



REPORT OF THE JUDICIARY OF TANZANIA ON HANDLING OF ELECTORAL DISPUTES AND THE DIGEST OF PETITIONS ARISING FROM THE 2015 ELECTION PETITIONS



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ON HANDLING OF ELECTORAL DISPUTES
AND THE DIGEST OF PETITIONS ARISING
FROM THE 2015 ELECTION PETITIONS

PREPARED BY THE JUDICIARY TANZANIA
WITH THE SUPPORT OF THE UNITED
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FOREWORD

The role and responsibility of the Court in the handling of electoral disputes depends on the efficiency of the judicial system, the proper functioning of the electoral system, and the legal framework for resolving electoral disputes, in particular. There must therefore exist effective legal institutions, good governance, respect for the rule of law and a conducive political environment in which credible elections are held. To complement these factors, it is significant that competent and efficient institutional arrangement exists to facilitate the effective management of elections. Moreover, an independent, credible, well-resourced, skilled, knowledgeable and competent judicial system is indispensable if it is to properly discharge its duty in the resolution of election disputes, timeously and effectively.

This Report aims primarily at providing Judicial Officers and other key stakeholders, lawyers inclusive, with a tool that will assist them in attaining the necessary skills, knowledge and proficiency that would give them a better understanding of legal issues, interpreting of electoral laws, the role of the Judiciary and methodologies deployed in the adjudication of electoral disputes.

I wish to congratulate the Judiciary Team that drafted this Report, which reveals a very crucial area of electoral dispute resolution. This crucial information will now be available to Judicial Officers, Officers of the National Electoral Commission, State Attorneys and legal practitioners and the broader public.

The Report is a product of a collaborative effort between the Judiciary and UNDP that started with the training of judicial officers even before the 2015 elections were held in October 2015. There is no doubt that the speed with which both the councilor and parliamentary election petitions were handled by the Courts was to a significant

extent the result of the training given to Judges, Magistrates and lawyers in the best practice of handling election petitions in the run-up to the 2015 General Elections.

The Report aims at contributing to the available legal resources, especially by providing all stakeholders with a handy tool to which they can make quick reference while handling election disputes in the future. More specifically, apart from equipping those concerned with a broad understanding of the electoral laws and the dispute resolution mechanism, the Report aims at:

- i. Setting out the achievements and challenges encountered by the Judiciary in handling Election petitions.
- ii. Setting out recommendations for improvements for future handling election petitions.

The Report comprises of eight parts: Part One is about election related lessons and advice from observers' Missions and Group. Part two is about the role of the court in pre-elections civil and criminal trials. Part three is about election petitions. Part four is about analysis and lessons from the grounds of election petitions. Part five is about matters and jurisprudence that arose during hearing of election petitions. Part six is about the Court of Appeal intervention. Part seven is revealing the challenges faced by the Court in handling Election Petitions. Part eight reveals recommendations and conclusion.

It is the Judiciary's expectations that the report would, to a significant extent, serve as a starting point towards the acquisition of vital knowledge in the subject area.

Mohamed Chande Othman
Chief Justice
Dar es Salaam, November, 2016

ACKNOWLEDGEMENT

This Report is the product of the efforts and contributions of many. We wish to thank most whole-heartedly all the Justices and Judges who in one way or another played a part in enabling the Judiciary to discharge its role in the adjudication of disputes that arose throughout the country's electoral process – from the very beginning up to the voting day, until the post-election period.

The financial and technical support of the United Nations Development Programme (UNDP), under the leadership of their Country Director, Ms. Awa Dabo, was crucial in the funding of training programmes attended by Judicial Officers and in the publication of this Report. That factor contributed to the success that saw the Judiciary achieve unprecedented disposal rates in the determination of electoral disputes that emerged from the 2015 General Elections: All petitions challenging councilor's elections results were determined by 31st March 2016 and 96% of all petitions in respect of parliamentary results had been disposed of by the High Court by 1st September 2016. This Report is a description of the role of the courts in handling the preliminary matters in the electoral petitions after the General election. The Report also contain a summary of the digest of cases that were filed in some of the Subordinate Courts as criminal matters but connected to matters of election and petitions for avoidance of election lodged and dealt at the level of Resident Magistrate Courts for councilors, High court for parliamentary election and the appeal and revision at the Court of Appeal level. We thank them and everyone who played a part in this success.

This project also benefitted immensely from the contribution of Judges in Charge, Judges, Registrars and Magistrates who attended a Validation Workshop at Arusha and discussed the electoral process, the role of the court and various challenges that emerged in their handling of election petitions. Their suggestions and recommendations, some of which are incorporated here, were invaluable and, we believe, would go a long way towards improving the future legal regime governing the handling and determination of election disputes in Tanzania.

PART ONE

ELECTION RELATED LESSONS AND ADVICE FROM OBSERVERS' MISSIONS AND GROUPS

1.0: Introduction

On 25th October 2015, general elections were held in Tanzania. This was the fifth multiparty general elections since 1995. The election was for the presidential seat, parliamentary and councilors' seat. Like the previous General Elections, the 2015 Election was closely observed by reputable election observation missions and groups from outside and inside Tanzania. The reports from these observations give the Judiciary of Tanzania as well as the National Electoral Commission, the opportunity to relate the electoral laws and practice pertaining in Tanzania, with the international and regional standards required for free and fair elections. The Observer Mission Reports have highlighted discussion points touching such diverse electoral stages as the newly introduced Biometric Voter Registration (BVR), nomination of candidates for Councilor and Parliamentary Elections, election campaigns, voting, counting of votes in polling stations, addition and tallying of voters' votes, right up to the declaration of the results and electoral dispute settlement.

Several reports were compiled by the prominent of election observer missions and groups. These reports include:

- (1) *The Report of the National Electoral Commission on the 2015 Presidential, Parliamentary and Councilors' Elections, 2016;*
- (2) *The Report of the Commonwealth Observer Group, Tanzania General Elections 25 October 2015;*
- (3) *European Union Election Observation Mission, United Republic Of Tanzania-Final Report General Elections 2015;*
- (4) *The Report of the SADC Electoral Observation Mission (SEOM) to the United Republic of Tanzania; and*
- (5) *Tanzania Election Monitoring Committee (TEMCO).*

1.1: Observation of new biometric voter registration system: Tanzania Election Monitoring Committee (TEMCO)

The Electoral Process in Tanzania comprises several steps which are all regulated by the National Elections Act. The salient steps in the electoral process are:¹

- i. Demarcation of Constituencies;
- ii. Registration of Voters/Update of the Permanent National Voters' Register (PNVR);
- iii. Nomination of Candidates; Election Campaign;
- iv. Voting;

¹ MR. EMMANUEL KAWISHE (STATE ATTORNEY IN THE NATIONAL ELECTORAL COMMISSION), The Electoral Process

- v. Counting of Votes;
- vi. Addition of Votes;
- vii. Declaration of Election Results; and
- viii. Nomination of Women Candidates for Women Special Seats.

Voter registration was subject of observation by TEMCO which was from February 23rd 2015 to August 4th, 2015 accredited by the NEC of Tanzania to observe the country's voter registration process.² In its interim report, TEMCO highlighted the new biometric voter registration system which the NEC was rolling out:

"For the first time in Tanzania Union elections, voter registration by way of updating the National Permanent Voter Register (NPVR) was carried out using the Biometric Voter Registration (BVR) technology instead of Optical Mark Recognition (OMR) system which was previously used in 2004 to create the National Permanent Voter Register."

The success of biometric voter registration was captured by the TEMCO Interim report:

*"TEMCO Election Observation Team also noted that **NEC has registered a total of 23,782,558 (99.6 percent) eligible voters out of the projected 23,913,184.** It seems plausible to point out that a significant number of potentially eligible voters have been registered."* [Emphasis added].

1.2: Lessons from the National Electoral Commission of Tanzania (NEC) Report

It has always been the practice of the NEC to compile a report on how it managed completed General Elections. In paragraph 2.3.1 dealing with the Electoral Laws NEC has come up with concrete recommendations on amendments and changes in laws electoral laws, all designed to improve the 2020 General Elections. NEC has proposed the following changes in the electoral laws:

- (i) Election Day should not fall on any day of worship and should be officially declared as a Public Holiday;
- (ii) Repeal of the provision which allows house to house campaigning;³
- (iii) Political Parties should appoint Agents from their respective Wards or Constituencies;
- (iv) Press should be allowed into Polling Stations;
- (v) Setting a specific time for declaring Election Results;
- (vi) A person who is capable of depositing security for costs in an Election Petition should be allowed to do so without an application to the Court;
- (vii) Striking out the Election Petitions where the Petitioner fails to pay security for costs;
- (viii) Extension of time for the hearing of the Parliamentary Election Petitions in the High Court; and

² See the Interim Statement by TEMCO Election Observation Team, Dar es Salaam, August 15, 2015.

³ Section 51 (3) of the National Elections Act provides:

(3) A candidate or his agent or a political party acting with the approval or consent of the candidate may convene or address any public meeting in the constituency held pursuant to subsection (2), for the purpose of furthering the candidate's election or undertake any public or door to door canvassing.

- (ix) To amend the provision which requires the Commission to postpone Elections in the event of death of the Running Mate.

1.3: Lessons from the European Union Election Observation Report

Despite its brief stay in Tanzania, the **European Union Election Observation Mission** carried out a detailed study of the electoral laws of Tanzania, highlighted areas of its concern and came up with actionable recommendations on areas requiring urgent electoral reforms. The EU Mission has reminded us all that free and fair elections on large scale depends on the extent the several electoral offences are expeditiously detected, investigated and prosecuted in the magistrates' courts. Illustrating its detailed study of electoral offences and the need for preparedness by the Police Force in Tanzania, the Prevention and Combating of Corruption Bureau and the office of the Director of Public Prosecutions, the report highlighted the following:

*"...Electoral **offences** are set out in chapter VI of the National Elections Act for the Union elections and in chapter VII of the Elections Act no. 11 related to the elections in Zanzibar. Offences include **double registration, false statements regarding qualification for registration or nomination, misconduct of election officials, forging the register of voters or voter cards, illegal possession of ballot papers, violation of the secrecy of the vote, bribery, impersonation, and undue influence over voters**, among others. Penalties include a fine and/or up to five years imprisonment.*

*Due to their criminal nature, **electoral offences are dealt with through the normal judicial channels, the district courts being the first instance court whose rulings may be appealed to the High Court.** More than 40 cases related to electoral offences were filed with the Union district courts before and immediately after the elections. These referred mainly to allegations of abusive language, unlawful procession, double registration, and the destruction of campaign material by CCM and CHADEMA candidates and supporters.*

*At the time of writing this report, **there were also over 40 ongoing police investigations into incidents that occurred before and after the elections**, some of which resulted in the arrests of party supporters (mainly CHADEMA-affiliated) and CHADEMA candidates, who were subsequently released on bail. Although during the campaign period most political parties generally commended the police for its performance during campaign events, in some areas, opposition parties voiced concerns in response to the arrest and detention of their candidates and supporters for public order offences."* [Emphasis added].

The EU Mission found that the National Elections Act has internal mechanisms which can potentially resolve election-related disputes well before the filing of election petitions. The EU Observer Mission had in mind the Ethical Committees and appeal mechanisms within the NEC:

"B. The Ethics Committees

The Ethics Committees, stipulated in the Code of Conduct for Political Parties and competent to supervise the implementation of and respect for the code provisions, are established at ward, constituency and national level. The Appeal Committee is responsible for hearing appeals from the National Ethics Committee. The committees comprised NEC officials, representatives from government and political parties. A complaint could be filed at any of these levels and, if still dissatisfied with the outcome,

the matter could be taken to court. Three complaints were filed with the National Ethics Committee over the destruction of campaign material, violation of the campaign timeframe and pleading votes on the grounds of religion. All three were settled and the decisions were adhered to by the political parties."

EU observers reported that around 25 complaints were submitted to the Ethics Committees throughout the country, mainly on issues such as the destruction of campaign material, exceeding campaign hours and the use of abusive language during campaign events. Most of them were settled and the rest referred to the competent bodies, namely the NEC, the Prevention and Combating of Corruption Bureau (PCCB) and the police.

In most constituencies, the Ethics Committees were established and perceived by the political parties as an effective mechanism to resolve minor disputes. Nevertheless, their effectiveness as an *ad hoc* dispute resolution mechanism was often questioned and, in some parts of the country, campaign related disputes were either settled between the involved parties and electoral officials without the need for these committees to be established, or through the mediation of other authorities such as district commissioners. The EU also noted the existence complaints and appeals mechanisms well before even election petitions are filed:

"C. Complaints and Appeals

The National Electoral Commission (NEC) and the Zanzibar Electoral Commission (ZEC) are responsible for resolving complaints and appeals at all levels of the electoral administration in relation to civil matters.

Although both Constitutions and laws provide that the decisions of both electoral commissions are considered final, the two Constitutions also provide for unlimited jurisdiction of the High Courts and the possibility for judicial review over the legality of any decision made by public authorities, including the election management bodies. This procedure has, however, never been used, so the courts have not been able to deliver a legal interpretation that could have enhanced certainty in relation to the possibility of challenging NEC and ZEC's decisions....

...Around 25 complaints were submitted to the NEC mainly regarding nomination, malpractices during voter registration and an alleged biased attitude of returning officers. On Election Day, very few complaints were submitted at the polling stations observed by the EU EOM and these were handled according to the regulations. Two complaints were also reported after the elections on tabulation: one complaint was submitted by a CCM candidate on alleged manipulation of results in Bunda Urban, with a request not to announce the results before a recount – an election petition was filed challenging these results; and one by a CHADEMA candidate, TADEA agent and AFP agent alleging irregularities during tabulation in Musoma Urban." [Emphasis added]

The EU Mission also expressed its deep concern why the electoral laws of Tanzania do not live up to international principles for democratic elections by failing to allow the election of the President to be challenged in courts of law:

"D. Election Petitions

The legal frameworks of both the Union and Zanzibar do not provide for the possibility to challenge presidential election results, contrary to international principles for democratic elections entrenched in the International Covenant on Civil and Political Rights (ICCPR). Only the validity of the National Assembly and House of Representatives' elections may be challenged by way of petition presented before the Union or Zanzibar High Court, respectively, and in the case of petitions regarding local councillors' elections, before the magistrate courts. Election petitions challenging the results of the National Assembly and the House of Representatives must be presented within 30 and 14 days, respectively, after the official declaration of results. The High Courts have to decide on the matter within 12 months for the Union parliamentary elections and within two years for the Zanzibar House of Representatives elections. The timeframe of two years for the Zanzibar High Court to deliver a judgment on an election petition is lengthy in comparison to the 12-month period in the Union. [Emphasis added].

1.4: Commonwealth Observation Report

The Group's terms of reference show that the Commonwealth Secretary-General at the invitation of the Ministry of Foreign Affairs and International Cooperation of the United Republic of Tanzania formed the observation group. The Group was given the task of observing:

"... the relevant aspects of the organization and conduct of the General Elections that are scheduled to take place on 25 October 2015, in accordance with the laws of Tanzania. ...

...to consider the various factors impinging on the credibility of the electoral process as a whole. It will determine in its own judgment whether the elections have been conducted according to the standards for democratic elections to which Tanzania has committed itself, with reference to national election-related legislation and relevant regional, Commonwealth and other international commitments." [Emphasis added].

The Chairperson of the Commonwealth Observer Group said the following with regard to the conduct of the 25 October 2015 General Election:

"Our overall assessment of the voting and counting process at the polling stations is that it was conducted in accordance with the laws of the United Republic of Tanzania, in a credible, peaceful and orderly manner. The electoral environment on Election Day was conducive to the free exercise of the people's franchise and basic freedoms were respected." – H.E. Dr. Goodluck Ebele Jonathan, Chairperson in a letter to the Secretary-General of the Commonwealth submitting the report.

Despite the positive assessment of the elections, the Commonwealth Group made important observations on the way Tanzania failed to implement Election Expenses Act⁴ that was designed to regulate moneys used during the electoral process.

The Election Expenses Act, Cap. 278 (R.E. 2015) is one of the most important electoral law which was unfortunately not subjected to judicial interpretation by the election petition

⁴ Cap. 278 Revised Edition 2015.

courts. *The Report of the Commonwealth Observer Group, Tanzania General Elections 25 October 2015* has very correctly observed that this Act was enacted:

"...to provide for the funding of nomination process, election campaigns and elections with a view to controlling the use of funds and prohibitive practices in the nomination process, election campaigns and elections; to make provisions for allocation, management and accountability of funds....

.....the Registrar of Political Parties is responsible for supervision and administration of election expenses. The Registrar is empowered to enter into any premises to examine the books of a political party or candidate, after serving prior notice of 5 days to the entity to be examined.

..... [it] provides for the regulation of maximum spending and fundraising. Disclosures of sources of donations are required for amounts exceeding one million Tanzanian shillings for individual donors or two million Tanzanian shillings for donor organisations. Each political party is required to open a special election expenses account for the purposes of depositing donations and paying expenses..."

The Commonwealth Observer Group studied the election expenses law and correctly saw the important role which the Registrar of Political Parties was expected to play. The Registrar of Political Parties is responsible for the supervision and administration of election expenses under the Election Expenses Act. Where the Registrar finds an election expenses irregularity, the Registrar informs the Director of Elections. The Group also found out that in case the Registrar of Political Parties and the Director of Elections are expected to refer the violations of Election Expenses Act to the Prevention of Crime and Corruption Bureau, for further investigations and prosecution in courts of law.

The Report of the National Electoral Commission on the 2015 Presidential, Parliamentary and Councillors' Elections that was published in 2016 shows that even the National Electoral Commission did not receive complaints arising from election expenses:

"4.7.1 The Election Expenses Act No. 6 of 2010

.....According to Section 20 (1)-(4) of the Elections Expenses Act No. 6 of 2010, the Registrar of Political Parties may lodge an objection to the Commission against any Candidate or Political Party which violated the law. However, during the 2015 General Election, the Commission did not receive any objection from the Registrar of Political Parties."

Because the provisions of the Election Expenses Act did not feature in the election petitions that followed the October 2015 General Elections, courts were not availed the opportunity to create electoral jurisprudence because election petition courts did not have the chance to gauge the efficacy of this law as a regulator of electoral financing.

PART TWO

THE ROLE OF THE COURT IN PRE-ELECTIONS CIVIL AND CRIMINAL TRIALS

2.0: Overview

Courts in Tanzania play important part in pre- and post-election disputes resolution. Electoral disputes which attract the role of the courts, are not limited to election petitions which are filed after the declaration of results. Electoral disputes may arise throughout any of the electoral processes. These electoral processes which can give rise to disputes range from— the demarcation of Constituency and Ward Boundaries; registration of voters; updating of permanent voters' registers, nomination of candidates by the National Electoral Commission, election campaigns, voting in polling stations, counting of votes, addition/tallying of votes under the supervision of the Returning Officers, right up to the declaration of the results by the Returning Officers.

Disputes arising from the above electoral stages, may be handled by the National Electoral Commission, or by various Ethics Committees, or even by the Magistrates Courts, High Court and the Court of Appeal. Disputes that are taken to courts may be criminal in nature of various categories of electoral offences: like undue influence (s. 99), false publication of withdrawal (s. 91A), corrupt inducement of withdrawal (s. 91), and bribery and treating (s. 94).

The electoral disputes may also take the form of civil disputes, for example seeking the interpretation of the provisions of the National Elections Act, or seeking declaratory orders on the actions of officers of the Commission. The determination of civil disputes and the efficacy of the investigation and prosecution of electoral offences is an integral part of a free and fair election. Invariably, the prosecution of electoral offences committed during voter registration, nominations and during election campaigns should be investigated and prosecuted well before the Election Day. Similarly, the electoral offences have the potential to create electoral jurisprudence.

2.1: CIVIL TRIAL

One example of an election-related dispute which caught the attention of the courts related to the Directive from the Commission that voters had to stay away from polling stations after voting. The Directive specified that voters should not remain within the distance of 200 metres from where the polling or tallying of votes was taking place. This Directive was challenged in the High Court of Tanzania which was called upon to determine the validity of this Directive. The concerned voters filed the MISCELLANEOUS CIVIL CAUSE NO 37 OF 2015 (popularly 200 metres case) in the High Court of Tanzania, Dar es Salaam Main Registry, **Amy P. Kibatata v. The Attorney General, the Director of Elections and National Electoral Commission, Miscellaneous Civil Cause No. 37 of 2015 (FULL BENCH, HIGH**

COURT). Specifically, this case sought the interpretation of section 104(1) of the National Election Act, Cap 343 R.E 2015.

2.1.1: Expeditious Hearing of an election-related matter

DISCUSSED IN: **Amy P. Kibatala v. The Attorney General, the Director of Elections and National Electoral Commission**, Miscellaneous Civil Cause No. 37 of 2015 (FULL BENCH, HIGH COURT):

- Due to the urgency, sensitivity and public interest involved, the Respondents were ordered to file their replies and counter affidavits within a period of one day of service.

2.1.2: The Effect of Directives from the Electoral Commission

DISCUSSED IN: **Amy P. Kibatala v. The Attorney General, the Director of Elections and National Electoral Commission**, Miscellaneous Civil Cause No. 37 of 2015 (FULL BENCH, HIGH COURT):

- Acting under S. 104 (1) of the Act, the Director of Elections issued the Directive on 9th October, 2015 ahead of the General Elections which was scheduled to take place on 25th October 2015. The directive reminded the voters and the public at large several acts and conduct prohibited by law relating to smooth conduct of the elections. Among these is the prohibition to any unauthorized person from staying anywhere near the polling stations as well as places where tallying of votes will be conducted during and immediately after the voting on 25th October 2015.
- Mr. Freeman Mbowe, National Chairman of Chama Cha Demokrasia na Maendeleo, ("CHADEMA") instructed his supporters to stay beyond 200 metres from the polling stations to "closely monitor" and protect their votes after the voting exercise. It was contended that section 104 (1) of the National Elections Act allows people to stay beyond 200 metres from the polling stations.
- The Petitioner alleged constitutional violations and premised her complaints on Articles 5 (1), 18 (1), 21 (2) and 29 (2) of the Constitution asking the High Court to give a proper interpretation on the import meaning and effect of the provisions of section 104 (1) which the petitioner believed permitted the voters' and as interested persons to stay and monitor the electoral process at a distance of 200 metres away from polling stations.

2.1.3: New Issues cropping up during the Submissions by Counsel

DISCUSSED IN: **Amy P. Kibatala v. The Attorney General, the Director of Elections and National Electoral Commission**, Miscellaneous Civil Cause No. 37 of 2015 (FULL BENCH, HIGH COURT):

Locus Standi Under the Basic Rights and Duties Enforcement Act, Cap 3 R.E 2002

During the course of her submissions, the Learned Deputy Attorney General asked the High Court to hold that in so far as the Petitioner had not established in what way her constitutional rights had been infringed by the directives and prohibitions, the petition did not qualify to be entertained under the Basic Rights and Duties Enforcement Act, Cap 3. R.E. 2002.

Instead, Deputy Attorney General submitted, to the extent the court was being invited to make an interpretation of S.104 (1) of the Act, the appropriate course

would have been to prefer the application under S. 2 (3) of the Judicature and Application of Laws Act [Cap. 358 R.E. 2002] and for that matter the court was not properly moved to exercise its jurisdiction.

The High Court agreed with Mr. Peter Kibatata, learned Advocate for the applicant:

"...that S. 2 (3) of [Cap 358] gives general powers to the High Court to exercise its jurisdiction, it does not specifically state that a petition like the instant one ought to be preferred under that provision. Accordingly, in the absence of any specific provision governing applications for interpretation of statutes, we are unable to say that filing the petition under the provisions specified in the originating summons was wrong so as to render the same incompetent and liable to be struck out on the authorities cited to us. Accordingly, we reject the invitation and hold that the petition is, as filed properly before the Court."

[B] Effect of ouster of Jurisdiction of courts by Article 74 (12) of the Constitution:

"(12) No court shall have power to inquire into anything done by the Electoral Commission in the discharge of its functions in accordance with the provisions of this Constitution."

The crux of the matter before the court does not fall under the matters whose examination falls within the matters whose examination has been ousted by article 74(12).

2.1.4: Interested Voters' Right to be within 200 metres of a Polling Station

DISCUSSED IN: **Amy P. Kibatata v. The Attorney General, the Director of Elections and National Electoral Commission**, Miscellaneous Civil Cause No. 37 of 2015 (FULL BENCH, HIGH COURT:

- Amy P. Kibatata went to the High Court of Tanzania at Dar es Salaam to seek two reliefs. Firstly, the interpretation of section 104 (1) of the National Elections Act, [Cap 343 R.E. 2002]. Secondly, the applicant sought a declaration that voters and/or interested voters have a right to stay orderly beyond a distance of 200 metres from where voting/tallying is taking place without breaking the law.

2.1.5: Meetings on Election Day or within any building where voting in an election is in progress

DISCUSSED IN: **Amy P. Kibatata v. The Attorney General, the Director of Elections and National Electoral Commission**, Miscellaneous Civil Cause No. 37 of 2015 (FULL BENCH, HIGH COURT:

104 (1) No person shall hold a meeting on election day or within any building where voting in an election is in progress/ or at any place within the radius of two hundred metres of such building wear or display any card photograph/favour, or other emblem indicating support for a particular candidate in the election.

(2) Any person acting in contravention of this section commits an offence and shall be liable on conviction to a fine of not less than fifty thousand shillings and not exceeding one hundred thousand shillings.

[National Elections Act, Cap. 343]

It is noteworthy that s 104 of the Act falls under Part II of the Act dedicated to *other election offences* is a penal provision requiring strict interpretation.

Although s. 104 is a penal provision, the High Court does not think that, that principle is necessarily applicable wholesale in the petition because the petition court was not sitting as a court of first instance in a criminal case, or in an appellate jurisdiction. All what the petition court was called upon to do is to find out whether a person who, (to use the Petitioner's language) is found exercising 'his/her right' sitting 200 metres from the' polling station election process will have committed any offence punishable pursuant to S. 104 (1) (2) of the Act. In addressing the issue, the High Court sought the guidance of the golden rule of construction of statute, to the effect that words are to be construed by reference to their natural and ordinary meaning.

The correct interpretation of s 104 (1) of the Act is that it prohibits meetings during the Election Day regardless of the place.

The High Court rejected the contentions that (a)-the prohibition of political meetings on election day is limited within the radius of 200 metres from the polling station and (b) - prohibition was limited to meetings envisaged under s 51 of the Act. The High Court could not see any logic nor common sense in bringing into play the provisions of s 51 of the Act to define a meeting envisaged by the legislature in s104 (1) of the Act. The legislature's intention was not to limit the definition of meetings to campaign meetings as submitted by the petitioner's learned counsel for had it been so, the legislature would have said so in the most unequivocal terms in s 104 (1) of the Act.

"...we hold that the proper interpretation of s 104 (1) of the Act is that the section prohibits any meeting in an election day regardless of the distance. On the same vein we endorse the interpretation given by the learned Deputy Attorney General that reference to the radius of 200 metres is limited to wearing or displaying any card photograph, favour or other emblem indicating support for a particular candidate in the election."

"...[section 104 (1)] being a penal section, we conclude that, it prohibits the following acts by any person; (a) holding a meeting in an election day, (b) wearing or displaying any card photograph, favour, or other emblem within any building where voting in an election is in progress and (c) wearing or displaying any card photograph, favour, or other emblem indicating support for a particular in the election at any place within the radius of 200 metres."

As to what rights of voters/interested persons have, to stay at a distance beyond the radius of 200 metres from a polling station or where tallying of votes is taking place: ... *"We have already held that s. 104 (1) of the Act prohibits the holding of meetings during the Election Day. In our view and in the light of the definition provided by the Petitioner's Advocate such a gathering is a meeting which s 104 (1) of the Act prohibits and punishable under s 104 (2) of the Act.... S. 72 of the Act. Section 72 (1) of the Act lists down persons who are permitted to be present at a voting/polling station whereas s 72 (2) prohibits people other than those expressly mentioned in s 72 (1) within the vicinity of the place where Votes are being counted... it is plain that in its wisdom, the parliament did not intend to permit presence of persons in the neighbourhood or surrounding area of a place where counting of votes is taking*

place other than those mentioned in s 72 (1) of the Act. Had the legislature intended to prohibit presence of unauthorized persons beyond a certain radius only, it would have said so in the most express language and it is for this reason we feel bound to endorse the submission made by the learned Deputy Attorney General to the effect that the word "vicinity" embraces a more extended space than that line contiguous to the place in question.... we are unable to go along with the Petitioner's learned counsel that s 72 (2) has to be interpreted in relation to a radius of 200 metres so as to permit his client to be present beyond that distance closely monitoring the electoral process. With respect, there is express prohibition of any unauthorized persons of whatever description including those who intend to protect their votes."

No need for voters to remain behind to "protect the votes": "...the sanctity of counting votes is guaranteed by s 72 (1) of the Act with the presence polling agents without the need of presence of other people in the vicinity monitoring the electoral process or protecting their votes."

Purpose of sections 104 (1) and 72 (2): "... the purpose of sections 104 (1) and 72 (2) of the said Act is to ensure that there is a free, fair and peaceful election at all stages, that is to say voting, counting, tallying and declaration of results."

2.2: CRIMINAL TRIAL

Before and after the 25th October 2015 General Election a number of accused persons were charged and convicted and others were acquitted of electoral offences as revealed below.

2.2.1. Double registration to vote (Electoral Offence)

DISCUSSED IN: Republic v Yoram Mgawe, Criminal Case No 131/2015, The Resident Magistrate's Court of Katavi at Mpanda, [Odira Amworo - RM]

He first registered as a voter at Mtakuja Primary School and was issued with Card No. T1002-4675-933-7. He later registered at Kaulolo Village Executive Office and was issued with Card No. T1002-5406-3805.

- Accused pleaded guilty and admitted all the facts as narrated by the prosecution
- Convicted on own plea of guilty.
- Sentenced to pay a fine of Tshs. 100,000/=
- NB: Provisions under which the accused was charged, convicted and sentenced were not mentioned.

2.2.2. Campaigning in refugee settlements, whether prohibited

DISCUSSED IN: Republic v Lawrence Masha and 7 Others, Criminal Case No 159/2015, The Resident Magistrate's Court of Katavi AT MPANDA, [C.M. TENGWA- RM]

- The Accused persons were arrested whilst in Katumba Refugee Camp. They were charged with entering a designated area without permission contrary to section 20 (1) and (3) of the Refugees Act, Cap. 137 R.E. 2002.
- The Returning Officer for Nsimbo Constituency tendered an Exhibit of campaign schedules showing that political parties were allowed to campaign at the settlement without special permits.
- It was argued that any person entering the settlement in pursuance of the schedule of campaigns committed no offence.

- **COURT:** Accused persons found not guilty and are acquitted under section 235 (1) of the Criminal Procedure Act, Cap. 20.

2.2.3. Voter Double registration (Electoral Offence)

DISCUSSED IN: **Republic v. Amidu Mpogole, Criminal Case No. 164 of 2015, DISTRICT COURT OF MUFINDI AT MAFINGA**

- The accused person was charged with the offence of registration in more than one polling station in two different dates. On April, 2015 at Ikangamwani he registered and obtained card number T.1001 – 0718 988-7. He again went to another registration office and registered without giving out prior notice that he has already been registered. It was during the verification exercise on 13th October 2015 when he was arrested at Malangali and sent to police Mafinga where he recorded a cautioned statement admitting double registration. He was on 15/10/2015, sent to Court where he admitted all the facts against him as true and did not object when his voter registration card was tendered and marked as prosecution exhibit No.1. He pleaded guilty.
- On 16/10/2015 L. Ndelwa – RM convicted him on his own plea of guilty.
- Sentence: The Court sentenced the accused person to pay fine of Tshs.50, 000/= in default to serve six (6) months in prison.

2.2.4 Multiple Voter Registration (Electoral Offence)

DISCUSSED IN: **Republic v. Deus S/O Mtimagulake @ Silinu, CRIMINAL CASE NO. 171 OF 2015, DISTRICT COURT OF MUFINDI AT MAFINGA (V. M. Nongwa – SRM)**

- Registration in more than one polling station is an offence under section 88 (1) and (2) of the National Election Act, Cap 343 R.E 2015.
- Accused person was arrested on 25/10/2015 charged and convicted and sentenced on 28/10/2015.
- When he was arrested he was found with Registration Card No. T.1001 -0710-351 – 6. When his house was searched, the police found another voter registration card in his name, No. T- 1001- 5197 – 900 – 3.
- When the Charge was read over and explained to accused person, he admitted claiming that he wanted to hold two voting cards, one as a spare card in case the other is lost. He did not know double registration is an offence: The accused stated *“Ni kweli nilijiandikisha mara mbili, nilitaka kikipotea kitambulisho kimoja basi nibakie na kingine, ni mara yangu ya kwanza kujiandikisha sikujua kabisa kama kujiandikisha ni mara moja sitarudia tena nimekosa na nimejifunza.*
- Accused person was convicted and sentenced to conditional discharged of Twelve (12) Months.

2.2.5 Voter Registered Twice (Electoral Offence)

DISCUSSED IN: **Republic v. Warda D/O Magehema, CRIMINAL CASE NO. 34 OF 2015, COURT OF RESIDENT MAGISTRATE OF NJOMBE AT NJOMBE (J.P. KAPOKOLO, RM).**

- Accused was charged with unlawful double registration of voter's card contrary to Section 88(1) (d) of the National Elections Act [Cap 343 R.E. 2015].
- In April 2015, the accused went to the office of Mtaa Executive Officer for Matalawe where she was successfully registered and issued with the voter's registration card with No. T 100023588. In the same month, she also went to a voter registration centre

at Idundilanga Mpechi Secondary School where she for a second time registered as a voter and issued with card No. T 10006614196.

- On 23/9/2015 the office of the Regional Crime Officer received a letter from National Election Commission in which there was a list of the people who were registered more than one registration. The accused person's name was in that list.
- She was arrested on 25/9/2015 and the police recorded her cautioned statement wherein she confessed the offence.
- On 22/10/2015 the accused was taken court, the charge was read over to her and she pleaded guilty to the charge. The following day she similarly pleaded guilty to the charge.
- Accused person was convicted on her own plea of guilty to the charge and admission of the facts as charged.
- **MITIGATION:** She registered twice because she initially thought her voter registration card was lost. But found it later mixed-up with other things in her room.
- **SENTENCE:** to pay a fine of Shs. 300,000/= or to serve a term of one year imprisonment in default.

2.2.6 Electoral offence, double registration

DISCUSSED IN: Republic v. John S/O Mligo, CRIMINAL CASE NO. 41 OF 2015, COURT OF RESIDENT MAGISTRATE OF NJOMBE AT NJOMBE (S.J. OBASI, RM)

- The accused first registered as a voter at Msete Mjimwema Njombe and was given a voter registration card number T100007582573. On a different date he went to a voter registration centre at Mjimwema Primary School where he was issued with a voter's registration number T 100005392645.
- In his cautioned statement the accused admitted to have registered twice as he claimed that he lost memory.
- Accused was on 21/10/2015 convicted on his own plea of guilty.
- **MITIGATION:** First offender, he is a sick man.
- **SENTENCE:** Ordered to pay Tshs. 100,000/= or serve two years imprisonment in default.

2.2.7 Double voter registration, blames machine error

DISCUSSED IN: Republic v. Jesca D/O Mchena, CRIMINAL CASE NO 52 OF 2015 RESIDENT MAGISTRATE COURT OF NJOMBE AT NJOMBE (C.J. HEMELA – SRM)

- Accused was first registered at Yambogo Primary School where she was issued voter's Card T. 100439570851. The following day she visited the Village Executive Office's (VEO) office Ikelu where she was issued with voter's Card No. T. 100012166774.
- Sometime in September 2015 VEO of Ikelu village, known by the name of Duston Luhengo received a list of people who had double registration. The accused person was one of them. The VEO of Ikelu referred the list to police station, the accused was arrested on 1/10/2015.
- When interviewed, she admitted to have been registered twice in the voter's register, and her cautioned statement confessing to the offence was recorded.
- Charged for the unlawful double registration of voter's card c/s 88 (1) (d) of the National Election Act, Cap. 343. She was on 11/1/2016 convicted on her own plea of guilty.

- **MITIGATION:** Begged for leniency, blaming the machine error for his double registration.
- **SENTENCE:** Sentenced to pay a fine of Tshs. 100,000/= or one year imprisonment.

2.2.8 Double Registration, Votes using another's card

DISCUSSED IN: **The Republic v. Dionice S/O Julius & Another**, Criminal Case No. 216/2015, District Court of Bariadi at Bariadi [J. F. NKWABI – RM]

- The 1st accused person induced the 2nd accused to give him her voter's registration card so that he may go to vote.
- The 1st accused went to vote to the polling station called Simiyu Secondary school where he voted by using his voter Identity card. He was discovered that he had already voted because he had the ink on his small finger showing that he had already voted.
- When questioned by the supervisors of the polling station he admitted having committed the offences and when he was sent to the police station he confessed.
- **COURT:** The 1st and 2nd accused persons convicted on their own pleas of guilty for the offence of illegal practices in elections contrary to section 102 (1)(b) and 96 (2) of the National Elections Act, Cap 343.
- **COURT:** The 1st accused convicted of the offence of impersonating contrary to section 101 (a) and 95 of the National Elections Act, Cap 343.
- **MITIGATION BY 1st Accused:** We admit that we committed the offences. We pray for leniency and the court should impose fines.
- **MITIGATION BY 2nd Accused:** Prays for leniency because she is breast-feeding a child of one year and 2 months.
- **SENTENCE:** 2nd Accused sentenced to conditional discharge. Ordered not to commit any criminal offence within the period of 6 months. Further she is disqualified from voting for a period of five years from the date of sentence.
- **SENTENCE:** 1st accused to pay fine of Tshs. 100,000/= for the first and second counts, in default he shall serve twelve months imprisonment.
- **SENTENCE:** 1st accused in the third count to pay fine of Tshs. 50,000/= or six months imprisonment in default. The 1st accused is disqualified from voting for a period of five years from date of sentence.

2.2.9 Double registration: holds two voters' Identification Cards

DISCUSSED IN: **Republic v Evance S/O Kalolo**, Criminal Case No 1/2016, The District Court of Mlele at Mlele, [T. Swai, – RM]

- The OC – CID Mlele District, received list of name of people and their Photos from the Regional Crimes Office in Katavi. Accused was amongst the people who had unlawfully made double registration in the permanent voter's register book and obtained more than one Voter ID.
- Convicted on his plea of guilty.
- **NB:** The sentence imposed upon conviction is not shown.

In addition, it was the same period when a number of judicial officers were trained how to handle prospected election petitions.

PART THREE

ELECTION PETITIONS

3.0: Introduction

This Part draws some lessons from the October 25, 2015 General Elections by highlighting the nature of grounds of election petitions and the legal issues arising from the grounds of petitions. The grounds of petition took many shapes of complaints which enriched our reflection on the common complaints which the High Court and the Courts of Resident Magistrate handled while determining petitions. This Part similarly maps out how election petition courts restated the existing electoral jurisprudence and suggested potential frontiers for electoral jurisprudence. Despite the variety of grounds of petitions and frontiers of new electoral jurisprudence these grounds offered, lack of evidential proof stood in the way of new electoral jurisprudence.

After the election results of parliamentary and councilor's elections were out, most of contestants who were unsuccessful filed election petitions in the High Court and Resident Magistrate's courts respectively as follows:

3.1: Parliamentary Election Petitions

In aftermath of the 25 October 2015 General Elections a total of 53 Election Petitions seeking to avoid election of Members of Parliament were filed in the High Court centres at Arusha (1), Dar es Salaam (11), Dodoma (2), Iringa (4), Mbeya (6), Moshi (3), Mtwara (6), Mwanza (5), Shinyanga (3), Songea (1), Sumbawanga (1), Tabora (5) and Tanga (2).

Of the 53 election petition cases filed, 31 ended at preliminary stage and 22 proceeded to full trial. By 25th October 2016 which marked one year after the General Elections, only three election petitions for Mbagala Constituency, Mbarali Constituency and Bunda Constituency were still pending in the High Court. It is noted that many petitions were lodged in November 2015 after the election results were announced. Thus the hearing and determination of election petitions were supposed to be completed in November on different dates depending on each petition's date of filing in court. November therefore marks the end of twelve months statutory period. It is comforting to note that by 22nd November 2016 the two petitions of Bunda and Mbarali had been finally decided by the High Court on 18th November and 21st November respectively. It is only Mbagala petition which is still pending and an extension of six months has been sought from the Minister of Justice and Constitution Affairs as there is an appeal pending in the Court of Appeal concerning the preliminary decision of the High Court on the matter.

The table below provides the current status of the 53 election petitions which were filed in the High Court:

S/N	CASE NO.	CONSTITUENCY	PARTIES	HIGH COURT CENTRE	TRIAL JUDGE	STATUS
DAR ES SALAAM ZONE						
1.	Misc. Civil Cause No. 3/2015	Kinondoni	Idd Mohamed Hassan Versus Mtulia Maulid Said Abdallah & 2 others	Dar es Salaam High Court	Hon. N. Chocha	Petition Withdrawn on 19/05/2016
2.	Misc. Civil Cause No. 2/2015	Temeke	Abas Zuberi Mtemvu Versus Returning Officer for Temeke Constituency & others	Dar es Salaam High Court	Hon. I. Maige	Judgement delivered on 21/09/2016 Petition dismissed
3.	Misc. Civil Cause No. 9/2015	Mrimba	Godwin Emmanuel Kunambi Versus Kiwanga Suzan Limbweni & 2 others	High Court Dar es Salaam Registry (Sitting at Ifakara District Court)	Hon. P. Kente	Judgment delivered on 27/07/2016 Petition dismissed
4.	Misc. Civil Cause No. 10/2015	Ukonga	Jerry W. Silaa Versus The Attorney General & 2 others	Dar es Salaam High Court	Hon. F. Massengi	Petition Dismissed on 15/06/2016 for being time barred
5.	Misc. Civil Cause No. 1/2015	Mbagala	Kondo Jumabungo Versus 1.Issa Ally Mangungu 2.Returning Officer 3.Attorney General	Dar es Salaam High Court	Hon. R. Kibela	PENDING Awaiting decision of the Court of Appeal on a preliminary matter. An extension of time of hearing this petition in the High Court has been sought from the Minister for legal Affairs as the twelve months statutory period of hearing will expire this month.
6.	Misc. Civil Cause No. 6/2015	Kilombero	Abubakari D. Asenga Versus	High Court Dar es Salaam Registry	Hon. P. Rugazia	Judgment delivered on 27/7/2016 Petition dismissed

			Peter A. Lijualikali & 2 others	(Sitting at Ifakara District Court)		
7.	Misc. Civil Cause No. 4/2015	Mafia	Haya H. Nyundo & 4 others Versus The Attorney General & 2 others	Dar es Salaam High Court	Hon. W. Korosso	Petition struck out on 2/03/2016 for want of <i>locus standi</i>
8.	Misc. Civil Cause No. 5/2015	Mikumi	Jonas E. Nkya Versus 1. Joseph L. Haule 2. Returning Officer for Mikumi Constituency 3. Attorney General	Dar es Salaam High Court	Hon. I.P. Kitusi	Petition dismissed on 26/01/2016 for non-payment of security for costs
9.	Misc. Civil Cause No. 7/2015	Kawe	Kippi Ivon Warioba Versus 1. Halima Mdee 2. Returning Officer for Kawe Constituency 3. Attorney General	Dar es Salaam High Court	Hon. Z. Muruke	Petition Withdrawn on 15/01/2016
10	Misc. Civil Cause No. 8/2015	Ubungu	Dr. Didas Masaburi Versus 1. Saed Kubenea 2. The Returning Officer for Ubungo Constituency 3. Attorney General	Dar es Salaam High Court	Hon. L. Mwandambo	Petition withdrawn on 16/12/2015
11	Misc. Civil Cause No. 11/2015	Mkuranga	Ally Athuman Ubuguyu Versus 1. Abdallah Hamisi Ulega 2. Returning Officer for Mkuranga Constituency 3. Attorney General	Dar es Salaam High Court	Hon. E. Feleshi	Petition struck out on 16/12/2015 for non-payment of security for costs
MTWARA ZONE						
12.	Misc. Civil Cause No. 2/2015	Mtwara Vijijini	Mneke Jaffar Said Versus 1. Hawa Ghasia	Mtwara High Court	Hon. Dr. Twaib	Petition dismissed on 23/02/2016 for non-payment of security for costs

			2.The Returning Officer for Mtwara Vijijini constituency 3.Attorney General			
13.	Misc. Civil Cause No. 6/2015	Newala Vijijini	Nkene Jaffer Said Versus 1 Rashidi Ajali Akbar 2The Returning Officer Newala Vijijini Parliamentary Election 3. Attorney General	High Court Mtwara Registry (Sitting at Newala District Court)	Hon. L. Mgonya	Judgment delivered on 28/09/2016 Petition dismissed
14.	Misc. Civil Cause No. 2/2015	Liwale	Faith Mohamed Mtambo Versus 1.Zuberi Mohamed Kachauka, 2.The Returning Officer Liwale Constituency & 3.Attorney General	High Court Mtwara Registry (Sitting at Lindi Resident Magistrate's Court)	Hon. R.K. Mkuye	Petition dismissed on 15/04/2016 for non-appearance of petitioner
15.	Misc. Civil Cause No. 3/2015	Ndanda	Mariam R. Kasemba Versus 1.Returning Officer for Ndanda Constituency Election 2.Attorney General	High Court Mtwara Registry (Sitting at Masasi District Court)	Hon. W.Korosso	Judgment delivered on 30/06/2016 Petition dismissed
16.	Misc. Civil Cause No. 1/2015	Newala	Juma Sadick Manguya Versus 1.George Mkuchika 2.The Returning Officer Newala Urban Parliamentary Constituency 3.The Attorney General	High Court Mtwara Registry (Sitting at Newala District Court)	Hon. A. Khamisi	Judgment delivered on 8/6/2016. Petition dismissed
17.	Misc. Civil Cause No. 4/2015	Kilwa	Murtaza Ally Mangungu Versus 1.The Returning Officer Kilwa North Parliamentary Election 2.Attorney General 3. Vedasto Edgar Ngombale	High Court Mtwara Registry (Sitting at Kilwa District Court)	Hon. I. Kitusi	Judgment delivered on 12/8/2016. Petition dismissed

MOSHI ZONE						
18.	Misc. Civil Cause No. 2/2015	Rombo	Samora Colman Kanje Versus 1. Selasini Joseph Roman 2. The Returning Officer for Rombo Constituency 3. Attorney General	High Court Moshi Registry (Sitting at Rombo District Court)	Hon. M. Mwaimu	Petition dismissed on 12/05/2016 for no case to answer
19.	Misc. Civil Cause No. 1/2015	Vunjo	Augustino Lyatonga Mrema Versus 1. James Francis Mbatia 2. The Returning Officer Vunjo Constituency 3. The Attorney General	Moshi High Court	Hon. L. Mwandambo	Ended at Preliminary Stage 3/04/2016. Settled out of Court
20.	Misc. Civil Cause No 3/2015	Same Magharibi	Christopher Shangweli Mbajo Versus 1. Dr. Mathayo D. Mathayo 2. Attorney General 3. The Returning Officer for Same West Constituency	Moshi High Court	Hon. A. Sumari	Petition dismissed on 14/01/2016 for being time barred
TABORA ZONE						
21.	Misc. Civil Cause No. 1/2015	Buyungu Kakonko	Eng. Christopher Kajoro Chiza Versus 1. The Attorney General 2. Director of Election 3. Bilago Kasuku Samson	High Court Tabora Registry (Sitting at Kibondo District Court)	Hon. P.F. Kihwelo	Judgment delivered on 08/07/2016 Petition dismissed
22.	Misc. Civil Cause No. 1/2015	Kahama	James David Lembeli Versus 1. Jumanne Kibera Kishimba 2. Returning Officer Kahama 3. Attorney General	High Court Tabora Registry (Sitting at Kahama District Court)	Hon. M. Mzuna	Judgment delivered on 08/03/2016 Petition dismissed

23.	Misc. Civil Cause No. 2/2015	Kigoma Kusini	David Zacharia Kafulila Versus 1.Husna Sudi Mwilima 2.The Retuning Officer Kigoma Kusini Constituency 3.The Attorney General	High Court Tabora Registry (Sitting at Kigoma Resident Magistrate's Court)	Hon. F.L.K. Wambali	Judgment delivered on 17/05/2016 Petition dismissed
24.	Misc. Civil Cause No. 3/2015	Tabora Mjini	1.JummaneSelemanMtunda 2.Johari Kasanga kondeu 3.Thomas Amoth Ayento 4.Shaban Mussa Kibonga Versus 1.Mwakasaka Adamson Emmanuel 2.Returning Officer of Tabora Urban Constituency 3.Attorney General	Tabora High Court	Hon. L.E. Mgonya	Petition dismissed on 26/02/2016 for non- payment of security for costs
25.	Misc. Civil Cause No. 4/2015	Bukene	Elias Michael Machibya Versus 1.Zed Selemani Jummane 2.Returning Officer for Bukene Constituency 3.Attorney General	Tabora High Court	Hon. A. Mruma	Petition dismissed on 26/01/2016 for non- payment of security for cost
26.	Misc. Civil Cause No. 5/2015	Kigoma - Kaskazini	Yared Jonas Fabusa Versus Peter Joseph Serukamba & 2 others	Tabora High Court	Hon. S. Rumanyika	Petition dismissed on 01/03/2016 for non- payment of security for costs
ARUSHA ZONE						
27.	Misc. Civil Cause No. 36/2015	Longido	Dr. Steven Lemomo Kiruswa Versus 1.OnesmoNgole 2.The Hon. Attorney General 3.The Returning Officer Longido Parliamentary Constituency	Arusha High Court	Hon. S.Mwangesi	Judgment delivered on 29/06/2016 Petition allowed Results nullified
BUKOBA ZONE						

28.	Misc. Civil Cause No. 7/2015	Kyerwa	Benedictor Mutachoka Mutungirehi Versus 1. Innocent Sebba Bitakwate 2. The Returning Officer Kyerwa Constituency 3. Attorney General	High Court Bukoba Registry (Sitting at Karagwe District Court)	Hon. A. Munisi	Petition dismissed on 24/03/2016 for failure to prosecute it
29.	Misc. Civil Cause No. 9/2015	North Muleba	Anserbet Mugamba Ngurumo Versus 1. Charles John Mwijage 2. Returning Officer Muleba North Constituency 3. Attorney General	Bukoba High Court	Hon. Matogolo	Petition dismissed 30/12/2015 for non- payment of security for costs
30.	Misc. Civil Cause No. 8/2015	South Muleba	Alistes A. Kashasira Versus 1. Prof. Anna Kajumulo Tibaijuka 2. Returning Officer Muleba South Constituency 3. Attorney General	Bukoba High Court	Hon. Khaday	Petition dismissed on 30/12/2015 for non- payment of security for costs
IRINGA ZONE						
31.	Misc. Civil Cause No. 5/2015	Iringa	Fredrick Mwakalebela Versus Rev. Peter Msigwa & 2 others	Iringa High Court	Hon. P. Rugazia	Petition withdrawn on 22/02/2015
32.	Misc. Civil Cause No. 6/2015	Njombe	Emmanuel Godfrey Versus 1. Edward Mwalongo 2. The Returning Officer Njombe Constituency 3. The Attorney General	High Court Iringa Registry (Sitting at Njombe Resident Magistrate's Court)	Hon. J. Mwambegele	Judgment delivered on 9/5/2016. Petition dismissed
33.	Misc. Civil Cause No. 8/2015	Mufindi	William Mungai Versus 1. Cosato David Chumi 2. The Retuning officer Mafinga Constituency	Iringa High Court	Hon. E. Feleshi	Judgment delivered on 02/5/2016. Petition dismissed

			3.The Attorney General			
34.	Misc. Civil Cause No. 7/2015	Mufindi North	1. Dr. Raphael B.M. Kalinga 2. Exaud S. Kigazi Versus 1.Mohamoud Hassan Mgimwa 2.Returning Officer of CCM North Mufindi 3. Attorney General	Iringa High Court	Hon. M. Shangali	Petition dismissed on 15/02/2016 for non-appearance
MBEYA ZONE						
35.	Misc. Civil Cause No. 4/2015	Mbeya Vijijini	Zella Adamu Abraham Versus 1.The Attorney General 2.Oran Manase Njeza 3.The Returning Officer	Mbeya High Court	Hon. R. Teemba	Judgment delivered on 2/9/2016. Petition dismissed
36.	Misc. Civil Cause No. 6/2015	Vwawa	Fanuel Elias Mkisi Versus 1.The Attorney General 2. Japhet Ngailonga Hasunga 3.The Returning Officer	High Court Mbeya Registry (Sitting at Mbozi District Court)	Hon. W. Dyansobera	Judgment delivered on 31/05/2016. Petition dismissed
37.	Misc. Civil Cause No.5/2015	Mbarali	Liberatus Laurent Mwang'ombe Versus 1.The Attorney General 2.Haroon Mulla Pirmohamed 3.The Returning Officer	High Court Mbeya Registry (Sitting at Mbarali District Court)	Hon. R.K. Sameji	Judgment delivered on 21/11/2016 Petition dismissed
38.	Misc. Civil Cause No. 2/2015	Kyela	Abraham Hebel Mwanyamaki Versus 1.The Attorney General 2.Dr. Harrison George Mwakyembe 3.The Returning Officer	Mbeya High Court	Hon. A. Ngwala	Petition withdrawn on 28/12/2015
39.	Misc. Civil Cause No. 1/2015	Rungwe	John David Mwambigila Versus 1.The Attorney General 2.Returning Officer	High Court Mbeya Registry (Sitting at Tukuyu District Court)	Hon. Sehel	Judgment delivered on 28/06/2016 Petition dismissed

40.	Misc. Civil Cause No. 3/2015	Momba	Dr. Lukas Jelas Siyame Versus 1.The Attorney General 2.Divid Ernest Silinde 3.The Returning Officer of Momba Constituency	High Court Mtwara Registry (Sitting at Mbozi District Court)	Hon. Mgetta	Judgment delivered on 16/05/2016 Petition dismissed
MWANZA ZONE						
41.	Misc. Civil Cause No. 3/2015	Nyamagana	Ezekiel Kibogo Wenje Versus 1.Stanslaus Mabula Sing'oma 2.Returning Officer Nyamagana 3.Attorney General	Mwanza High Court	Hon. Sambo	The matter ended on the Ruling on no case to answer on 8/4/2016 Petition dismissed
42.	Misc. Civil Cause No. 5/2015	Kwimba	Shilogile Babila Nganga Versus 1.Mansoor Shanif Hiran 2.Returning Officer Kwimba Constituency 3.Attorney General	Mwanza High Court	Hon. R. Makaramba	Petition dismissed on 26/02/2016 for non-payment of security for costs
43.	Misc. Civil Cause No. 4/2015	Tarime	Christopher Ryoba Kangoye Versus 1. Heche Wegesa 2. Attorney General 3. Returning Officer for Tarime	Mwanza High Court	Hon. Mlacha	Petition dismissed on 28/01/2016 for being vague
44.	Misc. Civil Cause No.	Ilemela	Highness Samson Kiwia Versus 1.Angelina Sylvester Mabula 2.Returning Officer for Ilemela 3.Attorney General	Mwanza High Court	Hon. Rujwahuka, DR.	Petition withdrawn on 11/01/2016
45.	Misc. Civil Cause No. 1/2015	Bunda	1.Magambo J. Masato 2. Matwiga M. Matwoga 3. James S. Ezekiel 4. Ascetic N. Malagila Versus 1. Esther Amos Bulaya	Mwanza High Court Registry (Sitting at Bunda District Court)	Hon.N.P.Z. Chocha	Judgment delivered on 18/11/2016 Petition dismissed

			2. Returning Officer for Bunda Mjini 3. Attorney General			
TANGA ZONE						
46.	Misc. Civil Cause No. 2/2015	Pangani	Amina Mohamed Mwidau Versus 1. Juma Hamibu Aweso 2. The Returning Officer Pangani 3. Attorney General	Tanga High Court	Hon. P. Fikirini	Judgment delivered on 28/7/2016 Petition dismissed
47.	Misc. Civil Cause No. 1/2015	Tanga	Nundu Omary Rashid Versus The Returning Officer of Tanga Constituency and 2 Others	Tanga High Court	Hon. U. Msuya	Petition struck out on 06/5/2016. Defective petition
SONGEA ZONE						
48.	Misc. Civil Cause No. 1/2015	Songea Mjini	Joseph Lusius Fuime Versus 1. Attorney General 2. Leonidas Tutubert Gama 3. Returning Officer Songea Urban Parliamentary Constituency	Songea High Court	Hon. M.A. Kwariko	Petition dismissed on 29/12/2015 for non-payment of security for costs
DODOMA ZONE						
49.	Misc. Civil Cause No. 1/2015	Singida Mashariki	Jonathan Andrew Njau Versus 1. Tundu Anthiphas Lisu 2. Returning Officer for Singida Mashariki Constituency 3. Attorney General	Dodoma High Court	Hon. B.M. Sehel	Petition dismissed on 02/02/2016 for non-payment of security for costs
50.	Misc. Civil Cause No. 2/2015	Mkalama	Oscar Alex Kapalale Versus 1. Alan Joseph Kiura 2. Returning officer for Mkalama	Dodoma High Court	Hon. Awadhi	Petition withdrawn on 21/01/2016

			Constituency 3.Attorney General			
SUMBAWANGA ZONE						
51.	Misc. Civil Cause No. 1/2015	Kwela	Daniel Naftari Ngogo versus 1.Malocha Aloyce Ignas 2.Returning Officer Kusela Parliamentary Constituency	Sumbawanga High Court	Hon. Mbuya DR	Petition dismissed on 21/02/2015 for non- payment of security for costs
SHINYANGA ZONE						
52.	Misc. Civil Cause No. 2/2015	Itilima	1.Emmanuel John Kunguku 2.Baraka Said Nyoma 3.Shiwa Maduhu Walwa 4.Maduhu Tungi Tambilo Versus 1.Njau Daudi Silanda 2.The Returning Officer for Itilima Constituency 3.The Attorney General	Shinyanga High Court	Hon. A. Mruma	Petition dismissed 04/01/2016 for non- payment of security for costs
53.	Misc. Civil Cause No. 3/2015	Kisesa/Meatu	William Manani Masanja Versus 1.Joel Luhaga Mpina 2.The Returning Officer for Kisesa Constituency 3.Attorney General	Shinyanga High Court	Hon. A. Mruma	Petition withdrawn on 04/01/2016

3.2: Councilor Election Petitions

In aftermath of the 25 October 2015 General Elections a total of 196 Election Petitions seeking to avoid election of Councilors were filed in the Resident Magistrates Courts as follows: Arusha (8), Dar es Salaam (47), Dodoma (4), Iringa (14), Mbeya (6), Moshi (12), Mtwara (12), Mwanza (3), Shinyanga (1), Songea (7) Sumbawanga (4), Tabora (6) ,Bukoba(9), Mara(8), Manyara(12), Morogoro (11), Kigoma (1), Pwani (1) , Lindi (4) , Geita (1), Njombe(1), Simiyu (3) and Tanga (21).

Of the 196 petitions filed to contest Councilor election results, 143 ended at preliminary stages and 53 proceeded to full trial. By the 25th of October 2016, which marked one year after the General Elections, all the councilor's election petitions were already finally disposed of at different stages. However, by simple arithmetic only 27 percent went for full trial. The basic reason being that 44 election petitioners failed to deposit security for costs and 17 election petitioners failed to comply with legal requirements. Other 15 petitioners withdrew their election petitions for lack of interest. Seven Election petitions were dismissed for being time barred. 22 election petitions were dismissed for want of prosecution.

Of the petitions which were finally determined, 17 went on appeal to the High Court; five applications to appeal out of time and eight notices of intention to appeal were also lodged at the High Court. The table below shows a statistical presentation of the handling of Councilor election petitions:

COUNCILLOR PETITIONS ARUSHA ZONE

NO	COURT	CASE NUMBER	PARTIES	CONSTITUENCY	WARD	PRESIDING MAGISTRATE	CURRENT PETITION STATUS
1	RM's Court Arusha	Misc. Civ. Cause No. 1/2015	Abel Ole Leken Versus 1.Returning Officer 2.Assistant Returning Officer Mateves Ward 3.Julius S. Morel 4.Attorney General	Arumeru	Mateves	Hon. Kamugisha RM	Judgement delivered on 29/03/2016 Petition allowed
2	RM's Court Arusha	Misc. Civ. Cause No. 2/2015	Laambara Lemomo Versus 1.Songoni Razaro Morel 2.Attorney General 3.The Returning Officer for Longido District Council	Longido	Meirugoi	Hon. Rwizile SRM	Petition Dismissed on 14/01/2016 for non-payment of security for costs
3	RM's Court Arusha		Makaroti Randasati Simei Versus 1. Elias Mepukori Mbao 2.Attorney General 3.The Returning Officer for Longido District Council	Longido	Kamwanga	Hon. Rwizile SDR	Petition Dismissed on 14/01/2016 for non-payment of security for cost
4	RM's Court Arusha	Misc. Civ. Cause No. 4/2015	Raphael Mengoru Ndook Versus 1.The Returning Officer for Ngorongoro District Council 2.Assistant Returning Officer Ngoile Word 3.Attorney General 4.Hon. Lazaro Saruni Saitoti	Ngorongoro	Ngoile	Hon. Chitanda RM	Petition abated on 28/12/2015.
5	RM's Court Arusha	Misc. Civ. Cause No. 5/2015	James Parteye Moringe Versus 1.The Returning Officer for Ngorongoro	Ngorongoro	Ataitole	Hon. Rwizile SRM	Petition Dismissed on 21/01/2016 for non-payment of security for cost

			District 2.Assistant Returning Officer 3.Hon. Sokoine Lakanet Moir 4.Attorney General				
6	RM's Court Arusha	Misc. Civ. Cause No. 6/2015	Flora L. Zelote Versus 1.Election Returning Officer Arusha District Council 2.The Election Assistant Retuning Officer of Musa Ward 3.Eliud Loomo Laiza 4.Attorney General	Arusha	Musa	Hon. Mwonkuga RM	Judgement delivered on 29/03/2016. Petition dismissed
7	RM's Court Arusha	Misc. Civ. Cause No. 7/2015	Labora P. Ndarpol Versus 1.Election Returning Officer Arusha City Council 2.The Election Assistant Returning Officer of Themu Ward 3.Edmundi Melance Kinabo 4.Attorney General	Arusha	Themu	Hon. Rwizile SRM	Petition Dismissed 14/01/2016 for non-payment of security for cost
8	RM's Court Arusha	Misc. Civ. Cause No. 8/2015	John Kimiti Ndoipo Versus 1.Lodupa Samweli Sundi 2.Attorney General 3.The Returning Officer for Longido District Council	Longido	Kimokoa	Hon. Rwizile SRM	Petition withdrawn 15/02/2016
BUKOBA ZONE							
9	RM's Court	Misc. Civil Cause No. 2/2015	Novati Kamugisha Masaba Versus 1.Anderson Lazaro 2.The Returning Officer	Karagwe	Chanika	Hon. D.J. Mpelembwa	Petition Dismissed on 22/12/2015 for being time barred.

			3.The Assistant Returning Officer				
10	RM's Court	Misc. Civil Cause No 7/2015	Shedrack Ntimba Versus 1.Mpaka E. Ernest 2.Assistant Returning Officer Ndama Ward 3.Returning Officer Karagwe District Council 4.Attorney General	Karagwe	Ndama	Hon. S.L. Maweda	Petition dismissed on 31/03/2016 for non-payment of security for cost
11	RM's Court	Misc. Civil Cause No 8/2015	Saibu M. Mfuruki Versus 1.Method Bakuza 2.Assistant Returning Officer Mayondwe Ward 3.Returning Officer Muleba District Council 4.Attorney General	Muleba	Mayondwe	Hon. D.J. Mpelembwa	Petition dismissed 22/01/2016 for non-payment of filing fee
12	RM's Court	Misc. Civil Cause No 9/2015	Aloyce Faustine Mafundi Versus 1. Magezi Laurian Simon 2.Assistant Returning Officer Kyerwa ward 3.Retuning Officer Kyerwa District Council 4.Attorney General	Kyerwa	Kyerwa	Hon. D.J. Mpelembwa	Petition Dismissed 26/05/2016 for want of prosecution
13	RM's Court	Misc. Civil Cause No 10/2015	Medard Kajuna Ananret Versus 1.Eustace Rwegoshora Christian 2.Assistant Returning Officer Kikukuru Ward 3.Returning Officer Kyerwa District Council 4.Attorney General	Kyerwa	Kikukuru	Hon. Mpelembwa	Petition Dismissed on 25/05/2016 for want of prosecution
14	RM's Court	Misc. Civil Cause No 11/2015	Revocatus Zawadi Nikolaus Versus 1.Liberious Tulakila Twijuke 2.Assistant Returning Officer Gugomora Ward 3.Returning Officer Kyerwa District Council 4.Attorney General	Kyerwa	Bugomoa	D.J. Mpelembwa	Petition dismissed on 21/12/2015 for non-appearance
15		Misc. Civ.	Mathayo Ludovick Chaemba	Kyerwa	Kitwechenkur a	Hon. S.J.	

	RM's Court	Cause No 12/2015	Versus 1.Said Abdunuru Mukandara 2.Assistant Returning Officer Kitwenkura Ward 3.Returning Officer Kyerwa District Council 4.Attorney General			Mwakihaba	Petition dismissed on 04/05/2015 for non-payment of security for costs
16	RM's Court	Misc. Civ. Cause No 13/2015	Ponsian Baitatafe Versus 1.Khalid Hussein 2.Assistant Returning Officer Kahsarunga Ward 3.Returning Officer Muleba District Council 4.Attorney General	Muleba	Kasharunga	Hon. S.L. Maweda	Petition dismissed on 25/05/2016 for non-appearance
17	RM's Court	Misc. Civ. Cause No 14/2015	Registered Trustee of CHADEMA Versus 1.Chairman of Electoral Commission 2.Director for Election 3.Returning Officer Kyerwa District Council 4.Attorney General	Kyerwa	Nkwenda	Hon. D.J. Mpelembwa	Petition dismissed on 22/04/2016 for want of prosecution
DAR ES SALAAM ZONE							
18	Kisutu	Misc. Civ. Cause No 7/2015	Hashim Mbuguli Mbonde Versus 1.Attorney General 2.Returning Officer of Kinondoni Municipal District 3.Assistant Returning Officer Mbweni Ward 4.Bakari A. Alibariki	Kinondoni	Mbweni	Hon. Simba PRM	Petition dismissed on 5/7/2016 for non-appearance
19	Kisutu	Misc. Civ. Cause No 24/2015	Zame Ramadhani Abdallah Versus Kassimu Mshamu Rashidi & 3 others	Temeke	Mbagala	Hon. Dr. Yongolo SRM	Judgment delivered on 15/07/2016. Petition dismissed
20	Kisutu	Misc. Civ. Cause No	Azimkhan Akber Azimkhan	Ilala	Mchkichini	Hon. Mashauri	Petition struck out on 24/08/2016

		31/2015	Versus Joseph John Ngowa & 3 others			PRM	on Point of Law
21	Kisutu	Misc. Civ. Cause No 1/2015	Kelvin William Mbogo Versus 1.Returning Officer of Kinondoni Municipal District 2.Assistant Returning Officer Mbezi Juu Ward 3.Fares Robinson Lupomo	Kinondoni	Mbezi Juu	Hon. Mkasiwa SRM	Petition dismissed on 4/1/2016 for non-appearance
22	Kisutu	Misc. Civ. Cause No 9/2015	Victor Michael Mwakasendile Versus 1.Assistant Returning Officer (Makangarawe Ward) 2.Returning Officer Temeke Municipality 3.Dr. Iddi Joseph Mahutu 4.Attorney General	Temeke	Makangarawe	Hon. Shaidi PRM	Petition Dismissed on 06/01/2016 for non-payment of security for cost
23	Kisutu	Misc. Civ. Cause No 16/2015	Shirima Oliver Quairine Versus Aniper K. Shiwili & 3 others	Kinondoni	Makuburi	Hon. Mkasiwa SRM	Petition Dismissed on 04/01/2016 for want of prosecution
24	Kisutu	Misc. Civ. Cause No 21/2015	Faraham H. Abbas Versus Muro M. Abdul & Others	Kinondoni	Kinondoni	Hon. Haule RM	Petition Dismissed on 21/12/2015 for non-payment of security for cost
25	Kisutu	Misc. Civ. Cause No 22/2015	Godfrey A. Mheluka Versus Manga M. Paschal & 3 others	Kinondoni	Kimara	Hon. Haule	Petition Dismissed on 21/12/2015 for non-appearance
26	Kisutu	Misc. Civ. Cause No 28/2015	Hashimu Mbuguli Mbonde Versus Bariki A. Elibariki & 3 others	Kinondoni	Mbweni	Hon. Mwambapa RM	Petition Dismissed on 05/01/2016 for non-appearance
27	Kisutu	Misc. Civ. Cause No 29/2015	Rukia Mtiga Mwenge Versus Mjema Manase John & 3 others	Ilala	Zingiziwa	Hon. Mkeha SRM	Petition with drawn on 31/12/2015
28	Kisutu	Misc. Civ. Cause No	Barua Abdi Mwakilanga Versus	Ilala	Buguruni	Hon. Rugemalila RM	Petition Withdrawn on 30/12/2015

		34/2015	Adam Rajab Fugame & 3 others				
29	Kisutu	Misc. Civ. Cause No 14/2015	Batuli Mraraka Mziya Versus. 1.Shukuru A. Dege 2.Returning Officer Ilala Municipality 3.Assistant Returning Officer Mnyamani Ward 4.Attorney General	Ilala	Mnyamani	Hon. Mchauru SRM	Petition struck out with costs on 07/01/2016 for non-payment of security for costs
30	Kisutu	Misc. Civ. Cause No 19/2015	Bernard Lwehasura Versus Kimei Venus Bethuel & 3 others	Kinondoni	Mikocheni	Hon. Msafiri RM	Petition Dismissed on 01/08/2016 for non- payment of security for cost.
31	Kisutu	Misc. Civ. Cause No 20/2015	Tamim O. Tamim Versus Mbunju Jumanne Amir & 3 others	Kinondoni	Tandale	Hon. Msafiri RM	Petition Dismissed on 01/08/2016 For non-payment of security for costs
32	Kisutu	Misc. Civ. Cause No 10/2015	Hemedy Ally Sabula Versus 1.Yusuph Omary Yenga 2.Assistant Returning Officer 3.The Returning Officer 4.Attorney General	Kinondoni	Mburahati	Hon. Simba SRM	Petition withdrawn on 14/01/2016
33	Kisutu	Misc. Civ. Cause No 26/2015	Tito Eliakim Osoro Versus Mungwer I. Mustapha & 3 others	Mbagala	Kiburugwa	Hon. Hassan SRM	Petition withdrawn on 18/01/2016
34	Kisutu	Misc. Civ. Cause No 39/2015	Siraju H. Mwasha Versus Mushi I Augustino & 3 others	Ilala	Misigani	Hon. Mbonamasabo RM	Petition Withdrawn on 18/01/2016
35	Kisutu	Misc. Civ. Cause No 41/2015	Lucy Jeremia Lugome Versus Saenda Joseph Stephan & 3 others	Ilala	Kisukuru	Hon. Mbonamasabo RM	Petition Withdrawn on 18/01/2017
36	Kisutu	Misc. Civ. Cause No	Henry Lazaro Chaula Versus	Kigamboni	Mjimwema	Hon. Shaidi PRM	Judgment delivered on 19/01/2016

		5/2015	1.Assitant Returning Officer 2.Celestine P. Maufi 3.Temeke Municipal Director				Petition Dismissed
37	Kisutu	Misc. Civ. Cause No 35/2015	Josephine A. wage Versus Kimbiror R. Eliakim & 3 others	Kinondoni	Hananasif	Hon. Mwingira RM	Petition Withdrawn on 20/01/2015
38	Kisutu	Misc. Civ. Cause No 40/2015	Judith Boniface Magembe Versus Bernard Mathew & 3 others	Mbagala	Mtoni	Hon. Mwijage PRM	Petition Dismissed on 20/01/2016 for want of prosecution
39	Kisutu	Misc. Civ. Cause No 45/2015	Siraju Hassani Mwashu Versus Attorney General & 2 others	Kinondoni	Msigani	Hon. Maua Hamduni RM	Petition Dismissed on 19/01/2016 for want of prosecution
40	Kisutu	Misc. Civ. Cause No 43/2015	William Masanja Mlenge Versus Boniface Jacob & Others	Kinondoni	Ubungu	Hon. Mwijage PRM	Petition Dismissed 22/01/2016 for want of prosecution
41	Kisutu	Misc. Civ. Cause No 46/2015	Albinus Balomi Magoye Versus Ephirahim Kinyafu & 3 others	Kinondoni	Msigani	Hon. W. E. Lema PRM	Petition Dismissed 28/01/2016 for non-appearance of parties
42	Kisutu	Misc. Civ. Cause No 36/2015	Batenga Haruna Versus Juma Zubari Mwaipopo & 3 others	Ilala	Ukonga	Hon. Mwingira	Petition Struck out on 05/02/2016 for being defective
43	Kisutu	Misc. Civ. Cause No 23/2015	Tumike Jabir Malilo Versus Kuyeko Charles & 3 others	Ilala	Bonyokwa	Hon. Mkeha SRM	Petition Struck out on 02/09/2016 for being defective
44	Kisutu	Misc. Civ. Cause No 3/2015	Fredy Chacha Hatari Versus 1.The Returning Officer for Ilala Constituency 2.The Assistant Returning for Chanika Ward 3.Ojambi Douglas Masaburi	Ilala	Chanika	Hon. Mchauru SRM	Petition Struck out on 16/02/2016 for non-payment of security for costs
45	Kisutu	Misc. Civ. Cause No 6/2015	Zacharia J. Mkundi Versus	Kigamboni	Vijibweni	Hon. Moshi SRM	Petition Struck out on 19/02/2016 for non-payment of security for costs

			1.Assistant Returning Officer 2.Isaya M. Charles 3.Attorney General				
46	Kisutu	Misc. Civ. Cause No 11/2015	William Iteba Charles Versus 1.Attorney General 2.Returning Officer of Kinondoni Municipal District 3.Assistant Returning Officer Makongo Ward 4.Ndishukurwa A. Tangaraza	Kinondoni	Makongo	Hon. Mwijage PRM	Petition Withddrawn on 24/02/2016
47	Kisutu	Misc. Civ. Cause No 32/2015	Godlisten Malisa Versus Kassimu Mshamu Rashidi & 3 others	Ilala	Minazi Mirefu	Hon. Dr. Yongolo SRM	Petition Withdrawn on 29/02/2016
48	Kisutu	Misc. Civ. Cause No 38/2015	Yusuph Masinge Lima Versus Kennedy Thomas Simon & 3 others	Ilala	Ukonga	Hon. Rusema PRM	Petition Dismissed on 22/03/2016 for want of prosecution
49	Kisutu	Misc. Civ. Cause No 37/2015	Samina Patrick Mshauri Versus Kipende A. Omary & 3 others	Mbagala	Mianzini	Hon. Rusema PRM	Petition Dismissed on 30/03/2016 for want of prosecution and non- payment of security for costs
50	Kisutu	Misc. Civ. Cause No 8/2015	Barua Abdi Mwakilanga Versus 1.Assistant Returning Officer 2.Ilala Municipal Council 3.Adam Rajab Fugame 4.The Attorney General	Ilala	Buguruni	Hon. Ding'oi RM	Petition Struck out on 15/04/2016 for being defective
51	Kisutu	Misc. Civ. Cause No 30/2015	Noel L. Kipangule Versus Benjamini Ndalichako & 3 others	Temeke	Chang'ome	Hon. Mwambapa RM	Petition Dismissed on 15/04/2016 for being defective
52	Kisutu	Misc. Civ. Cause No 33/2015	Mohamed Hassan Kingalu Versus Waziri Juma Mwenevyale & 3 others	Ilala	Majohe	Hon. Rugemalila RM	Petition on Withdrawn 19/04/2016
53	Kisutu	Misc. Civ.	Abdillah Salim Mpate	Ilala	Zingizio	Hon. Khamsini	Petition Struck out on 19/04/2016

		Cause No 44/2015	Versus Hussein W. Togoro & 3 others			RM	for want of necessary documents
54	Kisutu	Misc. Civ. Cause No 4/2015	Husna M. Kabyemela Versus 1.Assistant Returning Officer 2.Returning Officer Temeke Municipal Council 3.Mketo Mohamed Haji	Kigamboni	Toangoma	Hon. Hamza SRM	Judgment delivered on 29/04/2016 Petition Dismissed
55	Kisutu	Misc. Civ. Cause No 15/2015	Imelda Samjela Versus Bonaventure Mphuru & 3 others	Ilala	Pugu	Hon. Hamza SRM	Judgment delivered on 29/04/2016 Petition Dismissed
56	Kisutu	Misc. Civ. Cause No 25/2015	Lucas Munubi Rutainurwa Versus Kissi Jacob Maturu	Ilala	Gongolamboto	Hon. Tarimo SRM	Judgment delivered on 29/04/2016 Petition Dismissed
57	Kisutu	Misc. Civ. Cause No 27/2015	Abdukarim Rashid Atiki Versus Ramadhani Hamisi Kwangaya & 3 others	Kinondoni	Manzese	Hon. Tarimo SRM	Judgment delivered on 29/04/2016 Petition Dismissed
58	Kisutu	Misc. Civ. Cause No 12/2015	Haji Makame Mnyaa Versus 1.Attorney General 2.Returning Officer of Kinondoni Municipal District 3.Assistant Returning Officer Makumbusho Ward 4.Haroub A. Mohamed	Kinondoni	Wazo	Hon. Riwa SRM	Petition Dismissed on 05/06/2016 for being defective
59	Kisutu	Misc. Civ. Cause No 18/2015	Leah Benard Mgitu Versus Greyson Siwilwa & 3 others	Ilala	Kinyerezi	Hon. Ding'oi RM	Judgment delivered on 05/05/2016 Petition Dismissed
60	Kisutu	Misc. Civ. Cause No 42/2015	Peter Joseph Karia Versus Mwaipaja E. Andongwise & 3 others	Ilala	Liwiti	Hon. Khamsini RM	Petition Withdrawn on 05/02/2016
61	Kisutu	Misc. Civ.	Magesa Boniface Nyangera	Ilala	Mzinga	Hon. Mwijage	Petition Struck out on 20/05/2016

		Cause No 2/2015	Versus. 1.The Returning Officer for Ilala Constituency 2.The Assistant Returning Officer for Mzinga Ward 3.Job Isaak Ibrahim			PRM	For being defective
62	Kisutu	Misc. Civ. Cause No 17/2015	Sudi Kaxim Sudi Versus Patrick John Asenga & 3 others	Ilala	Tabata	Hon. Moshi SRM	Judgment delivered on 27/05/2016 Petition Dismissed
63	Kisutu	Misc. Civ. Cause No 47/2015	Harun Yusuf Mdoe Versus Ephraim Kinyafu & 3 others	Kinondoni	Saranga	Hon. W.E. Lema PRM	Judgment delivered on 14/06/2016 Petition allowed
64	Kisutu	Misc. Civ. Cause No 13/2015	Anna J. Luvanda Versus 1.Attorney General 2.Returning Officer of Kinondoni Municipal District 3.Assistant Returning Officer Wazo Ward 4.Mwakalebela J. Martin	Kinondoni	Wazo	Hon. Riwa SRM	Judgment delivered on 23/06/2016 Petition dismissed
DODOMA ZONE							
65	Dodoma District Court	Misc. Civil Cause No. 10/2015	Hussein Ally Bhahaji Versus 1.Saidi Luga Kitegile 2.The Returning Officer 3.The Attorney General	Dodoma Mjini	Madukani	Hon. Lukindo RM	Petition Withdrawn On 2/3/2016
66	Dodoma RM's Court	Misc. Civil Cause No. 11/2015	Japhet Jeremia Mrindoko Versus 1.Mziba Samwel Musaku 2.The Returning Officer 3.The Attorney General	Dodoma Mjini	Hazina	Hon. Karayemaha	Petition Withdrawn on 03/09/2016
67	Dodoma District	Misc. Civil Cause No.	Leonard Alexander Malima Versus	Dodoma Mjini	Nala	Hon. Fovo	Petition dismissed on 22/12/2015 for non-payment

	Court	13/2015	1.Brycen Leonard Elia 2.The Returning Officer 3.The Attorney General				of security for costs
68	Dodoma RM's Court	Misc. Civil Cause No. 12/2015	Yoramu Daniel Maima Versus 1. Hezron Ndaludugwa 2.The Returning Officer 3.The Attorney General	Dodoma Mjini	Iyumbu	Hon. Lukindo	Petition Dismissed On 14/3/2016 for being defective
IRINGA ZONE							
69	Resident Magistrate Court	Misc. Civil Cause No. 45/2015	Lulandala Joseph Nicolina Versus 1.Dady Johanes Igogo 2.The Returning Officer 3.The Attorney General	Iringa Town	Gangilonga	Hon. Mpitanja RM	Petition Struck out on 20/4/2016 for being vague
70	RM's Court	Misc. Civil Cause No. 56/2015	Doreen Martin Mgongolwa Versus 1.Nyalusi Fank John 2.Returning Officer 3.The Attorney General	Iringa Town	Mivinjeni	Hon. Scout RM	Petition Dismissed on 19/4/2016 for being time barred
71	RM's Court	Misc. Civil Cause No. 59/2015	1. Richard Mbalanga Mfunu Versus 1.Angeluso Mbogo Lijuja 2.Returning Officer 3.The Attorney General	Iringa Town	Mlandege	Hon. Nassary RM	Petition Withdrawn on 22/12/2015
72	RM's Court	Misc. Civil Cause No. 60/2015	Denis Pius Lupala Versus 1.Yobu Mbwilo 2.Returning Officer 3.The Attorney General	Iringa Town	Mgama	Hon. Nassary RM	Petition Dismissed on 30/12/2016 for being time barred
73	RM's Court	Misc. Civil Cause No.	Hamid Musa Mfalingundi Versus	Iringa Town	Kitanzini	Hon. Mpitanja RM	Petition dismissed on 28/12/2016 for being time barred

		58/2015	1.Hamadhi Hepalutwa 2.Returning Officer 3.The Attorney General				
74	RM's Court	Misc. Civil Cause No. 47/2015	Hamid Mohamed Mbatta Versus 1.Ryata Joseph Nzala 2.The Returning Officer	Iringa Town	Kwakilola	Hon. Ngunyale RM	Judgment delivered on 29/8/2016 Petition Dismissed
75	RM's Court	Misc. Civil Cause No. 44/2015	Bernard Exaviery Kanyika Versus 1.Kimbe Alex Boniphace 2.Returning Officer 3.The Attorney General	Iringa Town	Isakalilo	Hon. Ngunyale RM	Judgment delivered on 4/10/2016 Petition Dismissed
76	RM's Court	Misc. Civil Cause No. 55/2015	Galus Cosmas Lugenye Versus 1.Angeluso Mbogo Lijuja 2.Returning Officer 3.The Attorney General	Iringa Town	Mwangaa	Hon. Lyakinana SRM	Judgment delivered on 3/10/2016 Petition Dismissed
77	RM's Court	Misc. Civil Cause No 46/2015	Farida Haruna versus 1.Minde Ainameny Nelson 2.The Returning Officer 3.The Attorney General	Iringa Town	Mtwivila	Hon Nasssary RM	Petition Struck Out on 3/12/2015 for being vague
78	RM's Court	Misc. Civil Cause No. 51/2015	Samwel Japhet Mtaki Versus 1. Tandasay Gabriel Sanga 2.Returnning Officer 3.The Attorney General	Iringa Town	Ruaha	Hon. Lyakinana SRM	Judgment delivered on 3/10/2016 Petition Dismissed
79	RM's Court	Misc. Civil Cause No. 49/2015	Joseph Said Mgongolwa Versus 1.Mtitu Seven Yusuph	Iringa Town	Mkimbizi	Hon.Nongwa RM	Judgment delivered on 4/10/2016 Petition Dismissed

			2.Returning Officer 3.The Attorney General				
80	RM's Court	Misc. Civil Cause No. 57/2015	Kihongosi Kenani Kiburu Versus 1.Edga Mgimwa Simbamkali 2.Returning Officer 3.The Attorney General	Iringa Town	Kihesa	Hon. Mwakyolo RM	Judgment delivered on 3/10/2016 Petition Dismissed
81	RM's Court	Misc. Civil Cause No 48/2015	Paul Michael Lunyungu Versus 1.Baraka Jeremia Kimata 2.The Returning Officer 3.The Attorney General	Iringa Town	Kitwiru	Hon. G.N. Isaya RM	Petition Dismissed on 30/3/2016 For being time barred
82	RM's Court	Misc. Civil Cause No. 54/2015	Benjamin Andrew Chatanda Versus 1.Musa John Mlawa 2.Returning Officer 3.The Attorney General	Iringa Town	Igumbilo	Hon. Kasele RM	Judgment delivered on 4/10/2016 Petition Dismissed
83	RM's Court	Misc. Civil Cause No 50/2015	Kikula Thobia Eliya Versus 1.Oscar Chirius Kafuka 2.The Returning Officer 3.The Attorney General	Iringa Town	Mkwawa	Hon G. N Issaya RM	Petition Dismissed on 30/3/2016 for being time barred
84	RM's Court	Misc. Civil Cause No. 53/2015	Elizabeth Haji Mpogole Versus 1.Godfrey Nzareno 2.Returning Officer 3.The Attorney General	Iringa Town	Ilala	Hon. Kasele RM	Judgment delivered on 4/10/2016 Petition Dismissed
85	RM's Court	Misc. Civil Cause No. 52/2015	Thadeus John Tenga Versus 1.Ngujlo Raphael Lusika 2.Returning Officer 3.The Attorney General	Iringa Town	Makogongni	Hon. Mwakyolo RM	Judgment delivered on 3/12/2016 Petition Dismissed

MBEYA ZONE							
86	Mbeya	Misc. Civil Cause No 11/2015	Amanyisye Mahena Versus 1.Mayo Mbamba, 2. Assistant Returning Officer Ngana ward	Rungwe	Ngana	Hon. Mlingi RM	Petition Struck out on 23/12/2015 for non-joinder of Attorney General .
87	Mbeya	Misc. Civil Cause No 10/2015	Suma Fyandomo Versus 1.Lusubilo Simba 2. Assistant Returning Officer Ibighi Ward 3.Attorney General	Rungwe	Ibighi	Hon. Chaungu RM	Petition allowed on 4/4/2016 By-election to be conducted
88	Mbeya	Misc. Civil Cause No 12/2015	Martin Mwile Mwalende Versus 1.Alinanuswe Joram Busuke 2.Assistant Returning Officer Kinyala Ward 3.Attorney General	Rungwe	Kinyala	Hon. Butulaine	Petition Struck out on 10/12/2015 for want of security for costs
89	Mbeya	Misc. Civ. Cause No 13/2015	Asha Mahenge Versus 1.Tunjulu Mhewa 2. Assistant Returning Officer Sangambi Ward 3.Attorney General	Chunya	Sangambi	Hon. Mlingi RM	Petition Struck out on 11/12/2015 for non-payment of security for costs
90	Mbeya	Misc. Civ. Cause No 14/2015	Boniface Mwasikili Versus 1.Gibson Mwampagatwa 2. Assistant Returning Officer Makandana Ward 3.Attorney General	Rungwe	Makandana	Hon. Chaungu RM	Petition Struck out on 11/12/2015 for want of security for costs
91	Mbeya	Misc. Civ. Cause No 15/2015	Kupanga Sebastina Athanas Versus 1.Lawrance Andendekisye 2. Assistant Returning Officer Itiji Ward	Mbeya Mjini	Itiji	Hon. Mlingi RM	Petition Struck out on 10/12/2015 for want of security for costs

			3.Attorney General				
MOSHI ZONE							
92	Kilimanjaro	Misc. Civ. Cause No 29/2015	Loveless Elisante Versus 1.Election Returning Officer at Moshi Rural District Council 2.Daniel Maeda 3.Aloyce Mboya 4.The Attorney General	Vunjo	Njia Panda Himo	Hon. A.H. Mwilapwa SRM	Judgement delivered on 30/03/2016Petition dismissed.
93	Kilimanjaro	Misc. Civ. Cause No 30/2015	Palasio Naliwo Makange Versus 1.Returning Officer 2.Assistant Returning Officer 3.Kinga Amiri 4.The Attorney General	Mwanga	Toloha Ward	Hon. J.C. Tiganga PRM	Petition Struck out on 23/12/2015 for non-payment of security for costs
94	Kilimanjaro	Misc. Civ. Cause No 31/2015	Juma Rahibu Juma Versus 1.Returning Officer 2.Assistant Retuning Officer 3.Yudos Albin Tarimo 4.The Attorney General	Moshi Mjini	Bomambuzi	Hon. P. Meena RM	Judgement Delivered on 08/04/2016Petition allowed.
95	Kilimanjaro	Misc. Civ. Cause No 32/2015	Innocent Malamsha and 7 Others Versus 1.Evarist Silayo 2.Severine Michael Laswai & 28 others 3.The Attorney General	Rombo	Mkuu	Hon. J.C. Tiganga PRM	Petition struck out on 01/12/2016 for non-payment of security for costs
96	Kilimanjaro	Misc. Civ. Cause No 33/2015	Zuberi Abdallah Kidumo Versus 1.Assistant Returning Officer Njoro Ward 2.John Jomba Boy 3.The Attorney General	Moshi Mjini	Njoro	Hon. J.C. Tiganga PRM	Judgement delivered on 31/03/2016Petition dismissed
97	Kilimanjaro	Misc. Civ.	Mohamed Ally Mushi	Moshi	Miembeni	Hon. J.C. Tiganga	Petition struck out on 22/01/2016

		Cause No 34/2015	Versus 1.Returning Officer 2.Assistant Returning Officer 3.Mbonea Mshana 4.The Attorney General	Mjini		PRM	for non-payment of security for costs
98	Kilimanjaro	Misc. Civ. Cause No 35/2015	Pamela Ally Shuma Versus 1.Returning Officer 2.Assistant Returning Officer 3.Collins Tamimu Muyuta 4.The Attorney General	Moshi Mjini	Soweto	Hon. J.C. Tiganga PRM	Petition struck out on 22/01/2016 for non-payment of security for costs
99	Kilimanjaro	Misc. Civ. Cause No 36/2015	Apaikunda Cuthbert Naburi Versus 1.Returning Officer 2.Assistant Retuning Officer 3.Hawa Ally Mushi 4.The Attorney General	Moshi Mjini	Mawenzi	Hon. J.C. Tiganga PRM	Petition struck out on 22/1/2016 for non-payment of security for costs
100	Kilimanjaro	Misc. Civ. Cause No 37/2015	Beatrice Yohana Kimambo Versus 1.Returning Officer 2.Assistant Returning Officer 3.Mkarakara Charles Mkore 4.The Attorney General	Moshi Mjini	Pasua Ward	J.C. Tiganga PRM	Petition Struck out on 22/1/2016 for non-payment of security for costs
101	Kilimanjaro	Misc. Civ. Cause No 38/2015	Emmanuel R. Laizer Versus 1.Jonathan Masiria Nasari 2.Assistant Returning Officer of Orkolili Ward 3.The Attorney General	Hai	Orcoriri Ward	Hon. J.C. Tiganga PRM	Petition struck out on 22/01/2016 for non-payment of security for costs
102	Kilimanjaro	Misc. Civ. Cause No 39/2015	Vaileth Alphonse Kagoshe Versus 1.Returning Officer	Same Magharibi	Kihurio	Hon. J.C. Tiganga PRM	Petition struck out on 22/02/2015 for non-payment of security for costs

			2.Assistance Retuning Officer 3.Mariane Abdarahaman Mariane 4.The Attorney General				
103	Kilimanjaro	Misc. Civ. Cause No 40/2015	Alex Joseph Umbella Versus 1.Election Supervisor Kirua Vunjo East Ward 2.District Executive Director Moshi District Council 3.Ward Executive Officer Kirua Vunjo East Ward 4.Attorney General 5.Steven C. Materu	Vunjo	Vunjo East Ward	Hon. J.C. Tiganga PRM	Petition Struck out on 25/01/2016 for non-payment of security for costs
MTWARA ZONE							
104	RM's Mtwara	Misc. Civ. Cause No. 08/2015	Salum Dadi Mfaume Versus Hassam Hassan Lututwe & 2 Others	Mtwara Vijijini	Muungano	Hon. Missana SRM	Petition Dismissed on 23/12/2015 for non-payment of security for costs
105	RM's Mtwara	Misc. Civ. Cause. 07/2015	Makoko Fatuma Ismail Versus Nurdin Hassan Chambu & 2 others	Nanyamba	Mtiniko	Hon. Missana	Petition Dismissed on 23/12/2015 for non-payment of security for costs
106	RM's Mtwara	Misc. Civ. Cause. 05/2015	Likapa Mzee Selemani Versus Makombo Mohamed Selemani and 2 others	Mtwara Vijijini	Mahurunga	Hon. Missana SRM	Petition Dismissed on 23/12/2015 for non-payment of security for costs
107	RM's Mtwara	Misc. Civ. Cause No. 03/2015	Hassan Yusuf Chitale Versus Mshamu Abdallah Mabututu & 2 others	Nanyamba	Kiyanga	Hon. Dudu SRM	Judgement delivered on 22/12/2016Petition dismissed
108	RM's Mtwara	Misc. Civ. Cause No. 04/2015	Silimu Rukia Haifai Versus Simba Nassoro Hashimu & 2 others	Tandahimba	Naputa	Hon. Mwambapa SRM	Judgement delivered on 31/03/2016Petition dismissed
109	RM's Mtwara	Misc. Civ. Cause No.	Mtumweni Bakari Versus	Mtwara Vijijini	Mpapura	Hon. Mwambapa	Judgement delivered on 31/3/2016

		6/2015	Mahupa Abdul Bakari & 2 Others				Petition dismissed
110	RM's Mtwara	Misc. Civ. Cause No. 09/2025	Rashid Omary Linko Versus Salum Athumani Mussa & 2 others	Mtwara Vijijini	Msimbati	Hon. Kiswaga RM	Judgement delivered on 23/3/2016 Petition dismissed
111	RM's Mtwara	Misc. Civil Cause No. 10/2015	Sande Mohamed Selemani Versus Mtavanga Shaibu Salum & 2 others	Mtwara Vijijini	Nalingu	Hon. Kiswaga RM	Judgement delivered on 23/3/2016 Petition dismissed
MWANZA ZONE							
112	RM's Court	Misc. Civ. Cause No. 29/2015	Nyamasirir Charles Marwa Versus 1.Returning Officer for Isamilo 2.Chabaswa Daud Mwita 3. Attorney General	Nyamagan a	Isamilo	Hon. Sumaye RM	Judgement delivered on 20/04/2016 Petition allowed
113	RM's Court	Misc. Civil Cause No. 30/2015	Henry Ntinda Matata Versus. 1.John Mwita 2.Returning Officer Kitangili Ward	Ilemela	Kitangili	Hon. Moshi RM	Judgement delivered 20/04/2016. Petition allowed
114	RM's Court	Misc. Civil Cause No. 31/2015	Manganiko Ngaka Versus 1.Abubakaakari Kapera 2.Returning Officer for Nyamanoro Ward 3.The Attorney General	Ilemela	Nyamanoro	Hon. Mugendi RM	Judgement delivered on 20/4/2016. Petition allowed
SHINYANGA ZONE							
115	RM's Court Shinyanga	Misc. Civ. Cause No 8/2015	Prisca Richard Musoma Versus 1.Jesephat Michael Izengo 2.The Returning Officer of Msalala Constituency 3.The Attorney General	Msalala Shinyanga	Bugarama	Mushi RM	Petition Dismissed on 21/2/2016 for failure to pay security for costs.
SONGEA ZONE							

116	RM's Court Songea	Misc. Civ. Cause No 15/2015	Zainabu Hassan Kalikalanje Versus Kubodola Idd Ambali & 2 others	Tunduru	Nakapanya	Hon. Simon Kombelo SRM	Petition dismissed on 11/12/2015 for non-payment of security for costs
117	RM's Court Songea	Misc. Civ. Cause No 16/2015	Sharifa Swarehe Nicco Versus Ajola Hassan Ally & 2 others	Tunduru	Lugunga	Hoh. Simon Kobelo SRM	Petition dismissed on 11/12/2015 for non-payment of security for costs
118	RM's Court Songea	Misc. Civ. Cause No 14/2015	Ndeka Hashim Shaibu Versus Aloyce Mohamed Nyoni & 2 others	Tunduru	Mlingoti Mashariki	Hon. Simon Kobelo SRM	Petition dismissed on 11/12/2015 for non-payment of security for costs
119	RM's Court Songea	Misc. Civ. Cause No 17/2015	Malita Ally Omary Versus. Mtimbalugono Rajabu Rashid Mkwawa & 2 others	Tunduru	Nanjoka	Hon. Simon Kobelo SRM	Petition dismissed on 11/12/2015 for non-payment of security for costs
120	RM's Court Songea	Misc. Civ. Cause No 19/2015	Ndeka Mussa Zuberi Versus Abdallah Rajabu Abdallah & 2 others	Tunduru	Majengo	Hon. Simon Kobelo SRM	Petition dismissed on 11/12/2015 for non-payment of security for costs
121	RM's Court Songea	Misc. Civ. Cause No 20/2015	Anitha Lazaro Komba Versus Maganga Husein Zuberi & 2 others	Tunduru	Nandembo	Hon. Simon Kobelo SRM	Petition dismissed on 11/12/2015 for non-payment of security for costs
122	RM's Court Songea	Misc. Civ. Cause No 18/2015	Seif Said Yusuph Versus Rashid Bakari Tawala & 2 others	Tunduru	Kidodoma	Hon. Simon Kobero DRM	Petition dismissed on 11/12/2015 for non-payment of security for costs
SIMIYU							
123	RM's Court Simiyu	Misc. Civ. Cause No 2/2015	Basu Kayungilo Mshala Versus 1. Nhundu Francis Kishabi Kisesa 2. Assistant Returning Officer of Mwandoya Ward	Kisesa	Mwandoya	Hon. John F. Nkwabi RM	Petition Dismissed on 11/12/2015 for want of prosecution

124	RM's Court Simiyu	Misc. Civ. Cause No 2/2015	Fumbuka Manunda Magulu Versus 1. Joseph Nzagwina 2. Returning Officer Meatu District Council	Meatu	Bukindu	Hon. John F. Nkwabi RM	Petition Dismissed on 28/1/2016 for want of prosecution
125	RM's Court Simiyu	Misc. Civ. Cause No 3/2015	1. Manoni Ntobi 2. Evalini Charles 3. Maria Bahame Versus 1. Yohana Ezekiel Bibi 2. Returning Officer Itilima District Council 3. Assistant Returning Officer Mwalushu Ward	Itilima	Mwalushu	Mary P. Mrio SRM	Petition Dismissed on 28/1/2016 for non-payment of security for costs
SUMBAWANGA ZONE							
126	Rukwa	Misc. Civil Cause No. 1/2015	Benard Raphael Kasitu Versus 1. Assistant Returning Officer Lyangalile Ward 2. Innocent Lungwa	Kwela	Lyangalile	Hon. Matembele SRM	Petition Struck out on 16/12/2015 for want of security for costs
127	Rukwa	Misc. Civil Cause No. 2/2015	Chapita Timoth Ozem Versus 1. Assistant Returning Officer kanda ward 2. Yowas Abraham Meshack	Kwela	Kanda	Hon. Mwanjokolo RM	Petition Struck out on 28/12/2015 for want of security for costs
128	Rukwa	Misc. Civil Cause No. 3/2015	Mamboleo Restus Gustave Versus 1. Alinanuswe Joram Basuke 2. Assistant Returning Officer Lyangalile ward 3. Amas Athanas Nguvumali	Kwela	Lyangalile	Hon. Mwatulo RM	Petition Struck out on 21/12/2015 for want of security for costs
129	Rukwa	Misc. Civil Cause No. 4/2015	Faustine Athanas Mkula Versus 1. Assistant Returning Officer Mkowe ward 2. Alfred Mpandashalo	Kalambo	Mkowe	Hon. Matembele SRM	Petition Struck out on 24/12/2015 for want of security for costs

TABORA ZONE							
130	RM's Court Tabora	Misc. Civ. Cause No. 1/2015	James Erick Kapale Versus 1.Returning Officer Uyui District 2.Assistant Returning Officer Kigwa Ward 3.Msemwa Wilson Isaya	Igalula	Kingwa	Hon. Chugullu SRM	Petition Dismissed on 14/12/2015 for being defective
131	RM's Court Tabora	Misc. Civil Cause No. 2/2015	Seleman Ibrahim Versus 1.Kifoka Ibrahim 2.Returning Officer Silambo Ward 3.Attorney General	Ulyankulu	Silambo	Hon. Ngingwana RM	Judgment delivered on 19/4/2016 Petition Dismissed
132	RM's Court Tabora	Misc. Civil Cause Bo. 3/2015	Julius Sakwe Mshandete Versus 1.Machibya E. Masselle 2.Assistant Returning Officer Ugembe Ward 3.Attorney General	Nzega Vijijini	Ugembe	Hon. Ngingwana RM	Judgment delivered on 20/4/2016 Petition Dismissed.
133	RM's Court Tabora	Misc. civil Cause Bo. 4/2015	Vaileth Sundi Mwangwa Versus 1.Omary Shaban Omary 2.Assistant Returning Officer Bukene Ward 3.Attorney General	Bukene	Bukene	Hon. Chugulu SRM	Judgment delivered on 21/4/2016 Petition Dismissed.
134	RM's Court Tabora	Misc. Civil Cause No. 5/2015	Rashidi Maulid Magope Versus 1. Elemence Msumeno 2.Assistant Returning Officer Tutuo Ward 3.The Attorney General	Sikonge	Tutuo	Hon. Chugullu SRM	Judgment delivered on 21/4/2016 Petition Dismissed
135	RM's Court Tabora	Misc. Civil Cause No. 6/2015	Joyce James Paulo Versus 1. Anna Nyarobi 2.The Registered Trustees of CHADEMA 3.Assistant Returning Office 4.The Attorney General	Igunga	Viti Maalumu	Hon. Joctan RM	Judgment delivered on 11/4/2016 Petition Dismissed

MANYARA							
136	RM's Court Manyara	Misc. Civil Cause No 1/2015	Raphael Mukulat Mangole Versus 1. Kosei Luhinga 2. Assistant Returning Officer 3. Returning Officer	Kiteto	Loolera	Hon. Kamuzora SRM	Judgement delivered on 21/03/2016 Petition Dismissed
137	RM's Court Manyara	Misc. Civil Cause No 2/2015	Said Abdallah Ndiboi Versus 1. Kidawa Athuman Iyavu 2. Assistant Returning Officer 3. Returning Officer	Kiteto	Matui	Hon. Kamuzora SRM	Petition Dismissed on 01/06/2016 for being defective
138	RM's Court Manyara	Misc. Civil Cause No 3/2015	Ramadhani Ami Siasi Versus 1. Manfred L. Sumaye 2. Returning Officer 3. Attorney General	Babati Mjini	Sigino	Hon. Massawe RM	Judgement delivered on 21/03/2016 Petition Dismissed
139	RM's Court Manyara	Misc. Civil Cause No 4/2015	Ramadhani Mohamed Mungwe Versus 1. Abdulrahman H. Kololi 2. Returning Officer 3. Attorney General	Babati Mjini	Maisaka	Hon. Hudi RM	Judgement delivered on 24/03/2016 Petition Dismissed
140	RM's Court Manyara	Misc. Civil Cause No 5/2015	Farah Mohamed Omari Versus 1. Kibiki M. Kibiki 2. Returning Officer 3. The Attorney General	Babati Mjini	Babati	Hon. Shao RM	Judgement delivered on 03/11/2016 Petition Dismissed
141	RM's Court Manyara	Misc. Civil Cause No 6/2015	Jackson Buu Hhaibei Versus 1. Manfred I. Sumaye 2. Returning Officer	Babati Mjini	Duru	Hon. Nganga RM	Delivered Judgement on 30/03/2016 Petition allowed

			3. The Attorney General				
142	RM's Court Manyara	Misc. Civil Cause No 7/2015	Swalehe Ismail Swalehe Versus 1.Gelard John Chembe 2.The Returning Officer 3.The Attorney General	Babati Vijijini	Mwada	Hon. Kamuzora SRM	Petition Withdrawn on 14/01/2016
143	RM's Court Manyara	Misc. Civil Cause No 8/2015	Juma Hamisi Juma Versus 1.John Joseph Bim 2. The Returning Officer 3. The Attorney General	Babati Vijijini	Magara	Hon. Mnguruta RM	Judgement delivered on 03/11/2016 Petition Dismissed
144	RM's Court Manyara	Misc. Civil Cause No 9/2015	Gervas Hhalihhalay Versus 1.Eluthery Joseph Bura 2. The Returning Officer 3. The Attorney General	Babati Vijijini	Dareda	Hon. Maziku SRM	Petition Withdrawn on 15/01/2016
145	RM's Court Manyara	Misc. Civil Cause No 10/2015	Nangay Samwel Stephano Versus 1.Keremu Benjamin Keremu 2.The Returning Officer 3.The Attorney General	Babati Vijijini	Kiru	Hon. Maziku SRM	Petition Withdrawn on 15/01/2016
146	RM's Court Manyara	Misc. Civil Cause No 11/2015	Lupembe Luna Alaingui Versus 1. Yakobo Ninin Siyang'au 2. The Returning Officer 3.The Attorney General	Kiteto	Makame	Hon. Maziku SRM	Judgement delivered on 24/03/2016 Petition Dismissed
147	RM's Court Manyara	Misc. Civil Cause No 12/2015	Isdory John Sulley Versus 1.Elina Ntandu 2.The Returning Officer 3.The Attorney General	Hanang'	Getanuwa	Hon. Maziku SRM	Petition dismissed for want of prosecution 14/12/2015

MARA							
148	RM's Court	Misc. Civ. Cause No 25/2015	Jumanne Ally Oketho Versus Nickson Omolo Siso & 2 others	Rorya	Roche	Hon. Kilimi RM	Judgement delivered on 20/4/2016 Petition Dismissed
149	RM's Court	Misc. Civ. Cause No 27/2015	Ngicho Marwa Daud Versus Mangenyi Ryoba & 2 others	Tarime	Nyanungu	Hon. Kilimi RM	Petition withdrawn On 8/2/2016
150	RM's Court	Misc. Civ. Cause No 24/2015	Denis Kugoro Mkika Versus Returning Officer & 2 others	Butiama	Muriazia	Mpaze	Petition Dismissed on 30/3/2016 for non-appearance
151	RM's Court	Misc. Civ. Cause No 28/2015	Arika Messack Gombe Versus Jeremia Khan Rwande	Rorya	Nyathorogo	Hon. Mushi RM	Judgment delivered On 5/4/2016 Petition Dismissed
152	RM's Court	Misc. Civ. Cause No 29/2015	Laurent Abich Adriano Versus Andrew Mong'osi Nyariga & others	Rorya	Ikoma	Hon. Kilimi RM	Judgement delivered on 6/4/2016 Petition Dismissed
153	RM's Court	Misc. Civ. Cause No 26/2015	Ntogoro Peter Kurate Versus Petrus Joseph Itaras & 2 others	Tarime	Mwema	Hon. Mushi RM	Petition Dismissed on 17/2/2016 for non-compliance with Court Order to amend petition
154	RM's Court	Misc. Civ. Cause No 23/2015	Okere D. Manase Versus Jogoro Amon Biswalo and 2 others	Bunda	Namhula	Hon. Kilimi RM	Petition dismissed on 17/12/2015 for want of prosecution
155	RM's Court	Misc. Civ. Cause No 30/2015	Nazarious Aloo Baragi Versus Justine Lugome & 2 others	Rorya	Kingiroro	Hon. Mushi RM	Petition Dismiss on 5/4/2016 for failure to comply with Court Order to file Written submission for PO
MOROGORO							
156	RM's Court Morogoro	Misc. Civ. Cause No 33/2015	Christopher John Maarifa Versus Msimbe Adam Medard & 2 others	Mvomero	Mangae	Hon. Mary A. Moyo SRM	Judgement delivered on 24/03/2016 Petition dismissed
157	RM's	Misc. Civ.	Mohamed Seiph Kilongo	Morogoro	Mazimbu	Hon. Joyce J.	

	Court Morogoro	Cause No 34/2015	Versus Pascal Mwenda Kihanga & 2others			Mkhoi RM	Petition dismissed on 08/12/2015 for want of prosecution
158	RM's Court Morogoro	Misc. Civ. Cause No 35/2015	Andrew Boniface Mang'anga Versus Makanjira Dismas Winfred &2 others	Morogoro	Chamwino	Hon. Joyce J. Mkhoi RM	Petition dismissed 11/12/2016 for non-payment of security for costs.
159	RM's Court Morogoro	3 Misc. Civ. Cause No 36/2015	Hamsa Yusuph Kyelula Versus Kiwanga Kilian Bonaventura and 2 others	Malinyi	Kilosa kwa Mpepo	Hon. Regina R. Futakamba RM	Judgement delivered On 23/03/2016 Petition dismissed
160	RM's Court Morogoro	Misc. Civ. Cause No 37/2015	Brass Lui Mayanga Versus Cheme Juma Rajabu & 2 others	Kilosa	Mbigiri	Hon. Mary A. Moyo SRM	Petition struck out on 28/12/2015 for non-payment of security for costs
161	RM's Court Morogoro	Misc. Civ. Cause No 38/2015	Jonathan Wilson Kimbikile Versus Bakali Kilo Hassani & 2 others	Kilosa	Masanze	Hon. Mary A. Moyo SRM	Petition withdrawn 28/12/2015
162	RM's Court Morogoro	Misc. Civ. Cause No 39/2015	Hamisi Makwaya Mkolole Versus Issa Saidi Libenanga and 2others	Kilosa	Zombe	Hon. Joyce Mkhoi RM	Petition dismissed on 15/01/2016for want of prosecution
163	RM's Court Morogoro	Misc. Civ. Cause No 40/2015	Abdul Suleiman Msafiri Versus Mbaruku M. Yahaya and 2others	Kilosa	Tindiga	Regina R. Futakamba RM	Petition dismissed on 15/01/2016 for want of prosecution
164	RM's Court Morogoro	Misc. Civ. Cause No 41/2015	Betty Paskali Sembe Versus Isack Vitus Maliwa and 2others	Mikumi	Ruaha	Hon. Agripina Kimaze RM	Petition dismissed on 26/01/2016 for being time barred.
165	RM's Court Morogoro	Misc. Civ. Cause No 42/2015	Grace Illuminati Chimagi Versus Assistant Returning Officer & 2 others	Ulanga	Kichangani	Hon Agripina Kimaze	Petition dismissed on 11/02/2016 for being time barred and non-payment of security for costs
166	RM's Court Morogoro	Misc. Civ. Cause No 43/2015	Athumani A. Kapati Versus Michael M. Mahiringa and 2 others	Ulanga	Minepa	Hon. Joyce J. Mkhoi RM	Judgement delivered on 29/08/2016Petition Dismissed

KIGOMA							
167	Kigoma	Misc. Cause No. 1/2015	Paul Ngomagi Mavuko Lazaro Versus Peter Ntukamazina & 2 others	Muhambwe	Busunzu	Hon. S.J. Kainda SRM	Petition Dismissed 02/12/2015 for non-payment of security for costs
COAST (PWANI)							
168	Pwani	Misc. Civ. Cause No 8/2015	Gasper Melkiory Ndakidemi Versus 1.Addhu Dadi Mkomambo 2.Assistant Returning Officer 3.Returning Officer 4.Attorney General 5.Respondents	Kibaha	Misugusuu	Hon. Nyambele RM	Judgement delivered on 30/3/2016 Petition allowed
169	Pwani	Misc. Civil Cause No 9/2015	Sadick Bakar Sadiki Versus 1.Hassan Mohamed Hassan 2.Mafia District Council 3.Jibondo Ward 4.Attorney General				Petition Dismissed for want of prosecution
LINDI							
170	Lindi	Misc. Civ. Cause No 5/2015	Faudhia Abdallah Chiwangu Versus 1. Assistant Returning Officer Mwenge Ward 2.Ahmad Salum Zuberi 3.Attorney General	Lindi Mjini	Mwenge	Hon G.J. Mhini RM	Judgement delivered on 29/02/2016 Petition Dismissed
171	Lindi	Misc. Civ. Cause No 6/2015	Fadhili Selemani Mbinga Versus 1. Rajabu Hassani Mfaume 2.The Returning Officer for Mtama Ward 3. Attorney General	Mtama	Majengo	Hon. A. Nzowa RM	Petition Dismissed on 04/01/2016 for non-payment of security for costs
172	Lindi	Misc. Civ. Cause No	Hongonyoko Athuman Seif Versus	Mtama	Mtama	Hon. A. Nzowa RM	Petition Dismissed 04/01/2016 for non-payment of security for

		7/2015	1.Hassan Omary Kunyon' gonyea 2.Returning Officer for Mtama 3.Attorney General				costs
173	Lindi	Misc. Civ. Cause No 8/2015	Jaizu Abdallah Mkinde Versus 1.Adamu Issa Mahekula 2. Assistant Returning Officer Liwale Mjini Ward 3.Attorney General	Liwale	Liwale Mjini	Hon. A. Nzowa RM	Petition Dismissed on 8/12/2015 for want of prosecution
GEITA							
174	Geita	Misc. Cause No. 1/2015	Baraka Emmanuel Rwegamoyo Versus 1.Yusuf Man Door Fungameza 2.Returning Officer of Bukombe 3.Assistant Returning Officer Uyovu Ward	Bukombe	Uyovu	Hon. S.Simfukwe RM	Petition Struck out for wrong citation on 01/02/2016
NJOMBE							
175	Njombe	Misc. Civil Cause No. 1/2015	Onnar Amos Mkwama Versus 1.Asifiwe Abel Luvanda 2.Returning Officer 3.Attorney General	Makete	Iwawa	Hon. Cosmas J. Hemeka	Petition dismissed on 07/01/2016 for failure to comply with the requirement of Rule 3 (2) of Cap 292
TANGA							
176	Tanga	Misc. Civil cause No 01/2015	Kessy Mbasha Naoma Versus Haniu Mohamed Pony & 2 others	Tanga Mjini	Tangasisi	Hon. Kisongo SRM	Judgment delivered on 31/3/2016 Petition Dismissed
177	Tanga	Misc. Civil cause No 02/2015	Kalanghe Sadick Versus Magogo Seif Rashid & 2 others	Korogwe	Mgwashi	Hon. Kisongo SRM	Judgment delivered on 04/04/2016 Petition Dismissed
178	Tanga	Misc. Civil cause No 03/2015	Jambia Njama Abdallah Versus Juma Ramadhani Hussein & 2 others	Tanga Mjini	Mabokwei	Hon. Lutalla RM	Judgment delivered on 24/03/2016 Petition Dismissed

179	Tanga	Misc. Civil cause No 04/2015	Mwaveso Kassimu Mbega Versus Mswahili Njama Ally & 2 others	Tanga Mjini	Chongeleani	Hon. Makabwa RM	Judgment delivered on 24/03/2016 Petition Dismissed
180	Tanga	Misc. Civil cause No 05/2015	Kamari Mwinyi Kamari Versus Abdulrahamani Hassani & 2 others	Tanga Mjini	Msambweni	Hon. Lyatuu RM	Judgment delivered on 24/03/2016 Petition Dismissed
181	Tanga	Misc. Civil cause No 06/2015	Sarai Ali Zecha Versus Rashid Jumbe Hamza & 2 Others	Tanga Mjini	Mwanzane	Hon. Lyatuu RM	Judgment delivered on 04/04/2016 Petition Dismissed
182	Tanga	Misc. Civil cause No 07/2015	Fatuma Lali Mohamed Versus Mwasabu Juma Ngale & 2 others	Tanga Mjini	Mabawa	Hon. Kileo RM	Judgment delivered on 24/03/2016 Petition Dismissed
183	Tanga	Misc. Civil cause No 08/2015	Mkongwe Bakari Kombo Versus Thobias Haule & 2 others	Tanga Mjini	Mnyanjani	Hon. Kileo RM	Judgment delivered on 24/03/2016 Petition Dismissed
184	Tanga	Misc. Civil cause No 09/2015	Nasser Makata Mwinyi Versus Selemani Iddi Mbaruku & 2 others	Tanga Mjini	Majengo	Hon. Lutalla RM	Judgment delivered on 29/03/2016 Petition dismissed
185	Tanga	Misc. Civil cause No 10/2015	Husna Hussein Mussa Versus Habibu Nabahampa & 2 others	Tanga Mjini	Ngamiani Kati	Hon. Makambwa RM	Judgment delivered on 11/03/2016 Petition Dismissed
186	Tanga	Misc. Civil cause No 11/2015	Bakha Said Idd Versus Mussa Bakar Mabruk & 2 others	Tanga Mjini	Ngamiani Kusini	Hon. Lutalla RM	Petition Dismissed on 8/3/2016 for want of prosecution
187	Tanga	Misc. Civil cause No 12/2015	Jumaa Mashango Sifa Versus Usanga Rajab Bakari & 2 others	Tanga Mjini	Sigaya	Hon. Litaila RM	Judgment delivered on 30/03/2016 Petition Dismissed
188	Tanga	Misc. Civil cause No 13/2015	Menye Hamad Versus Omari Salim Mzee & 2 others	Tanga Mjini	Makorora	Hon. Mnguto RM	Petition withdrawn on 08/03/2016
189	Tanga	Misc. cause	Swaibu Juma Mwanyoka	Pangani	Pangani	Hon. Lyatuu RM	Judgment delivered on

		No. 14/2016	Versus Said Majira &2 others				06/04/2016 Petition Dismissed
190	Tanga	Misc. Cause No. 15/2016	Bakari Sufiani Moffi Versus Adam Sufiani Kimweri & 2 others	Pangani	Pangani	Hon. Kisongo RM	Judgment delivered on 01/04/2016 Petition Dismissed
191	Tanga	Misc. Civil cause No 16/2015	Abdi Abu Salimu Versus. Ally Said & 2 others	Tanga Mjini	Masiwqani	Hon. Kileo	Petition Dismissed on 11/03/2016 for want of prosecution
192	Tanga	Misc. Civil cause No 17/2015	Kisatu Ramadhani Selemeni Versus Mbweto Said Salewa & 2 others	Handeni Vijijini	Komkonga	Hon. Lyatuu RM	Petition dismissed on 04/03/2016 for want of prosecution
193	Tanga	Misc. Civil cause No 18/2015	Yusuf Juma Sempombe Versus Omari Mhina Masudi & 2 others	Handeni Mjini	Mabanda	Hon. Lutalla RM	Petition Dismissed on 03/12/2015 for non-payment of security for costs
194	Tanga	Misc. Civil cause No 21/2015	Mkungu Kassim Bulean Versus 1.Returning Officer Handeni District 2.Ass.Returning Officer Ndorwa Ward 3.Mabula Lwasa Joel 4.Attorney General	Handeni Vijijini	Ndolwa	Hon. Mnguto RM	Judgment delivered on 21/03/2016 Petition Dismissed
195	Tanga	Misc. Cause No. 19/2015	Leopald Abeid Johndora Versus Akida Mohamed & 2 Others	Pangani	Pangani	Hon. Lyatuu	Petition withdrawn on 04/01/2016
196	Tanga	Misc. Cause No. 20/2015	Salim Omari Bahorera Versus Jumal Nasoro Salehe & 2 others	Pangani	Kipumbwi	Hon.Kileo	Petition Withdrawn on 11/01/2016

PART FOUR

ANALYSIS AND LESSONS FROM THE GROUNDS OF ELECTION PETITIONS

4.0: Introduction

In this part it is proposed to highlight a few of the grounds of petitions which were raised in election petitions from select constituencies. Because of the failure to meet the evidential threshold of proof, the election petition courts did not come out with much electoral jurisprudence from some of the very inviting grounds of petition. All the same, these grounds are lessons in themselves about the common election complaints prevailing in Tanzania both in councilor and parliamentary election petitions.

4.1: IN THE RESIDENT MAGISTRATE COURTS

4.1.1 Grounds for avoidance of the election of Ward Councilors

DISCUSSED IN: **Laurent Abich Adriano v. Andrew Mong'osi Nyakriga, Attorney General and The Returning Officer For Rorya**, the Court Of Resident Magistrates At Musoma, Miscellaneous Civil Case No. 29 OF 2015 (A. P. KILIMI, RM):

- Arises from Ikoma Ward Counselors election campaign and results for the election held on the 25th day of October, 2015.
- It is clear that section 107 of the **Local Authorities (Election) Act** Cap 292 R.E 2015 provide for grounds to be proved in order to declare the election void, however in the case of **Attorney General and two others V. Amani Walid Kabourou** (1996) LRT 156, the Court of Appeal enlarged others and observed that... *such other grounds include anything which renders the elections not free and fair as well as any law which sued to protect an election which is not free and fair, since such would be unconstitutional.*"
- It is a trite law the burden of proof is upon the petitioner who alleges that there were malpractices and irregularities that occurred and the standard of proof is beyond reasonable doubt. (see the case of **Chabanga Dyamwale V. Alhaji Masomo** (1982) TLR 69 and **Yougolo V. Erasto and Attorney General** (1971) HCD 259 where the court stated that the party who seeks to avoid election result has to prove to the satisfaction of the court non-compliance with Election Act, and that proof to the satisfaction of the court means the proof beyond reasonable doubt. (See also **Manju Salum Msambya V. The Attorney General and Kifu Gulamali Kifu**, Civil Appeal No. 02 of 2002 CA and **Luther Symplorian Nelson V. A.G and Ibrahim Said Msabaha** [2002] TLR CA.
- Apart from proving that there were malpractices or non-compliances, the petitioner must satisfy the court that these affected the results. ...it was stated in the case of **Joseph Mwandwi Kashindye Versus Dalaly Peter Kafumu, The Returning Officer Igunga Constituency and Attorney General**, Misc. Civil Cause No. 10 of 2011 Tabora, that: "...It is not sufficient for the petitioner to establish the occurrence of

irregularity or malpractice only, for he must show how the alleged irregularity or malpractice substantially and materially affected the outcome of the Election process."

4.1.2: Grounds for avoiding election of a Ward Councilor

DISCUSSED IN: **Jumanne Ally Oketho v 1. Nickson Amolo Siso 2. The Returning Officer (Roche Ward)**, Miscellaneous Civil Case No 25 of 2015, Resident Magistrate's Court of Musoma at Musoma (A. P. Kilimi-RM).

- Section 107 of the Local Authorities (Election Act Cap 292 R.E 2015 provides for grounds to be proved in order to declare the election void, , however in the case of *Attorney General and two others v. Amani Walid Kabourou (1966) LRT 156*, the court of appeal enlarged others and observed that: *"...such other grounds include anything which renders the elections not there and fair as well as any who which sued to protect an election which is not there and fair be since such would be unconstitutional"*.

4.1.3: Used ballot papers voted against the Petitioner

DISCUSSED IN: **Arika Messack Gomb v. Jeremiah Khan Rwande, Returning Officer And Attorney General, In The Court of Resident Magistrates at Musoma**, Misc. Civil Cause No. 28 Of 2015 (K.T. MUSHI-SRM):

- Election petition under the Local Authorities Election Act, CAP 292 R.E 2002 and the Local Authorities (Election Petition) Rules 2010.
- This court cannot understand why the misconducts highlighted by the petitioner were not reported to the proper authorities for appropriate measures to be taken immediately. At very least, the petitioner should have filled the Complaint Form to show that the problems were reported on time. Without proper proof of misconduct this court cannot but conclude that all the proper procedures were followed that is why even when the results were finally announced, the petitioner and his agent signed and agreed to the same.

4.1.4: Grounds for avoidance of the election of Ward Councilors

DISCUSSED IN: **Laurent Abich Adriano v. Andrew Mong'osi Nyakriga, Attorney General and The Returning Officer For Rorya**, the Court Of Resident Magistrates At Musoma, Miscellaneous Civil Case No. 29 OF 2015 (A. P. KILIMI, RM):

- Arises from Ikoma Ward Counselors election campaign and results for the election held on the 25th day of October, 2015.
- It is clear that section 107 of the **Local Authorities (Election) Act** Cap 292 R.E 2015 provide for grounds to be proved in order to declare the election void, however in the case of **Attorney General and two others V. Amani Walid Kabourou (1996) LRT 156**, the Court of Appeal enlarged others and observed that... *such other grounds include anything which renders the elections not free and fair as well as any law which sued to protect an election which is not free and fair, since such would be unconstitutional."*
- It is a trite law the burden of proof is upon the petitioner who alleges that there were malpractices and irregularities that occurred and the standard of proof is beyond reasonable doubt. (see the case of **Chabanga Dyamwale V. Alhaji Masomo (1982) TLR 69** and **Yougolo V. Erasto and Attorney General (1971) HCD 259** where the court stated that the party who seeks to avoid election result has to prove to the satisfaction of the court non-compliance with Election Act, and that proof to the satisfaction of the court means the proof beyond reasonable doubt. (See also **Manju Salum Msambya V. The Attorney General and Kifu Gulamali Kifu**, Civil Appeal

No. 02 of 2002 CA and **Luther Symplorian Nelson v. A.G and Ibrahim Said Msabaha** [2002] TLR CA.

- Apart from proving that there were malpractices or non-compliances, the petitioner must satisfy the court that these affected the results. ...it was stated in the case of **Joseph Mwandwi Kashindye Versus Dalaly Peter Kafumu, The Returning Officer Igunga Constituency and Attorney General**, Misc. Civil Cause No. 10 of 2011 Tabora, that: *"...It is not sufficient for the petitioner to establish the occurrence of irregularity or malpractice only, for me must show how the alleged irregularity or malpractice substantially and materially affected the outcome of the Election process."*

4.1.5: Petitioner in Ward Council election excluded from the vote tallying room

DISCUSSED IN: **Hamid Mohamed Mbatta v. 1. Ryata Joseph Nzala, 2. The Returning Officer, 3. The Attorney General**, Miscellaneous Civil Cause No. 47 of 2015, The Resident Magistrate's Court of Iringa At Iringa (Ngunyale – RM):

- The Petitioner claimed that the first Respondent was allowed inside the tallying room, but he was excluded.
- When he arrived at the tallying room, CHADEMA followers told him **"pole"** meaning that he had already lost. He was denied entrance by the police officer. By the time he was allowed in, the results had already been compiled.
- **COURT:** political parties were informed in advance where addition of votes was scheduled to take place. Therefore, the petitioner ought to know where the exercise will take place and in fact he went there. The delay occurred out of the Petitioner's fault and not the fault of the 2nd respondent. The same position is ruled on the issue of denial of entrance to the polling stations. In the circumstance where denial to enter polling stations occurred the same had no effect because the petitioner had agents in every polling stations as acknowledge by himself.

4.1.6: Illegal campaigned on the Election Day

DISCUSSED IN: **Hamid Mohamed Mbatta v. 1. Ryata Joseph Nzala, 2. The Returning Officer, 3. The Attorney General**, Miscellaneous Civil Cause No. 47 of 2015, The Resident Magistrate's Court of Iringa At Iringa (Ngunyale – RM):

- Petitioner received information from agents polling station supervisors were speaking openly that **"sasa ni wakati wa mabadiliko"** when election was going on. The statement meant that voters were to vote for the other candidates.
- **COURT:** The agents are supposed to fill Form No. 14 immediate before the voting exercise to confirm that the ballot boxes are okay. If they are not okay they are to Fill Complaints and sign the Form accordingly. The same Form is filled after voting.
- **COURT:** After voting the agents also are at liberty to fill any complaint occurred during the exercise of voting. The agents filled the Forms and signed accordingly. No complaint was filled in the Forms. The complaints were not in the respective Complaint Form hence the court cannot accept mere allegations not in the format required by the election rules.
- **COURT:** Therefore the complaints that there were campaigns taking place on Election Day are unfounded. In the case of **WILLIAM JOSEPH MUNGAI vs. COSATO DAVID CHUMI & 2 OTHERS**, Misc. Civil Cause (Election Petition) No. 8 of 2015 the court said that the electoral laws and rules are very clear that every

irregularity are to be filled in the relevant form by either agents or supervisors, failure to fill the relevant form makes a complaint an afterthought.

4.1.7: Council Election vague and unspecific

DISCUSSED IN: **Farida Haruna v. 1. Minde Ainameny Nelson, 2. The Returning Officer, 3. The Attorney General**, Miscellaneous Civil Cause No. 46 of 2015, The Resident Magistrate's Court Of Iringa at Iringa (E. R. Nassary – RM:

- Preliminary Objection that particulars contained in paragraphs 7, 9, 11, and 12 of the Petition suffer from material insufficiency: cited **Fred Tungu Mpendazoe v. The Attorney General and two others**, Misc. Civil Application No. 98 of 2010 High Court at Dar es Salaam (unreported).
- In support of the objection, it was submitted that the Civil Procedure Code Cap 33 R.E 2002 and the Election Rule 19 (1) of the local Authority Government Election rules of 2010 that are applicable in a pleading writing.
- It was further submitted that the purpose of pleadings is to allow other party to know his case and to prepare its defence, also pleadings purporting a court knowing a matter before it in order to prepare issue(s) to be determined.
- It was pointed out that although there were 265 polling stations in the Constituency, the petitioner did not in his pleadings specify in which polling station he was denied to enter during the addition of votes instead of generalizing by saying in a various polling stations.
- To oppose the objection, while conceding that the purpose of pleadings is to allow other party to know their case and to allow another party to prepare his defence, it was contended that pleadings cannot contain details of the case as the State Attorney demands. It was further contended that the words “**vague and unspecific**” the learned State Attorney employed as a basis of the preliminary point of objection are not found anywhere in the Civil Procedure Code. That the remedy of a **vague** pleading that is provided for under Order VI Rule 17 of the Civil Procedure Code is to order an amendment of the pleading.
- Referred to the case of **Eastern Bakery Vs. Castelino** [1958] E.A 461 at page 462, where the court observed that, “ Amendments to pleadings sought before the hearing should be freely allowed if they can be made without injustice to the other side and that there injustice if the other side can be compensated with costs.
- Citing section 63 (2) of the Local Authority Election Cap 292 the court was urged to dismiss the objection as it has no basis.
- **COURT:** the purpose of pleading is to bring the parties to an issue and to prevent the issue being enlarged which would prevent either party from knowing, when the case came on for hearing, what the real point to be discussed and decided was. However, it was observed in the case of **Gandy v Caspar Air Charles Ltd**, 23 E.A C.A. 139 at page 140 that “ the object if pleadings is of course to secure that both parties shall know what are the points in issue between them, so that each may have full information of the case he has to meet prepare his evidence to support his own case or to meet that his opponent.”
- **COURT:** In the case of Fred Mpendazoe the court had referred the case of **Philip Annania Masas v. Returning Officer, Njombe North Constituency 2. The Attorney General 3. Jackson M. Makweta**, Misc. Civil Cause No. 7 of 1995 HC at Songea (unreported) at page 10. Samatta J. (as he then was) enunciated the principle on which courts have to adopt to determine whether a pleading is defective for

being vague. Samatta J., observed.... “.... that pleading should be concise and precise. Pleadings are defective if they contained vague and irrelevant statements.....that, pleadings which are too general as to fail to indicate what was meant by the party are also defective. That the court, in construing pleadings should always remember that it is the right of a party to have the opponent’s case intelligently presented.

- **COURT:** Failure to specify which stations the second respondent had denied the petitioner physical presence but he had allowed the first respondent to be present when the addition of votes were carried, this paragraph amount to being vague and unspecific..... The phrase “**various polling stations**” **does not give specific polling station**” in paragraph 7 do not give specific polling stations concerned.
- **COURT:** Similarly the words in Para. 9 that, “polling stations, the first respondent and his Chadema followers with the knowledge and approval of the first respondent conducted campaign without the electoral staff reprimanding such conduct..”
- **COURT:** Struck out paragraphs, 7, 9, 11 and 12 of the petition.
- **COURT:** The remaining paragraphs do not disclose any cause of action.

4.2: IN THE HIGH COURT

4.2.1 Grounds of Petition from Rungwe Parliamentary Constituency

- i) Disputing the votes' figures declared by the Returning Officer.
- ii) Vote counting, tallying, and declaration of results fraught with irregularities.
- iii) Tallying of votes at polling stations was done through the use of “Data Management System”.
- iv) Lack of Forms No. 14, 16 and 21B at Ward level thereby affected the tallying of votes at Ward level.
- v) Use of defamatory statements during election campaigns.
- vi) Arrests of people for possessing of two voting registration cards.
- vii) Complaint that one or two police officers who were coming in and going out the tallying were bringing suspect votes or Election Forms No. 21B or otherwise were interfering with the addition of votes.
- viii) Respondent, his agents and the police officers intimidated the petitioner’s followers during the public campaign and counting process.
- ix) Rigging and manipulation of votes.
- x) The petitioner claims that he had a majority of votes, should have been declared the winner.

4.2.2. Grounds of Petition from Kilombero Constituency

- i) Use of abusive, offensive, discriminatory and defamatory language during the campaigns.
- ii) Exploitation of tribal differences
- iii) Effect of referring or failing to refer the discriminatory statements complained of to the Ethical Committees (“Kamati ya Maadili ya Uchaguzi”).

4.2.3. Grounds of Petition from Kilwa North Constituency

- i) Failure to tally the number of votes cast with the votes that were rejected and votes which were allocated to each candidate.

- ii) Polling assistants and polling agents of some named polling stations did not sign the result forms.
- iii) Some Result Forms for a number of polling stations bore similar serial numbers rendering their integrity doubtful.
- iv) The results from some polling stations differed with the results ultimately announced in respect of those same polling stations.
- v) The Returning Officer refused the petitioner's request for recounting and tallying of votes.
- vi) Votes cast exceeded the number of registered voters at Mtende Zahanati polling station.
- vii) Result forms had no official emblem of the National Electoral Commission, bringing to question their authenticity.
- viii) The result forms for *Zahanati No 2*, was deleted and overwritten by unknown people, making their genuineness highly doubtful.
- ix) Threat of physical violence to voters and that people in Mitole and Miguruwe Wards were injured subsequent to which a police case was filed.

4.2.4: Grounds of Petition from Njombe Mjini Constituency

- i) Election was tainted with illegalities and malpractice
- ii) At the time of election, the 1st Respondent lacked qualification to become a Member of Parliament.
- iii) Exploitation of tribal differences and places of domicile during the campaign period.

4.2.5. Grounds of Petition from Mlimba Constituency

- i) False, scandalous and discriminatory statements.
- ii) Incitement of acts of violence, corrupt practices

4.2.6: Grounds of Petition from Nyamagana Constituency

- i) Prayer of "NO CASE TO ANSWER" at close of Petitioner's evidence
- ii) Standard of proof where Respondent prays- "NO CASE TO ANSWER" at close of Petitioner's evidence
- iii) Failure by the Petitioner at closing of his evidence, to tender 693 Election Results Forms No. 21B which were at the centre of his complaint.

4.3. General Legal Principles guiding the determination of Election Petitions

Over the years of the experience of election petitions in Tanzania, the High Court has always prefaced its judgments by highlighting general legal principles which guided the trial court in the determination of election petitions. Some of these general principles were reiterated in the decisions of the election petition courts following the 25 October, 2015 General Elections. A few examples are illustrative:

4.3.1: Emerging General Principles from Rungwe Parliamentary Constituency

He who alleges must prove. The standard of proof the petitioner is required by law to prove is the proof to the satisfaction of the court.

Parties are always bound by their pleadings.

Candidates and their agents are required to adhere to the election campaign programme.

The law obliges the Returning Officer to distribute/ or cause to be distributed, election equipment and materials not later than one day before the date of polling.

Forms 21B are the creatures of the law. They are filled by the presiding officer at the respective polling stations. They are filled after the ascertainment of the validity of votes and valid votes been counted. If there are any votes that have been disputed and a decision has been made by the presiding officer, then such decision is subject to review by the Returning Officer.

4.3.2 Emerging General Principles from Kilombero Constituency

The standard of proof in election petitions is “to the satisfaction of the court.” Such a standard presupposes that there should not be doubt in the petitioner’s case.

In an election petition, the trial court will be guided by the framed issues which arise out of the pleadings filed before the court.

Court of law cannot be expected to act and give weight to shaky and contradictory evidence.

Courts of law depend on witnesses to get to the root of truth.

4.3.4: Emerging General Principles from Kilwa North Constituency

Role of a petitioner in an election petition is largely to introduce his case; he states the grounds upon which the case is based and calls his witnesses to prove those grounds.

In election petitions like in civil litigation, parties are bound by their pleadings.

Annexures attached along with either the plaint or written statements of defence are not exhibits, they do not therefore qualify to be evidence.

Documentary evidence cannot be disproved by oral evidence.

The essence of section 108 (3) of the National Elections Act is that in order the petitioner to succeed on the allegation of malpractices in election, he must link the malpractices concerned with the contested candidate.

PART FIVE

MATTERS AND JURISPRUDENCE THAT AROSE DURING HEARING OF ELECTION PETITIONS

5.0: Introduction

During handling of election petitions, various matters emerged. This part highlights some of them and the way the High Court dealt with as it is reflected below.

5.1: Matters that arose from Nyamagana Constituency petition

- Prayer of “NO CASE TO ANSWER” at close of Petitioner’s evidence.
- Standard of proof where Respondent prays— “NO CASE TO ANSWER” at close of Petitioner’s evidence.
- Failure by the Petitioner at closing of his evidence, to tender 693 Election Results Forms **No. 21B** which were at the centre of his complaint.

5.2. Procedure of issuing the notice and application for discovery and inspection of documents

DISCUSSED IN: **David Zacharia Kafulila v. 1. Husna Sudi Mwilima, 2. The Returning Officer, Kigoma Kusini Constituency 3. The Attorney General**, Misc. Civil Cause No. 2 of 2015, High Court at Kigoma (Wambali, J.):

- After the petitioner had concluded reading his affidavit as required under Rule 21A (3) of the National Elections (Election Petitions) (Amendment) GN No. 106 of 2012, his counsel prayed to the Court to order the Returning Officer to produce the original copies of Form No. 21B for 382 polling stations that were issued and filled during the General Elections of October 2015 in Kigoma Kusini Constituency.
- It was contended on the Petitioner’s behalf that he (the Petitioner) is in possession of copies of **Forms No. 21B**, but he wanted the second respondent to produce the original copies.
- That the Petitioner had earlier lodged the notice to produce in court in which an order of the trial court was sought to compel the Returning Officer to produce original copies of Form No. 21B and the Final Chart of Election Results for the Kigoma Kusini Constituency.
- **COURT:** There is no dispute, in my view, that having regard to the submission of the counsels for the respondents and the reply by the counsels for the petitioner, it is clear that the provisions of order XI of the Civil Procedure Code, Cap. 33 [Discovery and Inspection) were not properly invoked by the petitioner’s advocates.
- **COURT:** It follows that by invoking order XI, the procedure of issuing the notice and application for discovery under that provision was supposed to be followed consistently.

- **COURT:** As correctly stated by counsels for the first, second and third respondents, the said notice was not in the first place directed to the respective parties as required by law. Indeed, it was upon non-compliance by the opposite party to the notice that the orders could have been sought from the court. A thorough reading of that provision presupposes that it should be made prior to the hearing and not on the hearing date as indicated by the learned counsels for the petitioner.
- **COURT:** Once a party invokes the provision of Order XI of Cap. 33, he must make sure that he has secured the necessary order of the court to produce the document or documents before the hearing which the court has ordered to be produced. A party cannot at the same time invoke, in my view, the provision of order XI and XIII without following the proper procedure. The provision of order XIII and Rule 18 is to the effect that parties must produce all documents at the first hearing in their possession subject to the conditions and procedure laid therein.
- **COURT:** The court has power to order production of documents and discovery without notice but that must be in accordance with the law, be it the Civil Procedure Act, National Election (Election Petitions) Rules GN No. 447 of 2010 or the Evidence Act.
- **COURT:** In the present matter, the petitioner has wrongly invoked the provisions of Order XI as he has not complied with the procedure.
- **COURT:** An application for discovery must be made in time and a party who receives the order of the court and fails to comply has to face sanctions. But, this is not the case in this matter as no order has been made by the court.

Submission and Prayer of NO CASE TO ANSWER

DISCUSSED IN: **David Zacharia Kafulila Vs. 1. Husna Sudi Mwilima, 2. The Returning Officer, Kigoma Kusini Constituency 3. The Attorney General**, Misc. Civil Cause No. 2 of 2015, High Court at Kigoma (Wambali, J.):

- The prayer and submission of the respondents of no case to answer after the closure of the petitioner's petition after four witnesses had testified and seven exhibits had been tendered.
- **COURT:** No case to answer concept is well entrenched practice in common law jurisprudence through case law. In some jurisdictions the concept has attracted legal provisions especially in criminal procedure statutes.
- The concept also known as "halftime submission" is also well entrenched jurisprudence through case law in Tanzania both in criminal and civil cases.

5.3: Witnesses' Affidavits, their logistical challenges

DISCUSSED IN: **Benedicto Mutachoka Mutungirehi v 1. Innocent Sebba Bilakwate, 2. The Returning Officer for Kyerwa 3. The Attorney General**, Miscellaneous Civil Cause No 7 of 2015 HC AT BUKOBA (Munisi, J.)

- On 16/3/2016 when the court resumed for the hearing, Mr. Erasto, learned counsel for the petitioner informed the court that due to logistical challenges he only managed to file thirty seven (37) affidavits out of 140 that he intended to file. He thus prayed for leave to file the remaining affidavits on the main ground that the time given was too little to manage the assignment, in addition the distance involved between Bukoba town and Kyerwa Constituent where the witnesses are located in different wards is over 200 kilometers.
- The trial proceeded and by 24/3/2016 out of the **37 affidavits** lodged in court **only 12 were left unopened** out of which **1 had no matching name to the agent intended**

to be called. Among the 24 sealed envelopes opened by the court, for different reasons, only seven were held valid hence only 7 witnesses gave evidence the remaining affidavits were declared defective and struck out with their corresponding deponents/witnesses discharged.

- On 24/3/2016 in the middle of prosecuting the case and in what surprised the court, Mr. Mwanaliela, learned counsel prayed the court to drop all the remaining 11 affidavits and close the petitioner's case.
- **COURT:** Petition is dismissed on account of failure to prosecute it.

5.4: Security for costs

DISCUSSED IN: **Faith Mohamed Mitambo v. Zuberi Mohamedi Kuchauka, The Returning Officer, Liwale Urban Parliamentary Constituency and the Attorney General**, Misc. Civil Application No. 20 of 2015 (Arising from Misc. Civil Cause No. 2 of 2015), High Court at Mtwara (F. Twaib, J.):

- Subsequent to the filing of the petition, the applicant has filed the present application for determination of security for costs.
- On the applicant's behalf it was submitted that the Petitioner is no longer a Member of Parliament, that she is now only a peasant and depends on agriculture, and has spent a lot of money on the campaigns for nomination by her party and the election.
- It was further submitted that the applicant's house was gutted down by fire in 2013 and she has not been able to re-construct the house due to shortage of funds. Photographs showing the applicant surveying a house that is burnt have been attached to her affidavit in support of the application.
- **COURT:** The constitutional principle of equality before law provided for under Article 13 (6) (a) of the Constitution is contained in section 111 (4) of the Elections Act. In *Chiriko Harun Daudi v Kangi Alphaxard Lugola & 2 Others*, Civ. Appeal No. 36 of 2012, CAT (unreported), the Court of Appeal expounded the principle by surveying its historical context an earlier decision of the Court of Appeal in *Julius Ishengoma Francis Ndyanabo v AG* (2004) TLR 14.
- **COURT:** The context in which subsections 111 (3) and (4) of the Elections Act were enacted was thoroughly discussed in *Chiriko Harun Daudi v Kangi Alphaxard Lugola & 2 Others* (*supra*). The Court of Appeal found that the amendments were aimed at making it possible for a petitioner who is facing considerable hardship to either be completely exempted from making a deposit, or to deposit a lesser sum. The intention was to provide a level playing field for those who cannot afford the deposit, or who can only afford part thereof.
- **COURT:** At the same time, it is possible for the court to order, pursuant to subsection (5) of section 111, the deposit of another form of security other than cash, whose value does not exceed Tshs. 5 Million for each respondent.
- **COURT:** Despite the absence of concrete proof that the house in the photographs displayed in the applicant's affidavits belongs to the applicant, I have no reason to doubt her averment that it is hers. I take it as proved that the house is hers. However, it is common ground that the applicant is an immediate past MP. She thus benefitted from the gratuity that was paid to all outgoing MPs upon the dissolution of the last Parliament to give room for the General Elections. For that reason, her hardship cannot completely exonerate her from the requirement of making a deposit.
- **COURT:** Gratuity is a relevant factor which I also took into account when determining the security. It must have boosted the applicant's financial capacity.

- **COURT:** Finds that although the applicant is entitled to the relief provided by subsection (3) of section 111, she does not qualify for total exemption from payment of security as stipulated in section 111 (5) (b). The applicant is assessed the amount at Tshs. 3,000,000/= for each respondent.

5.5.1: Failure to pay security for costs, matter marked closed by the Registrar

DISCUSSED IN: **Ansbert Mugamba Ngurumo v. 1. Charles John Mwijage, 2. Returning Officer of Muleba North Constituency 3. The Attorney General**, Miscellaneous Civil Cause No. 9 of 2015 High Court at Bukoba (S.M. Kulita –Deputy Registrar)

- **COURT:** The petitioner was supposed to pay security for costs within fourteen days from the date of determination by the court which is 14.12.2015. Since that said period has expired on 28.12.2015 without such payment being made, under S. 111 (7) of the National Elections Act [Cap 343 R.E. 2015] no further proceedings shall be heard. The matter is therefore marked closed.
- **COURT:** A learned counsel cannot replace the petitioner in filling the petition or the application for security of costs. Similarly, the learned counsel cannot swear affidavit relating to personal matters of the Petitioner. A Counsel shall always remain a counsel to and or for his client.

5.5.2: Security for costs, application filed out of time

DISCUSSED IN: **1. Alli Mohamed Lipemba, 2. Bora Abdallah Mkonda v. 1.Hawa Abdulrahman Ghasia, 2. The Returning Officer, Mtwara Vijijini Parliamentary Constituency, 3. The Attorney General**, Misc. Civil Application No. 25 of 2015 (Arising from Misc. Civil Cause No. 5 of 2015)High Court at Mtwara (F. Twaib, J.):

- Preliminary objection that application for determination of the amount of security was filed out of time.
- Section 111 (2) of the *National Elections Act*, Cap 343 (R.E. 2015) requires them to pay into court a deposit of Tshs. 5,000,000/= as security for costs in respect of each respondent.
- Reckoning from on 25th November 2015 when the applicants filed their petition, fourteen days expired on 9th December 2015 being the last day they could have timely filed the application for determination of security for costs.
- **COURT:** 9th December is ordinarily a public holiday, and section 19 (6) of the *Law of Limitation Act* would have excluded that day in the computation of time for purposes of determining the period of fourteen days within which the applicants should have filed their application. The situation as regards the Independence and Republic Day in 2015 was different. By Government Notice No. 537 of 2015, published on 23rd November 2015, His Excellency John Pombe Magufuli, the President of the United Republic of Tanzania, issued and published a Proclamation termed “*The Public Holidays (Deferment of the Independence and Republic Day – 9th December 2015 - Public Holiday) Proclamation, 2015*”. In that Proclamation, the President deferred the 2015 Independence and Republic Holiday until 9th December 2016, and declared 9th December 2015 to be a working day. The Principal Judge also issued a statement, directing all those in the service of the Judiciary to go to work like they do on any normal working day on 9th December 2015. Such power is provided for under section 5 of the Public Holidays Act.
- **COURT:** That the applicants should have filed the application on 9th December 2015, which could no longer be taken to be a public holiday within the meaning of section

19 (6) of the *Law of Limitation Act*. They did not and, instead, they filed it the next day (10th December 2015).

- **COURT:** The application is time-barred. The preliminary objection is thus sustained. The application is dismissed with costs to the 1st respondent.

5.5.3 Security for costs, determining factors

DISCUSSED IN: **Benedicto Mutachoka Mutungirehi v 1. Innocent Sebba Bilakwate, 2. The Returning Officer for Kyerwa 3. The Attorney General**, Miscellaneous Civil Application No. 43 of 2015 High Court at Bukoba (Mwangesi, J.).

- Petitioner/applicant for security for costs claimed that he was not in a position to deposit Tshs. 5,000,000/= which is required by law for each respondent, because he is a mere peasant residing at the village of Kitwe in Kyerwa District.
- That he was paying school fees for his children studying in various secondary schools. In addition, he was short of money because he spent so much during the election campaigns.
- **COURT:** The right to petition in order to challenge the validity of the results in an election is undeniably a basic right which has been clearly enshrined under Article 21 of the Constitution, 1977. Notwithstanding the constitutional right, a law was enacted to introduce the requirement to deposit security for costs, which is meant to serve a number of purposes, like to curb unreasonable and vexatious petitions by some busybodies. The Court of Appeal decision of **Julius Ishengoma Ndyababo vs. AG [2004] T.L.R. 14** found the amount which law had fixed to be stringent hence denying some indigent petitioners access to justice. The outcome was the enactment of the Written Laws (Miscellaneous Amendments) Act No. 25 of 2002, which led to the current practice of the determination of the security for costs by the High Court. Therefore, the procedure for applying for security for costs is not meant to deny justice. An amount of Tshs. 2,500,000/= was set as security for costs to each respondent.

5.5.4 Security for costs: “economic difficulties”

DISCUSSED IN: **Juma Sadick Manguya v 1. George Mkuchika, 2. The Returning Officer of Newala Urban Parliamentary Constituency 3. The Honourable Attorney General**, Misc. Civil Application No. 18 of 2015 (Arising from Misc. Civil Cause No. 1 of 2015) High Court at Mtwara (Twaib, J.):

- Determined the amount to be deposited by the applicant in respect of each of the respondents as security for costs.
- The applicant claimed that he was facing “economic difficulties” as he was then unemployed and had spent a lot of money during campaigns and the election process.
- Through his learned Advocate, the applicant suggested that he could afford to pay Tshs. 4,000,000/= in total, and prayed that the court should assess the amount of deposit at that amount, so that he may pursue his constitutional right to challenge the election results.
- Learned counsel for the 1st respondent opposed the application by submitting that being unemployed is no reason for not paying the full amount of deposit required by law. That the applicant has not stated his source of income and when his unemployment began. That the applicant should have expected and prepare himself financially for the possibility of an election petition.

- On behalf of the 2nd and 3rd respondents, it was submitted that the applicant has not advanced any good reason for the grant of the application. Being unemployed, argued counsel, is not the same as saying the applicant cannot afford the deposit.
- **COURT:** asked itself whether the circumstances justify a reduction of the security for costs?
- **COURT:** “Admittedly, civil litigation, whether ordinary or an election petition such as the one which is the subject of this application, is costly. In ordinary litigation, the law does not require any deposit for costs, except in restricted circumstances where the plaintiff is not resident of Tanzania and has no immovable assets in the country, under Order XXV rule 1 (1) of the Civil Procedure Code, Cap 33 (R.E. 2002).”
- **COURT:** It seems to me that the applicant has managed to prove, *prima facie*, that he has good reasons to justify the court finding that the amount of deposit be reduced from the amount provided by law. Finding Tshs. 15,000,000/= almost immediately after an election contest is not an easy task. And, if he is not employed, a fact that has not been seriously challenged by the respondent’s counter affidavits, his ability to raise funds for the deposit cannot be taken as a matter of course.
- **COURT:** I think the principles that should guide our courts in determining the amount of security for costs cannot be very different from the principles that govern the awarding of costs in civil cases generally. The East African Court of Appeal in *Premchand Raichand Ltd. & Another v. Quarry Services of East Africa Ltd. & Others* (No. 3) [1972] E.A. 162 set down the principles, which were adopted by this court in *Re. Africa Marble Co. Ltd.*, Misc. Civil Case No. 128 of 1980, H.C.T., Dar es Salaam (unreported). They are: - 1) *That costs should not be allowed to rise to such a level as to confine access to the courts to the wealthy;* 2. *That a successful litigant ought to be fairly reimbursed for the costs incurred;* 3. *That the general level of remuneration of advocates must be such as to attract recruits to the profession;* and 4. *That so far as practicable there should be consistency in the awards made.*
- **COURT:** I fixed the security for costs at the sum of Tshs. 3,000,000/=: meaning that the total amount to be deposited by the applicant in respect of all three respondents would be Tshs. 9,000,000/=.

5.5.5: Constitutionality of security for costs provisions

DISCUSSED IN OBITER: **Idd Mohamed Azzan v 1. Mtulia Maulid Said Abdallah, 2. Returning Officer Kinondoni Constituency, 3. Attorney General**, Miscellaneous Civil Cause No. 3 of 2015 High Court at Dar es Salaam (Chocha, J.)

- The Petitioner prayed to withdraw his petition. While considering the issue of costs, Chocha, J. questioned the constitutionality of section 111 of the National Elections Act, Cap. 343: “...I wish to begin by doubting the constitutionality of section 111 of Cap. 343 (*supra*) albeit in a nutshell. That question was posed by Samatta, CJ (as he then was) as he was lining up his arguments in the case of JULIUS ISHENGOMA FRANCIS NDYANABO VS THE ATTORNEY GENERAL- Civil Appeal 64/2001. At some point, the honourable CJ brought to the Respondents’ attention the arbitrariness of section 111 (2) Cap 343. Notably after ISHENGOMA (*supra*) decision the parliament quickly seemingly relaxed the offensive provision by empowering the court to determine upon application by a petition, quantum of security for costs which is what the full bench of the CAT again deliberated at length in the CHIRIKO (*supra*) case.
- *That relaxation was unfortunately not enough. The provisions’ (S.111) offensiveness to the constitution of the United Republic was not yet cured... The little efforts undertaken to purportedly relax the conditions with regard to the quantum is insufficient, the provision S.*

111 (2) (supra) is still violative and in confrontation of article 13 (1) of the Constitution for being segregative and cluster protector based.”

5.5.6 Learned Counsel applying for Security for Costs

DISCUSSED IN: Alistides A. Kashasira v 1. Prof. Anna Kajumulo Tibaijuka, 2. Returning Officer of Muleba South Constituency 3. The Attorney General, Misc. Civil Application No. 44 of 2015 High Court at Bukoba (Khaday, J.):

- Whether an affidavit sworn and filed by the learned Advocates on behalf of a party to an election petition is competently before this court.
- Whether an advocate can file and swear affidavit on behalf of his client in the application for security of costs without offending the provision of Section 111 (3) of the National Elections Act.
- **COURT:** It is unfortunate that we have no clear definition of who is a Petitioner under the National Elections Act. However, the provision of Section 111 (1) (a), (b), (c) and (d) of the same National Elections Act enables us to understand who is a Petitioner that are meant and or focused in our case.
- **COURT:** The National Elections Act is specifically enacted to deal and or to govern all matters relating to Election matters. Of course, the procedure to conduct the election matters is to a greater extent, similar to the procedure for other civil matters that are governed by other laws, the Civil Procedure Code being the main instrument. However, I find that the provision of Section 111 (3) in its unambiguous terms requires the petitioner himself to file the application for security of cost.
- **COURT:** The affidavit accompanying the application is incompetent since it has not been made by the petitioner himself.
- **COURT:** The application for security of costs is hereby struck out for being incompetently before this court. It lacks affidavit sworn by the Petitioner.

5.5.7: Registrar can strike out a petition if security for costs is unpaid

DISCUSSED: Daniel Naftal Ngogo v. 1. Attorney General, 2. Malocha Aloyce Ignas, Returning Officer Kwela Parliamentary Constituency, Misc. Civil Cause No 1 of 2015 High Court Sumbawanga (Mbuya-Deputy Registrar).

- Preliminary objection raised contending that the Petitioner has not complied with section 111 (2) and (3) of the National Elections Act governing payment into court of security of costs.
- That the law directs the Registrar of the High Court not to fix a hearing date unless the petitioner has paid security for costs. And in case security of cost is not paid within 14 days from the date of determination by the court no further proceeding shall be heard on the petition.
- The Court is aware of the Full Bench decision of the Court of Appeal in **Chiriko Haruna vs. Kangi Alphax Lugora & 2 Others**, Civil Appeal No. 36 of 2012, that a Petitioner is allowed to pay security of costs without going to the procedure laid down under section 111 (3).
- **Court:** Neither section 111 (2) nor the case of **Chiriko vs. Kangi Lugora** set a time limit for paying into the court of the security for costs. But the time is not so limitless. It is my wisdom that 14 days are more than reasonable.
- **Court:** Section 111 (2) and (7) of the National Elections Act is invoked to strike out the petition.

5.6: Proper citation of enabling provisions of the law

DISCUSSED IN: **Mariam R. Kasembe vs. Cecil David Mwambe, The Returning Officer for Ndanda Constituency Parliamentary Election & the Attorney General**, Misc. Civil Cause No. 3 of 2015, High Court at Mtwara, (F. Twaib, J.)

- The petitioner was challenging the results of the Parliamentary elections for Ndanda Constituency, Mtwara Region, which she lost by a margin of 32 votes.
- The 1st respondent raised three points of objection. One of the points was that the petition was bad in law for non-citation of the enabling provisions of the relevant law under which it was brought.
- It was argued by counsel for the 1st respondent that the law required the petitioner to state in her petition, fully and correctly, the provisions of the law that empowers the court to entertain the petition and that failure to do so was fatal to the petition and that as civil matters, election petitions are in the nature of applications and thus, the principle requiring proper citation applies to election petitions as well (citing *Peter Babeera Chacha & 3 others v. Chacha Zakayo Wangwe & Anor*, Misc. Civ. Cause No.3 (HCT, Mwanza) (unreported), *Donald Madeje Lupaa v. AG & Anor*, Misc. Civ. Cause No. 2 of 2010 (HCT at Dodoma) (Shangali, J.) (All unreported), *Christopher Ryoba Kangoya v. John Heche Wegesa & 2 Others* Misc. Civil Cause No.4 of 2015 (HCT – Mwanza, Mlacha, J.) and *Peter Babeere Chacha* (Mackanja, J.)
- It was further argued that the fact that there is a prescribed form [Form A in the schedule to the National Election (Petitions) Rules (GN 447 of 2010)] meant that election petitions are not normal civil causes, which are not instituted by way of any prescribed form and that, being different from a plaint, a petition under the Elections Act required proper citation of the enabling provisions.
- **COURT:** An election petition is in the nature of a plaint, which does require the citing of any law. Hence, citation of relevant law is not a requirement for election petitions and thus non-citation would have no effect on the validity of the petition. The same applies to certain applications such as human rights and matrimonial petitions, and even land applications in District Land and Housing Tribunals, which are substantive causes. So are cases under the Basic Rights and Duties Enforcement Act and matrimonial causes under the Law of Marriage Act and Matrimonial Proceedings Rules of 1971.
- Even if there was such a requirement, rule 32 (1) of the Election Petitions Rules, 2010 is sufficient to cure any irregularity, occasioned by non-citation. It provides a lifeline that will rescue the petition from whatever procedural irregularity that is found in a petition in contravention of the Rules, so long as no miscarriage of justice is occasioned by the cure (citing Samatta J in *Philip Anania Masasi*, “the wages of procedural sin should never be the death of rights”).
- **Order:** Objection overruled.

5.6.1: Wrong citation, effect of an election petition

DISCUSSED IN: **Mneke Jafari Said v. Rashidi Ajali Akbar, The Returning Officer For Newala Rural Constituency and the Attorney General**, Misc. Civil Cause No. 6 of 2015, High Court at Mtwara, (Fauz, J.):

- When the Petition seeking to nullify the election of a Member of Parliament for Newala Rural Constituency was called on for hearing, learned counsel for the respondents rose to argue a point of preliminary objection; contending that the court was not properly moved, in that the petition cited a non-existing law.

- It was argued that at the head of the petition, the petitioner cited the National Elections Act, Cap 343 (R.E. 2010), instead of the 2015 edition. It was therefore counsel's view that the court was not properly moved.
- The petitioner, who appeared in person, acknowledged the fact that his petition cites an old law but was quick to add that where it cites the law as revised in 2010 instead of 2015, it is just a typing error. This error, he added, is curable, since it is clear that the law that he cited was the National Elections Act, Cap. 343, which law still exists and has not been repealed.
- **COURT:** This is thus a fit case for the exercise of this court's discretion, provided by Order VI rule 17 of the CPC, and an order for the petitioner to amend his petition by removing the anomaly and substituting therefor a properly cited petition.
- **COURT:** The petitioner shall present his Amended Petition by Monday, 7th March, 2016. Costs shall be in the main cause.

5:7: Standard of proof in election petitions

DISCUSSED: **Abubakari Damian Asenga v. 1. Peter Ambrose Lijualikali, 2. The Returning Officer for Kilombero Constituency 3. The Attorney General**, Miscellaneous Civil Cause No. 06 of 2015 High Court at Dar Es Salaam (Rugazia, J.)

- **COURT:** It is pertinent to point out here that election petitions are special proceedings unlike normal civil suits. This is due to the underlying reason that in an election petition, the standard of proof required is to the satisfaction of the court. Such a standard presupposes that there should not be doubt in the petitioner's case. Reference was made to the case of **Mbowe v Eliufoo** (1967) E.A 240 where the court stated that one cannot be satisfied where one is in doubt. where a reasonable doubt exists, then it is impossible to say one is satisfied.

5.7.1: Proof of discrimination, defamatory words at campaigns

DISCUSSED IN: **Abubakari Damian Asenga v. 1. Peter Ambrose Lijualikali, 2. The Returning Officer for Kilombero Constituency 3. The Attorney General**, Miscellaneous Civil Cause No. 06 of 2015 High Court at Dar Es Salaam (Rugazia, J.):

- **Court:** Many discrepancies have been singled out in the evidence of petitioner's witnesses. Courts of law depend on witnesses to get to the root of truth. The witnesses who were lined up by the petitioner told the court, and oath, of what they claimed they heard being uttered by the first respondent at the various meetings they claimed to have attended. However, as it transpired in the course of hearing, their evidence was torn to pieces by the defence team..... As a result, the court was left wondering if these witnesses heard what they deposed because none of them was able to withstand the cross-examination they were subjected to.
- **COURT:** To claim as the petitioner did, that discriminatory and/or defamatory were uttered, and yet, the witnesses miserably failed to substantiate the claims is beyond comprehension. In the face of such evidence, and bearing in mind that the standard of proof in election petitions is "to the satisfaction of the court" – **Mbowe v. Eliufoo** (supra), I cannot dare make a finding that I have no doubt. To put it plainly, the evidence led in support of the first issue, as I have endeavoured to demonstrate in the foregoing, has left me with a lot of doubt.

5.7.2: Proof of exploitation of tribal differences in campaigns

DISCUSSED IN: **Emmanuel Godfrey Masonga v. Edward Franz Mwalongo, The Returning Officer of Njombe Township Council, The Attorney General**, Miscellaneous Civil Cause No. 6 of 2015, High Court of Tanzania at Njombe (MWAMBEGELE, J.):

- It was alleged that at campaign rallies, statements were made, exploiting tribal and domicile differences.
- **COURT:** On the general principle that “...the complaints on subsection (2) (a) of section 108 of the Act on exploitation of tribal, racial or religious differences, the petitioner must prove that such words were uttered by the candidate, or on his behalf and with knowledge and consent or approval. Unlike under the complaints under subsection (2) (b) of section 108 of the Act explained above, the petitioner need not prove that such utterances affected the election results. That is to say, once it is proved that there was exploitation of tribal, racial or religious differences in election campaigns, the consequence is to nullify the election results; the question of such contravention affecting the result of the election does not arise – see: *Azim Suleiman Premji V. Attorney General and another* [2000] TLR 359, *Lutter Symphorian Nelson* (supra) and *Manju Salum Msambya vs. The Attorney General & Kifu Gulamhussein Kifu*, Civil Appeal No. 2 of 2002 (unreported)...
- **COURT:** ...once it is established to the required standard; that is, beyond reasonable doubt, that the campaigns by the first respondent and his team were conducted in tribal lines as, *inter alia*, complained of by the petitioner, there will be required no enquiry into whether such noncompliance affected the result of the election.

5.7.3 Tribal differences, discriminatory statements at Campaigns

DISCUSSED IN: **Abubakari Damian Asenga v 1. Peter Ambrose Lijualikali, 2. The Returning Officer for Kilombero Constituency 3. The Attorney General**, Miscellaneous Civil Cause No. 06 of 2015 High Court at Dar Es Salaam (Rugazia, J.)

- The petitioner lined up three witnesses to prove tribal differences and discriminatory statements at rallies.
- However, when the three witnesses were shown the coordinated campaign program during cross-examination, they readily conceded that according to that programme, the campaign meeting allegedly held at “*Uwanja wa Fisi*” ground at Mkamba where tribal differences were exploited on 14/10/2015, was according to the programme not held there but was held at Kidatu B Village.

5.7.4: Defamation/discrimination and reference to Ethical Committees

DISCUSSED IN: **Abubakari Damian Asenga v 1. Peter Ambrose Lijualikali, 2. The Returning Officer for Kilombero Constituency 3. The Attorney General**, Miscellaneous Civil Cause No. 06 OF 2015 HC AT DAR ES SALAAM (Rugazia, J.)

- **Court:** Constituency Ethics Committees (*Kamati ya Maadili ya Uchaguzi ya Jimbo*) is mandated to deal with complaints which may arise during the electoral process. Obviously, these committees could not have been put in place for cosmetic purposes.
- **COURT:** The petitioner or whoever feels or has good grounds upon which to base his complaint that the adversary is campaigning contrary to the rules of the game, is expected to lodge a complaint to the said “*Kamati*”. However, as it is, even if one does not file a complaint there are no serious consequences to be suffered except that such an omission will water down his case – see **Fanuel Elias Mkisi v the Attorney General and 2 Others**, Miscellaneous Civil Cause No. 6 of 2015 HC – Mbeya

(unreported). In this, case it can be said that, the petitioner should have reported the complaints to the committee, which he said he complied with.

- **COURT:** the legal effect of not referring the complaints to the said “Kamati” is to water down his case.

5.7.5 False, scandalous and discriminatory statements during election campaigns

DISCUSSED IN: Emmanuel Godwin Kunambi v. 1. Suzan Limbweni Kiwanga, 2. Returning Officer Mlimba Constituency, 3. Attorney General, Misc. Civil Cause No. 9 of 2015 High Court at Ifakara (Kente, J.)

- Once it is proved that statements were made with intent to exploit ratio or tribal differences during campaign meetings, that is sufficient ground for declaring the election void: **Azim Suleiman Perini V. A.G and Another** [2000] TLR 359 and **Lutter Symphorian Nelson V. A.G and Another** [2000] TLR 419 at Page 423.
- Some of the petitioner’s witnesses were, by every rational definition, more of his (petitioner’s) political supporters than truthful and independent witnesses.
- Respondents’ counsel was understandably emphatic in their final submissions that the alleged false, scandalous and discriminatory words should have been reproduced in the witnesses’ affidavits in the language used by the first respondent. This would have put the court in a proper perspective for it to make a balanced evaluation of the evidence and finally arriving at a well informed decision. One would have expected the lawyer who prepared the witnesses’ affidavits to reproduce the alleged words in Kiswahili but he was not to.
- Corroboration is conspicuously wanting because these grave electoral misconducts (false, scandalous and discriminatory words) by the first respondent were not reported to the Ethics Committee.
- Although whether to report to the Ethics Committee or not is optional, but, the unexplained failure to report even one of these misconducts despite being a subscriber to the Electoral Code of Conduct, suggests that, either his claims are based on fanciful evidence to depict some imagined discrimination by the first respondent, or they were otherwise a mere afterthought.
- **COURT:** “I am not satisfied that the first respondent made the alleged statements as it has not been demonstrated to the satisfaction of this court that the said statements were ever made. I find no merit in this complaint and it is consequently dismissed.”

5.8: Election Petition Court and Extension of time to file petitions

DISCUSSED IN: Kippi Ivor Warioba v 1. Halima Mdee, 2. The Attorney General 3. The Returning Officer For Kinondoni Municipal, Miscellaneous Civil Application No. 43 of 2016 High Court at Dar es Salaam (Muruke, J.)

- The Petitioner filed his petition on 25/11/2015. Later, his learned counsel applied to withdraw, and the High Court duly marked it as withdrawn.
- Thereafter, the Petitioner filed another application for extension of time within which to file a fresh Election Petition. An objection was raised contending that courts have no jurisdiction to extend the time for filing election petitions.
- **COURT:** The time limit for filing an election petition is 30 days from the date of announcing the results— **Section 115 (1) of the National Elections Act, Cap. 343.** Cap. 343 does not confer jurisdiction to a court to extend the period for filing the petition beyond the 30 days. Section 14 (1) of the Law of Limitation Act, Cap. 89 cannot assist inasmuch as it relates to extension of time for purposes of an appeal or application of which an election petition is neither.

5.9: Counting from date of declaration of election results, Limitation Period

DISCUSSED IN: **Jerry Willian Silaa v 1. Attorney General, 2. Waitara Mwita Mwikabe 3. The Returning Officer For Ukonga Parliamentary Constituency**, Miscellaneous Civil Cause No. 10 of 2015 High Court at Dar es Salaam (Massengi, J.)

- Petitioner claims that he does not know when the results were declared.
- Form No. 24B election results were declared on 27/10/2015 at 4:27 HRS.
- **COURT:** "...as correctly submitted by Dr. Lamwai learned counsel; the issue as to when the election results were declared can easily be decided on balance of probabilities basing on what was pleaded and annexed by the pleaders without taking any testimony. But... the issue of time limitation comprised of mixed issues of law and fact needing to be ascertained through tendering of evidence, the same necessitated the hearing of the same through parading of the petitioner's witness and proof to be of the required standard..."
- **COURT:** Since the election results were declared on 27/10/2015 with the election petition filed on 27/11/2015, that is, on the 31st day contrary to the requirement of section 115 (1) of the National Elections Act which requires an election petition to be lodged within thirty (30) days from the date of the declaration of results of the election by the Returning Officer. Therefore, this court holds that, the election petition was filed beyond the prescribed time limit in terms of section 115 (1) of the National Elections Act hence time barred. Consequently, the election petition is dismissed for being time barred with costs.

5.10: Principles Guiding Election Petition Court

DISCUSSED IN: **Emmanuel Godwin Kunambi v. 1. Suzan Limbweni Kiwanga, 2. Returning Officer Mlimba Constituency, 3. Attorney General, Misc. Civil Cause No. 9 of 2015 High Court at Ifakara (Kente, J.)**

- Election petitions emanate from election processes that directly reflect the will of the people their exercise of their constitutional right and fulfillment of an obligation by the citizenry and courts have been reminded that they have a duty to respect the people's conscience and not to interfere in their choice except in the most compelling circumstances. There is a general rebuttable presumption that the winner has the trust of the majority of the people following a sound and well-run electoral process.
- Election petitions are not ordinary suits. Though they are disputes *in-rem* fought between certain parties, election petitions are nonetheless disputes of great public importance. They should not be taken lightly.
- Like in any civil or criminal proceedings the burden of proof in election petitions lies on the person alleging, that is the petitioner.
- The standard of proof required for the petitioner is proof beyond reasonable doubt. It is not sufficient for the petitioner to establish that irregularities or electoral malpractices did occur; he must establish that the said malpractices or irregularities were of such a magnitude as to substantially and materially affect the outcome of the electoral process.
- Unlike in Civil Proceedings, election petitions are special proceedings in that parties thereof are strictly bound by their pleadings and the framed issues.

5.11: Duty to assemble evidence before filing election petitions, a piece of advice

DISCUSSED IN: **Emmanuel Godwin Kunambi v. 1. Suzan Limbweni Kiwanga, 2. Returning Officer Mlimba Constituency, 3. Attorney General, Misc. Civil Cause No. 9 of 2015 High Court at Ifakara (Kente, J.)**

- It would be advisable then for one not to rush to lodge a petition in court without reflecting on what is the real cause for complaint and the evidence available to prove it. In the end, the salutary lesson to be learnt here is that, the urge to launch an election petition should go together with the heavy duty of collecting sufficient evidence to prove the same.

5.12: Incitement of acts of violence

DISCUSSED IN: Emmanuel Godwin Kunambi v. 1. Suzan Limbweni Kiwanga, 2. Returning Officer Mlimba Constituency, 3. Attorney General, Misc. Civil Cause No. 9 of 2015 High Court at Ifakara (Kente, J.)

- Whether the first respondent incited acts of violence at Masagati Ward which rendered the electoral process not free and fair.
- The standard of proof required for a party to succeed in overturning the results of an election is proof to the satisfaction of the court otherwise known as proof beyond reasonable doubt. It is not sufficient for the petitioner in the case of the present nature to grumble at every turn instead of presenting sufficient empirical evidence with a view to proving his case. Neither is it of much help for the petitioner or his counsel to pick as they did, on the perceived weakness of the respondents' case, see Latin maxim goes, *factum negantis nulla probatio*; no proof is incumbent upon a person who denies a fact.
- While indeed there were some acts of violence at Mfenesini area in Masagati Ward on 11th September, 2015, which cannot be said to have been a result of the first respondent's exclusive acts of incitement. It simply occurred after the rival political groups met and each claimed to have a right to hold a campaign rally at the same time and place. The alleged acts of violence were nothing but an isolated incident which did not have the effect as stipulated under the law as it had nothing to bear on the electoral process.

5.13: Corrupt practices by the agent during election campaigns

DISCUSSED IN: Emmanuel Godwin Kunambi v. 1. Suzan Limbweni Kiwanga, 2. Returning Officer Mlimba Constituency, 3. Attorney General, Misc. Civil Cause No. 9 of 2015 High Court at Ifakara (Kente, J.)

- Corrupt practices is one of the most serious electoral misconducts which renders elections not free and fair. A proven act of corrupt practice though not expressly specified as a ground for avoiding an election under the **National Elections Act**, may not only lead to one's name being deleted from the voters' register but also as it was held by Masanche J. in the case of **Prince Bagenda V. Wilson Masilingi & Another [1997] TLR 220 at 224** "...where the petitioner establishes corrupt practices, the successful candidate may not only be unseated but even disqualified to stand as a candidate in future elections".
- Being a serious electoral misconduct, an allegation of corrupt practice requires the high standard of proof.
- RW1 who was a contender for the Ward councillorship during the 2015 General Elections is the one who handed over some gifts (footballs and some jersey) to the captains of the two local football teams. It was suggested by the Petitioner that the first respondent (a Parliamentary candidate) is the one who sent the gifts.
- A few days thereafter the "gift" was impounded by the officials from the Prevention and Combating of Corruption Bureau following the allegations that it was given with a corrupt motive. But the gifts were returned sometimes later.

- The contentious issue is whether RW1 was the first respondent's agent as alleged by the petitioner.
- **COURT:** in legal terms, agency is not a matter of presumption. The law provides for the agency role and defines who an agent is. – Section 134 of the Law of Contract Act [Cap. 345 R.E 2002].
- According to the evidence before the trial court, RW1 was himself a contestant for the councillorship position and he was not a member of the first respondent's campaign team.
- In the absence of any documentary evidence or official statement from any authorized officer such as the Returning Officer, this court is unable to accept the petitioner's evidence that RW1 was the first respondent's agent.
- The petitioner has failed to discharge the burden of proof that RW1 was actually the first respondent's agent, referred to the Court of Appeal decision in **Charles Mugota Kajege V. Mutamwega Batt Mugawhya**, Civ. Appeal o. 39 of 2008 (unreported) – *"...Where there is allegation of corrupt practices then it has to be proved that the candidate has done it personally; or that the practices have been done by other persons but with the knowledge and consent of the candidate; or with the approval of the candidate."*

5.14: Voters of below the age of majority

DISCUSSED IN: **Emmanuel Godwin Kunambi v. 1. Suzan Limbweni Kiwanga, 2. Returning Officer Mlimba Constituency, 3. Attorney General**, Misc. Civil Cause No. 9 of 2015 High Court at Ifakara (Kente, J.)

- This complaint was not substantiated. The petitioner's case on this ground of complaint rests solely upon his own testimony that he was told that persons below the age of 18 years were allowed to vote at the above-said polling stations. He did not tender any birth certificate or voter's registration card of any of such persons to attest to that claim.

5.15: Existence of fake polling stations

DISCUSSED IN: **Dr. Lukas Jelas Siyame v. 1. Attorney General, 2. David Ernest Silinde 3. Returning Officer Momba Constituency**, Misc. Civil Cause No. 3 of 2015 High Court at Mbeya (Mgetta, J.)

- If the petitioner's polling agents had indeed discovered fake polling stations as they claimed, they should have raised appropriate complaints at their respective polling stations before signing Form No. 21B. The decision of the Court of Appeal in **Sylvester Masinde v. Pius Msekwa & Another** [1999] TLR 42 is applicable where it stated: *"...the correct legal position is that the prescribed forms are intended to serve only as material for testing the credibility of complaints made in respect of electoral process. This means that the evidence of a witness who could have recorded his or her complaint in a prescribed form but fails to do so would not be relied upon unless he or she explains the failure to record the complaint at the appropriate stage of the electoral process."*
- **COURT:** In this petition there is no explanation given by the 13 petitioner's witnesses why they didn't register the complaint, so their evidence would not be relied upon.

5.16: Parties to a Petition Bound by their Pleadings

DISCUSSED IN: **John David Mwambigija v 1. Attorney General, 2. Saul Henry Amon 3. Returning Officer Rungwe Parliamentary Constituency**, Miscellaneous Civil Cause No. 01 of 2015 High Court at MBEYA (Sehel, J.)

- Pleadings in election petition are stricter than normal plaint in civil suits as held in the case of **Yusuph Masjegeja Lupija**. It is also true that parties are always bound by their pleadings. That is why the petitioner is required by law to plead the grounds upon which the petitioner relies for the relief sought by him; and the nature of the relief or reliefs sought by the petitioner (See Rule 5 (1) (c) and (d) of the Rules).
- Nevertheless, Rule 23 requires the petitioner, who wishes to argue or be heard in support of any ground that was not set forth in the petition, to seek leave of the Court. Rule 23 has proviso whereby the court in determining a petition, is not confined to the grounds set forth in the petition. In the case of **Sebastian Rukiza Kinyondo v. Dr. Medard Mutalemwa Mutungi**, Civil Appeal No. 83 of 1998 (Unreported) -- the Court of Appeal found that the trial judge, by virtue of Rule 6 of the Election (Election Petition) Rules, 1971 (which is *pari materia* to Rule 23 of the Rules), was not precluded from dealing with a ground of complaint which has not been pleaded.
- However, in dealing with the un-pleaded issues, I will always be guided with the surrounding circumstances that gave rise to the issue and the respondents will not be prejudiced if I proceed with its determination.

5.17: Recording votes at polling stations, data management system

DISCUSSED IN: **John David Mwambigija v 1. Attorney General, 2. Saul Henry Amon 3. Returning Officer Rungwe Parliamentary Constituency**, Miscellaneous Civil Cause No. 01 of 2015 High Court at MBEYA (Sehel, J.)

- The Petitioner alleged that the 3rd Respondent insisted on the use of data base management despite there being resistance from both agents and political parties and that in the course of tallying of votes for every polling station at the ward level using data base management system, it was revealed that the figures declared are different from the one recorded by the Petitioner's agents.
- Apart from the evidence that Data base management system was used at the point of addition which system was then abandoned and addition started afresh manually there is no other evidence adduced to establish that at polling stations votes were tallied. Also no other evidence was brought forward to show that data base management was used at polling stations. On the contrary, at polling stations counting was done manually.

5.18: Mandate of the returning officer at the tallying stage

DISCUSSED IN: **John David Mwambigija v 1. Attorney General, 2. Saul Henry Amon 3. Returning Officer Rungwe Parliamentary Constituency**, Miscellaneous Civil Cause No. 01 of 2015 High Court at MBEYA (Sehel, J.)

- Regulation 62 of the National Elections (Presidential and Parliamentary Elections) Regulations of 2005 describes at which stage determination of disputed votes has to be done: ...*"Subject to the provisions of the Act, the Returning Officer or Assistant Returning Officer, as the case may be, shall determine validity of disputed votes before the addition of votes and record the result in Part B of Form 21A and 21B respectively indicating number of disputed votes acquired by each candidate and cause the forms to be signed by*

candidate or Political Parties' agents if present" Section 80 (4) of the Act provides: "...the candidate or polling agent may request the Returning Officer to check on any part of the addition to ascertain its accuracy but shall not be entitled to request a recount of all votes or all the ballot papers from any polling station,

- From the above position of the law, the mandate of the Returning Officer at the addition point is first to determine the disputed votes if any and then to make the addition and also to check the accuracy of the report submitted by the presiding officer but not to recount votes.
- In this petition we are not told as to whether there were any disputed votes let alone dissatisfaction on the presiding officer's decision regarding disputed votes that would have prompted the Returning Officer to review on the disputed votes as required by the law.

5.19: Removal of one polling station from list of polling stations

DISCUSSED IN: John David Mwambigija v 1. Attorney General, 2. Saul Henry Amon 3. Returning Officer Rungwe Parliamentary Constituency, Miscellaneous Civil Cause No. 01 of 2015 High Court at MBEYA (Sehel, J.)

- Complaint that information on the change of number of polling stations from 380 to 379 was announced by the Returning Officer on the counting day.
- After going the attached list of polling stations the Judge noticed that the list had 379 polling stations and not 380 polling stations. This list came from the Petitioner, implying that the notice of change of polling stations was availed to the Petitioner prior to the tallying of votes.
- On whether the election was affected: Assuming that the Petitioner had no prior notice as required by Section 47 (1) of the Act, this would still not have affected the results of the election.

5.20: Remedy of Scrutiny of Votes

DISCUSSED IN: John David Mwambigija v 1. Attorney General, 2. Saul Henry Amon 3. Returning Officer Rungwe Parliamentary Constituency, Miscellaneous Civil Cause No. 01 of 2015 High Court at MBEYA (Sehel, J.)

- For the election petition court (High Court) to make a scrutiny of votes, the Petitioner is required under Rule 12 (1) of the National Elections (Elections Petitions) Rules 2010 (**which refers to paragraph (d) of section 116 of the Act**) to lodge with the Registrar not less than six days a list of votes intended to be objected to and the objection to each vote. The obligation to file the list has been echoed by the Court of Appeal of Tanzania in the case of **Arusha Kalwa and Five Others v. Wilbroad Slaa and Another** [1997] T.L.R 250.
- In the present petition, no list of objected votes was filed.
- By seeking scrutiny of votes in the generalised form, the petitioner is in essence asking the court re-do the whole exercise of counting of the votes in the whole constituency which is not the objective of the National Elections Act.
- The position that the law does not allow the recount or examination of results has also been expressed by Wambali, J. (as he then was) in the case of **David Zacharia Kafulila v. Husna Sudi Mwilima and 2 Others**, Misc. Civil Cause No. 2 of 2015 (unreported) (HC) when he said at pg. 33 of his judgment: *"...It must be noted that after addition and declaration of results, the law does not allow or provide for recount of votes."*

5.21: Recounting of votes, procedure and stages

DISCUSSED IN: **Juma Sadick Manguya v 1. George Mkuchika, 2. The Returning Officer of Newala Urban Parliamentary Constituency 3. The Honourable Attorney General**, Miscellaneous Civil Cause No. 1 of 2015 High Court at Mtwara (Amour S. Khamis, J.)

- The requirements for recount are established under Section 80(4) of The National Elections Act.
- A booklet, *MAELEKEZO KWA WASIMAMIZI WA UCHAGUZI*, gives guidelines on what is to be done in recount of votes. Para. 10.6 at page 50, the booklet reads: *"...Maombi ya wakala/Mgombea ya Kurudia kuhesabu Kura Msimamizi wa Uchaguzi atalikubali tu ombi hilo, ikiwa usahihi wa matokeo ya kituo/vituo hivyo ulipingwa na wakala au Mgombea wakati wa kuhesabu kura katika kituo cha kuhesabu kura. Msimamizi wa chaguzi/Msimamizi Msaidizi wa Uchaguzi atajumlisha kura alizopata kwa kila Mgombea"*
- According to a booklet *"MAELEKEZO KWA VYAMA VYA SIASA NA WAGOMBEA"* provides at page 29 that— after completion of vote counting, candidates or their agents are required to fill in form no. 16 to register their satisfaction or non-satisfaction on the whole vote counting process. The relevant paragraph of the booklet reads:

"11.1-Utaratibu wa kuhesabu Kura:

*(v) Baada ya zoezi la Kuhesabu Kura kukamilika,
Mawakala au Wagombea watajaza Fomu Na. 16 kuonyesha kama
wameridhika au hawakuridhika na mwenendo mzima wa kuhesabu
kura"*

- The procedure stated above is also stated in Regulations No. 51(1) and 51(2) of *THE NATIONAL ELECTIONS (PRESIDENTIAL AND PARLIAMENTARY ELECTIONS) REGULATIONS, 2015 (G.N NO. 307 OF 31/07/2015)*.
- Neither the petitioner nor his agents in all polling stations, indicated dissatisfaction on the vote counting exercise in form no. 16. This means that a recount request was never lodged in any polling station as a pre-requisite for invoking Section 80(4) of the National Elections Act, Cap 343 R.E 2015. As a result of this, no recount could be done in the actual meaning of the word in law and therefore, allegations by PW 1 and PW 13 CANNOT BE TRUE.

5.22: Essence of the Election Results Form Number 21B

DISCUSSED IN: **John David Mwambigija v 1. Attorney General, 2. Saul Henry Amon 3. Returning Officer Rungwe Parliamentary Constituency**, Miscellaneous Civil Cause No. 01 of 2015 High Court at MBEYA (Sehel, J.)

- Forms No. 21B are not votes they are filled at polling stations. Forms 21B are displaying the names of candidate with corresponding number of votes garnered in that polling station, total number of voters registered at that polling station, total number of voters actually turned up to vote at that polling station, total number of valid votes casted at that polling station and total number of rejected votes (if any) at that polling station. In other words, it is an aggregation of all votes casted at the polling station.

5.22.1 Irregularities in filling Result Forms Number 21B

DISCUSSED IN: **Mariam R. Kasembe v 1. Cecil David Mwambe 2. The Returning Officer of Ndanda Constituency Parliamentary Election 3. The Attorney General**, Misc. Civil Cause No. 3 Of 2015 High Court at Masasi (W.B. Korosso, J.)

- It is pertinent to avail ourselves with the position of the law on this. Section 73(1) (a) of the National Election Act, 2015 requires the presiding officer to ascertain and record persons who voted at the polling station. For the Returning Officer another relevant Provision is Section 80(3) of the National Election Act, where it is expounded that a Returning Officer after all the results have been received from polling stations, after determining the validity of any disputed votes and before addition of votes to announce aloud the results of each polling station. Section 80(4) of the National Election Act is also relevant on this issue of ascertaining.
- From the records one cannot deny referring to the evidence in Court that there were some errors and some alterations done to the documents from the time the agents were handed the documents, meaning at the polling station.
- The question that remains is whether what we shall call errors were serious and in any way affected the results.

5.23: Petitioner fails to appear at the date set for hearing

DISCUSSED IN: **Faith Mohamed Mtambo v 1. Zuberi Mohamed Kuchauka, 2. Returning Officer Liwale Constituency, 3. Attorney General**, Misc. Civil Cause No. 2 of 2015 High Court at Mtwara (Mkuye, J.)

- By consent of all the parties to the Petition were ordered to come up for hearing on 15/4/2016 at 08:00 hrs.
- Neither the petitioner nor her learned counsel or agents had turned up in court by 10:35 hrs. Further, no information had been advanced in court to explain their whereabouts.
- **Court:** The law is very clear on the situation where the petitioner does not appear on the date fixed for hearing. Rule 27 (1) of the National Elections (Election Petitions) Rules is relevant on this aspect. It provides: *"27 (1) Where a petitioner fails to appear before the court on the date on which the petition is to be heard, the court may dismiss the petition."*
- Consequently, the petition is dismissed for non-appearance of the petitioner with costs.

5.24: Right to Vote as a Constitutional Right

DISCUSSED IN: **Zella Adam Abraham v 1. The Honourable Attorney General, 2. Oran Manase Njeza 3. Returning Officer Mbeya Vijijini Parliamentary Constituency**, Miscellaneous Civil Cause No. 4 of 2015 High Court at Mbeya (Teemba, J.)

- Voting and to be voted for is the basic right enshrined under Articles 76 and 77(1) of the Constitution of United Republic of Tanzania, 1977.
- Article 76 categorically provides that: *"...There shall be held an election of member of Parliament in every constituency"*
- Article 77 of the same Constitution provides that: *"...Members of Parliament representing constituencies shall be elected by the people in accordance with the provisions of this Constitution and also the provisions of a law enacted by Parliament pursuant to this Constitution to regulate the election of Members of Parliament representing constituencies..."*

5.25: The Mandate of the High Court in Election Petitions

DISCUSSED IN: **Emmanuel Godfrey Masonga v. Edward Franz Mwalongo, The Returning Officer of Njombe Township Council, The Attorney General**, Miscellaneous Civil Cause No. 6 of 2015, High Court of Tanzania at Njombe (MWAMBEGELE, J.):

- The mandate of this court to hear and determine election petitions is derived from the Constitution of the United Republic of Tanzania, 1977 (as amended from time to time) as well as the provisions of the Act. The provisions of article 83 (1) of the Constitution endow this court with power to enquire into the validity of the election of any Member of Parliament.
- Under the provisions of section 108 of the National Elections Act the High Court can avoid an election.

5.26: Refusal to allow the Polling Agents inside a Polling Room

DISCUSSED IN: **Juma Sadick Manguya v 1. George Mkuchika, 2. The Returning Officer of Newala Urban Parliamentary Constituency 3. The Honourable Attorney General**, Miscellaneous Civil Cause No. 1 of 2015 High Court at Mtwara (Amour S. Khamis, J.)

- It was argued that *ACT Wazalendo*, one of the political parties sponsoring candidates, did not comply with requirements for appointment of polling station agents.
- The National Electoral Commission issued a guideline for political parties' agents. The booklet is titled "**MAELEKEZO KWA MAWAKALA WA VYAMA VYA SIASA**". At page 6, Para 6.0, the booklet provides a procedure applicable in appointment of political parties' agents: "*Vyama vya siasa vinatakiwa kuwasilisha kwa Msimamizi wa Uchaguzi orodha ya majina ya mawakala wa upigaji kura/kuhesabu kura siku saba (7) kabla ya siku ya uchaguzi*"
- Exhibit P 3, a letter from a political party (*A.C.T. Wazalendo*) to the Returning Officer states that names of proposed agents are presented. However, a list of names is missing. It was not attached. Strictly speaking, the Returning Officer did not receive a proper application to make necessary arrangements for *ACT Wazalendo* polling agents.
- Under the **MAADILI YA UCHAGUZI WA RAIS, WABUNGE NA MADIWANI YA MWAKA 2015**, which can literally be translated to mean **Code of Ethics for Presidential, Parliamentary and Councilors Elections, 2015**, a political party or candidate was required to lodge his written complaint to the Ethics Committee in his jurisdiction within 72 hours from the time of occurrence of an act complained of. Neither the petitioner nor PW 9 lodged a complaint to that effect. In the absence of a list of proposed names and absence of any formal complaint prior to and after the election by *A.C.T. Wazalendo*, this Court finds that an allegation of refusing to allow *A.C.T. Wazalendo* polling agents to participate in the election, has not been proved and it fails.

5.27: Belated Display of Election Results as a ground of petition

DISCUSSED IN: **Juma Sadick Manguya v 1. George Mkuchika, 2. The Returning Officer of Newala Urban Parliamentary Constituency 3. The Honourable Attorney General**, Miscellaneous Civil Cause No. 1 of 2015 High Court at Mtwara (Amour S. Khamis, J.)

- Can belated display of election results, if proved to the court's satisfaction, avoid an election?
- **The allegation of delay to display election results is a factual issue. Cogent evidence is needed to attain a high standard of proof beyond reasonable doubt.**

The petitioner's witnesses who testified on the allegation, PW1 and PW2 were not present in the ten (10) polling stations of Mnekachi ward immediately after completion of vote counting exercise. All of them went to Mnekachi Ward Office the next day, 26/10/2015 which was more than twelve hours after completion of election process. None of them visited other polling stations in Mnekachi ward. None of them was able to testify as to what took place in the polling stations from the evening of 25/10/2015 to the morning of 26/10/2015.

5.28: Coordinated Campaign Programme

DISCUSSED IN: **Mariam R. Kasembe v 1. Cecil David Mwambe 2. The Returning Officer of Ndanda Constituency Parliamentary Election 3. The Attorney General**, Misc. Civil Cause No. 3 of 2015 High Court at Masasi (W.B. Korosso, J.)

- Complaints over the contravening the Coordinated Campaign Programme by holding campaign rallies in areas and at times earmarked for the Petitioner's campaign meetings and as a result of this interference the Petitioners campaign schedule was adversely affected.
- It is important to remind ourselves that Section 51(2) of the Election Act, requires all the candidates, their agents and political parties to supply to the Returning Officer their proposed campaign schedule. Section 51(3) of the Act requires candidates or their agents to address public meetings pursuant to their campaign programme. Section 51 (4) of the Act, sanctions the Returning Officer to call a meeting of the Candidates for the purpose of preparing a coordinated campaign programme for purposes of ensuring peaceful and orderly campaign meetings and to avoid conflicting meetings.
- The above provisions are emulated under Regulations 39, 42, 43 and 44 of the Parliamentary Elections Regulations. Regulation 43 is crafted so that the Coordinated Campaign Programme is binding to all candidates and political parties and constitutes sufficient notice of the proposed meetings for the purposes of the Political Parties Act, Cap 258 Revised Edition and the Police Force and Auxiliary Services Act, Cap 322 of the Revised Edition.
- There is also **Maadili ya Uchaguzi** which also provides provision for the conduct of election campaigns. Under Paragraph 2.1(c), it states "*Vyama vya Siasa vifanye mikutano ya kampeni kwa kuzingatia ratiba rasmi iiyoratibiwa na ... Wasimamizi wa Uchaguzi katika kutangaza sera zao*". This is also the position provided for by Regulation 39(3) of the Parliamentary Elections Regulations stating: "*Each Political Party or a candidate involved in any election shall comply with the coordinated programme for election campaigns*".
- **COURT:** Campaign meetings are regulated by a Coordinated Campaign Programme issued by the Returning Officer upon consultation with all the parties.
- **COURT:** So it is without doubt that for one to allege there was interference, there must be proof that there was a Coordinated Programme, which outlines the dates and time for campaign meetings for each candidate and their parties. Consideration must also be on the fact that an alleged fact must be proven to the satisfaction of the Court. This means that such standard of proof must be such that no reasonable doubt exists that the allegation has been proved.

5.29: Qualification to contest parliamentary election, criminal record

Criminal record indicated in the Nomination Form No. 8B. Although annexed, but was not tendered as evidence.

DISCUSSED IN: **Emmanuel Godfrey Masonga v Edward Franz Mwalongo, The Returning Officer of Njombe Township Council, The Attorney General**, Miscellaneous Civil Cause No. 6 of 2015, High Court of Tanzania at Njombe (MWAMBEGELE, J.):

- The first respondent was not qualified to contest the parliamentary seat for Njombe Mjini Constituency because he filled his **Nomination Form No. 8B** and indicated that he had previously been convicted with a criminal offence.
- PW6 testified that he saw the first respondent's Nomination Form No. 8B which was placed on the Notice Board at the Office of the Returning Officer having been cancelled "**HAPANA**" thereby leaving "**NDIYO**" in a place where the first respondent was asked to fill whether or not he has ever been convicted with a criminal offence. By cancelling "**HAPANA**", it suggested that the first respondent had previously been convicted with a criminal offence. PW6 informed the petitioner who rushed to the offices only to find the form has been rectified to show both "**NDIYO**" and "**HAPANA**" cancelled and a tick marked beside "**HAPANA**".
- **COURT:** The form is appropriately filled by cancelling "**NDIYO**" as there is an explanation at the bottom of that page showing that the asterisk means "*Futa isiyotakiwa*" which means cancel what is not required. It is not filled in the manner suggested by PW1 at Para 26 of his affidavit; his evidence-in-chief and Para 13 of the petition; that is, cancelling both "**NDIYO**" and "**HAPANA**" and then ticking "**HAPANA**".
- **COURT:** The allegedly corrected Form was annexed to the petition and affidavit as Annexure D but was not admitted in evidence. It is the law that annexures, unless admitted in evidence, are not part of evidence – see: *Abdallah Abass Najim V Amin Ahmad Ali* [2006] TLR 55, *Mohamed A. Issa Vs John Machela* Civil Appeal No. 55 of 2013 (CAT unreported) and *Shemsa Khalifa And Two Others V Suleman Hamed Abdalla*, Civil Appeal No. 82 of 2012 (CAT unreported).
- **COURT:** There is nothing concrete to show that indeed the first respondent had indicated in the form that he had a previous criminal conviction.
- **COURT:** There is nothing substantial shown in evidence to bring to the fore that the first respondent was not qualified to be nominated to contest the parliamentary seat for Njombe Mjini Constituency.

5.30: Video recording an incident via a mobile phone

DISCUSSED IN: **Emmanuel Godfrey Masonga v Edward Franz Mwalongo, The Returning Officer of Njombe Township Council, The Attorney General**, Miscellaneous Civil Cause No. 6 of 2015, High Court of Tanzania at Njombe (MWAMBEGELE, J.):**[JUDGMENT]**

- Nolasco Lihawa Malipula who was allegedly the campaign manager of the 1st respondent was recorded through a Video CD recorded via a mobile phone of one of the people who attended the said meeting at Igoma Village within Iwungilo Ward during campaign which was appended as an annexure. But, following a Ruling of the petition court pronounced on 08.04.2016, the video CD was not accepted as evidence.
- **COURT:** There is nothing substantial in testimony or in evidence to connect Nolasco Lihawa Malipula to the first respondent's Campaign Team. Nothing has been

substantially brought to dispute the testimony of RW1 having no relationship with the said Nolasco Lihawa Malipula

5.30.1: Video recorded evidence in Election Petitions

DISCUSSED IN: **Emmanuel Godfrey Masonga v. Edward Franz Mwalongo, The Returning Officer of Njombe Township Council, The Attorney General**, Miscellaneous Civil Cause No. 6 of 2015, High Court of Tanzania at Njombe (MWAMBEGELE, J.):[RULING]

- A Video Compact Disc (VCD) containing, allegedly, an episode captured on 05.09.2015 during the 2015 Parliamentary Election Campaigns in the Njombe Mjini Constituency.
- The sixth witness for the petitioner (PW6), having testified-in-chief by tendering an affidavit as required by Rule 21A of the National Elections (Election Petitions) Rules, 2010 sought to tender the video CD as exhibit in support of what he had deposed in the affidavit and in his evidence-in-chief.
- The VIDEO recorded discriminatory words against the petitioner which were made along tribal, residence, marital and social status lines.
- Respondents' objection against the VIDEO RECORDED EVIDENCE:

"....The objection by the respondents is, mainly, predicated upon the provisions of section 18 (2) (a), (b) and (c) of the Electronic Transactions Act, 2015 (henceforth "the Electronic Transactions Act"). Their doubts are primarily premised on two main grounds; namely, the reliability and authenticity of the electronic data intended to be tendered. The doubts with regard to reliability of the said video clip are summarized in their arguments as follows:

....They argue that by virtue of section 18 (1) of the Electronic Transactions Act, electronic data is admissible in evidence but subject to the conditions provided for under subsection (2) of the section. They argue further that the VCD sought to be tendered in evidence does not meet the conditions set out in subsection (2) of section 18 of the Electronic Transactions Act. The learned counsel for the respondents state that PW6 recorded the event on 05.09.2015 and that the phone with which he used to take and record the event got lost but that he had already sent the clip to Emmanuel Masonga; the petitioner, who later returned it to him from which the VCD was made by means of a computer. With the present technology in place, they argue, programmes like Movie-Maker and Adobe Photoshop, one can easily manipulate the contents of any electronic data."

- **COURT:** "...I will confine my discourse to the issue whether a VCD is admissible in evidence, and if the answer is in the affirmative, how is it admissible, and finally, whether the VCD in the present case can be admitted in evidence as prayed by the petitioner or whether it should not, as objected by the respondents."
- **COURT:** "As rightly put by the learned counsel for the parties, by virtue of the Electronic Transactions Act, 2015, electronic evidence is now admissible in legal proceedings in this jurisdiction; both criminal and civil. The Act, save for Part VII thereof, came into force on 01.09.2015 by virtue of the Electronic Transactions (Date of Commencement) Notice, 2015 – GN. No. 329 of 14.08.2015. Before that, electronic evidence was, as already alluded to above, admissible in criminal proceedings vide the Written Laws (Miscellaneous Amendment) Act, No. 15 of 2007."

- **COURT:** The hallmark of the conditions for admissibility of an electronic evidence under the provisions of section 18 (1) is, it seems to me, its authenticity.
- **COURT:** I am in agreement with the learned counsel for the respondents that the manner in which the electronic data sought to be tendered in evidence was generated and stored leaves a lot to be desired as to render it inadmissible in evidence.
- **COURT:** Sustained the objection, the VCD sought to be introduced in evidence inadmissible.

PART SIX

THE COURT OF APPEAL INTERVENTION

6.0: Introduction

Following decisions of the High Court on electoral Petitions, unsuccessful parties lodged their appeal to the Court of Appeal and some of the cases were referred to the Court of Appeal by the trial judges seeking guidance as revealed below.

6.1: Locus Standi, Right of registered voters to petition

DISCUSSED IN: **Magambo J. Masato, Matwiga M. Matwiga, Janes S. Ezekiel and Ascetic N. Malagila v Ester Amos Bulaya, Returning Officer of Bunda Urban Constituency and The Attorney General**, Civil Appeal No. 49 of 2016 CAT Full Bench (decided on 12th July 2016):

- Whether the voters' right to petition and challenge the election of a Member of Parliament is provided for and guaranteed under section 111 (1) (a) of the Act.
- Article 83 (3) of the Constitution of the United Republic vests in the Parliament the power to enact the appropriate law to prescribe such diverse electoral matters as identification of the persons who may lodge election petitions in the High Court, grounds of election petitions, timeframes within which to file the petition, procedure for litigating election petitions and laying the foundation for the right to appeal to the Court of Appeal.
- True to the spirit of Article 83 (3), the Parliament enacted the National Elections Act to provide *locus standi* or ability of voters to lodge an election petition as a statutory right under section 111 (1) (a): "**111 (1)** *An election petition may be presented by anyone or more of the following persons, namely- (a)- a person who lawfully voted or had a right to vote at the election to which the petition relates;*"
- It is very clear to us that the wording of the above section 111 (1) (a) includes the voters in the list of persons who are vested with statutory *locus standi* to institute a petition challenging the election.
- The *locus standi* or right of voters in Tanzania to institute election petitions does not emanate from the common law nor does it trace its legal validity from public litigation provisions of Article 26 (2) of the Constitution. The right of voters to petition an election of a Member of Parliament is statutory right provided for under section 111 (1) (a) of the National Elections Act.
- The right of voters to present petitions to annul results of an elected Member of Parliament is not so wide as to allow a voter concerned to petition the election of any Member of Parliament of his choice. Instead, section 111 (1) (a) restricts the right to petition by voters to the "*election to which the petition relates* i.e. within the Constituency in which the voter was registered to vote.
- The right of voters to so petition is not a uniquely Tanzanian invention. Similar provisions appear in other jurisdictions (e.g. section 19 of the Electoral Act, Cap 13 of Zambia and section 17 of the Representation of the People Law, 1992 of Ghana).

- Having averred in paragraphs 1 to 4 of their Petition in the High Court about their respective Tanzanian citizenship, coupled with their registration as voters and having voted in the Bunda Urban Parliamentary Constituency, the four appellants herein were legally entitled to be heard in their petition under section 111 (1) (a) of the National Elections Act. These voters bear the same burden of proof like other categories of petitioners, to satisfy the trial High Court on the grounds for the avoidance of the election of the first respondent in terms of section 108 (2) of the Act.
- *Locus standi* provisions of section 111 (1) (a) giving the voters the right to petition an election underpins the "**Fundamental Objectives and Directive Principles of State Policy**" in Part II of the Constitution to the effect that the Executive, the Legislature and the Judiciary are to serve the people of Tanzania. Article 8 (1) (a) reminds these three branches of the State that "*sovereignty resides in the people and it is from the people that the Government through this Constitution shall derive all its power and authority.*"
- *Locus standi* provisions secondly, manifests the constitutional underpinning that citizens should participate in the affairs of their Government (**see-Articles 8 (1) (d) and 21 of the Constitution**).
- *Locus standi* provision under section 111 (1) (a) is an important weapon of some sort which the people of Tanzania have retained to ensure the purity of elections in a working democracy and that the people they elect to Parliament to oversee the Government on their behalf, have not violated the electoral laws, in the entire process of being elected.

6.2: Basic right to vote and to be voted into office

DISCUSSED IN: 1. Zella Adam Abrahaman 2. Amina M. Mwadau 3. Dr. Steven L. Kirushwa v. 1. The Attorney General 2. Oran Manase Njeza 3. Returning Officer, Mbeya Vijijini Parliamentary Constituency, 4. Juma H. Aweso, 5. The Returning Officer, Pangani Constituency 6. Onesmo Nangole 7. Returning Officer Longido Constituency, Consolidated Civil Revisions Nos. 1, 3 and 4 of 2016 (Court of Appeal at Dar es Salaam) (decided on 5th May 2016).

- **COURT:** Placing reliance in Articles 8, 21 (1) & (2) of the Constitution of Tanzania the provisions which the Court of Appeal regarded as identical with Articles 21, 25 and 13 of the Universal Declaration of Human Rights, 1948 and the International Covenant on Civil and Political Rights, 1966 and the African Charter on Peoples and Human Rights, the Court of Appeal restated: "*...It goes without saying, therefore, the right to vote and to be voted into an elective office is a basic human right.*"
- **COURT:** To give effect to this basic right [i.e. *the right to vote and to be voted into an elective office*] it is stipulated in Article 76 that "*there shall be held an election of a Member of Parliament in every Constituency.*" It is further unequivocally provided in Article 77 (1) that: "*Members of Parliament representing constituencies shall be elected by the people in accordance with the provisions of this Constitution and also the provisions of a law enacted by Parliament pursuant to this Constitution to regulate the election of Members of Parliament representing Constituencies.*"
- The law envisaged in Article 77 (1) is already in place. It is the National Elections Act, Cap. 343.

6.3: Revision to the Court of Appeal over Rejection of documents

DISCUSSED IN: Murtaza Ally Mangungu v. The Returning Officer for Kilwa North Constituency, The Attorney General and Vedasto Edgar Ngombale, Civil Application No. 80 of 2016 (CA) (decided on 6th June, 2016):

- The wording of section 5 (2) (d) of AJA is very clear. There are two preconditions for the provision to come into effect. **Firstly**, the decision or order in question must be interlocutory or preliminary. **Secondly**, the decision or order must have the effect of finally determining the criminal charge or suit. Both conditions must exist for it to be invoked.
- That means that the order or decision must be such that it could not bring back the matter to the same court.
- In its decision in this case the High Court rejected to admit in evidence some documents which the applicant intended to rely on in his case. But did this mean that it had determined the rights of the parties? We do not think so.

6.4: Whether a decision of Election Petition Court is interlocutory

DISCUSSED IN: **Murtaza Ally Mangungu v. The Returning Officer for Kilwa North Constituency, the Attorney General and Vedasto Edgar Ngombale**, Civil Application No. 80 of 2016 (CA):

- In resolving the controversy, we have decided to adopt what is known as "the nature of the order test". This test was applied in a decision of the Privy Council of **BAZSON v. ATTRINCHAN URBAN DISTRICT COUNCIL** (1903, 1 KB 948) which is-- *"does the judgment or order as made/ finally dispose of the rights of the parties? If it does then ...it ought to be treated as a final order, but if it does not it is then ... an interlocutory order."*

6.5: Striking out an election petition, whether interlocutory

DISCUSSED IN: **Magambo J. Masato, Matwiga M. Matwiga, Janes S. Ezekiel and Ascetic N. Malagila vs. Ester Amos Bulaya, Returning Officer of Bunda Urban Constituency and The Attorney General**, Civil Appeal No. 49 of 2016 CAT Full Bench:

- **Court:** "After the trial court had struck out the petition, which marked the end of its life in the High Court. There was nothing remaining before Gwae, J. that can be described as interlocutory. It was therefore taking a journey of futility when Mr. Mutalemwa filed so many applications for leave on assumptions that he was destined to appeal against an interlocutory order: see- **Republic vs. Harry Msamire Kitilya, Shose Mori Sinare and Sioi Graham Solomon**, Criminal Appeal No. 124 of 2016 (unreported).

6.6: Role of Courts When Hearing Election Petitions

DISCUSSED IN: 1. **Zella Adam Abrahaman** 2. **Amina M. Mwadau** 3. **Dr. Steven L. Kirushwa v. 1. The Attorney General** 2. **Oran Manase Njeza** 3. **Returning Officer, Mbeya Vijijini Parliamentary Constituency**, 4. **Juma H. Aweso**, 5. **The Returning Officer, Pangani Constituency** 6. **Onesmo Nangole** 7. **Returning Officer Longido Constituency**, Consolidated Civil Revisions Nos. 1, 3 and 4 of 2016 (Court of Appeal at Dar es Salaam).

- Courts, through the election petitions, have a duty to preserve our constitutionally enshrined democratic principles and not to emasculate them. They also have to adopt a balanced judicial approach giving the electoral laws which enhance our basic rights, purposive and liberal interpretations, avoiding relying on undue technicalities. In so doing they will be preserving the sanctity of the will of the people and not subverting it. This is because the legitimacy and authority of democratic governments are derived solely from the consent of the governed

through the ballot box as articulated in Article 8 of the Constitution and not from the court...

6.7: Introduction of Affidavit of Witnesses in Election Petitions

DISCUSSED IN: 1. Zella Adam Abrahaman 2. Amina M. Mwadau 3. Dr. Steven L. Kirushwa v. 1. The Attorney General 2. Oran Manase Njeza 3. Returning Officer, Mbeya Vijijini Parliamentary Constituency, 4. Juma H. Aweso, 5. The Returning Officer, Pangani Constituency 6. Onesmo Nangole 7. Returning Officer Longido Constituency, Consolidated Civil Revisions Nos. 1, 3 and 4 of 2016 (Court of Appeal at Dar es Salaam).

- In exercise of his powers under section 117 (1) of the National Elections Act, Cap 343 to make rules to regulate the handling of election petitions, the Chief Justice promulgated the National Elections (Election Petitions) Rules, 2010 vide G.N. 447 of 2010. These Rules regulated the conduct of election petitions instituted in the aftermath of the 2010 General Elections.
- However, realizing the pressing need to promote further efficiency in the management and disposal of future election petitions, and conscious of the principles enunciated in Article 107A(2) of the Constitution, the Chief Justice amended the Rules in 2012 vide the National Elections (Election Petitions) (Amendment) Rules, 2012, G.N. No. 106 of 2012. These amendments aimed at achieving expeditious resolutions of electoral disputes.
- Rule 21A became effective on 30th March, 2012. We take judicial notice of the fact that this Rule had become effective when the Parliamentary Elections were held on 25th October, 2015. Although Rule 21A should have applied in the resulting election a petition, that was not the case in many election petitions which continued to receive evidence in accordance with the Evidence Act, Cap. 6 and Rule 21 of Election Petition Rules, 2010 which states:

"21. Witnesses shall be summoned and sworn in the same manner as nearly as circumstances admit, as in a trial by the court in the exercise of its original civil jurisdiction and shall, without prejudice to the provisions of any other law, be subject to the same penalties for giving false evidence for non-appearance."

- The above Rule 21, is a replica of section 110 (2) of the National Elections Act.

6.8: Witness Affidavits tainted with material irregularity

DISCUSSED IN: 1. Zella Adam Abrahaman 2. Amina M. Mwadau 3. Dr. Steven L. Kirushwa v. 1. The Attorney General 2. Oran Manase Njeza 3. Returning Officer, Mbeya Vijijini Parliamentary Constituency, 4. Juma H. Aweso, 5. The Returning Officer, Pangani Constituency 6. Onesmo Nangole 7. Returning Officer Longido Constituency, Consolidated Civil Revisions Nos. 1, 3 and 4 of 2016 (Court of Appeal at Dar es Salaam).

- On the question whether both Rules 21 and 21A are contradictory, confusing and vague:
- There is no element of contradiction and/or confusion in Rules 21 and 21A
- Once a witness has been duly summoned, and attends, he or she would be sworn or affirmed and his/her evidence taken under the provisions of the Evidence Act and the Civil Procedure Code. This is the true import of Rule 21. The provisions of this Rule still apply even after the introduction of Rule 21A.
- It has also occurred to us that a cursory look at Rule 21A (3) and (5), lends support to the assertion that the principle of orality has been retained partly in sub-rule (3) and

wholly in sub-rule (5). This is because evidence on cross-examination and re-examination will be oral despite the witness affidavital evidence and a witness testifying under the provisions of sub-rule (5), shall give entirely oral evidence.

- There is no modicum of truth in the assertion that Rule 21A qualifies Rule 21. Furthermore, Rule 21 cannot be said to be vague as it is a replica of section 110 (2) of the National Elections Act which has never been questioned in any election petition.
- Rule 21 did not shut out completely oral evidence. Failure to comply with Rule 21A was not a fatal irregularity.

6.9: Necessary Parties to be impleaded in the Court of Appeal, the Attorney General and the Returning Officer

DISCUSSED IN: **Onesmo Nangole v. Dr. Sterven Lemomo Kiruswa**, Civil Appeal No. 129 of 2016 Court of Appeal Tanzania at Arusha (unreported):

- In the Election Petition tried before the High Court, the appellant Onesmo Nangole who had declared the winner of the Longido Parliamentary Election, was impleaded as the first respondent. The Attorney General and the Returning Officer were captioned as second and third respondents to the Election Petition.
- The High Court nullified the election of the appellant after holding that the circumstance at the tallying room was not friendly so as to give results which reflect the wishes and real conscience of the electorate of Longido Constituency.
- This appeal was brought by the appellant Onesmo Nangole against Dr. Sterven Lemomo Kiruswa (the respondent) who had successfully petitioned the High Court to avoid the election of the Member of Parliament for Longido.
- At the hearing of this appeal, the respondent raised a preliminary point of objection— that the instant appeal is incompetent and should be struck out because, although the Attorney General and the Returning Officer were served with the Notice of Appeal, they were not subsequently impleaded in the appeal without first seeking and obtaining the directions of the Court as to whether they be impleaded or not.
- It was submitted in support of the objection that impleading of the Attorney General and the Returning Officer was necessitated by Rule 6 of the National Elections (Election Petitions) Rules, 2010. It was further submitted that both the Attorney General and the Returning Officer are necessary parties who should have been impleaded in the memorandum and record of appeal.
- It was also submitted in support of the objection that the grounds of the instant appeal relate to the irregularities that there were committed by the Returning Officer and, in that regard, both the Attorney General and the Returning Officer will be directly affected by the outcome of the appeal. To that extent, Attorney General and the Returning Officer ought to have been impleaded as necessary parties before any adverse order is made against them.
- In resisting the preliminary objection, it was submitted that Rule 6 of the National Elections (Election Petitions) Rules, 2010 only governs petitions lodged before the High Court. That there is no corresponding requirement, with respect to election petitions on appeals in the Court of Appeal.
- **COURT:** "...If we were to deliberate this appeal, certainly, we would be called to decide this detail and the alleged irregularities one way or the other and, perhaps, if need be, adversely to both the Attorney General and the Returning Officer. It is beyond question that whatever finding we arrive at would impact on the Returning Officer and, indeed, the Attorney General in his capacity as custodian of the legal affairs of the Government. Thus, if we were to deliberate the appeal in their absence,

the Court would lend itself in the mischief of condemning both the Attorney General and the Returning Officer without affording them the opportunity of being heard..... If we decided to deliberate this appeal in their absence, we will offend the *audi alteram partem* rule of natural justice..... Thus, consistent with the constitutional right to be heard as well as settled law, we are of the firm view that, in the circumstances of this case, it will be in the best interests of justice if both the Attorney General and the Returning Officer are impleaded and joined as necessary parties to the appeal before any deliberations are taken by the Court, adverse or otherwise. We take this as a matter of serious concern, more particularly, since the mishandling of the electoral process by an election officer, if established, could lead to far reaching consequences.”

- **COURT:** “...Granted that the Rules do not have a corresponding requirement of the Rule like of Rule 6 of the National Elections (Election Petitions) Rules, 2010: But, we are constrained to give a direction under Rule 4 (2) (2) (a) to the effect that, in a situation such as the present, where the nullification of the results of an election arose from irregularities or non-compliances allegedly occasioned by an election officer, an appellant is implicitly obliged to implead and join as necessary parties both the Attorney General and the Returning Officer. The direction, in our view, will be in accord with, and would translate into practical terms the constitutional right to be heard.”

6.10: The right of appeal in election petitions

DISCUSSED IN: **Murtaza Ally Mangungu v. The Returning Officer for Kilwa North Constituency, the Attorney General and Vedasto Edgar Ngombale**, Civil Application No. 80 of 2016 (CA):

- This was an application for revision from the proceedings of the Election Petition in the High Court of Tanzania at Mtwara. The applicant contested Kilwa North Constituency Parliamentary election in the 2015 General Elections. After losing that election to the third respondent, VEDASTO EDGAR NGOMBALE, he filed an Election Petition in the High Court (Misc. Civil Application No. 4 of 2015) seeking to avoid the election of the third respondent as the Member of Parliament for Kilwa North Constituency Parliamentary seat.
- The hearing of the petition commenced on 3/3/2016 by taking the evidence of the Petitioner (PW1) who is the applicant in this revision. When the petitioner offered to tender 31 election results forms (Form 21B), the learned State Attorney who was representing THE RETURNING OFFICER FOR KILWA NORTH CONSTITUENCY (the first respondent herein) and THE ATTORNEY GENERAL (the second respondent herein) objected the move describing these Forms to be secondary evidence.
- Aggrieved with the Ruling of the trial Judge, the applicant filed the instant application for revision under sections 4 (3) and 5 (2) (d) of the Appellate Jurisdiction Act, Cap 141 R.E. 2002 (AJA) as well as Rules 4 and 65 (1) of the Court of Appeal Rules, 2009 (the Rules).
- **COURT:** We agree with Mr. Mbamba that Article 83 (4) of the Constitution of the United Republic of Tanzania enshrines a right of appeal against decisions in election petitions. What we fail to understand is its relevancy in the present matter, which has nothing to do with appeals.

6.11: Right of appeal from decisions of the High Court on election petitions

DISCUSSED IN: **Magambo J. Masato, Matwiga M. Matwiga, Janes S. Ezekiel and Ascetic N. Malagila v Ester Amos Bulaya, Returning Officer of Bunda Urban Constituency and The Attorney General**, Civil Appeal No. 49 of 2016 CAT Full Bench:

- **Court:** "It seems clear to us that from the perspectives of Article 83 (4) of the Constitution and section 115 (4) of the National Elections Act, appeals from decisions of the High Court on election petitions may go to the Court of Appeal without obtaining prior leave of the High Court. Article 83 (4) was re-enacted under section 115 (4) of the National Elections Act- "**115 (4)**-*An appeal lodged pursuant to this section shall lie to the Court of Appeal.*"
- **Court:** "Section 5 (1) of the Appellate Jurisdiction Act, Cap. 141 has deliberately left it open for other written laws to make provisions for unconditional rights to appeal to this Court".
- **Court:** "Where such law [like the National Elections Act] does not impose a requirement to first seek leave to appeal, the right to appeal is automatic where the impugned decision finally disposes of the matter in the High Court or Tribunal".

6.12: Revision to the Court of Appeal over Rejection of documents

DISCUSSED IN: **Murtaza Ally Mangungu v. The Returning Officer for Kilwa North Constituency, the Attorney General and Vedasto Edgar Ngombale**, Civil Application No. 80 of 2016 (CA):

- The wording of section 5 (2) (d) of AJA is very clear. There are two preconditions for the provision to come into effect. **Firstly**, the decision or order in question must be interlocutory or preliminary. **Secondly**, the decision or order must have the effect of finally determining the criminal charge or suit. Both conditions must exist for it to be invoked.
- That means that the order or decision must be such that it could not bring back the matter to the same court.
- In its decision in this case the High Court rejected to admit in evidence some documents which the applicant intended to rely on in his case. But did this mean that it had determined the rights of the parties? We do not think so.

6.13: Whether a decision of Election Petition Court is interlocutory

DISCUSSED IN: **Murtaza Ally Mangungu v. The Returning Officer for Kilwa North Constituency, the Attorney General and Vedasto Edgar Ngombale**, Civil Application No. 80 of 2016 (CA):

- In resolving the controversy, we have decided to adopt what is known as "the nature of the order test". This test was applied in a decision of the Privy Council of **BAZSON v. ATTRINCHAN URBAN DISTRICT COUNCIL** (1903, 1 KB 948) which is-- "*does the judgment or order as made/ finally dispose of the rights of the parties? If it does then ...it ought to be treated as a final order, but if it does not it is then ... an interlocutory order.*"

6.14: Striking out an election petition, whether interlocutory

DISCUSSED IN: **Magambo J. Masato, Matwiga M. Matwiga, Janes S. Ezekiel and Ascetic N. Malagila v Ester Amos Bulaya, Returning Officer of Bunda Urban Constituency and The Attorney General**, Civil Appeal No. 49 of 2016 CAT Full Bench:

- **Court:** “After the trial court had struck out the petition, which marked the end of its life in the High Court. There was nothing remaining before Gwae, J. that can be described as interlocutory. It was therefore taking a journey of futility when Mr. Mutalemwa filed so many applications for leave on assumptions that he was destined to appeal against an interlocutory order: see- **Republic vs. Harry Msamire Kitilya, Shose Mori Sinare and Sioi Graham Solomon**, Criminal Appeal No. 124 of 2016 (unreported).

6.15: Cause of action in Election Petitions

DISCUSSED IN: **Liberatus Laurent Mwang'ombe v. The Attorney General, Haroon Mullah Pilmohamed And The Returning Officer Mbarali Parliamentary Constituency**, Civil Appeal No 45 of 2016 (decided on 23rd May, 2016):

- This appeal emanates from the 2015 General Elections which were conducted on 25th October. It follows a ruling of the High Court of Tanzania at Mbeya, striking out an election petition which Liberatus Laurent Mwang'ombe had filed on the ground that his petition against the election of Haroon Mullah Pilmohamed as a Member of Parliament for Mbarali Constituency, “did not disclose a cause of action”.
- Mr. Mwakagamba argued that the learned judge erred to hold that no cause of action had been disclosed for the failure to attach annexure **BMA-A** and **BMA-C**.
- That his client's complaints as per averment in the petition were mainly grounded on corrupt practices and as such a cause of action had been disclosed even in the absence of the two annexures in issue.
- That all the annexures relating to corrupt practices were attached to the petition.
- That the learned High Court judge failed to appreciate the provisions of Order VII Rule 18 and Order XIII Rule 1 with regard to documents needed for proof of a civil matter.
- That the learned trial Judge failed to properly interpret the provisions of Rule 32 (1) of the National Elections Petition Rules, 2010.
- Both Mr. Mwakitalu and Mr. Mohamed were of the view that the learned trial judge was justified to strike out the petition
- That the failure to attach the annexures BMA-and BMA-Which formed part and parcel of the petition rendered the petition to be wanting for failure to disclose a cause of action.
- That in terms of section 79A (3) annexure BMA-A could not be dispensed with because without the form the learned judge could not know if the appellant was entitled to file the petition.

6.16: Non- attachment of certain documents and cause of action

DISCUSSED IN: **Liberatus Laurent Mwang'ombe v. The Attorney General, Haroon Mullah Pilmohamed and The Returning Officer Mbarali Parliamentary Constituency**, Civil Appeal No 45 of 2016:

- **Court:** “...We are settled in our minds that the annexures mentioned in the petition were merely pieces of evidence that the appellant intended to rely upon to establish his case. Their absence did not erase the cause of action that was otherwise very clear from the body of the petition. There were several paragraphs revealing cause of action and to which annexures were attached, but the learned trial judge did not address herself to this fact.... Yet still, there were certain paragraphs in the petition which revealed a cause of action but which mentioned no annexures. See for example paragraph 9.4..... To strike out the petition without hearing the appellant on these averments denied him the right to be heard.”

- **Court** “...the appellant was not actually suing upon a document but he had documents in his possession upon which he intended to rely, a fact which would have made the documents to come squarely within the ambit of r.1 of Order XIII and r. 18 of the Election Petition Rules.”
- **Court:** “...It is also not clear from the record whether the case came up for hearing or for necessary orders on 14/01/2016 when the learned judge heard the parties on 'ascertainment of documents' which led her to a striking out of the petition. The matter was indeed still at preliminary stage and the appellant had time to exhibit the documents that he intended to rely upon in view of Order XIII r 1 and rule 18 of the Election Petition Rules.”

6.17: Whether Rule 32 (1) of the Rules on governs dismissals but not striking out of petitions

DISCUSSED IN: **Liberatus Laurent Mwang'ombe v The Attorney General, Haroon Mullah Pilmohamed and The Returning Officer Mbarali Parliamentary Constituency**, Civil Appeal No 45 of 2016:

- It was argued further that since the petition was struck out and not dismissed the learned trial judge could not be faulted for her interpretation of Rule 32 (1) of the Election Petitions Rules. This Rule prohibits dismissal of petitions for the reason only of non-compliance with any of the provisions of the Rules or for the reason only of any other procedural irregularity unless such non-compliance or irregularity has resulted or is likely to result in a miscarriage of justice.
- **Court:** “...Incidentally, the parties had not been 'heard on the petition in general' and we can say right away that the appellant was denied his constitutional right of being heard on *the petition in general*; which the learned judge purported to make a decision thereupon. For this reason alone, we would find good reason to allow the appeal.”

6.18: Interpretation of Rule 32 (1)

DISCUSSED IN: **Liberatus Laurent Mwang'ombe v. The Attorney General, Haroon Mullah Pilmohamed And The Returning Officer Mbarali Parliamentary Constituency**, Civil Appeal No 45 of 2016:

- **Court:** “...Another point that we are attracted to address ourselves to concerns the interpretation of r.32 (1) of the Election Petition Rules, 2010. Whereas Mr. Mwakagamba argued that the learned judge was barred from dismissing the petition under that rule, Mr. Mwakitalu was quick to point out that the trial judge did not dismiss the petition but she struck it out for failure to disclose a cause of action. The question that quickly comes to mind in response to Mr. Mwakitalu's argument is whether the judge was entitled to strike out the petition anyway? In our view there was every reason for the trial judge to have been inspired by the provisions of rule 32 (1) of the Election Petition Rules and should have restrained, herself from striking out the petition for some non-compliance or irregularities which even if they were there would not have resulted in a miscarriage of justice.”

6.19: Rules-making power to regulate the procedure in Election Petitions

DISCUSSED IN: **1. Zella Adam Abrahaman 2. Amina M. Mwadau 3. Dr. Steven L. Kirushwa v. 1. The Attorney General 2. Oran Manase Njeza 3. Returning Officer, Mbeya Vijijini Parliamentary Constituency, 4. Juma H. Aweso, 5. The Returning Officer, Pangani Constituency 6. Onesmo Nangole 7. Returning Officer Longido Constituency**, Consolidated Civil Revisions Nos. 1, 3 and 4 of 2016 (Court of Appeal at Dar es Salaam).

- Section 117 (1) of the National Elections Act, Cap 343 gives powers to the Chief Justice to make rules to regulate the practice and procedure to be followed by the courts in handling election petitions. Such rules are in accord with, among others, Articles 8 and 107A of the Constitution.

NOTE:

It is noted that as of 22nd November, 2016 there are two Revisions pending before the Court of Appeal awaiting determination. These are;

- (1) Nundu Omary Rashid v. The Returning Officer of Tanga Constituency, The Attorney General and Mussa Bakari Mbarouk, Civil Revision No 3 of 2016
- (2) Kondo Juma Bungo v. Issa Ally Mangungu, The Returning Officer Mbagala Constituency and The Attorney General, Civil Revision No 192 of 2016

There is also one appeal which is pending awaiting determination. This is Onesmo Nangole v. Dr Steven Lemomo Kiruswa, Civil Appeal No 129 of 2016. The appeal was adjourned on 24/10/2016 and the Court directed the joining of the Returning Officer of Loliondo Constituency and the Attorney General as respondents to facilitate fair determination of the appeal.

PART SEVEN

CHALLENGES IN HANDLING ELECTION PETITIONS

7.0: Introduction

In handling election petitions the Resident Magistrate Court and the High Court were faced with numerous challenges. Some of the challenges are briefly discussed below.

7.1: Institution Stage

One of the challenges that came out in handling election petition includes the language to be used by a petitioner in preparing election petition. It emerged out that some petitioners used Swahili language to prepare an election petition while electoral laws require election petitions to be in English language.

In addition to that, compliance with requirements as to form was one of the challenges. This led some election petitions to be rejection or returned to the petitioners. The Rules which direct how presentation of petition should be made were not complied with by most of the petitioners. For instance, some of election petitions were not titled as Misc. Cause No. Furthermore, enabling provisions and the requirement of joining necessary parties was not complied with.

7.1.1: Registrars and Deputy Registrars' Power

The Scope of Registrars and Deputy Registrars' Power in handling election petitions is only limited to return and/ or reject the election petition for non-compliance of electoral laws. For parliamentary petition, this in accordance with rule 9 of GN No 447 of 2010. But some registrars proceed to issue withdraw order. Moreover, some petitioners were not sure whether rejection amounted to a bar to lodge another petition especially taking into consideration the time limit.

7.1.2: Period to file reply to election petition

The electoral laws and rules are also silent on the period within which replies to the petition are to be filed. That is to say no time fixed by the electoral Act and Rules within which the respondent should file replies to the election petitions. This brought a lot of difficulties as the Civil Procedure Act was resorted to when the time set for hearing the petition was seriously interfered.

7.1.3: Attorney General's right to file election petition

The electoral law allows the Attorney General to challenge election results but he is precluded from deposing security for Costs. This position of law is assessed as double standard for the reason that the principle of equality is not reflective between the Attorney

General and other election petitioners. Nevertheless, the Attorney General did not file any petition after the 2015 General Election.

7.2: Security for Costs

The law does not state the time within which a petitioner who is not intending to apply for determination of security for costs is supposed to deposit security for costs. Case law requires reasonable time but reasonable time is subjective.

Another challenge was that none of the electoral law states the period within which the respondent has file Counter-Affidavits opposing the application for determination of security for costs. To accommodate the respondents, the Court normally applies Order 8 rule 1 of Civil Procedure Code to allow the Respondent to file his Counter-Affidavits. There is a need of amending electoral laws to eliminate the said *lacuna*.

Further to that the law is silent on what happens when the amount of security for costs is determined, but the petitioner fails to deposit the same within the prescribed period of 14 days. The law provides that no further action will be taken. The issue is whether no further action allows a dismissal of the petition.

A concern was also raised as to why there should be need for petitioner to deposit security for cost for the Attorney General who is merely a necessary party to the petition. The other concern involved why there should be need for Chief Justice to consult a Minister for extension of time for six months to finalize the election petition which has not been finalized within 12 months after being lodged.

7.3: Pre-Trial Stage

Electoral law is not clear who should frame the issues between a judge conducting preliminary hearing and a trial judge or Magistrate.

It is further uncertain as to whether settlement of Election Petition by the parties is allowed under the law, and in the event of settlement, it is possible for the court to issue a certificate. The major issue associated with this is whether the winner, respondent for this matter can settle with the petitioner to be a loser of the election and what happens.

On the other hand, it is the position of law that complexity of election petition which will necessitate a panel of three judges to hear a petition is to be determined by the Chief Justice and not a trial judge. It is argued that a trial judge is best placed to assess the complexity of the election petition at the early stage and can advise the Chief Justice according.

7.4: The Trial Stage

Despite the fact that, all election petitions filed were attended promptly by the Judiciary experienced insufficient fund to handle the filed election petitions. Moreover, the court had no enough court rooms to entertain election petitions. Instead, some of the elections petitions were handled in the environment that the health and safety of the trial judges were at stake. Some petitions were heard in Local Government halls instead of a normal court room.

7.4.1: Witness Affidavit

The law is such that the petitioner should file witness affidavit within 48 hours before hearing but it is silent as to when respondents should file his witness affidavit. The application of Rule 21A which was introduced for the first time by the GN 106 of 2012 was a

challenge in handling of election petitions evidence. Questions like when the opposite parties should raise objections against admissibility of the witnesses' affidavits and whether one could attach a document to the witnesses' affidavits. Most importantly, it was not clear as to when the registry had to endorse the affidavit whether it was after it was lodged or after the opening in court. Court clerks were not sure of which court seal had to be applied especially for those petitions which were heard outside the High Court centre.

7.4.2: Application for scrutiny

The electoral law does to contain a proper procedure on how to deal with the prayer of scrutiny. The concern is whether the matter should be determined before or during the trial. Thus the provisions of the National Elections Act on scrutiny have been sometimes improperly applied by trial judges.

7.4.3: Status of complaints not referred to ethics committees

It is also a challenge on what status should be accorded to complaints based on pre-election complaints that have not been referred to the Ethics Committees. This is despite of the fact that the Court of Appeal had determined that evidence will be given less or no weight at all.

7.4.5: No Case to answer

Electoral laws are not clear as to whether the Court can determine the issue of no case to answer and at what standard. Though the High Court judges agreed on the application of the principle, they differed on the extent and parameters of its application.

7.4.6: Unrepresented parties

Unrepresented parties experienced a lot of problems especially petitioners during trial of petitions. To a great extent many were ignorant of the proper procedure and thus ended up requesting trial judges to disqualify themselves when they were advised on issues. A proposal was thus made these kind of litigants should get legal aid to facilitate fair administration of justice.

7.5: General

7.5.1: Dispute Settlement before Election

As indicated earlier, the law is not clear as to whether the courts should be involved in or entertain the disputes arising during the pre-election stage.

7.5.2: Jurisdiction of District Court and Resident Magistrates Courts

It is noted that the Resident Magistrate Courts were overwhelmed with councilors petitions which mostly were from different Districts. It is hoped that in future the District Court will be able to handle councilor's petitions to facilitate timely and efficient determination of electoral disputes.

7.5.3: Parties to election petitions

A problem arose whether some parties who were impleaded at the trial stage could be withdrawn by an appellant at the appellate stage. This matter was settled by the Court of Appeal as stated above in Ole Nangole appeal.

PART EIGHT

RECOMMENDATIONS AND CONCLUSION

8.1: RECOMMENDATIONS

On the bases of the challenges which the courts faced in handling election petitions, it is important for stakeholders of electoral process to take into consideration the following recommendations.

8.1.1: Policy recommendations

The State must adopt the system of offering public education in respect of electoral process. It must also make sure that technological age is not a challenge to personnel handling election process.

It is recommended that Swahili language be allowed for petitioners to prepare an election petition like in Zanzibar and India where Swahili and Hindi local language respectively is used to prepare an election petitions.

It is further recommended that the Government should always allocate sufficient fund to the Judiciary for handling election petitions.

8.1.2: Institutional recommendations

Continuous training of judicial officers, advocates and State Attorneys is a must. Cooperation between election process stakeholders in imparting electoral process and dispute settlement knowledge to Judges, Magistrates, Legal Assistants, State Attorneys and Advocates is necessary.

Most importantly, improvement of communication and building infrastructures across the country is called for. Also amendment of electoral laws be made to do away with the requirement for Chief Justice to consult the Minister of Justice and Constitutional Affairs to extend time of handling election petitions.

It is proposed that the Attorney General should only be a necessary party in the parliamentary election petitions and not a necessary party in Councilors election petitions.

8.1.3: Legislative recommendations

It is recommended that all the mischiefs in the Electoral laws be eliminated by making amendments in respect of the revealed electoral legal gaps. Furthermore, the law should be amended in such a way that it is possible to hold the National Election Commission responsible for any omission or action done by its officials instead of officials being held personally responsible.

8.1.4: Reference to International legal standard on election process and dispute settlement

The Commonwealth Compendium on national electoral laws will be useful in future as a resource tool as it will guide on how to handle election process. Thus it must be available for use and every judicial officer must have it.

Furthermore, the compendium of International Legal Standards on Election process must be adopted by the Government of Tanzania.

8.2: CONCLUSION

There is a need to have a digest of election petitions decisions in one volume for ease of reference and access. Further to that there is need to continuously track various amendments of electoral laws. Moreover, a holistic training of all election stakeholders i.e. Judicial Officers, State Attorneys, lawyers and National Election Commission Officials is important to enhance proper electoral dispute settlement in Tanzania.

ANNEXTURES

1. THE ELECTION EXPENSES ORDER

This is an order made by the Prime Minister under Section 10(1)) of the Election Expenses Act Cap 278. It came into force through the Government Notice No 324, dated on 19th August 2015 aiming at regulating the use of funds during nomination process, election campaign and election in order to promote democratic elections.

ORDER

THE ELECTION EXPENSES (MAXIMUM AMOUNT OF FUNDS) ORDER, 2015

WHEREAS the Election Expenses Act is intended to regulate the use of funds in a manner that prohibit the commission of prohibited practices during nomination process, election campaigns and elections in order to make common level field and promote more democratic elections;

AND WHEREAS section 10(1) of the Election Expenses Act empowers the Minister responsible for election to make an Order in the Gazette, prescribing the maximum amount of election expenses or varying the maximum amount of election expenses to be used by candidates and political parties during election campaign.

HAVING REGARD to the requirement of law for a candidate and a political party to-

- (a) disclose funds in possession and funds expected to be received that is intended to be used for election expenses;
- (h) use funds for election expenses within the prescribed maximum amount;

GIVING EFFECT to section 10(1) which requires the Minister, when prescribing amount of funds to be used as election expenses, to have regard to -

- (a) the difference in the size of polling district;
- (b) categories of candidates;
- (c) population of people in an electoral constituency; and
- (d) communication infrastructure within an electoral constituency;

NOW THEREFORE, I MIZENGO PETER PINDA, the Minister responsible for election and pursuant to powers vested in me with regards to administration of the Election Expenses Act make the following Order:

1. This Order may be cited as the Election Expenses (Maximum Amount or Funds) Order, 2015.
2. The amount of funds specified in various Parts of Schedule to this Order may be expended by the category or candidates specified thereto.
3. The excess funds which may, under special circumstances, be expended election expenses shall not exceed fifteen percent of the substantive maximum amount or funds prescribed in various Parts of the Schedule to this Order.
4. The Election Expenses (Maximum Amount of Funds) Order, 2010 is hereby revoked.

SCHEDULE

PART ONE

A: OFFICE OF THE PRESIDENT

Prescribed Maximum Amount of Funds 6,000,000,000/-

B: OFFICE OF A MEMBER OF PARLIAMENT

CLUSTER 1					
S/ N	NAME OF CONSTITUENCY	SIZE OF CONSTITU ENCY IN KM ²	POPULATIO N OF CONSTITUE NCY	LEVEL OF COMMUNICATI ON INFRASTRUCTU RE	MAXIMUM AMOUNT OF FUNDS SHS
1	2	3	4	5	6
1	Ilala	12.72	157,315	12.8	33,000,000/=
2	Konde	64	27,351	50.5	33,000,000/=
3	Mgogoni	64	23,449	50.5	33,000,000/=
4	Micheweni	64	32,587	50.5	33,000,000/=
5	Tumbe	64	29,056	50.5	33,000,000/=
6	Gando	64	15,651	50.5	33,000,000/=
7	Kojani	64	22,113	50.5	33,000,000/=
8	Mtambwe	64	19,193	50.5	33,000,000/=
9	Ole	64	17,012	50.5	33,000,000/=
10	Wete	64	28,898	50.5	33,000,000/=
11	Chaani	59	23,937	50.5	33,000,000/=
12	Kijini	59	19,495	50.5	33,000,000/=
13	Mkwajuni	59	19,495	50.5	33,000,000/=
14	Nungwi	59	28,007	50.5	33,000,000/=
15	Tumbatu	59	23,693	50.5	33,000,000/=
16	Bubwini	59	22,964	50.5	33,000,000/=
17	Donge	59	30,014	50.5	33,000,000/=
18	Mahonda	59	35,774	50.5	33,000,000/=
19	Chakechake	37	25,365	50.5	33,000,000/=

20	Chonga	37	22,485	50.5	33,000,000/=
21	Mawi	37	30,645	50.5	33,000,000/=
22	Ziwani	37	26,519	50.5	33,000,000/=
23	Chambani	37	17,229	50.5	33,000,000/=
24	Kiwami	37	13,119	50.5	33,000,000/=
25	Mkoani	37	40,497	50.5	33,000,000/=
26	Mtambile	37	25,245	50.5	33,000,000/=
27	Chwaka	171	26,376	50.5	33,000,000/=
28	Tunguu	171	34,439	50.5	33,000,000/=
29	Uzini	171	21,866	50.5	33,000,000/=
30	Makunduchi	171	19,419	50.5	33,000,000/=
31	Paje	171	23,079	50.5	33,000,000/=
32	Bububu	12	83,455	50.5	33,000,000/=
33	Dimani	12	63,126	50.5	33,000,000/=
34	Mwera	12	41,992	50.5	33,000,000/=
35	Fuoni	12	70,500	50.5	33,000,000/=
36	Kiembe Samaki	12	24,530	50.5	33,000,000/=
37	Mfenesini	12	37,670	50.5	33,000,000/=
38	Amani	12	22,837	50.5	33,000,000/=
39	Chumbuni	12	30,203	50.5	33,000,000/=
40	Jang'ombe	12	23,612	50.5	33,000,000/=
41	Kikwajuni	12	20,813	50.5	33,000,000/=
42	Mwanakwerekwe	12	40,285	50.5	33,000,000/=
43	Shaurimoyo	13	29,291	50.5	33,000,000/=
44	Magogoni	12	21,008	50.5	33,000,000/=
45	Malindi	12	22,229	50.5	33,000,000/=
46	Kwahani	12	20,438	50.5	33,000,000/=
47	Magomeni	12	29,323	50.5	33,000,000/=
48	Mpendae	12	28,365	50.5	33,000,000/=
49	Raha Leo	12	17,807	50.5	33,000,000/=

50	Wingwi	35	32,587	50.5	33,000,000/=
51	Kiwengwa	98	35,774	50.5	33,000,000/=
52	Kibaha Mjini	487.56	138,753	26.4	33,000,000/=
53	Bagamoyo	1741.01	113,584	34.2	33,000,000/=
54	Kibaha Vijijini	1346.84	75,818	37.3	33,000,000/=
55	Mafia	567.06	50,148	47.0	33,000,000/=
56	Kibiti	2884.20	132,446	37.6	33,000,000/=
57	Korogwe Mjini	243	73,765	34.0	33,000,000/=
58	Pangani	1784	58,341	47.5	33,000,000/=
59	Lindi Mjini	250	85,140	18.8	33,000,000/=
60	Mpanda Kati	1494	56,620	39.1	33,000,000/=

CLUSTER 2					
S/N	NAME OF CONSTITUENCY	SIZE OF CONSTITUENCE IN KM ²	POPULATION OF CONSTITUENCE	LEVEL OF COMMUNICATION INFRASTRUCTURE	MAXIMUM AMOUNT OF FUNDS SHS
1	2	3	4	5	6
61	Chilomwa	3,730	157,855	38.8	44,000,000/=
62	Kibakwe	4,625	163,480	18.8	44,000,000/=
63	Mpwapwa	2,788	165,946	37.6	44,000,000/=
64	Gairo	1,802.14	208,430	31.9	44,000,000/=
65	Morogoro Kusini Mashariki	5,167.96	142,285	25.6	44,000,000/=
66	Bukoba Mjini	91	139,085	26.4	44,000,000/=
67	Muleba Kasikazini	1,069	193,728	37.6	44,000,000/=
68	Babati Mjini	342	100,546	52.8	44,000,000/=
69	Bumbuli	64	172,787	46.5	44,000,000/=
70	Lushoto	64	146,733	43.1	44,000,000/=
71	Mkinga	59	127,497	45.9	44,000,000/=
72	Iringa Mjini	59	163,436	195	44,000,000/=
73	Ludewa	59	143,860	25.7	44,000,000/=

74	Makete	59	105,036	23.9	44,000,000/=
75	Mufindi Kasikazini	59	176,495	29.1	44,000,000/=
76	Mufindi Kasikazini	59	166,618	53.5	44,000,000/=
77	Njombe Mjini	59	120,585	29.6	44,000,000/=
78	Wanging'ombe	59	174,732	25.2	44,000,000/=
79	Kilwa Kasikazini	37	101,956	40.7	44,000,000/=
80	Kilwa Kusini	37	104,057	31.1	44,000,000/=
81	Mchinga	37	68,250	49.6	44,000,000/=
82	Ruangwa	37	141,552	30.8	44,000,000/=
83	Ileje	37	134,396	32.8	44,000,000/=
84	Kyela	37	239,186	24.1	44,000,000/=
85	Busokelo	37	104,025	50.8	44,000,000/=
86	Mtwara Mjini	37	116,951	37.0	44,000,000/=
87	Maswa Magharibi	171	185,439	44.3	44,000,000/=
88	Singida Kusini	171	119,251	58.4	44,000,000/=
89	Tunduru Kaskazini	171	176,504	40.5	44,000,000/=
90	Nkasi Kaskazini	171	159,763	44.5	44,000,000/=
91	Nkasi Kusini	171	143,902	44.5	44,000,000/=
92	Tunduru Kusini	12	145,603	40.5	44,000,000/=
93	Maswa Mashariki	12	185,778	44.5	44,000,000/=
94	Masasi	12	77,345	38.4	44,000,000/=
95	Musoma Mjini	12	145,058	27.8	44,000,000/=
96	Sumve	12	203,166	38.3	44,000,000/=
97	Shinyanga Mjini	12	174,297	21.5	44,000,000/=
98	Longido	12	132,992	13.9	44,000,000/=
99	Moshi Mjini	12	199,015	17.6	44,000,000/=
100	Hai	12	227,352	19.8	44,000,000/=
101	Siha	12	125,605	24.8	44,000,000/=
102	Mwanga	12	141,943	26.1	44,000,000/=
103	Same Magharibi	13	159,236	32.5	44,000,000/=

104	Same Mashariki	12	131,125	35.4	44,000,000/=
105	Sumbawanga Mjini	12	226,551	28.3	44,000,000/=
106	Songea Mjini	12	219,551	31.2	44,000,000/=
107	Nyasa	12	171,589	35.4	44,000,000/=
108	Singida Mjini	12	162,393	43.8	44,000,000/=
109	Kasulu Mjini	12	224,880	41.1	44,000,000/=
110	Kasulu Vijijini	35	459,810	41.1	44,000,000/=
111	Mafinga Mjini	98	69,283	31.7	44,000,000/=
112	Nanyamba	487.56	179,650	37.0	44,000,000/=
113	Ndanda	1741.01	149,823	38.4	44,000,000/=
114	Ikungi	1346.84	160,643	58.4	44,000,000/=

CLUSTER III					
S/N	NAME OF CONSTITUENCY	SIZE OF CONSTITUENCE IN KM ²	POPULATION OF CONSTITUENCE	LEVEL OF COMMUNICATION INFRASTRUCTURE	MAXIMUM AMOUNT OF FUNDS SHS
1	2	3	4	5	6
115	Mtera	5,489	199,094	42.0	55,000,000/=
116	Chemba	7,227	254,542	19.3	55,000,000/=
117	Kigoma Mjini	250	232,671	26.5	55,000,000/=
118	Manyovu	2,064	157,451	40.2	55,000,000/=
119	Buyungu	2,323	180,940	42.0	55,000,000/=
120	Kigoma Kasikazini	1,219	228,468	32.8	55,000,000/=
121	Iramba Mashariki	3,400	184,811	37.5	55,000,000/=
122	Manyoni Magharibi	18,957	139,469	37.8	55,000,000/=
123	Singida Kaskazini	2,581	243,538	51.7	55,000,000/=
124	Bukene	3,536.32	250,191	39.4	55,000,000/=
125	Igalula	8,545.22	204,228	54.6	55,000,000/=
126	Tabora Kasikazini	3,381.09	224,080	44.5	55,000,000/=
127	Urambo	6,234.44	208,182	37.2	55,000,000/=

128	Kawe	232.73	539,319	19.0	55,000,000/=
129	Ukonga	161.14	503,175	16.3	55,000,000/=
130	Segerea	161.14	657,637	16.3	55,000,000/=
131	Morogoro Mjini	535.08	341,100	15.2	55,000,000/=
132	Kilosa	4,413.79	279,812	28.6	55,000,000/=
133	Mikumi	7,353.03	279,812	31.3	55,000,000/=
134	Morogoro Kusini	7,709.86	166,834	30.4	55,000,000/=
135	Malinyi	10,382.20	184,445	33.3	55,000,000/=
136	Ulanga	11,988.60	101,946	29.0	55,000,000/=
137	Chalinze	6,789.28	223,060	43.3	55,000,000/=
138	Kisarawe	4,852.94	109,715	53.5	55,000,000/=
139	Mkuranga	2,720.00	240,729	40.0	55,000,000/=
140	Biharamulo	7,126	349,329	34.2	55,000,000/=
141	Nkenge	2,884	218,820	53.1	55,000,000/=
142	Kyerwa	2,629	346,673	40.0	55,000,000/=
143	Kilindi	6,294	255,753	21.5	55,000,000/=
144	Mlalo	2,784	212,261	47.2	55,000,000/=
145	Muheza	1,529	220,795	41.7	55,000,000/=
146	Isimani	18,913	112,258	23.4	55,000,000/=
147	Kalenga	2,710	162,069	37.0	55,000,000/=
148	Mufindi Kusini	4,503	168,435	35.5	55,000,000/=
149	Lupembe	3456.2	102,512	25.9	55,000,000/=
150	Mtama	3,193	141,402	51.6	55,000,000/=
151	Nachingwea	6,056.94	192,721	41.7	55,000,000/=
152	Lupa	16,820	169,311	18.9	55,000,000/=
153	Songwe	11,311	144,372	31.9	55,000,000/=
154	Momba	4705.2	185,482	32.5	55,000,000/=
155	Rungwe	1,447	262,210	26.2	55,000,000/=
156	Nanyumbu	4,938	162,909	50.8	55,000,000/=
157	Newala Vijijini	1,425	128,529	44.0	55,000,000/=

158	Tandaimba	2,155	245,990	35.4	55,000,000/=
159	Bunda Vijijini	1,370	85,830	24.0	55,000,000/=
160	Mwibara	689	131,318	79.0	55,000,000/=
161	Nyamagana	153.55	392,487	16.2	55,000,000/=
162	Nyang'hwale	1,556.69	160,169	66.3	55,000,000/=
163	Kwimba	1,968.94	235,818	41.6	55,000,000/=
164	Busega	1,443.88	219,861	33.5	55,000,000/=
165	Kisesa	2,902	160,280	55.4	55,000,000/=
166	Meatu	6,413	163,275	47.2	55,000,000/=
167	Arumeru Mashariki	1,387	289,565	19.4	55,000,000/=
168	Karatu	4,142	248,553	39.1	55,000,000/=
169	Monduli	7,827	171,626	28.7	55,000,000/=
170	Moshi Vijijini	715	249,307	32.1	55,000,000/=
171	Vunjo	683	254,117	23.9	55,000,000/=
172	Rombo	1,362	281,811	37.1	55,000,000/=
173	Kalambo	5,728	224,293	40.2	55,000,000/=
174	Bukombe	5,4004	242,480	47.5	55,000,000/=
175	Mbogwe	5,004	209,414	47.5	55,000,000/=
176	Bunda Mjini	1,013	144,681	24.0	55,000,000/=
177	Makambako	1,767.4	82,220	25.9	55,000,000/=
178	Newala Mjini	5,265	93,379	44.0	55,000,000/=
179	Nsimbo	7,856.8	148,044	32.5	55,000,000/=
180	Tunduma	87.4	132,423	32.5	55,000,000/=
181	Singida Mashariki	3,184.8	134,122	37.5	55,000,000/=

CLUSTER IV					
S/N	NAME OF CONSTITUENCY	SIZE OF CONSTITUENCE IN KM ²	POPULATION OF CONSTITUENCE	LEVEL OF COMMUNICATION INFRASTRUCTURE	MAXIMUM AMOUNT OF FUNDS SHS
1	2	3	4	5	66,000,000/=

182	Bahi	5,612	239,352	46.0	66,000,000/=
183	Kondoa	4381.3	226,728	21.0	66,000,000/=
184	Kongwa	3,853	334,736	39.3	66,000,000/=
185	Muhambwe	13,599	282,209	39.3	66,000,000/=
186	Iramba	4,327	255,158	46.7	66,000,000/=
187	Mkalama	10,268	181,002	51.7	66,000,000/=
188	Tabora Mjini	1,529.51	254,134	23.3	66,000,000/=
189	Nzegha Vijijini	3,813.8	179,9978	33.1	66,000,000/=
190	Mvomero	6,445.57	337,043	27.6	66,000,000/=
191	Rufiji	10,286.80	202,186	25.6	66,000,000/=
192	Chato	3,242	397,299	43.3	66,000,000/=
193	Bukoba Vijijini	1,729	312,840	37.3	66,000,000/=
194	Karagwe	5,234	358,544	47.0	66,000,000/=
195	Muleba Kusini	2,489	389,746	25.6	66,000,000/=
196	Hanang'	3,725	298,038	29.4	66,000,000/=
197	Kiteto	13,319	264,215	27.8	66,000,000/=
198	Mbulu Vijijini	2,988	224,892	49.2	66,000,000/=
199	Simanjiro	19,593	192,968	24.0	66,000,000/=
200	Tanga Mjini	594	295,168	39.7	66,000,000/=
201	Korogwe Vijijini	2,892	261,374	44.3	66,000,000/=
202	Kilolo	8,997	235,556	29.6	66,000,000/=
203	Mbeya Mjini	253	416,060	12.3	66,000,000/=
204	Mbeya Vijijini	2,810	329,710	33.1	66,000,000/=
205	Lulindi	2,405	135,968	32.3	66,000,000/=
206	Serengeti	11,314	269,346	49.4	66,000,000/=
207	Rorya	1,956	286,431	52.8	66,000,000/=
208	Ilemela	275,02	286,431	25.2	66,000,000/=
209	Magu Mjini	162,516	323,706	40.0	66,000,000/=
210	Misungwi	261,169	379,696	39.5	66,000,000/=
211	Buchosa	1,350.20	379,960	51.0	66,000,000/=

212	Sengerema	1,695.26	235,044	42.0	66,000,000/=
213	Ukerewe	698.67	372,720	47.8	66,000,000/=
214	Msalala	3,199	445,943	34.0	66,000,000/=
215	Kishapu	4,311	294,814	45.9	66,000,000/=
216	Arusha Mjini	108	449,710	12.0	66,000,000/=
217	Arumeru Magharibi	1,462	349,018	17.0	66,000,000/=
218	Ngorongoro	15,887	188,210	23.1	66,000,000/=
219	Kwela	5,040.63	230,280	30.9	66,000,000/=
220	Peramiho	7,268	136,113	42.0	66,000,000/=
221	Nzega Mjini	3,813.8	112,230	33.1	66,000,000/=
222	Kondoa Mjini	1,420.8	64,522	21.0	66,000,000/=
223	Mbulu Mjini	814	120,975	49.2	66,000,000/=
224	Madada	6,791	511,514	42.0	66,000,000/=

CLUSTER V					
S/N	NAME OF CONSTITUENCY	SIZE OF CONSTITUENCE IN KM²	POPULATION OF CONSTITUTE	LEVEL OF COMMUNICATION INFRASTRUCTURE	MAXIMUM AMOUNT OF FUNDS SHS
1	2	3	4	5	6
225	Dodoma Mjini	2,580	443,787	26.5	77,000,000/=
226	Uvinza	12,647	414,288	44.1	77,000,000/=
227	Sikonge	28,187.90	194,254	42.0	77,000,000/=
228	Kaliua	10,546.5	309,268	43.5	77,000,000/=
229	Kinondoni	18.82	464,633	10.8	77,000,000/=
230	Kigamboni	577.8	175,948	42.3	77,000,000/=
231	Ngara	3,497	345,625	34.8	77,000,000/=
232	Babati Vijijini	4,739	337,348	34.8	77,000,000/=
233	Handeni Vijijini	6524.5	273,574	55.4	77,000,000/=
234	Mbarali	13,645	224,527	13.8	77,000,000/=
235	Mbozi	2,064.9	243,739	16.7	77,000,000/=

236	Musoma Vijijini	1069	171,218	49.2	77,000,000/=
237	Tarime Vijijini	1,427	285,559	50.2	77,000,000/=
238	Busanda	2,251.65	508,736	63.5	77,000,000/=
239	Geita Vijijini	2,314.2	262,962	58.6	77,000,000/=
240	Itilima	4,709.52	338,976	46.5	77,000,000/=
241	Solwa	3,736.26	361,146	41.7	77,000,000/=
242	Katavi	15,403	193,447	36.2	77,000,000/=
243	Mbinga Vijijini	3,593	254,136	31.7	77,000,000/=
244	Namtumbo	21,2275	217,748	54.1	77,000,000/=
245	Handeni Mjini	836.9	85,934	55.5	77,000,000/=
246	Butiama	2,166	219,951	49.2	77,000,000/=
247	Tarime Mjini	109	81,271	50.2	77,000,000/=
248	Kavuu	6,1104	111,904	36.0	77,000,000/=
249	Geita Mjini	1,284.3	100,336	58.6	77,000,000/=
250	Mbagala	106.9	633,108	42.3	77,000,000/=
251	Vwawa	1,741.5	238,259	16.7	77,000,000/=
252	Ulyankulu	4784.1	115,514	43.5	77,000,000/=
253	Mbinga Mjini	1,248	114,050	31.7	77,000,000/=
254	Mlele	21,641.4	37,470	36.2	77,000,000/=
255	Mtwara Vijijini	1,914	246,218	37.0	77,000,000/=

CLUSTER VI					
S/N	NAME OF CONSTITUENCY	SIZE OF CONSTITUENCE IN KM²	POPULATION OF CONSTITUTE	LEVEL OF COMMUNICATION INFRASTRUCTURE	MAXIMUM AMOUNT OF FUNDS SHS
1	2	3	4	5	6
256	Igunga	4,018.5	236,924	48.5	88,000,000/=
257	Ubungo	4321	522,949	10.6	88,000,000/=
258	Temeke	44.80	669,182	19.2	88,000,000/=
259	Kilombero	7,206.3	244,782	29.9	88,000,000/=

260	Liwale	37,412	98,680	40.2	88,000,000/=
261	Bariadi	5,546	456,701	43.1	88,000,000/=
262	Ushetu	5,532	283,680	39.7	88,000,000/=
263	Mpanda Mashariki	30,782	111,120	33.5	88,000,000/=
264	Kahama	1,362.1	189,579	39.7	88,000,000/=
265	Manonga	3,040.9	194,736	48.5	88,000,000/=
266	Kibamba	225.9	389,954	10.6	88,000,000/=
267	Mlimba	6,3353.9	195,675	29.9	88,000,000/=

C.OFFICE OF A MEMBER OF PARLIAMENT

(Women Special Seats)

Prescribed Maximum Amount of Funds Shillings 11,000,000/=

D: OFFICE OF A COUNCILLOR

(Mainland Tanzania)

Councillor	Urban area	Prescribed Maximum amount	Shs. 8,000,000/=
Councillor	Rural area	Prescribed Maximum amount	Shs.6,000,000/=

E: OFFICE OF A COUNCILLOR

(Mainland Tanzania)

Councillor Special Seat	Women	Urban area	Prescribed Maximum amount	Shs. 4,000,000/=
Councillor Special Seat	Women	Rural area	Prescribed Maximum amount	Shs. 3,500,000/=

PART TWO

Nomination Processes: Political Parties

CATEGORY OF CANDIDATES	MAXIMUM AMOUNT OF FUNDS
PRESIDENTIAL CANDIDATES	Shs. 3,000,000,000/=
MEMBERS OF PARLIAMENT	Shs.3,000,000,000/=
MEMBERS OF PARLIAMENT(Women Special Seat)	Shs.1,000,000,000/=
COUNCILLOR	Shs.2,000,000,000/=
COUNCILLOR(Women Special Seats)	Shs.4,000,000,000/=

PART THREE

Election Campaigns: Political Parties

POLITICAL PARTY	MAXIMUM AMOUNT OF FUNDS
EVERY POLITICAL PARTY	Shs.17,000,000,000/=

Dar es Salaam

18th August, 2015

MIZENGO P. PINDA

Prime Minister

DEMOCRATIC EMPOWERMENT PROJECT 2013-2016

The Democratic Empowerment Project 2013 - 2016 is supported by a joint basket fund financed by Canada, Denmark, the European Commission, Finland, Ireland, Norway, Sweden, Switzerland, the United Kingdom and UNDP. The project is directly implemented by the United Nations Development Programme in Tanzania.



*Empowered lives.
Resilient nations.*