

Received laws consist of a body of laws that were imposed in Tanganyika during the British colonial rule.<sup>1</sup> These laws were received by virtue of what has come to be referred to be as 'reception clauses'. Received laws brought about the substance of the common law, doctrines of equity and statutes of general application are applied in Tanzania Mainland by virtue of Section 2(3) of the Judicature and Application of Laws Act<sup>2</sup>. It needs to be emphasized that there are local statutes, which have enacted the rules of English common law, equity, or those contained in statutes of general application, with or without modifications.

Statutes of general application mean all the legislation of a general nature in England that was applied to Tanganyika. It is a residual source of law where there is no Tanzania legislation on the subject covered by a statute of general application.

Common law means common law from England<sup>3</sup>, therefore it is the common law applicable in Tanzanian.

Doctrine of equity means fairness of judges or magistrates in making decisions but also are laws cited by the judiciary of Tanzania wherever the circumstances requires it's application. The maximum Justice delayed is justice dinied, he who approaches justice must go in clean hands are some of maxims of equity which judges apply from time to time.

As far as Received laws is concerned. The following are the circumstances for the application of received laws in Tanzanian in relationsh to criminal procedure in Tanzanian.

Received laws is applicable where limit of local jurisdiction circumstance permit. It is applied in Tanzania and it is residual source of law where there is no Tanzania legislation on the subject covered by a statute of general application as it is among of the received laws, such statute are applicable as far as the limit of local jurisdiction and circumstance permit. This was cemented by the East African court of appeal, as in the case of **Standard**

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1 Frank mirindo (2014) Administration of justice Tanzania mainland page no 107.

22 [ CAP. 358 R.E. 2019 ].

33 The judicature and application of laws Act [CAP. 358 R.E. 2019].

**Bank v. Senkubage**<sup>4</sup> the court pointed that “ for statute to be of general application all English laws must be silent on the matter provided for by the statute of general application”.

Received law is applied in Tanzania where there is lacuna ; this means that when the Tanzania laws remain silent on the matter brought before the court the judge or magistrates have decided the certain matter by referring from the common law to decide the matter . As it was stated in case **Tanganyika Garage Ltd v. Marcel G. Mafuruki**,<sup>5</sup> where the high court stated that “ as far as application of common law in Tanzania where the circumstances are not provided in the codified laws in Tanzania one must fall back to the common law ”. Restriction on the applicability of common law in Tanzania hold water since it was developed from customs, traditional, and practice of Englishmen which are different from Tanzania.

Received law is applied where the circumstance permit. The high court of Tanzania has where it need arises, the high court of Tanzania has made various decisions towards the modification of common law suit the circumstances of Tanzania, a good example is seen on the applicability of the common law doctrine of issue estoppel in criminal cases in Tanzania as it was discussed in the case of **Issa Athuman Tojo v. R.**,<sup>6</sup> the court of appeal held that “ although issue estoppel was not applicable in criminal cases in England. It is applicable in criminal cases in Tanzania because the local circumstance permit”.

Received law is to be applied in Tanzania in relation to criminal procedure where there is no any legislation covering the certain matter to be determined by the court. The statute of general application is to be applied when or where there is no any registration governed the matter .The same was discussed in the case of **Arusha Kalwa and Five Others v. Willbroad Slaa and Others**<sup>7</sup>, that “ the element recount was not provided

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<sup>44</sup> ( 1960 ) EA 13

<sup>5</sup> (1975) LRT 23.

<sup>6</sup> (2003) TLR 188.

<sup>7</sup> (1997) TLR 250.

for under the election Act whether the English law concept applied in Tanzania was governed by the judicature and application of laws ordinance. Which prescribe two condition, that the statute concerned had to be of general application and here should be no specific legislation in Tanzania dealing with the matter in question in the instant case neither condition was met". Generally common law, doctrine of equity, and statute of general application applies subject to the limit of the circumstances of Tanzania and it's inhabitants and subject to qualifications of local circumstance may render necessary.

Received law is to applied in Tanzania in relation to criminal procedure where there is a modification of law. This means that the law which was inherent from England is differ from our culture so it needs the modification of common law can be done only with judges of High Court. There are a number of instance where Tanzanian court have modified the application of common law in Tanzania. The common law rule that there is no general requirement for public authorities to give reason for their decision was done away with by the High Court in the case of **Tanzania Air Services Ltd v. Minister for labour, Attorney General and Commissioner for labour** held that "Should I, In determining that instant application, apply to common law as it now stand or should I apply it after modifying it? This court has under section 2(2) of the Judicature and Application of Laws Ordinance powers to vary that law to make it suit local condition. Should I use that power in this matter? I think I should. It seems to me that the interests of justice call for the existence, in common law of a general rule making it mandatory in matter of importance for public authorities, a term I use to include statutory.

Generally received laws are applicable in Tanzania by referring from common law, doctrine of equity, and statute of general application, as used in Tanzania laws especially in criminal procedure where there is no any legislation covering the certain matter also when the Tanzania laws remain

silent on the matter or remain lacuna and also when local circumstance permit. They use to refer from received law to decide the matter brought before the court.

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### **REFERENCES**

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### **BOOKS**

Frank mirindo (2014) Administration of justice Tanzania mainland page no. 107

### **STATUTES**

The judicature and application of laws Act [ CAP. 358 R.E 2019]

## **CASES**

. Tanganyika garage v. Marcel G mafuruki (1975) TLR 23.

. Standard Bank v. Senkubage (1970) EA 13.

. Arusha Kalwa and others v. Willbroad Slaa and Others ( 1997) TLR 23

. Tanzania Air Services Ltd v. Minister for labour, Attorney General and  
Commissioner for labour

. Issa Athuman Tojo v. R (2003) TLR 188