

INTROCUCTION OF CONSTITUTION LAW

Constitution is a legal foundation of the State and the supreme law of a country.¹ It is a superior to every other law and institution.² It defines and establishes the principal organs of the State; it is therefore the source of the State authority which prescribes the manner in which and the limits within which the functions of State organs are exercised, and it determines interrelationships of the State organs.³ The constitution as a highest or supreme law of the land has been provided under Article 64(5) of the Constitution of the United Republic of Tanzania, 1977⁴ as here under:-

“...Without prejudice to the application of the Constitution of Zanzibar in accordance with this Constitution shall have the force of law in the whole of the United Republic, and in the event any other law conflicts with the provisions contained in this Constitution, the Constitution shall prevail and that other law, to the extent of the inconsistency with the Constitution, shall be void...”

The constitution as a highest law of the land was explained under article 4 of the Zanzibar Constitution⁵ also provides the supremacy of the Constitution in the following words.

“...This Constitution is the Constitution of Zanzibar and shall have the force of law throughout the Country save for provision of article 80 if any legislation is found to be in conflict with this Constitution, Constitution shall prevail and that law shall be null and void to that extent that conflicts with this Constitution...”

Wade and Phillips⁶ define constitution to be “a document, having special legal sanctity, which sets out the framework and the principle functions of organs of government of a state and declares the principles governing the operations of those organs”

The above definition suggests that a constitution needs to:

- Be a legal document
- Set or establish the Pillars of the government
- Set the functions of those organs
- Set the powers and limits of those organs

¹F. Mirindo, (2012) *Administration of Justice in Mainland Tanzania*, at pager 4

²Ibid. See also the case of Attorney General v. Lohay Akonaay and Joseph Lohay [1995] TLR 80

³Op.cit. footnote no. 1

⁴[CAP 2 R.E. 2002] as amended from time to time.

⁵Article 4 of the Constitution of Zanzibar, 1984

⁶Wade, ECS & Phillips, H. *Constitutional Law*, London, 1965.

However, this definition has received a lot of challenges from scholars who argue that it is not necessary for a constitution to be found in a document, it is possible for a country to have her constitution in various documents, United Kingdom is mostly cited as an example where by her constitution is made by the Magna Carta, 1215, the petition of right, 1628, The bill of Rights 1688, The Act of Settlement 1700, and the Acts of Union.

Prof. Shivji et al⁷ defines-Constitution is a law found in one or more documents which constitutes State Power and defines the relationship between major organs of the State and between the State and the Citizen.

Black's Law dictionary defines the term constitution to mean the fundamental and organic law of nation or state, establishing the conception, character, and organization of its government as well as prescribing the extent of its sovereign power and the manner of its exercise.⁸

Section 3 of the Constitution Review Act⁹ defines constitution to means the fundamental law, written or unwritten, that establishes the character of a state by defining the basic principles to which a society shall conform, distribution of powers and functions among pillars of the state, by describing the organization of the executive, legislature and judiciary, their regulation, distribution, and the limitation of different state organs, and by prescribing the extent and manner of the exercise of its sovereign powers.

Question: *The Constitution of the United Republic of Tanzania is found in two different languages that is Swahili and English language, therefore which is the controlling version of the constitution in case of any conflict in interpretation of same constitution or which version supersede the other or superior over the other?*

⁷Shivji I. G. et al (2004), *Constitutional and Legal System of Tanzania: A Civics Sourcebook*, at p.37

⁸Garner, B.A (1999), *Black's Law Dictionary*, at page 306

⁹Act No. 08 of 2011

The Constitution of the United Republic of Tanzania, 1977 was firstly enacted in Swahili language and later was translated in English language. A legal version for constitution of Tanzania is Kiswahili version not English version. There are plethora of authorities regarding the controlling version of the constitution such as the Interpretation of Laws Act¹⁰ and case laws.

Section 4 of the Interpretation of Laws Act¹¹ defines the term constitution to means the Constitution of the United Republic of Tanzania, 1977, (entitled in Kiswahili "Katiba ya Jamhuri ya Muungano wa Tanzania ya Mwaka, 1977") enacted by the Constituent Assembly of the United Republic.

In the case of **DIRECTOR OF PUBLIC PROSECUTIONS V. DAUDI PETE**¹² the Court of Appeal of Tanzania at Mwanza, Nyalali CJ as then he was held as follows regarding the controlling version of the Constitution of the United Republic of Tanzania, 1977

“...As the Constitution of the United Republic of Tanzania is established in the Kiswahili language, ***the controlling version in interpreting the Constitution is the Kiswahili and not the English version...***”

The same view was pointed out in the case **REPUBLIC V. MBUSHUU alias DOMINIC MNYAROJE AND KALAI SANGULA**¹³ whereby High Court of Tanzania at Mwanza, Mwalusanya J as then he was declared Swahili version of the Constitution of the United Republic of Tanzania, 1977 in the following words:-

“...From the wording of article 14 on the right to life in the ***Swahili version of the Constitution of the United Republic of Tanzania, which is the controlling version***, both the right to life and the right to protection of one's life by society is subject to the claw-back clause and is therefore not absolute...”

It is of paramount important to note that where there is a conflict in interpretation of the articles of the Constitution of the United Republic of Tanzania, 1977, the Swahili version

¹⁰Ibid.

¹¹[CAP 1 R.E. 2002]

¹²[1993] TLR 22

¹³[1994] TLR 146

shall prevail. However, English version of the same constitution is used for academic purpose. Therefore, the Constitution of Tanzania should be cited as *The Constitution of the United Republic of Tanzania, 1977*. The Constitution came into operation on the 26th April, 1977 and shall apply to Mainland Tanzania and Tanzania Zanzibar.¹⁴

¹⁴Article 152 of the Constitution of the United Republic of Tanzania, 1977 [CAP 2 R.E. 200]