

Legal Methods, 2012-2013

FINDING & CITING & USING THE SOURCES OF LAW THE LAW LIBRARY

In the library you may find the statutes, books, law reports, which is used as authorities.

LAW REPORTS

- ✓ Law Reports of Tanzania-1973-1979.
- ✓ Tanzania Law Reports-1980-2006.
- ✓ High Court Digest-1968-1972.
- ✓ East African Law Reports.

Leading case it depends on the topics and subjects.

BOOKS

- ✓ English books;
- ✓ Tanzania books.

CITING STATUTES

PENAL CODE [CAP 16 R.E. 2002]

Underline the title but not necessary to write in capital letter.

Evidence Act [Cap 6 R.E 200]

According to section 5 of the Magistrates' Court Act [CAP 11 R.E. 2002]

ACTS WHICH IS NOT REVISED.

Examples:

Evidence Act, 1967 (Act no. 7/1971)

Underlining the title is mandatory

CITING CONSTITUTION

The Constitution of the United Republic of Tanzania of 1977 [CAP 2 R.E. 2002]. For more citation of constitution read Article 152(1) of that

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constitution.

CITING REGULATION, RULE, GOVERNMENT ORDER

Magistrates' Court [Rules of Evidence on Primary Court] Regulation
G.N No. 22/1964

The Magistrates' Courts [Civil Procedure in Primary Court Rules] G.N
310 of 1964.

CITING CASES

REPORTED CASES & UNREPORTED CASES

REPORTED CASES

- ✓ Name of the parties.
- ✓ Name of Law Reports.
- ✓ Page number & Case number especially HCD, LRT. TLR

Example:

Republic V. Mohamed [1991] TLR 20

Peter V. Rajabu [1962] EA 52

IN ENGLAND

Jones V. Jones [1972] 1 ALL ER 58

IN TANZANIA

Republic V. Juma [1970] HCD No. 20

Musty V. Hashy 1973 LRT No. 52

Not necessary for LRT (Law Reports of Tanganyika) to use bracket.

UNREPORTED CASES

- ✓ Name of parties.
- ✓ Case number.
- ✓ Name of the court.

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- ✓ Year in which particular judgment was made then write the word unreported.

Example:

Clemensia Falima V. Bashiri Ally, Civil Appeal No. 19 of 1998, Court of Appeal of Tanzania at Mwanza (2003) (Unreported)

2. MATERIAL FACT

Material fact means the important facts of the case or the relevant facts. The rule of the case depends on the nature of material fact. Every court decision must be read to the facts or material fact in question.

ELEMENTS OF MATERIAL FACTS

1. There must be identity of parties.
2. Nature of their relationship or status must also be indicated.
3. should the nature of their dispute.
4. Must also indicate either the cause of action or criminal charge.

Flynote: very brief summary that about a particular case.

EXAMPLE:

CASE, EMMANUEL

The deceased who was a Tanzanian of Greek origin died interstate left behind her estate included a registered landed property in Tanzania. The deceased left behind heirs (inheritors) consists brother, niece and nephew who are not Tanzania.

3. PROCEDURAL HISTORY

- What happened in the trial court & in any intermediate court?
- What relief was sought and the outcome in a trial court.

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- How was the case brought before the court. Example plaint, preliminary objection, case hated, petition, originating summons.

EXAMPLE:

- The deceased brother by power of a attorney appoints the plaintiff to deal with the estate of deceased sister.
- The deceased applied the letter for administration which opposed by deceased's niece & nephew.
- The High Court appointed the latter to be the administrator of the estate.
- The plaintiff appealed to the Court of Appeal which removed the nephew as an administrator & appointed the defendant in his place.
- Before the appeal was heard the administrators disposing off a second landed property.
- As a result it was agreed that first landed property should be owned go to deceased's brother.
- Since the defendant could not distribute the property to the plaintiff who was a non-citizen and his beneficiary, a case state was filed in the High Court.

4. ISSUES

In dealing with the issues, it is important to deal with the issues of lat court. Normally the issue in judgment they use the term "whether". If there is many issue and court decided to deal with the single issue there should deal with the issue decided.

EXAMPLE OF ISSUES

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- Whether the defendant can legally bequeath the landed property to the plaintiff who is the Greek citizen and a beneficiary of the estate of his deceased sister.
- Whether plaintiff can pass his interest & have his shares of estate transferred to his attorney.
- Whether the only situation is to dispose off the property and pass the proceeds to the beneficiary or his attorney.

NB; In writing the issue (s) you can use number or paragraph
Issue was whether use (past tense) dealing with the issue (s) occurred in the last court.

If there is many issues but the court decided on issue, the issue decided is the one which supposed to be written in the case note.

5. ARGUMENT

The provision of section 12 (1) of the Land Act deal with allocation of Land and section 22(1) deal with the right of occupancy which are irrelevant to this case.

- Reason which support or not support the case.
- Write the most important argument which is relevant to the decision.
- Argument must relate to the issues.

6. REASON OF THE COURT

Explaining why the court decides the dispute as it is did. The reasoning of the court provides the group on which future litigant court will predict on defendant similar results, court usually rely upon precedent, principle, policy to justify decision.

Looking at the point of law which used by the court to reach their decision or case as precedent. Explain in brief the authorities used.

Example:

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- Occupation means the mere holding of a right of occupancy. The procedure for the allocation of land under the Land Act provided for section 12, the section provides for establishment of Land allocation committees which are charged with the task of advising the commission of land on his exercising of his power to determine.
- The mode in which the right of grant of occupancy is governed by section 4(5) and grant of it must be in the name of president and be sealed.
- According to the definition of the word transfer under Land Act a bequeath upon death is not a transfer because it is not a passing of a right of occupancy by an act of one party to another.
- A bequeath upon death is a transmission.
- Therefore a bequeath of deceased property upon his or her death is neither a grant nor allocation of right of occupancy, it is legally possible on favour of non-citizen.
- Even under provision of Land Regulation Act, the procedure of landed property which involves to an heir upon death...

7. HOLDING & JUDGMENT

This concerns with how the court answers the particular issue. Order of the court.

Final order in deciding the case.

Example:

- Judgment for the plaintiff.
- Appeal dismissed.
- Appeal allowed.

8. RATIO DECIDENDI

- This means the reason for or deciding the matter.
- Connection of application of the law to the fact.

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- The rule of law made by the judge as the basis of his decision.
- The rule of law which other regard as being of binding authority.
- If the court is not required to make a ruling on a point of law its decision not give rise to ratio decidendi (its decision will not have ratio decidendi).
- There is no requirement for each judgment & decision to contain a single ratio so the case can have multiparty rationes.

NB; Not all cases has ratio decidendi.

9. OBITER DICTUM & OBITER DICTA

It is a pronouncement of law which is not a part of the ratio decidendi.

Obiter dictum-Singular

Obiter dicta- Plural

Obiter dictum it is very close to ratio decidendi, but it depends on the nature of each case.

Obiter dicta & dictum simply means a rule of law which is made in a particular case but it is not necessary to the case for giving a decision.
(Some in addition)

10. SIGNIFICANCE OF THE CASE TO THE LEGAL PROCESS

- If the case has one RD can be one significance but if the case have more than one RD, also the case may have more than one significance.
- Does the case state a new rule of law or restates in modern terms an old rule of law or particular applicability in Tanzania or modifies a rule of common law to meet particular circumstances in Tanzania.
- Does the case declare extents qualifies or distinguished an existing of rule of law?
- Does the case give instruction or point of practise or procedure?

CASE NOTE EXAMPLES:

1. CITING OF THE CASE

Clemensia Falima v. Bashiri Ally (Minor), Civil Appeal No. 19 of 1998, in the court of appeal of Tanzania at Mwanza (2003) (unreported)
Coram: Ramadhani, Mroso, and Mnuo, JJA

2. MATERIAL FACT

The respondent who is the minor was born by caesarean section, sometime after his birth suffer cerebral palsy it was alleged that...

3. PROCEDURAL HISTORY

The appellant file the suit by his next friend (mother) played for general damages, interest, cost and any other relief that the High Court could grant. The appellant was negligent as the result the appellant appeal to Court of Appeal.

4. ISSUES

1. Whether the respondent mental retardation was caused by the negligence of the appellant.
2. Whether the appellant or her employer owed any duty of care towards respondent who was a foetus at the material time.

5. ARGUMENT

The High Court was wrong in holding that the respondent cerebral palsy or mental retardation was caused by the negligence of the appellant.

6. REASONS OF THE COURT

There was no evidence or sufficient evidence to prove what cause the brain damage or when was caused and therefore it was not

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necessarily to consider whether the appellant was guilty of professional negligence.

- In holding the appellant liable the High Court relying on English authorities that is congenital disabilities (Civil liabilities) Act of 1976 and *Burton V. Islington Health Authority* [1993] QB 204, in the view of those authorities the High Court found that the duty of care could be owed to unborn child. We think the learned Judge misdirected himself on the law, the law here regarding the rights, if any of a foetus is the common law as it obtained at the reception date, that is to say on 22nd July, 1920.
- Court of Appeal held that the High Court was wrong in applying the English statutes and decision which made after the general reception date, the High Court was bound to apply the common law as obtain at the reception date or at the general reception date, 27th July, 1920. The common law position prior to the reception date was that no duty of care could be owed to unborn child.
- Nevertheless the Court of Appeal noted that the common law position was unsatisfactory and unfair and should be updated especially by statutory, in that way the law will be consistence with the position under section 219 of the Penal Code in the Criminal Law. In the mean time a child who is born alive between with disabilities which caused before was born by negligence of a person should be able to sue such person.

In law there is issue which are dependence

Example:

Whether A killed B?

Whether A killed B with malice aforethought?

RD & OBITER DICTUM OF THE CASE

A child who is born alive but with disabilities which were caused

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before it, was born by negligence of a person, should be able to sue such a person for the negligence. The common law position is no longer a good law.

RD/OD

The common law position duty of care to un born child is as stated before the general reception date 22nd July, 1920 which is to the effect that no duty of care could be owed to unborn child.

10. SIGNIFICANCE OF THE CASE TO A LEGAL PROCESS.

Example:

Clemensia Falima's case.

The court is required to apply common law which received under reception date 22nd July, 1920 unless the local circumstances do not permit.

THE MOST ACCEPTABLE EXAMPLES ON CASE NOTE

1. IDENTIFICATION

The Attorney General V. Sisi Enterprises, Civil Appeal No. 30 of 2004, Court of Appeal of Tanzania at Dar-es-salaam, (2005) (Unreported) (CORAM: Ramadhani, J.A., Msofe, J.A., Kaji, J.A.)

2. PROCEDURAL HISTORY

The High court of Tanzania where the appellant was in need of acquiring the land.

The Court of Appeal.

3. MATRIAL FACTS

The respondent signed a letter with his department of state of the Government of the United States of America to purchase the land. A

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letter received from the commissioner for lands that the government of Tanzania intended to acquire land under section 4 of the Land Act, 1967 for the public interest.

4. ISSUES

Whether it was proper for the respondent to be paid in USA dollars.

5. ARGUMENTS

APPELLANT

- The general public was to benefit from services offered by the American Embassy at the acquired piece of land.
- It was wrong to enter judgment into foreign currency.
- It was wrong to invoke the Land Act, 1999 in determining compensation and interests.

RESPONDENT

- Both the Land Acquisition Act, 1967 and Land Act, 1999 did not apply for purpose of determining compensation.
- Respondent will be satisfied with an award of interest prevailing at the time the judgment was given

6. REASONS FOR DECISION

- o The Continental Agencies V. A.C. Berrillor Co. Ltd [1962] EA 205
- o Transport Equipment Ltd V. D.P. Valambhia [1993] TLR 91
- o Section 4 of the Land Acquisition Act, 1967 where the requirements did not meet.

7. JUDGMENT

It is partly appeal allowed and the public interest did not stand.

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8. RATIO DECIDENDI

- The acquisition of the land did not meet the requirements of section 4 of the Land Acquisition Act. 1967.
- It was not proper to enter judgment in the foreign currency in the case of Continental Agencies V. A.C. Berrillor Co. Ltd.

9. OBITER DICTUM

10. SIGNIFICANCE OF THE CASE

The case state an newly of law for the purpose of applicability of Tanzania that the principle of law propounded in continental agencies no longer applies in Tanzania.

1. IDENTIFICATION

Hamis Rajabu Dibangula V. Republic, Criminal Appeal No. 53 of 2001, Court of Appeal of Tanzania at Dar-es-salaam, (2003) (Unreported) **(CORAM: Samatta, C.J, Mroso, J.A, and Munuo, J.A)**

2. PROCEDURAL HISTORY

- District Court, where the records where called for a revisional proceeding to the High Court so as to satisfy itself to the correctness.
- High Court, where the appellant appealed to the Court of Appeal of Tanzania.
- The Court of Appeal gave the judgment in favour of the appellant being excessive conviction.

3. MATERIAL FACTS

The appellant was convicted for the utterances of words which were contrary to section 129 of the Penal Code Cap 16 of the Revised

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Edition 2002 with the intent to wound religious feelings.

“...Yesu si Mwana wa Mungu, ni jina la Mtu kama mtu mwingine tu...”

4. ISSUE

- Whether making utterance of words in the hearing of another person that Jesus Christ is not a son of God constitute the criminal offence under section 129 of the Penal Code Cap 16 of the Revised Edition of 2002.
- Whether the trial magistrate’s judgment complied with the requirement of section 312 of the Criminal Procedure Act.

5. ARGUMENTS

APPELLANT

- Utterance of words was not more than exercising his constitutional rights to freedom of religion.
- Prosecution side must bring some one whose religious feeling were wounded by the alleged utterances to prove their charge.
- The learned judge & magistrate did not direct (to the existence of mens rea) themselves in vital question of mensrea.

The learned Magistrates’ judgment did not comply with the requirement of section 312 of the Criminal Procedure Act.

RESPONDENT

- Due to uttered words that is jealous the son of God, Millions of people will shaply disagree with no doubt any others may accept.

6. REASONING OF THE COURT

- John V. Rees and Others [1969] 2 All E.R 214, that there is the

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Principle of Natural Justice: Right to be heard.

- Amitabi Ismail V. Regina 1 TLR 370, that a good judgment should be clear, systematic and straight forward.
- Section 373(1) of the C.P.A

7. JUDGMENT & HOLDING

Appeal allowed conviction quashed and set aside the sentence imposed.

8. RATIO DECIDENDI

- Section 129 of the Penal Code Cap 16 of the Revised Laws of Tanzania contains mens rea (intent) which was not considered by the trial magistrate and judge did not direct their mind.
- The magistrate did not comply with the requirement of section 312 of the Criminal Procedure Act.

9. OBITER DICTUM

The word mentioned by the appellant advocate. It is not regarded as binding because it may have been made without full consideration of the cases on the point.

10. SIGNIFICANCE OF THE CASE

The case demonstrates and establishes the principal of natural justice.

