



THE COURT OF APPEAL OF TANZANIA HAS DELIVERED A LANDMARK JUDGMENT ON PUBLIC INTEREST LITIGATION IN THE CASE OF *ONESMO OLENGURUMWA V. ATTORNEY GENERAL*

1.0 Introduction

With the provisions of Section 4 (2) and (3) of the Basic Rights and Duties Enforcement Act in place as part of our law, it is evident that the Constitution remains exposed to abuse and violation with no hope of being protected by any person – Court of Appeal of Tanzania

On 13th June 2025, the Court of Appeal of Tanzania, sitting at Dar es Salaam, delivered a landmark decision in Civil Appeal No. 134 of 2022, setting a historic precedent in the realm of human rights and public interest litigation. The appeal was filed by renowned human rights defender Advocate Onesmo Olungurumwa against the Attorney General of Tanzania. The case was presided over by a panel of three Justices of the Court of Appeal: **Hon. Justice Levira, Hon. Justice Rumanyika, and Hon. Justice Ngwembe**. Advocate Olungurumwa (the Appellant) was ably represented by a distinguished legal team comprising **Professor Emeritus Issa Shivji, Senior Counsel Mpale Kaba Mpoki, Dr. Rugemeleza Nshala, and Advocate John Beniel Seka**. This judgment marks a significant milestone in advancing constitutionalism, the rule of law, and the protection of fundamental human rights in Tanzania.

2.0 Case Background

On 19th June 2021, the Government of Tanzania gazetted the Written Laws (Miscellaneous Amendments) (No. 3) Act, 2020, which introduced significant changes to the Basic Rights and Duties Enforcement Act through the addition of Sections 4(2), 4(3), 4(4), and 4(5). Under Section 4(2), any petition filed before the High Court must include an affidavit by the petitioner explaining how the alleged violation of constitutional rights under Articles 12 to 29 has personally affected him.

Section 4(3) further tightened the scope for public interest litigation by requiring that any person seeking to file a case under Article 26(2) of the Constitution must also comply with Article 30(3), which demands a disclosure of personal interest effectively shifting the legal standard for such cases. In addition, Section 4(4) introduced a requirement that when seeking redress for acts or omissions of high-ranking officials including the President, Vice-President, Prime Minister, Speaker, Deputy Speaker, and Chief Justice petitioners must sue the Attorney General instead of the officials directly. Lastly, Section 4(5) imposes a condition that all other

available legal remedies under existing laws must be exhausted before initiating a case under the Basic Rights and Duties Enforcement Act.

Overall, the Written Laws (Miscellaneous Amendments) (No. 3) Act of 2020 introduced sweeping legal changes that raised significant constitutional concerns. The Act imposed a requirement that only individuals who can demonstrate personal harm may bring cases alleging violations of fundamental human rights guaranteed under the Constitution. It further mandated that any legal action seeking redress against senior officials of the State must be directed to the Attorney General. This undermines the principle of separation of powers and interferes with the principle of rule of law. Additionally, by requiring proof of personal interest even in public interest litigation, the amendments were widely seen as having technically altered the Constitution, thereby restricting access to justice and weakening public accountability mechanisms. In 2021 Advocate Olengurumwa instituted a case at the High Court of Tanzania challenging Sections 4(2), 4(3), 4(4), and 4(5) of the Basic Rights and Duties Enforcement Act.

3.0 The Judgment of the High Court of Tanzania

On 15th June February 2022, the High Court of Tanzania delivered its judgment in the case, holding that Sections 4(2), 4(3), 4(4), and 4(5) of the Basic Rights and Duties Enforcement Act are consistent with the Constitution and international human rights instruments. The Court dismissed the petition based on six grounds:

First, it found that the new provisions complement and link Articles 26(2) and 30(3) of the Constitution; second, that the requirement to demonstrate personal interest is already inherent in Article 26(2); third, that the amendments align with the principles of separation of powers, rule of law, and international human rights standards; fourth, that directing suits to the Attorney General when seeking redress against senior state officials is appropriate under the Constitution; fifth, that the requirement to exhaust local remedies aligns with mechanisms such as the Commission for Human Rights and Good Governance; and finally, that the amendments were enacted in good faith and are therefore protected under Article 30(2) of the Constitution.

Dissatisfied with the High Court decision, Advocate Olengurumwa lodged an appeal in the Court of Appeal of Tanzania in Dar es Salaam in 2022 hence the recent judgement.

4.0 The Judgement of the Court of Appeal of Tanzania

On 13th June 2025 almost four years since the introduction of the amendments, the court of appeal delivers a landmark decision upholding constitutionalism setting a clear precedent that instituting public interest cases does not in any how require disclosure of personal interest.

The court held that Section 4(2) introduced two mandatory requirements for a citizen who wishes to enforce his right created under Article 26 (2) of the Constitution, first, to present an affidavit stating how he has been affected personally by the contravention of the Constitution, and second, such citizen or applicant must comply with the requirements of Article 30 (3) of the Constitution. This requirement defeats the spirit of Article 26 (2) of the Constitution which confers to every person or individual citizen of the country, a right and duty to protect the Constitution and the laws of the land, whether affected personally or defending public interests.

The court held further that Articles 26(2) and 30(3) are different. Article 26 (2) of the Constitution provides for a right to "every person" to take legal action to ensure protection of the Constitution and the laws of the land while Article 30(3) gives option to "any person" who is personally affected by the infringement of any of his right or duty owed to him, to institute proceedings for redress in the High Court (personal interest litigations). Therefore, by subjecting a public interest petitioner to a procedure which requires him to prove his personal interests, is tantamount to giving him a right by one hand and taking it away by another.

We say so because, it is common knowledge that, in public interest litigations, a petitioner does not have to demonstrate the manner or extent of his being affected by the violation of the Constitution he wants to challenge. Therefore, with the provisions of Section 4 (2) and (3) of the Basic Rights and Duties Enforcement Act in place as part of our law, it is evident that the Constitution remains exposed to abuse and violation with no hope of being protected by any person as it used to be before enactment of the contested amendments.

Regarding Section 4 (4) of the Basic Rights and Duties Enforcement Act the court held that this provision provides for a list of six office bearers who cannot be taken to court for their actions or omissions in the performance of their duties. In case they commit any wrong, the 'only' person to be sued is the Attorney General. This means that there is a possibility of having a petition in court whose end result may revolve around the issue between the parties to its finality, without enforceable order. For the enforceable order requires presence of a necessary party to whom the order of court should be directed.

The court conclusively held that Section 4 (4) of the Basic Rights and Duties Enforcement Act contravenes Articles 26 (1) and 13 (6) (a) of the Constitution which advocates on accountability and equality before the law. Also, it interferes with the powers of the court conferred under Article 107A of the Constitution by limiting who should appear before it. We say so because, in dispensation of justice, it is useless if the court can make orders that are incapable of being complied with or cannot be enforceable.

Regarding Section 4(5), the court held that it is superfluous and quite unnecessary in the circumstances because there are no other available remedies to enforce the right under Article 26 of the Constitution except by way of petition to the High Court, as it has been the practice since the introduction of the Bill of Rights in the Constitution of Tanzania.

Finally, the court directed that, within 12 (twelve) months from the date of the judgment, sections 6 and 7 of the Written Laws (Miscellaneous Amendments) (No. 3) Act, 2020, which introduced section 4(2), 4(3), 4(4) and 4(5) of the of the Basic Rights and Duties Enforcement Act be repealed by the Parliament of the United Republic of Tanzania; failure of which, the amendment under consideration in that Act shall have no legal force.

5.0 Vote of Thanks

On behalf of the Tanzania Human Rights Defenders Coalition (THRDC), the appellant extends heartfelt and profound appreciation to the Court of Appeal of Tanzania for delivering a landmark decision, an historic judgment that sets a fundamental precedent in the litigation of public interest cases in the country. We offer special gratitude to the distinguished team of lawyers who selflessly dedicated their legal expertise and tireless efforts throughout the course of this litigation. Their commitment was instrumental to the success of this case.

We also extend our sincere thanks to all stakeholders, partners, Bar Associations, civil society organizations, and individuals whose unwavering support contributed to this long-awaited victory for our Constitution. Indeed, this is not just a legal win, it is a significant triumph for constitutionalism, the rule of law, and the fundamental protection of basic human rights in Tanzania.



Issued by:
Tanzania Human Rights Defenders Coalition (THRDC)
June 14, 2025
Dar es Salaam