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Streamlining Justice or Compromising Fairness? The Impact of the Overriding Objective in Tanzania.

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Abstract

The year 2018 witnessed the introduction of the new legal principle by the Government of the United Republic of Tanzania commonly referred to as “the overriding objective principle.” This was done through Written Laws (Miscellaneous Amendments) Act, 2018 (Act No. 8 of 2018). The aim of the legislative process was to promote substantive justice and to give statutory effect to the contents of Article 107A (2) (e) of the Constitution of the United Republic of Tanzania, 1977. Article 107A (2) (e) of the Constitution directs the courts of law: To dispense justice without being tied up with technicalities provisions, which may obstruct dispensation of justice. Therefore, strictly speaking, the new law was not creating anything new, but rather amplifying what the Constitution had already provided back in 2005 when that provision was entered into the mother law. However, since the enactment of this law, the principle of “overriding principle” has become a cause of many challenges in legal circles in the United Republic of Tanzania. the judiciary as the temple of justice has been in a great task of fighting against the legal technicalities that hinder attainment of substantive justice. This article deals with application, impact and challenges of the overriding objective principle in the administration of justice in Tanzania

INTRODUCTION

The paramount objective and traditional view of the modern civil justice regime until the present time has always been deep rooted in substantive justice, to get at the truth what happened, who said and did what and why. Until now all proposals to reform the system in many jurisdictions have been designed to further this objective by for example reducing the importance of technicalities and avoiding surprise.

The overriding objective famously known today as the oxygen rule is derived from the double *Os* in the phrase overriding objectives. Etymologically overriding objective is derived from two English words overriding and objective. The term overriding has been defined as taking precedence and it is synonymous to major, chief, main and prime. On the other hand, the word objective means what is to be achieved and it is synonymous to purpose, goal, aim and end.¹ It is worth noting that a broad understanding of the oxygen

rule can well be grasped by recourse to an interpretive approach rather than by seeking a precise meaning to the rule. The overriding objective is the principle from the rules of civil procedure the purpose of which is for the civil litigation and dispute resolution process to be fair, fast and inexpensive. It is a rule which sets the fabrics of effective case management requiring the court to make sure that as much as possible civil disputes are litigated fairly without delay at a proportionate and affordable cost.² The court is duty bound to give effect to this overriding objective whenever it is exercising its discretion or interpreting the meaning of any civil procedure rule. It should also carry in mind that rules of procedures are the hand maid for the attainment of justice and not obstacles to the attainment of substantive justice. the first part of this the article, presents the rationale of the overriding objective principle, while the third part presents the application of the overriding objective principle, the third part discusses the impact, while the fourth part treats the challenges and finally in the last part a recommendation of what must be done is

¹STANLEY, A.K, The Overriding Objective in Civil procedure, (2015), p., accessed via <https://www.academia.edu/10514493/-the-overriding-objective-in-civil-Procedure-Kenya>, on 25 September

2025

² Ibid.



given so as to have a healthier application of the overriding objective principle in the administration of justice in Tanzania.

THE RATIONALE OF THE OVERRIDING OBJECTIVE PRINCIPLE

The introduction of the overriding objective came to give a breather to the litigants over the overwhelming and longtime criticism of the court being seen as the court of technicalities and not as the temple of justice. As such the provision of Article 107A(2)(e) of the CURT becomes meaningful. This is a reason that the principle is sometimes referred to as the Oxygen principle as it came to add oxygen to matters that would otherwise collapse for minor and curable defects.

APPLICATION OF OVERRIDING OBJECTIVE PRINCIPLE IN TANZANIA

In October 2018 three weeks later after the date of effective amendment the overriding objective principle was for the first time put to test. The landmark case being the case of *Yakobo Magoiga Gichere v. Peninah Yusuph* (civil Appeal no. 55 of 2017) where the court of appeal at Mwanza was called upon to decide on what the Appellant had perceived to be an obvious contravention of Section 4 of the Ward tribunals Act, Cap. 206 which stipulates that; -

4(1) Every tribunal shall consist of; -

- a) Not less than 4 or more than 8 other members elected by the Ward Committee....
- b) A chairman of the Tribunal appointed by the appropriate authority from among the members elected under paragraph (a)

It was the contention by the appellant that on several occasions neither the chairman nor any person appointed to preside presided over the proceedings of the Tribunal. On that account, the Appellant called upon the Court of Appeal to quash the Ward Tribunal Proceeding for want of a composition jurisdiction. It was held by the Court of Appeal that, *with the advent of the principle of Overriding Objective brought by the Written Laws (Miscellaneous Amendments) (No.3) Act, 2018 [Act No. 8 of 2018], which now requires the Courts to deal with cases justly and to have regard to substantive justice; section 45 of the Land Disputes Courts Act (which prohibits reversing decision on account of errors which do not occasion failure of justice) should be given more prominence to cut back on over-reliance on procedural technicalities... failure to identify the member who presided over the proceedings of the Ward Tribunal when the chairman was absent did not occasion any failure of justice to the appellant.... The final order of the court is that this Appeal is dismissed in its entirety...*

In the case of *SGS Societe Generale de Surveillance SA and another v VIP Engineering & Marketing Ltd and another* (Civil Appeal NO. 124 OF 2017, the Court turned down the Appellants' invitation to invoke the overriding principle to dismiss one of the objections raised by the Respondent that had urged the Court to strike out the appeal for failure of the Registrar to endorse the Memorandum of Appeal with which the appeal had been instituted.

In upholding the PO, the Court stated that the amendment by Act No. 8 of 2018 was not meant to enable parties to circumvent the mandatory rules of the Court or to turn blind to the mandatory provision of the procedural law which go to the foundation of the case.

In another case, that is the case of *Gaspar Peter v. Mtwara Urban Water Supply Authority (MTUWASA)* (Civil Appeal No. 35 of 2017) at Mtwara, the application of the overriding objective to save an appeal was accepted. The respondent asked the Court to rely on the string of decision delivered before the coming into force of the amendment to strike out the appeal on this omission. It was stated by Court that the missing documents were not necessary for disposal of the legal issues raised in the appeal; hence the absence is excusable under the oxygen principle.

As opposed to the MTUWASA case above, in the case of *Mondorosi Village Council and 2 others v. TBL and 4 others in Civil Appeal No. 66 of 2017 (at Arusha)* the application of the oxygen principle failed. The appellant had asked the court to invoke the principle to bless the appeal whose record only missed a letter applying for copies of the proceedings in the subordinate courts. The court of appeal refused saying that such a letter was a necessary document to enable the court to determine whether the appeal is within the prescribed time.

The same position was maintained in *Martin Kumalija & 117 Others. V. Iron and Steel Ltd* (Civil Application No. 70/18 of 2018 at Dar es salaam), a case in which the procedural error committed by the respondent was the same as that committed by the appellant in Mondorosi case above. On the respondent's advocate's prayer to the court to apply the oxygen principle to save this appeal, the court remarked that, while this principle is a vehicle for attainment of a substantive justice, it will not help a party to circumvent the mandatory rules of the court...

Here it can be observed that in both previous appeal where a none – page document was missing, the court of Appeal in the interest of substantive justice, could have ordered the party to amend the record of appeal as it did in the *Civil Appeal no. 78 of 2018, Tanzania Revenue Authority v ARMZ*. In this tax case, the court ruled that while the Tribunal submission were missing in the records the Appellant be given time to amend its record of appeal and the appeal was not struck out. This tax case is a welcome decision in which the maximum flexibility has been applied by the court to allow parties to rectify omissions in records.

Generally, the introduced overriding objective principle is new and still under test. Most cases as discussed above do reflect the unpredictability of when the Court will allow the principle to be invoked and when it will not. It is also observed that some decisions are reflective on the spirit of the court to incorporate the oxygen principle while others are not.

IMPACT OF THE OVERRIDING OBJECTIVES IN THE ADMINISTRATION OF JUSTICE IN TANZANIA

The overriding objective for which courts are established in the United Republic of Tanzania is dispensation of justice.³ In achieving this, the courts are bound to apply many principles including dispensation of justice without being tied up with unduly technicalities.⁴ With the introduction of an overriding objective, the expected impact includes facilitating the just, expeditious, proportionate, and affordable resolution of disputes.⁵ In practice and based on the decision of Court of Appeal of Tanzania, this study has unleashed the following notable impact of overriding objectives in the administration of justice;

One; is increased relaxation in compliance with the procedure among litigants. The application of the oxygen principle, however, resulted in another challenge, where litigants seem to disregard court rules and procedures, seemingly comfortable in the knowledge that failure to adhere will not necessarily be fatal to their case.⁶ The relaxation is much influenced by the belief that the overriding objective is there to rescue any anomaly in the sense that the courts are inclined to ensure there is attainment of substantive justice without being tied up with unduly technicalities. As a result of this challenge, they prompted the reaction of CAT that the overriding objective principle is not a panacea to fix every kind of defect and omission by the parties in the Court.⁷

Two; reduced numbers of struck-out suits, appeals, and applications on minor legal anomalies. It is believed that there is an increased number of legal proceedings that are determined on merits compared to the past five years before the introduction and application of the overriding principle in 2018. It is now settled that only such an anomaly that offends clear and mandatory provisions of law that touch on the very foundation of the dispute will not be saved by the principle. In addition, courts should be more inclined to have cases heard and finalized on merits when the law permits such a course, in line with the overriding objective or oxygen principle.⁸ For example, in the case of Mohamed Suleiman Mohamed vs Amne Salum Mohamed & Others,⁹ the Court of Appeal applied an overriding objective to save the incompetent

appeal because of a defective decree and missing documents by striking out the appeal with the leave to refile a proper record.¹⁰

Three; reluctance of some judicial officers to accord the spirit of overriding objective. Most of those who fancy compliance of procedure even if they do not affect the substantive justice are influenced by the inherent restrictive interpretation of Article 107A (2) (e) of the CURT. The pressing need to ensure the cases and backlogs are completed within time also influences the continuation of entertainment of some legal technicalities among some of the judicial officers. The fact that the CURT requires the courts to dispense justice in accordance with the law impacts the application of the overriding objective in the sense that some judicial officers will stick to the four corners of the law even if such non-compliance with the law does not prejudice the interest of justice.

The reluctant judicial officers focus on the nature of the provision and not the impact of the provision on the administration of justice. For example, the law requires that where the case changes hands from one Judge to another, the reasons for reassignment and taking over must be stated.¹¹ But the question is whether such an omission may occasion injustice even if it is not the fault of a party to the case. For example, in the case of *Mariam Samburo vs Masoud Mohamed Joshi & Others*, CAT rejected invoking an overriding objective to proceed with an appeal in which there was reassignment and transfer of case but no reasons were advanced.¹² The Court deemed the failure to state reasons while transferring a case as a violation of the mandatory provision of law which goes to the foundation of the case and the same cannot be saved by overriding objective.

Generally, the study has revealed that the application of the overriding objective has impacted much on the administration of justice especially having many disputes being determined on merits compared to the situation before its introduction. The study has also found an increase in the speedy disposition of disputes as the courts are more now informed by the spirit of overriding objectives and the reasons for their existence. Furthermore, the study has found that the principle has not worked much on ensuring proportionate and affordable justice but much emphasis has been placed on ensuring that justice prevails in disregard of legal technicalities.

³ Blue Peal Hotel & Apartment vs Ubungo Plaza Limited (Civil Appeal 78 of 2017) [2021] TZCA 127 (19 April 2021) p. 13.

⁴ Article 107A (1), Constitution of the United Republic of Tanzania, of 1977

⁵ Section 4, 6, the Written Laws (Miscellaneous Amendments) (No.3) Act No. 8 of 2018.

⁶ <https://nairobi.lawmonthly.com/Limits-to-the-oxygen-principle/>, accessed on 19 September, 2025

⁷ See, Juma Busiya vs Zonal Manager, South Tanzania Postal Corporation (Civil Appeal 273 of 2020) [2021] TZCA 522 (27 September 2021) p. 9

⁸ Dar Express Co. Ltd vs Mathew Paulo Mbaruku (Civil Appeal 132 of 2021) [2023] TZCA 228 (2 May 2023), p.11

⁹ Mohamed Suleiman Mohamed vs Amne Salum Mohamed & Others (Civil Appeal 142 of 2017) [2018] TZCA 333 (13 December 2018)

¹⁰ Puma Energy Tanzania Ltd vs Diamond Trust Bank Tanzania Ltd (Civil Appeal No 54 of 2016) [2020] TZCA 1947 (27 May 2020) p.9

¹¹ Order XVIII Rule 10(1), the CPC, [Cap.33 R.E 2019].

¹² MARIAM Samburo vs Masoud Mohamed Joshi & Others (Civil Appeal 109 of 2016) [2019] TZCA 288 (11 September 2019), p. 8-9.



LEGAL CHALLENGES OF THE OVERRIDING OBJECTIVE PRINCIPLES IN THE ADMINISTRATION OF JUSTICE IN TANZANIA.

The introduction of the overriding objective in Tanzania in 2018 has impacted the administration of justice. However, there are notable challenges in the course of its application that the researcher has gathered which lead to inconsistencies. These include the following;

a. Uncertainty, inconsistency and unpredictability of the oxygen principle

When and where the courts will apply the oxygen principle in favor of which party is fundamentally unresolved question.¹³ What has been insisted by the court of Appeal on several occasion is that the overriding objective cannot be used to abrogate the mandatory provisions of the procedural law. This is because the court of appeal has not laid down a clear guide for a proper foundation and ascertainment of the benefits of its application has been not only recognized but also appreciated by the court of Appeal. Scholars argue that legal reforms need to be consistently applied, but without undue rigidity. This is because consistency and flexibility are important tenets for the effective application of the new rule and contradictory as well.¹⁴ It is necessary for a consistent approach to be adopted and maintained, unless there are good reasons to change the approach.

b. The absence of the promulgated rules by the Chief Justice as required by the law.

The Criminal Procedure Code and Appellate Jurisdiction Act have empowered the Chief Justice with the power of making rules to give effect to the provision of the overriding objectives as stated in their respective statutes. However, it is now five years since 2018 when the overriding objective was introduced, no rules guiding the application of the principle. As such the application of the overriding objective is considered as the game of chance as said by Nkombe.¹⁵ Having rules will smoothen the application of the principle compared to the present circumstances in which lower courts have to depend on the precedents by Court of Appeal of Tanzania which sometimes are not exhaustive and consistent.¹⁶

c. The absence of enabling provisions for making rules in the Criminal Procedure Aact.

Though the overriding objective principle came into existence in 2018, it was not part of the Criminal Procedure applicable before

the High Court of Tanzania and subordinate courts. This is because it was first introduced in the Criminal Procedure Code and the Appellate Jurisdiction Act in 2023 when it was introduced in the Criminal Procedure Act. Despite its late introduction in the Criminal Procedure Act, there is no provision guiding the promulgation of rules giving effect to the overriding objectives.¹⁷ This means that the implementation of the overriding objective under the Criminal Procedure Act will only be dependent on the existing precedents, unlike the Criminal Procedure Act and Appellate Jurisdiction Act which allows the Chief Justice to make rules for the better implementation of the principle.

d. Lack of a reflection of the decisions on matters saved by the overriding objective principle in the spirit of Article 107A(2)(e)

The, decisions of Court of Appeal of Tanzania do not reflect much on the spirit of Article 107A (2) (e) of the Constitution of the United Republic of Tanzania even though the overriding principle was introduced to give effect to that Article of the Constitution. Most of the decisions cited above in which the principle was applied only reflect on the purpose of the introduction of the overriding objective and disregard the fact that the principle has been in existence in the Constitution of the United Republic of Tanzania since 2005. CAT should ensure that in the course of the application of the principle, the provision of Article 107A(2)(e) of the Constitution of the United Republic of Tanzania is embedded. This is because the CURT is the mother of all laws in the United Republic of Tanzania, and any interpretation should be guided by it. The decisions of the CAT should draw the link between Article 107A(2)(e) of the CURT and the principle.

e. Restrictive decision given before the introduction of the overriding objective Principle

The Court of Appeal of Tanzania has not revisited the decisions given before the introduction of the overriding objectives into the procedural laws such as Appellate Jurisdiction Act, Civil Procedure Code, and Criminal Procedure Act. The researcher has found that there are still restrictive decisions of the Court of Appeal of Tanzania on the application of Article 107A(2)(e)¹⁸ which has not been addressed. The Court of Appeal of Tanzania needs to state whether the interpretation of Article 107A(2)(e) of the Constituion of the United Republic of Tanzania and emphasis on procedural compliance given Zuberi Mussa v. Shinyanga Town Council,¹⁹ China Henan International Cooperation Group v. Salvand K. A. Rwegasira²⁰ and Mohamed Enterprises (T) Limited v. Masoud Mohamed Nasser²¹ are still good law or not in the context of the application of the overriding principle in the procedural laws. This is important to help the CAT and litigants in proper use of the above decisions as precedents.

¹³ KYARUZI L., Litigatin And Key Cases; The Oxygen Rule- A kiss of Life for Tanzanian Litigants? January, 2020.Retrieved from <https://www.thecitizen.co.tz/oped1840568-5438122-forma-xhtml-h0dulez/index.tml> on 19 September, 2025

¹⁴ Judiciary of England and Wales, The English Experience of Access to Justice Reform, 2015, p. 6

¹⁵ NKOMBE, N.E, Legal Dilemma on the application of Overriding Objective in the Court of Appeal of Tanzania, EALR Vol.48 No. 2 December, 2021 p.203-204

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¹⁷ Ibid. p.891

¹⁸ Of the Constitution of the United Republic of Tanzania of 1977 as amended

¹⁹ (Civil Application 100 of 2004) 2007, TZCA 153

²⁰ Civil Reference No. 22/2005

²¹ Civil case No. 127 of 2009

f. *The Lack of articulation of the objective of overriding objective principle as stated in the Bill that resulted to the amendment.*

Court of Appeal of Tanzania has not articulated much on the objective stated in the Bill which resulted in the amendment of the Appellate Jurisdiction Act and Civil Procedure Code in weighing up the interest of justice and the prejudice caused by procedural non-compliance. The researcher has found that the Court of Appeal of Tanzania quoted by passing the statement of reasons and object of the Bill in the case of Mondorosi Village 31 Council & 2 Others v. Tanzania Breweries Ltd & 4 Others²². In absence of guidance on how the courts should weigh the interests of justices as opposed to the emphasis on procedural compliance will continue to leave litigants at the crossroads on the application of the principle. It is not enough to hold that the principle is not meant to be blindly applied in disregard of procedural rules which are couched on mandatory terms. More should be done to address the object and reasons with the view of having consistent application of the principle. In the absence of the rules, then the decisions of the Court of Appeal Tanzania should be elaborative enough to guide the lower courts on how they should balance the conflicting interests of justice and procedural compliance in the administration of justice.

g. *Unclear remedies upon a matter saved by the overriding objective*

Lack of clarity on the remedies that the Court will give when the matter is saved by the overriding objective. It is uncertain what remedy should the court give on the particular anomaly that does not go to the root of the matter. The researcher has found the Court of Appeal of Tanzania gives different remedies for the same anomaly in the context of application of overriding objective. For example, in the case of Commissioner General Tanzania Revenue Authority v. JSC Atomred metzoloto (ARMZ)²³ the Court of Appeal adjourned the hearing of the case on the ground of incomplete records so that the party could file supplementary records while in the case of Mondorosi Village Council & 2 Others v. Tanzania Breweries Ltd & 4 Others²⁴, where the record of appeal was missing letter copies of proceedings, judgment and decree though it is an important document, the Court of Appeal of Tanzania did not adjourn hearing so that the appellant file supplementary record to include that missing letter.²⁵

h. *Too much reliance of the principle application on legal technicalities rather than ensuring affordable administration of justice*

The application of the principle focuses much on curbing legal technicalities and speedy legal proceedings and forgets about

ensuring proportionate and affordable administration of justice. In the interview conducted with one Advocate, this study found that less has been done to address the affordability of justice in the context of the application of the overriding objective²⁶. In most cases, the question of proportionate and affordable justice has been left in the hands of administrators and it has not tasked the judicial mind in addressing the impediments in ensuring justice is proportionate and affordable.

Having noted this challenge, the Judiciary of Tanzania has strategized on how to address challenges that affect access to justice which include affordability. This includes improvement of the infrastructure both hard and soft concepts. Thus, in the last seven years, there has been increased construction of modern Court buildings fitted with the corresponding modern Information and Communication Technology facilities (ICT). But the question remains the affordability of ICT services to the common people.

RECOMMENDATION

The judiciary of Tanzania must ensure consistency in the application of the principle, the Chief Justice should implement the dictates of the Appellate Jurisdiction Act and Civil Procedure Code by promulgating rules guiding the application of overriding objectives in Tanzania. Rules will be a guiding tool for the courts and litigants on the effective and smooth application to impact timely justice. It is recommended that the rules that will be promulgated should draw inspiration from the challenges and good memories of the progressive decisions that the Court of Appeal Tanzania has given in the context of the application of the overriding objective.

It is also recommended that the parties and their advocates play their legal role of furthering the spirit for which the overriding objective was introduced. It is observed that the parties or their advocates use the principle as a shield against their negligence and not the sword in furtherance of timely and substantive justice. It is recommended that the application of the principle should elaborate much on the role that parties and their advocate should play in the furtherance of the objectives and reasons for which the principle was introduced.

It is further recommended that the rules that will be promulgated by the Chief Justice or any other body, should stress some principles that cater to access to justice in terms of costs to ensure there is proportionate and affordable justice, since the interpretation of the Court of Appeal of Tanzania on the overriding objectives has focused much on ensuring timely justice as among the intended objectives. However, the part that deals with proportionate and affordable justice has not much been addressed.

The Parliament of the United Republic of Tanzania should amend other Procedural Laws so as to give Effect to the Principle and Simplify the Procedural Rules. From the objects and reasons for introducing the overriding objective principle it is apparent that it

²² Civil Appeal No. 66 of 2017 (Unreported)

²³ Commissioner General Tanzania Revenue Authority v. JSC Atomredmetzoloto (ARMZ), Consolidated Civil Appeal No. 78 of 2018 (Unreported), at p. 10

²⁴ Civil Appeal No. 66 of 2017 (Unreported)

²⁵ HASSAN Kimera, (2021). The Oxygen's Life Breathing into Civil Litigation in Tanzanian Courts: A Sword or a Shield, 1JTLS2, 2020 The Tanzania Lawyer Journal.

²⁶ Interview with an anonymous Advocate conducted on 14 September, 2024 at the High Court of Mwanza (Sub Registry).



does not cover Criminal Procedure Act when the matter is before the District Court or Resident Magistrate Court of the High Court. Thus, the principle should be incorporated in other procedural laws in Tanzania as explained above. Honourable Chande in his address to the Bar on Law Day 2012, made a critical observation regarding application of procedural technicalities. He opined that efforts must be made to simplify and streamline court procedures to render them more user friendly and less technical. He noted that: "Procedural justice constitutes another imperative challenge to the system of administration of justice. It has a direct influence on justice delivery. Article 107A (1) (e) of the Constitution enjoins the Court to dispense justice without being tied up with undue procedural technicalities."²⁷

In order to establish the scope and application of the principle, it is appropriate for the Court of Appeal of Tanzania to direct itself properly to the objects and reasons for establishment of the principle as stated in the Bill.²⁸ This article over emphasized on the importance of objects and reasons of the Bill for obvious two reasons. Firstly, the traditional approach of dealing with the substantive justice as required by the Constitution proved futile and secondly it is through objects and reasons where the purpose of enacting a particular law can be identified and the existing mischief which a particular law intends to cure. It is supposed that this may be one of the starting points for proper understanding and interpretation of the principle by the Court of Appeal.

CONCLUSION

It is generally submitted that although the 2018 amendments to the civil procedure statutes marked another significant milestone in improving the civil justice in Tanzania until the present, the amendment have not shielded a desirable outcome. The amendment introduced the overriding objective principle which directs the courts to ensure that civil litigation is conducted expeditiously, fairly and at minimal cost. Despite the Hight Court's and Court of Appeal's message drawn from the number of decision that the principle may be applied or not applied, it is not crystal clear at what point the principle should be invoked as such either way although the courts have cognizance of a need for a proper foundation for the application of the principle until now, since no clear test for that purpose has been laid down by the Court of Appeal apart from maintaining that the principle can be involved only to cure trivial errors, not all procedural errors to the effect of abrogating the rules of procedure used in the mandatory terms.

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²⁷ Othman, M.C., (2012), Keynote Address of Chief Justice on the occasion of the Annual Conference of the Tanganyika Law Society, 17 February 2012, Arusha, Tanzania at p. 21.

²⁸ Bill Supplement to the Gazette of the United Republic of Tanzania, above note, 61 at. 17.

