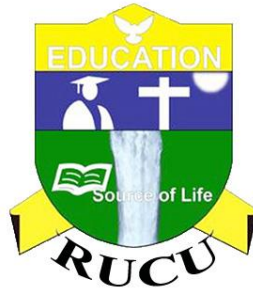


RUAHA CATHOLIC UNIVERSITY



Faculty of Law

A RESEARCH TITLE ON

EQUALITY BEFORE THE LAW IN TANZANIA:

ANALYSIS OF THE IMPACT OF THE GOVERNMENT PROCEEDINGS ACT 1967

[CAP.5 2019]

**A Research Submitted in Partial Fulfilment of the Requirements for the Award of the
Bachelor of Laws Degree (LL.B) of Ruaha Catholic University.**

By

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RU/LLB/2020/024

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JULY, 2024

VERIFICATION

I, the undersigned, do hereby certify that, I have read and recommend for acceptance of the research titled “Equality before the Law in Tanzania: Analysis of the Impact of the Government Proceedings Act 1967” in partial fulfillment of the requirement for the Bachelor of Laws Degree of Ruaha Catholic University.

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SUPERVISOR

JULY, 2024

DECLARATION

I, Damas Sebastian Kiloga, do hereby declare that this research paper is the result of my own original work and that it has not been presented and will not be presented to any other University.

Signature

Date

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ACKNOWLEDGEMENTS

First of all, heartfelt gratitude to Almighty God, for his endless mercy and blessings but also good health throughout of my research works.

I would like also to declare indebtedness to my friends and colleagues who assist me to accomplish my research paper, am so proud of them and God bless all of them.

I am also expressing my excitement for the Cooperative heart of my research supervisor Mr. Zuberi Ngoda .without his assistance and involvement in every step of my research, without him I would never been accomplished.

I am extending my thanks to the Judiciary of Iringa especially in the law week ,where I got a chance of filling out of my research questionnaire as a part of my data collection for this research.

The same gratitude, I dedicate to the Law chambers, lecturers and my fellow students who help to filling out my research questionnaire during the collection of data process.

DEDICATION

This research is dedicated to my beloved father Mr. Sebastian Kiloga, for his endless support, love and prayers throughout of my studies. I pray to Almighty God continue to bless him with good health and long live throughout of his life.

ABBREVIATIONS

AU	The African Union
CA	The Court of Appeal
ICCPR	The International Covenant on Civil and Political Rights
JALA	The Judicature and Application of Laws Act
LD	The Labour Division
OAU	The Organization of Africa Union
TLR	The Tanganyika Law Report
TOC	The Tanganyika Order in Council
TZHC	The Tanzania High Court
UDHR	The Declarations of Human Rights

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CHAPTER ONE
EQUALITY BEFORE THE LAW IN TANZANIA:
ANALYSIS OF THE IMPACTS GOVERNMENT PROCEEDINGS ACT 1967
[CAP.5 R.E 2019]

1.1 Introduction

Article 13 of the Constitution of the United Republic of Tanzania¹ provide for the equality before the law and fair hearing during the determination of rights and interest of the parties². However, Although the Constitution guarantees the right to equality before the law, the Parliament of Tanzania enacted the Government Proceedings Act 1967³. The Act which waters down the concept of the equality before the law and the research will be based on the examination of the impact of the Government Proceedings Act 1967 and other relevant laws on the violation of the right to Equality before the law in Tanzania.

This chapter contains the background of the problem, statement of the problem, hypothesis, literature review, significance of research, objectives of the research, research methodology, research design, method of data collection, sample technique, scope and limitation of the research proposal as the equality before the law in Tanzania is concern.

1.2 Historical Background of the Problem

Tanzania inherited from the British colonial power a legal tradition that “a King never does wrongs” and “time does not run against the King”. These concepts mean that the government will not be limited by the time in instituting case regardless of the law. This

¹ Cap.2 R.E 2019

² *Ibid*

³ Cap.5 R.E 2019

means that the State is accountable for the order of the God only who gives them power⁴. Due to the change and increase of the government activities there was necessity of the Government to be accountable for the wrong committed by the State and the ordinary exemption from the liability comes to an end.

Tanzania specifically ,through knowing the importance of uphold the constitutional principle like the rule of law and equality before the law and the constitutionalism the government through legislature enact the laws which makes the government to be held liable in both civil and criminal wrongs⁵ , this was purposely to comply with the provision of article 13 of the Constitution of the United Republic of Tanzania of 1977 which emphasize on the importance of the every person being equal under the law⁶.

The implementation of the constitutional requirement of making the Government accountable and responsible to its people by ensuring there is promotion of the justices they introduced the Government Proceedings Act of 1967 so as to be a governing laws in the suit against government and the law provide the procedure of accessing the court and the forum of accessing the court. But apart from having the governing laws which the Government Proceedings Act of 1967 and the Law of limitations Act of 1971 seems to be discriminative in nature which leads to the violation of the right of equality before the law in Tanzania in the suit against government and individual.

⁴ <https://www.mkundilegalservice.com>> Government Proceedings In Tanzania –Mkundi Legal Service Accessed On 16th May 2023.

⁵ Section 3 Of The Government Proceedings Act Of 1967 [Cap.5 R.E 2019]

⁶ <https://www.hrw.org/news> Public Interest Litigation Under Threat In Tanzania Accessed On 16th May 2023.

The source of all these were in England and among of the effects seen in our laws as through the Government Proceedings Act 1967 and the Law of Limitations Act 1971 instead of promoting justice act as the superstructure for demise the minority rights.

1.3 Statement of the Problem

In Tanzania, the equality before the law is a fundamental human right and it is protected by the constitution⁷. To mean that no law which is discriminative will be enacted in Tanzania as the suit against government in Tanzania is governed by the Government Proceedings Act 1967 and the Law of Limitations Act 1971. The Law in itself is against the equality before the law as advocated by the Constitution of the United Republic of Tanzania.

The provision of section 16 (3)⁸ of the Government Proceedings Act 1967, is discriminative in nature and violate the right to equality before the law and this also was developed in the case of *Pili Kisenga v. The Attorney General* ⁹.the violation of continued to be seen in the matter of time and the long process of instituting the case on about 90 days, also the limitation of time to individual person and exclusion of time limit to government as per section 20¹⁰ also through the provision of section 3(1) and

⁷ Article 13 of the Constitution of the United Republic of Tanzania of 1977 As Amended time to time “All Person are Equal before the Law are Entitled, without any Discrimination, to Protection and Equality Before the Law”.

⁸ The Government Proceedings Act of 1967 [Cap.5 R.E 2019] ‘Save As Provided in this Section no Execution Attachment or Similar Process Shall be Issued out of any Court for Enforcing Payment by the Government of any Money or Cost Referred to in this Section and no Person Shala I be Individually Liable Under any Order for Payment By the Government or any Government as Such of the Money or Costs”

⁹ [2022] TZHC No.15 .Pg.3.The Matter Was Before Magoiga J. ‘The Provision of Section 16 (3) is Unconstitutional and Unfair “.

¹⁰ The Government Proceedings Act of 1967 [Cap.5 R.E 2019] “Nothing in This Act Shall Prejudice The Right of the Government to Rely Upon any Written Law Relating to the Limitation for Bringing the Proceedings”

389(c) of the Act¹¹. This inequality was seen in the case of *National Housing Corporation v. Lindi Town Council*¹². Through the provision of the law of the Government Proceedings Act 1967 it's clear that violate the right of equality before the law as enshrined by the Constitution of the United Republic of Tanzania through Article 13 (2) which provides that “no law enacted by any authority in the United Republic shall make any provision which is discriminatory by nature.

The provisions of the Government Proceeding Act 1967 is against the constitution provision also Article 13 (6a) “when the rights and duties of any person are being determined by the court or any agency shall be entitled to fair hearing and the right to appeal or other legal remedy against the decision of the curt or agencies”. From the constitution of the United Republic of Tanzania 1977 emphasize on the equality before law as per article 13(3) but also demand that the laws must be fair in itself this can be amount that the court gives the decision basing on the law which are discriminative in nature and its impact are unjust to its people and in fact that the laws after giving right become a superstructure to the community especially in the case of Individual against the Government.

Laws governing the suit against government as basing on the provision of mentioned sections are discriminative in nature opposite with Constitutional provision of Article 13 of the Constitution of the United Republic of Tanzania.

¹¹ The Law of Limitations Act of 1971 [Cap.89 R.E 2019]

¹² [1996] TLR. 347 “The Plaintiff was the Government Decision Court, Held that the Government in instituting never limited by time Expiration”

1.4 Literature Review

Chris Maina Peter¹³, describes the factors which contribute to the problem of the violation of the right to equality before the law in Tanzania is that the law gives privilege to the government and forget the majority which suffers from those discriminative laws. The law makers and the judiciary should work in impartial manner with realizing that the State and not the United Kingdom .the author describe that the privilege and favors given to the State through laws are those which violate the Human Rights and Underlined principles of equality before the law remain in paper only.

Onyango¹⁴, addresses that law as the superstructure which made by the government so as to control and exploit the minority. Through the law it has set the biases towards its people especially in the suit against government and the court since it is party of the state work on the manner of protecting the interest of the government. And the government ignore the principle which uphold the equality before the law as include the constitutionalism supremacy the State does not respect this principle especially in East Africa and the idea behind is the political pressure from the opposition side thus why the laws made in favoring the State.

Chipeta¹⁵, describes that the there are some laws which set with the view of violating the equality before the law and tis laws include the Government Proceedings Act of 1967 where by the process of intention through notice of 90 days to sue the government is a

¹³ P. Maina, *Tanzania Human Report, Legal and Human Centre*, 2010 .31-44.

¹⁴ J.O.Onyango ,*Public Interest Law & Litigation in East Africa* ,Cambridge Scholars Publishing .2017.Chapter.7

¹⁵B.D. Chipeta, *Administrative Law in Tanzania*, Mkuki Na Nyota Publishers, Tanzania .2009.

special treatment to government and in general violate the Right of Equality before the law in Tanzania.

Widner¹⁶, argues that under the suit against the government there must be the observation of the equality before the law in the cases involving private person(s) and the Government. Proposes that the parliament as lawmakers is supposed to think about their people when passing the laws which underestimate the citizen and favoring the government since no one above the law.

Barnett¹⁷, addresses that the implementation of the equality before the law will be if there must be a respect of the rule of law by ensuring that there is impartiality and fairness in legal procedure in both criminal and civil cases. It does not make sense if the government, the State Attorney, or Minister may file a case involving the government even if the time is barred; this is a violation of the principles of natural justice. Overall, the matter in itself does not promote the principle of equality before the law in the legal system and there is hope that the State protect the interest of its citizen and on that matter is like nothing in law, since law is supposed to be impartial in itself.

Jackson¹⁸ acknowledges that the principle of equality before the law is the sound proper when it is in paper but actually in the reality there is nothing on this principle and usually has contributed to kill the principle of rule of law and making the government to be a peculiar organ. Since apart from the Government to stand as the legal person which can be sued or sue through the office of State Attorney but still they enjoy the immunity

¹⁶ J. Widner, *Building the Rule of Law*, W.W. Norton 2001

¹⁷ Barnett, *Constitutional and Administrative Law*, Routledge Cavendish 5th Edition 2004

¹⁸ H. Jackson, *Constitutional and Administrative Law* Sweet & Maxwell 8th Edition 2005

example no suit will be brought before the court of law against the president ,minister or judge on his period of in charge in any office . these gives us the notion that the laws is discriminative in nature and violate the principle of quality before the law as emphasized in both local legal frame¹⁹ and international instrument like the Universal Declaration of Human Rights ²⁰.

The authors through the literature review addressed the reasons or factors which contribute to the problems of inequalities before the law in Tanzania perspective in consideration of the Government Proceedings Act 1967 despite of realizing the reasons for the problem but most of them does not disclose or proposing the best way to end the violation of this basic and fundamental human right in Tanzania in suit against the Government.

1.5 Hypothesis

It seems that, the Government Proceedings Act of 1967and other related laws on the suit against Government violate the constitutional provision of Equality before the law in Tanzania.

1.6 Objectives of the Research

1.6.1 General objectives of the research

To research on the impacts of the Government Proceedings Act 1967 and find out the nature and extent to which violate the principle of the Equality before in Tanzania.

¹⁹ *Supra Note.1*

²⁰ Article 1 of the Universal Declaration of Human Rights of 1948

1.6.2 Specific objectives of the research

- i. To research on the Government Proceedings Act 1967 and find out the nature and the extent on which violate the principle of Equality before the law in Tanzania.
- ii. To research on the other laws which governing the suit against government and find out the nature and the extent in which violate the principle of Equality before the law in Tanzania.
- iii. To research on the impacts and other problems of the Government Proceedings Act 1967 and other laws governing the suit against Government.

1.7 Significance of the Research

To create the awareness to the community and stakeholders in order for them to realizing that we are Republic and not Kingdom, therefore all we are entitled for the equal laws and equal procedures before the court of law without any form of discrimination . Since the right is very essential aspect of life but its availability also should be easier with no corners like inequality seen between the suit against government and an individual as developed through the Government Proceedings Act 1967 and other related laws like the Law of Limitations Act 1971.

1.8 Research Methodology

The research based on non-doctrinal research methodology. Where a researcher concentrates with the issue of equality before the law is in Tanzania upon the cases involving government and individuals. Also will be based on the collection of information and views and opinions from the legal practitioners such as the State Attorneys, Solicitors and Private Advocates on the how the Government Proceedings Act

1967 bring infringe the right of equality before the law on the suit of government against an individual.

1.9 Research Design

The researcher employ both primary and secondary sources of data so as to have the intensive information on the research concerning with.

1.10 Sampling and Sample Technique

The researcher use non random sampling techniques in collecting data in Iringa region-Tanzania.

1.11 The Scope of the Research

The scope of the research based on, The Constitution of the United Republic of Tanzania of 1977, The Government Proceedings Act 1967 and the Law of Limitations Act 1971 and the area of research is Iringa –Tanzania.

1.12 Conclusion

Therefore, there is importance's of enforcing the right of equality before the law in Tanzania as put forward by the Constitution of the United Republic of Tanzania under article 13. the best way of enforcing this right depends from the laws governing the availability of the rights. The governing law in Tanzania the Government Proceedings Act 1967 is discriminative (superstructure) and the rights of people is still violated through matters involving compulsory land compensation, contract with the government and its agencies since society through its people suffers a lot from the provision of the law which violate this right of equality before the law in Tanzania . Therefore the study can help the

society to raise and proposing for amending of law through parliament also ensuring they choose the competent leaders who cares about minority rights.

CHAPTER TWO

CONCEPTUAL FRAMEWORK ON EQUALITY BEFORE THE LAW IN TANZANIA

ANALYSIS OF THE IMPACTS GOVERNMENT PROCEEDINGS ACT 1967

[CAP.R.E2019]

2.1 Introduction

This chapter analyses the conceptual framework on the equality before the law in basing on the impacts of the Government Proceedings Act 1967. It will be concentrated on the meaning of the Equality before the law, Government and the government's proceedings Act of 1967. This chapter also will focus on the application of the principle of Equality before the law and under what circumstances the principle may ignore from application in the proceedings against the state or individual.

2.2 Equality before the Law

The word "equality" in the literally meaning means the state or condition of being equal. This carries the concept of being equally basing on the status, political opinion, race, sex, position, profession, tribe, religion or opportunities in the manner that all people being treated fairly without any form of discrimination or bias²¹. Equality before the law means the declaration of all people to be equal before the law or the state and individual before the law to be treated equally.

The Equality before the law is a call for equal treatment between the natural person and juridical person means the human being or legal entities as government or companies to

²¹ <https://www.Oxforddictionaries/Equalitydefinition.Com> Accessed On 10th July 2023

be treated equally by the law of the State because all legal people and the human being possess equal legal obligations and rights²².

The equality before the law is essential element in democratic state since without the equality before the law the state will not reach the constitution demands as being stated in the constitution example in Tanzania as per articles 12-29²³. If the law will treated others different the human rights and other national goals will be meaningless in the democratic state²⁴. The equality before the law is not an amount to the private person only (people's disputes) but also are supposed to be applied in the disputes between the government and individual through application of law because the law is supposed to be justice and common good in itself as developed through the case of *Ismail G. Lazaro v. Joseph Gomel*²⁵ "the court held that ,the law in itself it is justice they should treat individual human being and the government employee the same as applied to the common person. The primary duty of the law is to bring equality and not to create favor to the government agencies or employees and discriminate citizens". Also in the case of *Adams v. Naylor*²⁶ the house of lords State that ,there is need of placing the government in the same position as private individual since the laws needs obedience by so the government is capable to be sued or suing in the accordance of the law which is not discriminatory in itself.

²² E.Aquantana Adriano," *The Natural Person, Legal Entity or Juridical Person and Juridical Personality* ", 4penn State Journal of Law and International Affairs, 2015, 370.

²³ The Constitution of the United Republic of Tanzania 1977

²⁴ M.L Principle " *Albert Venn Dicey and the Principle of the Rule of Law, Is Justice Blind? A Comparative Analysis of the United States and Great Britain* " 22 *Loyola of Los Angeles International and Comparative Law Review* 2000 357-359.

²⁵ (1986) ELR

²⁶ (1949) A.C. 543

in the case of *Jackson Ole Nemeteni @ Ole Saibul @Mjombanjombs & 19 Others v. The Attorney General*²⁷ the High Court developed that the equality before the law is not for ordinary person only but also to the government and its employees and both are subjected to the same rules. It is like the notion developed by Karl Marx through its theory of classless society, the society which the law will not be used as the superstructure and material base to exploit the inferior in the society and through its theory it where the principle of no one above the law born to mean that all people are supposed to be subjected to the same rules and law no matter is a government official or ordinary person.

2.3 Government

The term Government refers to the group of people in which the state is governed by and it means that the government is the citizen representatives this is according to article 8 of the Constitution of the United Republic of Tanzania 1977 ²⁸(8) (1) (a) provides that “sovereignty resides in the people and it’s from the people that the Government through this Constitution shall derived all its power and authority”. In other words the Government means the people of the people by the people means that the governments is governed by the people themselves in accordance with the laws of the country to mean the Constitution. The Government sometimes referred as the States upon the fulfilling the requirement stipulated by the Montevideo Conventions and the same was developed in the case of *Serikali Ya Mapinduzi Ya Zanzibar (SMZ) vs. Mchano Khamis*

²⁷ The High Court of Tanzania Miscellaneous Civil Cause No.117 of 2004 (Unreported)

²⁸ Cap.2 R.E 2019

*Ali & 17 others*²⁹the court developed that in order for the suspects to be convicted for an offence of treason, the prosecution should prove that the Government or State qualified the conditions stipulated under Montevideo conventions like; the state should have permanent population, defined territory, capacity to inter into negotiation with other states and structured government.

2.3.1 The Organs of the States

2.3.1.1 The Legislature

Legislature also known as the parliament acts as the law making organ or body of the State. The Legislature has the functions of debating the issues pertaining to the development of the country also to question the responsibility of the executives. According to Article 63 of the Constitution of the United Republic of Tanzania 1977 provide that “the President as the part of Parliament shall exercise all the authority vested in him by this Constitution for that purpose and the second part of Parliament shall be the principal organ of the United Republic which shall have the authority on behalf of the people to oversee and advise the government of the united republic and all it orgasm in the discharge of their respective responsibilities in accordance with this Constitution as stipulated under Article 63 (3) (a) of the Constitution and its function as provided through article 64³⁰

2.3.1.2 The Executive

The Executive as the policy making organ in the State and Comprise a number of differently Ministry as be headed by the Prime Minister. The Ministers are responsible in

²⁹ [2000] CAT, Criminal Case No.8

³⁰ Supra Note.29

answering any questions and to provide the manner in which the Government responsible to its functions in respect to the governing laws and policies. The executives are the appointees of the president as the manner described under Part III of the Constitution of the United Republic.

2.3.2.3 The Judiciary

The judiciary is the Constitutional organ as the body established by the law purposely for the dispensing of justices. The judiciaries as independent organ is responsible in dispensing justice in the manner which will ensure the impartiality, the awards of reasonable remedies or compensation, promotion of the alternative disputes resolution and dispensing justices without being tied with technicalities.³¹ the arms of the government as the organ of State are supposed to work on to operate in the ambit of the separation of power as enriched through Article 4 of the Constitution but also to be followed by the principle of check and balance in order to ensure that the government oversee the constitution principles of democratic government as provided through article 2 of the Constitution of the United Republic 1977.

2.3.2 Liability of Government

Section 3 of the Government Proceedings Act 1967 ³² Provide that the Government can be held liable the for the tort commission. Contracts, detinue, nuisance and defamation. Also the government can be held liable for the vicarious liability especially in the offence committed by its employee or agency.

³¹ article 107B of the Constitution of the United Republic of Tanzania of 1977 [CAP.2 R.E 2002]

³² CAP.5 1967

2.3.3 Immunity of the Government (State Immunity)

From the Latin Maxim as *Rex Non Protest Peccarre* which mean that the “King Never do Wrong” which implies as the sense of immunity towards the liability of Government or State in civil wrongs. Is the principle applied in England where by an individual cannot bring or file suit the suit against Crown or its servants for any action arise in their daily functions. This mean that the Crown cannot be sued in own courts and the crown cannot be sued without consents³³. Due to the existence of these long history and practice, the situation become changed during the domination of King Edward who developed the procedure to be obeyed by individual or common when he or she need to sue the Government (Crown) through the petition of right³⁴. The petition was available for different rights including land chattels and control nevertheless when the petition refused the petitioner(s) had no other remedy. With the objectives of having the democratic government and State, the situation become changed after the introduction of the Government Proceedings Act 1947 which gives end of the petition rights and made it possible to sue the Government in civil wrongs through this Act.

“where any person has the claims against the Crown after commencement of this Act and if this Act had not been passed the claims might have been enforced by a proceedings provided by the statutory provision repealed by this Act, then subject to the provisions Act the claim may be enforced as of right and without fiat of His Majesty, by proceedings taken against the Crown for that purpose in accordance with this provision of this Act”.

³³ <https://www.shodhganga.inflibnet.ac.in/binsteam/10607/11/11-chhapter%205.pdf>

³⁴ Street, *Government Liability; a Comparative Study*, Issue 4 Cambridge University Press, Cambridge 1953, 1.

The essence of the above procedures implies that Government or the Crown was not ready to be subjected to its own laws and court proceedings until when the new procedure introduced which actually by then was simple compared to the time before the Act.

Tanzania after gaining independence inherited the legal system of England who was the former colony of Tanganyika (Tanzania). Tanzania as a free states featured with the same principle which uphold the legal system of England that “King never do wrong”. Several laws Tanzania succeed from England Include the Tanganyika Order in Council (T.O.C)³⁵ and the Judicature and Applications of Laws (JALA)³⁶.

According to section 6 of the Government Proceedings Act 1967 as amended by Act No.40 of 1974 the section provide the Ministerial consent for the suit against Government Nevertheless the provision was challenged by the Constitutional Case of *Kukutia Ole Pumbun vs. Attorney General and Another*³⁷the petitioner of the case challenged the constitutionality provision of section which required the minister consent in order for the person sue the government ,The Court developed that the requirement of the Minister consent under Section 6 is unconstitutional since it violate the constitutional provisions under Article 13 (3) and 30(3) of the constitution . The decision also which shows the inequality of the law between the suit against government and individual was developed in the case of *Peter Ngomango v. Gerson Mwangwa and Another Mwalusanya* held that-;

³⁵ Tanganyika Order in Council, 1920

³⁶ Cap.358 R.E 2002

³⁷ [1993]TLR 159 (CA)

The Constitution recognizes the right of an individual to have free access to the courts for a remedy; section 6 of the Government Proceedings Act 1967 which requires the Minister Consent or fiat in order to sue the Government infringes the constitution right to free access to the court of law for remedy and that Act was not in public interest, there it is unconstitutional and void".³⁸

Through these two case laws with the consideration to the constitution provisions which emphasize ,promote and protect the right of individual especially the right of equality before the law, the government through parliament make the amendment in section 6 of the Government Proceedings Act 1967 also draft the other laws especially those of Local Government Authorities in the manner which will able to promote and protect the constitutional right of equality before the law so as to ensure justices through law itself.

2.4. Conclusion

From the conceptual framework of the Equality before the law in Tanzania as through the Government Proceedings Act 1967 it is very clear that this principle was developed since ancient time when the Government operates in the form of Monarchy whereby under this structure the government lead by the Kings or Queens who believed that they got the power of control from God and no one can question them upon they exercising their powers.

Now the world has changed even the system of Government has changed enough in the manner which gives the right and chance to the majority to question on the function and responsibility of the government through laws. Under Article 13 of the Constitution of the United Republic of Tanzania is very clear that the right of indicial should be recognized and be protected in the manner which provide equality wherever the rights

³⁸ (1993)TLR77(HC)

of he or she has been infringed either by the central Government, department to Agencies.

CHAPTER THREE

LEGAL FRAMEWORK ON THE EQUALITY BEFORE THE LAW IN TANZANIA

3.1 Introduction

This chapter outlines the legal framework which protects the right of principle of equality before the law in Tanzania. Since Tanzania is a dualistic country, the Chapter will be focused in both international legal framework and regional or domestic legal framework on the equality before the law in Tanzania.

3.2 International Laws

Tanzania as member to the different international organization such as United Nations and Africa Union. International laws Tanzania through ratification and domestication and include the following set of laws, The Universal Declaration of Human Rights (UDHR) 1948, and the International Covenant on Civil and Political Rights (ICCPR) 1966. These two international instruments emphasize on the treatment of human being without any form of discrimination regardless of the economic, political or social status of the Human being.

3.2.1 Universal Declaration of Human Rights (UDHR) 1948

The Universal Declaration of Human Rights 1948 is among of the historical legal instrument in the World for the matter of the protection of the human rights against any forms of discrimination. The United Nations developed this instrument and demanded every members State to the United Nations are supposed to be complied with the

principles of the protection of the human rights. According to the provision of Article 7³⁹ provides for the following-;

“All are equal before the law and are entitled without any discrimination to equal protection of the law; all are entitled to equal protection against any discrimination in violation and against any incitement to such discrimination”.

From the provision of this Declaration it is very clear that the member state to the United Nations are obliged to make the laws which are no-discriminative in itself or through its effects or impacts to its people.

3.2.2 International Covenant on Civil and political Rights (ICCPR) of 1966

The Covenant was adopted by the United Nations General Assembly so as to ensure that there is wider protection of human rights from both political and civil rights. The right to nondiscrimination is included to the covenant in the manner of making the human being to feel free in their States and anywhere will be in the scope of the United Nations. Article 14⁴⁰ provides that-;

“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. in the respect ,the law shall prohibit any discrimination and guarantee to all person equal and effective protection against discrimination on any ground such as race, colour ,sex ,language ,religion,political,or other opinion ,national or social origin ,property ,birth or other status”.

The protection of the equality before under this instrument goes far even to the ensuring and protection of the equality before the courts or tribunals where emphasizing that the

³⁹ Universal Declaration of Human Rights (UDHR) of 1948

⁴⁰ International Covenant on Civil and Political Rights (ICCPR) 1966

protection of the equality before the law in courts will be the key element of the rule of law to every democratic Government⁴¹.

3.3 Regional Laws (Instruments).

The regional level is specific focused in Africa on the legal framework which protect the rights to equality before the law and include the following, The African Charter on Peoples and Human Rights and African Charter on Rights and Welfare of the Child also the Protocol to the African on Human and Peoples Rights on the Rights of Women in Africa. The importance of the regional laws are to enhance and promote the objectives of the United Nations as highlighted in the Charter with the view of maintain peace around the world through the process of integration that will be regulated by the constitutive instruments such as charter or declarations⁴².

3.3.1. The African Charter on Peoples and Human Rights

The Africa as means unity and solidarity among of the people with African origin and the way of protecting the togetherness of Africans is to have the laws or charter which will protect the human rights and should be known that the equality before the law is human rights as being incorporated in charter under Article 3⁴³ as provides that

“Every individual shall be equal before the law and also every one shall be entitled to equal protection before the law”

The Charter confers the duty for every state member to African union to respect and enact the laws which will advocate and grant the equality before the law and equal protection of the law through out of the Africa.

⁴¹ General comment No.32 of the United Nations Human Right Committee

⁴² The Charter of the United Nations ,1945

⁴³ The African Charter on Peoples and Human Rights, 1986

3.3.2 The African Charter On rights and Welfare of the Child

Child as in the meaning of the Convention on the Rights of the Child ,the Convention define a child as the person below the age of eighteen years old and entitled to the following rights ,education,life,nationality,non-discrimination,to grow with parents ,and health. These rights cannot be protected without the laws which adheres the principle and fundamental of humanity and since a child is a human being who can be brought before the court of law for trial or tender evidence so the charter requires the State in Africa who signed and ratified this convention to adhere the equality before the law even the cases involves children (child). Article 3⁴⁴ provides that -;

“every child shall be entitled to the enjoyment of the rights and freedom recognized and granted on this charter irrespective of the child’s or his/her parents or legal guardian race, ethnic group,colour ,sex ,religion, political or other opinion, national and social origin ,fortune, birth or other status”.

This treatment to the children is possible only through legislation and without laws which emphasize on equality before the laws and equal protection the children rights will be violated and thus why the equality before the law is very important tool in ensuring the protection of human rights regardless of the age of the person.

3.3.3 The Protocols to the African Charter on Human and People’s Rights on the Rights of Women in Africa

The history shows that there was no equality between the men and women in terms of ownership of properties, leadership, and the right to make decision. But due to the

⁴⁴ African Charter on Rights and Welfare of the Child, 1990

development of the regional integration and awareness among the States, the equality before the law and equal protection before the law become the basic fundamental rights of human being. Example the case of *Bernado*

*Ephraim v. Holaria Pastory and Gervazi Kaizelege*⁴⁵ Mwalusanya J. held that the Haya Customary Law based on discrimination and it's against the provision of the Constitution of the United Republic of Tanzania and the international instrument which emphasize and promoting the equality and equal protection before the law. The Protocol to the African Charter on the Rights of the women basing on the equality before the law provides for the following -; "that the State shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures"⁴⁶

The States are bound to grant this right of equal protection before the law to the women by ensuring that the legislations that developed in their State uphold the principle of non-discrimination but also through giving the women equal opportunity of participation in any matters involves laws or by implementing the present laws which prohibit discrimination in the eyes of the laws.

3.4 DOMESTIC LEGAL FRAMEWORK

The Constitution of the United Republic of Tanzania 1977 provides that "the United Republic is a democratic, secular State which adheres to multiparty democracy and all matters pertaining in the registration and administration of political parties in the United Republic, is governed by this Constitution and of a law enacted by the parliament for that purpose"⁴⁷. From that provision it is very clear that everything in Tanzania is originated from article 3 where by the availability of the organ of the State which established under Article 4 is a product of article 3 of the Constitution of the United

⁴⁵ Civil Appeal No. 70 of 1989

⁴⁶The Protocols to the African Charter on Human and People's Rights on the Rights of Women in Africa, 2000

⁴⁷ Article 3 of the Constitution of the United Republic of Tanzania ,1977

Republic of Tanzania. The Question of equality before the law in Tanzania is governed by the following domestic legal framework⁴⁸.

3.4.1 The Constitution of the United Republic of Tanzania, 1977

Since the Constitution is a mother law of the land (State)⁴⁹. Everything about the State become got blessing s from the Constitution and sometimes acts as a Bible or Quran in religion either Christianity or Muslims. Now the Constitution of the United Republic of Tanzania contains several provisions which stand as the guard for the protection of the principle or right to equality before the law in Tanzania, Article 13 ⁵⁰ Provides that-;

“All persons are equal before the law and are entitled without any discrimination to protection and equality before the law and no law shall be enacted by any authority in the United Republic shall make any provision that is discriminatory either in it or in its effect”.

The Constitution is that empowers the parliament to legislate under Article 63 (3) (d) of the Constitution but also set the limitation of ensuring that all laws that made in the United Republic even those delegated laws under article 97 (5) of the Constitution are supposed to be in the conformity with the Constitution of the United Republic of Tanzania . As the High Court tasked by the Constitution of the United Republic of Tanzania to interpret the laws also through Article 30(5) of the Constitution grant the Court to nullify the laws which oppose the spirit of the Constitution of the United Republic of Tanzania as Judge Mwalusanya declared the Haya Customary law of 1963 to be void since is against the Bill of Human Rights of 1984 which encourage the “equality

⁴⁸ Supra

⁴⁹ Shivji I, *The Constitution and Legal System of East Africa*, University of Dar es Salaam, 2005.

⁵⁰ The Constitution of the United Republic of Tanzania ,1977

before the law”⁵¹. The protection of the equality before the law Kisanga J. the case of *Haji Athmani Issa v. Rwentama Mutula* ⁵² The Judge of the High Court had this to say “any matter brought before the subordinate Court and involves the violation of the Bill of Rights developed in the Constitution of the United Republic of Tanzania, the Subordinate Court had to adjourn and transfer that case to the High Court and this procedure must be observed because the fundamental rights touches human life”.

3.4.2 The Law of the Child Act 2009

The Law of Child Act was developed for the purpose of protecting a child from the child labour, discrimination and also to set the institutions which will enable children to get their rights and being protected and the Act are in the models of enhancing and promoting equality before the law because Section 5⁵³ provides that “a child shall have the right to live free from any discrimination and also the Act states that no person shall discriminate against a child on the grounds of gender ,race, religion language ,political opinion ,disability ,health status ,custom, ethnic origin ,rural or urban background”. It’s from the provision of the Act and the only way to protect the provision is to ensure that the laws that enacted by the parliament are non-discriminative but also the institution dealing with the laws should be required to uphold this provision of law and other legislations that advocate for the same .

3.3.3 Persons with Disabilities Act 2010

The persons with disabilities include dumbness, lame, deafness and others with similar problems are entitled to the equal protection before the law and this can be through the

⁵¹ *Bernado Ephraim v. Holaria Pastory and Gervazi Kaizelege Civil Appeal No. 70 of 1989(unreported)*

⁵² Civil Appeal No.9 of 1988

⁵³ The Child Act No.21 of 2009

laws especially during they appeared before the courts of law ,there must be good and favorable environment to support them without considering their disabilities . The Act ⁵⁴ provides the principles of respect the human dignity, freedom to make choices and the issues related to non-discrimination (all we are equal).

3.3.4 The Employment and Labour Relations Act, 2004.

The Employment is a contract between employee and employer and always the employment is governed by the contract entered between parties. During the determination of the element of contract of service in the case of *Sulatan Palace Zanzibar Hotel v. Daniel Lizer* ⁵⁵ The High Court developed that what makes distinction between the contract of services and contract for service is the power of the master to control and make supervision and also the Master has the power to choose the employee of his wish but is supposed to observe the provision of section 7⁵⁶ that “ the employers required not to discriminate the employee in the work place basing n his sex, colour,religion ,social status, ethnic group or political opinion” the basis of this section is from the International Labour Organization Convention Against Discrimination. This means that the laws of Tanzania in labour matters ensure that there is equality before the law in industrial relations.

⁵⁴ Persons with Disabilities Act, No.9 of 2010

⁵⁵ (2004) Labour Division ,High Court Dar es Salaam Registry (unreported)

⁵⁶ The Employment and Labour Relations Act ,2004[Cap.366 R.E 2019]

CHAPTER FOUR

EQUALITY BEFORE THE LAW IN TANZANIA:

ANALYSIS OF THE IMPACTS GOVERNMENT PROCEEDINGS ACT 1967

[CAP.5 R.E 2019]

4.1 Introduction

This chapter is analysis of the impact of the Government Proceedings Act 1967 and the purpose of this Chapter is to prove the hypothesis that “It seem that, the Government Proceedings Act of 1967and other related law on the suit against Government violate the constitutional provision of Equality before the law in Tanzania” and the hypothesis is proved basing on the objectives developed in this research.

- i. To research on the Government Proceedings Act of 1967 and find out the nature and the extent on which violate the principle of Equality before the law in Tanzania.
- ii. To research on the other laws which governing the suit against government and find out the nature and the extent in which violate the principle of Equality before the law in Tanzania.
- iii. To research on the impacts and other problems of the Government Proceedings Act and other laws governing the suit against Government

4.2 The Government Proceedings Act 1967

4.2.1 The Privilege to the Government (States)

The Government Proceedings Act 1967 is designed in the manner which gives more privilege to the government especially the suit is instituted against the government and this is because the equality before the law requires that “all person to be treated fairly

and equally before the law without any forms of discrimination or favour” in the case of *Jackson Ole Nemeteni & 19 Others v. The Attorney General* ⁵⁷the High Court of Tanzania had a chance to define the equality before the law where developed that “the equality before the law it’s where every person in the State regardless to the title he or she have is subjected to the same rule and procedure”.

The Government Proceedings Act⁵⁸ This Act is evidenced and proved that does not observe the principle of the equality before the law especially those suit involves individual persons (Common Mwananchi) and the Government. The Government Proceedings Act gave the special privilege basing on the following;-

(i) The Notice to sue the Government

The provision of section 6(2)⁵⁹ that “no suit against the Government shall be instituted and heard unless the claimant previously submits to the Government Minister ,Department or officer concerned a notice of not less than ninety days of intention to sue the Government ,specifying the basis of his claims against the Government ,and shall send a copy of his claim to the Attorney-General and Solicitor General and also subsection 4 provide that all suit against the Government shall be instituted to the High Court.

From the provision of this section clearly favors the government, the Act gives a lot of time the government to make preparation of answering the case and there is no important reasons developed by the Act ,why 90 days but also the issue of serving the notice to the minister or department sometimes remove the issue of the privacy between the claimant and the respondent because it’s a court to determine the disputes and not

⁵⁷ (2004) Civil Cause No.17, TZHC.

⁵⁸ The Government Proceedings Act,1967[Cap.5 R.E 2019]

⁵⁹ Ibid.

any other governmental department so through that the equality before the law become violated through the privileges offered by this Act to the Government . The other issue which leads to the inequality before the law is the process of the suit against Government to be heard in the High Court this creates fear and difficulties of get rights because a judge is appointee of the president and the principle of natural justice oppose a person from being a judge on his own case. So it is true that the law gives privilege to the government and treat different the common people in terms of procedure in the suit.

(ii) Attachment of the Government properties

The Government Proceedings Act, apart from the provision of section 12 of the Act to provide that the relief in the case involving Government to be the same as applicable to the private persons but under the provision of section 16 of the Act, prohibit or protect the Government Properties from being attached when the government is judgment debtor the same can be only applicable when a private person is judgment debtor as provided under section 17⁶⁰. Example from the case decided in the Supreme Court of Kenya the case of *Kenya Bus Services Ltd & Another v. Minister for Transport & 2 Others*⁶¹ The Counsel for applicant during his submission submit that the law which exclude the government property from attachment in eyes of the justice that law is discriminatory and unconstitutional. Also in the case of *Attorney General & Uganda Land Commission v. Namaiba Estate Ltd*⁶² The High Court of Uganda developed that when the Statute allow the private person to sue the government ,that permission should observe the all requirements of the laws that ensure the equality before the law and

⁶⁰ Supra note .58

⁶¹ [2012]KLR

⁶² [2012]Misc. No. 758, ULR.

equal protection of the law . The exemption of the attachment of the government properties sometimes increase the claims to the Court in the meaning of act bias against the private and favors the government but actually is results of the Government Proceedings Act ,which does not adheres the principle of no one above the law.

4.3 The Immunity to the Government

Apart from the Government Proceedings Act 1967 which proved to be violating the fundamental rights of equality before the law but there are several laws which also treat the government in the manner which violate the principle of equality before the law.

4.3.1 The Constitution of the United Republic of Tanzania 1977

The Constitution of the United Republic of Tanzania 1977 is considered to be the mother law of the land or supreme law of the country and despite the Constitution to provide and insist for the equality before the law under Article 13 ⁶³.The Constitution also violate the right through setting the provision which gives the immunity to the President of the United Republic of Tanzania to be prosecuted for the whole time when he or she is power ⁶⁴ Article 46(2) of the Constitution provides that During the President's tenure of office in accordance this constitution ,no civil proceedings against him shall be instituted in Court in respect of anything done not done" . But the process of instating the case against the president will be subjected in the procedure developed through the Statute made by the Government (Government Proceedings Act, 1967) but in the case of *Fatuma Karume & Another v. Attorney General* ⁶⁵ The High Court developed that no suit will be instated against the President who is in power, this will be

⁶³ Supra

⁶⁴ Article 46 of the Constitution of the United Republic of Tanzania ,1977

⁶⁵ (2020)TZHC,No.2

possible only after expiration of his time in leadership. The immunity awarded to the head of State by this Constitution wipe away the importance and the meaning of Article 13 of this Constitution as advocate for the Equality before the law.

4.3.2 The Law of Limitations Act 1971

The Law of Limitations Act 1971 which enacted for the purpose of defining the limits of instituting case before the court of laws on the matters of torts, contract, land, and succession and trust. The Act set the time limit basing on the course of action but this is different to the government as the governed by the principle that “kings never run by time” its means that the Government is not time barred from instituting the case in Court of law regardless of any claims. From Part I of the schedule⁶⁶ Provides that the Time limits for the State to bring an action before the Court of law is 60 years while to private person is 12 years this implies that there is no equality before the law between the Government and individual as the Government suits governed by the Government Proceedings Act.

In the case of *National Housing Corporation (NHC) v.Lindi Town Council and Another*

⁶⁷ The Plaintiff in this case is the corporation owned by the Government and instituting the case of recovery the land from the defendant but the Court decided that the case was time barred and when made the application for the extension of time, the Court insist that the plaintiff is not a government. From that decision entails that its only government before the law which treated differently from the private person as the law requires. The

⁶⁶ The Law of Limitations Act [Cap.69 R.E 2019]

⁶⁷ (2005) Land Case No.14, Mtwara High Court Registry.

provision of section 38 (c)⁶⁸ provides that “no suit or other proceedings by or on behalf of the president or the government of the United Republic for the recovery of land shall be dismissed on the ground that the period of limitation is expired”.

Apart from the Act to exclude the limitations of time to the President or the Government of Tanzania when need the recovery of land but also the Act still maintain the biasness which is not an amount to the equality before the law example section 44(1)⁶⁹ as provided that “ When the Minister is of the opinion that in the view of circumstance in any case ,it is just and equitable to do so, he may after consultation with the Attorney General ,by order under his hand ,extend the period of limitation in respect of any suit by a period not exceeding one-half of the period of limitation prescribed in this Act”. The provision of this section as the Minister to intervene the process of extending time makes inequality before the law because the private persons cannot do this when faces the challenges from instituting case as provided under section 15, 16 and 17 but in the case of *Tanzania Red Cross Society v. Dar es Salaam City Council and Others* ⁷⁰ The Court developed that the power to extend the time by Minister does not promote the legality especially the equality before the law because that process it is too administrative and not judicial ones and also in the case of *Mwalimu John Paul Mozihya v. AG*⁷¹ That the principle of separation of powers should be respected and not allow the intervention of the judicial functions by the executive functions and through this leads to the absence

⁶⁸ Ibid .65

⁶⁹ Supra

⁷⁰ Commercial Case No.53 of 2005 ,DSM Registry

⁷¹ [1996]TLR 130

of independence of judiciary which actually makes difficulties in availability of justices in Court of law especially when the Government has interest in the case.

4.3.3 The Executive Agencies Act 1997

The Executive Agency Act creates the Agency which is capable for being sued and sue by its name only in the contract as Stated in the case of *African Banking Corporation v. Tanzania National Road Agency* ⁷²the Court founded that the applicants was based on the contract in the meaning that the suit was not proper filed by the claimant without joining the Attorney General as the necessary part to the Government as required by the Government Proceedings Act. The Act apart from grant the permission of being sued in its capacity but still the Act maintain the element which violate the principle of equality before the laws as the Executive Agency Act prohibit the Execution or attachment of thee Government properties⁷³.

4.3.4 The Bank of Tanzania Act 2006

The provision of section 66(1) of the ⁷⁴ of the Bank of Tanzania Act 2006 it provides that “the assets of the Government of Tanzania held by or managed by the Bank of Tanzania are immune from enforcement Proceedings and no payment in relation to such assets may be collected by means of execution, attachment or any similar process”. The provision of this section it is very clear that violate the principle of equality before the law in the meaning that the Government properties are protected by the law quite different from those of private person and presence of this in law leads to massive poverty to the citizens of the Republic of Tanzania and makes those few works in

⁷² Commercial Application No.235 of 216

⁷³ The Executive Agency Act [Cap .245 R.E 2019]

⁷⁴ The Bank of Tanzania Act ,2006

government department to be rich under the privilege and immunities conferred by the Act to the Government.

4.4 The Impacts of the Government Proceedings Act and other related laws on the Suit against Government

4.4.1 Discouragement to Investors

The immunities and the privileges conferred to the State in the Suits against the Government particularly in Tanzania as governed by the Government Proceedings Act and other related laws such as the Constitution of the United Republic of Tanzania, the Executive Agency Act, the Law of Limitations Act, and the Bank of Tanzania Act, 2006 which provides some immunities from attachment of the Government properties in Tanzania discouraging the investors from being invest in Tanzania⁷⁵. In the case of *Birch Shipping Corporation v. Embassy of the United Republic of Tanzania*⁷⁶. The Court held that it is difficult to waive the immunity or privilege set by the State in its domestic laws, the best way for the purpose of protecting the interest of investors especially in Contract is to set the arbitration clause which will be used to solve the dispute arose from the laws of the particular State in absence of the immunities and privilege.

4.4.2 Accountability and Responsibility

Should note that ,the accountability of the Government can be enforced through the application of the law ,but since the law set the immunities and privilege to the Government ,the process of accountability becomes difficulties especially the Head of State(President),Judges ,Ministers and Parliament ,the level of accountability and

⁷⁵ E. k. Banka ,*The State Immunity Controversy in International Law* ,Cambridge University ,3rd Edition ,2007 .

⁷⁶ [1970]IL .507

responsibility become poor . Since the life of citizens depends on the accountability and responsibility of the Government as we know accountability is a talent not every leader can be accountable so the only way to enforce accountability and responsibility is through the laws which consider the equality and equal protection.in the case of *DPP v. Prosper Mwalusanya*⁷⁷ The Court developed that ,Government had many employees throughout of the Country therefore the applicant was irresponsible to its functions, duties and responsibilities for fails to prepare the documents within the time and he made the application for the extension of time and most of the government employees are lazy and irresponsible because of the immunities and privilege have by the virtue of the law.

4.3.3 Embezzlement and Corruption

Because of the immunities and privileges granted to the Government and its Agencies or Department leads to the increase of embezzlement and corruption within the Country example during the Late President John Pombe Magufuli in power most of the time in his speech he used to say there are different agencies of the government which has no advantages to the country because running the business without profits and the money become accumulated by few people ⁷⁸ also the issue of Tegeta Escrow (Richmond) apart from the huge loss caused to the government no action were taken against the participant and this was actually because of the immunities granted to them by the laws we have.

⁷⁷ [2003]TLR 34

⁷⁸ <https://www.dailynews.com> accessed on 25th February 2024

4.4.4 Democracy and Transparency

The Equality before the law is a better way of uphold the basis of democracy and transparent in our country when we let the Government to be treated with favor or privilege, this leads to the creation of the weapon of killing democracy and transparent because the leaders in power will have the fear of being citizen by the opposition parties. Example 5 years ago the freedom to speech and right of association was banned by the State.

4.4 Field Research Report

The process of data collection was done in Iringa where I visited different department and different stakeholders and gathering their views based on the Equality before the law in Tanzania; impacts of the Government Proceedings Act ,1967. By Using questionnaire which requires the answers of YES or NO. Different respondents participated include Magistrate,Advocates,Statea Attorney ,Legal Practitioners and Law Students and the number of participation was as follow-;

Table: 1 Category and Number of Participants

Category	Number
Magistrates	3
State Attorney	2
Advocates	5
Legal Practitioners	3
Law Students	25
Total	38

Table; 2 Reactions to the Questions asked

Question	Qn.1: Does the Government Proceedings Act Violate the Equality before the law?	Qn.2: should the State or Government have immunities and Privilege?	Qn.3: Do you think that the Notice to sue and attachment of the Government properties violate the equality before the law?	Qn. 4; do you think that it is necessary to have the limit of time to suit instituted by the President or Government in recovery of land?
Answers	YES NO	YES NO	YES NO	YES NO
Magistrate	2 1	1 2	2 1	1 2
Advocates	5 0	0 5	5 0	0 5
State Attorney	0 2	2 0	0 2	2 -
Legal Practitioner	2 1	1 2	2 1	-
Law Students	21 4	4 21	17 -	-
Total	30 8	8 30	26 4	3 7

4.5 Data analysis and interpretation

The Data analysis based on the data obtained from the Secondary and primary sources of data collection.

4.5.1 Interpretation of Secondary Data

Through the analysis of the Government Proceedings Act ,the Law of Limitations Act, The Constitution of the United Republic of Tanzania ,The Executive Agency Act and the Bank of Tanzania Act . a researcher come to conclusion that there is violation of the Equality before the law by the Governing laws ,but also the different decided cases prove the same that the Government Proceedings and other related laws violate the equality before the law as being advocated by the Constitution of the United Republic of Tanzania under article 13. And from the Acts and the decided cases it's very clear that the Government is above the law.

4.5.2 Interpretation of Primary Data

From the questions asked to more than 38 peoples from different department as include magistrate, Advocates, State Attorneys and Legal Practitioner most of them about 45% of the respondents agreed that “the Government Proceedings Act and other related laws violate the Equality before the laws and leads to the problems such as the poor accountability and responsibilities, embezzlement and corruption and discouragement to investors in Tanzania”.

4.6 Conclusion

Basing on the analysis made a researcher conclude that the problem of the violation of the equality before the law is a results of the governing laws themselves especially the Constitution of the United Republic of Tanzania, the Government Proceedings Act and the Law of Limitations Act.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1 Introduction

This chapter contains the summary of the research findings basing on the proof of the research hypothesis but also will include the recommendations to the government, law reform commission, lawmakers and other people in the law field and also society in general. Lastly; it will be the conclusion of whole research.

5.2 Summary of Research Findings

The Research with the hypothesis that “It seem that, the Government Proceedings Act⁷⁹ and other related laws on the suit against Government violate the constitutional provision of Equality before the law in Tanzania”. The research has managed to prove the hypothesis as the Government Proceedings Act and other relevant laws on that extent which violate the Principle of equality before the law in Tanzania.

The proof of the research hypothesis, researcher visit different literature reviews and ascertains the extent of the violation of the principle of the equality before the law by the Government Proceedings Act and other laws opposite with the requirement of Article 13 of the Constitution⁸⁰. Since the importance and requirement of observing and adhering the principle of equality before the law is not only the basis of the constitution of the United Republic but even the international legal instrument advocate for the dispensation of justice the equality before the to be primary concern the laws such United Nations on Declarations of Human Rights(UNDHR) ,International Covenant on

⁷⁹ [Cap.5 R.E 2019]

⁸⁰ The Constitution of the United Republic of Tanzania of 1977

Civil and Political Rights (ICCPR), African Charter on Human and Peoples Rights, and African Charter on Human and People Rights on the Rights of the Women.

The Constitution of the United Republic of Tanzania 1977 as the mother law of the land provides clearly that the law which opposes the constitution of the United Republic of Tanzania will be declared by the Court to be null and void⁸¹. There is a need of amend the Government Proceedings Act and other relevant laws especially the Law of Limitations Act ,because does not only violate the Equality before the alone but also violate the principle of separations of powers⁸². In the facts that these law seems to treat people and government differently before the Court of law in the case of *Joran Lwehabura Bashange v. Minister for Constitution and Leal Affairs and Attorney General*⁸³ Mlyambina ,Kakolaki and Aghato,JJ., They developed that the powers granted to the Minister of Constitution and Legal Affairs to extent time in the suit against the Government under section 44 of the Law of Limitation Act 1971 is unconstitutional since violate the principle of equality before the law and to some extent violate the principal of the separation of powers in the State organs.

Researcher comes to conclusion that it's true that the Government Proceedings Act 1967 and other relevant laws violate the equality before the laws especially in the suit of Government against individual or private person and actually this leads to the violation of the human rights enriched in the constitution because of the difficulties to fight the Government which shaded by immunity and the powers to decide through its organ.

⁸¹ Article 30(5) and 64(5) of the Constitution of the United Republic of Tanzania, 1977

⁸² Section 44 of the Law of Limitations Act [Cap.89 R.E 2019]

⁸³ (2024)TZHC ,774

5.3 Conclusion

The researcher has strived to prove the hypothesis on the violation of the equality before the law in Tanzania by the Government Proceedings Act 1967 and other relevant laws. Since Tanzania is democratic country as being recognized in their Constitution ,the human rights especially the equality before the law should be the primary objective of the State or Government.

Since it proved that the Government Proceedings Act 1967 and other relevant laws violate the principle of equality before the laws opposite with the requirement of the Constitution of the United Republic, 1977. The researcher with the views that the Government, Law Reforms Commission, Lawyers and the public to consider the recommendations made by researcher for the purpose of uphold the principle of equality before the law in Tanzania but also with the expectations of benefiting the public, Government

5.4. Recommendations

The researcher based on the analysis, recommend the following to the Government (Legislature, Judiciary and Executive), The Law Reform Commission and the Public in general.

5.4.1 Recommendation to the Legislature

The Provision of article 63 (d)⁸⁴ of the Constitution of the United Republic of Tanzania 1977, empowers the Parliament of the Tanzania to enact the laws but also the Constitution through article 30(5) emphasize on the importance of enact the laws which

⁸⁴ The Constitution of the United Republic of Tanzania ,1977

are in the conformity with the provision of the constitution of the United Republic of Tanzania, the reason behind is the protection of human right and good governance. Therefore ,the researcher call the government to make the laws which adhere the foundations of the Constitution of the United Republic of Tanzania especially to observe the importance and the need of the equality before the law ,because when the law is bad the right of human being is in threat to be violated and to be unprotected.

The legislature also have to amend the Government Proceedings Act 1967 in the manner which will be similar to the proceedings of individual or private person, the Notice of 90 days to the Attorney General causing the suit to take a long period of time as always lawyers argue “Justice delay is justice denied” but also the issue related to the execution and attachment of Government Properties should be the same as done to the private person ,because this show there is privileged to government ,the legislature should think that the pains or the loss to be got by the Government even the private person got the same when his or her properties is attached and to the large extent makes them to fall into excessive and severe poverty ,so section 6 and 17 of the Government Proceedings Act 1967 should be amended so as to implement and to perfect the principle of equality before the laws. Also the Amend should not stopped in the Government Proceedings Act only other laws such as the Constitution of the United Republic under Article 44 which grant the immunity to the President from being prosecuted , the Laws of Limitation Act section 44 also to be amended since provide the extension of time to the minister thing which is Unconstitutional .

5.4.2 Recommendations to Judiciary

The Judiciary of the United Republic is vested with the powers to dispense justice through the interpretation of the laws. The judiciary supposed to ensure the justice is done by ensuring that there is fair and just laws⁸⁵. The Court also usually has to review the laws made by the parliament for the purpose ensuring that they comply with the Constitutional requirement like the separation of powers and equality before the law. The Court has to know itself that has the duty of protecting the Constitution and its people failure to do that may leads to the civil wars and poor governance because the people in power may do anything they wish.

5.4.3. Recommendations to Executive

The Executives, Minister are supposed to know that they are not part of the Court instead they should carry their duties as provided by the Constitution and not to intervene the powers and authority of the Court⁸⁶. Because it's only Court which may bless for the extension of time upon there is valid reasons for so doing and not the Minister⁸⁷.

5.4.4 Recommendations to the Law Reform Commission

The law Reform Commission as institution vested with the power and authority to review of the laws made by the Parliament and make recommendations to the lawmakers to make amendment, repeal or to enact the new laws in the country⁸⁸. The Commission should fulfill its duties towards the Government Proceedings Act 1967 and

⁸⁵ Article 107 A of the Constitution of the United Republic of Tanzania ,1977

⁸⁶⁸⁶ Article 107 B of the Constitution of the United Republic of Tanzania,1977

⁸⁷ Supra Note .82

⁸⁸ [Cap.171 R.E 2019]

other relevant laws which violate the principle of equality before the law as among of the Constitution bases of the United Republic of Tanzania.

5.4.5 Recommendations to the Lawyers, and the Public

The lawyers as tasked by the Statute in the United Republic of Tanzania to defend and protect the human rights and the interest of their clients. They have the duty of educating the public on importance of the principle of equality before the law and sometime to defend them when their rights seen to be violated by the laws especially in the point of suit against the State. But also the Public has the duty to cooperate with lawyers and Court when their rights being infringed either by the law itself or authority or the Government. The Public also should participate in the public meetings so as to discuss the importance of the laws which adheres the equality before the law and its impact to the nations and to the human rights, lawmakers, law students and other stakeholders.

Appendix

RESEARCH QUESTIONNAIRE

I am Damas Sebastian Kiloga, RU/LLB/2020/024, Studying Bachelor of Law (LL.B) at Ruaha Catholic University(RUCU) ,Iringa –Tanzania . I am researching on Equality before the Law in Tanzania: Analysis on the Impact of the Government Proceedings Act 1967.

PURPOSE: For the purpose of my research will be gratefully and thankfully if you will share the information on Equality before the Law in Tanzania: Analysis on the Impact of the Government Proceedings Act 1967as being provided by the Constitution of the United Republic of Tanzania, 1977.

The subject matter of the research will be the Government Proceedings Act 1967 and other relevant laws on the suit against Government and their impact to the Equality before the law in Tanzania.

Note: the information that you will provide to be kept secretly confidential

Questions to Honorable Judges, Magistrates, State Attorneys, Advocates, Lawyers (Legal Practitioners and Law Students.

Name of Department.....

Name (option).....

1. There is equality before the law in Tanzania? Put Tick . Yes [] NO[]

Does the Government Proceedings Act violate the Equality before the law in Tanzania?

YES [] NO[].

Email: damaskiloga228@gmail.com : Tell: +225654337029

2. If, yes mention other laws that violate the equality before the law in Tanzania?.....

.....

.....

.....

.....

3. What are the impacts of these laws to the Equality before the laws?.....

.....

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4. Did the privileged, immunity, notice to sue, attachment of government property and extension of the time by the Minister in the suit against Government amount to the violation of the equality before the law in Tanzania? YES[☐] NO [☐]

5. If, yes, what should be done?.....

.....

.....

Your participation and opinion is highly appreciated

Email: damaskiloga228@gmail.com : Tell: +225654337029

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