. To my dismay, the grammage was much less than my Jeweler scale, meaning that his scale is deliberately calibrated to show more grammage and cheat customers. I think this Jeweller has cheated me for the past ten years. Is there no law that regulates the weighing scales that such Jewellers use?

29 April 2019

The Weights and Measures Act (WMA) protects you. Such scales are to be regularly inspected, and you have the right to report this to the Weights and Measures Agency (WMA), which will take appropriate action. The WMA can both fine and imprison such a Jeweller. 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 Jewellers. Such behaviour amounts to a criminal offence that attracts imprisonment.

Declaration of properties by leaders

Are public leaders forced to declare their properties? Is there any law that requires them to do so?

29 April 2019

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The ethics of public leaders in Tanzania is guided and directed by the Public Leadership Code of Ethics Act. 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 30 days after being appointed, at the end of each year, and at the end of such leader's term in office.

A public leader must declare all assets owned by him, his spouse, and unmarried minor children. Furthermore, 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 that 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 breach may result in a fine, imprisonment, or both.

Child testimony in Court

I came home drunk and hit my wife so badly in front of our six-year-old girl until she was admitted to the 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. My wife won't testify against me, but I am worried that our daughter will be called. Can a child as young as six years give testimony? Will it carry any value? Please advise.

1 July 2019

Yes, a child's testimony is acceptable in any Court of law and carries weight depending on the child's age and how she testifies in Court.

The child witness is normally submitted to some questioning by the judge/magistrate to establish if he/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. Remember that children's testimony is of high value because, in most cases, it is a general belief that children are unlikely to tell a lie.

Award for costs in case very low

I am a Tanzanian businessman. In 2009, I successfully defended a suit my customer had instituted against me in the Resident Magistrate's Court at Kisutu on allegations of breach of contract. The Court awarded me the costs of the suit. Still, with great disappointment, I have been awarded very minimal costs compared to the amount I spent defending the suit, including transport, taxis, food, entertainment, accommodation, and other expenses for my witnesses. I feel that the Court has not been fair to me. What should I do?

8 July 2019

Taxation is a legal term given to the process of the Court to assess the costs that the successful litigant incurs in prosecuting the suit. The taxing master, usually the registrar or deputy registrar, or the resident magistrate in charge in the case of the lower Courts, is the officer of the Court responsible for taxation. The whole process starts with the successful litigant if awarded costs, presenting in Court a list of costs in a tabulation form commonly known as a 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 for the entertainment of your lawyer or witnesses are not accepted. The bill of costs must 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, public importance, and other surrounding circumstances of the case at the trial, decides on what figure the bill of costs should be taxed. 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. Regarding your question, we are not in a position to default the taxing master for 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 about the assessment of costs, we advise you to refer the matter to the Judge. Reference to the Judge is made by way of Chamber Application supported by an affidavit within 21 days after issuance of the certified copy of the taxing master's decision. If you are out of time, you can apply for enlargement upon showing good cause for such delay.

Stay of execution at Court of Appeal

I lost a case ex parte at the High Court while on medical treatment outside the country. I have appealed the decision and also filed for a stay of execution. My lawyers tell me that I should prepare to deposit the funds in Court as a condition for granting a stay. However, in any case, I have no such security as it is with the bank. The decision is unjust, and I cannot be forced to deposit the amount when I have such a strong appeal. Please guide me.

15 July 2019

The Tanzania Court of Appeal rules require the Appellant to provide security for the due performance of the decree. Rule 11 states that

no order for a stay of execution shall be made unless the Court is satisfied (i) that substantial loss may result to the party applying for a stay of execution unless the order is made; (ii) that the application has been made without unreasonable delay; and (iii) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

The security need not be a cash deposit; a title deed suffices. A recent decision of the Court of Appeal has allowed the security that is already with the bank, as a mortgage, to serve as a deposit for the due performance of the decree, especially where the decree is of a smaller amount than the market value of the property that has been mortgaged. Your lawyer needs to look into this judgment and guide you further. We wish you all the best.

When a law comes into force

I need to know when a law comes into force. I used to think that once they were passed by the National Assembly and assented by the President, they came into force only to discover that there were more steps to follow. Please explain to me how this works. This is stalling progress; what do you think?
15 July 2019

Bills or draft laws are taken to the National Assembly in Dodoma. After passing the National Assembly, the President must assent to the bill to become law (called the Act). However, the Bill does not automatically come into force after it is assented to. Coming into force is the commencement date of the Act.

The law can come into commencement in one of the following three ways. The first is where a commencement date is stated in the Act, which has recently become rare. The second way is where the Act leaves the commencement in the hands of a certain authority appointed by the respective Act. For example, the Act would state that this Act shall come into force on such date as the Minister may by notice in the Gazette appoint. Hence, under this method, the law's commencement date is at the mercy of the Minister or relevant appointment authority. A typical example is the Minister for Industries and Trade, who for the past few years has surprisingly failed to bring into force the commencement of the change in law for a company to have a single shareholder, despite both the law having passed the National Assembly and having been assented to by the President.

Hence, you cannot register a single shareholder company because of the appointing authority's non-action. This is a typical example of progress being stalled. The third way for an Act to commence, which is rare, is for the Act not to mention it and the commencement date would automatically be as soon as it is published in the gazette.

Mother-in-law accident

My mother-in-law was visiting us when she fell on wet tiles due to a leakage in the bathroom. She sustained serious injuries to her hip and has been on and off the hospital. I have voluntarily paid for her medical bills, but she is still unhappy with me. Is this something she can pursue in Court against me? Can my mother-in-law sue me, considering our relationship?
5 August 2019

They say a happy mother-in-law leads to a happy marriage, but that doesn't answer your question.

You can indeed be sued under the law of tort for negligence. The test is whether you had a duty of care, whether you breached that duty, and whether that breach caused any damages. In this case, notwithstanding that she is your mother-in-law, you did have a duty of care, which you breached, resulting in an injury.

Just because she is your mother-in-law does not absolve you of such a claim. Taking good care of her on and off the hospital might be a solution. In our experience, most such

and many other 'mother-in-law' issues are amicably resolved and don't end up in Court.

Flying drone in Tanzania

I have a drone that I regularly use for mapping and videoing purposes. Is such a drone required to be registered, and by whom? Anything else I need to know?
2 September 2019

The answer to your question is yes. Please register the Remotely Piloted Aircraft (RPA) with the Tanzania Civil Aviation Authority (TCAA). The registration is governed by the Civil Aviation (Remotely Piloted Aircraft Systems) Regulations 2018, which clearly states that a person shall not fly the RPAS for commercial or private purposes without a valid licence issued by the Authority per these Regulations.

Further, regulation 7(1) provides that a person shall not operate a remotely piloted aircraft within the United Republic of Tanzania unless the Authority has registered the remotely piloted aircraft and a certificate of registration has been issued per these Regulations. (2) A remotely piloted aircraft shall acquire Tanzanian nationality when registered under these Regulations.

Regulation 65(1) also has very interesting restrictions and states that on receipt of an application for a remote pilot licence or registration of a remotely piloted aircraft, the Authority shall verify compliance and the accuracy of the application and provide the applicant's information to competent security agencies for security vetting before issuance of a certificate. (2) The Authority shall only issue certificates to individuals who have completed a security threat assessment conducted by competent security agencies. (3) The security threat assessment shall consist of a check of intelligence-related databases, including Interpol and international databases, terrorist watch lists, and other sources relevant to determining whether an individual poses or may pose a threat to national security and that confirm the individual's identity. (4) Where the competent security agencies determine that the applicant poses a security risk, the Authority shall deny the application for a certificate. (5) A holder of a remote pilot licence or the certificate of registration who will be determined to pose a security risk shall have his certificate amended, modified, suspended, or revoked (as appropriate) based on the competent security agencies' security findings. (6) The competent security agencies shall conduct background and criminal record checks every 24 months on all personnel employed in deploying, handling, and storing remotely piloted aircraft.

Gone are the days when you could merely fly a drone. There are serious compliance requirements that you must follow, and if you fail, you can be criminally prosecuted.

Suing hospital for charging for oxygen

My brother was in a hospital in Dar where they had to give him oxygen and charged him over TZS 1M for the oxygen. From what I know, oxygen is free. God supplied it, and we breathe it every day. This is a money-making scheme of the hospital. Whilst I consented for oxygen to be given, now that my brother is well, I intend to sue the hospital for taking advantage of my brother. These hospitals intend to reap us off by overcharging us, and I want this to be a lesson for hospitals. Please guide me on the next steps.
9 September 2019

We are happy to learn your brother is safe and out of the hospital. Not being medical professionals, we consulted some of our doctor friends who told us that the oxygen concentration your brother likely got was higher than the normal oxygen we usually breathe from the air. The oxygen in the air is about 21%, whereas the oxygen he likely got was over 60%, 300% higher than the normal

oxygen. It is this additional concentrated oxygen that likely saved your brother from dying, and you should, perhaps, be thankful to the hospital for doing its job well. If a doctor thinks an additional oxygen concentration will assist the patient, he will administer it without thinking twice. It is better to be cautious and save a life than to be stingy and lose a patient because of a wrong decision.

Of course, if the hospital overused oxygen, then you might have a cause of action, but it seems likelier than not that the oxygen was essential to save your brother's life, and it seems to have helped. Your lawyers can guide you further, but this is not an easy case.

Indeed, God supplies oxygen, but the supply by God does not exceed 21%, and the Doctor might have lost your brother if he had not intervened.

Attorney-client privilege betrayal

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 in advance. It has been many months and the advocate has not performed thus far. Hence, I withdrew instructions and transferred my file to another law firm. The previous advocate now threatens to disclose information that I released to him. Is this information not protected?

14 October 2019

Generally, whatever the client communicates with their advocate is privileged. That is, the advocate is not required to release this information without the consent of his client.

There are circumstances in which he can be obligated to release the said communication, like by order of the Court or if the information is about an intention to commit a crime. Under the scenario you gave us, the advocate is legally obligated not to disclose the information unless it fits in the grounds that he will be legally obligated to disclose it. Finally, the law professionals' basic rule of ethics is to maintain confidentiality, and whatever is communicated to the advocate by his client or comes to the advocate's knowledge while attending to that client remains privileged and cannot and should not be disclosed. What the advocate is threatening to do is illegal; if he is a duly registered advocate, he should be aware of the basic principles of the attorney-client relationship. If he does reveal the information, you can sue him and ask for compensation, and he can be suspended.

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 his firm. The basic professional ethics rule on confidentiality provides that a lawyer shall not reveal information relating to the representation of a client.

Without all the exceptions above, the lawyer's obligation of confidence to his client is sacrosanct. Whether the client is a prospective, current, or past is immaterial. It is also immaterial whether or not the lawyer-client relationship ended on a sour note.

MP claims immunity

I was at a bar where a Member of Parliament misbehaved with my girlfriend. I confronted him, and we ended up arguing. He hit me with a chair and I ended up in hospital. The MP now claims immunity and cannot be arrested or reported. What should I do?

21 October 2019

Members of Parliament indeed have 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 any Court or elsewhere outside the National Assembly.

The article states further that subject to

this Constitution or 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 about anything that 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.

However, having cited the above, the fighting did not occur in the National Assembly based on anything he said therein. Hence, there is no immunity to protect this MP. You can proceed and report this to the police.

Affidavit contains lies

A party to certain proceedings has lied in their affidavit filed in Court. It seems like sworn statements are not taken seriously here. What are the consequences of giving such false statements under oath? In other countries, one would be sent to jail.

28 October 2019

The Penal Code has specific provisions for offences relating to the administration of justice. Section 102 of the Code states that any person who, in any judicial proceeding, or to institute any judicial proceeding, knowingly gives false testimony touching any matter which is material to any question then depending in that proceeding or intended to be raised in that proceeding, is guilty of the misdemeanour termed "perjury." It is immaterial whether the testimony is given on oath or otherwise. The forms and ceremonies used in administering the oath or binding the person giving the testimony to speak the truth are immaterial if he assents to the forms and ceremonies used.

Further, whether the false testimony is given orally or in writing is immaterial. It is immaterial whether the Court or tribunal is appropriately constituted, held in the proper place, or not if it acts as a Court or tribunal in the proceeding in which the testimony is given. It is immaterial whether the person who gives the testimony is a competent witness or not or whether the testimony is admissible in the proceedings.

Moreover, anyone who aids, abets, counsels, procures, or suborns another person to commit perjury is guilty of the misdemeanour termed "subornation of perjury."

Any person who commits perjury or suborns perjury is liable to imprisonment for seven years.

We agree with you that, unlike other jurisdictions, affidavits in Tanzania are taken a little too lightly in that persons affirming or swearing the affidavits do not realise the strict provisions of the law. We have not seen any recent cases where a party to proceedings has been charged under the above provisions. The law is in place against lying in Court or affidavits, but it is not strictly enforced and/or pursued.

Viagra information leaked by pharmacist

I might be 70 years old, but I am physically fit overall. To boost my performance for a date, I decided to walk into a pharmacy and purchase a few 50mg tablets of Viagra. It worked wonders. However, I did not realise that the dispensing female pharmacist was from my community and had informed many people in Dar on WhatsApp about my purchase of Viagra. I am now being looked at differently whenever I see anyone from the community. I wish to sue the pharmacist for this. Please guide me.

25 November 2019

We are sorry to hear these defamatory remarks about your purchase. We are glad the medication worked. This drug is meant for people your age.

Under the Pharmacy Act, a disciplinary committee has been established, and you can officially lodge a complaint against the pharmacist for breach of confidentiality, amongst others.

Depending on the facts, this could even lead to the suspension of the pharmacist. You can also consider suing the pharmacist for defamation. The normal ingredients of defamation are that the defendant made a false and defamatory statement concerning you, she/he made that statement to a third party, and the information was negligently published. In your case, the information is accurate that you indeed purchased Viagra. That, however, doesn't mean that you have not been defamed. In your case, the pharmacist knowingly published something defamatory on WhatsApp about you, which has harmed your reputation and caused you to be lowered in the community; this is enough. The tricky part is for you to prove damages. Your lawyer can guide you further.

Application of customary law

I am confused as to the sources of laws in Tanzania. Is customary law relevant in Tanzania at this time and era, and how is it applied?

2 December 2019

You cannot undermine customary law, customs, or traditions in any time and era. With the current 'Globalisation' of the world, there is a serious risk that we are trying to adopt customs that were non-existent before. We still maintain our culture and heritage in Tanzania and hope to continue doing so.

Customary law is formally recognised as a source of law by the Judicature and Application of Laws Act. Since enacted laws have developed over the years, customary law application has decreased, but it still exists today.

According to the Act, customary laws may only be applied by Courts in matters of a civil nature and with respect to cases (a) between members of a community in which rules of customary law relevant to the matter are established and accepted or (b) between a member of one community and a member of another community if the rules of customary law of both communities make similar provision for the matter.

If customary law is applied, the Court concerned is required to use the customary law prevailing within the area of the local jurisdiction of the Court, or if there is more than one such law, the Court is required to apply the customary law applicable in the area in which the act, transaction or matter occurred or arose.

The District Councils are tasked with identifying customary laws prevalent in their jurisdiction and recommending to the Government which of those customary laws should be declared as laws to be applied by Courts within areas of such District Councils. We recommend you read the Act for further details.

Law not mentioning females

There is a Tanzanian law that mentions only the male gender and ignores the females, who the law should equally bind. Is such a law that only targets males not discriminatory? As a male, I am very upset that Tanzania is so advanced in overprotecting women.

2 December 2019

Do not panic. Tanzania is playing its part in protecting women, but your interpretation of this is misconstrued. The new way of drafting a law is by using the word 'person' instead of 'he.' However, some decades-old laws still apply, but the word 'he' is used instead of 'person'.

In the Interpretation of Laws Act, the '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; (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, although the male gender is the only one it refers to.

Training school for military activity

I am a specialised military martial arts trainer. I want to open a school to train people in military-type operations so that they can increase the security of their premises. Can I proceed?

9 December 2019

The answer to your question is no. You cannot have a training school for military-type operations as this training is only reserved for the military. Section 62 of the Penal Code criminalizes unauthorized military training. Specifically, subsection (1) states that it is a felony, punishable by up to seven years imprisonment, for anyone who: (a) without the Home Affairs Minister's permission, trains or drills another person in the use of arms or military exercises; or (b) attends an unauthorized meeting for such training. Subsection (2) states that anyone attending such an unauthorized meeting to be trained or trained there is guilty of a misdemeanour.

30-year rule for accessing public records

I am a historian interested in accessing various public records from the time of Mwalimu Nyerere and the successor presidents. In other countries, such records are open to the public after a certain time limit. What is the position in Tanzania, and how can I access these records to document some interesting moments?

16 December 2019

Like in other countries, Tanzania has in place the Records and Archives Management Act of 2002, which is an act to establish the Records and Archives Management Department to provide for the proper Administration and management of public records and archives throughout their life cycle and connected matters.

This law provides that after 30 years from the date the documents were created, such documents are available to the public for inspection. At the expiration of 30 years, any records classified as confidential cease to be so classified and subject to the National Security Act can be accessed. However, a longer period of 30 years may be prescribed when there is a continuing need to restrict public access on the grounds of national security, maintaining public order, safeguarding revenue, or protecting living individuals' privacy.

You may approach the Director of Records and Archives, who can facilitate viewing such records, subject to the above 30-year rule and other exclusions.

For your reference, public records include but are not limited to the records and archives belonging to the United Republic created, received and maintained (a) in the offices of the President and of the Cabinet; (b) by any ministry, department, commission, committee, office or other body under the Government of the United Republic or by the Minister or any other officer or employee thereof, (c) by any post representing the Government of the United Republic outside the country or any officer serving in such a post; (d) by any information or unit of the armed forces of the United Republic or any officer of such a formation or unit; (e) by the Parliament or Electoral Commission or any committee or officer thereof, (f) by the Court of Appeal, High Court or any other Court or tribunal with jurisdiction within the United Republic or by any Judge, Management or other officer of such a Court, in addition created, amongst others.

Law enforcement entry into consular premises

Can law enforcement enter the premises of any embassy in Tanzania? Why should we not be allowed when these embassies are on our soil? This is a breach of our sovereignty and I want to challenge it.

16 December 2019

You seem to be taking sovereignty too far and forgetting that we also have our High Commissions worldwide accorded the same protection. International law, specifically the Vienna Convention and the Diplomatic and Consular Immunities and Privileges Act, prohibits law enforcement from entering consulates without the consent of the minister or a consular officer in charge. There are exceptions. For example, if there is an emergency in the consulate or if a crime is about to be committed or has been committed, law enforcement can enter. This privilege is very tightly guarded, and governments worldwide, including Tanzania, respect it.

Oversleeping and death

I tend to sleep long hours, which I enjoy. There is this particular individual who is threatening me that considering I sleep such long hours, there is a chance that I am preparing to go to sleep, i.e., to die permanently. This is causing me a lot of discomfort. Is there no provision in the law that I can sue against such threats?

27 January 2020

You have not provided enough details on the exact threat for us. Is it a threat or a mere concern that the person raises in good faith? Our brief research will not please you as it shows that oversleeping is not very healthy and can indeed lead to early death. To that extent, we recommend you see a doctor.

The Penal Code has many offences, including threatening violence, the threat of injury to persons employed in public service, procuring defilement by threats, written threat to murder, demanding property by written threat, threatening to accuse of crime with intent to extort, procuring the execution of the deed by threats, demanding thing with threats with intent to steal and threats to burn or destroy.

Based on our limited information, we are unsure of the exact threat and where it would fall, if at all, and recommend you see your legal advisor, who can guide you further.

Ministerial power to make regulations

There have been instances where Ministers use powers under the laws they administer to develop stricter regulations than the governing law itself. There seem to be no checks and balances. Why does the National Assembly not have control over such regulations? Some of these regulations are like principal laws, have no stakeholder input, and impose penalties and fines for hundreds of millions. Is there no limit to the powers that such Ministers can exercise?

17 February 2020

The Interpretation of Laws Act is clear that the subsidiary legislation shall not be inconsistent with the provisions of the written law under which it is made or of any Act. Subsidiary legislation shall be void to the extent of any such inconsistency. There is also a limit on the fine amount the regulations can impose.

It is also not true that the National Assembly has no power over subsidiary legislation. Under our laws, all regulations must be laid before the National Assembly within six sitting days of the National Assembly next following publication of the regulations in the Gazette, and the National Assembly has a right to disallow any such regulations. However, we have not seen that happen as, in our opinion, regulations are generally not carefully scrutinised. However, this may change if brought to the attention of the National Assembly.

Section 38(2) of the Interpretation of Laws Act states that notwithstanding any provision in any Act to the contrary if the National Assembly passes a resolution disallowing any regulations of which resolution notice has been given within 14 sitting days of the National Assembly after such regulations have been laid before it or if any regulations

are not laid before the National Assembly, such regulations shall cease to have effect, but without affecting the validity or curing the invalidity of anything done or of the omission of anything in the meantime. This law further states that subsection (2) applies notwithstanding that the period of 14 days referred to in that subsection, or part of that period, does not occur in or during the same session of the National Assembly in which the regulation is laid. before the National Assembly concerned.

In subsection 4 the law states that notwithstanding any provision in any Act to the contrary, if the National Assembly at any time passes a resolution amending any such regulation or substituting another regulation or part of a regulation for that which the National Assembly has disallowed under subsection (2), then on the passing of any such resolution (a) amending a regulation or part of a regulation the regulation or part of a regulation so amended shall, after the expiration of 7 days from the publication in the Gazette of the notice provided for in subsection (5), take effect as so amended; (b) substituting a regulation or part of a regulation in place of a regulation so substituted shall, after the expiration of 7 days from the publication in the Gazette of the notice provided for in subsection (5), take effect in place of that for which it is so substituted.

The Regulations can also be challenged in Court and there have been various instances of Courts striking down regulations that are made beyond powers vested in Ministers. Your lawyers can guide you further on this.

Conflicting decisions at Court of Appeal

Which decision will prevail if the Court of Appeal has two or more conflicting decisions? How do I get certainty on what decision should be applied? I find these decisions quite strange as there is no consistency in interpretation at the apex Court. Please guide.

17 February 2020

Inconsistent decisions are part and parcel of building legal jurisprudence, and this happens around the world, and Tanzania is no different. The current Court of Appeal is trying hard to fast-track cases, but we agree that consistency is needed, which should not be dispensed at the expense of speed.

If there are inconsistent decisions, and if this is brought to the attention of the Court, the Chief Justice may order that a full bench of five or even seven justices be appointed to hear parties on these decisions so that the Court can come up with one decision.

Strange laws

I am at our law school and find the laws very strange. The law doesn't compel one to tell the truth, but you can get into trouble, including going to jail, if you do not tell the truth. I think at least someone attempted to speak out, but untruthfully, as opposed to someone who just refused to speak, which should also be criminal. I also find the law like a spider's web, which lets the big mosquitoes through and only catches the small ones.

2 March 2020

We believe it is not a question about your first thought, so we don't have an answer. All we can say is that your observation is quite valid, but it depends on the setting and the situation and must be discussed on a case-to-case basis. Whilst you cannot compel one to speak the truth, there are some statutes that, nowadays, compel one to speak or report, and not speaking or reporting becomes an offence. Hence, your observation is not universally correct.

As for your analogy of mosquitoes and the spider web, we believe it would be a failure of the law if that happened. The law is supposed

to apply equally to everyone, and people cannot choose between the big and the small offenders. Everyone must be treated equally. The approach to law is not always fair, and there are big mosquitoes who get away with a lot.

Date of coming into force of law

From what date do our laws come into force? There does not seem to be consistency in the approach, and certain laws signed off by former presidents after being passed in the National Assembly are not yet in force.

9 March 2020

There are three ways for a law to come into force. The first is where the Act gives a date of when it will come into force. This method was popular before but not the most common nowadays. The second method of how the law comes into force is where the Act states that it shall come into force when the portfolio Minister or a named Minister designates a date by notice in the Gazette. This means the law does not come into force without publishing a notice. The third way is where the Act states nothing on the commencement date. In such an instance, the Act comes into force when it is published in the Gazette.

Setting quarantine centre

We are an NGO having our offices in Tanzania. Due to the outbreak of COVID-19 and the fact that the disease has been spreading worldwide, we are considering supporting the government by establishing quarantine centres. Do we need approval for this, or is it automatic? Should we write to the Ministry of Health to seek approval and submit our plan? Please guide.

13 April 2020

The Public Health Act 2009 obliges the Government, through the Medical Officer of Health (MOH) and District Medical Officer (DMO), to prevent and control the spread of infectious or communicable diseases. Section 15 of the Act empowers MHO and District DMO to specify quarantine measures that will facilitate the scaling down of the outbreak. One of the quarantine measures is the creation of temporary treatment centres.

Please note that every state protects and provides basic services for its citizens. The said duty is a legal obligation of each state towards its citizens and is usually provided for under the Constitution. On top of that, as different philosophers advocate, the Social Contract Theory puts a similar obligation to the state to protect its subjects. Social contract arguments typically posit that individuals have consented, either explicitly or tacitly, to surrender some of their freedoms and submit to the Government in exchange for the protection of their remaining rights or maintenance of the social order. The above implies that since the citizens pay taxes, the government is expected to provide services such as police protection, education, highway building and maintenance, welfare programs, and medical services in return.

Based on the above analysis, individuals, community groups, religious communities, and NGOs usually support the Government through financial measures unless communicated otherwise. The rationale behind the above is that the duty to provide health care and medical services lies with the government. However, based on the Act, subject to relevant approval, you may also offer to assist with setting up such quarantine centres, and approval will only be granted based on the situation at the time. For example, if COVID-19 gets out of control (we pray that it doesn't), approval can be sought based on the situation. However, without approval, you cannot proceed with your plan. Presently, only select hospitals are allowed to treat COVID-19.

Kissing during COVID-19

Can we continue kissing during COVID-19? I am terrified of the virus and of committing an offence. How can we continue kissing? Please guide me, as I feel a part of me is missing.

1 June 2020

This is a very fascinating question. Regarding kissing, it depends entirely on who you are kissing, whether you know you have COVID-19 and whether the person you are kissing knows you have the virus. If you have no reason to believe that you have the virus, and provided the person you are kissing has consented to the kiss, no offence is committed.

However, if you know or ought to know that you are infected with the virus and you kiss someone, say on the lips, there is a considerable risk of transmission, and you can be convicted for up to a year imprisonment under the Public Health Act.

Unfortunately, we are legal practitioners and cannot guide you regarding how you can continue kissing. Undoubtedly, many people are missing this level of intimacy, but this question should be directed to your doctor as it is beyond the scope of lawyers.

Air conditioners in jail

I have a friend who has been imprisoned for a certain offence. He cannot sleep in prison because he is used to air conditioning. Is it not unfair to detain persons without catering to their basic needs? Can't he fit in an air conditioning at his own expense?

1 June 2020

When you are sent to prison, you are deprived of certain non-basic needs as a punishment for your offences.

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

Further, there is no discrimination in being unable 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 with 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, the law disallowed this as it would be discriminatory. Buying an AC is much cheaper than the power it consumes over its lifetime, and the prison department cannot afford such additional power consumption. Therefore, buying an AC is not an option.

Big body, small seat

I took a flight out of Dar to an overseas destination and was made to sit next to an extremely fat man. He was easily over 160 kilograms. I am not sure how he managed to sit in economy class. When he slept, he snored, and his hands touched mine. Is there no weight restriction for economy class? I must confess that it was a terrible 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?

15 June 2020

You have not disclosed what airline this was, but generally, no rule 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 the safety and comfort of the passenger and others, to buy two tickets and if the plane is not full, the second ticket is reimbursed. Some airlines have stricter policies that prevent you from being able to board if you have an economy class ticket, but the seat size does not fit you.

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

Constitutionality of Saturday cleaning campaign

I actively believe in the Seventh Day Adventist (SDA) Church. I have always observed our church's fundamental doctrines and teachings, which strictly dedicate the seventh day of every week (Saturday) to keeping it holy for resting, worshipping, and praising the Almighty God. My concern is about the Guidelines that designate every Saturday of the last week of each month as the national cleanliness day. I believe the Guidelines interfere with my right to observe Saturday as a worship day. Do the Guidelines still exist, and is there any legal remedy?

6 June 2020

We know the Minister of State, Office of the Vice President, Union Affairs and Environment, issued the Environmental Management (Designation of National Cleanliness Day) Guidelines 2016. The Guidelines designated every Saturday of the last week of each month as a National Cleanliness Day. The Guidelines mandate every person, without exception, to participate in the cleanliness of the environment. Failing to do so risks penalties under the provisions of the Environmental Management Act and the Regulations thereunder.

Every person in Tanzania can enjoy the fundamental rights engraved under Part II, Basic Rights and Duties of our Constitution and expressly provided for under Articles 12 to 28. The right to freedom of conscience and religion provided under Article 19 is enforceable under Article 26(2) of the Constitution and sections 4, 5, and 6 of the Basic Rights and Duties Enforcement Act. Therefore, the remedy is to lodge a petition before the High Court to challenge the constitutionality of the Guidelines.

However, a petition challenging the Guidelines has already sought this remedy. The Court held that "the designation of the Saturday a Sabbath for members of SDA church during the last week of every month as a national cleanliness day violates the Constitution as it curtails the right to the enjoyment of religion guaranteed under Article 19 (1) of the Constitution." In short, the Court declared the Guidelines unconstitutional and directed the respective authority to make good the offensive provisions.

Considering the above ruling, we believe the Guidelines are no longer in force.

Rectification of error in law

If there is an error or ambiguity in the law, does the Attorney General have the power to make changes to cure this?

3 August 2020

Section 26(3) of the Interpretation of Laws Act states that where there is any clerical or printing error in any Bill or Act published in the Gazette, the Chief Parliamentary Draftsman or any member of the Attorney-General's Chambers authorised in writing on that behalf by the Chief Parliamentary Draftsman, may, by order published in the Gazette, give directions as to the rectification of such error and every such direction shall be read as one with the Bill or Act to which it relates and such Bill or Act shall, with effect from the date of its first publication, take effect as so rectified.

This power is only limited to any clerical or printing error. If the law is ambiguous, the AG has no authority to cure this, and the legislature or Courts must resolve the ambiguity.

Unconstitutionality of Article 41(7) and the African Court

I am a first-year law student and have been reading with interest about the case where the African Court on Human and People's Rights (African Court) declared Article 41(7) of our constitution unconstitutional. Can you briefly summarize this? What exactly did the Court say?

10 August 2020

In the case of Jebra Kambole (Applicant) v United Republic of Tanzania (Respondent State), the Applicant was challenging the legality of Article 41(7) of the Constitution, which states: "When a candidate is declared by the Electoral Commission to have been duly elected in accordance with this Article, then no Court of law shall have any jurisdiction to inquire into the election of that candidate."

The Applicant alleged that the Respondent State had violated his rights under the African Charter on Human and Peoples' Rights (the Charter) by maintaining Article 41(7) in its Constitution, which provision bars any Court from inquiring into the election of a presidential candidate after the Electoral Commission has declared a winner.

Specifically, the Applicant alleged that Article 41(7) violated his right to non-discrimination, his right to equal protection of the law, and the right to have his cause heard, especially the right to appeal to competent national organs against acts violating his fundamental rights as provided for under Articles 2, 3(2) and 7(1)(a) of the Charter, respectively. The Applicant also alleged that the Respondent State had failed to honour its obligation to recognise the rights, duties, and freedoms enshrined in the Charter and to take legislative and other measures to give effect to the Charter as required by the Charter.

The Court first held that it had jurisdiction to entertain the application. On admissibility, the Court stated that the Application was admissible notwithstanding arguments raised on (i) local remedies not being exhausted and (ii) that the Application was time-barred. The Court held that the Applicant did not have a local remedy available for him to exhaust before filing his application and that there was no specific time frame for such an application.

On the merits, the Court found as follows that Article 41(7) of the Constitution creates a differentiation between litigants in that while the Respondent State's Courts are permitted to look into any allegation by any litigant, they are not allowed to do so when a litigant seeks to inquire into the election of a President. The Court held that this amounted to violating Article 2 of the Charter.

Regarding whether the Respondent State had violated Article 3(2) of the Charter, the Court noted that the principle of equal protection of the law does not necessarily require equal treatment in all instances and can permit differentiated treatment of individuals who are differently placed. The Court thus held that the Respondent State had not violated Article 3(2) of the Charter.

In Article 7(1)(a) of the Charter, the Court noted that the key elements of the right to a fair hearing are the right to access a Court to adjudicate one's grievances and the right to appeal against any decision rendered. The Court held that Article 41(7) ousts the jurisdiction of Courts to consider any complaint about the election of a presidential candidate after the Electoral Commission has declared a winner. Hence, the Respondent State's Constitution violated the Applicant's rights under Article 7(1)(a) of the Charter.

Suing a Ministry

Some issues aggrieved me, and I intend to sue the Ministry's Permanent Secretary. I am unaware of the law governing such suits and the procedure for instituting these civil proceedings. Please guide.

24 August 2020

Since the Permanent Secretary (PS) is an officer of the Government, the procedures for suing are stipulated under the Government

Proceedings Act, R.E. 2019 (the Act). Section 6 of the Act requires the claimant to submit to the Government Minister, Department, or officer concerned a notice not less than 90 days of their intention to sue the Government. The said notice has to specify the basis of the claim against the Government, and a copy of the notice has to be sent to the Attorney General and the Solicitor General.

After the expiry of the Notice, the suit against the Government has to be brought against the Attorney General, and a copy of the Plaint is to be served upon the Solicitor General, Government Ministry, Department, or officer that is alleged to have committed the civil wrong on which the civil suit is based.

It is worth noting that section 7 of the Act makes it mandatory for all civil proceedings brought against the Government to be instituted before the High Court. However, joining the responsible ministry as a co-defendant in such proceedings might be necessary, depending on the nature of your claim. Since we are unaware of your claim's facts, we recommend you talk to your lawyer for further advice, but remember the 90-day rule.

Minors and statute of limitation

I am told that the statute of limitations for a breach under contract is six years. However, when the dispute arose, I was only 15 years. When did the 6-year rule start to count for me? My lawyer says I am time-barred as the 6 years started when the dispute arose. Please guide me as I seem to be out of time.
31 August 2020

For any cause of action that arises from a breach of contract, the statute of limitation is six years, i.e., the person intending to act must do so within six years. However, under our Law of Limitations Act (the Act), there is an exception for minors.

Section 17 states that (1) where two or more persons are jointly entitled to institute a suit or make an application for the execution of a decree, and one of such persons is under a disability, the provisions of section 15 and section 16 shall apply as if all such persons are under a disability.

The Act defines disability as a minor, meaning that section 17 applies to you. When you turn to section 15, it states that if on the date on which a right of action for a suit or an application for the execution of a decree accrues, the person to whom it accrues is under a disability, the action may be brought at any time before the expiry of the period of limitation prescribed for such action computed from the date when the person ceases to be under a disability or dies, whichever event first occurs.

In your case, time starts running from when you turned 18, considering that under the law, you were under a disability until your 18th birthday.

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.
31 August 2020

A Power of Attorney (POA) is a written authorisation to represent or act on another's behalf in private affairs, business, or other legal matters. The person authorising the other to act is usually the donor, and the one authorised to act is the donee or the attorney.

The person who creates a power of attorney, known as the grantor, can only do so when they have the requisite mental capacity. In some powers of attorney, the grantor states they wish the document to remain in effect even after becoming incapacitated. This type of power is commonly referred to as a durable power of attorney, which has not been tested in Tanzania to the best of our knowledge. If someone is incapacitated, that person can't execute a valid power. If a person cannot 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 that person.

Concerning your specific question, it is very unlikely that you can further delegate your powers under the power of attorney unless the power of attorney states explicitly so. Under the legal principle of delegatus non potest delegare, i.e., delegated powers cannot be further delegated. Your lawyer can guide you further.

Weddings and drone camera

I am a photographer living in Dar es Salaam. Most of the events I photograph are send-off parties and weddings, and to get the best shots and videos, I use a high-altitude camera. In 2017, I bought a drone to serve this purpose, and I have since been using it without a problem. Last week, while at a wedding in Arusha, one of the guests approached me and asked if I had a permit to fly my drone camera in Arusha. I was quite surprised. He further told me that the respective authorities could arrest and charge me. My questions are whether this is true and what I should do to operate my drone camera without being bothered by the authorities.

7 September 2020

It is important to note that the Civil Aviation (Remotely Piloted Aircraft Systems) Regulations 2018 require all owners of drones to register with the Tanzania Civil Aviation Authority (TCAA) before any operation. Nowadays, this is also a requirement in many other jurisdictions, and nothing is surprising or peculiar about it. Regulation 7 stipulates that a person shall not operate a remotely piloted aircraft within the United Republic of Tanzania unless the Authority has registered the remotely piloted aircraft and a certificate of registration has been issued under these Regulations.

On top of that, after applying for registration to the TCAA, the owner will be required to seek approval from the military force. The application for registration form has to be submitted together with the evidence of ownership and the registration fee of USD 100.

Even after being registered and issued a permit, when you want to operate your drone outside the authorisation area (in your case, Dar es Salaam), you will be required to notify the responsible Authorities (TCAA and the Military Force). Failure to comply with the stipulated requirements will result in an offence punishable by a fine of up to TZS 1M or imprisonment of up to six months or both.

Since the Regulations also define certain restricted areas for operating drones, we recommend reading the dos and don'ts before operating your drone.

Leave to appeal to Court of Appeal

Last year, I lodged my land appeal in the High Court against the decision of the District Land and Housing Tribunal. The High Court transferred my appeal to the Resident Magistrate with extended jurisdiction under section 41A of the Land Disputes Courts Act. The Resident Magistrate with extended jurisdiction dismissed my appeal. Since the case originated from the District Land and Housing Tribunal, I have been told that I cannot appeal to the Court of Appeal without leave of the High Court or Court of Appeal. Since the Resident Magistrate's Court decided the matter with extended jurisdiction, can I lodge my application for leave to appeal there, or do I have to file it in the High Court?

19 August 2020

A Resident Magistrate Court cannot exercise extended jurisdiction to grant a leave to appeal to the Court of Appeal without a formal order from the judge in charge of the High Court transferring the application to a specific resident magistrate with extended

jurisdiction. You cannot directly apply for leave to appeal in the Resident Magistrate's Court. You should file it in the High Court first, but the High Court/Judge shall transfer it to the Resident Magistrates' Court, mandating a specific Magistrate with extended jurisdiction.

Recently, the Court of Appeal in Civil Application No. 121/03 of 2019 explained that the High Court cannot entertain an application for leave to appeal to the Court of Appeal in a matter arising from the Resident Magistrate's Court exercising its extended jurisdiction. However, the Court of Appeal expounded that such an application for leave to appeal should first be lodged in the High Court before it is transferred to the Resident Magistrate Court to a specific magistrate with extended jurisdiction.

Smoking in entertainment facilities

Some people smoke in bars without considering that they affect the health of non-smokers who drink beside them. Is this not a crime? In other countries, smoking is strictly dealt with.

2 November 2020

Tanzania also has strong anti-smoking laws, which may not be strictly enforced but exist. Smoking in public is an offence under section 12(1) of the Tobacco Production (Regulation) Act, 2003. Further, section 33(3) of the Act imposes a penalty of a fine not exceeding TZS 500,000 or imprisonment for a term not exceeding one year for smoking in public.

The Act defines a public place as a health care establishment, library, place of worship, enclosed premises intended for social, cultural meetings, sporting or recreational activities, public eating places, office buildings, public transport on air, land, sea, pavilion, enclosed environment such as markets, malls and any other place to which public has admittance. We believe bars fall within this definition because they are enclosed places where the public can have admittance.

Moreover, sections 13(1) and 14(1) of the Act require the owners, occupiers, or operators of entertainment facilities, restaurants, and hotels to set aside rooms or places for smoking to ensure maximum protection of non-smokers. As stated above, we have noted that this may not be strictly adhered to, but such an offence is imprisonable.

Loud music in residential area

My neighbour owns a social hall and rents it for weddings and other social entertainment during weekends. We get disturbed by the loud music that comes from the hall. What can I do in law?

2 November 2020

Under section 42(1) of the Police Force and Auxiliary Service Act [Cap.322 R.E 2002] Police are vested with the power to regulate the extent to which music may be played or to which music, human speech, or other sound may be amplified, broadcast, relayed, or otherwise reproduced by artificial means in public. Neglect or failure to obey Police orders amounts to an offence punishable by a fine not exceeding TZS 500,000 or imprisonment for a term not exceeding three months. Permits are issued area-wise for music to be played, usually till midnight. If the neighbour's hall does not have a permit or goes beyond the time stated on the permit, that may be an offence. Your lawyer can guide you further after getting further facts from you.

Conducting religious activities without registration

I own a registered church outside Tanzania and want to visit Tanzania early next year on an evangelical mission. Does the law allow foreigners to preach in Tanzania?

21 December 2020

The Societies Act [Cap.337 R.E 2002] allows foreigners to preach in Tanzania, but his church must be registered first for the

priest to preach lawfully. It is not the preacher who has to be registered. The church has to be registered for its foreign priest to conduct lawful religious meetings. It is an offence under section 7 of the Societies Act as amended by Act No.9 of 2019 for a priest of a foreign-registered church to conduct religious activities in Tanzania without his church being first registered in Tanzania. Running an unregistered church or preaching the gospel without registering the church is an offence that attracts a penalty of not less than TZS 1M but not exceeding TZS 10M. Registering a church in a foreign country does not automatically authorise a priest of the foreign-registered church to conduct religious activities in Tanzania.

Legality of security groups formed by political parties

We see security groups of all kinds of 'colour' guards and others of that nature formed by political parties. Does the law allow political parties to form their security groups? Are these political parties' security groups not usurping the Police and other security organs?

14 December 2020

You are right. It is against Article 147(1) of the Constitution of the United Republic of Tanzania, Section 3 of the Public Order Act (RE 2002), and Section 8E of the Political Parties Act [Cap 258 R.E 2019] for a political party or leaders or members of political parties to form, recruit or deploy in Tanzania any form of militia, paramilitary or security group. The law further prohibits political parties, political leaders, or members of political parties from maintaining organisations that purport to usurp or supplement the functions of the Police and other security organs of maintaining security, law and order. Under Article 147(2) of the Constitution, the duty to form a security group is exclusively vested in the Government of the United Republic of Tanzania. Political parties are disallowed even to conduct, finance, coordinate, or order to be conducted military training or any training on using any kind of weapons to its members, be it for their self-defence or defence of their leaders.

Forming a security group by a political party is an offence under Section 8E (3) of the Political Parties Act. Every member or leader of a political party who forms a security group is liable upon conviction to imprisonment for a term of not less than five years but not exceeding 20 years imprisonment. In addition to the custodial sentence imposed on the leaders and members of the political parties concerned, the Registrar of Political Parties shall also de-register the political party whose leaders or members are found guilty of unlawful formation of a security group.

Beehive in neighbourhood

My neighbour has placed several beehives in a tree whose shade enters my house. I am very conscious about my beauty and thus use perfumes and lotions with strong scents. I am worried the bees might attack me because of this scent. What can I do legally?

8 March 2021

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

Suppose the person does not implement the order of the Director or authorised officer. In that case, the Act states that where the

Director or an authorised officer is satisfied that a person has failed to comply with directives contained in an order under the Director or the authorised officer, this shall be reported to Court.

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

Representation by advocate in disciplinary hearing

I work for a private company and have been summoned to appear in a disciplinary hearing to answer an accusation of gross negligence. Am I entitled to engage and appear before the committee with my advocate?

19 April 2021

Under paragraph 4(4)(5) of the Disciplinary Procedure prescribed under the Employment and Labour Relations (Code of Good Practice) Rules, 2007, the employee accused of a disciplinary offence has the right to appear before the disciplinary hearing committee with a co-worker or a trade union representative if he or she is a union member. The law does not give the right to appear before a disciplinary inquiry committee with an advocate. The disciplinary inquiry committee may allow an employee to be represented by an advocate, but the employee cannot demand, as a right, to be represented by an advocate.

Suing the Judiciary

I would like to know if the High Court or subordinate Court can be sued to recover the Court fees it has overcharged, which it refuses to refund after several demands. What is the procedure for suing the Court and which Court has jurisdiction to hear a case against the Court? I also want to institute a constitutional petition in Court for violation of my rights. Am I required to notify anyone of my intention to sue?

17 May 2021

A Court can be sued just like any other government department. A suit against the Court is treated like a government suit and has to follow the procedure laid down under the Government Proceedings Act [Cap. 5 R.E 2019] as amended by Act No.1 of 2020. As per section 6 of the Government Proceedings Act, the claimant must first give 90 days' notice of intention to sue the Judiciary. The notice must be addressed to the Chief Court Administrator, and a copy must be served to the Attorney General and the Solicitor General. The notice of intention to sue should specify the basis of a claim against the Judiciary. After 90 days' notice expires, a suit can be brought against the Judiciary, and the Attorney General should be joined as a necessary party. Failure to enter the Attorney General renders the suit incompetent.

Since the Judiciary is treated like a government department and a suit against it must be instituted in the High Court irrespective of the amount involved in the suit. Please note that the Government Proceedings Act does not govern constitutional petitions. Their institution does not require giving notice of intention to sue the Government as is usually done in civil suits. The procedure for the institution of constitutional petitions is prescribed under the Basic Rights and Duties Enforcement Act and the Rules made thereunder.

Crime, Police and Due Process

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This chapter demystifies complex legal scenarios, from anti-corruption laws and cybercrimes to rights during arrests and societal issues like witchcraft, offering clear, actionable insights rooted in statutes like the Penal Code, Cybercrimes Act, and Prevention of Corruption Act. Each response bridges legal theory with everyday concerns, addressing dilemmas citizens, professionals, and expatriates face. Whether unraveling the nuances of bail procedures, digital defamation, or cultural practices, the content is an indispensable guide for understanding rights, obligations, and recent legal reforms.

It addresses questions from ordinary people and their everyday struggles, such as can you sue yourself to curb destructive habits? What happens when a supplier stands up to the government for unpaid dues, and can they be strong-armed with threats of “economic sabotage”? And is there a chance for redemption through community service instead of prison time? Through compelling examples and clear explanations, we’ll reveal how the legal system intersects with our relationships, work, and communities, offering essential insights for navigating the complexities of modern Tanzanian life.

Gifts to public officials

Is it legal for me to take a public official for lunch in a nice restaurant? Can it amount to bribing the official? What about when I gift an official for Christmas?

8 January 2018

Generally, there is nothing wrong with taking a public official for lunch in a nice restaurant. However, it depends on your motive for the invitation to that lunch. For example, suppose your motive is to convince the public official to give you favourable treatment. In that case, that will be contrary to the anti-corruption law and code of ethics for public officials.

For example, Section 15 (1) (a) of the Prevention and Combating of Corruption Act 2007 makes it an offence for a public official to solicit, accept, or obtain any advantage as an inducement or reward for providing certain services to the person who offers such advantage. Similarly, section 15(1)(b) of the Act makes an offence for any person to give a gift as an inducement to a public official in anticipation of favourable treatment from that public official. In other words, a public official is prohibited from accepting any gift from a person in exchange for favourable treatment.

Depending on your motive (i.e., what do you expect in return from the official), a Christmas gift that intends to induce an official to act in your favour is unlawful.

The 1995 Code of Ethics and Conduct for the Public Service in Tanzania prohibits a public official or any member of his/her family from receiving presents as money, entertainment, or any service from a person that may be regarded as geared towards compromising his/her integrity. However, a public official may accept or give nominal gifts such as pens, calendars and diaries in small amounts. A public official must return any other gift to the donor or handle it to the government, in which case a receipt will be issued.

It is unwise to consult your attorneys if you are unsure what amounts to bribery and what doesn't.

Traffic police causing accidents

I have noted with the greatest concern that the highway from Dar to Dodoma has some outrageously low-speed limits in areas with no such basis. It is quite clear that no one has bothered to do a survey again on what speeds should apply where. Such speed limits cause an increase in the number of accidents because drivers overspeed in other areas to compensate for the lost time. In short, accidents are on the rise because of the speed limits and over-strictness by traffic officers in low-speed areas, leading to overspeeding in other areas where the traffic officers are not present. Can you guide me on what to do? Also, the highway has a speed limit of about 30 Km/h on the road from the airport to town. No wonder there is always traffic on that road.

8 January 2018

This is not a legal question, but we found the contents valuable information that the Traffic Police and TANROADS might want to look into. We suggest you write to them directly to ask them to take appropriate action.

Rights when under arrest

I was arrested after a friend of mine was involved in a fight at a nightclub. When under arrest, the officer refused me to make contact with anyone. Is this legal?

15 January 2018

The Criminal Procedure Act (the Act) is clear and states 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, subject to the Act, he may communicate with a lawyer, relative or friend.

However, the Criminal Procedure Act also states under section 54 that 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 to prevent– 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 that you have a right to call a friend or your lawyer unless the police reasonably believe that making that call will result in another suspect escaping or evidence being destroyed or fabricated. We're not sure if that is the case in your matter, but if it wasn't, then the police were in contravention of the Criminal Procedure Act.

Legality of abortion

There is a well-known clinic that I know specialises in abortions. I am not sure what is meant by legal and illegal abortions. Please educate me.

19 February 2018

Abortions, unless to save the mother or for other medical reasons, are illegal in Tanzania. Our law states that any person who, with intent to procure the miscarriage of a woman, whether she is or is not with child, unlawfully administers to her or causes her to take any poison or other noxious thing or uses any force of any kind, or uses any other means whatever is guilty of a felony, and is liable to imprisonment for 14 years. Hence, the doctors in the clinic you refer to can face 14 years imprisonment for carrying out illegal abortions.

Offence of conspiracy

What is the offence of conspiracy, and is it bailable? Is aiding and abetting a crime?

24 September 2018

The Penal Code of Tanzania, under sections 384 to 386, makes it a criminal offence for two or more people to form an agreement to commit an offence. Conspiracy is an offence on its own, and one can be charged even if the intended offence is not committed or attempted. It can be charged even if the intended offence is committed, depending on by whom.

On the issue of bail, under section 148(5) of the Criminal Procedure Act, the non-bailable offences have been stipulated, which include murder, treason, armed robbery, money laundering, etc. Therefore, whether conspiracy is bailable or non-bailable will depend on the nature of the offence, which is the object of the conspiracy.

A criminal charge of aiding and abetting can usually be brought against anyone who helps in the commission of a crime. Our Penal Code under sections 22 to 24 provides that every person who aids or abets another in

committing the offence is guilty and may be charged with actually committing it.

A person charged with aiding and abetting is usually not present when the crime is committed, but they have knowledge of the crime before and may assist in its commission through advice, actions, or financial support. Hence, if you drive someone to a place where the person is going to rob someone and you know about this, you can be charged as well.

The crime of aiding and abetting requires the following elements to be proved beyond a reasonable doubt: the crime was committed; the accused aided, counselled, commanded, induced, or procured the person committing the crime; the accused acted with the intent to facilitate the crime and the accused acted before the crime was completed.

Serious abuses on Facebook

There is a particular person who keeps on abusing me on Facebook. No one seems to care and people end up commenting. It is really causing me stress and I feel I am being stalked and abused. Is there a way I can stop this?

8 April 2019

Section 23 of the Cyber Crimes Act comes to your rescue. It states that (1) a person shall not initiate or send any electronic communication using a computer system to another person intending 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 5M or to imprisonment for a term of not less than 3 years or both.

You can report this to the police, who can take this up. It will likely lead to the person's arrest, and so long as it is known who the person is, this should be easy to do.

You may also want to consider suing the person for defamation. A claim must generally be false and made to someone other than the person defamed. Some common law jurisdictions also distinguish between spoken defamation, slander, and defamation in other media, such as printed words or images, called libel.

False messages forwarded on Facebook and WhatsApp

There is an article in which someone published malicious information on Facebook and circulated it through WhatsApp. Apart from being false, it has distorted information intending to cause panic amongst people. Despite several reminders, this information has been reported to Facebook, but they have not yet removed it from their site. The person who posted it used a pen name, but I have since discovered his IP address and true identity. In fact, a gang gets paid by competitors/individuals to defame, damage other businesses and spread rumours. It is quite evident that the gang is a threat to all. Whilst they might seem to be on your side today, and as a recipient, you might enjoy reading the content today, they could write about you tomorrow. The circulated WhatsApp messages are more dangerous than newspaper articles and are by far a big threat to everyone. Is there a way these persons can be taken to task? What about the people who indulge in forwarding such messages? Can they also not be held responsible for forwarding false messages? Please guide me as I want to take solid action.

5 March 2018

Similar questions have been asked to the FB Attorneys' Q&A team more than once. But there is a twist to your question this time; hence, we will respond to it again. You must read this response to the end as it may save a lot of readers, most of whom are on Facebook and WhatsApp, a lot of trouble.

We begin by quoting section 16 of the

Cyber Crimes Act 2015, which 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 five million TZS or imprisonment for a term of not less than three years or to both.

To constitute a criminal offense, a Facebook or WhatsApp message must be false, deceptive, misleading, inaccurate, and cause defamation or public misguidance. Your description meets these criteria, and the responsible individuals can be reported to the police for arrest and prosecution, which carries a potential three-year jail sentence upon conviction.

We have noted that people take this very lightly, but you must know that several cases have been arrested and charged in Courts in Tanzania for offending section 16 of the Cyber Crimes Act. For example, if someone circulates a false message about you, your business, or anything, there is a high chance that the person is offending the law and can be sentenced to up to three years imprisonment. The law has been enacted specifically to counter the growing usage of technology, and it is not hard to find out the origin of the message.

Those forwarding messages in groups, including group administrators, can also be liable under the same section. The defence of simply saying they just forwarded a message or are only group administrators and not the perpetrators. Hence, those on WhatsApp as administrators or as members or running Facebook groups must be aware that any message that is false, deceptive, misleading, or inaccurate, which leads to defamation, threats, abuse, insult, or with intent to mislead the public, can lead to criminal prosecution.

The police force has a special no-nonsense unit that deals with cybercrime. Therefore, one must be very careful before posting, reposting, and/or forwarding a message. Group administrators must also closely monitor what is happening in their groups, as they can also be charged. In addition to the criminal sanctions above, where the police and prosecutor will take charge, you also have some civil measures at your disposal.

Since you know these persons, you can file a defamation suit amounting to millions or even billions of TZS against them, including likely against Facebook and WhatsApp as publishers. Defamation is an all-encompassing term covering any statement that hurts someone's reputation. If the statement is made in writing and published, the defamation is called libel. If the hurtful statement is spoken, it is a slander.

To win in a defamation case, you must prove that (i) someone made a statement, (ii) that the statement was published, (iii) the statement caused you injury, (iv) the statement was false and finally, that the statement doesn't fall into a privileged category i.e. was not made in Court or parliament.

Having read your question, we believe that the above are provable by you, and considering that you have proof of where the statements originated from (proof is on you), you can, in addition to reporting this to the cybercrime unit in the police forces, proceed to sue the individuals.

A word of caution to active Facebook and WhatsApp users: be mindful of what you forward. While sharing a harmless joke is different, forwarding false, deceptive, misleading, inaccurate, or potentially defamatory messages is a serious crime. If you receive such a message, deleting it is wiser than forwarding it, as that momentary pleasure could cost you up to three years of freedom. Group administrators bear the same responsibility.

Insulting and abusive language

My boss uses very abusive language with me. It is his style, and everyone in the office witnesses this. Is such language not an offence under any of our laws in Tanzania?

9 March 2020

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

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

Jurisdiction of criminal statute

Does the core criminal statute in Tanzania, the Penal Code, 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?

9 March 2020

The Mainland Tanzania's Penal Code, through Section 6, establishes a broad jurisdictional reach for its Courts. This includes (a) all locations within Mainland Tanzania and its territorial waters, (b) offenses committed by Tanzanian citizens anywhere in the world, and (c) offenses committed on Tanzanian-registered aircraft, no matter their location. Consider this: if you assault someone on a Tanzanian aircraft while it's in another country, you can still be prosecuted in Tanzania. This 'long arm' principle ensures Tanzanian law can protect its interests and people even when they are outside the country.

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 in Tanzania and appear in person before them. These contracts are confidential and we cannot disclose them. Is this not the police's job and is it mandatory for us to appear? Please guide.

26 August 2019

The PCCB is established under the Prevention and Combating of Corruption Act (the Act), a penal statute that deals, inter alia, with corruption matters. Hence, the PCCB is independent of the police and is specially empowered to investigate corruption-related matters.

Section 10 of the Act states that (1) An officer of the Bureau investigating an offence under the Act may-(a) order any person to attend before him to be interviewed orally or in writing in relation to any matter which may assist the investigation of the offence; (b) order any person to produce any book, document or any certified copy thereof, and any article which may assist the investigation of the offence; or (c) by written notice, require any person to furnish a statement on oath or affirmation setting out such information which may be of assistance in the investigation of the offence. (2) Subject to the direction of the Director of Public Prosecutions, the Director General may assume prosecution commenced by the police or any other law enforcement agency for an offence involving corruption.

A plain reading of section 10 above clearly allows any officer of the PCCB to demand any document. Hence, the Act overrides any confidentiality clauses in your contracts and

you must release the documents to the PCCB. Should you not cooperate or release the documents, you will commit an offence and could face imprisonment.

Charged with offence of possessing cocaine

A relative of mine was caught in possession of cocaine when he flew into Dar from South Africa. He was taken to Court, but no bail has been granted. It is claimed that this is not bailable, and I fail to understand why he has been denied bail. What can I do?
19 March 2018

Under section 29 of the Drug Control and Enforcement Act, if a person is accused of trafficking cocaine of more than 200 grams, he cannot be admitted for bail. For cocaine of less than 200 grams, bail may be considered. Hence, it entirely depends on whether he is being charged for an offence above or below 200 grams of possession of cocaine.

The same 200 grams applies to heroine, mandrax, morphine, ecstasy, cannabis resin, prepared opium, and other manufactured drugs; however, for cannabis, khat and other prohibited plants, the offence is unbailable if one is charged to own 100 kgs or more.

The grammage determined by the Government Chemist is the legally binding measurement. To understand the bail status of this offense, you need to ascertain the exact grammage. Furthermore, the relevant Act states that if a company is charged, individuals 'in charge of and responsible to the company at the time' can also face charges. Drug offenses are treated with utmost seriousness in Tanzania, so extreme caution is advised.

Suing myself

I am distraught at the amount of alcohol I drink and what I do after that. I want to take action against my drunken side by suing myself when I am drunk. Can I sue myself to be protected from my drunken behaviour that I cannot seem to come out of?
2 April 2018

Suing yourself is a very interesting thought. We are unsure how you would do that and what the cause of action would be, or how your drunken and normal side will each appoint a lawyer, and both of you will not be conflicted. It would also be interesting to see how you pay damages if you lose the case, as one pocket will merely pay the other. It seems like the happiest individuals will be your lawyers.

It is an exciting thought but not tenable under Tanzanian law. What we think you want to achieve is to stop drinking or getting drunk. For that, a rehab centre will deliver better results than the Court system. We wish you all the best.

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?
15 July 2019

There is an Act called the Community Service Act (the Act), which makes provisions for introducing and regulating community service for offenders in certain cases and connected and incidental matters.

Section 3 states that (1) where any person is convicted of an offence punishable by (a) imprisonment for a term not exceeding 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 imprisonment for three years or less, with or without the option of a fine, to be appropriate, the Court may, subject to the Act, make a community service order requiring the offender to perform community service.

Hence, the Act can be invoked if the offender is sentenced to a term not exceeding

three years. You must remember that this is not an automatic right and the Community Service Orders Committee, amongst others, has discretionary power under the Act.

Immunity and prosecution of MPs

I have seen many members of Parliament prosecuted in a Court of law. Is that legal? Do they have immunity like in other countries? Is it equivalent to prosecuting a President?

5 August 2019

Generally speaking, the MP cannot be prosecuted for any opinion aired in the National Assembly. Article 100 of our Constitution provides that protection and states that (1) there shall be freedom of opinion and debate and that freedom shall not be breached or questioned by any organ in the United Republic, any Court, or elsewhere outside the National Assembly. (2) Subject to this Constitution or 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 that 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.

The immunity is limited to what is said or done in the National Assembly. Hence, the MP can be questioned by police and taken to Court for anything that does not result from 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. There is no absolute immunity that the MP enjoys the way the President enjoys under Article 46, which states that during the President's tenure of office per the Constitution, it shall be prohibited to institute or continue in Court any criminal proceedings whatsoever against him.

We believe that in other countries, the MPs do not enjoy immunity outside of their parliament for actions unrelated to their opinions and actions in parliament.

Attending burial of mother whilst in prison

My uncle has been in prison for the past five years and has an excellent disciplinary record with the prison authorities. His mother passed away a few months ago, and he was promptly informed. However, his application to go for last respects was denied. Is that legal? This has disturbed me, especially considering that all he asked for was to go to Church in Dar, where he is imprisoned.

9 April 2018

Unfortunately, the law and the rules governing the detention of prisoners are very strict, not only in Tanzania but in many other developing countries as well. In most cases, escort facilities to attend funerals are not readily available. Also, for safety, there are standard provisions that a prisoner cannot go to the funerals of their loved ones. It is indeed unfortunate, but the circumstances seem to dictate so. To change this, you can suggest that the Law Reform Commission of Tanzania take this up.

Leakage of exam papers

I know of several teachers and examiners who leak examination papers to students so that they can excel in their exams. Who is responsible for the exams and how can such persons be punished? Many public officials have passed under such schemes and I wish to expose them all now.

21 May 2018

Form four exams are administered by the National Examination Council of Tanzania (NECTA). This is not the first time we have heard of this. Leaking exams is a serious offence specifically covered under the

National Security Act of Tanzania (the Act).

Section 5 of the Act states that any person who communicates any classified matter or causes the leakage of such classified matter to any person other than a person to whom he is authorised to communicate it or to whom it is in the interests of the United Republic his duty to communicate it commits an offence and shall be liable on conviction to imprisonment for a term not exceeding twenty years. In a prosecution for a contravention of this section, it shall be no defence for the accused person to prove that when he communicated the matter, he did not know and could not reasonably have known that it was a classified matter.

The Act defines classified matter as any information or thing declared to be classified by an authorised officer, examination papers prepared and administered by the National Examination Council or other institution duly authorised to prepare, distribute and conduct examinations.

Please note that teachers selling exam papers risk imprisonment for up to twenty years. Should you know who they are, you can report them to NECTA, the Police forces, or both.

Confusion about where to apply for bail

I am confused. First, I thought that economic offences were not bailable, as it is for money laundering. I am told they are bailable only if you are charged below TZS 10M. Recently, I learnt that any amount is bailable, but there is confusion about which Court one can apply to for bail. Please assist in sorting out this confusion.

10 December 2018

You do not need to be confused. Money laundering is not bailable under our laws, but offences under the Economic and Organised Crime Control Act are bailable. However, if one is charged with an economic offence, the Director for Public Prosecution (DPP) can issue a certificate for non-admittance of bail, which means that you cannot get bail; if no certificate is issued, the offence is bailable.

Where to apply for bail: if the amount one is charged is below TZS 10M, the District Court has jurisdiction to grant bail. If the amount is between TZS 10M and TZS 1B, then the High Court of Tanzania can grant bail. This is according to a recent decision of the Court of Appeal, which removed the confusion of where to apply bail for amounts between TZS 10M and TZS 1B. If the amount is above TZS 1B, only the Corruption and Economic Organised Crimes Division of the High Court has jurisdiction.

Bail pending appeal

A cousin of mine was sentenced to imprisonment by the High Court. He has major health issues, and we believe there are serious errors in the judgment of the High Court. He has started serving his sentence, but we wish to apply for bail pending appeal. Is this possible?

21 May 2018

A provision in the Appellate Jurisdiction Act (the Act) provides for bail pending appeal. Section 10 of the Act states that the High Court or, where an appeal lies from a subordinate Court exercising extended powers, the subordinate Court concerned, may, if it thinks fit, pending the determination of an appeal from the High Court or the subordinate Court concerned to the Court of Appeal– (a) admit the appellant to bail in the same circumstances in which the Court would have given bail under section 368 of the Criminal Procedure Act; (b) postpone the payment of a fine. We must pre-warn you that we have seen bail before the appeal being sparingly granted. Perhaps a major health issue could be a good ground. Your lawyers can guide you further.

Questioning when under arrest

Can a police officer start asking questions to a suspect without following some procedures? In other countries, there is a strict protocol to allow the suspect a phone call and have his lawyer present. I ask this because one of my colleagues was arrested and was aggressively questioned without being allowed to make any phone calls.
21 May 2018

Questioning in criminal law is governed by the Criminal Procedure Act, which states the following clearly and unambiguously in section 54: (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 to prevent 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, on reasonable grounds, deny the suspect from making a call to a friend or relative.

Crime when drunk

I have recently moved to Tanzania and want to know to what extent intoxication is a defence in Tanzanian laws. Is this taken up as seriously as in the Western world?
19 August 2019

Intoxication is usually no defence in criminal law unless the intoxication is not self-induced or the person intoxicated was insane when committing such an offence.

Section 14 of the Penal Code specifically deals with this. We must point out that intoxication is taken seriously under our laws, although implementing such a provision is weaker than in the Western world.

Threatened with economic sabotage

I am a supplier of key drugs and machines to some government hospitals and have not been paid for the past year. The amount owed to me is now running in the millions of dollars and I keep getting empty promises. I gave the relevant authority an ultimatum only to be asked to see some senior person who first told me that I would be paid. After I responded that I did not believe this and that I would cut supplies and sue, he threatened me that I would be charged under the Economic and Organised Crime Control Act if I did so. In short, he said that under the laws of Tanzania, particularly this Act, since these products are vital for hospitals, I have no choice but to continue supplying. I was also told that this offence is not bailable. What do I do?
28 May 2018

This is our first time hearing of such an approach to a contractual obligation to pay. If what the official told you is true, then any supplier of vital equipment for the economy, be it power, water, or security, can never sue or make demands. Nobody would then be willing to supply to the Government, and it would defy the basic principles of contract law.

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

its operation.

From the above definition, you cannot be successfully charged under the Act as you are lawfully demanding your money under a contract you entered into to supply goods. The Act can apply if you were unlawfully doing so and for a purpose prejudicial to Tanzania's economic safety or interests. As for bail, please be advised that this is a bailable offence. However, bail shall not be granted in any of the following circumstances:(a) it appears to it that the accused person has previously been sentenced to imprisonment for a term exceeding three years; (b) it appears to it that the accused person has previously been granted bail by a Court and failed to comply with the conditions of the bail or absconded; (c)the accused person is charged with an economic offence alleged to have been committed while he was released on bail by a Court of law; (d) it appears to the Court that the accused person must be kept in custody for his own protection or safety; (e) the offence for which the person is charged involves property whose value exceeds ten million TZS, unless that person pays cash deposit equivalent to half the value of the property, and the rest is secured by execution of a bond; (f)if he is charged with an offence under the Dangerous Drugs Act.

Records maintenance in money laundering

I own a small bureau de change that does small transactions. Recently, I have been asked to produce some documents that date way back to 2009 and 2010. I never maintained such records, but the law enforcement officers insist I have no choice but to produce them. Is the limit to retain documents not five years under our laws?

4 June 2018

As a bureau de change dealer, and since you deal with cash, you fall under the definition of a reporting person under the Anti-Money Laundering Act (the Act). The regulations under the Act, particularly Regulation 30, state that such a person must retain the relevant records for ten years.

Regulation 30 is worded as follows: (1) A reporting person shall retain records required by section 16 of the Act for a minimum period of ten 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. (2) Where any enactment requires a reporting person to release a record referred to in sub-regulation (1) before the period of ten years lapses, the reporting person shall retain a copy of the record. (3) Where a report has been made to the FIU pursuant to the provisions of the Act or the reporting person knows or believes that a matter is under investigation, that person shall, without prejudice to sub-regulation (1), retain all relevant records for as long as may be required by the FIU. (4) For the purpose of this regulation, the question of what records may be relevant in the analysis process may be determined per the Guidelines. Most bureaus perhaps don't know this, but the records are to be maintained for 10 years and must be easily retrievable.

Furthermore, money laundering is very widely defined in the Act. As far as what is relevant to you, the Act states that a person who engages, directly or indirectly, in a transaction that involves property that is proceeds of a predicate offence while he knows or ought to know or ought to have known that the property is the proceeds of a predicate offense, commits the offence of money laundering.

Predicate offenses, the underlying crimes of more serious offenses, encompass a wide range of illegal activities. We advise you to prioritize locating the relevant documentation, as money laundering is generally a non-bailable offense, unlike many of the predicate offenses that form its basis.

Sexual favour as economic offence

I recently read on social media that a lecturer at a public university was charged with an economic offence for demanding sexual favours from a student. How does a sexual favour affect the national economy to make an offence 'economic'?

26 October 2020

Demanding or imposing sexual favour as a pre-condition for giving someone employment, promotion, right, privilege, or preferential treatment is a corruption offence under section 25 of the Prevention and Combating of Corruption Act [Cap. 329 R.E 2019]. This offence was listed in paragraph 21 of the First Schedule to the Economic and Organised Crime Control Act [Cap. 200 R.E 2019] as one of the economic offences on 8 July 2016 by Act No. 3 of 2016.

Section 57(1) of the Economic and Organised Crime Control Act clarifies that an offence becomes "economic" by its inclusion in the First Schedule, not by its economic impact. Therefore, the corruption offence of demanding or imposing sexual favors is considered economic solely because it was listed in paragraph 21 of the First Schedule on 8 July 2016, regardless of its effect on the national economy.

It is important to note that offenses with significant national economic impact, like tax evasion or theft by public servants, are not classified as "economic offenses" under the Economic and Organised Crime Control Act unless they are specifically listed in its First Schedule.

Lynching of a thief

We caught a thief in my street and decided to burn him as a lesson to other thieves. We were about 60 in total; others brought gasoline and tyres, and I was asked for my cigarette lighter. The thief was then burned and died right there. Days later, I, together with a large group of persons, was arrested for murder by the police. I was informed that one person had recorded the whole event on his mobile phone, so the police could easily see all of us present there. I never lit the thief and merely gave the cigarette lighter to another person who lit it. I had a lighter because I am a smoker and not because I intended to use it to kill the thief. I do not believe that providing a cigarette lighter constitutes an offense. I maintain that I am wrongly accused of murder. Is this a just situation?

25 June 2018

First, we strongly condemn the act of lynching thieves because there are legal procedures that can be taken to ensure that justice is done instead of murdering a person in cold blood.

Concerning your question, we refer you to the Penal Code, which states that a person is deemed to have caused the death of another person. However, his act is not the immediate or sole cause of death if his act or omission would not have caused death unless it had been accompanied by an act or omission of the person killed or of another person.

The act of handing over a cigarette lighter in itself is not an offence. However, depending on more facts that you can disclose to your lawyers, you might have facilitated the commission of murder because you were fully aware of the circumstances under which the cigarette lighter was going to be used, yet you handed over the cigarette lighter. The police are likely acting within the law by arresting and charging you. We strongly advise you to consult your attorney for further guidance.

Death sentences

For someone who has committed murder, does Tanzania still have the death sentence? 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?

2 July 2018

Yes, the Penal Code, which deals with criminal matters in Tanzania, provides for a death sentence for offences like murder and treason. Section 26 states that (1) when any person is sentenced to death, the sentence shall direct that he shall suffer death by hanging. (2) Sentence of death shall not be pronounced on or recorded against any person who, in the opinion of the Court, is under eighteen years of age, but in lieu thereof, the Court shall sentence such person to be detained during the President's pleasure, and if so sentenced he shall be liable to be detained in such place and under such conditions as the Minister for the time being responsible for legal affairs may direct, and whilst so detained shall be deemed to be in legal custody. (3) When a person has been sentenced to be detained during the President's pleasure under the last preceding subsection, the presiding judge shall forward to the Minister for the time being responsible for legal affairs a copy of the notes of evidence taken at the trial, with a report in wiping- signed by him containing such recommendation or observations on the case as he may think fit to make.

According to the Penal Code, death sentences in Tanzania are to be carried out by hanging. We are unaware 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 President at the time has not given the final sign-off.

Regarding 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 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 murder has appealed. Thus, one does not need to apply for a stay of execution.

Death penalty abolished in Tanzania

I have read with great pleasure the decision by the African Court on Human and Peoples' Rights forcing Tanzania to abolish the death penalty. What happens next? How is the decision going to be implemented? The Court is very slow, as most case numbers are from 2015.

2 December 2019

We address this question, having just received it as it is in the media and that it has been slightly misrepresented. First, we must appreciate that Tanzania is one of the few African countries that have allowed its people and NGOs direct access to this African Court. Most African countries have not deposited the Article 34(6) Declaration allowing access to persons and NGOs. To that extent, Tanzanians should be proud.

Second, the African Court did not abolish the death penalty in its November 2019 decision. It simply stated that the mandatory death penalty imposition should be changed, i.e., not all sentences should have a minimum of a death penalty. At the moment, for offences like murder and treason, the only sentence available is death by hanging, which is what the African Court has directed be changed. The death penalty may still stay, but it should not be the minimum sentence.

Lastly, your observation of speed is accurate. The Court still has over 300 cases/ applications outstanding, but you must remember there is a process to follow. Moreover, one cannot entirely blame the Court as African countries' commitment to the Court, shamefully so, is questionable, as is the funding available to the Court. These factors, amongst others, do not make this Court the most efficient in case disposition. To put this into perspective, the

equivalent European Court has a budget 10+ times that available to the African Court.

Telling your criminal lawyer truth

I am charged with a criminal offence and wonder whether I should tell my lawyer the truth. What if the lawyer refuses to defend me after hearing me? What are the lawyer's duties to me as his client?
20 August 2018

There is an Attorney-Client privilege whereby your lawyer cannot disclose any information relating to an offence you have committed. It may not fully apply to an offence you are about to commit.

Whilst you might employ lawyers, they are still officers of the Court and, therefore, cannot lie or misguide the Court. Hence, if your lawyer knows you are guilty of an offence, he must first tell 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 held 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 form rock-solid arguments if the evidence reasonably supports them. The lawyer cannot offer your testimony, knowing it to be false. In many trials, the accused does not testify, which does not create a good impression on the presiding judge.

It would help if you could appreciate that every attorney will be different in what they want to know, and things will vary based on the specific case, Court, and gravity of the charges. Generally, you should never lie to your attorney, as this will ultimately backfire.

Lastly, after hearing the trust, the lawyer can discontinue representing you. However, he cannot testify against you in Court.

Gay marriages in Tanzania

We celebrated gay marriage in our country and wish to visit Tanzania for the holidays. Just out of curiosity, are gay marriages allowed in Tanzania?
10 September 2018

Gay marriage and gay sex are strictly prohibited in Tanzania. The Law of Marriage Act only recognises a man and woman's union, not a man and another man. This is also against the local culture and is considered an immoral act. Relations between a man and a man are also penalized in the penal code with serious consequences. Whilst nothing can stop you from coming to Tanzania, we advise you to be careful about your behaviour and conduct. You might want to consult your lawyer on some dos and don'ts.

Substitute as prisoner

My boss, who was very close to me, is in jail. After discussions with my family, I am ready to serve the remaining three years on his behalf. Which department should I contact and what documents must I draw to formalise this arrangement?
29 October 2018

We are sure your boss will be thrilled with this proposal as there are few people like you. Unfortunately, the prison sentence that your boss is serving has been imposed on him as an individual. Unlike an airline ticket or hotel booking, going to jail is not transferable. It is imposed on the person who is charged with an offence. Otherwise, there would be businesses that would provide such services, which is against public policy.

In short, there is no department to contact or document to draw. You cannot enter into such an arrangement as it is illegal.

Shooting intruder in self-defence

If an intruder enters my house and shoots my wife, and I shoot the intruder dead, can I be charged with murder? How sympathetically does the law look at intruders in Tanzania? I am informed that in other jurisdictions, intruders have their rights. Kindly guide.

3 September 2018

You might be a law student and have come up with a good question. Suppose an intruder breaks into someone's house with a gun and kills his wife, and the husband fires back. Otherwise, the intruder would also kill the husband. In that case, the husband has used reasonable force in self-defence, and he will unlikely be charged with murder as his force is not disproportionate.

However, if an intruder comes and shoots at your wife and then runs away from your house, but you intentionally shoot him in the head when he is no longer a threat to you, that may amount to murder.

In another scenario, the intruder shoots your wife, then runs out of bullets, and hence no more a threat. But you, knowing that he tried shooting you and failed, shoot him in the head and kill him. This also might amount to murder. It all depends on the facts of each case.

As for rights, we are unaware of intruders' rights in other countries. In Tanzania, you cannot use unreasonable force in self-defence. Again, what is reasonable and what is not depends on the facts of each case.

Rights when under arrest/questioning by police

Can a police officer interrogate or question a suspect without following some procedures? In other countries, there is a strict protocol to follow, including informing the suspect of 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.

3 December 2018

The Criminal Procedure Act (the Act) governs questioning or interrogation in criminal law. Section 53 of the Criminal Procedure Act states: 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 an access to a lawyer or friend, as the law does not want suspects to make statements without the 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 under restraint, cause reasonable facilities to be provided to enable the person to communicate with a lawyer, a relative, or a 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 to prevent 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.

Illegal usage of radio frequency

I know of a station using a spectrum that is not allocated to it. What are the consequences, and what should be done as it affects our transmission?

31 August 2020

This is a very serious issue that the Tanzania Communications Regulatory Authority (TCRA) does not take lightly. The consequences are punitive and/or custodial.

Section 117 of the Electronic and Postal Communications Act states that (1) Any person who uses radio frequency spectrum without obtaining any relevant individual assignment commits an offence and shall be liable upon conviction to a fine of not less than two billion five hundred thousand million TZS or imprisonment for a term not less than 12 months or to both and in case of a continuing offence, to a fine of not less than seventy-five million TZS for every day during which the offence continues after conviction.

As you can see, the fine is astronomical to ensure persons comply with the law. The right thing to do is report this to the TCRA, who will take appropriate action.

False information on WhatsApp

Someone has been sending out false and malicious information about me and my business on WhatsApp. It has gone viral and has damaged me. I am financially in turmoil and find it difficult to defend my position. Is there any law that governs all the false information on WhatsApp? Can I sue WhatsApp as a platform for carrying such false information?

28 January 2019

When the Cyber Crimes Act was enacted a few years ago, a very controversial section was included in the law, which will, in this instance, greatly assist you in your pursuit of justice. Section 16 of this 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 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 five million TZS or imprisonment for a term of not less than three years or to both.

The Cybercrimes Act defines a computer system as a device or combination of devices, including network, input and output devices capable of being used in conjunction with external files that contain computer programmes, electronic instructions, input data and output data that perform logic, arithmetic data storage and retrieval communication control and other functions. Our opinion is that WhatsApp is covered in this definition. Hence, having false information on WhatsApp is an offence under section 16, which can lead to a minimum of three years sentence on conviction. You can report this to the police for their appropriate action.

Concerning a lawsuit against WhatsApp for its role in defamation, while a possibility exists, there's currently no legal precedent supporting such action.

Midwife causes C-section during labour

I was doing fine in my normal delivery until the midwife started making weird remarks about 'enjoyment during intercourse, and

pain now being the consequence thereof' that made me give up. I ended up in theatre for a C-section with a terrible and ugly scar. I am one of the fittest women in Dar and had the midwife not made such remarks, I would have delivered normally, which my gym instructor can vouch for. I want to sue and want your advice on whether this is tenable.
6 May 2019

This is a very interesting question. Your case needs to be properly assessed by your lawyer as apart from being fit before and during pregnancy, it does not mean you will automatically deliver normally. Even some top stars have delivered by C-sections, including Britney Spears, Elizabeth Hurley, Victoria Beckham, and Jenifer Lopez. There was a rumour that these ladies were too 'posh to push,' but a good number of them had C-sections because of the complications during normal delivery.

There is no doubt that C-sections have become quite common to ensure that the mother and child are safe, not only because women have become lazier, as some seem to suggest (there is a theorem that lets the men also experience labour). It could be a result of genetics, the time you have been in labour, the exercises you did, and the size of the passage, amongst others. There is, of course, always the possibility that your midwife demotivated you, but that might not be the only factor. When you sue, which you can, you must provide enough evidence to show that the midwife caused you the C-section and demonstrate what damages you are entitled to.

The midwives are governed by the Nursing and Midwifery Act in Tanzania, a law we believe is not the most well-known, but it provides you with the right to complain against the midwife to the Registrar. You can also consider this route.

Your gym instructor can witness your fitness, but remember he is neither a doctor nor a midwife, so he should not be able to adduce medical evidence. Unless there are facts that we do not know about him and you, he can only likely talk about your general fitness, not your medical fitness, to deliver a child normally.

We wish you all the best and recommend that you consult your lawyer.

Plea bargaining in Tanzania

My brother is accused of armed robbery. Whilst I must admit that he is guilty, he was not armed. Are there any provisions of law that allow an accused person in a criminal case to plead guilty and the prosecutor or magistrate reduces the charge or sentence?
10 June 2019

A plea bargain (also 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 sentence reduction or a sort of concession from the prosecutor. This may mean that the accused will plead guilty to a less serious charge or one of several charges in return 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 the accused to avoid the risk of conviction at trial on a more serious charge. For example, in the U.S. legal system, an accused charged with a felony theft charge, the conviction of which would require imprisonment in 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.

Plea bargaining is a controversial subject in many jurisdictions. In Tanzania, our penal statute or the Criminal Procedure Act does not have a specific provision for plea bargains. However, there have been many instances

where the prosecutor has agreed to leniency in sentencing upon a voluntary plea of guilty.

It must be stated that there are various such provisions in our tax statutes where the TRA can compound offences, which effectively means that they convert (by compounding) tax evasion or other serious noncompliance issues that are criminal for which one can be imprisoned to a fine and/or penalty.

My son is a thief

I am a widow and have a son who is a thief. I don't support his activities but can't turn him in, although I know where he keeps his stolen properties. I thought I was safe until the police questioned me for hours about my son's activities, and I refused to give him up. The police told me that if I don't give him up, they will also arrest me for aiding and abetting. As a mother, I am doing the best for my child. Please advise me on what I should do in such circumstances.

1 July 2019

As much as we sympathise with you, the Penal Code states that every person who does or omits to do any act to enable or aid another person commits an offence and may be charged with actually committing it. To elaborate on this provision, you withhold information from the police that your son is a thief, and you do not even know where he keeps his stolen properties. Hence, you are omitting to do what is right to prevent your son from stealing again. Due to that, you can be charged and convicted of aiding and abetting, to which you will be charged and convicted of theft and be imprisoned as a thief, although you didn't commit theft. The Penal Code further states that a person who receives or assists another who is, to his/her definition of knowledge, guilty of an offence, to enable him to escape punishment is said to become an accessory after the fact to the fact offence and any such person who becomes an accessory after the fact to a felony is guilty of a felony and is liable, if no other punishment is provided, to imprisonment for seven years. From the foregoing provision, you can also be charged with an offence of accessory after the fact, which can land you in prison for seven years. With the above in mind, you must report him to avoid getting in trouble.

Non-bailable offences in Tanzania

There have recently been various calls saying that to decongest our prisons, we need a reform of laws, like in neighbouring Kenya, to make all offences bailable. Apart from murder, what other offences are unbailable in Tanzania? What makes an offence unbailable? On what grounds can a Judge or magistrate deny bail in a bailable offence? Why are Courts delaying the trials of innocent people in remand prison who are charged but whose trials have not started?

22 July 2019

Bail is both a constitutional and statutory right. A suspect or the accused person is entitled to release on bail pending investigation or trial of his case. A suspect is admitted to bail by the authority investigating the crime (i.e., the investigation is still underway and the suspect is yet to be charged in Court). After the accused is charged in Court, he can be admitted to bail by a Court with competent jurisdiction to admit him to bail. The right to bail is based on the presumption of innocence and the right to personal freedom. Nonetheless, bail is not an absolute right, as we show below.

Unbailable offences are listed in our penal laws. Currently, unbailable offences are listed in Section 148(5)(a) of the Criminal Procedure Act and Section 29(1) of the Drug Control and Enforcement Act, 2015. Section 36(4) of the Economic and Organised Crime Control Act can also make an economic offence unbailable, though that provision does not list any economic offence now. Unbailable

offences under the Criminal Procedure Act are murder, treason, armed robbery, terrorism, money laundering, and human trafficking.

The biggest challenge to bail nowadays is money laundering. The entire case becomes unbailable once money laundering is charged along with bailable predicate offences. Hence, although the predicate offence is bailable one is denied bail because it is charged with money laundering. The list of predicate offences is very long. It includes offences like tax evasion, terrorism, corrupt practice, armed robbery, theft, smuggling, extortion, forgery, hijacking, insider dealing, poaching, illegal fishing, illegal mining, and environmental crimes. Hence, it is possible to make many offences unbailable by charging the predicate offence and money laundering, meaning that bail can be denied even for offences that would normally be bailable.

Moreover, under the Drug Control and Enforcement Act, unbailable offences are trafficking in narcotic drugs, precursor chemicals, or substances capable of being used or used to make narcotic drugs. Processed drugs like heroin and cocaine are unbailable if the drug with which the accused is charged weighs 20 grams or more. Cannabis sativa and khat are unbailable if the drug weighs 20 kilograms or more. Precursor chemicals or other substances proved to have drug-related effects or used to manufacture drugs are unbailable if they weigh 30 litres or more if in liquid form or 30 kilograms or more if in solid form. Other unbailable offences under the Drug Control and Enforcement Act are unlawful possession of equipment or tools used for preparation, production, or manufacturing of narcotic drugs or psychotropic substances; unlawful administering of the narcotic drug to a person without his knowledge and financing drug trafficking or harbouring a drug trafficker.

Parliament can make any offence unbailable where it thinks the grant of bail to the accused person or suspects of such an offence may pose a danger or threat to the interest of defence, public safety, or public order.

The DPP is also vested with powers under Section 36(2) of the Economic and Organised Crime Control Act and Section 19 of the National Security Act to file a certificate of bail denial where he is of the view that admission of the accused to bail would prejudice the interest of the Republic or public safety. Hence, regardless of its seriousness, the DPP's certificate makes any such offence unbailable.

On the other hand, the Court will not necessarily admit the accused to bail just because the offence is bailable. The accused may be denied bail by the Court for bailable offences for reasons such as (i) the accused has previously been sentenced to imprisonment for a term exceeding three years; (ii) the accused was in the past granted bail but violated the bail conditions that were given, or absconded bail; (iii) it is proved that it is necessary to keep the accused in remand custody for his safety or protection, or (iv) there is a likelihood of the accused not turning up on the dates appointed by the Court for appearance.

Further, if the accused is charged with an economic offence, he can be denied bail if it is proved that he committed the offence he is charged with while on bail for another economic offence.

Regarding delays by courts, in our opinion, it is not the Courts that cause delays in trials but rather the investigators and prosecutors who claim that the investigation is 'ongoing.' Indeed, this is very concerning as justice delayed is justice denied. However, having said that, in various other jurisdictions, as soon as a judge or magistrate, after a long delay, believes that the prosecution is further delaying a trial for lack of evidence or other mischief, the Court proceeds to dismiss the matter and release the accused. That pressures the prosecution to bring only serious cases to Court and ensure they do not delay trial proceedings. Tanzanian Courts have not done so despite some remandees being in custody for more than 4 years and issued with one appearance date after

another. In such instances, we agree that the Court adds to the delay.

Military uniforms worn on street and highways

We often see persons wearing army or police uniforms when travelling by highways, but they are highway robbers. What are the consequences of wearing such uniforms? What about the fake government department seals we see, especially on local purchase orders to cheat traders to supply goods? How serious are these offences?

5 August 2019

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 20 years. Additionally, 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.

Legality of consuming cannabis abroad

As a Tanzanian, I know consuming or dealing with cannabis is not allowed and is a criminal offence. However, if I travel to a country like the Netherlands, where cannabis is legal, and if I consume it while there, am I committing any offence in Tanzania? What if I consume it and fly into Tanzania?

26 August 2019

Section 18 of the Drug Control and Enforcement Act, 2015 (DCEA) prohibits smoking, inhaling, injecting, sniffing, or otherwise using any narcotic drug, cannabis inclusive unless the offender proves lawful and reasonable excuse. Lawful and reasonable excuses for using narcotic drugs may include the consumption of narcotic drugs on medical grounds and not for leisure, as seems to be the case for you. Reasonability of the excuse for the consumption of the narcotic drugs will be tested by looking at the quantity of the drug consumed and whether a registered medical doctor authorised the consumption.

Section 1(3)(b)(i) of the DCEA, as amended by the Drug Control and Enforcement (Amendment) Act, No. 15 of 2017, extends the scope of the DCEA to prohibited conducts committed by a citizen of Tanzania outside Tanzania regardless of whether the conduct prohibited in Tanzania is lawful in the foreign country where it is committed.

Since you are a citizen of Tanzania and consumption of cannabis is prohibited under the DCEA, if you consume cannabis in the Netherlands, where it is legal, you are committing a crime of unlawful consumption of narcotic drugs contrary to section 18 of the Drug Control and Enforcement Act. Whether you fly back to Tanzania or not, you have still violated the law of Tanzania. Hence, the moment you land on the soil of Tanzania, you can be charged under section 18, and it

will not be a defence that you consumed the cannabis in the Netherlands, where it is legal, before you flew to Tanzania.

If you consume cannabis and remain in the Netherlands, you will be guilty under section 18 of the DCEA. Still, it will be impossible to charge you while you are there or extradite you to Tanzania because your conduct is not a crime in the Netherlands.

A foreigner who consumes cannabis outside Tanzania cannot be charged under section 18 because section 1(3)(b)(i) of the DCEA extends the scope of the DCEA only to the conduct of citizens of Tanzania committed outside of Tanzania.

In short, the DCEA follows the citizens of Tanzania wherever they go. Therefore, Tanzanians should observe the DCEA and the drug laws of the foreign states where they visit or reside. This means that Tanzanian nationals who are overseas are still bound to follow the DCEA, notwithstanding that consuming cannabis is legal in the countries they reside in.

Fake email to girl

I study at a university and have a particular liking for a girl in one of the second-year batches. I had never told her I liked her as I wasn't sure if she was dating anyone. A few months ago, a friend of mine sent her an email, as if it was from me, proposing to date her. It was a very descriptive email. I did not know this fake email, although it looked it was from my email. As I suspected, she reported this to her boyfriend, who is a high-ranking official in the political system. I was picked and roughed up. Is sending fake emails not a crime in Tanzania? This has upset me as I have lost confidence in approaching any girl.

26 August 2019

We cannot answer the question of how you can gain back confidence to approach girls. What we can tell you is that it is a criminal offence to send out such fake emails. Section 15 of the Cybercrimes Act 2015 states that (1) a person shall not impersonate another person using a computer system. Furthermore, subsection (2) states that a person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine of not less than five million TZS 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.

We suggest you report this to the police, who will act appropriately.

Pleading guilty to economic offence

My son and his company are charged with occasioning loss to the Government. It is claimed that his company has been evading taxes for five years and he has been in remand prison since November 2015. He wants to plead guilty and is ready to pay a fine if given that option. I have read the penalty section in the Economic and Organised Crime Control Act, section 60(2), but I don't see if it gives an option to pay a fine. Can he be allowed to pay a fine if he pleads guilty?

9 September 2019

Section 60(2) of the Economic and Organised Crime Control Act (EOCCA) was amended by Act No. 3 of 2016, which came into force on 8 July 2016. The minimum sentence for any economic offence is twenty years imprisonment, irrespective of the nature and gravity of the crime committed, although this position is debatable. Under section 73 of the Interpretation of Laws Act and Article 13(6)(d) of the Constitution of Tanzania, the Court cannot impose on your son a penalty that is higher than the one in place when he committed the crime charged.

Before 8 July 2016, Section 60(2) of the EOCCA did not provide the minimum custodial sentence for an economic offence. It only provided the maximum, which was 15

years imprisonment. Since the penalty for the offence he is charged with is at the discretion of the Court, the Court can impose on him any sentence, including a fine, conditional or absolute discharge as it thinks fit.

In the case of Tabu Fikwa v R [1988] TLR 48, the HC, Samatta, J held that the use of words "shall be liable on conviction to imprisonment" in the penalty provisions if properly construed, gives discretion to the Court to impose an option of a fine. This is a forgotten case and the Courts need to be reminded of it. The Court, in this case, said that save where the nature of the offence and circumstances of its commission call for a custodial sentence or where the Court has no discretion in the matter because the offence attracts a mandatory sentence of imprisonment, the Court should seriously consider alternative punishment before sending an offender to prison, especially if he is a first offender.

The crucial question here is what amount of a fine the Court can impose under Section 60(2) of the EOCCA, which does not expressly give the option of a fine. The answer is the Court can convert the prison term prescribed under section 60(2) of the EOCCA into a fine by using Section 71(3)(d) of the Interpretation of Laws Act against a corporate offender and section 29(a) of the Penal Code against individual offenders. Under Section 29(a) of the Penal Code, there is no minimum or maximum limit of fine to be imposed by the Court, but the fine should not be excessive. Under Section 71(3)(d) of the Interpretation of Laws Act, the maximum fine the Court can impose on a corporate offender is TZS 10M if the custodial sentence prescribed by the law exceeds a 3-year term of jail like the one provided under Section 60(2) of the EOCCA.

Apart from the fine or conditional or absolute order, which the Court may give under Section 60(2) of the EOCCA, the Court has to give a mandatory order for the accused to make good the actual tax evaded without interest or penalty. Compensation under paragraph 10(4) of the First Schedule to the EOCCA covers only the actual loss. However, the Court has the discretion to order the compensation of the actual loss incurred to be paid in instalments at such times and in such amount as the Court may think fit. This is provided under Sections 330(3) (4), 348(1) and 349 of the CPA.

Reading the provisions of the above law, your son can consider pleading guilty and being released. It might be the most practical solution in the circumstances. However, your lawyers can guide you further.

Intoxication as defence

My friend had a few extra beers in a nightclub that his friends had mixed with some other stronger liquor. He ended up punching someone on the dance floor and breaking his nose. What defence is available to him? Can I not claim that he was insane?

5 November 2018

Our criminal laws are embedded in the Penal Code, which makes it quite clear that an individual is presumed to be sane unless proven otherwise. Hence, this defence is not automatic.

Sections 13 and 14 of the Penal Code are relevant to this question. Section 13 states a person is not criminally responsible for an act or omission if, at the time of doing the act or making the omission, he is through any disease affecting his mind incapable of understanding what he is doing or of knowing that he ought not to do the act or make the omission. A person may be criminally responsible for an act or omission, although his mind is affected by disease. If such disease does not produce upon his mind one or other of the effects above mentioned in reference to that act or omission,

Section 14 states that (1) save as provided in this section, intoxication shall not constitute a defence to any criminal charge. (2) Intoxication shall be a defence

to any criminal charge if, by reason thereof the person charged at the time of the act or omission complained of did not know what he was doing and — (a) the state of intoxication was caused without his consent by the malicious or negligent act of another person; or (b) the person charged was by reason of intoxication insane, temporarily or otherwise, at the time of such act or omission. (3) Where the defence under the preceding subsection is established, then in a case falling under paragraph (a) thereof the accused shall be discharged and in a case falling under paragraph (b) the provisions of this Code and the Criminal Procedure Code relating to insanity shall apply. (4) Intoxication shall be taken into account to determine whether the person charged formed any intention, specific or otherwise, in the absence of which he would not be guilty of the offence. (5) For the purpose of this section "intoxication" shall be deemed to include a state produced by narcotics or drugs.

Under section 14(2) above, the fact that the beers were laced with other stronger liquor might be a good defence. Otherwise, intoxication is not a defence and your friend is criminally liable for assault and will, if found guilty, be imprisoned.

In remand for five years

My son is charged with an economic offence and has been in remand prison for the past five years. Every time he goes to Court, the prosecutor informs the Magistrate that the investigation is still underway. Is there any time limit within which an investigation of an economic offence should be completed? What if they don't complete the investigation? What judicial remedy can I seek? This system is very unfair and presumes guilt ahead of innocence.

16 September 2019

Unfortunately, neither the Criminal Procedure Act nor the Economic and Organised Crime Control Act sets a time limit for investigating an economic offence. Section 225(6) of the Criminal Procedure Act excludes economic offences from the list of offences whose investigation should be completed within 60 days from the date of incarceration or arraignment. Nonetheless, this does not mean that investigation of an economic offence can be endless. Timely justice is a fundamental right that forms part of a fair hearing protected by Article 13(6) of the Constitution of the United Republic of Tanzania. Further, Article 7(1)(d) of the African Charter on Human and Peoples Rights, which Tanzania has ratified, guarantees the right to a timely trial.

In the case of Kondo v Republic, Criminal Appeal No 322 of 2015, the Court of Appeal said that Courts have inherent powers to control the proceedings before them. In the event of an inordinate delay in prosecuting or committing the accused for trial by the Corruption and Economic Crime Court for an economic offence, a subordinate Court before which the accused appears can dismiss the charge and discharge the accused. Unfortunately, dismissal of charges for want of committal or prosecution will not be a bar to a re-arrest and re-charge of the accused on the same facts. However, where one is re-arrested and recharged but thinks there is clear evidence of abuse of discretion to re-arrest and recharge the accused, such abuse of power can be challenged in Court.

There are two main approaches to challenging the abuse of prosecutorial powers in Court. One view holds that judicial review or a constitutional petition to the High Court is appropriate. This perspective was articulated in the case of Makombanya v DPP, Misc Civil Cause No 29 of 1989, High Court at Mwanza.

The second school of thought is that since judicial review or constitutional petitions are civil, such remedies cannot be invoked to terminate malicious charges because criminal and civil proceedings differ. The Court of

Appeal expressed the second view in the case of Patel and others v AG and Others, Civil Appeal No. 59 of 2012. In the case of DPP v Haji, Criminal Appeal No 28 of 1992, the abuse of prosecutorial powers was challenged within the same criminal proceedings.

While Courts are meant to provide oversight, the current system lacks close monitoring, resulting in lengthy pre-trial detention for many accused. Committal Courts also have the authority to prevent endless adjournments in economic cases by dismissing charges and releasing the accused.

The standard of proving the abuse of prosecutorial powers is on a balance of probability. Unfortunately, the Courts and advocates have not been aggressive enough to push for dismissal of charges, with Courts being blamed for delays in criminal cases when the brunt of the blame should go to the prosecutor and investigator.

70-year-old sentenced to 5 years

My friend was convicted of forgery and uttering false documents. Even though he is 70 years and suffering from heart and kidney failure, he was sentenced to 5 years imprisonment. He is very old and weak and has done abundant community and charity work in his home region. What is the way forward to help him? Can he appeal to the Court of Appeal or be admitted to bail by the Court of Appeal pending the result of his appeal? Can he request a community service order or amnesty from the President in December? Please guide me.

7 October 2019

If a Magistrate Court convicted your friend, he may appeal to the High Court. Before he lodges his appeal, he must file in the Magistrate Court that convicted him a notice of intention to appeal within ten days from the date he was convicted. If the High Court convicted him, he can appeal to the Court of Appeal. Before he appeals to the Court of Appeal, he must give a notice of appeal within thirty days of his conviction. A notice of appeal against the decision of the High Court is filed in the High Court registry that made the decision, which is a sub-registry of the Court of Appeal.

Under our law, a notice of appeal to the Court of Appeal in criminal matters institutes an appeal. After filing a notice of appeal, it is deemed that there is a criminal appeal pending at the Court of Appeal. After filing a notice of appeal, your friend can lodge an application for bail pending the appeal result. If the High Court convicted him, his application for bail pending the result of his appeal by the Court of Appeal should be filed in the High Court under section 10(a) of the Appellate Jurisdiction Act. The High Court has exclusive power to hear bail applications pending the result of an appeal by the Court of Appeal. The Court of Appeal does not deal with bail applications pending appeals before it.

Bail pending appeal is not a right like bail pending trial. It is the discretion of the Court to which the bail application is made. There is no right to appeal against an order refusing or granting bail pending an appeal hearing.

If a Magistrate's Court convicts a person, he can apply for bail pending the hearing of his appeal by the High Court under section 368 of the Criminal Procedure Act. Bail pending hearing of an appeal by the High Court can be lodged in the High Court or the Magistrate Court that convicted the applicant after filing an appeal to the High Court.

A convict appealing their sentence can be granted bail by the High Court or a Magistrate Court if their appeal has a strong likelihood of success or if there are compelling and unusual circumstances. Importantly, granting bail must not obstruct justice. Conditions like serious illness or extreme old age can qualify as compelling and unusual reasons for bail.

Section 3(1)(b) of the Community Service Act disqualifies convicts serving a prison term exceeding three years from community service orders. By law, a person sentenced to

five years imprisonment, like your friend, is disqualified from community service orders.

Amnesty of the President is given under Article 45 of the Constitution, but it cannot be applied. It is a confidential process determined by the prison authority, which selects the prisoners considered qualified for amnesty and submits their names to the President. From experience, prisoners who are 70 years old are always considered for amnesty.

Court increased sentence on appeal

My uncle was charged with cattle theft in the Primary Court, convicted, and sentenced to 6 months imprisonment. He appealed to the District Court, but his appeal was dismissed. Surprisingly, his sentence was enhanced to 2 years imprisonment. Is this proper? Please advise me on what to do.
21 October 2019

Section 21(1)(b) of the Magistrates Courts Act gives the District Court the power to enhance the sentence when it exercises its appellate power. However, the power of the District Court to enhance sentences has several restrictions. When exercising its appellate jurisdiction, the District Court cannot enhance the sentence beyond the sentencing power of the Primary Court sitting as a Court of the first instance.

Under the Primary Courts Criminal Procedure Code, the Third Schedule to the Magistrates Courts Act, a Primary Court can impose a maximum sentence of 12 months imprisonment. Where it decides to impose a sentence exceeding six months imprisonment, the District Court should confirm the sentence before the convict starts to serve it.

Therefore, the sentence of two years imprisonment enhanced by the District Court is excessive and illegal. The second restriction is that before the District Court decides to enhance the sentence, it has to allow the convict to be heard about why the sentence should not be enhanced.

You can ask your uncle to appeal to the High Court within 30 days of the decision that enhanced the sentence.

False document misleading employer

I was charged with using a false document with intent to mislead my employer under the Prevention and Combating of Corruption Act. The prosecution claimed that I acted upon a false invoice from an accountant to pay a fictitious claim. After a full trial, I was acquitted. The magistrate reasoned that there was no proof that I knew the receipt I acted upon to authorise payment was forged. After my acquittal, I was subsequently re-arrested and charged with uttering a false document under the Penal Code. It is the same invoice that I am being accused of uttering to the accounts department. Does the law permit this?
21 October 2019

Using a false document to mislead a principal and uttering a false document are related but distinct offences created by different laws. Therefore, the defence of autrefois acquittal under Section 137 of the Criminal Procedure Act is inapplicable, as you were not acquitted of uttering a false document in the previous trial. However, knowledge of the invoice's falsity is a key element common to both offenses. Since this issue was implicitly or explicitly decided in your favor during the previous trial, the prosecution is barred from charging you with any offence concerning the same invoice that hinges on this already-decided issue. The doctrine of estoppel aims to ensure fairness and prevent disguised retrials.

Funny 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, in breach of this forgiveness agreement, she 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?

11 November 2019

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.

The same section provides even further protection to women and states that whoever intends to insult the modesty of any woman utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard or that such woman shall see such gesture or object, or intrudes upon the privacy of such woman, is guilty of a misdemeanour and is liable to imprisonment for one year.

What you described to us in your emailed question 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.

This is a very serious offence and you could see yourself spending 14 years in jail. You should consult a criminal defence counsel to guide you further.

Removal from surety

I am 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 a withdrawal?

11 November 2019

The Criminal Procedure Act allows a surety to withdraw. You need to apply to the magistrate, which you can do orally. Upon 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 someone else as a surety. Otherwise, he will be sent to remand prison pending the satisfaction of a surety. It might be wise to inform your boss beforehand that you intend to withdraw being his surety to allow him to prepare another surety.

As for your employment, just because you removed your name as a surety, it is not a ground for your boss to fire you. If he does, it would be an unfair termination.

Seizure of property in economic offence

If a person is charged with an economic offence, can the Court confiscate his properties apart from being sentenced?

2 December 2019

Under the Economic and Organised Crimes Control Act, where the Court convicts a person of any economic offence, it may make any order with respect to the property of that person, including forfeiture. The Court shall not make an order for the forfeiture 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 in the commission or facilitation of the offence.

Prostitution and human trafficking

I am quite concerned about my neighbour who seems to bring in ladies from all over 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 a 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 be exploited in Dar. Is this not an offence?

6 January 2020

Section 4 of the Anti-Trafficking in Person Act (2008) states that a person commits an offence of trafficking in person 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 falls under the above, and this is a serious offence that can fetch the owner up to 20 years imprisonment, a fine, or both.

Cyberbullying at work

A group of guys have been harassing me at my workplace, especially on social media, where they have been posting some nasty images of me. This is depressing for me. How do I approach this?

13 January 2020

Cyberbullying is a serious offence under the Cyber Crimes Act. Section 23 of the Act states that (1) a person shall not initiate or send any electronic communication using a computer system to another person intending to coerce, intimidate, harass or cause emotional distress. Sub regulation (2) adds that a person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of not less than five million TZS or to imprisonment for a term of not less than three years or to both.

You can report this to both the TCRA and police forces for their action.

Chain letter stressing me out

I have received a chain letter on WhatsApp stating I need to forward this to five people and contribute TZS 10,000 each time I do so. This chain letter states that if I do not forward, I will be hit with bad luck, and if I do, I will be fortunate. I have a very sick child and initially forwarded the letter believing that my child was healing, but that is not the case. I am really scared as I keep receiving the letter and have lost quite a bit of my savings in this scheme. Please guide me.

20 January 2020

Chain letters are hoaxes that have existed for hundreds of years. As hoaxes go, it isn't a bad way to get someone's attention. Copies of the letter have sometimes survived generations, proving that people have always had an innate curiosity—and superstition—about chain letters. Hundreds of thousands have received and forwarded letters promising charity, prosperity, or religious enlightenment in the following decades. Many letters state that you will be hit with bad luck or even death if you don't.

In your case, we don't see anything different. The original sender and/or recipient of the electronic unsolicited chain letter is committing an offence, and you can report them to the police. The Penal Code has a specific section on chain letters. We also recommend you ignore these letters and stop sending any further funds, and focus on other methods for the well-being of your sick child.

Trial of drug offences

I have seen some of the drug cases being tried in the High Court District Registry, some tried in the Corruption and Economic Crime Division of the High Court and some being tried in other subordinate Courts. I am confused about this. What determines the competence of the Court to try a drug offence? Is the prosecutor deciding where he wants the charge to be tried?

27 January 2020

Jurisdiction to try a drug offence depends on the drug law in force when the drug offence was committed. The drug law in force up to 15 September 2015 was the Drugs and Prevention of Illicit Traffic in Drugs Act (DPITDA), Cap. 95, R.E 2002. Under this law, jurisdiction to try a drug offence was dependent on the section of the law under which the offence was charged. Many offences charged under the DPITDA

were triable by the High Court and District Registries, except those charged under Section 12.

The DPITDA was repealed by the Drug Control and Enforcement Act of 2015 (DCEA), which came into force on 15 September 2015 and was further amended by the Drug Control and Enforcement (Amendment) Act of 2017. The DCEA and its amendment changed the test of the jurisdiction in drug offences. Under the DCEA, jurisdiction is dependent on the weight of the drug involved. For prohibited plants like cannabis, sativa and khat a charge becomes triable by the High Court if the drug weighs more than 50kgs. If the cannabis, sativa, or khat weighs less than 50 kgs, it is tried by a subordinate Court but not a primary Court. For manufactured drugs like cocaine and heroin, once their weight exceeds 200 grams, the offence becomes triable by the High Court. Below 200 grams, the offence is triable by subordinate Courts.

Further, from 8 July 2016, all the drug offences triable by the High Court were listed in the First Schedule to the Economic and Organised Crime Control Act as economic offences. It was after that date when the Corruption and Economic Crime Division of the High Court assumed the jurisdiction to try drug offences that were committed after 8 July 2016, which meets the trial threshold required for a drug offence to be tried by the High Court. Hence, for a drug offence to be tried in the Corruption and Economic Crime Division of the High Court, it must have been committed after 8 July 2016. Also, it must meet the weight threshold required by the law for a drug offence to be tried by the High Court. A drug offence committed before 8 July 2016 cannot be tried by the Corruption and Economic Crime Division of the High Court because, before that, drug offences were ordinary criminal cases that were within the domain of ordinary Courts.

Unexplained wealth and stolen property

My uncle is a businessman, never having worked for the government. He was arrested and charged with possessing properties suspected of being stolen or unlawfully acquired. He was told during his arrest that his wealth was incommensurate with his known sources of income. To my little understanding of the law, that offence is for public officials only who are required to account for their wealth. Can you please guide me on this?

10 February 2020

Possession of unexplained property and possession of property suspected of being stolen or unlawfully acquired are distinct offenses under separate legislation. Section 312(1)(b) of the Penal Code specifically addresses the latter offense, applicable to any person. "Unlawfully acquired" under this section means obtained through a criminal offence or as proceeds of crime. Crucially, the prosecution must prove circumstances suggesting the property was stolen or unlawfully acquired, not merely that the accused's possessions are disproportionate to their income. They must detail the acquisition circumstances of each property to establish the basis of their suspicion.

The offence of possession of the unexplained property is created under Section 27(1)(b) of the Prevention and Combating of Corruption Act, 2007. Unlike Section 312(1)(b) of the Penal Code, which applies to any person, Section 27(1)(b) of the PCCA applies to public officials only. Suppose a public servant possesses or controls properties disproportionate to his past and present incomes. In that case, it raises a presumption that he might have acquired the properties corruptly or by other criminal conduct.

Whereas possession or control of properties that are incommensurate with the past or present lawful income of a public

servant raises a presumption of corruption or other criminal conduct by a public official and constitutes a crime under Section 27(1)(b) of the PCCA, a mere fact that a private individual is in control or possession of properties that she/he cannot account for, does not, in itself constitute a crime of possession of property suspected to have been stolen or unlawfully acquired contrary to Section 312(1)(b) of the Penal Code. You must note that Section 312(1)(b) of the Penal Code requires more than a mere property audit or disproportionality of the wealth and lawful income of the accused. It requires proof of the circumstances for the acquisition of the properties, which raises suspicion of there being a criminal who generated the property.

Gay people in Tanzania

I am a gay person married in a foreign jurisdiction. I want to visit Tanzania for tourism, but I fear my husband will get arrested. Is my suspicion correct? What if I come alone? Will it make any difference? Please guide me.

17 February 2020

There is no specific legislation in Tanzania that criminalises gay marriage. Section 9(1) of the Law of Marriage Act defines marriage as a voluntary union of a man and a woman intended to last for their joint lives. Gay marriage does not fit within this definition of marriage in Tanzania, but that does not mean gay marriage is a crime in Tanzania. It only means gay marriage is not recognised as a valid marriage and cannot be enforced in Tanzania.

What the law prohibits in Tanzania is having sexual intercourse against the order of nature as provided for under section 154 of the Penal Code. Both parties to the act of sexual intercourse against the order of nature are held criminally liable. But for the law to be enforced, there must be a complaint to the police and proof of the act that two men had sexual intercourse against the order of nature. In short, you can enter Tanzania as a gay couple or gay person but cannot indulge in intercourse against the order of nature.

17-year-old charged with sexual offence

My neighbour's son, aged 17 years, was charged with an unnatural offence in that he had sexual intercourse with a nine-year-old girl against the order of nature. He was sentenced to life imprisonment. Since the victim is below ten years old, the magistrate reasoned that the statutory minimum sentence is only life imprisonment. Was it correct for the Court to consider the victim's age, disregarding the offender's age? I hear that in India, in a famous rape trial, one of the rapists was a person under 18, yet he was sentenced to death.

23 March 2020

This is an unfortunate state of affairs. Our response below is based on the law as it stands now. It may not be what the reader or we approve of. As lawyers, we cannot answer it any other way.

Under Section 154(2) of the Penal Code [Cap. 16 R.E 2002], the statutory minimum penalty for an unnatural offence committed against a child who is under the age of 10 years is life imprisonment. However, and unfortunately so, that statutory minimum custodial sentence cannot apply to an offender who is also a child. The sentencing law and policy in Tanzania have exempted children from cruel or severe sentences even where the sentence is mandatory and the victim is a child. Before the Penal Code was amended by the Sexual Offences (Special Provisions) Act, 1998, Section 2 of the Minimum Sentences Act [Cap. 90 R.E 2002] prohibited Courts from imposing minimum sentences on children in conflict with the law. Courts retained their discretion to impose appropriate sentences on children despite there being a mandatory minimum sentence for the offence of which the child is convicted.

The 1998 Sexual Offences (Special Provisions) Act failed to reconcile the conflict between the interest to promote and protect a child offender and the child victim. The law did not consider a situation where children are both the offender and the victim. In 2007, Section 160B of the Penal Code was introduced by amendment through Act (No. 19 of 2007) to reconcile the interests of both the child offender and the child victim. The amendment exempted child offenders from statutory minimum sentences provided for sexual offences even where the victim is a child. The amendment gave the Court discretion to impose any sentence they deem appropriate in the circumstances of the case and the offender, including corporal punishment. Section 160B of the Penal Code extended exemption from the minimum sentences for sexual offences to offenders who are 18 years and those below the age of 18 years.

In 2009, the Law of Child Act 2009 was enacted. Section 119(1) of this law, as amended by Act No. 4 of 2016, prohibits Courts from imposing a custodial sentence on children offenders for all offences irrespective of the nature of the offence and the penalty provided for that offence by written law. In our opinion, the Court might have imposed life imprisonment for under 18 years for failure to consider other laws and other provisions protecting child offenders. There seems to be an issue with how the 17-year-old was sentenced. He can seek an appeal if he wants.

From our research on the 2012 Indian rape case of Nirbhaya (not her real name), six people on the bus raped the young college student, resulting in her death. One committed suicide in jail, and the other four were convicted of rape and murder and given the death sentence, which was carried out by hanging on 20 March 2020. The sixth was a juvenile (under 18), and he was convicted of rape and murder, but because of his age, he was not sentenced to death. Instead, he was given a three-year sentence and was released from jail in December 2015.

Coughing with Coronavirus

If a person infected with Coronavirus jokingly coughs on the other and infects him, can that be an offence? What if that person dies? Can the offence be murder?

20 April 2020

We are not sure what you mean by jokingly. In any case, infecting another person with coronavirus can be a crime under Section 16(a) of the Public Health Act, 2009, or Section 179 of the Penal Code, amongst other laws. To prosecute under Section 16(a) of the 2003 Public Health Act, there must be evidence proving that the accused knew or had reasons to think that he was infected and that he also knew that his conduct or act that caused Corona was likely to infect another. Even Section 179 of the Penal Code requires proof of the same elements. It provides that "any person who unlawfully or negligently does any act which is and which he knows or has reason to believe to be likely to spread the infection of any disease dangerous to human life is guilty of an offence."

If the victim dies, the offence is more likely manslaughter than murder. To prove manslaughter, the prosecution must demonstrate that the act causing infection was negligent to a high degree, showing significant disregard for human life. Based on the facts, this seems probable. Simply proving negligence is insufficient; recklessness amounting to a high degree of disregard for human life must also be established.

All in all, coughing and intentionally trying to infect someone is a serious offence. It will not be lightly taken in Tanzania when the whole world is affected in this era.

Bail for money laundering

There is a new case that I have heard of where there is an indication that money laundering is bailable. What is the background of this case?

25 May 2020

The Petitioner, one Dickson Paulo Sanga, moved the High Court in a constitutional Petition challenging the provisions of Section 148(5) of the Criminal Procedure Act (CPA) that denies bail to accused persons in various offences, the most popular being money laundering.

The Petition was filed at the High Court of Tanzania, and Miscellaneous Civil Cause no 8 of 2019 was assigned to the Attorney General as the Respondent.

The Petitioner was seeking orders that Section 148(5) of the CPA (Section 148(5)) infringes constitutional rights of presumption of innocence and the right to personal liberty as enshrined under Articles 13(6)(b) and 15(2)(a) of the Constitution of the United Republic of Tanzania (Constitution). Below are some FAQs for your guidance:

What is money laundering?

Money laundering is widely defined. According to section 3 of the Anti-Money Laundering Act (AMLA), money laundering means "engagement of a person or persons, directly or indirectly in conversion, transfer, concealment, disguising, use or acquisition of money or property known to be of illicit origin and in which such engagement intends to avoid the legal consequences of such action, and includes offences referred in Section 12.'

Section 12 introduces predicate offences that must have been committed for money laundering to exist. The AMLA defines predicate offences to include a very wide range of offences (where the most controversy arises), including illicit drug trafficking, terrorism, arms trafficking, corrupt practice, armed robbery, theft, kidnapping, smuggling, extortion, forgery, piracy, poaching, tax evasion, illegal fishing, illegal mining, environmental crimes in addition to any other offence that the Minister for Finance may publish by notice in the Gazette.

In short, if you commit one of the predicate offences above, a good number of which are normally bailable, you can also be charged with money laundering, making the offence unbailable.

What does section 148(5) state?

This section provides that a police officer or a Court before whom an accused person is brought shall not be admitted to bail in offences like murder, treason, money laundering, offences relating to certain drugs, terrorism, and armed robbery, amongst others. Since 1985, this list has been growing in the number of offences becoming unbailable.

What did the Court decide in this case?

The Court held that the whole of section 148(5) violates the Constitution since there is no procedure under which consideration for granting or refusing bail is in place to ensure due process. However, the judges did not stop there; they invoked Article 30(5) of the Constitution to direct the government to rectify this within 18 months, a failure of which all Section 148(5) offences will become bailable. The 18-month period is a cool-off period allowing the Government to take necessary action.

Does that mean that bail is now open for all accused?

No. Bail will not be open to the accused charged with offences specified under section 148(5) of the CPA until the expiration of the 18 months. Effectively, the Government can rectify the unconstitutionality of section 148(5) within 18 months.

This isn't very clear. How can section 148(5) be unconstitutional without giving the Government time to change it?

A saving provision in the Constitution allows the Court to give the Government time to rectify the defect. The Court has decided to grant such time to the Government at its discretion.

What about armed robbery? Why did the Court rule armed robbery as bailable?

In another Constitutional matter of Jackson Ole Nemeteni (Mjomba Mjomba), the Court ruled that section 148(5)(a)(i), which specifically denies bail to accused in armed robbery cases, was unconstitutional. However, just like in this case, the Court gave the Government 18 months to rectify the error and have in place procedures, and the Government did not do so. Hence, with the 18 months expired, it has been struck out from the CPA, meaning it now becomes bailable.

What does all this mean?

As discussed above, the Government has to rectify the defect in Section 148(5) of the CPA within 18 months. If it does so, all offences under section 148(5) will remain unbailable, but the Courts shall have the power to check or control the abuse or arbitrary decisions of charging unbailable offences or delaying the prosecution of unbailable offences to 'fix' people. If the Government does not rectify this defect, as in the case of armed robbery, all section 148(5) offences will become bailable.

What about money laundering?

It also continues to be unbailable for 18 months. If procedures under which consideration for granting or refusing of bail are made within 18 months, then money laundering will continue to remain unbailable, but the Court will have to look at the circumstances of the case or the offender to decide whether to admit the accused to bail or not and when based on the procedures. The Court will have some control over such matters, which is not the case now, where accused persons remain in custody for many years. Please note that all offences under section 148(5), except for armed robbery, will remain unbailable until either 18 months expires without any procedures in place or this decision is overturned.

What will the procedures provide, and why are they needed?

There has been a public outcry that accused persons are taken to Court even before investigations are over. With investigations never completed, the accused stay in remand prison for many years because their offences are unbailable. There have been many accused persons in prison for over five years whose cases are still being investigated, and their offences are unbailable, so they cannot be released.

With proper procedures in place, the Prosecution will be required to act within the ambit of what is laid out there, failure of which the accused will be released. For example, the procedures could provide for the maximum time allowed for investigation, the time by which a trial must commence and end. That would ensure that the accused persons are not remanded in prison for an indefinite period.

In short, the procedure is intended to check the abuse of power to charge unbailable offences maliciously and to control inordinate delays in prosecuting unbailable offences.

Offence partly committed in Mainland Tanzania and partly in Zanzibar

Except for the Court of Appeal, I understand that the judiciary is not a union matter. What if an offence is partly committed in Mainland Tanzania and Zanzibar? Can the accused be tried in a Court in Mainland Tanzania?

5 October 2020

We answer your question in the affirmative. Section 7 of the Penal Code confers the Courts of Mainland Tanzania with jurisdiction to try offences that have been partly committed in Mainland Tanzania and outside Mainland Tanzania. This section can be used to try an offence whose commission

might have been organised from Zanzibar or it was partly committed in Zanzibar and partly in Mainland Tanzania.

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?

15 June 2020

Our Penal Code states that a person is not deemed to have killed another if the person's death does not take place within a year and a day of the cause of death. Such period is reckoned inclusive of the day on which the last unlawful act contributing to the cause of death was done. Hence, you cannot be charged with murder but can still be charged with other offences.

Truck forfeiture due to drugs

I own trucks that transport goods within and outside the country. In 2017, my driver drove a truck containing 30 tons of fruit from Tanga to Nairobi. On the way, he was arrested by police because he was found carrying 50 kilograms of Cannabis Sativa (bhang). He was, however, acquitted after a full trial because he claimed he did not pack the goods in the truck, so he could not know that the truck had the bhang. However, the Court still ordered the forfeiture of my truck because it was used to commit the crime, even though the prosecution failed to link the crime with the accused. I know nothing about the bhang found in my truck; it was not part of the goods my customer packed. I feel justice has not been done to me because I was not part of that crime, if any. Does the law allow forfeiture without a prior conviction? Can the Court order forfeiture of property not belonging to the accused? What can I do to get my truck back?

29 June 2020

Section 49A of the Drug Control and Enforcement Act, 2015, amended by Act No. 15 of 2017, allows confiscation without necessarily convicting the accused. There are two circumstances where the law allows forfeiture of an instrument used to commit a crime without necessarily convicting the accused. One is where the accused absconds or dies during the investigation or trial. Two is where the accused is acquitted, but evidence proves that the instrument was used to commit the offence. In other words, the accused might be innocent, but the property is guilty because it has been proved that it was used to commit the offence charged.

The Court can order the confiscation of the property used to commit a crime even though that property does not belong to the accused. The guilt of the property and the guilt of the accused are treated differently. The accused's guilt must be proved beyond a reasonable doubt, but the guilt of the property used to commit a crime is proved within the balance of probability, which is what has happened in your case.

Section 49A (5) of the Drug Control and Enforcement Act, 2015, as amended by the Drug Control (Amendment) Act, 2017, however, gives the right to property owners to apply to set aside the confiscation order made against the property. The law does not provide a time limit within which the owner should make an application to set aside the confiscation order. We recommend that the application be made as soon as possible after one becomes aware of the confiscation order.

Pretending to be PCCB officer

My brother is charged with an offence of false pretence to be an officer of the Prevention and Combating of Corruption Bureau. What surprises me is that the offence is charged as an economic offence. Does the law make such a minor offence economic? How does that offence affect the economy? What is the penalty in case he is

found guilty by the Court? What if he had pretended to be a police officer? Could he still be charged with an economic offence? Please guide me as this is causing me panic attacks.

20 June 2020

In 2016, the Parliament passed the Written Laws (Miscellaneous Amendments) Act, No. 3 of 2016. This law amended the Economic and Organised Crime Control Act [Cap. 2002] by adding all offences under the Prevention and Combating of Corruption Act, 2007 (PCCA) to the list of economic offences. False pretence of being an officer of the Prevention and Combating of Corruption Bureau is one of the offences under the PCCA added to the list of economic offences. That offence is created by Section 36 of the PCCA. The only corruption offence excluded from the list of economic offences is bribery under Section 15 of the PCCA.

The law allows the Parliament to add any offence to the list of economic offences irrespective of its effect on the economy. It is hard to understand why the Parliament decided to add a minor offence of false pretence to be an officer of PCCB in the list of economic offence and make it attract a penalty of 20 years imprisonment while excluding the offence of bribery which is a public concern with bribery still attracts a minimum penalty of TZS 500,000 or three years imprisonment regardless of the amount involved.

Since Act No. 3 of 2016 came into force on 8 July 2016, the minimum penalty for any economic offence is 20 years imprisonment and the maximum penalty is 30 years imprisonment. If your brother is found guilty by the Court, he shall thus serve a minimum of 20 years in prison.

Had your brother pretended to be a police officer, he would have been charged with personating a public officer contrary to sections 100(b) and 35 of the Penal Code. This offence is minor, attracting a maximum penalty of two years imprisonment. Unlike the PCCA offence, personating a public officer is not an offence specified in the list of economic offences and hence cannot be charged as an economic offence.

Lying under oath

What are the consequences of lying under oath? I am involved in a case where the applicant has lied to such an extent that it will lead to obstruction of justice. If it is proven that he has lied under oath, can he be imprisoned, as is the case in other jurisdictions?

3 August 2020

Section 102 of the Penal Code, which is our key criminal statute, addresses this and states that (1) Any person who, in any judicial proceeding, or to institute any judicial proceeding, knowingly gives false testimony touching any matter which is material to any question then depending in that proceeding or intended to be raised in that proceeding, is guilty of the misdemeanour termed "perjury." It is immaterial whether the testimony is given on oath or otherwise. The forms and ceremonies used in administering the oath or binding the person giving the testimony to speak the truth are immaterial if he assents to the forms and ceremonies used.

It is immaterial whether the false testimony is given orally or in writing. It is immaterial whether the Court or tribunal is properly constituted, or is held in the proper place, or not if it acts as a Court or tribunal in the proceeding in which the testimony is given. It is immaterial whether the person who gives the testimony is a competent witness or not or whether the testimony is admissible in the proceedings. (2) Any person who aids, abets, counsels, procures, or suborns another person to commit perjury is guilty of the misdemeanour termed "subornation of perjury."

Contempt of Court

What constitutes contempt under the Penal Code and what is the penalty?

17 December 2018

Contempt is widely defined under the Penal Code. Section 114 of the Penal Code states that any person who (a) within the premises in which any judicial proceeding is being had or taken, or within the precincts of the same shows disrespect, in speech or manner, to or with reference to such proceeding, or any person before whom such proceeding is being had or taken; or (b) having been called upon to give evidence in a judicial proceeding, fails to attend or, having attended, refuses to be sworn or to make an affirmation, or having been sworn or affirmed, refuses without lawful excuse to answer a question or to produce a document or other thing, or remains in the room in which such proceeding is being had or taken, after the witnesses have been ordered to leave such room; or (c) causes an obstruction or disturbance in the course of a judicial proceeding; or (d) while a judicial proceeding is pending, publishes, prints or makes use of any speech or writing, misrepresenting such proceeding, or capable of prejudicing any person in favour of or against any parties to such proceeding, or calculated to lower the authority of any person before whom such proceeding is being had or taken; or (e) publishes a report of the evidence taken in any judicial proceeding which has been directed to be held in private; or (f) attempts wrongfully to interfere with or influence a witness in a judicial proceeding, either before or after he has given evidence, in connection with such evidence; or (g) dismisses a servant because he has given evidence on behalf of a certain party to a judicial proceeding; or (h) wrongfully retakes possession «of any land or other property from any person who has recently obtained judgment from a Court for the recovery of possession of such land or property; or (i) wrongfully retakes possession of any child from any person who has obtained the custody of such child under an order of the Court; or (j) having the means to pay any sums by way of compensation or costs or otherwise-in civil or criminal proceedings awarded against him by a primary Court, wrongfully refuses or neglects after due notice to make such payment in accordance with any order for payment whether by instalments or otherwise; or (k) commits any other act of intentional disrespect to any judicial proceeding, or to any person before whom such proceeding is being had or taken is guilty of a misdemeanour, and is liable to imprisonment for six months or to a fine not exceeding five hundred TZS.

The Judge can send you to jail for six months or fine you TZS 500 for contempt. If you are a first offender, it is likelier than not that you can get away by simply paying TZS 500. Your lawyers can guide you further.

Police interrogation time limit

I was taken in for a police interview and spent the entire day there from 9 am to 7 pm. I was then admitted to bail after pleading with the officer that I did not want to be held in custody as it was a minor bailable offence, which I was denied. 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 get bail. My question is, how long can an officer interview me? By the end of the interview, I was exhausted and stressed. The officer repeatedly asked the same question while slowly writing on his notepad. Is there no time limit under the law?

4 February 2019

Section 50(1) of the Criminal Procedure Act (the Act) provides: for the purpose of the Act, the period available for interviewing a person who is in restraint in respect of an offence is– (a) subject to paragraph (b), the basic period available for interviewing the person, that is to say, the period of four hours commencing

at the time when he was taken under restraint in respect of the offence.

In principle, paragraph (b) excludes time when you are waiting for your lawyer or not being interviewed. However, the basic time frame for the interview is four hours, which can be extended to another four hours, as provided under section 51.

Section 51(1) states: 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 the person must 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 in respect of whose interview the basic period 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.

Pregnant in jail

My cousin was accused of the murder of her former housemaid in 2015. In 2019, while in remand prison, she got involved with a police officer and became pregnant. The little I know is that if a person is convicted of murder, they are sentenced to death by hanging as a mandatory punishment. Much as I feel sorry for my cousin, my most significant concern is for the unborn child who has not done any wrong. I want to know if my cousin will be hanged or if they will wait until she delivers.

14 September 2020

We are very sorry for what is going on with your cousin. Indeed, section 197 of the Penal Code, Cap. 16 [R.E. 2019] makes it clear that a person convicted of murder shall be sentenced to death. However, the same section in its proviso exempts pregnant women from such a punishment. The said section stipulates that 'if a woman convicted of an offence punishable with death is alleged to be pregnant, the Court shall inquire into the fact and, if it is proved to the satisfaction of the Court that she is pregnant, the sentence to be passed on her shall be a sentence of imprisonment for life instead of a sentence to death.'

Jurisdiction of ward tribunals for offence of smoking bhang

My neighbour is charged before a Ward Tribunal with an offence of smoking bhang. I am curious to know which law gives such Ward Tribunals power to try the offence of smoking bhang. Secondly, what are the rules of evidence and procedures that govern criminal trials in these tribunals and the sentencing powers and orders?

21 September 2020

Smoking bhang is a criminal offence under section 18(a) of the Drug Control and Enforcement Act, 2015. This offence attracts a penalty of a fine not less than TZS 1M or a prison term of three years or both. Part II of the Schedule to the Ward Tribunals Act [Cap. 206 R.E 2002] gives such tribunals the power to try the offence of smoking bhang. Generally, the sentencing power of the Ward Tribunals under the Ward Tribunals Act for the offence of smoking bhang is limited to a fine not exceeding TZS 2000 or a prison term not exceeding 12 months. However, since the law creating the offence imposes a minimum penalty of TZS 1M, the Ward Tribunal convicting the accused of smoking bhang must impose such a minimum statutory penalty. In case of default to pay the fine, the Ward Tribunal shall impose a prison term not

exceeding 12 months on the accused.

For a prison sentence passed by a Ward Tribunal to have legal force, it must be endorsed by a Primary Court magistrate for the area where the Ward Tribunal that convicted the accused is established. The Primary Court magistrate can endorse the sentence passed by a Ward Tribunal or set it aside for want of jurisdiction or any other reason.

Ward Tribunals regulate their procedures. They are not bound by the rules of evidence and procedures applicable to ordinary Courts of law. However, they must observe all the rules of natural justice, such as giving both parties the right to be heard, the right to produce exhibits, and the right to call witnesses and cross-examine the opponent's witnesses. Interestingly, lawyers or prosecutors are not allowed in the Ward Tribunal. If the accused is under 18, he can appear with his parent, guardian, relative, or friend to assist in examining witnesses, cross-examination, or submissions.

Adult woman exploiting child sexually

I have heard that there are adult women who induce or force boys under the age of 18 to have sexual intercourse with them. Doesn't that act amount to an offence of rape?

28 September 2020

In terms of Section 130 of the Penal Code, rape is committed by a male person against a female person. Under our laws, a woman or a girl cannot rape a male person of any age. Where an adult female person engages in sexual intercourse with a male person who is under the age of 18 years, be it with or without consent of the minor boy; such adult female commits an offence termed grave sexual abuse contrary to Section 138C(1)(d) of the Penal Code as amended by Act, No. 1 of 2020. Upon conviction, the offender shall be imprisoned for 20 to 30 years. In addition to imprisonment, she shall be ordered to pay compensation to the tune determined by the Court.

20-year imprisonment for hunting impala

My cousin was convicted of unlawful hunting of impala. He hunted only one impala for family consumption. He was found in possession of a skin and ten kilograms of impala he hunted. Last week, he was sentenced to twenty years imprisonment by the Court. This sentence looks excessive to me. Can you advise me on the legality of this sentence? Is it not too harsh?

5 October 2020

Before 8 July 2016, unlawful hunting or possession of any part of wildlife was punishable under the Wildlife Conservation Act (2009), depending on the value and species of the wildlife. The Court could even impose a fine against the offender depending on the species, quantity and value of the wildlife hunted or possessed.

However, in July 2016, the Parliament, through Act No.3 of 2016, amended section 60(2) of the Economic and Organised Crime Control Act by prescribing a new minimum sentence of 20 years imprisonment for all economic offences irrespective of the nature of the economic offence charged. Unlawful hunting or possessing impala meat or skin is one of the economic offences listed under paragraph 14 of the First Schedule to the Economic and Organised Crime Control Act. So, the minimum sentence the Court can impose for unlawful hunting of any wildlife species, including even one impala, is 20 years imprisonment regardless of its value, species, number, or purpose for hunting the impala.

Hence, the sentence is legal if the crime was committed post-July 2016. It is quite a harsh sentence, but unfortunately, the law supports it.

Suicide is still a crime

I am aware of a doctor who has been assisting patients with terminal diseases to die. He does so by injecting them with some medicine. Is it true that this is illegal even though the patient consents to die?

14 January 2019

The issue of physician-assisted suicide has been heavily debated in foreign Courts. Many countries have now made it legal to do so, whereby a physician can assist the patient to die under certain conditions. In Tanzania, under our Penal Code, assisted suicide is illegal and are a serious offence that can send the doctor to life imprisonment.

A foreign case that comes to mind is a landmark decision by the Supreme Court of Canada in 2015 that held that a total prohibition of physician-assisted death is unconstitutional. However, the Court's ruling limits such physician-assisted death to hard cases of 'a competent adult person who consents to the termination of life and has a grievous and irremediable medical condition, including an illness, disease or disability, that causes enduring suffering that is intolerable to the individual in the circumstances of his or her condition.'

Specifically, the Canadian Supreme Court held that the current legislation was overboard in that it prohibits "physician-assisted death for a competent adult person who (1) consents to the termination of life and (2) has a grievous and irremediable medical condition (including an illness, disease or disability) that causes enduring suffering that is intolerable to the individual in the circumstances of his or her condition." However, the Canadian Apex Court decision includes a requirement that there must be stringent limits that are 'scrupulously monitored.' This requires the death certificate to be completed by an independent medical examiner, not the treating physician, to ensure the accuracy of reporting the cause of death. Whether a Physician is forced to proceed with such assisted suicide has not yet been tested in Canada. Still, it seems likelier than not that a Physician can withdraw himself from not wanting to proceed with assisted suicide on personal grounds.

Plea bargaining of drug offence

My friend is incarcerated in prison and charged with trafficking in narcotic drugs, namely bhang. He has asked me to seek your opinion if it is possible for him to initiate plea bargaining. He would also like to know the possible penalty that the Court will likely impose on him if he enters into a plea-bargaining agreement with the prosecution. Kindly guide.

19 October 2020

Section 194F of the Criminal Procedure Act limits the scope of plea bargaining. It makes some offences unfit for plea bargaining. Trafficking in narcotic drugs whose market value is above TZS 20M is one of the offences in which the law restricts plea bargaining.

Although section 194F restricts plea bargaining for drug offences based on the market value of the drug, it is important to note that the Drug Control and Enforcement Act does not test the seriousness of the drug offence by using the market value of the drug involved in the charge. The repealed Drugs and Illicit Traffic in Drugs Act abolished the use of market value to determine the seriousness of drug offences. Currently, there is no authority vested with the power to assess the market value of narcotic drugs.

Hence, you will note that under the new law, the seriousness of a drug offence is assessed according to the weight of the drug. Under the repealed drug law, the power to assess the market value of the drug seized was vested in the Director General of the Drug Control Commission. Also, under the repealed drug law, bail and sentences were given depending on the market value of the drug charged. Now, bail and sentence for a drug offence are dependent on the weight

and type of the drug and not its market value.

Secondly, plea bargaining does not allow the Court to impose a lower sentence than the statutory minimum sentence imposed by the law. The Drug Control and Enforcement Act prescribes minimum sentences for the offence of trafficking in narcotic drugs depending on the nature and the weight of the drug. The minimum sentence for a drug offence, irrespective of its nature and weight, is 20 years imprisonment. So even if your cousin can enter into plea bargaining, he will be sentenced to a minimum of 20 years imprisonment, and his plea bargaining cannot give a discount below 20 years in jail.

Appeal from conviction on plea of guilt

My uncle pleaded guilty to unlawful possession of a tail of wildebeest. In our tradition, older adults like him walk with wildebeest tails to chase away flies. Can he appeal his conviction?

2 November 2020

Section 360(1) of the Criminal Procedure Act gives a person convicted on his plea of guilty a limited right of appeal to challenge the sentence's extent or legality.

Through case laws, a conviction founded on the plea of guilty can now be overturned on appeal where it is shown, or it appears to the appellate Court that: the appellant's plea of guilty was imperfect, ambiguous, or unfinished and for that reason, the trial Court erred in treating it as a plea of guilty; the appellant pleaded guilty as a result of mistake or misapprehension; the charge on which the appellant was convicted was a defective charge or facts adduced by the prosecution in support of the plea of guilty did not establish the essential elements of the offence to which the appellant pleaded guilty; lack of jurisdiction; lack of proper consent of the DPP where the prosecution of the offence charged requires the prior consent of the DPP to try it. Some of the cases that explain the position above that you can refer to are Lawrence Mpinga v. R [1983] TLR 166; Msafiri Mganga v. R, Criminal Appeal No. 57 of 2012 at p. 3; Said Omari Kombo v. R [2000] TLR 315.

For your reference, unlawful possession of a government trophy is one such offence whose prosecution requires the consent of the DPP. In any case, you can try the abovementioned grounds to challenge the conviction.

Forced or induced female genital mutilation

In some tribes, married women are induced or forced by their sister-in-law or mother-in-law to undergo female genital mutilation to earn respect in the community purportedly. Does the law not create an offence of forced or induced female genital mutilation for married women?

9 November 2020

Induced or forced female genital mutilation is prohibited, but the name of the offence varies depending on the age of the female. If the female is a girl under 18 years, the offence is termed child cruelty contrary to Section 169A of the Penal Code. This offence covers parents, guardians, and those who carry out or cause to be carried out female genital mutilation. Cruelty to a child is punishable with imprisonment for a term of not less than five years but not exceeding 15 years or a fine not exceeding TZS 300,000. Since the law gives the option of paying a fine, the Court normally imposes the fine (which is not much) if the individual is a first-time offender.

However, where female genital mutilation is carried out against a married woman over 18 years, the offence shall be termed as causing grievous bodily harm contrary to Section 225 of the Penal Code. The maximum punishment for causing grievous bodily harm is seven years imprisonment. In such cases, the Court can impose the appropriate sentence of up to seven years.

Kissing woman without consent

After having too many drinks, I lip-kissed a woman in a bar. I did apologise, but she intends to report this to the police. Is being drunk a defence to this? This is the third time this has happened to me whilst drunk, and I think I might need medical help.

30 November 2020

Before you get into further serious trouble, you might want to consider keeping your lips to yourself and get a medical check done. Kissing a woman in a bar without her consent amounts to an offence of sexual harassment. Under section 138D (1) of the Penal Code [Cap. 16 R.E 2002], sexual harassment attracts a penalty of imprisonment for a term not exceeding five years or a fine not exceeding TZS 200,000.

However, section 138D (2) of the Penal Code requires a complaint of sexual harassment to be concluded within 60 days from the date of the event. This means that if investigation and prosecution take longer than 60 days, the suspect or the accused has the right to demand that the investigation be stopped if it is still underway, or if the case has been taken to Court, the accused will have the right to ask the Court to terminate the charges against him on the grounds the charge has expired since it has taken more than 60 days since the alleged crime of sexual harassment was committed. Sexual harassment is one of the few offences that have such an expiration period. Many offences do not expire and you will see many investigations going on for months and even years.

According to Section 16 of the Penal Code, intoxication can be used as a defence to a charge of sexual harassment where it is proved that the offender was so drunk that he was unable to know that what he was doing is prohibited by the law. If the offender seems to recall all that happened when committing the crime, then his defence of intoxication cannot stand. In any case, this defence cannot stand on its own and will depend on other facts.

Consumption of traditional liquor called "Gongo"

I live in the UK, but I am Tanzanian by birth. There is one drink that I miss the most: Gongo. I intend to visit Tanzania soon and want to introduce this drink to my friends. However, some of my English friends googled this and discovered that it might be illegal to consume Gongo. Kindly guide me as it is a liquor we need to market to the world.

30 November 2020

Under Section 31 of the Traditional Liquor (Control and Distillation) Act [Cap. 384 R.E 2002], consuming traditional liquor commonly known as gongo, machozi ya simba, umeme, chang'aa, supu ya mawe is a crime. The offence of consumption of traditional liquor attracts a penalty of up to five years in jail. Interestingly, while the law allows the distillation or supply of gongo if the distiller or supplier is licenced, the same law does not exempt from liability the offenders who have consumed traditional liquor sold to them by licenced distillers or suppliers.

Gongo is considered harmful to the body because of the chemicals used to make it. From our little research, we learnt that consuming heavy doses of gongo could also lead to blindness. All in all, it is illegal to consume gongo, and your English friends are right. Your vision of marketing gongo to the world will first require it to be legalized in Tanzania, which can only be achieved by changing the law.

Time to sell intoxicating local liquor

Every December, I go back to my home village. I get quite surprised when I see the village leaders arresting people who sell intoxicating local liquor because of selling it before the allowed time. Does the law provide the time for selling local liquor?

30 November 2020

Section 33 of the Intoxicating Liquors Act [Cap.77 R.E 2002] prescribes hours for selling local liquors. Local liquors can be sold in urban areas from the evening to 11 pm from Monday to Friday. There are two authorised drinking sessions on Saturdays, Sundays and public holidays. The morning session starts from 11 am to 2 pm, and the evening session begins from 6 pm to 12 midnight.

In rural areas, the local liquor bars may be open to the public from 3 pm to 8 pm on Monday to Friday. On Saturdays, Sundays and public holidays, local village liquor bars may be open from 2 pm to 11 pm.

Selling local liquors before or after the prescribed hours is a crime. Punishment for selling local liquor before or after the prescribed hours is a fine not exceeding TZS 2,000 or imprisonment for a term not exceeding one year. Drinking hours are controlled to give villagers time to work and rest instead of spending much time drinking local brew.

Legalisation of "Bangi"

I have read in the media that the United Nations Office on Drugs and Crimes has removed Cannabis Sativa (bhang or bangi) from the list of narcotic drugs following recommendations made to it by the World Health Organisation (WHO). I find the WHO quite strange, and I agree with President Donald Trump that the WHO is useless. How can such a drug be legalised? Does this mean that the use or sale of bangi in Tanzania is now legal?

7 December 2020

We cannot comment on the recommendations made by the WHO or any comments made by the current American president against the WHO. We leave that to political commentators as it is not a legal question.

Back to your question, Bangi is still a narcotic drug and illegal in Tanzania until when such a drug is removed from the list of narcotic drugs by the Minister responsible for drug control. Cannabis Sativa (bhang or bangi) is listed in the First Schedule of the Drug Control and Enforcement Act [Cap. 95 R.E 2019] as one of the narcotic drugs.

However, section 14(2) of the Drug Control and Enforcement Act gives the Minister responsible for controlling narcotic drugs the power to amend the list of narcotic drugs by a notice published in the Gazette. The list of narcotic drugs can be amended by either adding or removing a narcotic drug from the list. Based on our research, the Minister responsible for controlling narcotic drugs has yet to remove bhang from the First Schedule.

The First Schedule to the Drug Control and Enforcement Act contains the same list of narcotic drugs appearing in the Schedules to the Single Convention on Narcotic Drugs of 1961 as amended by various protocols. However, the amendment of the Schedules to Convention by UNODC does not automatically remove the narcotic drug from the First Schedule to the Drug Control and Enforcement Act. The Minister will decide to remove bangi from the list based on what WHO has recommended and the subsequent changes made to the Schedules of the Convention.

Death sentence against pregnant woman

I am a first-year law student currently studying criminal law. Can the Court pronounce a death sentence against a pregnant woman? Would that not be inhumane?

7 December 2020

According to section 26(1) of the Penal Code, where a woman convicted of an offence punishable with death is alleged to be pregnant, the Court shall order a medical practitioner to examine her to establish the pregnancy. If it is proved to the satisfaction of the Court that she is pregnant, the Court shall sentence her to life imprisonment instead of

suffering death by hanging.

Likewise, if the offender was below 18 years old at the time of committing the crime punishable with death, the Court, instead of sentencing her/him to suffer death by hanging, shall order that the offender be detained at the President's pleasure until such time when President will order otherwise.

Provocation as a defence

I am a law student and find the defence of provocation too farfetched and unfair for the victim. Is this a defence recognised in our law or a Common Law import?
4 March 2019

The Penal Code in Section 201 states that 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 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 responds with controlled violence if his honour 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 defence 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 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 individuals should be held responsible for their actions depends on assessing 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 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, when he or she acts violently, master of his or her mind.

Overall, the defence is recognized in our statutes and further reinforced by case law worldwide.

Contempt of Court

I have been summoned to Court but am not comfortable attending as I don't feel I want to be a witness in this case, which may incriminate a friend of mine. Can I be forced to testify? What if I choose to lie or not to testify? Please guide me; this issue is very sensitive for me and my family.

18 March 2019

If you lie on oath, you can be charged with perjury, which carries a jail sentence. You must say the truth and nothing but the truth when you are on the witness stand.

You can also be forced to testify. Our Penal Code states that any person who, having been called upon to give evidence in a judicial proceeding, fails to attend or, having attended, refuses to be sworn or to make an affirmation, or having been sworn or affirmed, refuses without lawful excuse to answer a question or to produce a document or other thing, or remains in the room in which such proceeding is being had or taken after the witnesses have been ordered to leave such room is guilty of a misdemeanour, and is liable to imprisonment for six months or to a fine not exceeding TZS 500f.

Should the Court be satisfied that the offence has been committed, it is empowered to order the offender's detention. Furthermore, at any point before the Court's adjournment that same day, it may take cognizance of the offence and sentence the offender to a fine of four hundred TZS, with a default penalty of one month's imprisonment. This same provision is applicable in Primary Courts, irrespective of whether the individual has taken an oath.

Pornographic material on e-mail

We have some managers in our office who forward very obnoxious and pornographic material by e-mail. It is against company policy, but they use private e-mails to forward these. I have also started receiving these ridiculous e-mails. Is this not an offence?

3 September 2018

Apart from other penal statutes that address pornography, the recently enacted Cyber Crimes Act provides under section 14 that (1) a person shall not publish or cause to be published through a computer system or 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 twenty million TZS or imprisonment for a term of not less than seven years or both; and (b) pornography which is lascivious or obscene, to a fine of not less than thirty million TZS or 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 intending 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 five million TZS 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 that can attract both a fine and imprisonment. We suggest you inform them of the above and if the emails and behaviour do not stop, report them to the police, who can take appropriate action. They must be reminded that pornography in Tanzania is prohibited.

Kleptomania as 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?

13 May 2019

Kleptomania is the inability to refrain from the urge to steal items, which 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 from understanding that it was wrong.

Kleptomaniacs generally understand perfectly well what they're doing and that it's criminal and indeed, many suffer overwhelming guilt or at least fear of arrest. Hence, it is unlikely that this defence will work. Having stated the above, we must state that several American states follow the A.L.I. (American Law Institute) 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 Court would take judicial notice that all kleptomaniacs cannot resist stealing at all times and places, so simply proving that you were a kleptomaniac would probably not be enough to get one off. We strongly suggest that instead of looking for defences for this condition, you should look at trying to treat it.

Forfeiture of corruption proceeds

Is there a law in Tanzania whereby the PCCB can forfeit corruption proceeds? What is the procedure?

24 May 2019

The answer to your question is yes. The Prevention and Combating of Corruption Act (the Act) provides in section 40 (1) that the Bureau may, in collaboration with the office of the Director of Public Prosecutions, recover proceeds of corruption through confiscation to the Government. (2) Where a person is convicted of an offence of corruption under the Act, the Director of Public Prosecutions may apply to the convicting Court or to any other appropriate Court not later than six months after conviction of the person for a forfeiture order against any property that was obtained through corruption. (3) For this part, "proceeds of corruption" means any property derived or obtained by a person from the commission of corruption offences.

It must be noted that the forfeiture 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 vest in the United Republic.

Disposal order of exhibit in Court

My radio was stolen a few years ago, and I reported the matter to the police. After an investigation, the radio was recovered from the accused person's house, and he was charged with stealing. The police kept my radio as an exhibit. After a long attendance in Court and without any hearing, the prosecutor asked the Court to withdraw the case against the accused person and he was set free. I have been advised to apply to the same Court for an order for the police to release my radio. What documents do I need to have? And what are the possibilities of succeeding?

19 November 2018

The law allows the prosecutor to withdraw the charge, but that is not always the end of the matter. The police are free to re-arrest the accused person and charge him afresh. We are unsure if the police are still interested in

prosecuting the accused person. Assuming they want to re-file the case, they are justified in withholding the exhibit/radio as part of their evidence.

On the other hand, if the police have abandoned the charges against the accused person, you are entitled to take your radio as long as it is yours. In our opinion, since there is no subsisting charge in the Court against the accused person, the Court is functus officio in so far as the charge is concerned. The fastest way to get back to the radio is to follow up with the police. If that fails, your attorney can guide you through the formalities required to make a miscellaneous application in court.

Presumption of sanity

What does the law say about insanity and its effect if an insane person is engaged in criminal activity? What about not knowing the law?

19 November 2018

The Penal Code is clear in that a person is not criminally responsible for an act or omission if, at the time of doing the act or making the omission, he is through any disease affecting his mind, incapable of understanding what he is doing, or of knowing that he ought not to do the act or make the omission. However, a person may be criminally responsible for an act or omission, although his mind is affected by the disease if such disease does not produce one or other of the effects mentioned in reference to that act or omission upon his mind.

The law also presumes every person to be of sound mind and to have been of sound mind at any time, which comes into question until the contrary is proved. Hence, you are not automatically deemed insane but must prove it.

As for not knowing the law, it is clear in the Penal Code that ignorance of the law does not afford any excuse for any act or omission which would otherwise constitute an offence unless knowledge of the law by the offender is expressly declared to be an element of the offence.

Practice of witchcraft

I have rented a house in Kibiti, where we reside, with one woman who is about 70 years old. Recently, there have been rumours that the woman is practicing witchcraft. After a certain misunderstanding, she threatened to bewitch two of my neighbours. Can this woman be relocated?

4 November 2019

In Tanzania, the Witchcraft Act, Cap. 18 R.E 2002, is the key legislation that regulates witchcraft. The legislation defines witchcraft to include sorcery, enchantment, bewitching, the use of instruments of witchcraft, the purported exercise of any occult power, and the purported possession of any occult knowledge. The law makes it a criminal offence to do any of the below actions: claim to have the power of witchcraft; make, use, possess, or claim to possess any instruments of witchcraft; supply instruments of witchcraft to others; advise others on the use of witchcraft; threaten to use witchcraft against people or property; employ someone to use witchcraft; and accuse someone of using witchcraft, or of being a witch or wizard (except when reporting to official bodies such as the police).

Since the old woman threatens to use witchcraft against your neighbours, which is an offence under section 3(v) of the Act, you can advise your neighbours to go to the police. It is worth noting that the police officers cannot relocate the old woman rather may prefer criminal charges against her.

In addition, section 8 of the Act empowers the District Commissioner (DC) to order a person suspected of practicing witchcraft to reside in any specified locality within a district until such order is varied or revoked. However, the law requires the DC to conduct a due inquiry before issuing such an order. When

the DC is satisfied that the suspect will likely cause fear, annoyance, or injury to the mind, person, or property, she/he must issue such an order.

Wearing military-style uniform

Is it true that one cannot wear a military-style uniform in Tanzania even if one wears it in the jungles away from people?

15 April 2019

Indeed, people not in the military are prohibited from wearing military uniforms. The Penal Code Cap makes it an offence for any person not serving in the defence forces of the United Republic or in any police force established by law to wear any of those forces' attire without the permission of the President.

Further, section 106 of the National Defence Act stipulates that "every person who without lawful authority, the proof of which lies on him, wears a uniform of the defence forces or any other uniform that is so similar to the uniform of any of the defence forces that is likely to be mistaken for it commits an offence and upon conviction is liable to a fine not exceeding five hundred TZS or to imprisonment for a term not exceeding three months or to both."

In addition, the National Security Act cements the above by criminalizing unauthorised uses/wearing of the defence force's uniforms to gain or assist any other person in gaining admission to a protected place or for any other purpose prejudicial to the safety or interests of the United Republic. The Act also prohibits the use/wearing of any uniform so closely resembling the same as to be likely to deceive or falsely represent someone to be a person who is entitled to wear or use any such uniform.

However, the Penal Code recognise the uses/wearing of the defence force's uniforms in the course of a stage play performed in any place in which stage plays may lawfully be publicly performed or in the course of a music hall or circus performance or the course of any bona fide military representation.

The rationale behind the above prohibition is mainly for identification and protection purposes. Military uniforms are intended to demonstrate that their wearers belong to a state's armed forces and distinguish them from civilians. This principle of distinction originates from the international humanitarian law and customs of wars.

Article 48 of the Protocol, in addition to the Geneva Conventions of 12 August 1949, relates to the Protection of Victims of International Armed Conflicts (Protocol), which protects civilians against the effects of hostilities. It reads, "…to ensure respect for and protection of the civilian population and civilian objects, the parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives."

Since the customs of wars allow members of the armed forces to be attacked, the state protects its people from such occasions by prohibiting the unauthorised use/wearing of military uniforms.

Bullying via email

My daughter is a third-year university student who is constantly bullied by a computer science student who is one year senior to her. He uses all kinds of cyber tricks and threats to bully and make fun of my daughter. Is there any way I can stop this?

7 January 2019

Cyberbullying is a serious offence under the Cyber Crimes Act. Section 23 states that a person shall not initiate or send electronic communication using a computer system to another person intending to coerce, intimidate, harass, or cause emotional distress. A person who contravenes this section commits an offence and is liable on conviction to a fine of not less than TZS 5Mor

to imprisonment for a term of not less than three years or both.

Thus, cyberbullying is a criminal offence and a serious crime. You have the right to report this to the police, who have a cybercrime division that can further investigate this. It would also be a good idea to alert the other student about the criminal nature of his conduct in case he doesn't know the law.

Detained in police station for traffic offence

I was stopped by police officers who shockingly did an alcohol test on me. The results were positive and I got arrested and spent the night in police custody. Can they arrest me for this offence? Could they just not have fined me and let me go? Is this legal?

8 July 2019

The Road Traffic Act (the Act) states that any person required to provide a specimen of blood for a laboratory test under the provisions of the Act 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 purpose of the Act, the expression "prescribed limit" means eighty milligrams of alcohol in one hundred millilitres of blood.

You can see that your arrest was legal and also to protect you. Nothing is shocking about alcohol tests and they are now quite common.

Rights on my farm

I own a very large farm with 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 feel at home- can I drive on the right side of the road? Are the police allowed into my private property? Are there any offences in traffic laws that strictly stipulate imprisonment?

7 September 2020

You must be reminded that you own a farm and not a country, hence bound by the laws of Tanzania. The Road Traffic Act and the various traffic regulations dictate that one must always wear a seatbelt when driving. A 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 can visit any property, whether 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, a custodial sentence of a minimum of 3 years (without an option of a fine) for offences that cause bodily injury to, or the death of, any person.

Forfeiture of deceased's property

We are foreign investors. Last year, we discovered that over TZS 1 billion had been stolen from our company's bank account. Our preliminary investigation discovered that our head of the finance department committed the offence. We reported the incident to the Police for criminal investigation and the preliminary police financial investigation report shows that this individual was owning a house worth nearly TZS 800 million and that he acquired that house around the same period when the money was stolen from the Company's bank account. However, during the investigation, he died. How can the company recover the stolen asset from the deceased estate? We are getting conflicting opinions from leading lawyers and are seeking your final opinion. Please guide.

26 October 2020

In Tanzania, criminal asset recovery and forfeiture are conviction-based. Conviction is a pre-condition for recovering and forfeiting ill-gotten assets from a criminal.

However, sections 4(1)(c), 5(c)(i) and 12 of the Proceeds of Crimes Act [Cap. 256 R.E 2019] allows forfeiture of a stolen asset if the suspect dies during an investigation. However, three pre-requisite conditions must be met for the Prosecution to invoke the mentioned provisions.

First, the investigation must have mounted before the suspect died, not after the death. Secondly, there must be evidence showing the likelihood that had the deceased survived, he would have been convicted of the offence for which he was investigated before his death. Thirdly, the evidence must prove a nexus between the allegedly ill-gotten asset and the crime he was being investigated to show that a forfeiture order would have been issued against the deceased if he was alive. The standard for proving these conditions is the balance of probability.

Please note that the response here should not be taken as final, and we recommend that your lawyer review our response in addition to the other opinions you obtained. We do not have all the facts to cement this response further.

Protection for informers

If I have information that will be valuable to the authorities, what will my status be as I fear such reporting? What protection do I get, and how does this work? Kindly guide me.

16 November 2020

The 2015 Whistle-blower and Witness Protection Act protects whistle-blowers from retaliation or victimisation for disclosing information concerning illegal and dangerous activities, unethical conduct, abuse of office, corruption offences, etc.

However, Section 9 of the Act requires a whistle-blower to be afforded protection if the disclosure is made in good faith and the whistle-blower has reasonable cause to believe that the information disclosed and the allegation of wrongdoing contained in it is substantially valid. Hence, that is the test you must pass. Merely passing on information already in the public domain may not suffice to get you the required protection.

It is worth noting that whistleblowing must be done honestly and in good faith. It is wrong to merely accuse or report someone simply because he gets on your nerves. Such action may then backfire if it is investigated.

Fraudulent transfer of credit in electronic account

If someone fraudulently transfers credit from my mobile account or bank account to someone else's account, does that not amount to stealing? I was shockingly told that it doesn't.

12 October 2020

Under the said circumstances, it is a criminal offence but does not amount to stealing. Stealing is the dishonest taking of someone's property, which can be stolen. Fraudulent transfer of credit stored in any computer system is not theft; it is obtaining credit by false pretence contrary to section 305(a) of the Penal Code. It does not matter whether the offender transferred the credit to his/her account or the third party's account. This section was amended in 2011 by Act No. 3 of 2011 to curb fraudulent credit transfers from computer systems. Alternatively, the person can be charged with computer fraud contrary to section 12 of the Cyber Crimes Act, 2015. Either way, such a fraudulent transfer is a criminal offence.

Kite flying on personal plot

I have started flying kites very high on my plot. The police have started harassing me and I cannot do so. We have had arguments with them, and they have failed to show me

what provision of the law disallows me from flying kites. This is my country, and I don't see why I should be allowed to enjoy my airspace. Am I doing the right thing?

18 January 2021

Flying kites at heights over 200 feet is illegal under our laws. The Civil Aviation (Operation of Aircraft) Regulations states in Regulation 17 that (1) A person shall not, within the United Republic of Tanzania (a) fly a captive balloon or kite at a height of more than 200 feet above the ground level or within 200 feet of any vessel, vehicle or structure; (b) fly a captive balloon within an aerodrome traffic zone; (c) fly a balloon exceeding 6 feet in any linear dimension at any stage of its flight, including any basket or other equipment attached to the balloon, in controlled airspace; (d) fly a kite within an aerodrome traffic zone; (e) moor an airship; or (f) fly a free balloon at night, without the permission in writing of the Authority, and in accordance with any conditions subject to which the permission may be granted. (2) A captive balloon in flight shall not be left unattended unless fitted with a device that ensures automatic deflation if it breaks. (3) An unmanned free balloon shall be operated in such a manner as to minimise hazards to persons, property, or other aircraft.

Therefore, flying a kite at heights over 200 feet is illegal, and you may be charged for doing so as it would endanger the safe navigation of aircraft.

Firecrackers on beach wedding

I am getting married later this year. We are planning to have a beach wedding that will involve a lot of activities, including the bursting of firecrackers. One of our family friends informed us that the law prohibits firecrackers from bursting. I want to confirm if this is true and what we can do to achieve our dream wedding with firecrackers.

18 January 2021

The law prohibits anyone from carrying out fireworks without being permitted by the Inspector General of Police (IGP). Section 21A (2) of the Firearms and Ammunition Control Act stipulates that "A person shall not carry out activities involving fireworks unless he has obtained a written permit from the person authorised to deal with fireworks……."

Based on the above requirement, you must write a letter to the IGP seeking the said written permit before carrying out this activity. It is important to note that failure to comply with the above requirement amounts to an offence punishable by a fine of TZS 500,000 or imprisonment for six months or both. We wish you good luck in your wedding, and hopefully, you will not get into trouble.

Power of Sungusungu to arrest or search suspect for revenue offences

Last week, I was arrested by a traditional security and defence militia commonly known as Sungusungu. During the arrest, they stormed into my shop and seized goods from the shop, alleging that I was doing business without the necessary documentation, such as a valid TIN Number. I would like to know if Sungususungu has the legal authority to arrest me for revenue offences.

25 January 2021

Sungusungu derives its power from section 4(1) of the Peoples Militia Act [Cap.111 R.E 2002]. That provision gives them power similar to that of a police constable. Since Sungusungu are equated to a police constable, the law gives them the power to arrest and search a place or person for breach of any written law, including the revenue laws. However, when they exercise their power, they are bound by the same limitations, conditions and restrictions as a police constable. Therefore, they should have seized your shop goods with a seizure note. All in all, you must ensure you are fully compliant with all laws.

Intercourse as form of treatment

If a traditional healer prescribes sexual intercourse with a client as a form of examination or treatment for an ailment, and the client consents to believing that she will get healed, does that constitute rape?
15 March 2021

It is unethical and an offence for a traditional healer to have sexual intercourse with a client. Regulation 9 of the Traditional and Alternative Medicine (Code of Ethics, Conduct and Practice) Regulations, 2008 (GN No. 409 of 2008), as amended by GN No. 425 of 2017, prohibits traditional healers from engaging in any sexual relationship with a client. A traditional healer must protect his client against any form of sexual abuse. He is not allowed to prescribe or administer sexual intercourse as a form of treatment for any ailment, be it physical or spiritual. Even where the client requests to pay the cost of treatment in the form of sexual intercourse, the traditional healer should not accept it.

When a male traditional healer is examining or treating a girl under the age of 18 years, he should do so in the presence of a parent or relative of the client. A traditional healer is required by regulation 15(a) to keep a record of every client he attends. The record includes the name, address, age, and ailment of the client and the medicine dispensed or administered to the client. A traditional healer who takes advantage of his position to have sexual intercourse with a girl or woman he is attending commits a serious offence of rape contrary to section 130(3)(d) of the Penal Code and he becomes liable to a minimum term of 30 years imprisonment.

Lending academic certificates

I am a form four leaver doing private business. My cousin is asking me to lend him my form four academic certificate as he wants to use it to apply for a job in a private company. Is this a crime? I want to help him secure this job as the job market is tough, and he is smarter than me. He could not complete his O-levels due to financial reasons.
5 April 2021

It is very thoughtful of you to assist your cousin, but you shouldn't, as you will be committing an offence. Lending an academic certificate to another person so the borrower may use it to apply for employment is an offence under sections 372 and 374 of the Penal Code [Cap.16 R.E 2019]. The offence is called unlawful lending of a certificate. The lender is liable to imprisonment for a term not exceeding 2 years or a fine to be determined by the Court. The borrower is also guilty of impersonating a person named in the certificate contrary to section 373 of the Penal Code and is liable to imprisonment for a year.

Setting aside plea agreement

Four years back, I was charged with an unbailable economic offence. The prosecution could not complete the investigation for 3 years. Every time I was taken to Court, the prosecutor told the Court that the investigation was still underway and also told the Court that if I was ready for a plea agreement, the case could be concluded. Not having a choice, I entered into a plea agreement with the prosecution to regain my liberty. I pleaded guilty to the offences charged and was ordered to pay a fine and compensation to the Government. How can I vacate the agreement and recover the fine and compensation I paid on the plea agreement?
21 June 2021

Section 194G(2) of the Criminal Procedure Act [Cap. 20 R.E 2019] gives the accused who was a party to the plea agreement the right to lodge an application to the same Court that convicted him to set aside the conviction, sentence and any order founded

on the plea agreement entered into by that accused. According to Rule 23 of the Criminal Procedure (Plea Bargaining Agreement) Rules (2021), an application to set aside conviction, sentence, and any order founded on the plea agreement should be made by a chamber summons supported by an affidavit. In such an application, the accused seeking to set aside the conviction has to convince the Court by proving through an affidavit that the plea agreement was procured involuntarily or that the accused misapprehended the plea agreement.

However, the law does not prescribe the time limit within which the application to set aside the conviction founded on the plea agreement should be made. However, the Court may not condone the delay in moving it to set aside the conviction, sentence, and orders it previously made. The Court cannot open its door endlessly for a party to move it whenever she/he wishes.

Driving barefoot

I was stopped by a traffic police who peeped inside my car and questioned me why I was driving barefoot. I told him it was not an offence to drive barefoot, and he asked me which law allowed me to do so. I could not continue the argument because I was unsure whether such a law existed. I told him most of the women wearing high heels remove their shoes to drive, which would mean they all committed an offence. Please advise me if I have committed an offence.

9 August 2021

Traffic offences are prescribed under the Road Traffic Act [Cap. 168 R.E 2002], the Road Regulations and other subsidiary legislations made under the Road Traffic Act. We have read the Road Traffic Act and the subsidiary legislations made thereunder, especially the Road Traffic (Notification of Offences) Regulations (2011), which summarise all minor road traffic offences liable to a notification. However, we could not find a provision prohibiting driving barefoot. Our opinion that you can crosscheck with your lawyers is that since there is no law prohibiting driving barefoot, it is not an offence to drive barefoot. The fact that women wearing high heels remove their shoes when driving does not change our response or defence.

Tooting horn unreasonably

While driving, I tooted the horn to alert the driver in front of me, who was driving slowly, to speed up. A traffic police who was also in front of me stopped me and alleged that it was wrong for me to toot. Is it an offence to toot?

16 August 2021

Section 39B(1)(2) of the Road Traffic Act [Cap.168 R.E 2002] and regulation 39(3) of the Traffic Regulations allow tooting in exceptional circumstances. Tooting a horn is allowed only where it is necessary to attract the attention of other road users to avoid or prevent danger or warn another road user to avoid the dangerous approach or position he or she is trying to take. Even when a driver toots the horn to avoid or prevent danger, the tooting should not be excessive and is likely to be a nuisance or cause annoyance to other road users or people who live near the road.

In short, it is an offence to toot a horn unreasonably. What is unreasonable and what is not varies depending on the circumstances. Tooting a horn to force a driver in front of you to speed up is an offence because the intention is not to avoid or prevent an accident unless you can prove otherwise.

Prohibited contribution or hospitality to civil servant

I am a businessman and get a lot of requests for contributions from different civil servants. For example, I am called very regularly to contribute to the funerals of close ones of those who are working in the civil service. Is it an offence to contribute? My second question is whether treating a

civil servant to a meal in a nice hotel is an offense. Kindly guide.

27 September 2021

Contribution to a funeral or wedding of a family member of a civil servant might be or might not be an offence depending on the motive for giving the contribution and the existing relationship between the civil servant and the person giving the contribution. Suppose there is an existing or supposed official relationship between the civil servant and the person giving the contribution and the contribution is given as undue influence to the civil servant to obtain undue advantage for either the person giving the contribution himself or another person. In that case, such contribution shall be a corruption offence termed trading in influence contrary to section 33(1) of the Prevention and Combating of Corruption Act [Cap.329 R.E 2019]. There is no crime where the contribution is given without intent to gain any undue advantage. Similarly, providing a civil servant with luxurious hotel accommodation to influence them improperly constitutes trading in influence, contrary to section 33(1) of the Prevention of Corruption Act.

Time frame for submitting information to law enforcement agent

Our telecom company received a letter from a law enforcement agent requiring the managing director to submit certain information within 24 hours. We find this time to be unreasonably short for us to be able to comply. Is it the law providing such a short time to furnish a law enforcement agent with the required information? What is the consequence of failure to furnish the information within the time prescribed in the letter?

11 October 2021

Regulation 3(1) of the Cybercrimes (General) Regulations, 2016 imposes on telecommunication companies an obligation to furnish an enforcement agent with the information requested for investigation. The time within which a telecom company should furnish information to the law enforcement agent depends on the urgency or emergency of the situation and the nature of the offence being investigated, or the reason for which the information is sought. Under normal circumstances, regulation 3(1)(c) requires information to be furnished to the law enforcement agent within 24 hours. However, where the crime under investigation threatens public safety and human life, the information has to be furnished to the law enforcement agent within 1 hour. If the information sought pertains to investigating an offence affecting national security, the telecommunication company must provide law enforcement with the requested information within 4 hours.

Section 10(2A) of the Criminal Procedure Act makes it an offence to refuse or decline to provide information to law enforcement without a valid reason. If the given timeframe is too short, you can request an extension from the law enforcement agent, explaining your inability to comply and the reasons why within the original deadline.

Registering SIM card for friend

My friend has asked me to register a SIM card for him using my National ID because he has no National ID card or NIDA number to register a SIM Card. I would like to know if it is legally acceptable to register a SIM Card for someone.

18 October 2021

Regulation 4(4) of the Electronic and Postal Communications (SIM Card Registration) Regulations, 2020 (GN No.112/2020) strictly prohibits using someone's National ID card to register a SIM card. Only a minor can register a SIM card using a national ID card from his/her parent or guardian. Our understanding of the law is that using someone else's National ID to register a SIM card is an offence due to

impersonation. We strongly advise against registering a SIM for a friend, as you could be traced, arrested, and prosecuted for their crimes, facing a difficult defense. Given the prevalence of SIM card-related crimes, caution is paramount.

Law on witchcraft

Last week, I arrested a witch at night at my homestead. She was found naked on top of the roof of my house with a calabash, a gazelle horn containing soot, a piece of black cloth and a wild animal tail. She confessed in front of people that she came to bewitch me and I reported the incident to the Police, who came to take her to the Police Station. I am told that even the Police and Courts are scared of witches and the witch can also turn around them. What are your thoughts? Do we have laws to protect us from witchcraft and what does our law say?

22 November 2021

The Witchcraft Act [Cap 18 R.E 2002], enacted in colonial times, addresses witchcraft. It is an offence under section 3(ii) of the Witchcraft Act to possess instruments of witchcraft. The witch you found on the roof of your house with calabash, wild animal tail, gazelle horn containing soot and a piece of black cloth are such instruments, and she may be charged with possession instruments of witchcraft if it is proved from the circumstances of the possession, and the oral confession she made after the arrest. Bewitching a person is also an offence under section 3(v) of the Witchcraft Act. The penalty of witchcraft varies depending on the intention of the witch. Suppose the witch intended to cause harm, disease, death, or misfortune to a person, family, community, or animal or cause injury to the property belonging to another. In that case, she will be liable under section 5(1) of the Witchcraft Act to imprisonment for not less than 7 years. However, if the witch was motiveless, the penalty is a fine of not less than TZS 100,000 or imprisonment for not more than 5 years.

Section 8 of the Witchcraft Act gives a District Commissioner power to order the relocation of a person suspected to be a witch from one place to another within the district if the District Commissioner is satisfied that the presence of such suspected witch at a place she/he is residing is causing fear, annoyance or injury in the mind of a person or community in which she/he lives. The order of the District Commissioner to relocate a suspected witch to another place within the district can be varied, suspended, or reversed by a Regional Commissioner or the President.

Unfortunately, we cannot comment on your observation that the Courts and Police are also scared of witches. You must contact social scientists or other professionals to help you with this.

Out of Court settlement in criminal matter

I am charged with sexual harassment of a barmaid, but I committed the offence at a bar when I was already drunk. Hearing of the case has started, but the prosecution case is yet to be closed. I have spoken to the complainant and agreed to settle the dispute by paying her some money. Does the law allow amicable settlement of a criminal matter without undergoing a plea bargaining process? Will we need to sign a deed of settlement and file it in Court for the Court to close the case? Can the victim later re-open the case that has been closed after an amicable settlement?

29 November 2021

Section 163 of the Criminal Procedure Act [Cap.20 R.E 2019] requires criminal Courts to encourage and facilitate an amicable settlement of offences of personal or private nature if, in the opinion of the Court, the public interest does not demand the infliction

of a penalty for the commission of the offence. Sexual harassment is an offence of personal or private nature that can be resolved amicably unless its commission is attributed to special circumstances that warrant the imposition of a penalty on the offender.

Amicable settlement under section 163 of the Criminal Procedure Act differs from plea bargaining. The amicable settlement involves the accused and the victim; no prosecutor and investigator is involved in the process, as with plea bargaining. The Court can only act as a mediator and approve the terms and conditions of the settlement agreed upon by the victim and the accused. The law neither requires nor bars the signing and filing of a written deed of settlement.

However, we recommend a settlement deed to file with the trial Court for the Court to approve it and mark the case closed. If the accused fulfils the terms and conditions of the settlement deed and the file is marked closed, the victim cannot reopen the same matter later.

Time limitation in criminal matters

Two years ago, someone insulted me while we were in a bar drinking on Christmas day night. I reported the incident to the Police and before the suspect was arrested, he fled. I am informed that the fugitive is returning home for Christmas this year. I would like to know if he can still be prosecuted for the offence of insulting me, which he committed two years ago.

20 December 2021

Under section 241 of the Criminal Procedure Act, a charge of an offence whose maximum penalty does not exceed imprisonment for 6 months or a fine of TZS 5000 cannot be instituted after the expiration of 12 months counted from the date of commission of the offence. The offence of use of insulting language contrary to section 89(1)(a) of the Penal Code is punishable with a maximum of 12 months imprisonment. Therefore, the offender can still be prosecuted for the offence he committed 2 years ago. If the punishment for using insulting language had been 6 months, you would have been out of time! You are not allowed to do so and may proceed to push for charges.

Keeping cash at home

I drew large cash from the bank and kept them at home. These are the funds for which I paid full taxes. The bank reported me to the Financial Intelligence Unit and the law enforcement authorities came to look for me and they conducted a search in my house to find the money I withdrew. Is it an offence to keep a large sum of money at home?

27 December 2021

Under regulation 5(1) of the Anti-Money Laundering (Electronic Fund Transfer and Cash Transaction Reporting) Regulations, 2019, a bank is obliged to report to the Financial Intelligence Unit a cash withdrawal involving TZS or foreign currency equivalent to USD 10,000 or more in the course of a single transaction. The duty to report cash withdrawals is based on the amount withdrawn, not whether the bank is suspicious of the transaction.

After reporting the cash transaction, the FIU analyses it and may decide to report it to law enforcement agents for investigation. Though it is not an offence to keep a large sum of cash at home, where a law enforcement agent suspects that a large amount of cash held at home is likely to be proceeds of crime or that it is intended to be used to commit a crime like bribery, the holder of the money needs to clear the doubt of the law of enforcement agent by giving a reasonable explanation for holding such large sum of cash at home. Otherwise, we do not see an offence unless there are facts you are hiding from us.

Beyond Life – Inheritance, Wills and Legal Legacies in Tanzania

Death does not end the story; it writes the next chapter. Are you prepared?

This compelling chapter unlocks Tanzania's intricate world of inheritance, probate, and posthumous rights. It delves into the legal, cultural, and emotional battles that unfold when loved ones pass, blending statutory rigour with human stories of loss, legacy, and survival. From contested wills to the ethics of organ donation, explore how Tanzanian law navigates the delicate balance between tradition and modernity. Key themes explored include:

- Can a divorced spouse inherit property? What happens if a will demands marriage to a "rich person"? It unpacks the validity of wills amid family disputes and societal expectations.
- Discover the legal standing of unborn children, posthumous heirs, and the complexities of intestate succession in a multicultural society.
- Navigate burial controversies, private plots vs. public cemeteries, organ donation clauses, and clashes over cultural mourning periods like Iddat.
- Untangle Tanzania's tripartite legal system, statutory, Islamic, and customary laws, and learn how Courts resolve conflicts over inheritance.
- Can a dead body be valued as property? How do executors handle decrees against the deceased? Tackle contemporary issues with historical roots.

This chapter combines legal expertise with cultural sensitivity, structured through gripping real-life cases. It cites pivotal statutes like the Law of Marriage Act and Probate and Administration of Estates Act, alongside landmark Court rulings, offering a roadmap for resolving estate disputes. Whether addressing fraudulent administrators or guiding organ donors, the content bridges legal theory and actionable advice.

FB

Divorced wife beneficiary in Will

My father wrote his Will before divorcing my mother. He gave her, as his wife, a property she lives in even though they were divorced. My father did not remarry, but his brothers are now challenging the Will, arguing 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?

29 January 2018

When one marries, the law dictates that any Will made before the marriage has no legal effect. However, the law is silent on what happens to a Will when the testator, the husband, divorces his wife, having mentioned her in the Will.

We have researched case law and there is a similar case nearly five 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."

Based on our understanding, your father's Will remains valid, and your mother (his former wife) is likely entitled to the house. However, we strongly recommend your lawyer review all the specific details, as each case is unique.

Perusing my father's Will

My father died in Dar es Salaam about 10 years ago and my brother was the executor. He told me my father did not leave anything for me, which I am fine with, but I want to see the original will. Is there a way I can get a copy? My brother says he doesn't have the original.

12 March 2018

Very few people know this, but the original Will attached to the petition for the grant of probate is not surrendered to the executor but 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.

Will states not get married

My father does not want me to get married and has stated in the Will. He is deceased and I am worried that someone might object to me getting married. I do not want my marriage to affect him in the heavens above.

26 March 2018

No one can successfully object like this. Getting married is a universal right, and neither a will nor any other document can stop you from proceeding with marriage. It does not matter what your father wants. The final decision is yours when it comes to such personal rights. Under the law, you can proceed as you deem fit. Your lawyers can guide you further.

We are not qualified to respond to whether or not it will affect him up there.

Mourning period after husband's death

My brother passed away and his wife got remarried in an Islamic ceremony 30 days after his death. Is there no statutory waiting

period, or is everything allowed in this dot-com era? It has destroyed the sanctity of marriage and is a classic example of why people might not get married in the future. Further, in his will, my brother explicitly ordered that if anything happened to him, she should marry me. Please guide.

14 May 2018

The Law of Marriage Act provides a specific period called Iddat, during which the deceased's wife cannot get married. This is provided in Section 68 of the Act, which states: notwithstanding any custom to the contrary, a woman whose husband has died shall be free– (a) to reside wherever she may please; and (b) to remain unmarried or, subject to the provisions of Section 17, to marry again any man of her choosing: Provided that where the parties were married in the Islamic form the widow shall not be entitled to remarry until after the expiration of the customary period of iddat.

This iddat period varies from sect to sect, but it is certainly more than 30 days, meaning that her new marriage may likely be void from the outset.

The other question is whether or not the woman could have defied what was stated in her husband's Will. The answer is yes. She is not bound by what the Will says as far as marriage is concerned. Her deceased husband cannot force her to marry someone she does not want to marry. Even the law protects her and the Will is ineffective to that extent.

Will not signed by lawyer

My lawyer has not signed my Will and is now dead. Does that invalidate my Will? I am worried as I do not want to leave an invalid Will. Please guide me.

16 July 2018

First and foremost, there is no requirement for a lawyer to sign a will. Hence, it does not matter whether he is dead or alive. You must have two witnesses who have jointly seen you sign the will and have each signed in front of you and the other witness. This is a mandatory condition to ensure the Will is valid. However, the person drafting the Will, who in this case happens to be your lawyer, does not need to sign anywhere.

Secondly, your Will can be changed at any time, meaning that even though he has passed on, you can still go ahead and change it. A Will is an evolving instrument and changeable document and must be reviewed yearly or every two years. If you are still worried, we suggest you draft a new Will and get two witnesses to sign it in your presence.

Inheritance rights when getting remarried

I was married for 10 years before my husband died two years ago. We jointly acquired properties during our marriage, as we both worked in very good positions. I have met someone interested in me, and we intend to get married. My in-laws are trying to stop me from getting married, saying it was not allowed and that they would automatically have a claim on my properties. Please guide.

4 March 2019

Section 68 of the Law of Marriage Act does not restrict a woman from re-marry and states that notwithstanding any custom to the contrary, a woman whose husband has died shall be free (a) To reside wherever she may please and (b) To remain unmarried or, subject to the provisions of section 17, to marry again any man of her choosing: Provided that where the parties were married in the Islamic form the widow shall not be entitled to re-marry until after the expiration of the customary period of iddat.

As for your in-laws, if you acquired the properties as joint tenants, then upon the death of your husband, the property vested automatically with you as the other surviving

joint occupier. However, if you acquired the properties as tenants in common, your portion under the title remains with you and your husband's portion will be transferred to whoever he mentioned under his Will. The distinction between joint tenants and tenants in common is critical and most property owners don't know the difference. You should check this in your title deed.

Will says I should marry rich man

My father left a Will that says I should marry a rich person. I agree with him, but what happens to my marriage if I don't comply? Can the Will executor challenge my marriage?

24 September 2018

The answer is that your father's Will cannot decide who you marry, much as you agree with him. Even if he was alive, he could not have dictated such terms to you. The same applies to the executor. We are also not sure what the term 'rich person' means. Did your dad define it? Did he mean financial, intellectual, health, or other forms of wealth? Wealth is subjective, and health and education are the most prominent forms of it. Perhaps he meant these two as opposed to financial wealth. In any case, the answer to this question will remain the same. We wish you all the best as you pursue getting married.

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 will be beneficiaries after my death. I also wish to understand 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?

24 June 2019

Neither your beneficiaries nor executor(s) will know they are mentioned in your Will if you do not inform them. It is as simple as that - no authority informs them automatically. Our first suggestion is to make sure that you ask the executor if he is agreeable to act as the executor.

It is wise also to 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 ensure that the executor and/or the beneficiaries or someone 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 them to particular people upon one's demise. Others use Will storage facilities. We are unaware of specific Will storage facilities in Tanzania, but many such facilities are outside the country.

Dead body as property

I am threatened to be sued following a motor accident a few years back. My driver caused a fatal accident by knocking a minibus carrying funeral-goers from Dar to Mbinga, Songea Region, which burnt completely, causing severe bodily injuries to mourners and loss of properties. According to the demand notice to sue issued against me, the alleged lost and damaged properties include, among others, the coffin, which contained the remains of the body of the complainant's father. The intended suitor now claims payment of millions for the alleged sustained bodily injuries, the value of the coffin, and the dead body of his late father. Is a dead body a property with any monetary value?

4 November 2019

We do not have facts about the accident. However, our take is that the legal rights over a dead person's body, which are sometimes termed as 'pseudo property rights,' do generally vary with the civilization of particular countries and peoples. While in many countries, the duty to bury is imposed by law, in Tanzania, only rights to bury exist, and they are protected only by courts. We are unaware of any statute to that effect.

In Tanzania, only siblings, the surviving spouse, parents, or children have rights to possession, custody, and burial of the dead body. The facts you have given us show that the coffin and the remains of the body contained therein were completely destroyed because of a fire that burnt the minibus, causing your intended suitor to lose his right to bury the body of his dead father. We are unsure whether your driver (and you) caused such damage. In any case, the person sending you the demand notice has a right to sue you both but must establish in Court the kind of damages he suffered.

Legal rights of unborn child

I am a student aged 17 years and was born after my father's death. He died seven months before I was born. We are a family of three children, two boys and one girl. My father died intestate, and our mother is also dead, having died four years ago. Until she died, no one had been appointed administrator of the estate of our deceased father. After our mother's death, my older brothers conspiratorially started to dispose of some of the properties belonging to the family. They denied me my share, alleging that I was not entitled to anything as I was born after the death of our father. Is this correct? I find it very agonizing and quite unfair since I was born and grew up with them, and there is no point in time during our mother's lifetime when these allegations ever arose. Kindly advise on what I can do to get my entitlement.

18 November 2019

Unfortunately, the facts you have given us do not let us know which religion your father professed during his lifetime nor tell us the community your family belonged to enable us to advise on your entitlements according to customs applicable to your family. We thus refer to the different scenarios below.

Our understanding of Islamic law is that a child in the womb of his mother at the time of his father's death (Posthumous Child) is entitled to inherit from his father's estate. His share has to be reserved until the child is born, for there is always a presumption that the child will be born alive, provided the child is born within six months after the death of his supposed father. The same applies more or less under customary law, but no time frame is attached to the time of birth.

However, under Civil law, since at the time of the death of your father, you were an embryo, it is doubtful if you have any inheritable right to his estate. You might be a legitimate child, but the fact that you were still an embryo at the time of the death of your father, your rights to inherit from his estate remains an issue, as an embryo cannot own anything.

Having said the above, you need to contact legal practitioners for more in-depth research as the law is not significantly developed in this area. It is not unwise to consider applying for injunctive relief from our Courts, who might be sympathetic to your plight.

Father dead, properties being misused

My father passed away a few weeks ago without leaving behind a Will. Since I am the firstborn 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 from the blue challenged my application, claiming she was my father's wife. My father's business partners are also behaving weirdly and not disclosing details of certain transactions. The Court case

will take too long. What can we do at this juncture to stop this pilferage?

20 January 2020

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 the granting of a letter 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. This is referred to as a grant of letters of administration pendente lite in law. We recommend that you immediately apply for this letter of administration to preserve your late father's estate whilst fighting it out in Court. This application should be filed under a certificate of urgency to get a quick hearing date.

Armchair principle in interpreting a will

I have been assisting in drafting Wills and want to learn more about the Armchair principle when interpreting a Will. What is this, and how does it apply? Some of the English is used in Will making is so difficult because we are using old English law drafts. What should we do?

4 May 2020

This principle was enunciated in the Canadian case of the Estate of Douglas Carson Smith, where the Lady Justice stated the following:

"The guiding principle is that to interpret a will the Court must first look to its language. Only if the Court cannot ascertain the intention of the testator should it look beyond the will itself, in which case the armchair rule applies. This principle is … as follows: if, in the first instance, the testator's intention cannot be discerned from the will itself, then, since the testator must be taken to have used the language of the will in view of the surrounding circumstances known to him at the time when he made his will, evidence of such circumstances is necessarily admissible, at least insofar as it corresponds to the facts and circumstances referred to in the will – the so-called Armchair Rule. That is, the Court may sit in the armchair of the testator, assume the knowledge he had of the extent his assets, the size and makeup of his family and his relationship to its members, so far as such things can be ascertained by the evidence."

He added: "Each Judge must endeavour to place himself in the position of the testator at the time when the last will and testament was made. He should concentrate his thoughts on the circumstances which then existed and which might reasonably be expected to influence the testator in the disposition of his property. He must give due weight to those circumstances in so far as they bear on the intention of the testator. He should then study the whole contents of the will and, after full consideration of all the provisions and language used therein, try to find what intention was in the mind of the testator. When an opinion has been formed as to that intention, the Court should strive to give effect to it and should do so unless there is some rule or principle of law that prohibits it from doing so."

The armchair principle is not always consistently applied, hence the importance of using clear, precise, and simple language when drafting a Will. We strongly recommend using modern, simpler will drafts rather than the older versions, which even the draftspersons found hard to understand.

Donation of 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?

16 November 2020

A Will is a 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 as 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 from indicating whatever they wish to be done when he passes away unless it is contrary to the laws. Since no law in Tanzania bars people from donating their organs and bodies for medical research, you can do so since this is not against public policy.

In response to whether or not your family can challenge your will, challenging a will is not easy, leading to delays in granting 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 one's death for them to be effectively used. Thus, taking the conservative side, we recommend informing your loved ones at the outset of your intentions and perhaps even having them sign on 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 nobody 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:

Qs: I'm too old to be a donor, and you wouldn't want my organs.

Answer: you are never too old; most organ donors are older.

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 from becoming an organ or tissue donor.

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.

Qs: It's against my religion to be a donor.

Answer: most major religions do not object to organ donation.

Qs: 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 have been buried. Hence, it is recommended that you inform your family beforehand.

Time limitation to petition for letters of administration

What is the limitation period for petitioning a Court for letters of administration of the deceased estates? I am getting conflicting opinions from various lawyers.

9 November 2020

Rule 31 of the Probate Rules requires the petitioner who petitions the Court for a letter of administration three years after the expiration of death to explain in the petition the reasons for the delay in petitioning. If the petitioner fails to explain satisfactorily, the Court may require them to give further proof of the delay. But where the proof for the delay is not given in the petition, the Court will strike out the petition on the grounds of time limitation. Hence, you need to ensure that you provide reasons for delay in petitioning if you exceed the three-year limit above.

Request to be buried in private plot

My father bought a plot not very far from the centre of the city of Dar es Salaam. He

has started constructing a house in the plot, planning for our family to move there. However, we have one small problem. Our father has ordered us to bury him in that plot when he passes away. We do not have any objections but are unsure if the law allows this. The government has set aside areas for public cemeteries in many places, including our neighbourhood. Is my father's wish, not an offence, or does it not amount to a land use change? Please advise.

6 May 2019

We are unaware of any law that imposes a legal obligation to bury a person in a public cemetery or prohibits burial in one's plot. The burying place may be subject to one's decision and/or family members' decision. It is not an offence for one to be buried in their plot as long as burial permits are obtained from authorities before such burial.

We believe that your father's burial will not amount to a change of land use. The plot can still be used for residential purposes despite the presence of a grave. The grave might reduce the value of the plot as many people are not very receptive to living near graves. It would be wise to advise your father to be buried in a public cemetery as it is more convenient in the future.

Different people have different beliefs, and we must learn to respect them. Meanwhile, we hope and pray that your father lives as long as possible.

Decree against dead person

In 2014, I was appointed as a personal legal representative of our father's estate, who died 3 years before I became an administrator. Recently, I have been served with a Court decree for payment of money, which, according to the dates thereof, was passed after the deceased's demise but before I was appointed as an administrator of his estate. Upon following up on the matter with the Court, I am informed that the suit, from which the decree arises, proceeded in the absence of the deceased, as the records of the Court show that the deceased refused to receive the Court summons. I am uncertain about what to do as I have very limited legal knowledge. This issue arose when I administered and distributed all the deceased's estate assets to the heirs. Please advise me on what to do.

4 November 2019

While seeking legal advice is always recommended, based on the information provided, you likely don't need to be overly concerned. There are strong arguments against the decree's applicability to you. Firstly, if you can prove you only became aware of the decree after fully distributing the estate, you were already discharged as administrator, making the service incorrect. Secondly, an administrator is only responsible for known debts, and the estate no longer legally exists. Finally, the decree itself is likely unenforceable as it was issued after the deceased's death but before your appointment. Legally, a decree against a deceased person is void.

Applicability of Customary, Statutory, and Islamic Laws in Tanzania

I am a law (LLB) student. I find it quite intriguing that there are various laws regarding inheritance matters. How do I know when to apply Customary, Statutory, or Islamic law? Please guide.

27 July 2020

Hopefully, this is not an assignment you had in school that you reassigned to us. In any case, this is an exciting question, and we have decided to answer it. Ethnic, religious affinity or race are the connecting factors to the stated regimes. To determine the applicability and choice of law in Tanzania, we should, in brief, understand the Laws governing succession/inheritance in Tanzania and the time of their applicability.

For statutory law, the relevant statute is

the Indian Succession Act of 1865, which was made applicable to Tanzania by the Indian Acts (Application) Ordinance, Cap. 2. Under section 24, a man is considered to die intestate for all property of which he has not made a testamentary disposition capable of taking effect. The Indian Succession Act applies to Christians and all those not governed by the Islamic religion or customary rights.

Islamic Law applies to all those who proclaim the Muslim faith and who live according to such faith. The primary law that applies Islamic Law in Mainland Tanzania in matters relating to succession/inheritance where parties are members of the Islamic faith is the Succession (Non-Christian Asiatic) Ordinance (Cap. 112).

Customary law's rules of testate and intestate succession are embodied in the Local Customary Law (Declaration) Order (No.4) of 1963, which provides for inheritance-related issues. Customary law is applied to all living according to the tribal rites, traditions, and customs of a given society.

However, in most cases, determining applicable law may not be straightforward. Conflicts and the choice of applicable laws may convolute the administration of the estate of a deceased person. It is not always easy to claim explicitly that a deceased person was a Christian utterly detached from the customs and traditions of the society to which s/he belonged. Thus, in most cases, the estate's beneficiaries would always be in favour of the law that will favour them in administrating the estate of the deceased. For instance, since customary law is more inclined to men, a widow would likely prefer statutory law over customary law. The relative of a deceased male would usually favour customary law, favouring them best.

Since a deceased is not around to determine or state which law is to be applied in the administration of their estates, Courts developed tests that can be used to determine conflicts and choice of law in the administration of estates. The tests are a) Mode of Life tests – evidence of the lifestyle of the deceased, etc. b) Intention of the deceased – where one lives a will, makes written or oral declarations in relation to the administration of his or her estate when still alive.

In most cases, in case of conflicts over applicable law in the deceased's estate, the Court will be responsible for determining the applicable law depending on the evidence adduced by contesting parties. Thus, whether the deceased's estate can opt out of one of the legal regimes and apply the other depends on the nature of the case, issues arising out of the case, and evidence adduced by the contesting parties.

The case of Re Innocent Mbilinyi, deceased [1969] HCD No. 283 illustrates how Courts apply the mode of life test. The deceased was a Ngoni married to a Chagga woman under Christian marriage rites. Both were staying in Dar es Salaam. The deceased had left Songea when he was still of the tender age of about 7 years. He was educated outside Songea until he graduated with a Bachelor of Arts. Both rarely visited Songea or Moshi. They had three children from the marriage. Innocent died intestate, and the matter was brought before the High Court to determine which law was to apply in the administration of the deceased's estate.

The Judge held that on these facts, which are in no way controverted, and I am satisfied that it can be said that the deceased had abandoned the customary way of life in favour of what may be called a Christian and non-traditional way. There is satisfactory evidence that he was largely alienated from his family and that his children had no connection with them. Accordingly, I would direct that the law to be applied in administrating the deceased's estate should be the Indian Succession Act.

In another case of George S/O Kumwenda v. Fidelis Nyirenda [1981] TLR 211, the deceased Martin Kumwenda was a Malawian national living in Dar es Salaam and left a house at the time of his death. The Primary Court invoked the application of customary law, and on appeal, the District Court

overruled the Primary Court and opted for the application of statutory law. In the High Court, Kisanga J. (as he then was) ordered a retrial because the two Courts below had arbitrarily chosen the law without first investigating the mode of the life of the deceased.

Lastly, in the Estate of the Late Salum Omari Meremi [1973] LRT No. 80, the deceased was a Hehe Moslem. He was an army officer and married a member of his tribe, but he was a practicing Muslim. Justice Mfalila held that applying the mode of life test (that he was a practicing Muslim), the deceased had intended his estate to be administered according to Islamic Law and not Hehe Customary Law, as the deceased's manner and way of life were far removed from his tribal customs.

From the above, you will observe that there is no generic answer to your question, and it all depends on the facts and particulars of each case. The bottom line is to ensure that you have a Will. It will save your loved ones a lot of trouble.

Cancellation of death certificate

I left my home town 7 years ago to go overseas to look for employment. When I came back in January this year, I was informed that last year, my brother filed an application in Court for a declaratory order that I was presumed dead. After the Court had granted him the declaratory order that I was presumed dead due to absence for 6 years, he approached the Registrar of Deaths to record my name. Based on the death certificate the Registrar of Deaths gave him, he also went to Court and successfully applied to be appointed administrator of my estate. How can I now remove my name from the register of deaths and have the appointment of the administrator of my estates revoked? In short, I am well and alive and back in Tanzania

14 June 2021

Section 26A (3) of the Births and Deaths Registration Act [Cap.108 R.E 2002] as recently amended, bestows on the Registrar General of Births and Deaths power to delete from the register of deaths any entry entered thereto on the presumption of death and he can cancel any death certificate issued on such presumption if the person presumed dead is later found alive.

Registrar General may exercise his powers of deleting the entry and cancelling the death certificate irrespective of the Court's order that declared the death. However, the person applying for deletion of entry of death from the register and cancellation of the death certificate must satisfy the Registrar General that the person presumed dead and registered in the death register is indeed alive. If you show up and prove that it is you, then you should be able to succeed.

After deleting the entry of death from the register and cancellation of the death certificate, the person presumed dead can file an application in Court for revocation of the appointment of his administrator of the estate.

Land Law and Unusual Queries

This chapter explores the intricate landscape of Tanzanian property laws alongside quirky, real-life legal dilemmas, offering a window into how regulations shape everyday life and investments. It dives into land use rules, from securing mortgages on underdeveloped plots, where funds must strictly finance the land's development, to navigating the delicate process of purchasing village land, which requires approvals scaling up to the Commissioner for Lands for more extensive tracts. Understand the risks of land revocation, where abandonment or misuse can prompt the President to reclaim rights, often after warnings or fines, and learn how absentee landowners can protect their plots from being declared abandoned.

Beyond property, the chapter tackles surprising questions: Can you legally transfer a university degree to a sibling? (Spoiler: No.) Is there a cap on lavish spending for a boss's pampered pet? (Not if the money's legally earned.) It also demystifies government efforts to formalize informal settlements, detailing how squatters may gain legal titles, though plot mergers could require fair compensation.

The chapter balances practical advice for landowners and investors with curious insights into Tanzania's legal boundaries. Whether you're safeguarding property, investing in village land, or pondering the limits of personal freedom, this chapter equips you with clarity and context, turning complex statutes into relatable stories. Perfect for anyone seeking to confidently navigate Tanzania's legal terrain or intrigued by its unusual corners.

Third-party mortgages on underdeveloped land

I am informed the Land Act has been amended and has restrictions on how a plot of land can be used to borrow money. What are the main highlights and how are we affected? Can a third-party mortgage be created over an underdeveloped land?
2 April 2018

The amendments restrict the use of all money obtained from a mortgage from a bank or financial institution, whether local or foreign, to be invested in Tanzania. This restriction will severely dilute guarantees given by Tanzanian individuals to foreign banks. As was provided in the Bill, the amendments retain the position that if mortgaged land is 'undeveloped' or 'underdeveloped' land, money obtained therefrom can only be used to develop the particular land (cannot be used elsewhere). Banks cannot use third-party mortgages on undeveloped or underdeveloped land.

The amendments make it clear that non-compliance with these new conditions amounts to a breach of the terms of the Right of Occupancy and the Right of Occupancy in question can be revoked, likely notwithstanding the existence of a mortgage. However, where the mortgaged land is developed, money obtained from it can be used in any other investments, but it must be within Tanzania. The law also provides that these restrictions do not apply to lands held under the Customary Right of Occupancy Certificate. The law further obligates the mortgagor to submit information on how money obtained from the mortgage is invested in developing the mortgaged land to the Commissioner for Lands within six months of creating the mortgage.

Also, the law obligates the local or foreign mortgagee to submit to the Commissioner a declaration that money obtained from the mortgage is invested in Tanzania. The Regulations (not yet promulgated) will prescribe the procedures for administrating and enforcing these restrictions. In terms of definitions, 'underdeveloped land' is defined as land that is not developed in accordance with the conditions of the relevant Rights of Occupancy, and "Undeveloped land" means land without improvement in or on, under or over such land or without any change of substantial nature in the use of such land.

Revocation of land

I am confused as to when land can be liable for revocation. Who revokes the land, and are there any alternatives?
18 February 2019

Revocation is provided under section 45 of the Land Act Chapter 113 of our laws. This section states that if there is a breach in the right of occupancy (title deed), the title deed becomes liable to be revoked by the President. The section further states that the President shall not revoke a right of occupancy save for the good cause.

Good cause includes the following: there has been an attempted disposition of a right of occupancy to a non-citizen contrary to the Land Act and any other law governing dispositions of a right of occupancy to a non-citizen; the land the subject of the right of been abandon for not less than two years; where the right of occupancy is of land of an area of not less than five hundred hectares, not less than eighty per centum of that area of land has been unused for the purpose for which the right of occupancy was granted for not less than five years; there has been a disposition or an attempt at a disposition which does not comply with the provision of the Land Act; there has been a breach of a condition contained or implied in a certificate of occupancy; there has been a breach of any regulation made under the Land Act; where under a mortgage, borrowed funds are not used for purposes of developing underdeveloped or undeveloped land; and

where funds are borrowed from overseas bank under a mortgage, such funds are not used for purposes of investing in Tanzania.

Section 45 adds that the President may also revoke a right of occupancy if it is in the public interest to do so for a project of strategic importance to the country. Before proceeding to take any action in respect of a breach of a condition of the right of occupancy, the Commissioner must consider the nature and gravity of the breach and whether it could be waived; the circumstances leading to the breach by the occupier and whether the condition that has been breached could be amended to obviate the breach, and shall in all cases where he is minded to proceed to take action on a breach, first issue a warning letter to the occupier advising him that he is in breach of the conditions of the right of occupancy. The Commissioner may, instead of proceeding to the enforcement of the revocation, impose a fine on the occupier or serve a notice on the occupier requiring the breach to be remedied.

Restriction on purchase of village land

I want to invest 150 hectares of village land from the villagers. Are there any legal restrictions or conditions? What is the process like? Please guide.

7 December 2020

Regulation 76 of the Village Land Regulations, 2002 restricts the purchase of village land. A purchase of village land not exceeding 20 hectares requires the approval of the Village Council. If the village land intended to be disposed of is between 21 hectares and 50 hectares, the Village Council has to apply the proposed sale of the village land to the District Council for approval. However, if the village land intended to be sold is more than 50 hectares, the Village Council must seek and obtain approval from the Commissioner for Lands. The application to the Commissioner for Lands should be forwarded under the further signature of the Authorised District Land Officer. In your case, based on the number of hectares being more than 50, please ensure you obtain the approval of the Commissioner for Lands before you sign the purchase agreement with the sellers.

Abandonment of plot

I am a Tanzanian who has been working abroad for several years. I came back last month on vacation and, to my surprise, was issued a notice of abandonment of my plot, which is situated at Kigamboni. After several enquiries, I was informed that the Commissioner has the right to declare a land abandoned, which may lead to revocation of the right of occupancy. I am not sure of what to do to save my land. Please advise.

24 August 2020

Please note that Section 51 of the Land Act, Cap 113, empowers the Commissioner for Lands to declare any land abandoned where the occupier has left the country or fails to comply with the payment of rent, dues, or taxes for five years.

The above provision makes it mandatory for the occupier to notify the Commissioner for Lands of his absence in the country. In the alternative, the occupier must make arrangements for a person to be responsible for the land and ensure that the conditions subject to which the right of occupancy was granted are complied with during the occupier's absence.

However, under section 51 (5), there is room to remedy this situation; if the Commissioner is satisfied, he shall take no further action.

Money spent on boss's pet

I am a driver for a high-net-worth individual who spends millions of TZS on his dog. From imported pet food to full body check-ups and grooming, including manicures and

pedicures, I find it insulting to my fellow citizens. My question is whether there is a limit on how much my boss can spend on his dog, considering that some people are finding it hard to meet their daily expenses.
1 July 2019

No law states how one can spend your hard-earned money. The same applies to your boss. As long as your boss legally acquires the funds and meets his statutory and contractual commitments, you cannot stop him from spending how he likes and chooses. However, if he was using funds from the bank to invest in his dog and not his business, contrary to his agreement with the bank, the bank could object to such expenses and limit such spending.

Transferring my degree

I wish to transfer my architecture degree to my brother. How can you help me?
11 March 2019

In our wildest dreams, we wouldn't think that this is possible. A degree is proprietary to you and is not transferable. It is not a tradeable or transferable document; no university will transfer a degree to your brother. We find it hard to understand how you even thought of this concept. How would your brother perform not being a qualified architect? We doubt if any lawyer will be able to succeed in this case. Your chances are near zero, but you may know things we don't. Good luck.

Squatter regularisation schemes

I live in a squatter and have been informed by our Mtaa Chairman that the government intends to regularise our settlements. We shall be given a certificate of occupancy at the end of the project. Because we have very small plots in the squatter, I am afraid my plot may be merged with my neighbour's plot. Can you guide me?
22 March 2021

Regularization schemes in Tanzania are governed by two principal legal instruments: the Land Act [Cap.113 R.E 2019], specifically sections 56 to 60 and the Urban Planning Act, 2007. One primary objective of these schemes is to enable the formal registration of land occupation and use for residents of informal settlements. The process of regularizing such a settlement commences with the Minister for Lands declaring the area a planning area. Subsequently, by order published in the Gazette, the Minister may formally designate the settlement as an area subject to a regularization scheme. This designation must be preceded by an inquiry to ascertain the suitability of the proposed area for regularization. The inquiry team must consult with the settlement residents to gather their perspectives and determine the area's financial implications, timeframe, and existing land tenure arrangements. Following the inquiry, the team prepares a draft regularization scheme in consultation with the relevant local urban authority.

A copy of the draft scheme, translated into Swahili, must be published in a newspaper circulating within the proposed area. Additionally, a Swahili version may be disseminated by posting it in public buildings within the scheme area to solicit feedback from residents before the draft report is submitted to the Minister for a final decision.

In instances where the implementation of the draft scheme is likely to result in the readjustment of plot boundaries and areas, the Commissioner for Lands is obligated to serve a notice on all individuals likely to be affected. The final version of the regularization scheme cannot be issued until the concerns of those notified have been addressed. Individuals whose plots are lost due to merging or readjustment are entitled to compensation. If the prescribed procedures are not adhered to and you are adversely affected by the scheme, you can challenge the project through legal channels.

Tax Compliance, Disputes and Practical Insights

This chapter offers a deep dive into Tanzania's tax laws, blending real-world dilemmas with expert analysis to unravel the complexities of compliance, enforcement, and taxpayer rights. Through relatable scenarios, like a diner fined for discarding an electronic receipt or a CEO grappling with personal liability for corporate taxes, it illuminates the practical challenges individuals and businesses face under the Tax Administration Act.

Explore how the Tanzania Revenue Authority (TRA) wields its authority, from conducting audits and issuing assessments to enforcing penalties for non-compliance. Learn why retaining a restaurant receipt isn't just a formality but a legal obligation, how tax disputes escalate from objections to appeals, and why even expatriate managers aren't shielded from personal liability for unpaid taxes. The chapter also tackles nuanced issues like transfer pricing regulations, confidentiality concerns, and the blurred lines between tax crimes and economic offences under the Economic and Organised Crime Control Act.

Delve into the procedural intricacies of tax investigations, where agencies like the Police, PCCB, and TRA collaborate, often leaving taxpayers navigating overlapping demands. Discover the risks of aggressive tax planning, the hurdles of securing private rulings, and the consequences of ignoring TRA's stringent deadlines. Real-life cases, such as a small business fined for unregistered homemade crisps or a multinational entangled in transfer pricing disputes, highlight the balance between legal compliance and operational practicality.

This chapter guides taxpayers, legal practitioners, and business leaders seeking clarity in Tanzania's evolving tax environment. Whether addressing the confusion around tax assessments or demystifying the role of the Tax Ombudsperson, it equips readers with actionable insights to avoid pitfalls, resolve disputes, and foster transparency. From everyday obligations to high-stakes corporate strategies, this chapter bridges the gap between legal theory and lived experience, offering a roadmap for navigating one of East Africa's most dynamic regulatory landscapes.

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Retaining electronic receipt

I went to a restaurant for lunch. After paying my bill, I did not keep the electronic receipt issued, only to be caught by the TRA officers outside. I know restaurants must issue electronic receipts, but do I, a client who had lunch in a restaurant, have to retain the receipt? What are my rights? I see this as being very unfair.

22 January 2018

The Tax Administration Act Regulations 2016 provide that a person to whom a fiscal receipt or invoice is issued shall demand and retain the receipt or invoice in his possession and shall, upon a request made by the Commissioner General or any officer authorised by the Commissioner General, produce the said receipt to the Commissioner General or such authorised officer.

A person who demands a fiscal receipt or invoice upon purchasing goods or services and is denied shall immediately report to the Commissioner General through the quickest means of such incident.

You can see that you have an obligation to demand a receipt and retain it, and if you don't, you commit an offence and will be fined. This is the law, and you must comply with it. The TRA officers were merely doing their jobs.

Winning overseas lottery

I won a luxury car in a lottery competition outside of Tanzania. I intend to bring it to Tanzania, but I am told I must pay some astronomical amounts for 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?

7 May 2018

Your luxury car will indeed be liable for some large import duty. Another tax you have forgotten to mention is the applicability of the 18% value-added tax you must pay. Importation falls under the East African Community Customs Management Act, a common Act across East Africa, meaning the same taxes will apply if you import the car through Tanzania or Kenya.

Another option you have is to sell the car wherever it is now. However, please note that under our Income Tax Act, you will likely pay income tax on your worldwide income. If this comes to the notice of TRA, you will likely get taxed for the sale even though it is out of the country.

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

Caught without EFD receipt

I went to a restaurant in the late evening, promptly paid my bill and left. Just as I entered my car, a policeman and two officers claiming to be from the Tanzania Revenue Authority approached me and demanded that I show them the receipt of the bill I had paid. I told them that the restaurant owner did produce a receipt, but I had hurriedly left and that we could go in and verify. They declined, saying it was an offence and that I was now liable to pay a fine of double the amount I spent in the restaurant. What does the law say?

14 May 2018

The Tax Administration Act (General) Regulations of 2016 state that any person who fails to demand and retain a fiscal receipt or fiscal invoice or fails to report a denial of issuance of the said receipt or invoice as required by regulation 55 commits an offence and upon conviction shall be liable for payment of twice the amount of the tax evaded.

Regulation 55 adds that a person to whom a fiscal receipt or invoice is issued shall demand and retain the receipt or invoice in his possession and shall, upon a request made by the Commissioner General or any officer authorised by the Commissioner General, produce the said receipt to the Commissioner General or such authorised officer.

These Regulations further claim that a person who demands a fiscal receipt or fiscal invoice upon purchasing goods or services and is denied that person shall immediately report to the Commissioner General through the quickest means of such incident. You are thus not only required to demand a fiscal receipt but are supposed to retain it. The Regulations do not reveal how long such restaurant receipts should be retained or kept.

The Regulations also hold the person who hasn't issued a receipt liable for not doing so. Hence, the seller and the purchaser of goods and services can be fined for not issuing or demanding a receipt, as the case may be.

Fake EFD receipt

My uncle is a supplies officer working for one of the public parastatals. He is being accused of forgery of an EFD receipt, which he submitted to his accounting officer, purporting to show that he bought stationery worth TZS 10M from one of their suppliers. An inquiry done by the Corporation revealed that my uncle never bought the stationeries. Furthermore, the EFD receipt he submitted to his accounting officer was submitted to the TRA for verification, but they claimed that it does not appear to have been issued from their system. Can someone be charged with forgery of an electronic printout that was not manually written or signed by him?

14 September 2020

Section 333 of the Penal Code [Cap. 16 R.E 2019] defines forgery as making a false document intending to deceive or defraud. It does not matter whether the falsification of the document was done manually or by an electronic device. A false signature is just one of the methods of forging a document. Under section 335(a) of the Penal Code, a person can be held guilty of forgery by making a false document, whether the false particulars are inserted manually or by using any electronic device. What makes the document forged under section 335(a) of the Penal Code is proof that it contains false contents.

Forgery can be proved by circumstantial evidence without seeking the aid of a handwriting expert. Once the document is found to have false contents in that it purports to be what it is not, anybody who is proved to have tendered such document or found in possession of it is deemed its author unless he gives a reasonable explanation as to how he got it.

Even if it is proved that he solicited someone to issue him such a receipt containing false contents, he can still be held criminally liable to the person who issued it. In law, counselling a person to commit a crime amounts to committing such a crime. Therefore, a person issuing a false document and the recipient is guilty of forgery if they knew of the document's falsity and intended to deceive or defraud.

You will need to get more facts from your uncle, but it seems that the offence of forgery might have been committed.

BIT over Tanzanian tax laws

If a foreign state has a Bilateral Investment Treaty (BIT) with Tanzania, based on which a state party decides to invest in Tanzania, and there is a clash between what is stated in the BIT as opposed to our local taxation laws, what law will prevail? I see several BITs giving one-sided protection to foreign entities.

21 May 2018

There is a debate going on in many

countries on the advantages and disadvantages of signing BITs. Attracting large investments by large investors always requires protection by parties and is one of the most common reasons for a BIT. Tanzania has several BITs with various countries. However, the recently enacted Tax Administration Act (the Act) gives the BIT superior status over our tax statutes. Hence, any inconsistency would result in the prevailing provisions of the BIT. This is covered in section 7 of the Act, which states that the provisions of an international agreement to which the United Republic is a party shall, to the extent that the provisions of the agreement are inconsistent with the provisions of any tax law, prevail over the provisions of the tax laws.

An international agreement in the Act is defined as a treaty or other agreement that Tanzania signed with a foreign government to provide reciprocal assistance for administering or enforcing tax laws. Depending on how they are drafted, we believe this definition covers BITs, although no local case law has tested this. You should accordingly move with caution.

TRA communications in Kiswahili

We are a foreign company and do not understand Kiswahili. The TRA has started writing to us in Kiswahili. Is this allowed, and how can we change it?

3 September 2018

Under the Tax Administration Act 2015, the TRA can write to you in either English or Kiswahili. It is perfectly okay. There is no provision in the law that states the TRA must write to you in English. You can request the TRA, but they can continue writing in any of the two languages. In some countries, the language adopted by statutory authorities is only the national language. English is still commonly used in Tanzania as our laws are mostly still in English.

Liability of managers in tax law

I am the CEO of a large company, and I think my company cannot, and will not, meet its tax obligations. Although a tax manager is in place, I am worried that the company is not tax-compliant. I am only an expatriate, so I am fully protected, but is there something I should be aware of?

3 September 2018

Under the old tax regimes, there was confusion in different tax laws regarding the personal liability of managers like you. However, with the new Tax Administration Act (2015), there is no more ambiguity. Section 65 of this newly enacted law states that when an entity fails to pay tax on time, a manager or a person who was the manager of that entity within 12 months before the entity default shall be jointly and severally liable with the entity for the tax payment.

However, the law 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 paying such taxes. The Act allows you 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 local managers from those who are expatriates. The Act allows the Commissioner General to order the Director of Immigration Services to stop you from leaving the country for 14 days, after which the Commissioner General must have a Court order to restrain you from leaving.

You must contact your tax consultants and auditors to discuss how your company can become tax-compliant.

Registration requirements for homemade potato crisps

I make homemade crisps that I pack and sell to supermarkets. Do I need any approvals as I am a small-scale housewife-type operator? Just like Mama Ntilie, I do not have any TRA registration and don't intend to get one. What do you suggest?

8 October 2018

We know that there are many such informal businesses in Tanzania, some of which are now quite large and doing reasonably well. Tax registration under our Tax Administration Act is mandatory for such a business as is getting a business licence. As soon as you sell goods to customers, that becomes a taxable event, no matter how small you claim your business to be. Much as it is something that very few people in your category comply with, we recommend that you do so.

Another required approval is from the Tanzania Food and Drugs Authority (TFDA), established under section 4 of the Tanzania Food, Drugs and Cosmetics Act of 2003. TFDA operates as an agency that regulates and controls Tanzania's food, drugs, and cosmetics. Section 28 of the Act stipulates that no person shall manufacture, import, distribute, sell, or expose for sale pre-packaged food unless the Authority has registered that food or food product.

Apart from that, the Tanzania Food, Drugs and Cosmetics (Registration of Foods) Regulations number 207 of 2011 restricts the sale of unregistered food products. It also provides the procedure for registering pre-packaged food, making it mandatory for the application to be accompanied by the food sample. After being satisfied that the food product complies with the requirements, the Authority will grant a registration certificate.

Since you haven't told us how large your business is, depending on the number of employees you have, you might need to comply with the Occupational Safety and Health Act, better known as OSHA. This law deals with safety and health management actions, taking all measures possible to protect employees from illness or injury and educating employees on workplace health and safety measures.

TRA threatens to publish defaulters' names in newspaper

I have had serious issues with the Tanzania Revenue Authority (TRA) and admit that I have not always been compliant. The TRA threatens to publish my name as a defaulter in the newspapers. Do they have such a right, and how can I stop them from doing so?

17 December 2018

TRA has wide powers under the Tax Administration Act and the regulations regarding tax compliance. Rule 97 of the regulations states that (1) any person liable to pay tax under any tax law shall pay such tax on or before the due date as provided under the relevant law. (2) Any person who (a) fails to pay tax after being notified by the Commissioner General more than twice of his obligation to pay the due date tax; (b) has been convicted of an offence under a tax law and the time for appeal against such conviction has expired; or (c) within two years has thrice committed compounding offence, shall be published in a newspaper or any media of a wide circulation within the United Republic of Tanzania. (3) Notwithstanding the provisions of sub-regulation (2), the Commissioner General may publish a list of offenders as he may deem proper.

Regulation 98 further states that where the Commissioner General publishes a list of offenders under regulation 97(3), he may specify the following: (a) the name, Taxpayer Identification Number and address of a taxpayer; (b) the offence committed; (c) the period during which the offence committed;

(d) the amount of tax involved; and (e) particulars of any fine or sentence imposed.

Whilst you can apply to the Tax Revenue Appeals Board to try and stop TRA from advertising your name, your chances of succeeding are not high as you have admitted that you are not very compliant. We recommend that you ensure compliance and administratively resolve this with the TRA. The TRA officials are only doing their jobs as provided for by tax laws.

Charged in Court by TRA

I have been charged in Court by TRA for failure to pay certain taxes on certain dates that I had committed to pay and failed because of cash flow. I am now ready to do so, but the TRA says this is beyond their control as it is in Court. Is that true? How can I resolve this without going through Court proceedings?

22 April 2019

The Tax Administration Act has a specific section that deals with a compounding of offences, i.e., converting the offence from 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 the compounding agreement. This is an option that TRA usually prefers, as TRA's ultimate aim is to collect taxes and not to imprison you.

The problem we see is that TRA is not allowed under the law to enter into this agreement solely unless they seek the consent of the Director for Public Prosecutions. Subject to this consent from the DPP, TRA has 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 that as a tax authority, TRA has the power to proceed against you.

Notice of offence by TRA

Despite being ready to resolve my differences with the TRA, they have issued me a notice of offence. I fail to understand how this arises and what to do next. Please guide.

6 May 2019

A notice of offence is not the end of the world for you. It is provided for under the Tax Administration Act (TAA) and the TAA regulations and TRA has the right to issue it. It must contain the offence and the amount thereon for you to consider whether you want to compound, i.e., pay the amount and the fine to resolve the matter and not get prosecuted.

Under regulation 100, you have the right to request for compounding of the offence within 7 days of service of such notice of offence. The regulations have a specific format for such requests, which you must follow. The request under this regulation shall be accompanied by a written statement of admission of the offence committed and acceptance of terms and conditions of compounding the offence, including the fine imposed under the TAA. The Commissioner has 30 days to decide on this request. Our experience is that as long as you are ready to pay the taxes and fines, the request is usually accepted, and a compounding order is issued.

Where the Commissioner General has issued a notice of offence and the offender has not applied for the offence to be compounded within the seven days above, the Commissioner General shall institute criminal proceedings.

Considering that you were ready to resolve the matter from the outset, we highly recommend that you compound the offence and close the matter amicably. As we know it, TRA's interest is not to prosecute but to allow you to pay and continue your business.

TRA right to enter dwelling house

Do the TRA officials have the right to enter a taxpayer's dwelling house? Is there a procedure to follow, and what are my rights?

24 June 2019

Please be advised that under the Tax Administration Act (TAA), TRA has wide powers to search taxpayers' properties, including dwelling houses. Besides, Regulation 88 of the TAA Regulations states that where a distraint agent takes possession of charged assets under the instruction and in the presence of the distraint officer, the agent shall prepare an inventory of the assets, provide the tax debtor with a receipt for the goods and a copy of the inventory; provide for the safe custody of the assets, including in the case of livestock, transport and feeding; and forward to the Commissioner General a report containing the value of each asset as estimated by the officer, in the case of moveable tangible assets, the address at which the assets are kept pending sale; and the arrangements, if any, made or to be made for the sale of the assets.

Private ruling with wrong assumptions

To ensure 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 unrealistic and irrelevant assumptions. I find it hard to understand the ruling, although it seems to agree with our analysis. What should we do? My tax consultant says that since it seems to be in our favour, we should start the project, as TRA is not predictable and may drastically alter the ruling if we return to them. Please guide.

8 July 2019

We are as confused by your question as you are about the TRA's ruling. On the one hand, you say there is a ruling with certain inserted assumptions that are irrelevant; on the other, you say it agrees with your analysis. We cannot answer in the affirmative or negative unless we see it.

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, in subsection (2), the Commissioner General may not make assumptions about the information the applicant can provide.

Predictability and transparency are some of the key pillars that large companies require. 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.

CAG and TRA powers

Can only the TRA or other authorities jointly conduct investigations on a company? I recently received a notice that the TRA and the CAG want to audit my company's affairs. Is this allowed, and how do I protect myself from confidentiality? Should I get them to sign a Non-Disclosure Agreement (NDA)? I am scared they will leak the info to my competitors.

15 July 2019

The TRA can audit any taxpayer's business affairs to ascertain various aspects of the taxpayer's compliance. Also, in conducting its affairs, the TRA can request any other government officer like the Controller and Auditor General (CAG) or even private experts to help them conduct such audits. Hence, if TRA brought the CAG, this is allowed under our law. Under the law, both the TRA and CAG are bound by confidentiality. It is their

statutory obligation, and no NDA needs to be signed.

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?

29 July 2019

Unfortunately, you have not told us what type of tax it is, but the TRA usually serves you in person as a tax officer 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 is your statutory responsibility. Without a physical address, the TRA would normally use your last known address.

The key issue 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.

To challenge the assessment, you must apply for an extension of time to file an objection. If you have reasonable grounds, the TRA may consider this application.

Updating TRA when receiver appointed

I was appointed as a Receiver in a company a 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?

16 September 2019

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.

Should you fail to set aside an amount as required by the TRA, you will be personally liable to pay the TRA on the company's account, although you can then claim this back.

Tax offence as economic offence

My uncle is a businessman and was recently arrested for tax evasion and charged under the Economic and Organised Crime Control Act. Before his arrest, other business people in the same locality were arrested for the same offence but were charged under the tax laws. What makes an offence economic? Is it the investigator, the prosecutor, or the law that makes a tax offence or other offence economic? When does a tax crime become an economic offence, and when

does it become an ordinary criminal case? I am told that multinational companies are not exposed to this because of treaties and other instruments in place. Is this true, and why is there discrimination?

23 September 2019

The First Schedule to the Economic and Organised Crime Control Act (Act) contains a list of economic offences. It is the schedule that makes a crime economic. Tax evasion is not one of the economic offences listed in the First Schedule of the Act. However, because tax evasion causes loss of revenue to the Government, a prosecutor may, instead of charging the offender under the tax laws, charge him with offence of occasioning loss to a specified authority contrary to paragraph 10 of the First Schedule.

Tax laws provide light sentences compared to the penalty provided under the Act. Therefore, there have been times when the prosecutor prefers charging the offence of tax evasion as an occasioning loss to specified authority under the Act as it attracts a bigger penalty.

A tax crime can also be an economic case if it is charged with any offence listed in the First Schedule to the Act. The entire case becomes economic once one economic offence is in the charge sheet. For example, if a tax offence is charged along with money laundering, which is now an economic offence, the whole case becomes economical.

Another way of making a tax offence or any other economic offence is by charging the accused with the offence of leading organised crime contrary to paragraph 4 of the First Schedule to the Act and any crime committed. If the prosecution alleges that the tax crime was organized and the accused took part in the criminal racket directly or indirectly, the charge becomes economic. The offence of leading organised crime covers all the offences and investigators and prosecutors can use it to make any offence economic by charging it along with the crime alleged.

Hence, it is true that investigators or prosecutors may make a tax crime or any ordinary crime economical. However, such offences are not on the list of economic offences on the First Schedule.

Lastly, the law does not distinguish between multinational companies and local ones. All that is stated above applies to both multinational and Tanzanian entities. Hence, the issue of discrimination does not arise.

Confidentiality of documents submitted to TRA

I submitted some sensitive documents, including business and feasibility plans, to the Tanzania Revenue Authority (TRA) for them to examine my tax affairs. Can the TRA share such documents with my competitors? 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 they 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?

23 September 2019

What you submit to the TRA becomes confidential, with or without your stamp. The TRA cannot use this for any purpose other than tax collection. For example, TRA cannot share the document with your competitors. However, they can appoint third-party experts to assist them in their duties. However, the third party will also be bound by confidentiality.

Section 8 of the TRA Act (the Act) states that the Revenue Commissioner or any other Commissioner or person employed in the carrying out of the provisions of the Act shall regard and deal with all documents and information relating to the income, expenditure, or other financial dealings or status of any taxpayer or other person

involved in any operations in furtherance of the purposes of the Act, and all confidential instructions in respect of the administration of the 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. You have a right to sue if it engages in such information leakage. We must state that we have not heard of such instances where TRA leaks information to the taxpayer's competitors.

Tax investigation by TRA, Police and PCCB

I have seen TRA, PCCB and even Police conducting tax crime investigations. I want to know what specific organ is mandated to investigate tax crimes. It is confusing as they seem to be seated together in the so-called task force. Who is in charge and why are they not coordinated? Why should I take the same information to different agencies? This is not helping businesses prosper, as penal sanctions force people to pay. In the long run, this is destroying the business environment in the country. Please advise whether the police and others can follow up on tax matters.

30 September 2019

Under the Police Force and Auxiliary Services Act and Criminal Procedure Act, police have the general power to investigate all crimes, including tax crimes. Establishing a specialized investigative agency for a specified crime does not oust the Police Force's power to investigate a particular crime. Police have the power to investigate all tax crimes. Unlike the Police, the PCCB has limited investigative powers. Under Section 7(a) and (b) of the Prevention and Combating of Corruption Act, the PCCB can investigate corruption offences and non-corruption offences like tax offences whose commission involves corrupt practices or is committed along with tax crime or involve misconduct by a public official. To that extent, PCCB does have such power.

Although tax crimes are not corruption offences per se, they are deemed offences involving public officials dealing with revenue administration, like tax assessors, tax auditors and tax investigators. The commission of tax crimes is sometimes associated with corrupt practices. In the case of Mariam Mashaka Faustine and Others v AG and Others, Misc. Civil Cause No. 88 and 95 of 2010, the High Court was of the view that even where the PCCB investigation comes out with non-corruption offences only, investigation of those offences does not become unlawful simply because there is no public official whose conduct was investigated or there is no a public official who is charged. Since the decision of the High Court in Mariam Mashaka Faustine's case, PCCB has conducted several other tax investigations that have led to the institution of high-profile tax crime charges in our Courts.

Moreover, Section 5(2)(b) of the Tax Administration Act empowers the Commissioner General of TRA to investigate tax crimes. It may co-opt other investigative agencies regarding section 19 of the Tax Administration Act. Hence, the act of the PCCB, TRA, and police investigating tax crimes is not illegal.

Additionally, despite there being three authorities vested with the power to investigate tax crimes, the DPP can invoke his power under Section 9(1)(e) and 16(2) of the National Prosecutions Service Act, 2008, to form one investigation team comprised of the Police, PCCB, and TRA to investigate a tax crime. When these investigative agencies work together, Police normally take the lead because the investigation is primarily the function of the police.

Regarding the inconvenience of multiple agencies asking for tax information, it is true that it is not very healthy for business.

Although, in the last many years, a lot of tax fraud has been being investigated, this can be reported to the relevant ministries to streamline the process.

Execution notices from TRA

We are a small company based in Dar and were issued by TRA with a couple of tax assessments to which we objected, but our objections did not succeed. We unsuccessfully appealed against the TRA's decision to the Tax Revenue Appeals Board. Our second appeal is pending at the Tax Revenue Appeals Tribunal. Last week, we received demand notices from TRA requiring us to pay, within 14 days, all amounts in dispute, including accrued interest covering the entire period when the dispute has been pending. We would like to know the following: (a) Is TRA justified now to enforce the judgment of the Board? (b) Is TRA right to include accrued interest while the dispute is pending in the tax court? (c) What can we do now to rescue the situation?

13 January 2020

According to rule 26(4) of the Board Rules, an appeal to the Tribunal does not operate as a bar to enforcement of the decree of the Board. This means that your pending appeal at the Tribunal does not automatically prevent TRA from executing the judgment of the Board. However, rule 25 requires a person to enforce the decision of the Board by applying to the Board for an order authorizing execution. Hence, our opinion is that if the demands issued by TRA purporting to enforce the decision of the Board were not preceded by an application for execution, then there is a procedural issue on the TRA's side.

Regarding the imposition of interest, according to section 74(6) of the Tax Administration Act, 2015, interest on tax payable is not affected or waived for the reason of delay due to Court proceedings or any other dispute resolution process. This means that interest continues to accrue regardless of whether a particular tax dispute is pending at the Board or Tribunal.

Our advice, for now, is to apply to the Tribunal to stay the attempted execution, for TRA has not observed the execution process. If the application succeeds, you will get a temporary relief.

Undue tax benefit

We engaged with foreign consultants to structure a certain transaction that we intend to carry out in Tanzania and some other countries in Eastern Africa. The recommended structure includes offshore entities that will hold Tanzanian assets. We intend to properly plan our tax plan and ensure that we are protected within the boundaries of the law without exposing ourselves to unwarranted tax claims. Is this the right approach, and what would you recommend?

24 February 2020

Tax planning is an exercise any business owner would do. In recent years, we have seen aggressive tax planning, which has resulted in huge disputes with the taxman. Having an offshore entity for a foreign company is not abnormal and has been commonly used worldwide. Unfortunately, we do not have enough information on the exact structure to be able to comment further. Moreover, appointing a local tax consultant to look at this structure to ensure you are not breaching our law is good.

Before we put our pen down, we would like you to take cognizance of Section 8 of the Tax Administration Act 2015 of Tanzania (the Act), which addresses schemes for obtaining undue tax benefits. It is broadly worded and has been used against uncommon structures for bona fide business purposes. Various instances of 'over creative' foreign structures have fallen foul of this law. This section states: 8(1) Notwithstanding any provisions of this

Act, where the Commissioner General is satisfied that any scheme that has the effect of conferring tax benefit on any person was entered into or carried out (a) solely or mainly to obtain that benefit; and (b) by means or in a manner that would not usually be employed for bona fide business purposes, or by means or in a manner of the creation of rights or obligations that would not normally be created between persons dealing at arm's length, the Commissioner General may determine the liability for any tax imposed by this Act, and its amount, as if the scheme had not been entered into or carried out, or diminution of the tax benefits sought to be obtained by the scheme. (2) A determination under subsection (1) shall be deemed an assessment of tax and the provisions of this Act and any other tax law provisions in relation to assessments shall apply accordingly. (3) In this section, bona fide business purposes do not include obtaining tax benefits. Your tax team can guide you further.

TRA not responding to private ruling

We have applied to the TRA for a private ruling. It has been almost 8 months, and they have not responded. Is there no time limit within which the Commissioner-General must respond? What do you advise us to do?

27 April 2020

For certainty in transactions and business dealings, the Tax Administration Act and the regulations thereto provide for a private ruling that binds the TRA. Regulation 22 provides for a statutory format to be used. You need to confirm whether you have complied with the format, as that could be one of the causes of the delay.

Under Regulation 24, you must, amongst others, also state the identity of the applicant; disclose all relevant facts, documents, and circumstances relating to the arrangement for which the ruling is sought; state the tax law or laws in respect of which the ruling is sought; and state the provisions of the law, if any, which are relevant to the issues raised in the application. A declaration must also be made that the information disclosed in the application is true and comprehensive to the best of your knowledge and belief.

As long as you have complied with the requirements above, we expect a response within a reasonable period. Eight months is indeed long, and we suggest you remind the Commissioner General of the pendency of the tax ruling. He is obliged to respond to you under law, but unfortunately, the Tax Administration Act has not stipulated a timeframe within which he must reply.

Confused with types of assessments

I am getting confused about the types of assessments issued by the TRA. I hear of self-assessment, jeopardy, adjusted, and amended assessments. Please let me know what these are. Also, for assessments that require objections, what details am I entitled to, and within what time do I have to file my response? Is there a complaint mechanism against a TRA approach or officer behaviour who is bullying me?

1 June 2020

The Tax Administration Act of 2015 (TAA) has all your answers. A self-assessment is made by the person her/himself. You can see it as a self-declaration of taxes you must pay. A jeopardy assessment is when a person fails to file a tax return on time, and the Commissioner General uses his best judgment and available information to estimate what taxes should be paid.

On the other hand, adjusted assessments are normally issued after audit findings. These assessments are objected to after paying 1/3 of the tax assessed or the amount not disputed (whichever is higher). Generally, there is a five-year time limit within which such assessments can be issued, and section 48(4) of the TAA further elaborates on the

5-year rule.

After an adjustment assessment, the Commissioner usually issues an amended assessment after determining the objection. This amended assessment is what allows you to proceed with an appeal to the Tax Revenue Appeals Board. There have been instances where the taxpayer objects and the TRA issues another adjusted assessment, which vacates the previous adjusted assessment and must be objected to and not appealed against as it is not an amended assessment. Usually, this happens when the TRA determines that the taxpayer has to pay more and not less than what had been previously assessed in the adjusted assessment.

The adjusted assessment notice must state why the assessment has been issued, including the event or matter the assessment relates to and the amount remaining to be paid. Your rights to object, including the time, place and manner of objecting, must also be stated on this assessment notice. All these details allow you to object. Short of getting such details, one would be required to request more details, and the assessment would also not comply with the requirements of the law and could be challenged accordingly.

Lastly, an objection must be filed within 30 days of the amended assessment being issued. If you intend to apply for a full or partial waiver, then such waiver must be applied for 15 days before the expiration of the time limit for objecting. As for the bullying by a TRA officer, our experience is that most TRA officers focus on their jobs and are trained to do so. Remember, the compliance level in the country is not very good; however, bullying is not permitted, and it can be reported to the Commissioner General.

Moreover, the Tax Administration Act has provided for a Tax Ombudsperson, who is in charge of and required to carry out his functions independently and impartially without interference from any institution, agency, or department of the Government or any other person. This person shall report her/his findings to the Minister for Finance with recommendations. The tax ombudsperson can review complaints, resolve them amicably, and facilitate taxpayer access to dispute resolution processes within TRA. Unfortunately, and for unknown reasons, such a position has not yet been filled, so there is a vacuum here.

Confusion on what to do after rejection of waiver

The TRA has raised a huge assessment of our oil and gas company, which is at an exploration stage and has no revenues. We have applied for a waiver and also objected to the assessment. The TRA has rejected our waiver application; unfortunately, our consultant is confused about what to do. Can you please guide us?

8 June 2020

Indeed, there is some confusion because of a very controversial interpretation of the law by the Court of Appeal, a recent Tribunal decision and the inconsistent position that the TRA has been taking. Not only is this uncertainty frustrating for taxpayers and likely for the taxman, but it is also delaying resolutions of tax disputes on merit. We explain below.

Section 50(1) of the Tax Administration Act seems to imply that a tax decision includes an assessment or other decision or omission on a matter left to the discretion, judgement, direction, opinion, approval, consent, satisfaction, or determination of the Commissioner General under a tax law that directly affects a person. Hence, it would seem that the interpretation of tax decisions is not only that of an assessment but widely interprets other decisions and omissions.

Based on a tax decision, under Section 51(1), a taxpayer can file an objection to the Commissioner General and seek a waiver if required. Thereafter, under Section 52(5), after following certain procedures, the Commissioner General is required to issue a final determination of the objection, which

we interpret to culminate into an objection decision.

Under Section 53(1), an objection decision or other decision or omission of the Commissioner General under this part is appealable to the Tax Revenue Appeals Board (Board). This would imply that it is an objection decision that can be appealed to and any other decision or omission. However, the Court and Tribunal have stated that only objection decisions are appealable to the Board.

The question that begs an answer is, what is a 1/3 waiver decision? It has been held that it is not an objection decision; therefore, you cannot appeal to the Board. What has been said by the Tribunal recently is that if you are denied a 1/3 waiver, you, once again, file another objection to the Commissioner General, an objection on an objection. As we explain further, this leads to absurdity in interpreting the tax statute and loads the Commissioner General with one objection after another.

Further, one of the prerequisites to admitting an objection under Section 51(5) is if the taxpayer pays the amount of tax not in dispute or one-third of the assessed tax, whichever amount is greater. Regarding a second objection to the 1/3 waiver decision, how does one comply with Section 51(5)? Complying with it becomes impossible, and one wonders how such an objection can be admitted and determined.

What we believe should be the correct interpretation is that an objection decision can emanate from a tax decision, which is arrived at after an objection is filed against an assessment. In addition to objection decisions, section 53(1) clearly provides for other decisions and omissions to be appealed to the Board. These other decisions and omissions are what the Courts need to address themselves and also address why such a provision is provided under the tax statute.

Moreover, the Tribunal has held that the jurisdiction of the Board, as per section 16 of the Tax Revenue Appeals Act (TRAA), only allows the Board to admit appeals based on an objection decision of the Commissioner General made under the Tax Administration Act. What is being implied here is that any tax decision by the TRA must first be objected to the TRA, and only after getting such an objection decision can one appeal to the Board.

However, what has not been adequately addressed is the provision of section 7 of the TRAA, which is the specific provision that grants jurisdiction to the Board. When section 50(1) is read with section 53(1) of the Tax Administration Act, there is a 'drafting contradiction' and clear absurdity on what is appealable and what is not.

The Court of Appeal, in a recently filed review, will have a chance to relook at its decision, and it is to be seen what position the TRA will take in Court and what the Court's final position will be. Remember that whatever the Court decides will not increase or decrease a taxpayer's tax liability but will rather provide guidance on what taxpayers, like yourselves, who have 1/3 waiver rejections, should finally do. It also does not increase or decrease the collection of taxes. If at all, it will streamline and increase the early resolution of tax matters should the Court clean up the contradiction and absurdity resulting from it.

The fact that you are in the exploration stage does not mean no taxes are payable. There is potentially VAT in addition to SDL, PAYE, and withholding tax, amongst other taxes that remain payable. On the 1/3 waiver rejection, most taxpayers are currently filing objections to this decision. TRA position is not entirely clear or consistent. If you file an objection, we have seen TRA state that you should have appealed. If you file an appeal, preliminary objections will be raised that the Board has no jurisdiction! However, the Tribunal has recently sealed this and stated that the 1/3 waiver rejections must be objected to first.

Hence, for now, subject to the advice from

your consultants, you should object to the 1/3 waiver decision (to get an objection decision) before you can appeal that decision.

Tax case, member's opinion differs

I had a case at the Tax Revenue Appeals Board where one of the board members 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, but the board's decision was not on point. What can I do?

15 June 2020

You can appeal to the Tax Revenue Appeals Tribunal within 30 days of the decision. Section 20 of the Tax Revenue Appeals Act states that to determine 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 the reasons for his disagreement. The Chairman or Vice-Chairman should have stated reasons in the judgment for her/his disagreement, and that can now also be a ground of appeal to the Tribunal.

Receiver to inform TRA of appointment

I was appointed as a Receiver in a company a 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?

12 October 2020

The Tax Administration Act in Section 66 makes it mandatory to inform the TRA of your appointment within 14 days of such an 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 the correct amount of tax is remitted to the TRA. Should you fail to set aside an amount as required by the TRA, you may become personally liable to pay to the TRA on the company's account, although you can then claim this back from the company.

Transfer pricing tips in Tanzania.

Does Tanzania have any transfer pricing laws, and how do they compare with international best practices? Where can I find the transfer pricing regulations and practice notes? What documents should I keep to avoid getting caught in this trap?

23 April 2018

Tanzania has always had transfer pricing control under section 33 of the Income Tax Act, which states that in any arrangement between persons who are associates, the persons shall quantify, apportion and allocate amounts to be included or deducted in calculating income between the persons as is necessary to reflect the total income or tax payable that would have arisen for them if the arrangement had been conducted at arm's length.

The government published the first transfer pricing regulations in 2014, followed by transfer pricing guidelines. One of the key provisions of the guidelines states that transfer pricing of goods, services, and intangible properties are intercompany pricing arrangements between associated parties in their transactions. When independent parties deal with each other, independent market forces shape the commercial pricing of goods, services and intangibles transacted between them. However, business transactions between associates may not always reflect the dynamics of market forces. These Transfer Pricing Guidelines (hereinafter referred to as the Guidelines) are largely based on the

governing standard for transfer pricing, which is the arm's length principle as set out under the Organisation for Economic Co-operation and Development (OECD) Transfer Pricing Guidelines and the United Nations (UN) Practical Manual on Transfer Pricing for Developing Countries, (hereinafter referred to as OECD/UN Guidelines). TRA abides by this arm's length principle and believes this is the most appropriate standard to determine the transfer prices of related parties. Although some parts of the Guidelines have been adopted directly from the OECD /UN Guidelines, some aspects may differ in ensuring adherence to the Income Tax Act Cap.332 and domestic circumstances. In this regard, the Guidelines may be reviewed from time to time. Examples used in the Guidelines are for demonstrative purposes only. Thus, in dealing with actual cases, the facts and circumstances of each case must be considered before deciding on the applicability of any of the methods recommended in the Guidelines.

Due to space constraints, a full comparison of transfer pricing regulations with international best practices isn't possible here. Nevertheless, as demonstrated previously, the regulations largely reflect the OECD's arm's length principle. To ensure the acceptability of contemporaneous transfer pricing documentation, the guidelines stipulate that reasonable efforts should be made to (a) conduct a transfer pricing analysis to verify that transfer prices are consistent with the arm's length principle and reflect commercially realistic outcomes for all controlled transactions; (b) maintain relevant documentation and be prepared to furnish supplementary information or documentation not explicitly mentioned above, but which may be pertinent to determining the arm's length price; (c) prepare the documentation per the established Rules and Guidelines; (d) implement and periodically review arm's length transfer pricing policies, and revise such policies to accommodate any alterations in the business environment; (e) refrain from providing ambiguous, irrelevant, or insufficiently substantiated information; (f) employ a coherent and transparent methodology in identifying uncontrolled transactions; (g) provide a thorough analysis of functions, assets, risks, market conditions, and business strategies; (h) apply a transfer pricing method that adheres to the prescribed Rules; (i) ensure that the factual, economic, and empirical representations within the transfer pricing documentation are specifically relevant to the company, product, and market; (j) ensure that the transfer pricing documentation is accurate and precise, and aligns with accounting, financial, and benchmark data/comparables; (k) highlight and document any specific event that may have impeded the MNE's performance, enabling the consideration of appropriate fact-based adjustments; (l) maintain adequate background documentation and comprehensive records detailing the factual assumptions and pertinent factors considered in deriving the arm's length price; and (m) avoid documentation that inadequately supports the transactions, is limited in scope, and is incomplete. The adoption of a formal transfer pricing policy is strongly recommended.

ABOUT THE BOOK

Explore the laws shaping headlines and daily life in Tanzania through the Q&A Columns published every Monday in the Daily News, one of Tanzania's leading English newspapers, now compiled and available as Q&A with FB Attorneys book series.

From Courtroom clashes to family feuds and business snares to bizarre legal dilemmas, Volume 4 of Q&A with FB Attorneys offers a riveting dive into Tanzanian and international law through real-life questions and expert answers. Covering everything from marriage and inheritance to corporate disputes, immigration, and tax battles, this book demystifies the legal system with sharp insights, practical advice, and the occasional dose of humour.

Authored by renowned legal minds Dr. FAyaz A. Bhojani and Timon Vitalis, Volume 4 is an essential reading for professionals, students, and anyone who has ever wondered, "Can they really do that?" or "What are my rights?" Legal literacy begins with you, and it has never been more engaging.

Volume 4

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