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IN THE EAST AFRICAN COURT OF JUSTICE
AT ARUSHA
FIRST INSTANCE DIVISION

(**Coram**: *Yohane B. Masara, PJ; Richard Wabwire Wejuli, DPJ; Richard Muhumuza, Gacuko Leonard & Kayembe Ignace Rene Kasanda; JJ)*

CONSOLIDATED REFERENCES NO. 25 & 27 OF 2020

PAN AFRICAN LAWYERS UNION .... 1ST APPLICANT

LEGAL AND HUMAN RIGHTS CENTRE .... 2ND APPLICANT

TANZANIA HUMAN RIGHTS DEFENDERS COALITION .... 3RD APPLICANT

CENTER FOR STRATEGIC LITIGATION LIMITED .... 4TH APPLICANT

TANGANYIKA LAW SOCIETY .... 5TH APPLICANT

VERSUS

THE ATTORNEY GENERAL OF THE REPUBLIC OF UNITED REPUBLIC OF TANZANIA .... RESPONDENT

27TH MARCH 2026

JUDGMENT OF THE COURT

A. INTRODUCTION AND BACKGROUND

1. **Reference No. 25 of 2020** was filed on 25th September 2020, and **Reference No. 27 of 2020** was filed on 28th September 2020, both in the First Instance Division of this Court at Arusha. The References were instituted under Articles 6(d), 7(2), 8(1)(c), 27(1) and 30(1) of the Treaty for the Establishment of the East African Community ("the Treaty"), Articles 2, 3(1), 3(2), 7(1)(a), 7(1)(c), 10 and 13 of the African Charter on Human and Peoples' Rights ("the Charter"), and Rules 1(2) and 25 of the East African Court of Justice Rules of Procedure, 2019 ("the Rules").

2. By consent of the parties recorded pursuant to Rule 63 of the Rules, the two References were consolidated and heard together on 10th November 2025.

3. The References challenge provisions of the **Written Laws (Miscellaneous Amendments) Act, No. 3 of 2020** ("the Impugned Act"), enacted by the National Assembly of the United Republic of Tanzania on 10th June 2020 and assented to by the President on 19th June 2020.

4. **Reference No. 25 of 2020** focuses on Section 7 of the Impugned Act, which amended Section 4 of the **Basic Rights and Duties Enforcement Act, Cap. 3** [R.E. 2019] (**BRADEA**) by inserting subsections (2), (3), (4) and (5).

5. **Reference No. 27 of 2020** challenges Sections 33, 35, 37, 39, 41, 45, 48 and 49 of the Impugned Act, which amend various statutes including the **Interpretation of Laws Act**, **Judiciary Administration Act**, **Law**

Reform (Fatal Accidents and Miscellaneous Provisions) Act, **Law Revision Act, National Assembly (Administration) Act**, and **Presidential Affairs Act**.

B. PARTIES

6. The 1st Applicant is the Pan African Lawyers Union (PALU), registered in the Republic of Kenya and the United Republic of Tanzania, is a continental - 20 membership forum for African lawyers and lawyers' associations.

7. The 2nd Applicant, the Legal and Human Rights Centre (LHRC), is an independent, Non-partisan and non-profit human rights organization that seeks to promote internationally recognized human rights norms and standards. It was registered on 26/09/1995, under the Companies Act of Tanzania, and with the Compliance under the **Non-Governmental Organization Act No. 24 of 2002.**

8. The 3rd Applicant, the Tanzania Human Rights Defenders Coalition (THRDC), is a membership organization registered in 2012, comprised of over 150 members across Tanzania. THRDC is also interested in public interest litigation among other initiatives.

9. The 4th Applicant is the Center for Strategic Litigation Limited (CSL), a Zanzibar based partnership that seeks to advance the vision of a just, tolerant, vibrant and inclusive democracy grounded on respect for the rule of law and justice for all.

10. The 5th Applicant, the Tanganyika Law Society (TLS), is the national Bar Association of the United Republic of Tanzania, established under the Tanganyika Law Society Act, Cap. 307 [R.E. 2002] of the laws of the United Republic of Tanzania. Its stated objectives include

assistance to the government and the Courts on all matters affecting the law, to protect and assist the public in all matters touching, ancillary or incidental to the law.

11. The Applicants' address for service for the purpose of this Reference is in the care of Mr Donald Omondi Deya, Advocate, of Pan African Lawyers Union (PALU), Number 3, Jandu Road, Corridor Area, P.O. Box 6065, Arusha, in the United Republic of Tanzania. Electronic mail for purposes of this Reference and all and any Applications thereunder is: legal@lawyersofafrica.org.

12. The Respondent is the Attorney General of the United Republic of Tanzania (the Respondent) and is being sued on behalf of the Respondent. The Respondent's address for service for the purposes of this Reference is: The Office of the Solicitor-General, 10 Kivukoni Road, P.O. Box 71554 DAR ES SALAAM. Email: info@osg.go.tz.

C. REPRESENTATION

13. The Applicants were represented by Mr Jeremiah Mtobesya, Ms Praise God Joseph, Mr Peter Majanjara and Mr Jebra Kambore (virtually), learned advocates.

14. The Respondent was represented by Mr Stanley Kalokola (Senior State Attorney), Ms Narindwa Sekimanga (Senior State Attorney), Mr Boaz Msofe (State Attorney), Ms Pauline Mdedemi (Senior State Attorney) and Ms Zamaradi Johannes (State Attorney).

D. APPLICANTS' CASE

15. The Applicants' case is set out in the statements of Reference, the supporting Affidavits and their Submissions.

16. The Applicants contend that the impugned provisions curtail public interest litigation, impose barriers to access to justice, grant disguised immunity to the named high public officials, confer excessive powers on the Attorney General and Chief Parliamentary Draftsman without adequate oversight, and were enacted under Certificates of Urgency without meaningful public participation.

17. They allege violations of the fundamental and operational principles of the Treaty, the African Charter, the Constitution of the United Republic of Tanzania, 1977 ("the Constitution"), and the African philosophy of *Ubuntu*.

18. In summary, the Applicants allege:

    a) **that Sections 4(2) and 4(3) of BRADEA which require an affidavit demonstrating personal interest before admission of any petition and expressly subject Article 26(2) of the Constitution to Article 30(3) render public interest litigation illusory, contrary to Article 26(2) of the Constitution as interpreted in Christopher Mtikila vs Attorney General [1995] TLR 31 and Attorney General vs Jeremia Mtobesya, Civil Appeal No. 65 of 2016;**

    b) **that Section 4(2) discriminates in favour of the Commission for Human Rights and Good Governance (CHRAGG) by exempting it from the personal-interest requirement.**

    c) **that Section 4(3) purports to amend the Constitution by an ordinary Act of Parliament, violating Article 97 of the Constitution and the rule of law.**

d) **that Section 4(4) extends disguised immunity to the President, Vice-President, Prime Minister, Speaker, Deputy Speaker and Chief Justice, violating accountability, separation of powers and the rules of pleading.**

e) **that Section 4(5) imposes an exhaustion-of-remedies requirement that duplicates Section 8(2) of BRADEA and creates confusion.**

f) **that the other provisions of the Impugned Act, challenged in <u>Reference No. 27 of 2020</u>, were passed under a Certificate of Urgency thereby denying public participation; grant immunity to judicial officers "in good faith"; confer on the Attorney General powers to translate and revise laws without parliamentary oversight thus violating the principles of democracy, rule of law and good governance.**

19. The Applicants submit that the above violations breach the fundamental and operational principles of the Treaty in Articles 6(d), 7(2) and 8(1)(c); the African Charter, the Constitution and the African philosophy of *Ubuntu*.

20. They pray for declaratory orders and an order directing the Respondent to repeal or amend the offending provisions.

E. <u>RESPONDENT'S CASE</u>

21. The Respondent, in his Response to the Reference supported by the affidavit of Mercy Kyamba and elaborated in submissions, contends that:

a) The amendments to Section 4 of BRADEA are procedural and merely complement Articles 26(2) and 30(3) of the Constitution. The affidavit-of-admissibility requirement is a legitimate filter against frivolous and vexatious petitions and is consistent with the three-part test of limitations on rights.
b) The exception for CHRAGG is justified because it is a constitutional body with a statutory mandate to promote human rights; the differential treatment is not discriminatory;
c) Section 4(3) clarifies rather than amends the Constitution and does not overrule judicial decisions;
d) Section 4(4) designates the Attorney General as the proper party for official acts, consistent with Article 59 of the Constitution, Article 30(5) and the practice before this Court and other international tribunals. It prevents State paralysis and ensures effective implementation of court orders;
e) Section 4(5) restates the principle already in Section 8(2) of BRADEA that constitutional remedies are of last resort;
f) The Impugned Act was enacted in accordance with parliamentary standing orders and that public participation occurred through submissions from key stakeholders such as Tanganyika Law Society, Legal and Human Rights Centre and Twaweza, and that the Certificate of Urgency was lawfully invoked;
g) All challenged provisions are proportionate, necessary and serve legitimate aims; and
h) The Respondent prays that both References be dismissed with costs.

F. EVIDENCE

Evidence was adduced by way of Affidavits, excerpts from the impugned law; excerpt of a record of proceedings of the Parliament (Hansard) of 10th June 2020, written submissions were filed and supplemented by oral highlights on 10th November 2025. Noteworthy, the Respondent's reply submissions, though filed out of time were, in the interests of justice, validated by the Court under Rule 5.

G. ISSUES FOR DETEMINATION

22. At the Scheduling Conference, the parties framed the following issues for determination:

    i) **Whether the East African Court of Justice has jurisdiction to hear and determine the References (consolidated);**
    ii) **Whether the provisions of Sections 33, 35, 37, 39, 41, 45, 48 and 49 of the Written Laws (Miscellaneous Amendments) Act, No. 3 of 2020 violate the principles of rule of law, accountability, good governance and right to an effective remedy as provided for under Articles 6(d), 7(2), 8(c) of the EAC Treaty and Articles 3, 7 and 13 of the African Charter;**
    iii) **Whether the enactment of laws under certificate of urgency by the respondent is a violation of the EAC Treaty and the African Charter;** and
    iv) **What remedies, if any, are the parties entitled to?**

H. DETERMINATION OF THE ISSUES

23. The Court has considered the pleadings, the affidavits of Deusdedit Valentine Rweyemamu for the Applicants and Mercy Kyamba for the

Respondent, written submissions, the record of proceedings, the Constitution of Tanzania, the Treaty, the Impugned Act, **BRADEA** (as amended), the Interpretation Act, proceedings of Parliament of 10th June 2020, the jurisprudence of this Court and common law principles.

ISSUE 1: <u>Whether the East African Court of Justice has jurisdiction to hear and determine the References (consolidated)</u>

24. The Respondent does not contest that this Court possesses jurisdiction under Article 27(1) of the Treaty to interpret and apply the Treaty and to ensure its observance. His objection is confined to the scope of that jurisdiction.

25. He submits that the Applicants are impermissibly inviting the Court to exercise a general human rights jurisdiction which, in the absence of a Protocol under Article 27(2) of the Treaty, this Court does not possess. According to the Respondent, the Reference is in substance a complaint about violations of the rights to information, opinion, expression, assembly and participation arising from the use of a Certificate of Urgency, and such pure human rights claims fall outside the Court's competence.

26. The Applicants, conversely, maintain that the Court is fully seized of jurisdiction. They emphasise that they do not seek adjudication of human rights violations in isolation, but invite the Court to determine whether the impugned provisions and the manner of their enactment breach the fundamental and operational principles of the Community enshrined in Articles 6(d), 7(2) and 8(1)(c) of the Treaty.

27. They rely squarely on the settled jurisprudence of this Court, beginning with the seminal decision in **James Katabazi & 21 Others vs Secretary General of the East African Community & Attorney General of Uganda, EACJ Reference No. 1 of 2007**, where the Court made plain it that while it will not assume a stand alone human rights jurisdiction, it will not abdicate its duty under Article 27(1) merely because a reference includes allegations of human rights violations. The Applicants further invoke **Plaxeda Rugumba vs Secretary General of the East African Community, EACJ Reference No. 8 of 2020** and subsequent authorities to underscore that this Court is duty-bound to interpret the Treaty, including its governance clauses, even where human rights standards under the African Charter are engaged as interpretive aids.

28. The Court has given the most anxious consideration to these rival contentions.

29. Article 27(1) confers upon this Court jurisdiction to interpret and apply the Treaty and to ensure its observance. While it is correct, as the Respondent observes, that a general human rights jurisdiction awaits the conclusion of a Protocol under Article 27(2), that limitation does not preclude the Court from examining alleged violations of human rights where such violations are pleaded and established as breaches of the Treaty's fundamental and operational principles.

30. This position is now firmly settled. It was authoritatively articulated by this Court in **James Katabazi** (*supra*), where it was held that the Court "will not shy away" from exercising its interpretive jurisdiction under Article 27(1) merely because a reference includes allegations of human rights violations, provided those allegations engage the principles

enshrined in Articles 6(d) and 7(2) of the Treaty. The Court has consistently reaffirmed and applied this doctrine in subsequent decisions, including **Burundian Journalists Union vs Attorney General of the Republic of Burundi, EACJ Reference No. 7 of 2013** and **The Managing Editor, Mseto & Others vs Attorney General of the United Republic of Tanzania, EACJ Reference No. 7 of 2016.**

31. In each case, the Court has anchored its analysis firmly in the Treaty while drawing upon the African Charter and relevant national constitutional provisions as interpretive tools rather than as independent sources of jurisdiction.

32. In the present Reference, the Applicants have expressly framed their claims as breaches of the fundamental principles of good governance, the rule of law, accountability, transparency and the promotion and protection of human and peoples' rights under Article 6(d), as well as the operational principles of democracy, rule of law and universally accepted standards of human rights under Article 7(2), read together with Article 8(1)(c). They invoke the African Charter and provisions of the Constitution of the United Republic of Tanzania not as stand alone causes of action, but as evidence of the alleged breach of the Treaty's governance clauses. This is precisely the type of Reference over which this Court has repeatedly affirmed jurisdiction.

33. The Court therefore holds that it has jurisdiction to hear and determine the entire Reference and to examine every provision of the **Written Laws (Miscellaneous Amendments) Act, No. 3 of 2020** that has been challenged.

34. The objection raised by the Respondent is accordingly overruled.

ISSUE 2: Whether the provisions of sections 33, 35, 37,39, 41, 45, 48 and 49 of the Act violate the principles of rule of law, accountability, good governance and right to an effective remedy as provided for under Articles 6(d), 7(2),8(c) of the EAC Treaty and Articles 3, 7 and 13 of the African Charter

35. As a result of the consolidation of the **References 25 and 27**, the scope of this issue was extended to incorporate Sections 4(2), 4(3) 4(4) and 4(5) of the Basic Rights and Duties Enforcement Act (BRADEA).

36. Before examining the specific provisions of the impugned Act, it is necessary to recall the legal framework that governs any limitation placed by a Partner State on the rights and principles protected under the Treaty.

37. Any such restriction must satisfy the well-established three-part test.

38. This test was authoritatively laid down in **Media Council of Tanzania & 2 Others vs Attorney General of the United Republic of Tanzania, EACJ Reference No. 2 of 2017** and has since been followed in **Burundian Journalists Union** *(supra)*, **The Managing Editor, Mseto & Others vs Attorney General of Tanzania** (*supra*) and in **Independent Medico-Legal Unit vs Attorney General of Kenya, EACJ Reference No. 3 of 2016**.

39. Any restriction imposed by a Partner State on rights and principles protected under Articles 6(d), 7(2) and 8(1)(c) of the Treaty must satisfy the well-established *Three-part Test.*

40. The Test requires that a limitation must:

(i) **Be prescribed by law. It must be contained in a clear, accessible, precise and foreseeable statute or other written law so that citizens know exactly what is required or prohibited;**

(ii) **Pursue a pressing and substantial objective in a democratic society. The objective must be important to society as a whole, for example, preventing abuse of process, protecting public order or safeguarding state institutions and not merely convenient or administrative;** and

(iii) **Be proportionate to the objective sought. The measure must impair the protected right as little as possible (minimal impairment). There must be a rational connection between the measure and the objective. A balance must be struck between the beneficial effects of the measure and its adverse effects on the rights in question** (proportionality *stricto sensu*).

41. The evidential and persuasive burden of proving that all three limbs are satisfied rests squarely and cumulatively on the Respondent State.

42. *"The burden is on the Respondent to show that the limitation is prescribed by law, serves a legitimate aim, and is necessary and proportionate in a democratic society." – See* **Media Council of Tanzania & 2 Others vs Attorney General of the United Republic of Tanzania** (*supra*).

43. Failure on any single limb renders the measure inconsistent with the Treaty.

(i) SECTIONS 4(2) AND 4(3) OF BRADEA (AS AMENDED BY SECTION 7 OF THE IMPUGNED ACT) – CURTAILMENT OF PUBLIC INTEREST LITIGATION

44. The Applicants contend that Sections 4(2) and 4(3) of **BRADEA** violate Articles 6(d), 7(2) and 8(1)(c) of the EAC Treaty.

45. They argue that these provisions were enacted in blatant disregard of the principles of good governance, including adherence to democracy, the rule of law, accountability, transparency, and the recognition, promotion and protection of human and peoples' rights in accordance with the African Charter. Specifically, they submit that the requirement of an affidavit demonstrating personal effect for admission of petitions, together with the express subjection of Article 26(2) to Article 30(3) of the Constitution renders public interest litigation illusory.

46. They further argue that the preferential treatment accorded to the Commission for Human Rights and Good Governance (CHRAGG) is discriminatory and that Section 4(3) amounts to an indirect amendment of the Constitution by ordinary legislation.

47. The Respondent, on the other hand, maintains that the amendments are purely procedural and serve as a legitimate filter against frivolous and vexatious petitions.

48. According to the Respondent, the provisions complement Articles 26(2) and 30(3) of the Constitution, prevent abuse of court processes, and are consistent with the three-part test for limitations on rights.

Court's Determination

49. The Respondent bears the burden of proving that the impugned provisions satisfy all three limbs of that test: that they are prescribed by

law, pursue a pressing and substantial objective, and are proportionate.

50. The Court finds that the first limb, whether the limitation is prescribed by law, is satisfied. The new subsections are contained in a duly enacted and published statute, namely the **Written Laws (Miscellaneous Amendments) Act, No. 3 of 2020**, and their language is sufficiently clear.

51. The Court also accepts that the second limb is met. Preventing abuse of the judicial process and protecting the integrity and efficiency of the courts constitutes a pressing and substantial objective in a democratic society.

52. However, the provisions fail at the third and decisive limb of proportionality. Although there may be some logical link between requiring disclosure of personal effect and filtering frivolous claims, the connection is tenuous. We say so for the following reasons.

53. Section 8(2) of the unamended **BRADEA** already empowers the High Court, after hearing the parties, to dismiss any petition that is frivolous, vexatious or an abuse of process. The new pre-admission filter is therefore largely duplicative and unnecessary.

54. More critically, the measure operates at the very threshold of admission, before any judge has seen the petition. In practice, as confirmed during submissions highlights and in the Applicants' affidavit, the Registrar performs this gate-keeping function. There is no right of audience, no opportunity to cure defects, and no right of appeal. This constitutes a blunt and heavy-handed barrier that effectively slams the court door shut before any judicial assessment can occur.

55. This approach directly contradicts the authoritative interpretation of Article 26(2) of the Constitution by Tanzania's superior courts. In **Rev. Christopher Mtikila vs Attorney General** (*supra*), the High Court (Rugakingira J.) held that Article 26(2) is an independent source of standing for public-spirited citizens to vindicate the Constitution without the need to prove personal interest. This position was expressly affirmed by the Court of Appeal in **Attorney General vs Jeremia Mtobesya** (*supra*).

56. These binding decisions form part of the constitutional landscape that this Court must respect when applying the Treaty.

57. Furthermore, Section 4(3) of **BRADEA**, which declares that a person exercising the right provided for under Article 26(2) of the Constitution "*shall abide with*" the provisions of Article 30(3), constitutes an impermissible indirect amendment of the Constitution by ordinary legislation.

58. It is a cardinal principle of constitutional supremacy that an Act of Parliament cannot lawfully overrule, subordinate or effectively rewrite a constitutional provision that has been authoritatively interpreted by the superior courts. Any such attempt strikes at the very heart of the rule of law and the separation of powers.

59. In the Tanzanian context, the High Court in **Rev. Christopher Mtikila vs Attorney General** *(supra)* and the Court of Appeal in **Attorney General vs Jeremia Mtobesya** *(supra)* have conclusively and authoritatively held that Article 26(2) constitutes an independent source of standing for public-spirited citizens to vindicate the Constitution without the need to demonstrate personal interest.

60. These decisions are still good law. They form an integral part of the authoritative constitutional landscape which this Court is bound to respect when interpreting and applying the Treaty.

61. A closely analogous principle was articulated by the Court of Appeal of Uganda in **Human Rights Network Uganda & 4 Others vs Attorney General, Constitutional Petition No. 56 of 2013 [2020] UGCC 6**, where the Court struck down provisions that sought to negate or subordinate constitutional rights already adjudicated upon, interpreted and protected by the Courts. The Court held that Parliament cannot, by ordinary legislation, amend or override a constitutional provision or a judicial interpretation thereof that has become part of the constitutional order, for to do so would undermine constitutional supremacy and the separation of powers.

62. Although not binding, that decision (**Human Rights Network Uganda & 4 Others vs Attorney General** *-supra)* carries considerable persuasive weight in this Community, arising as it does from a sister jurisdiction that shares a common-law tradition, a similar constitutional framework and the same Treaty obligations under Articles 6(d) and 7(2) of the Treaty.

63. By purporting to subordinate Constitutional Article 26(2) to Article 30(3), Section 4(3) of **BRADEA** effectively seeks to overrule or qualify the binding judicial interpretation of Article 26(2). This represents an unconstitutional intrusion by the legislature into the judicial domain and a grave breach of the rule of law and separation of powers, principles that lie at the core of the fundamental objectives of the East African Community under Article 6(d) of the Treaty.

64. The deleterious impact of these amendments is both severe and discriminatory. They disproportionately burden the very groups public interest litigation was designed to protect, i.e. the indigent, the marginalised, persons with disabilities, women, children and rural communities, who in most cases lack the resources or knowledge to prove personal effect.

65. By granting an absolute exemption to the Commission for Human Rights and Good Governance while denying ordinary citizens and other entities the same latitude, the law creates an irrational and discriminatory hierarchy of access to justice. This offends the principle of equality before the law enshrined in Article 13 of the Constitution and Article 3 of the African Charter.

66. Although the objective of filtering frivolous petitions may be legitimate in the abstract, the means chosen are excessively restrictive and inflict far greater harm upon the foundational principles of access to justice, democracy, equality and good governance than the mischief they purport to address.

67. The proportionality limb is not satisfied.

68. In the final analysis, Sections 4(2) and 4(3) fail the three-part test.

69. We find the provisions inconsistent with Articles 2, 3(1), 3(2), 7(1), 10 and 13 of the African Charter, and the corresponding constitutional provisions and in contravention of Articles 6(d), 7(2) and 8(1)(c) of the Treaty.

(ii) SECTION 4(4) OF BRADEA - DESIGNATION OF THE ATTORNEY GENERAL AS THE PROPER PARTY

70. The Applicants challenge Section 4(4) of **BRADEA** on the ground that, by requiring petitions against the President, Vice-President, Prime Minister, Speaker, Deputy Speaker or Chief Justice to be brought only against the Attorney General, the provision extends disguised immunity to these high officials.

71. They argue that this undermines the principle of accountability, good governance and the rule of law enshrined in Articles 6(d), 7(2) and 8(1)(c) of the EAC Treaty. They further contend that it violates cardinal principles of civil procedure regarding necessary and proper parties, and that public officers who have taken an oath to uphold the Constitution individually cannot transfer that responsibility to another representative.

72. In their view, the Attorney General, being part of the Executive, cannot properly represent the heads of the Legislature and Judiciary without compromising the separation of powers.

73. The Respondent, for his part, maintains that Section 4(4) does not confer immunity but merely designates the Attorney General as the proper party for acts or omissions done in an official capacity. He submits that the provision is necessary to avoid State paralysis and to ensure effective implementation of Court orders, particularly those issued under Article 30(5) of the Constitution, which are typically directives to the Government as an institution. That the Attorney General, as the chief legal adviser to the Government under Article 59 of the Constitution, is best placed to defend such actions and to coordinate compliance with any remedies granted.

74. The Respondent emphasises that the right to seek redress remains intact, and that the practice of naming the Attorney General as Respondent is consistent with both domestic constitutional arrangements and the established procedure of this Court.

Court's Determination

75. The burden of proving that the limitation satisfies the three-part test rests squarely and cumulatively on the Respondent.

76. The provision is clearly prescribed by law.

77. The Respondent submits that the designation of the Attorney General as the proper party pursues two pressing and substantial objectives. First, it prevents state paralysis by ensuring that the heads of the Executive, Legislature and Judiciary are not diverted from their high-level constitutional duties by repeated personal appearance in civil proceedings. Second, it ensures effective implementation of court remedies, particularly those issued under Article 30(5) of the Constitution as directives to the Government as an institution. As the chief legal adviser to the Government under Article 59 and the officer responsible for legislative drafting and coordinating the State's legal responses, the Attorney General is uniquely positioned to defend official-capacity acts and secure compliance with court orders. When the complaint concerns acts performed in an official constitutional capacity, the real party in interest is the State itself. Designating the Attorney General as respondent therefore promotes clarity, avoids multiplicity of suits, and ensures coherent execution without compromising the separation of powers.

78. We are convinced that these objectives are not merely administrative conveniences. They protect the continuity and effectiveness of

constitutional governance and are therefore pressing and substantial in a democratic society governed by the rule of law.

79. On proportionality, the Court disagrees with the notion proffered by the Applicants that designating the Attorney General as the proper party for official-capacity suits against the heads of the Executive, Legislature and Judiciary compromises the separation of powers.

80. The Attorney General acts not as personal representative of any individual office-holder, but as the constitutional chief legal adviser to the Government and the institutional representative of the United Republic of Tanzania itself. When official acts are challenged, it is the State, not the individual, that is answerable. This practice is fully consistent with Article 59 of the Constitution and with the established procedure of this Court, where the Attorney General is invariably named respondent on behalf of the Partner State, irrespective of which organ is implicated. Far from undermining separation of powers, the provision preserves institutional coherence and ensures effective implementation of court orders.

81. The designation is therefore rationally connected to the legitimate aims.

82. The restriction by Section 4(4) is narrowly tailored. It does not confer absolute or blanket immunity. It applies only to acts or omissions "*done in the performance of their duties*", i.e. in their official-capacity.

83. Legal action or suits against these office-holders in their personal capacity remain possible under Article 46 of the Constitution, subject to the 30-day notice requirement.

84. Moreover, the provision does not bar relief. An aggrieved party retains full access to court; the only change is the identity of the named defendant.

85. The Attorney General, as a constitutional officer and member of the Bar, is answerable to the court and must defend the action on the merits. The impairment of the right to sue is therefore minimal, it affects form rather than substance, while still achieving the protective objectives.

86. The criterion of the test is that: if the harm to the right is too great compared to the benefit gained, the restriction fails the final test of proportionality and is unlawful, even if it passes all the earlier steps.

87. In the instance, we are convinced that the beneficial effects of the measure substantially outweigh its adverse impact. The balance tilts decisively in favour of upholding the provision.

88. Conclusively, Section 4(4) designating the Attorney General as the proper party under Section 4(4) of **BRADEA** satisfies all three limbs of the limitation test. It is consistent with the corresponding provisions of the African Charter or the Constitution and does not violate Articles 6(d), 7(2) and 8(1)(c) of the Treaty.

(iii) SECTION 4(5) OF BRADEA - (EXHAUSTION OF ALTERNATIVE REMEDIES)

89. The Applicants challenge Section 4(5) of **BRADEA** on the ground that it violates the Treaty by imposing an exhaustion-of-remedies requirement that is contradictory to Section 8(2) of the same Act, creates confusion for litigants, and serves no legitimate purpose. They

argue that the provision fails all three limbs of the three-part test and is therefore inconsistent with Articles 6(d), 7(2) and 8(1)(c) of the Treaty.

90. The Respondent, for his part, maintains that Section 4(5) is not a novel requirement but merely restates the principle already embodied in Section 8(2) of the unamended **BRADEA**.

91. He submits that constitutional remedies under **BRADEA** are intended to be remedies of last resort. Requiring exhaustion of available remedies under other written laws, the Respondent argues, prevents abuse of the constitutional process, promotes efficiency and coherence in the administration of justice, and upholds the hierarchy envisaged by the Constitution itself.

92. Under the 3-part test, the burden of proving that the provision satisfies all three limbs of the limitation test rests squarely and cumulatively on the Respondent.

93. Section 4(5) states:

> **"A petitioner shall, prior to seeking redress under this Act, exhaust all available remedies under any other written laws."**

94. The provision is contained in a duly enacted and published statute and its language is sufficiently clear. The Court finds that the first limb of the tripartite test is satisfied.

95. Regarding the exhaustion requirement, it is contended that the provision pursues pressing and substantial objectives. It prevents forum-shopping and the abuse of constitutional process by ensuring that litigants do not routinely bypass specialised administrative, statutory or ordinary civil remedies, such as judicial review under the

Law Reform (Fatal Accidents and Miscellaneous Provisions) Act or remedies available before constitutional bodies like the Commission for Human Rights and Good Governance.

96. The Respondent further submits that the exhaustion requirement promotes efficiency and coherence in the administration of justice by ensuring that specialised bodies or lower courts first address matters within their competence, thereby reducing unnecessary constitutional litigation and preserving the High Court's role as a forum of last resort for genuine constitutional violations. It also reinforces the constitutional principle that remedies under BRADEA are extraordinary in nature.

97. Agreeably, these objectives are not peripheral; they safeguard the integrity of the judicial system, prevent duplication of proceedings, and ensure that constitutional remedies remain truly exceptional.

98. Article 30(3) of the Constitution and the overall scheme of Part III of the Bill of Rights envisage that ordinary remedies should be pursued where they are adequate. The exhaustion rule upholds this hierarchy and prevents the constitutional jurisdiction from becoming a routine substitute for normal judicial or administrative processes.

99. The second limb is also met.

100. Turning to proportionality, there exists a clear and direct rational link between the exhaustion requirement and the legitimate objectives it serves: by directing litigants first to pursue alternative remedies where they exist and are adequate, the provision properly reserves the special constitutional jurisdiction under **BRADEA** for those cases in which no other effective redress is available. This approach accords fully with the long-established common-law principle that extraordinary remedies

such as constitutional petitions are not granted where alternative statutory or administrative remedies exist.

101. The impairment caused by the provision is both minimal and narrowly tailored. Section 4(5) does not bar access to constitutional redress; it merely postpones it until alternative remedies have been exhausted or shown to be inadequate.

102. The Respondent maintained that Section 4(5) of BRADEA is not a novel requirement but merely restates and strengthens the principle already embodied in Section 8(2) of the unamended BRADEA.

103. Far from introducing a new barrier, the section restates and codifies the principle already embodied in Section 8(2) of the unamended **BRADEA** which provides that:

> ***"The High Court shall not exercise its powers under this section if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law, or that the application is merely frivolous or vexatious."***

104. Section 4(5) simply codifies this long-standing principle by making exhaustion of available remedies a mandatory precondition before a petitioner may invoke the special constitutional jurisdiction under the Act. The provision gives clearer statutory expression to a doctrine that has long guided the exercise of constitutional jurisprudence in this jurisdiction.

105. In **Tanzania Cigarette Company Ltd vs Fair Competition Commission & Attorney General, Misc. Civil Cause No. 31 of 2010**, the Court held that remedies under BRADEA are remedies of

last resort and should not be invoked where adequate statutory remedies exist, dismissing a constitutional petition that had bypassed the statutory appeal process under the Fair Competition Act.

106. Similarly, in **Paul Revocatus Kaunda vs Attorney General, Misc. Civil Cause No. 33 of 2019**, the High Court reaffirmed that BRADEA remedies are extraordinary in nature and that petitioners must first exhaust alternative remedies or demonstrate why they are inadequate before approaching the Court under the Act.

107. In substance, both provisions and the foregoing authorities affirm that constitutional remedies under BRADEA are intended to be residual and exceptional, not routine or alternative avenues for relief.

108. Moreover, the exhaustion requirement is not absolute. Where alternative remedies prove inadequate, illusory, unduly delayed or ineffective, the High Court retains unfettered discretion to entertain the petition.

109. The restriction is therefore minimally impairing.

110. On the overall balance demanded by proportionality *stricto sensu*, the salutary effects of the provision are compelling. It promotes the orderly and efficient administration of justice, reduces congestion in the constitutional jurisdiction, encourages recourse to specialised remedies, and preserves **BRADEA** as a meaningful remedy of last resort.

111. The burden placed upon litigants is modest, they are merely required to pursue available remedies first, a standard requirement reflected in the exhaustion rule under the African Charter.

112. There is no evidence before the Court that this requirement has in practice denied justice or rendered constitutional remedies illusory. On the contrary, the beneficial effects of the measure manifestly outweigh any limited adverse impact. The balance tilts decisively in favour of upholding the provision.

113. The Court is satisfied that Section 4(5) of **BRADEA** meets the exacting requirements of rational connection, minimal impairment, and overall balance.

114. The Respondent has therefore discharged the burden of proving that Section 4(5) satisfies all three limbs of the limitation test.

115. The provision is consistent with Articles 6(d), 7(2) and 8(1)(c) of the Treaty and does not violate the corresponding provisions of the African Charter or the Constitution.

(iv) SECTIONS 33, 35, 37, 39, 41, 45, 48 AND 49 OF THE IMPUGNED ACT

116. The Applicants contend that Sections 33, 35, 37, 39, 41, 45, 48 and 49 of the **Written Laws (Miscellaneous Amendments) Act, No. 3 of 2020** violate the fundamental and operational principles of the Treaty, particularly Articles 6(d), 7(2) and 8(1)(c). They submit that these provisions undermine good governance, the rule of law, accountability, transparency, separation of powers and universally accepted standards of human rights.

117. Specifically, they argue that Section 33 impermissibly expands the Attorney General's powers to translate laws without prior statutory authority; Section 35 grants overly broad "good faith" immunity to judicial officers; Sections 39 and 41 allow the Executive, through the

Attorney General and Chief Parliamentary Draftsman, to revise laws without adequate parliamentary oversight; Section 45 subjects the Parliamentary Services Commission to presidential approval, thereby compromising its independence; and Sections 37 and 48 unduly restrict accountability by shielding high office holders and judicial officers from suits.

118. The Applicants invited the Court to apply the three-part test and declare these provisions inconsistent with the Treaty.

119. The burden of proving that each provision satisfies the three-part test rests with the Respondent.

120. The Respondent maintains that each of the impugned provisions is procedural in nature and fully compliant with the Constitution and the Treaty.

121. He submits that Section 33 merely clarifies the Attorney General's existing mandate under Article 59 of the Constitution to ensure that laws are accessible in both official languages; Section 35 protects judicial independence by shielding judicial officers from liability for acts done in good faith, consistent with international standards on judicial immunity; Sections 39 and 41 concern technical law revision and consolidation, not substantive law-making, and remain subject to presidential proclamation. That Section 45 introduces a necessary check-and-balance mechanism given the President's constitutional role in Parliament under Article 87; and Section 48 merely channels personal-capacity suits against a sitting President through the Attorney General or defers them until after tenure, without barring official-capacity suits or denying redress.

122. The Respondent asserts that all provisions pursue legitimate objectives and are proportionate.

Court's Determination

123. Sections 33, 39 and 41 pursue the legitimate and pressing objective of ensuring that the statute book remains accessible, updated, consolidated and modernised in both English and Kiswahili without substantive alteration.

124. Translation and revision are purely administrative and technical functions. They do not involve new law-making, nor do they alter rights or obligations. The measures are rationally connected to the objective, cause minimal impairment, and the benefits of legal certainty and public accessibility clearly outweigh any marginal impact. These sections therefore satisfy the three-part test and do not violate the Treaty.

125. Section 35, which provides that a judicial officer shall not be liable in any action or suit for anything done or omitted to be done in good faith in the performance of judicial functions, equally withstands scrutiny. Judicial independence and impartiality are cornerstones of the rule of law and the separation of powers.

126. Protecting judges from personal civil liability for *bona fide* judicial acts is a universally recognised principle, affirmed in international instruments including the UN Basic Principles on the Independence of the Judiciary.

127. The limitation is prescribed by law, serves the pressing objective of safeguarding judicial independence, and is proportionate. The "good

faith" qualifier provides an adequate and objective safeguard against abuse.

128. The provision does not therefore confer absolute immunity and does not breach the Treaty.

129. Section 45, which requires Presidential approval for certain decisions of the Parliamentary Services Commission, likewise passes the test. Given that the President forms part of Parliament under Article 87 of the Constitution (mandates President to appoint Clerk to Assembly), the requirement introduces a legitimate check-and-balance mechanism aimed at ensuring coherence in the administration of the Parliamentary Service.

130. The impairment is limited and rationally connected to the objective of institutional harmony.

131. On balance, the provision is proportionate and consistent with the principles of good governance.

132. Section 48, which restricts the institution of civil proceedings against a sitting President in his or her personal capacity until after leaving office, must also be upheld. The provision does not grant absolute immunity; it merely channels personal-capacity suits through the Attorney General or defers them until the end of the presidential term, while leaving official-capacity suits fully justiciable. It pursues the pressing objective of preventing distraction from the President's constitutional duties and preserving the dignity of the high office.

133. The measure is rationally connected to that objective, minimally impairing, as it defers rather than extinguishes the right, and the

balance clearly favours institutional functionality over the limited procedural burden on litigants.

134. The section therefore satisfies the three-part test.

135. Finally, the substance of Sections 37 and 49 is materially identical to that of Section 4(4) of BRADEA, which the Court has already analysed above. Both provisions serve the same purpose of designating the Attorney General as the proper party for suits concerning acts or omissions performed in an official capacity. Having found that Section 4(4) satisfies the three-part test and does not violate Articles 6(d), 7(2) or 8(1)(c) of the Treaty, it is unnecessary and superfluous to subject Section 49 to a separate and repetitive analysis. The Court therefore adopts its reasoning and findings in respect of Section 4(4) and holds that Section 49 is equally consistent with the Treaty.

136. The Respondent has successfully demonstrated that each provision satisfies the three-part test.

137. In conclusion, the Court holds that Sections 33, 35, 37, 39, 41, 45,48 and 49 of the Impugned Act are consistent with Articles 6(d), 7(2) and 8(1)(c) of the Treaty.

138. These provisions do not violate the Treaty.

ISSUE 3: Whether the enactment of laws under certificate of urgency by the Respondent is a violation of the Treaty and the African Charter

139. The Applicants submit that the Respondent's practice of enacting legislation under a Certificate of Urgency amounts to a serious violation of Articles 6(d), 7(2) and 8(1)(c) of the Treaty and fundamental

provisions of the African Charter on Human and Peoples' Rights. That by deliberately compressing legislative timelines and severely restricting meaningful public consultation and parliamentary scrutiny, this procedure systematically undermines the core principles of democracy, good governance, rule of law, transparency and citizen participation in the law-making process.

140. It effectively denies Tanzanian citizens their constitutional and Charter-protected right to participate in governance, a right expressly guaranteed under Article 13 of the African Charter, and gravely erodes the legitimacy and accountability of the laws thereby enacted. Such conduct is fundamentally incompatible with the foundational values of the East African Community.

141. The Respondent seeks to justify the procedure as a legitimate parliamentary mechanism intended to address alleged pressing national needs that cannot await the ordinary legislative process. It maintains that the Certificate of Urgency preserves parliamentary sovereignty and flexibility while still allowing for public input and debate.

142. In respect of the Impugned Act, the Respondent asserts that the requisite procedures, including an invitation for public comments on 5th June 2020 and subsequent parliamentary debate, were duly observed. The burden of proving that the invocation of urgency in this case satisfied the three-part test rests squarely and cumulatively upon the Respondent.

Court's Determination

143. Having examined the submissions of both parties and the evidence before us, we note that the practice of enacting legislation under a Certificate of Urgency is indeed not alien to the procedures of the National Assembly. In principle, the mechanism may serve pressing and substantial objectives, such as enabling timely legislative response in cases of genuine urgency and preserving parliamentary flexibility.

144. However, the Respondent has manifestly failed to discharge its burden of demonstrating that those objectives were pressing and substantial in the specific circumstances of the Impugned Act.

145. The Act was a miscellaneous amendments statute concerned primarily with technical and procedural updates across several laws. It addressed no immediate threat to national security, public health, economic stability, or any other exigent situation that would legitimately justify dispensing with ordinary deliberative safeguards.

146. No cogent evidence, whether in the Bill's preamble, the Hansard, or the affidavit of Mercy Kyamba, was adduced to establish a concrete, time-sensitive imperative that rendered the normal legislative timetable impracticable. The mere fact that a bill consolidates or updates procedural laws cannot, without more, constitute sufficient urgency to warrant the compression of public consultation and meaningful parliamentary scrutiny.

147. In the absence of any demonstrated crisis or genuine necessity, the invocation of urgency was one of convenience rather than imperative.

148. Even assuming *arguendo*, the existence of a pressing objective, the measure fails the exacting test of proportionality. The salutary effects

of expedited enactment must be weighed against the serious deleterious impact on public participation, stakeholder consultation and thorough parliamentary debate.

149. In the present case, the invitation for public views was issued on 5th June 2020, a Friday, and the Bill was debated and passed merely five days later on 10th June 2020. The compressed window afforded neither meaningful broad-based consultation nor adequate time for civil society, legal experts or the public to scrutinise amendments affecting multiple statutes, including sensitive changes to constitutional enforcement under **BRADEA** and high-office accountability mechanisms. Parliamentary debate was correspondingly curtailed, materially diminishing opportunities for thorough committee scrutiny and informed amendment.

150. Public participation in the legislative process is not a procedural nicety; it is a fundamental democratic imperative enshrined in Article 7(2) of the Treaty and Article 13 of the African Charter. Its unwarranted curtailment inflicts grave harm upon the principles of transparency, accountability and citizen engagement, especially in a non-emergency context. The marginal advantage of accelerated enactment of largely technical updates cannot outweigh this harm.

151. The Respondent has failed to discharge the burden of proving compliance with the three-part test.

152. On the strict balance demanded by proportionality *stricto sensu*, the scales tilt decisively and unequivocally against the measure.

153. The procedure, as applied in this case, has caused disproportionate harm to transparency, public participation and good governance.

154. In the final analysis, the Court is compelled to declare that the deployment of a Certificate of Urgency for the enactment of the **Written Laws (Miscellaneous Amendments) Act, No. 3 of 2020** was unwarranted, unjustified and impermissible in the circumstances.

155. Accordingly, the enactment of the Impugned Act under a Certificate of Urgency is inconsistent with and violates Articles 6(d), 7(2) and 8(1)(c) of the Treaty.

I. CONCLUSION

156. Sections 4(2) and 4(3) of the **Basic Rights and Duties Enforcement Act** (as amended by Section 7 of the **Written Laws (Miscellaneous Amendments) Act, No. 3 of 2020** violate Articles 6(d), 7(2) and 8(1)(c) of the Treaty. These provisions impermissibly curtail public interest litigation, subordinate a constitutional right by ordinary legislation and create an irrational hierarchy of access to justice.

157. The enactment of the Impugned Act under a Certificate of Urgency further violates the same Treaty provisions. In the absence of any demonstrated crisis or time-sensitive imperative, the compressed procedure unduly restricted public participation and parliamentary scrutiny, producing disproportionate harm to transparency, accountability and democratic governance.

158. By contrast, Section 4(4) and Section 4(5) of **BRADEA** (as amended), together with Sections 33, 35, 37, 39, 41, 45, 48 and 49 of the Impugned Act, do not violate the Treaty. In each case the Respondent has discharged the burden of proving compliance with the three-part test.

159. The designation of the Attorney General, the exhaustion requirement, the technical powers of translation and revision, the limited good-faith immunity for judicial officers, the deferral of personal-capacity suits against a sitting President, and the requirement of Presidential approval for certain decisions of the Parliamentary Services Commission are proportionate measures that pursue legitimate objectives without impermissibly impairing the fundamental and operational principles of the Community.

ISSUE 4: <u>Remedies</u>

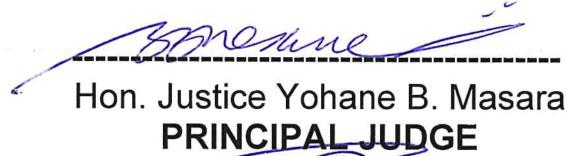
160. Pursuant to Article 23(3) of the Treaty and Rule 78 of the Rules of Procedure, the Court grants the following reliefs:

a) **A DECLARATION that Sections 4(2) and 4(3) of the Basic Rights and Duties Enforcement Act (as amended) are inconsistent with and violate Articles 6(d), 7(2) and 8(1)(c) of the Treaty;**

b) **An ORDER directing the Respondent to take all necessary steps, within six (6) months from the date of this Judgment, to repeal or amend the offending provisions so as to restore the full scope of public interest litigation as recognized under Article 26(2) of the Constitution and the jurisprudence of the Tanzanian Courts; and**

c) **Each party shall bear its own costs.**

Dated, signed and delivered at Arusha this 27th Day of March 2026.



Hon. Justice Yohane B. Masara
PRINCIPAL JUDGE

Hon. Justice Richard Wabwire Wejuli
DEPUTY PRINCIPAL JUDGE

Hon. Justice Richard Muhumuza
JUDGE

Hon. Justice Dr Leonard Gacuko
JUDGE

Hon. Kayembe Ignace Rene Kasanda
JUDGE