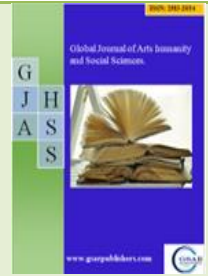
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THE LAW AND PROCEDURES ON THE APPLICATION OF PREROGATIVE ORDERS AS A PRIMARY VEHICLE TO CONTROL ABUSIVE ADMINISTRATIVE ACTIONS OF THE GOVERNMENT.

By

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Abstract

The application of prerogative orders is very crucial in the administration of justice in any jurisdiction including Tanzania. This paper deals with an exploration on the laws and procedures on the application of prerogative orders by addressing legal and practical challenges facing applicants pursuing judicial review in Tanzania. The aim of this paper is centered to overlook on effectiveness of laws on the application of prerogative orders in Tanzania and to determine whether the procedures in place in the application of prerogative orders in Tanzania are user friendly.

The paper found that procedural technicalities on the application of prerogative orders affect the effective application of judicial review in the administration of justice. Also, the found that for the proper administration of justice independence of the judiciary is crucial in the administration of justice and revealed that the court is limited to review the improper actions of the government as there are ouster clauses and finality provisions.

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1.1 INTRODUCTION

Prerogative orders, these are orders that are issued by the High Court when exercising its super-visionary powers over subordinate courts and other judicial and quasi-judicial bodies in order to make them abide with the administration of justice in the country. The orders are regarded as a primary vehicle to oversee the oppressive and abusive actions of the government that meant to distort the administration of justice and protection of fundamental rights of an individual¹.

Prerogative orders in Tanzania are exercised through invoking the doctrine of judicial review of which are exercised by the Court to review the decisions passed by the organs of the government and other quasi-judicial bodies and it is an inherent power of the High Court exercised through the doctrine of judicial review². This is

enshrined in the Constitution, though no express provision that provide for the judicial review which is exercised through prerogative orders but impliedly may be referred from various provisions of the constitution.

Where Article 30(3) of the Constitution provides the room for any person who is of the view that his right has been infringed by any person or any organ has to knock the door of the High Court for redress³. Thus, the Article is constructed to pave the way to any interested person to enforce his or her rights before the Court of law. Further, Article 108 (2) of the Constitution to entertain any matter of no express provision under any law and any matter which traditionally is determined by the High Court, thus renders the High court to be with the powers to determine any matter relating to the application of prerogative orders challenging the oppressive actions of the government. Likewise, Article 13 (6) (a) of the Constitution is construed to impliedly provide for the application

¹ The Oxford Law Dictionary, 8th Edition

² RAMADHANI, A. (2009). *Judicial Review of Administrative Action as the Primary Vehicle for the Protection of Human Rights and the Rule of Law*. [A Paper Presented to the Southern African Chief Justices Conference], at

Kasane, Botswana

³ The Constitution of the United Republic of Tanzania of 1977



of prerogative orders where it provides that in determining the right of an individual by any court or any agency a person must be accorded with the right of fair hearing, the right to appeal or any other remedy which is conducted by through judicial review Act⁴, empowers the High Court of Tanzania to grant the orders of mandamus, certiorari and prohibition which all are exercised through judicial review.

The brief background of the application of prerogative orders is traced from Common law legal system where under common law the sovereign was termed as a source of justice since it was entrusted with prerogative powers for the interest of administering justice. The exercise of powers meant to be used as a shield in upholding the rights and liberties of subjects and in providing effective safeguards against arbitrary exercise of power by public authorities. The control of arbitrary exercise of powers were implemented by issuing prerogative writs⁵.

The prominence of prerogative orders in Tanzania was viewed by the Court to be the effective ways to challenge the oppressive actions of the government, this was the view of the court in John Mwombeki Byombalirwa vs. Regional Commissioner of Kagera Region and Regional Police Commander⁶, where the Court overlooked judicial review as an significant tool to judges by which a citizen can use to challenge actions of the government through prerogative order.

The law under Rule 4 of the Law Reform (Fatal Accident and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules⁷ provides for a person whom may apply for judicial review where it illustrate that any person whose interest have been or who is of the view that his interests will be affected by any act or omission may apply for judicial review for redress.

1.2 ADMINISTRATIVE ACTIONS

Administrative actions are actions that are non-legislative and non-judicial in nature but are the actions concerned with the analysis and treatment of a particular situation and is devoid of generality. Or is a legal action relating to the conduct of a public administrative body. Administrative action may be statutory meaning having the force of law, or non-statutory, devoid of such legal force⁸.

These actions are designed to protect the public and uphold law and order in the community and while excising administrative powers the rules on natural justice need to be adhered considering the circumstance of on case to the other. Therefore, governmental actions must comply with the principles of fairness. Administrative actions are normally challenged in courts by any person and these

actions are controlled by the Court through issuing prerogative orders.

Administrative actions are categorized into three main pillars of the state that is the executive, Legislature and Judiciary. The case of *A.K. Kraipak v. Union of India*⁹, where among other things the court held that determination of the act to be either administrative or quasi-judicial the concentration should be of the power conferred and to whom the power is conferred together with the consequences thereupon.

1.3. THE LEGAL REGIME FOR PREROGATIVE ORDERS IN TANZANIA

Prior enactment of the Rules, the application for Prerogative orders was governed by case law which borrowed much from the common law legal system. This was upheld by the court in the case of *John Mwombeki Byombalirwa v. Regional Commissioner and Regional Police Commander*¹⁰, where the Court stated that “*The law on the prerogative orders is on the move to meet the changes of modern government. What was the position in 1960 as regards the contents of those rules is not the same now. The law has been constantly changed by judges to see how effectively the law can protect an individual citizen from oppressive administrative actions*”.

The similar views was stated in the case of *M/S. Tanalec Limited V. The Honourable Attorney General & Another*, (Misc. Civil Cause No. 9 of 2011 (H.C. Commercial Division), where it was stated that “*The source of the jurisdiction of this court to entertain applications for prerogative orders is the Judicature and Applications of Laws Ordinance, Cap 543, which imports into this country the substance of the common law, doctrines of equity and statutes of general application in force in England on the reception date.. Such applications are not governed by the provisions of the Civil Procedure Code or the Government Proceedings Act. The matter is one of judicial discretion to be exercised by the court in the light of the circumstances of each particular case*”.

The application of common law principles on the application of prerogative orders posed a critical issue as these procedural rules were not codified and thus, difficult to apply. Thus, courts in Tanzania followed procedural rules established through Court decisions in England as it is evident in the case of *John Mwombeki Byombalirwa v. Regional Commissioner and Regional Police Commander*¹¹ where among other things the Court stated that “*In Tanzania no rules of procedure adopted by the Chief Justice as empowered by law. Courts follow common law rules of procedure developed by case laws in England*”.

Apart from the application of common law doctrine of equity and statutes of general application in England there other statutes that regulate the application of prerogative orders in Tanzania which

⁴ Cap 310 R.E 2019

⁵ Mwakilembe, A, *Prerogative Orders: Procedures & Case-law*, <https://independent.academia.edu/AngetileMwakilembe>

⁶ [1986] T.L.R 73

⁷ G.N. No. 324 of 2014

⁸ <https://lawbhoomi.com/administrative-action-meaning-classification-and-need-to-control/> accessed on 18th June 2024

⁹ (1970)

¹⁰ *Supra*

¹¹ *Supra*



are the Constitution of the United Republic of Tanzania¹², The Law Reform (Fatal Accident and Miscellaneous Provisions) Act¹³ and The Law Reform (Fatal Accident and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules¹⁴. These laws meant to regulate the application of prerogative orders in Tanzania.

➤ **The Constitution of the United Republic of Tanzania**

The Constitution is described as the mother law of the land on which all laws are required to abide with and to be in consistent with the Constitution where any law that contravene the Constitution is void in respect of its inconsistent, this is enshrined under Article 64(5) of the Constitution of the United Republic of Tanzania which meant to define supremacy of the Constitution.

The Constitution comprise of provisions that define rights and duties of individuals which are provided from Article 12 to 29 of the Constitution, more importantly the Constitution provide for the enforcement mechanism of rights and duties of which the room to enforce the rights are provided under Article 30(3) which gave an avenue to any person who is of the view that his or her rights are being violated or is likely to be violated by anyone to institute the proceeding before the High Court for redress. In relation to the application of prerogative orders the Constitution though no express provision but impliedly the provision of Article 13 (6) (a) meant to regulate the application of prerogative orders through judicial review of which it provide that when the rights of an individual is being determined by any organ or body the person has to be accorded with fair hearing, the right to appeal against the decision made or any other legal remedy appropriate which include prerogative orders.

➤ **The Law Reform (Fatal Accident and Miscellaneous Provisions) Act Cap 310 R.E 2019**

This is the basic and specific law in place regulating the application of prerogative orders in Tanzania where it covers the orders of Mandamus, Certiorari and Prohibition. It includes provisions that expressly guarantee the application of Prerogative orders in Tanzania which includes section 17 of the Law Reform (Fatal Accident and Miscellaneous Provision) Act¹⁵ which empowers the High Court to grant the Orders of mandamus or mandatory orders, prohibiting order and quashing orders to an applicant who successfully followed all procedural rules governing the application of prerogative orders.

Section 18 provide for the requirement to summon the Attorney General to be part of the proceedings in case the application is sought against the Government for the proper adjudication of the matter. Furthermore, the law empowers the Chief Justice to make rules prescribing the procedures that has to be adhered before the application of prerogative orders that are applied under section 17

of the Act. Thus, this law is vital in the application of prerogative orders as it is a specific legislation in Tanzania regulating the application of prerogative orders.

➤ **The Law Reform (Fatal Accident and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, GN. No 324**

This is a specific law which provide for procedural rules on the application of prerogative orders where Rule 5¹⁶ provides for the mandatory requirement of leave need to be granted by the Court applying for the orders sought to be applied. Also, the Rules provide that the application for leave must be made to the judge in chambers being accompanied by the statement on the names of the applicant and the relief sought together with the ground on which the relief is sought. Further, the Rules under Rule 5(4) give a mandatory requirement on which the application for leave must be determined and heard within the time limit of 14 days from the date of the application.

The Rules provide for the limitation of time for application of prerogative orders in Tanzania as it is stipulated under Rule 6 of the Law Reform (Fatal Accident and Miscellaneous provisions) (Judicial Review Procedure and Fees) Rules¹⁷ that the application for leave to apply for judicial review shall not be granted unless the application is made within six months after the date of the proceedings, act or omission to which the application for leave is so relates.

1.4. GROUNDS FOR APPLICATION FOR PREROGATIVE ORDERS

The grounds in place for the application of prerogative orders were established by court where the Court of Appeal of Tanzania in the case of *Sanai Murumbe & Another V. Muhere Chacha*¹⁸ established six grounds to be relied for the application of judicial review as the court stated that “*The High Court is entitled to investigate the proceedings of a lower court or tribunal or a public authority on any of the following grounds, apparent on the record. First, that the subordinate court or tribunal or public authority has taken into account matters which it ought not to have taken into account. Second, that the court or tribunal or public authority has not taken into account matters which it ought to have taken into account. Third, lack or excess of jurisdiction by the lower court. Fourth, that the conclusion arrived at is so unreasonable that no reasonable authority could ever come to it. Fifth, rules of natural justice have been violated. Sixth, illegality of procedure or decision.*”

Likewise, Lord Diplock in the landmark case in judicial review of *Council of Civil Service Union v Minister for the Civil Service*¹⁹ clarified the grounds to be relied upon for the application of judicial review where he stated that “*Judicial review has I think*

¹² *The Constitution of the United Republic of Tanzania, 1977*

¹³ *Cap 310 R.E 2019*

¹⁴ *GN.No 324 of 2014*

¹⁵ *Cap 310 R.E 2019*

¹⁶ *GN. No. 324, 2014*

¹⁷ *Rule 6 of GN. No 324 of 2024*

¹⁸ *[1990] TLR 54*

¹⁹ *[1985] AC 374*



developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the ground on which administrative action is subject to control by judicial review. The first ground I would call illegality, the second irrationality and the third procedural impropriety. This is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of proportionality.”

1.5. STAGES ON THE APPLICATION OF PREROGATIVE ORDERS

The application of prerogative orders is two staged procedure which include the leave stage and the main application. This was the decision of the court in the case of *Sunlodges (T) Ltd Vs. The Minister for Lands, Housing and Human Settlement Development & 3 Others*²⁰, where the court stated that an “application for judicial review is a two stages process”. The first stage is where an applicant has to seek and obtain leave to apply for judicial review. At leave stage the court does not require extensive arguments or submissions on an application for leave, and the court is not expected to go in the depth of the matter.

➤ Leave stage

As ascertained above the application for prerogative orders is of two staged procedures starting with the leave stage where the applicant for judicial review under this stage is required to seek the permission of the court before instituting the main application for prerogative orders. This procedural requirement was adopted from common law legal system and became the part of the legal system of Tanzania until to date. The requirements for leave is a mandatory stage provided under Rule 5(1) of the Rules²¹, where rule 5(1) (a-d) of the Rules provide for mandatory requirements in application for leave that the application must be made in chambers and accompanied with statement providing for names and description of the applicant, the relief sought, the grounds on which the relief is sought and affidavit verifying the facts relied on.

The law further, provide for time limit to apply for leave of the court for application of prerogative orders where this is provided for under rule 6 of the rule which the time limit is six months from the date of the impugned act or omission to which the application for leave relates.

The application for leave to file application for prerogative order must be heard within 14 days from the date the application is filed as it is provided for under rule 5 (4) of the Rules²². However, in practice courts have not managed to hear and determine application for leave within the required time of 14 days.

The law under section 18 of the Law Reform (Fatal Accident and Miscellaneous Provisions) Act²³ provide the mandatory

²⁰ Misc. Land Cause No. 6 of 2011 (unreported)

²¹ GN. No. 324 of 2014

²² Ibid

²³ Cap 310 R.E 2019

requirement that in case the leave for application for prerogative orders is sought in any civil matter against the Government, the court has to order the Attorney General be summoned to appear as a party to those proceedings.

Likewise, case law emphasized on the requirement of leave and the rationale behind leave of the court in an application for prerogative orders where in the case of *Hans Wolfgang Golcher v General Manager of Morogoro Canvas Mill Ltd*²⁴ where in the court held that in all applications for prerogative orders leave must be sought and obtained before the application for any prerogative order is made and determined as in practice leave to file an application for prerogative orders is not only a necessary step but also a mandatory step for proper application of prerogative orders in Tanzania towards control of administrative actions.

The rationale behind leave stage that is to give a chance to the court to determine whether there is sufficient interest in applying for the orders and whether there is an arguable point of law that need court intervention for administration of justice as it was upheld in the case of *M/S. Tanalec Limited V. The Honourable Attorney General & Another*²⁵, where it is stated that “The requirement of leave is intended to filter out applications which are groundless on early stage. The purpose is to prevent the time of the court being wasted by busy bodies with misguided or trivial complaints of administrative error and to remove uncertainty which the public authorities might be left”.

➤ Main application

Upon being granted leave to apply for prerogative orders, the next step will be to actually apply for Prerogative Orders which must be done within 14 days after leave has been granted. This is the main application of prerogative orders where soon after the leave for application of orders have been granted by the Court, the applicant has a chance to institute an application for prerogative orders where the law require that the a party is required to apply for the orders within 14 days from the date when the leave is granted. This is provided under rule 8 of the Law Reform (Fatal Accident and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules which provide that an application for judicial review must be made by chamber summons supported by affidavit and must be made within fourteen days from the date leave was granted.

The applicant of prerogative orders is required within seven days after filing the application to serve a copy of the application to the respondent together with all supporting documents as required by the law. Also, the respondent is entitled to demand be served with copies of affidavit accompanying the application for leave. And the applicant shall within three days before the hearing date file in court an affidavit stating the names, address of the place and date of service on all persons who have been served with chamber summons and the fact and reasons why the service has not been effected to a person ought to be served.

²⁴ [1987] TLR 78

²⁵ Misc. Civil Cause No. 9 of 2011



The law give a duty to a party to the proceeding to supply to other parties copies of all documents which he proposes to use at the hearing and no grounds shall be relied upon or any relief sought at the hearing of the application except the grounds and relief set out in the statement. Further, any evidence filed in reply to the application for an order for judicial review shall be by way of counter affidavit and a statement in reply and filed within fourteen days from the date of service.

The law under Rule 4 of the Law Reform (Fatal Accident and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules provide for a person who is eligible to apply for prerogative orders that any person whose interests have been or believes will be adversely affected by any act or omission may apply for judicial review, thus the an applicant for judicial review must have *locus standi* on the matter²⁶. Also, there are other conditions for the application of prerogative orders developed through case law taking example the case of *John Mwombeki Byombalirwa v the Regional Commissioner and Regional Police Commander* the judge stated conditions to be considered by the applicant before applying for prerogative orders including;

- a) The applicant must have demanded the performance and the respondent must have refused to perform
- b) The respondent as a public officer must have a public duty to perform imposed by statute or any other law
- c) The public duty should be of an imperative nature and not a discretionary one
- d) The applicant must have a sufficient interest in the matter he is applying for

Also, there should be no other appropriate remedy available to the applicant, This was emphasized by the Court in the case of *Hon. Halima James Mdee & 2 Others v Hon. Job Yustino Ndugai, The Speaker of the National Assembly of the United Republic of Tanzania & 2 Others*²⁷, where it was held correctly that the court cannot grant remedies sought under judicial review where the party applying for such remedies has not exhausted statutory remedy available. This notion is similar to that held by Maina, J. (as he then was) in *Hans Wolfgang Golcher v General Manager of Morogoro Canvas Mill Limited 1987*²⁸ where among other things it was held that prerogative orders cannot be granted where there is some other legal remedy available.

Although, these conditions are important to be considered by the applicant before he files an application for prerogative orders, there is no any express provision in specific legislations that regulate the application of prerogative orders in Tanzania that stipulate for the conditions to be adhered in an application for prerogative orders.

As we have seen above that failure of the applicant to demonstrate in the affidavit the above named conditions the reliefs of judicial review fail or rejected. Taking consideration of their effects in the

application for judicial review they ought to have be specifically spelt in the respective statutes not only to be followed by the judicial review applicants but to know them in advance.

1.6. CHALLENGES FACING THE APPLICATION OF PREROGATIVE ORDERS IN TANZANIA

It is realized that the application of prerogative orders in Tanzania faces numerous legal and practical challenges in administration of justice. The challenges identified have roots in the way the laws were made to govern the judicial system in the administration of justice. Also, some of the challenges emanating from the practical point of view of the laws governing the judicial system in doing its work.

➤ Fees for the Application

The application for prerogative orders is not free as it involves payment of filing fees provided by the law. The amount for application of orders differs from action to action depending on the action, the amount of fees are provided for in the First Schedule to the Rules. In case of an application for prerogative orders which are paid twice where the applicant is required to pay court fees in an application of leave to file an application for orders and in case the leave is granted within 14 days from the date leave was granted the applicant has to file the main application of which he has to pay another filing court fees. This economically is a discouraging factor for victims to file applications of prerogative orders and thus, likely to affect the administration of justice. If the applicant has no money to pay fees he may apply to the registrar of the High Court for a waiver of fees. But this procedure is not clear in the law as the law does not prescribe ways to make the application for a waiver of fees to the Registrar of the High court. Therefore, these requirements make the law and procedure for making applications of judicial review cumbersome, complex and difficult to follow.

➤ Time Taken

It has been observed that the one of procedural restraint that affect the application of prerogative orders in Tanzania is the time taken from determination of the leave for application of the orders where in practice it is evident that the court failed to manage the application of leave within 14 days as stipulated under rule 5(4) of the Law Reform Fatal Accident and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules²⁹, which provide that the application of leave must be heard and determined within 14 days from the application for leave is filed by the applicant.

Also, another issue that prolong time in the application of prerogative orders is the requirement to summon the Attorney General when the proceeding involve the government whose appearance makes the application inter-parties that requires the Attorney General to counter the application something which consumes another 14 days. Therefore, from this undertaking it is apparent that the time taken in the application of prerogative orders

²⁶ GN. No 324 of 2014

²⁷ Misc. Civil Application No. 27 of 2017 HC at Dodoma

²⁸ [1987] TLR 78

²⁹ GN. No 324 of 2014



in Tanzania affect the proper and effective administration of justice as the time is too long in determining leave of the court.

➤ Presence of ouster and finality clauses

Ouster clauses are the provisions enshrined in the law that limit the power of the court in an application of prerogative orders through judicial review and finality clauses declaring certain decisions as final and pose challenges to the administration of justice. Courts have tried to find ways to deal with such clauses through judicial interpretation. The ouster and finality clauses take away the jurisdiction of the court and finality of the matter without remedies in case parties are aggrieved by the decision. This is evident in the provisions in the Constitution of the United Republic of Tanzania including the provisions of Article 126(3)³⁰ providing that conciliatory decisions given by the Special Constitutional Court shall be final and no right of appeal to any forum, Article 7(2), Article 54(5) which provide that any given by the Cabinet to the President cannot be inquired into any court. This affects the court to administer justice as they are limited to executing their important task as they have been vested power to dispense justice.

➤ Overriding objectives

This is the principle adopted to ensure and facilitate just, expeditious, proportionate and affordable resolution of disputes which calls the court to do away with unnecessary technicalities that are likely to affect the administration of justice³¹. The intention of incorporating overriding objective principles in the Constitution of the United Republic of Tanzania under Article 107A (2) (e) requiring the court not to be bound with technicalities in dispensation of justice. Further, section 3B of the Civil Procedure Code provide for the objective of enshrining overriding objectives that is for the view of attaining just determination of proceedings and timely disposal of the proceedings at a cost affordable by respective parties.

In respect to the application of prerogative orders in administration of justice the whole process need not to be bound by technicalities, but as one of the aim of incorporating overriding objective in Tanzanian legal context is to ensure timely disposal of cases of which the application of leave for the application of prerogative orders required to heard and determined within 14 days including also when the Attorney General is required to be summoned which also take another 14 days of which in practice courts have not managed to determine the matter within the required time thus, affecting the administration of justice. Also, another hindrance in the application of overriding objective principle is that there are inconsistent applications of the overriding objective principle by the Court of Appeal of Tanzania through *Gaspar Peter v Mtwara Urban Water Supply Authority*³² and the case of *Mondorosi Village Council and 2 others v TBL and 4 Others*³³. This creates confusion

for the lower courts when it comes to the application of the principle. Thus, due to these inconsistent application of the principle may hinder the administration of justice through the application of the overriding objective principle

➤ The question of independence of the judiciary

The principle of independent of the judiciary is designed to ensure that the judicial branch should interpret the law and the Constitution free from the influence of other branches of government, the principle is a crucial principle for the fair administration of justice incorporated under Article 107B of the Constitution of the United Republic of Tanzania³⁴. In Tanzania, judicial independence is provided for under Article 107B of the Constitution which provide that the judiciary shall be independent and free from interference and that the courts shall be autonomous and no person or authority can interfere with legal proceedings.

However, issue of independence of the judiciary in Tanzania has been questioned in recent years relating to the administration of justice where the executive branch has been accused of exerting pressure on judges in politically sensitive cases, appointment procedures of judges has also allegedly become more politicized. The independence of the judiciary is affected by various factors including political pressure, historical context, institutional arrangements and financial incentives can affect the effective application of the principle of independence of the judiciary. Thus, in relation to the application of prerogative orders in Tanzania the judicial system need to be accorded with independence in exercise of its powers so as to administer justice and to let just be seen to be done and not to be tied up with legal technicalities that may affect the rights of the applicant.

1.7. SUGGESTED REFORMS ON THE APPLICATION OF PREROGATIVE ORDERS

➤ Amendments of the Laws

There is a need for amendment of some laws relating to the application of prerogative orders, this work propose to make amendment of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review and Fees) Rules, 2014, the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act. There is a need to include prerequisite conditions for the application and grant of prerogative orders in specific legislations that regulate the application of prerogative orders in Tanzania. As stated before, there is need to include a provision stating the need for the applicant to make sure that he has exhausted all statutory remedies before he files for judicial review or the provision stating that no application for judicial review is granted where the applicant has other available remedies on the matter. Other important rules are that which requires the applicant to do so in good faith and issues of public duty.

³⁰ The Constitution of the United Republic of Tanzania, 1977

³¹ Section 3A of the Civil Procedure Code, Cap 33 R.E 2019

³² Civil Appeal No. 35 of 2017 (Unreported)

³³ Civil Appeal No. 66 of 2017 (Unreported)

³⁴ Article 107B of The Constitution of the United Republic of Tanzania, 1977



➤ Monitoring implementation of orders

As observed from the findings that there is no a specific established mechanism to enforce the orders awarded by the Court to the applicant of judicial review as it lead to ineffective application of prerogative orders. It is the light time now in order to ensure that there is effective application of prerogative orders in controlling the abusive administrative actions of the government to have the mechanisms in place to monitor compliance with the directives of the court. By adopting the specific enforcing mechanism to enforce the orders of the Court will ensure that government authorities adhere to the orders granted by the court for the proper administration of justice.

➤ Streamlining the procedures on the application of prerogative orders

The Court of law being the guardian of people's rights and temple of justice in which everyone is free to access and attain justice, should not be tied up by technicalities in the way of approaching the Court where the procedures need not to be too complex of which may hamper to arrive at the peak of justice. The door of the Court should always be opened to all people where one think that his right is being violated by any person should be free to knock the door of the Court for any necessary remedy available. Both the constitution specifically require the Courts to desist from using legal technicalities to prevent the administration of justice when determining the matters brought before the Court. The Court should oversee the matter that goes to the root of the case in order to be free from being tied up by technicalities all restrictions put forward should always be meant to facilitate the administration of justice.

1.8. CONCLUSION

The application of the order of mandamus through judicial review prays a crucial role in the administration of justice and the protection of individual rights as are utilized in controlling the

abusive administrative actions and the whole process of invoking judicial review is connected directly with the principles governing justice system in the country towards protection of human rights. By adhering to the principles surrounding the administration of justice create the state of citizens confidence on the judicial organ that is mandated with the constitutional duty of dispensing justice and making sure that justice is seen to be done.

The application of prerogative orders in Tanzania as a mechanism in place to challenge the actions of the government faces critical challenges that hamper administration of justice system in the country since the judicial system which is entrusted with constitutional duty to administer justice encounters numerous legal and practical challenges where some challenges emanate on the practical point of view of the laws governing the application of prerogative orders in relation to the administration of judicial.

BIBLIOGRAPHY

1. CHIPETA B. D. (2009). *Administrative Law in Tanzania: A digest of cases*. Dar es Salaam, MkukinaNyota Publishers, Quality Plaza Building, Nyerere Road, Tanzania
2. MWAKILEMBE, A. *Prerogative Orders: Procedure and Case Law*. Dar-es-salaam Tanzania
3. PETER, Maina C. (1997). *Human Rights in Tanzania: Selected Cases and Materials*. Dar es Salaam, Tanzania, MkukinaNyota Publishers
4. RAMADHANI, A. (2009). *Judicial Review of Administrative Action as the Primary Vehicle for the Protection of Human Rights and the Rule of Law*. [A Paper Presented to the Southern African Chief Justices Conference], at Kasane, Botswana
5. Wade H.W.R. & Forsyth C.F. (2000). *Administrative Law*, 8th Ed, New York, Oxford University Press