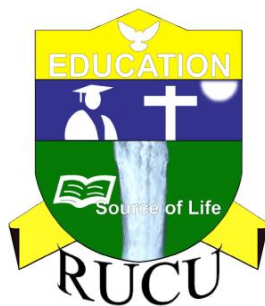


**RUAHA CATHOLIC UNIVERSITY**



**FACULTY OF LAW**

**AN EXAMINATION OF THE DISPUTE SETTLEMENT MECHANISMS UNDER CO-  
OPERATIVE SOCIETIES ACT AND ITS REGULATIONS: A FOCUS ON THE APPELLATE  
POWERS OF THE MINISTER**

**Research Paper Submitted in Partial Fulfillment of the Requirements for the Award of**

**Bachelor of Laws (LL.B) of Ruaha Catholic University**

**By**

**JUNIOR S KALINGA**

**RU/LL.B/2020/289**

**Prepared under the supervision of**

**Mr. BARNABAS NYALUSI**

**At the Faculty of Law**

**July, 2024**

## CERTIFICATION

The undersigned certifies that he has read and hereby recommends for the acceptance by Ruaha Catholic University, a research paper titled “An examination of the dispute settlement mechanisms under Co-operative Societies Act and its Regulations: A focus on the appellate powers of the Minister” in partial fulfillment of the requirements for the award of the degree of Bachelor of Laws (LL.B) of the Ruaha Catholic University.

Signed on .....day of .....2024

.....

(SUPERVISOR)

Mr. Barnabas Nyalusi

## DECLARATION

I, Junior Samweli Kalinga, hereby declare that this research paper is original work and that it has never been presented in any other institution(s) before for a similar or any other degree award. I also declare that any secondary information used has been duly acknowledged in this research paper. It is in this regard; I declare that this work is originally mine.

Signature

.....

Junior Samweli Kalinga

Date

.....

## STATEMENT OF COPYRIGHT

This research paper is a copyright material protected under the Copyright and Neighboring Act of 1999 R.E of 2002 and other International and National enactments, in that behalf, on intellectual property. It may not be reproduced by any means, in full or in part, except for the short extracts in fair dealing; for research or private study, critical scholarly review or discourse with an acknowledgement, without the written permission of the author or Ruaha Catholic University on behalf of the author.

© Junior Kalinga/ Ruaha Catholic University 2024.

## ACKNOWLEDGEMENT

First, I thank the Almighty God for upbringing me in this universe and enshrine me to undertake this course. I believe you are only king who lives in this world forever and ever.

Then I whole-heartedly show thanks and love to my parents Mr and Mrs Samweli Kalinga. I appreciate your close care and joyful parenting to me. May you live longer. My sincere gratitude to my family members, brothers Michael Kalinga, Maneno Kalinga and my sister Jema Kalinga for supporting my entire life at Ruaha Catholic University, thank you very much all.

I am abundantly grateful to my supervisor Mr. Barnabas Nyalusi of Ruaha Catholic University for devoting his valuable time to supervise me from the beginning of my research to the end. May God continue to hold and lift you up.

This research paper has taken a lot of work, effort and help from different people in different places. I am greatly indebted to a number of people who have assisted me in some way during preparation of writing this work. Although to mention all of them would be impossible but few are Mr Baraka Mwakanyamare, Ms Nancy Ernest, Ruaha Catholic University Library office. I real appreciate their material support throughout this study.

Lastly, am humbly thanking my classmate and particularly group members for their encouragement and due assistance in my study. May their studies be wonderful and precious.

## DEDICATION

This work is dedicated to the people who serve as inspiration. From parents and guardians, to classmates, and circle of friends whom extended their help to the problem while doing this work. The Faculty of law, Ruaha Catholic University and the community at large whom in one way or the other they are addressed through this research.

Above all I dedicate this research to the Almighty God who showered me with his blessings in my everyday life, especially for the strength, courage, patience, wisdom, time and guidance in realization of this work.

## **ABSTRACT**

This research paper is titled an examination of the dispute settlement mechanisms under cooperative societies Act and its regulations: A focus on the appellate powers of the minister. This research paper is based on the Cooperative Societies Act and its Regulations on violation of the Constitutional right of appeal against the decision of the Minister as research paper examine statutory laws of Tanzania on the provision concerning right of appeal in Co-operative Societies Act and its Regulations. The research analyzes the prohibited right of appeal decision of the Minister and the question of right of appeal in the state. As a result the jurisdiction of the court is diminished since the Co-operative Societies Act and its Regulations prohibit such right of appeal after decision of the Minister in the country.

This research comprise of four chapters where by the first chapter comprise of the general introduction of the research,

The second chapter is the conceptual frame work of the research under which all concepts concerning the research are defined and well explained, the legal frame work of the research which both laws from International level to domestic level focusing on the institutions governing such laws from international level to domestic level.

The third chapter is all about the research findings with due regarding to the analysis of various data collection corrected by the researcher.

The forth chapter of the research is all about the conclusion and recommendations of the research as the finalization of the research.

## LIST OF LEGAL INSTRUMENTS

### **International Instruments**

Universal Declaration on Human Rights of 1949

International Covenant on Civil and Political Rights of 1966

### **Regional Instrument**

The African Charter on Human and Peoples' Rights of 1979

### **Domestic laws**

The Constitution of United Republic of Tanzania cap2 of 1977, as amended from time to time

The Cooperative Society Act, CAP 112, R.E 2013, Act No 6 of 2013

Cooperative Societies Regulations, GN No. 272 of 2015



## **LIST OF CASES**

Fanuel Mantiri Ng'unda v. Herman Mantiri Ng'unda & 2 others [1995] TLR 155

Satiel S/O Duguda and Amon S/O Balavuga v. Manyovu Amcos Ltd Civil Appeal No. 2  
of 2020

## LIST OF ABBREVIATIONS

ACHPR	African Charter on Human and People's Rights
AMCOS	Agricultural Marketing Cooperative Society
AU	African Union
CBS	Cooperative and Business Studies
GN	Government Notes
ICCPR	International Covenant on Civil and Political Rights
Ibid	The same author but different pages
Idem	The same author and the same page
OAU	Organization of African Union
RUCU	Ruaha Catholic University
R.E	Revise Edition
Cap	Chapter
Ltd	Limited
TCD	Tanzania Cooperative Development
TCDC	Tanzania Co-operative Development Commission
TLR	Tanzania Law Report
UDHR	Universal Declaration of Human Rights
V	Versus
S/O	Son of

**TABLE OF CONTENTS**

CERTIFICATION .....	i
DECLARATION .....	ii
STATEMENT OF COPYRIGHT .....	iii
ACKNOWLEDGEMENT .....	iv
DEDICATION.....	v
ABSTRACT .....	vi
LIST OF LEGAL INSTRUMENTS.....	vii
LIST OF CASES.....	viii
LIST OF ABBREVIATIONS.....	ix
CHAPTER ONE .....	1
GENERAL INTRODUCTION.....	1
1.0 Introduction.....	1
1.1 Background of the problem.....	1
1.2 Statement of the problem .....	4
1.3 Literature review .....	5
1.4 Hypothesis.....	8
1.5 Objectives.....	9
1.5.1 General Objectives.....	9

1.5.2 Specific objectives .....	9
1.6 Significance of the study .....	9
1.7 Research methodology .....	10
1.7.1 Research Methods.....	10
1.7.2 Research Design.....	11
1.7.1.1 Primary Data Collection.....	11
1.7.1.2 Secondary Source.....	11
1.8 Scope and limitation.....	11
CHAPTER TWO .....	13
CONCEPTUAL FRAMEWORK .....	13
2.0 Introduction .....	13
2.1 Conceptual frame work.....	13
2.1.1 Various Definitions and Concept of Right to Appeal.....	13
2.1.2 Related Forms of Appeal under Co-operative societies.....	14
2.1.2.1 Appeal to the Registrar.....	14
2.1.2.2 Appeal to the Minister.....	15
2.2 Importance of right to appeal decision of the minister .....	16
2.2.1 General Importance of Appeal in Relation to Decision of the Minister.....	16
2.3 The concept of co-operative society .....	17

2.5 Co-operative disputes .....	20
CHAPTER THREE .....	22
3.0 Legal frameworks .....	22
3.1 International legal framework.....	22
3.1.1 Universal Declaration of Human Rights. ....	22
3.1.2 International Covenant on Civil and Political Rights .....	23
3.2. Regional legal framework .....	24
3.2.1 The African Charter on Human and Peoples' Rights.....	24
3.3 Domestic legal framework.....	25
3.3.1 The Constitution of United Republic of Tanzania CAP 2 of 1977.....	25
3.3.2 The Cooperative Society Act, CAP 112, R.E 2013 .....	26
3.3.3 The Co-operative Societies Regulations of 2015 (GN. No. 272 of 2015) .....	28
CHAPTER FOUR .....	30
AN EXAMINATION OF THE DISPUTE SETTLEMENT MECHANISM UNDER CO- OPERATIVE SOCIETIES ACT AND ITS REGULATIONS: A FOCUS ON THE APPELLATE POWERS OF THE MINISTER. ....	30
4.0 Introduction .....	30
4.1 Research findings.....	31
4.2 The right to appeal in co-operative societies .....	31

4.3 The constitution and the right of appeal .....	32
4.4 The right to appeal in the co-operative societies act .....	34
4.5 Disadvantages of the provision of section 101(4) of the co-operative societies act and regulation 83(9) of the co-operative societies regulation. ....	35
4.6 Challenges coming from the provision of section 101(4) of the co-operative societies act and regulation 83(9) of the co-operative societies regulations. ....	38
CHAPTER FIVE.....	40
CONCLUSION AND RECOMMENDATION .....	40
5.0 Introduction .....	40
5.1 Summary of the research findings.....	40
5.2 Recommendations .....	41
5.2.1 To the parliament.....	41
5.2.2 To the government.....	43
5.2.3 To the public at large.....	44
5.3 Conclusion .....	45
BIBLIOGRAPHY.....	47

# CHAPTER ONE

## GENERAL INTRODUCTION

### 1.0 Introduction

Article 13(6) (a) of the Constitution of the United Republic of Tanzania provide that to ensure equality before the law, the state authority shall make procedures which are appropriate or which take into account the principles, and among are the rights and duties of any person are being determined by the court or any other agency, that person shall be entitled to a fair hearing and to the right of appeal<sup>1</sup>. However, despite the Constitution guarantee the right to appeal, and Judiciary as final authority on decision the state of Tanzania has enacted the Cooperative Societies Act 2013. The laws which restrict the right to appeal and the research will base on the analysis of Cooperative Societies Act of 2013 and its Regulations of 2015 on the violation of the right to appeal in Tanzania.

### 1.1 Background of the problem

The Tanzania co-operative societies' legislation has a long history, the history, however, in the present context is explained in connection with the evolution of co-operative dispute settlement machinery. The first co-operative societies' legislation was enacted in 1932. The legislation contained no provisions on the societies' dispute settlement procedures. Focus was on the regulation of the societies by the colonial administration

---

<sup>1</sup> The Constitution of the United Republic of Tanzania of 1977 as amended time to time.

without which the colonial interests would be in jeopardy<sup>2</sup>. The legislation was amended several times with significant amendments in the 1940's. Even then, no provisions on the societies' dispute settlement were introduced. Critics of the legislation believed that the absence of such provisions was attributed to the purpose of formation of the societies, which was to aid the smooth availability of raw materials for export<sup>3</sup>.

They cite the formation of most agriculture-based co-operatives to substantiate their contentions. The question that is key and which is might likely be posed by any ordinary person would be as to how disputes were resolved in the societies in absence of such provisions. The general perspective was that the colonial administration was responsible for the general handling of the societies including the determination of disputes that arose in the societies. Evidence for the colonial masters' interventions hardly exists in substance and numbers<sup>4</sup>.

It took almost three and a half decades to repeal the 1932 legislation. The gap in the law of the missing provisions on dispute settlement was filled in 1968 following the enactment of the Co-operative Societies Act 1968. It was the first ever legislation to encompass provisions on the societies' dispute settlement. It conferred discretionary powers to the Minister responsible for co-operative affairs to make Rules for purposes of carrying out the purposes of the Act.<sup>5</sup> Rules by the Minister were to encompass a provision to the effect that any dispute touching the business of a society between the

---

<sup>2</sup> The Co-operative Societies Act 1932.

<sup>3</sup> The Co-operative Societies Act 1940.

<sup>4</sup> A. Rutabanzibwa. *Resilience of Traditional African Co-operatives amidst Foreign Co-operatives*: Vol. 6(2) of 2021, 14.

<sup>5</sup> Co-operative Societies Act No.27 of 1968 sec, 99 (1).



members or past members of the society or persons claiming through a member or past member or between a member or past member or persons claiming through a members or persons claiming and the committee or any officer shall be referred to the Registrar for decision or, if he so directs, to arbitration under the Arbitration Ordinance.<sup>6</sup>

It was not that the Minister was to make Rules on dispute settlement but he only had to ensure that the provision aforementioned is inserted in the Rules made. Under the said provision, disputes were to be resolved by the Registrar of the societies or, on his direction, through arbitration. There was a gap in terms of the provision failing to state what would happen if a party to a dispute is aggrieved with the Registrar or arbitral decision. We have argued elsewhere that the provision created a presumption that the Registrars' decision was, by then, final and conclusive.<sup>7</sup> The provision under the 1968 Act was maintained by the 1982<sup>8</sup> Co-operative Societies Legislation. There were, however, developments in terms of the authority for settlement of co-operative society's disputes, the presumption of the Registrar's finality was dissolved and replaced by a provision on appeal to the Minister.

The Co-operative Societies Rules 1991 and those of 2004<sup>9</sup> took aboard provisions for appeal to the Minister.<sup>10</sup> The provision was maintained by the 2003 legislation and the current one, which is the Co-operative Societies Act 2013<sup>11</sup>. The wording of the provision

---

<sup>6</sup> Co-operative Societies Act No.27 of 1968 Sec, 99(2)

<sup>7</sup> M. Nkuhi & A. Rutabanzibwa, (2021), *supra*, note 18

<sup>8</sup> Co-operative Societies Act, No.14 of 1982, sec, 165

<sup>9</sup> Adopted following the enactment of the Co-operative Societies Act, 2003, No.20 of 2003 (which repealed the Co-operative Societies Act No. 15 of 1991).

<sup>10</sup> Rule 23 of the Co-operative Societies Rules of 1991

<sup>11</sup> Co-operative Societies Act No. 6 of 2013

with regard to settlement of Co-operative disputes under the 1968 and subsequent legislation was changed in the 2003 Act. The same is preserved in the current Co-operative Societies Act No.6 of 2013, that co-operative dispute settlement is a matter regulated by the Co-operative Societies Act 2013 and Regulations made thereunder. Under the law disputes are classified as disputes between members, between a member and a board, between a member and the management and disputes between societies. These disputes must be ones concerning the business of a co-operative society. The legal requirement is that they are to be resolved through negotiation or reconciliation, reference to the Registrar, and appeal to the Minister<sup>12</sup>.

## **1.2 Statement of the problem**

The provision of section 101(4) of the Cooperative Societies Act<sup>13</sup> and Regulation 83(9) of the Co-operative Societies Regulations<sup>14</sup>, gives the Minister appellate authority and further provide that his decision to be final and conclusive, and no further appeal is allowed when decision is made. The provisions are contrary to the Constitution of United Republic of Tanzania under article 13(6)(a) which provides for the right of appeal.

---

<sup>12</sup> Regulation 83 of the Cooperative Societies Regulations of 2015.

<sup>13</sup> Cooperative Societies Act No. 6 of 2013.

<sup>14</sup> Regulation 83(9) of the Cooperative Societies Regulations of 2015.

### 1.3 Literature review

**Sambuo**<sup>15</sup>, in the book titled *The Co-operative and Business Studies (CBS)*, this book describe that despite the historical evidence on economic contribution, co-operative societies in Tanzania remain motionless due to various challenges, there is a serious lack of oversight body for the promotion and coordination of co-operatives in the country due to multiple Co-operative actors established by different laws and operates under different regulators. There is an interference of strategic accountability from Ministry responsible, local government authorities and Tanzania Co-operative Development Commission (TCDC) supervision and promotion responsibilities caused by weak structure of co-operative movement in Tanzania. The attention given to co-operatives is very low partly because at the moment they have no home and lack an oversight body.

**Joseph**<sup>16</sup>, in the book titled *Co-operative Societies Dispute Settlement in Tanzania and Unsettled Positions over Courts Authority*, this book highlights that Co-operative societies' dispute settlement is among the contentious areas under the current Tanzania legal machinery. The machinery requires co-operative disputes' to be settled through negotiation or reconciliation, reference to the Registrar, and finally appeal to the Minister. The machinery appears to preclude ordinary courts from entertaining co-operative disputes. The lack of clarity has resulted into disputes involving co-operative societies in the hands of courts of law and expectedly, multiple 'preliminary objections' are raised on the point of lack of jurisdiction.

---

<sup>15</sup> D. Sambuo. *The Co-operative and Business Studies*: vol. 4, Issue 2, 2019, 58.

<sup>16</sup> J. Richard. *Co-operative Societies Dispute Settlement in Tanzania and Unsettled Positions over Courts Authority*, Mkuki na Nyota, 2012

**Mhihi**<sup>17</sup> in the book titled *The Co-operative Development in Tanzania*, this book highlights that Co-operatives are instruments that are used as a mechanism to develop the community in socio-economic development, first, they are formed by group of people with specific needs, second, it is formed freely by members after contributing to its assets, third, it is governed democratically and fourth, its independent enterprise promoted, owned, and controlled by people to meet their needs. Change of co-operative position in the government ministries, co-operative suffers that drastic shift now and then from different Tanzania government ministries as from independent to date. Despite these changes the mentioning of co-operative was at the end that signifies even on its priority. Co-operative in the ministry such as trade, industry, and agriculture makes co-operative losing focus and dimensions to specialize on its co-operative business.

**Rutabanzibwa**<sup>18</sup>, in his report titled *“Legal Framework Analysis National Report-Tanzania”*, has also provided information concerning the subject matter of the study by explaining that the Mainland legal framework contain the following unfriendly provision, it gives to the Minister responsible for co-operatives power to give directives of general and specific nature to the commission on matters pertaining to the development of co-operatives. The Minister is an appellate authority in all matters decided by the Registrar of Co-operatives. Further, since the Minister responsible for agriculture is also the Minister responsible for co-operatives, sometimes he uses legal powers under different laws to direct different public authorities to take over the

---

<sup>17</sup> C. Mhihi. *The Co-operative Development in Tanzania*: Moshi Co-operative University Vol7. No.6. 2016

<sup>18</sup> A. Rutabanzibwa. *Legal Framework Analysis National Report in Tanzania 2021*. 15 -19

functions of the cooperative movement and thereby denying the cooperators the benefits of collective bargaining.

**Urio**<sup>19</sup>, in his book titled *The Cooperative Law in Tanzania*, this book also provided information concerning the subject matter by explaining that there are gaps in regulatory frameworks found towards co-operative development and have been by and large historically unfriendly. In Tanzania key actors in co-operative movement are ineffective because their origin is closely related to government taking the lead in the management of cooperatives via the legal provisions and in the conduct of its changing development policies over the years. This resulted to leadership among actors limited away from the grass root membership services and movement.

**Rosemary**<sup>20</sup>, in the book titled *The Paradox of the Dispute Settlement Procedure for Co-operative Societies in Tanzania*, this book describe information concerning the subject matter by explaining that there are errors in the co-operative movement in Tanzania and some assume superiority over others. There is a conflict over regulatory frameworks by such that all co-operative officers should be shifted and be accountable to the Registrar of Co-operative Societies. This challenged evidence is also associated with the founding existing operational challenges facing Department of cooperatives in Tanzania. Others are established co-operative development programs lacks sustainability strategy and exist approach, this narrows willingness of the actors of co-operatives to participate on other co-operative promotion programs at primary level. Moreover, Tanzania lacks an

---

<sup>19</sup> A. Urio. *The Co-operative Law in Tanzania*, Safi Publishers, 2019. 30

<sup>20</sup> R. Mukama. *The Paradox of the Dispute Settlement Procedure for Co-operative Societies in Tanzania: A call for a Reform*: Mzumbe University 2022, 30-39

oversight body of co-operatives that could form part of a co-operative Tribunal to assess of claims, granting ex parte judgments, giving hearing dates and hearing disputes.

**Mutaha,**<sup>21</sup> in the book titled *The Co-operative Reform Process in Tanzania and Sri Lanka*, this book argue that there are gaps existing in Tanzania co-operative regulatory frameworks. There is also persistence of ineffective utilization of key actors in the co-operative movement of Tanzania and are ineffective because their origin is closely related to government taking the lead in the management of co-operatives via the legal provisions and in the conduct of its changing development policies over the years. Gaps in regulatory frameworks found towards co-operative in Tanzania started in 1925 after the formation of Kilimanjaro Native Planters Association and the first co-operative legislation was passed in 1932 after the enactment of the cap.211 co-operative society's ordinance as an effort to guide for the formation and to regulate the daily operations of co-operative societies. From this time, the government took several efforts of promoting co-operatives in the country but still Tanzania lacks an oversight body of co-operatives that could form part of co-operative Tribunal to assess co-operative disputes.

#### 1.4 Hypothesis

It seems that, the Co-operative Societies Act and its Regulations violate the Constitutional right to appeal against the decision of the Minister.

---

<sup>21</sup> B. Mutaha, *Co-operative Reform Process in Tanzania and Sri Lanka*, Oxford University Press, 2010.

## **1.5 Objectives**

### **1.5.1 General Objectives**

To assess infringement of right to appeal in the provision of the Co-operative Societies Act and its Regulations in Tanzania

### **1.5.2 Specific objectives**

- i. To assess section 101(4) of Co-operative Societies Act and its Regulations towards the infringements of right to appeal.
- ii. To assess the challenges coming from the provision of the Co-operative Societies Act and its Regulations.
- iii. To examine the disadvantage of the generality of the provisions on the basis of right to appeal in Tanzania.

## **1.6 Significance of the study**

This research is important because provides the scope on how the laws has to be, that the laws are to be certain and neutral, and not general or weak, when the law enacted has to be full and certain that a person cannot take advantage of the law.

This research shows readers that the constitution provides for the right to appeal for all people as the research is concern on the Co-operative Societies Act and its Regulations on how its provision infringe the right to appeal.

The research helps other researchers to learn study other laws and there provision to access how the laws succeed to attain the aim of human rights.

The research also implements as how and why it is important to protect human rights and infringement of one right it is an infringement to all rights that as people are the ones who are responsible to protect our rights as by infringing them, we jeopardize the society at large.

## **1.7 Research methodology**

In the course of conducting this study the research methodology to be employed in accomplishing this research. During the whole process of collecting information for the purpose of accomplishing this research two methods were used are; primary and secondary methods of collecting data.

### **1.7.1 Research Methods**

This study was undertaken through the use of Library Research Method. Library research method is the method of undertaking research through reviewing works of various legal authors, scholars and intellectuals in efforts of getting their responses regarding the topic of the research. In the study researcher collected data from libraries such as, Ruaha Catholic University library. Not only that but also the researcher collected data from Websites or online materials.



## **1.7.2 Research Design**

In this study, the researcher has used both primary data collection and secondary data collection.

### **1.7.1.1 Primary Data Collection.**

In the primary data collection the researcher has reviewed both legislations which are the Co-operative Societies Act and the Co-operative Societies Regulations to acknowledge how those laws are unconstitutional on the issue of right to appeal decision of the Minister.

### **1.7.1.2 Secondary Source**

In this study, the researcher has used secondary data collection in which the researcher collected data from various materials such as Case laws, Journals, textbooks and other materials.

## **1.8 Scope and limitation**

This research was conducted in Tanzania and the region specifically Iringa region. Whereby the researcher based on the study analyzed the right to appeal decision of the Minister in the Co-operative Societies Act and its Regulations as it infringes the right. The study was based on the Co-operative Societies Act as a parent Act in co-operative societies as it is of the most important that it has to be complete because to infringe the right of appeal is against the constitution of united Republic of Tanzania of 1977.

Hence, the research investigation has passed through a number of different co-operative societies laws from various jurisdictions. The researcher has faced difficulties in data collection due to the reasons such as there are few laws and authors that have explained more on the issue of co-operative dispute settlement mechanism in Tanzania and the criticism of the laws.

## CHAPTER TWO

### CONCEPTUAL FRAMEWORK

#### 2.0 Introduction

This chapter is designed to cover the overview of position on the appellate powers of the Minister and the key concepts of which the study is based. Therefore, this chapter offers to provide the explanation on the term that have been used in the research to understand the confusing and to make the research to be well understood to each and every person who has interests in the research. It includes the historical background and its recognition internationally. Also the need (importance) of having this appeal must be focused.

Also, the researcher seeks to discuss the laws relating to the appellate powers of the Minister on Co-operative Societies especially in Tanzania and to identify the gap in laws which ultimately contributes to the challenges of right to appeal which facing Co-operative Societies sector.

#### 2.1 Conceptual frame work

##### 2.1.1 Various Definitions and Concept of Right to Appeal

The following are some definitions of the term Right to appeal.

An appeal can be defined as the time defendants convicted of criminal offenses have the right to appeal their decisions, convictions or their sentences<sup>22</sup>. An appeal is defendant's

---

<sup>22</sup> [www.vocabulary.com](http://www.vocabulary.com) (accessed on 15<sup>th</sup> April 2024)

request that an unfavorable ruling be reviewed. The right to appeal is established by statute or constitutional provision. Before hearing an appeal, the appellate court or tribunals must first make several preliminary determinations. The court or tribunals must determine whether the contested ruling is one that qualifies for appeal, and if it qualifies, the proper legal standard to apply to that appeal<sup>23</sup>.

Also, an appeal is right of all human beings regardless of race, sex, nationality, language, religion, or any other status. Everyone is entitled to this right without discrimination, the right to appeal is a basic right and it applies when a person is aggrieved for the decision provided. The right of appeal is a standard right that recognize and protect the dignity of all human beings for the time of finding justice<sup>24</sup>.

### **2.1.2 Related Forms of Appeal under Co-operative societies**

Apart to appeal the decision of the Minister of cooperative societies which is prohibited, there other forms of appeal which are used by the cooperative society's member such as, appeal to the Registrar, appeal to the Minister, and they are defined as follows;

#### **2.1.2.1 Appeal to the Registrar**

Negotiation or reconciliation presupposes internal regulation mechanism that gives disputants an opportunity to amicably settle the dispute. There is a time limit of thirty (30) days from the first day of the negotiation or reconciliation. When the mechanisms are futile on lapse of the said duration, a dispute is to be referred to the Registrar<sup>25</sup>.

---

<sup>23</sup> [www.lawshelf.com](http://www.lawshelf.com) (accessed on 8 April 2024).

<sup>24</sup> D. Draza. *The Right to Appeal in International Criminal Law*: Martinus Nijhoff Publishers, 2019, 1.

<sup>25</sup> Sec, 10 of the Co-operative Societies Act No. 6 of 2013.

When a dispute is referred to the Registrar, three options are on the table; he/she may decide to resolve the dispute by himself/herself<sup>26</sup>, appoint a committee of experts, or refer the dispute to an independent arbitrator<sup>27</sup>. When the option preferred is that of appointing a committee of experts, the Registrar is obliged to ensure that the committee is composed of persons familiar with co-operative and law matters. From the wording of the Act it appears that the committee is working to assist the Registrar to reaching a decision and therefore the committee's decision is deemed to be the Registrar's decision<sup>28</sup>. When the matter is referred to the Registrar proceedings are expected to be in the same way as proceedings before the court of law.<sup>29</sup>

#### **2.1.2.2 Appeal to the Minister**

At the top of the reference to the Registrar is the Minister responsible for co-operative affairs. The Minister is the appellate authority, he/she entertains appeals from parties aggrieved with decisions by the Registrar<sup>30</sup>. It is trite that disputes entertained by the Minister are ones which must have gone through negotiation or reconciliation and later referred to the Registrar. The law limits the lodging of an appeal within thirty (30) days of receipt of Registrar's decision<sup>31</sup>. Significant to this explanation is the provision that the decision by the Minister is final and conclusive<sup>32</sup>. It is this provision which is construed as ousting ordinary court's jurisdiction on co-operative disputes.

---

<sup>26</sup> Regulation 83(2) of the Cooperative Societies Regulations of 2015

<sup>27</sup> *Ibid* sub regulation (7).

<sup>28</sup> Sub regulation (7) read together with Sub regulation (13).

<sup>29</sup> Regulation 83(4) of the Cooperative Societies Regulations of 2015

<sup>30</sup> Regulation 83(9) of the Cooperative Societies Regulations of 2015

<sup>31</sup> A. Rutabanzibwa. *Legal Framework Analysis National Report in Tanzania* 2021

<sup>32</sup> Regulation 83(9) of the Cooperative Societies Regulations of 2015

## **2.2 Importance of right to appeal decision of the minister**

An appeal is not another trial but an opportunity for the party to try to raise specific errors that might have occurred at trial. The primary importance of right of appeal especially the decision from the Minister of co-operative societies is to protect against miscarriages of justice<sup>33</sup>. Also the right to appeal safeguard against wrongful decision, ensuring that a defendant has at least one review of their conviction and sentence. Once an appeal is granted the review by the higher tribunal does not necessarily involve the full range of guarantees that are required for a fair trial at first instance.

The right to appeal governs how individual human beings fights for rights with each other, as well as their relationship with the court and the obligations the court has towards them. Individuals also have responsibilities in using their rights; they must respect the rights of others. No government, group or individual person has the right to do anything that violates another's rights. Universality and inalienability the right to appeal is universal and inalienable<sup>34</sup>.

### **2.2.1 General Importance of Appeal in Relation to Decision of the Minister**

Appeal is very important aspect in our everyday administration of justice. It helps us in improving better administration of justice. All people everywhere in the world are entitled to it. No one can voluntarily give it up. Nor can others take them away from him or her. Indivisibility human rights are indivisible. Whether civil, political, economic,

---

<sup>33</sup> <http://www.Adrc.racinecounty.com> (accessed on 11 April 2024).

<sup>34</sup> <http://www.Scholarlycommonslaw.case.com> (accessed on 13 April 2024).

social or cultural in nature, they are all inherent to the dignity of every human person<sup>35</sup>. Consequently, they all have equal status as rights. There is no such thing as a 'small' right. All human beings are entitled to appeal for their human rights without discrimination of any kind, such as race, color, sex, ethnicity, age, language, religion, political or other opinion, national or social origin, disability, property, birth or other status as explained by the human rights treaty bodies<sup>36</sup>.

### 2.3 The concept of co-operative society

Co-operative Society is the autonomous association of people who united together voluntary to meet their common economic, cultural, and social needs and aspiration through jointly owned democratically controlled enterprises which are based on the values of self-help, democracy, equality, and solidarity<sup>37</sup>. In the tradition of their founders co-operative members believe in the ethical values of honesty, openness, social responsibility and caring for others. All over the world co-operatives generally operates using these seven principles as guidelines by which they put their values into practice. Co-operative enterprise being a social entity had been used by the majority by different country citizens in attaining their social economic needs<sup>38</sup>.

Blacks Dictionary<sup>39</sup> Co-operative Society is the autonomous association of people who united together voluntary to meet their common economic, social needs and aspiration

---

<sup>35</sup> D. Kamuli. *Human Rights in Tanzania*: Gunewe Publishers, Tanzania, 2019, 26.

<sup>36</sup> <http://www.ContemporaryAmericanSociety> (accessed on 21 March 2024).

<sup>37</sup> D. Patel. *A study on Performance Evaluation of Farmers Cooperative Society*: EduPedia Publications Ltd, 2015, 8.

<sup>38</sup> M. Komba. *Tanzania's Co-operatives in the environment of liberalized economy*, 2011, 7.

<sup>39</sup> G. Beranda. *Black's Law Dictionary*, 8<sup>th</sup> Edition, 123.

through jointly owned democratically controlled enterprises . Co-operatives are based on the values of self-help, self-responsibility, democracy, equality, equity and solidarity. In the tradition of their founders co-operative members believe in the ethical values of honesty, openness, social responsibility and caring for others. All over the world co-operatives generally operates using these seven principles as guidelines by which they put their values into practice.<sup>40</sup>

The defining characteristic of a democratic organization is that its members are the ultimate authority. This sentence emphasizes that members ultimately control their co-operative. It also stresses that they do so actively in a democratic manner, through having the right to vote on key strategic policy decisions and to participate in electing the representatives who control their co-operative's day-to-day business activities<sup>41</sup>.

Co-operatives were used as a tool for uniting the poor for poverty reduction through member owned institution. The co-operative enterprises are primary member owned enterprises that can be used as a tool for community development. The social economic development in Tanzania had been attained through co-operative institutions<sup>42</sup>. The landmarks to rural empowerment becomes possible from the use of co-operative, that capture the comprehensive dimensional part of villagelization, agricultural

---

<sup>40</sup> M. Komba. *Tanzania's Co-operatives in the environment of liberalized economy*, 2011, 7.

<sup>41</sup> D. Patel. *Financial Analysis of Cooperative Society*: Edupedia Publications Ltd. New Delhi, 2015, 5.

<sup>42</sup> United Republic of Tanzania Ministry of co-operative and marketing: *The Co-operative Reform and Modernization Program (CRMP)*, 2005-2015.



mechanization, income generating tool, agricultural input supports, developing good governance mechanism in Tanzania majority<sup>43</sup>.

## 2.4 Co-operative enterprise

Co-operative enterprise is a company or business often a small one operated by a co-operative in accordance with the co-operative principles which are voluntary and open membership, democratic member control, member economic participation, autonomy and independence, education, training and information, co-operation among co-operatives and concern for community. Working together is the underlying principle on which cooperative movement is based. Co-operatives are therefore business enterprises, they are referred to as social enterprises, they have the specific feature of producing goods, services and knowledge while pursuing both economic and social aims and fostering solidarity<sup>44</sup>.

Co-operative enterprises are governed by a set of principles which are voluntary and open membership, democratic member control (one member one vote), member economic participation, autonomy and independence, education, training information, cooperation among co-operatives and concern for the community<sup>45</sup>.

---

<sup>43</sup> J. Sizya. *The role co-operatives play in poverty reduction in Tanzania*: Paper presented at the United Nations in observance of the International Day for the Eradication of poverty on 17 October 2001, 17.

<sup>44</sup> F. Francil. *Rural Cooperation in the Cooperative Movement in Tanzania*: Mkuki na Nyota Publishers Ltd. Dar es Salaam 2012, 3

<sup>45</sup> M. Hans. *Cooperative Principles and Cooperative Law*: Global Book marketing .UK 2<sup>nd</sup>, revised edition 2015, 17

From a legal point of view they are formal, legally constituted organizations which mean they enjoy legal recognition, and protection, can enter into contracts, own or dispose of property, sue and be sued and operate as corporate bodies with perpetual succession.

## 2.5 Co-operative disputes

Co-operative disputes are normally disputes limited to the business or activities of the co-operative society. Disputes which do not relate or are not directly connected or linked with the business of a given co-operative society are normally considered to be outside the scope of co-operative disputes<sup>46</sup>. The scope is thus a matter to be specified by co-operative law, which encompasses by- laws of a particular society, the Co-operative societies Act and Regulations. Delineating scope is critical in order to distinguish co-operative disputes from other disputes which co-operative societies or members may be part to. Co-operative disputes settlement is a matter regulated by the Co-operative Societies Act No. 6 of 2013 and its Regulations made thereunder. Under the law, disputes are classified as disputes between members, between a member and a board, between a member and the management and disputes between societies. These disputes must be ones concerning the business of a co-operative society<sup>47</sup>.

Also the decisions involve both co-operative disputes and non-co-operative disputes and the focus however is on the co-operative disputes and court authority on their settlement. Researcher observed some converging and diverging views by the court. The areas of convergence include the existence of co-operative internal mechanisms for

---

<sup>46</sup> D. Datus. *Alternative Disputes Resolution in Tanzania*. German National Library, 2022, 1.

<sup>47</sup> Regulation 83(1) of the Co-operative Societies Regulations of 2015.

dispute resolution under the Co-operative Societies Legislation, the requirement for their exhaustion, and the inclusion of members as well as non-members as parties to co-operative disputes.

On the divergences it is still unsettled as to whether ordinary court have jurisdiction to entertain co-operative disputes, whether the court has duty to ascertain if a dispute falls in the definition of a co-operative business, orders which should be given by a court when it finds out that it has no jurisdiction to entertain a co-operative dispute, and what legal steps should follow after co-operative disputants have exhausted internal dispute settlement mechanisms in a normal suit<sup>48</sup>. Critical to bringing the position are responses to the questions whether the Tanzania co-operative legislation infringes the principles of rule of law requiring co-operative disputes to be finally determined by government authorities; and whether the framework restricts access to court as last remedy<sup>49</sup>.

---

<sup>48</sup> R. Mukama. *The Paradox of the Dispute Settlement Procedure for Co-operative Societies in Tanzania: A call for a Reform*: Mzumbe University 2022, 80.

<sup>49</sup> <https://www.researchgate.net> (accessed on 21, March 2024).

## CHAPTER THREE

### LEGAL FRAMEWORK GOVERNING DISPUTE SETTLEMENT MECHANISM UNDER CO-OPERATIVE SOCIETIES ACT AND ITS REGULATIONS: A FOCUS ON THE APPELLATE POWERS OF THE MINISTER

#### 3.0 Legal frameworks

#### 3.1 International legal framework

##### 3.1.1 Universal Declaration of Human Rights.

The Universal Declaration of Human Rights (UDHR) was adopted by the United Nations General Assembly in 1948. As a resolution it is not itself formally legal binding despite common assumption to the contrary. However, it did establish important principles and value which were later elaborated in legally binding UN treaties<sup>50</sup>. Moreover, a number of its provision has become part of customary international law, also provision which uphold the important of human rights and all benefits. For example;

Article 1 provides that," All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood"<sup>51</sup>

Also, Article 2 provides that" Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language or other opinion, social origin, property, birth and other status."<sup>52</sup>

---

<sup>50</sup> Preamble of Universal Declaration of Human Rights of 1948, Art, 1

<sup>51</sup> *Ibid.*

<sup>52</sup> Preamble of Universal Declaration of Human Rights of 1948, Art, 2

Under the Universal Declaration of Human Rights there is no direct provision which mention the right to appeal rather by its implication the words such as "Everyone is born free and equal in dignity and rights" as provided under article 1 may in one way or another amount for right to appeal upon which the provision is part and parcel to it.

### **3.1.2 International Covenant on Civil and Political Rights**

This is an international human rights instrument introduced by a treaty human right in 1966. This instrument includes rights falling under the civil and political phenomena in international level. Since right to appeal is necessary on both civil and political matters, International Covenant on Civil and Political Rights (ICCPR), as an instrument governing such criteria of life has provided the administration of justice under article 14 which provide. "Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law."<sup>53</sup> Thus the Article is interlinked with Article 14(1) which provides for a fair trial within a reasonable length of time by a competent tribunal.<sup>54</sup>

Also Article 14(3) (c) is very important to the parties as it prohibits the delay in the administration of justice. The International Covenant on Civil and Political Rights do not state the meaning of the term within a reasonable time. The Human Rights Commission stated in the General Comment No 13 that, the term reasonable time does not guarantee only the time on which the trial must start, but the time by which trial should

---

<sup>53</sup> See Art, 14(5) of the International Covenant on Civil and Political Rights, 1966.

<sup>54</sup> See Art, 14(1) of the International Covenant on Civil and Political Rights, 1966.

end and judgment be rendered to the parties.<sup>55</sup> It considers all the due process of determining the case from the first instance up to appeals.

### **3.2. Regional legal framework**

#### **3.2.1 The African Charter on Human and Peoples' Rights**

This is African region human rights instrument introduced in 1979 as it was established by the nation heads assembly of the member states of the Organization of Africa Union (OAU) by now transformed into African Union (AU). The instrument was design so as to meet the criteria of need of enforcement of human rights in Africa as back then every country was struggling with the violation's humans' rights despite the introduction of the rights in 1949 which was done worldwide. Region like Europe adopted region instruments like Europe convention of human rights hence Africa also saw fit to have region instruments of their own so has to ensure that the region recognizes human rights and increases the effort of enforcement of human rights in the area, as far as the right to appeal is in topic, The African Charter on Human and People's Rights (ACHPR).

Provides and grants the right to appeal under Article 7(1) "every individual shall have the right to have his cause heard and the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force". The Charter has recognized the importance of right to appeal in all category of life<sup>56</sup>.

---

<sup>55</sup> See M. Bossuyt. *Guide to the Preparatoires of the International Covenant on Civil and Political Rights*, (1987) 297. See. Bosco, *International Human Rights Law: The Quest for judicial Bodies in the Third World Countries*, 23 Harvard law Journal, (2000), 234 See report on Judiciary and Good Governance in Contemporary World Presented by Sophia Mathew (2003) 34.

<sup>56</sup> Art, 7(1) of the African Charter on Human and People's Rights of 1979.

### 3.3 Domestic legal framework

#### 3.3.1 The Constitution of United Republic of Tanzania CAP 2 of 1977

The Constitution, show the efforts of the Government towards protection of all citizens in the country particular on right to appeal protection to ensure justice. The provision of article 13(6) (a) provide that,

“The issue of determine rights and duties of any person in Tanzania are being determined by the court or any other agency and that person whose his or her rights and duties are determined shall be entitled to a fair hearing and the right to appeal or other legal remedy against the decision of the court or other agency concerned...”<sup>57</sup>.

Also article 107A (1) provide that “the Judiciary shall be the authority with final decision in dispensation of justice and all people are equal before the law...”<sup>58</sup>

Therefore, these articles warrant commitment of the Government towards protection of the right to appeal for all human beings regardless of race, sex, nationality, language, religion, or any other status. Everyone is entitled to this right without discrimination, the right to appeal is a basic right and it applies when a person is aggrieved for the decision provided, the Co-operative Societies Act and its Regulation must be incorporates with the requirement of the Constitution of United Republic of Tanzania.

---

<sup>57</sup> Art, 13(6) (a) of the Constitution of the united Republic of Tanzania Cap 2 of 1977, amended time to time.

<sup>58</sup> Art, 107A (1) of the Constitution of the united Republic of Tanzania Cap 2 of 1977, amended time to time.

### 3.3.2 The Cooperative Society Act, CAP 112, R.E 2013

This is an Act to make provisions for rights to co-operative society's members, to establish basic dispute settlement standards, to provide a framework for right to appeal decision of the Minister, and to provide for related matters. It was established in 1968 and through various amendments we have the current Co-operative Societies law which is No. 6 R.E 2013.

The law under section 101 provides for an appeal in which under subsection (1) provides that” Where the registration of a society is cancelled under the provisions of section 100, any member of the society the registration of which is cancelled may, within thirty days from the date of the order canceling the registration, appeal against such order to the Minister”<sup>59</sup>.

The law provides for cooperative societies members to be granted right to appeal to the Minister for thirty (30) days and immediately under subsection (4) it prohibit members to appeal the decision of the Minister for providing that where an order is so confirmed, no further appeal shall be allowed against such order<sup>60</sup>.

The law under section 5 provides for Minister to encourage cooperative development in which under subsection (1) provides that “The Minister shall, upon consultation with the Commission, take such relevant measures for enhancing development of self-sustaining cooperative movement.

---

<sup>59</sup> Co-operative Societies Act No. 6 CAP 112 R.E 2013, sec, 101(1).

<sup>60</sup> Co-operative Societies Act No. 6 CAP 112 R.E 2013, sec, 101(4).



The law provides for the purposes of fostering cooperative development shall have a duty to;

- (a) Facilitate the creation of a conducive environment through the formulation and review of policy and regulatory frameworks for cooperative development
- (b) Ensure that the Commission and the Board perform their functions in accordance with the provisions of this Act
- (c) Encourage educational institutions to teach, conduct research, offer consultancy services and perform other relevant duties pertaining to cooperative development in the country; and
- (d) Perform any other duty necessary for the attainment of the objectives of this Act<sup>61</sup>.

Under the provision of the law it involves all members working in cooperative societies sector to be granted good environment through the formulation and review of policy and regulatory frameworks for cooperative development even for new societies.

Therefore the Co-operative Societies Act as a domestic law is there to ensure that cooperative society's members are provided with their rights such as right to appeal decisions, right to work under good legal framework and policy, right to work democratically, and right to associate for all the cooperative societies in Tanzania<sup>62</sup>.

---

<sup>61</sup> Co-operative Societies Act No. 6 CAP 112 R.E 2013 sec, 5.

<sup>62</sup> F. Lyimo. *Rural Cooperation in the Cooperative Movement in Tanzania*, Mkuki na Nyota, Dar es-Salaam 2012.

### 3.3.3 The Co-operative Societies Regulations of 2015 (GN. No. 272 of 2015)

The Cooperative Society Regulations<sup>63</sup> regulate matters relating to co-operative society in Tanzania by establishing the Committee as the main regulator of cooperative society matters including considering in detail the type of co-operative society to be formed and determine its objects, to prepare and submit a report to the formation meeting for discussion and approval, to compile a list of members and record of the required share capital and contributions as required in the proposed By-laws of the society, and to do all such acts as may be necessary for the purpose of meeting registration requirements, regulation 5(1) of the Cooperative Societies Regulations<sup>64</sup> establish the committee that is elected under regulation 4 consisting number of members.

Regulation 5(2) provides that the formation committee shall, under the guidance of Cooperative promotion officer or cooperative officer, elect a chairperson and appoint a secretary to prepare and maintain records of its proceedings<sup>65</sup>.

Also Regulation 14(1) of the Cooperative societies Regulations provides that after all requirement the Registrar shall register a society at its by-laws if he is satisfied that, the society has complied with the provisions of the Act and these Regulations, the proposed by-laws of the society are not contrary to the Act and the Regulations, and the proposed by-laws of the society are sufficient to provide for its proper administration and

---

<sup>63</sup> The Co-operative Societies Regulations of 2015 (GN No. 272 of 2015)

<sup>64</sup> Regulation 5(1) of the Cooperative Societies Regulations of 2015 (GN. No. 272 of 2015).

<sup>65</sup> Regulation 5(2) of the Cooperative Societies Regulations of 2015 (GN. No. 272 of 2015).

management. Where the Registrar determines that an application meets the requirement he shall issue a certificate of registration<sup>66</sup>.

Under the provision of Regulation 17(1) vests the jurisdiction to the Minister who is responsible to deal with appeal concerning the Co-operative Societies and the Minister shall within thirty days from the date of receiving the appeal make a decision<sup>67</sup>.

---

<sup>66</sup> Regulation 14(1) of the Cooperative Societies Regulations of 2015 (GN. No. 272 of 2015).

<sup>67</sup> Regulation 17(1) of the Cooperative Societies Regulations of 2015(GN. No. 272 of 2015).

## CHAPTER FOUR

### AN EXAMINATION OF THE DISPUTE SETTLEMENT MECHANISM UNDER CO-OPERATIVE SOCIETIES ACT AND ITS REGULATIONS: A FOCUS ON THE APPELLATE POWERS OF THE MINISTER.

#### 4.0 Introduction

In this chapter the researcher analyses The Co-operative Societies Act and its Regulations in compliance to Constitution of United Republic of Tanzania and the question of right to appeal against the decision of the Minister. This chapter examines the application of legal right to access justice in Tanzania in relation to appeal decision from the Minister as among the biggest challenges. Through governed by various laws domestic, regional and international instruments together with case law, ascertaining the right to appeal by the party (co-operative members) disappointed with the provisions; that may be there was unfair or any kind of infringement and preferential treatment in that provisions and powers given to the Minister.

Pursuant to article 107A of the Constitution of United Republic of Tanzania which provide the courts have final decision in dispensation of justice in the United Republic of Tanzania. Moreover article 107B, further requires all court to have freedom to observe the provision of the Constitution and all other laws in force. The challenges have been on whether the Minister of Co-operative Societies as empowered under the above articles of the Constitution of United Republic of Tanzania, violates the legal right to

appeal and violates the independence of judiciary as provided in the same mother law under article 107A and 107B.

Hence this chapter reveals the contradiction of the laws against the Constitution of the United Republic of Tanzania and how does it infringe legal right to appeal on the matter concerning decision of the Minister as conducted on Co-operative Societies disputes resolution, which has been mandated to do so.

#### **4.1 Research findings**

The data provided under this chapter is genuine as the researcher employed various methods of data collections for assistance which includes Ruaha Catholic University Library, reading and exploring different sources such as books, reports, journals, websites sources from internet blogs and other published materials.

The data provided for this research and specifically under this chapter is because of the various authors of co-operative societies on providing such data and despite all the challenges the researcher manage to obtain data form them and their efforts and bravery are appreciated by the researcher due to an examination of the co-operative societies Act and its Regulations,

#### **4.2 The right to appeal in co-operative societies**

Tanzania being state still victimize and denies its citizens the right to appeal in co-operatives. The co-operatives being the top source of where the people can cooperate and perform themselves co-operative business and being strong economically in the

country since the co-operative society's coverage is of large quantity. Co-operative Societies the actual platform where by the citizen can real lay down their opinions on how can solve their disputes in the whole country Tanzania still lay down laws under which restricts a person from right to appeal against the decision of the Minister<sup>68</sup>.

The laws present offer barriers to certain action a person can take in the co-operative societies. There are laws which are to general and favorable only to the government bring injustice when it comes to execution of such laws. A nation needs clear and precise law without forgetting non favor ability of any group for laws so as to deliver justice but Tanzania does not have clear laws on governing co-operative societies of the country the laws enacted are on the biased enacted to uphold numerous amounts of people especially with power. Since Tanzania law is based on the constitution of Tanzania, the constitution is fair and it is the voice and protector of the people and citizen against the people of power<sup>69</sup>.

Tanzanian constitution condemns and recognizes right to appeal hence people of all caliber are obligated to respect people's right to appeal as when they are need to do so no member in the society has the right to restrict them or deny them of their right.

### **4.3 The constitution and the right of appeal**

The United Republic of Tanzania and its constitution recognize that people have right to appeal as they are allowed to appeal the decision of the cases whenever and wherever

---

<sup>68</sup> H. Konde. *Co-operative Movement in Tanzania*, Eastern Africa Publications, Tanzania (2008), 47.

<sup>69</sup> M, Lofchie. *The Political Economy of Tanzania, Decline and Recovery*: University of Pennsylvania Press, 2014, 120.

they see it fit. People in daily lives have the disputes and that disputes are being determined by the court of law<sup>70</sup>. The government is there to supervise on behalf of the citizen about the welfare of the society as to make sure that the society is taken care of as it is provide for infrastructure and all other social services since the government is given power by the citizens it is also the duty of the citizen to claim wherever they see that there is a place where the matters are going bad and they think out if their claim for such matters are to be carried out smooth or in a correct way , as from that the constitution provides for the right to appeal freely without interruption<sup>71</sup>.

The constitution being the ,other law of the country it all about equality hence it covers any person whether that person has power or not it offers the right to anybody who is the citizen of the Republic of Tanzania under Article 13(6)(a) of constitution provides “To ensure equality before the law, the state authority shall make procedures which are appropriate or which take into account the following principle, namely; (a) when the rights and duties of any person are being determined by the court or any other agency, that person shall be entitled to a fair hearing and to the right of appeal or other legal remedy against the decision of the court or of the other agency concerned”.<sup>72</sup> Right to appeal has provided in the constitution, right to appeal can be exercise in any form without any restriction once a person restricts another for the right to appeal is violating the constitution of United Republic of Tanzania. So, person is free to appeal his or her

---

<sup>70</sup> [Http://www.cjad.nottingham.ac](http://www.cjad.nottingham.ac) (accessed on 24, March 2024).

<sup>71</sup> G, Brown. *The Universal Declaration of Human Rights in the 21<sup>st</sup> Century: A Living Document in a Changing World*, Grobal Institute for Avanced Study, Open Book Publisher 2016, 82.

<sup>72</sup> Art, 13(6) (a) of the Constitution of United Republic of Tanzania of 1977, as amended from time to time.

decision from the Minister in co-operative societies without being obstructed by anyone in the state of United Republic of Tanzania<sup>73</sup>.

#### **4.4 The right to appeal in the co-operative societies act**

The Co-operative Societies Act is the Parent Act in the co-operative societies industry it the like a constitution of the co-operative societies platform in Tanzania. There are various Acts governing the co-operative society's platform in Tanzania but they all derive its power under this Act. The Act has provided for various committees and government system under which them service is to be governed<sup>74</sup>. The Co-operative Societies Act has many Generality and favors-ability to the government under which it has contributed to many other Acts which are derived from it to be unconstitutional because itself also is unconstitutional such Acts like Co-operative Societies Regulations Acts Government Notice No. 272, of 2015, as it was found to be unconstitutional as it violates human rights<sup>75</sup>.

The main issue as the researcher I have focused on the provision of section 101(4) of the Co-operative Societies Act and regulation 83(9) of the Co-operative Societies Regulations provides that after being the Minister made decision or order no further appeal shall be allowed against such order. The provision of this sections prohibit the right to appeal in favorable or favors the side of the government as it provides approximately every angle whereby a person cannot allowed to appeal the decision from the Minister<sup>76</sup>. The

---

<sup>73</sup> [Http://www.administrativelawmatters.com](http://www.administrativelawmatters.com) (accessed on 19 March 2024).

<sup>74</sup> A. Rutabanzibwa. *Legal Framework Analysis National Report –Tanzania* (2021).

<sup>75</sup> Ibid 34.

<sup>76</sup> Sec, 101(4) of the Cooperative Societies Act No. 6 R.E 2013, See Cooperative Societies Regulation 83(9).



machinery requires co-operative disputes to be settled through negotiation or reconciliation, reference to the Registrar, and finally appeal to the Minister<sup>77</sup>. The machinery appears to preclude ordinary courts from entertaining co-operative disputes. The lack of clarity has resulted into disputes involving co-operative societies in the hands of courts of law and expectedly multiple preliminary objections are raised on the point of lack of jurisdiction. As the researcher I have analyzed the unsettled legal position on the authority of ordinary courts of law in settlement of co-operative disputes in Tanzania, the co-operative disputes are resolved through internal mechanisms and departure is as to what follows after the exhaustion of the mechanisms. Co-operative Societies Act being a Parent Act as to be constitutional so as subsidiary legislations originating from it has to be competent.

#### **4.5 Disadvantages of the provision of section 101(4) of the co-operative societies act and regulation 83(9) of the co-operative societies regulation.**

The infringement under section 101(4) of The Co-operative Societies Act and regulation 83(9) of the Co-operative Societies Regulations has a lot of disadvantages but the most and the biggest of it all is the infringement and restriction of the right to appeal<sup>78</sup>. In the society a law to be appropriate it has to uphold human rights if the law denies the rights of individuals it is oppressive hence it is likely to cause injustice to the society under human rights there is development and as many other factors under which a society can prosper human rights are inevitable, human rights being in a chain as if one right is

---

<sup>77</sup> Idem.

<sup>78</sup> A. Urjo. *The Co-operative Law in Tanzania*, Safi Publishers, 2019, 32.

violated the remaining are to be threatened too, is of most important that rights are to be protected in whole and not partial hence the provision under section 101(4) of The Co-operative Societies Act and regulation 83(9) of the Co-operative Societies Regulations under the human rights it violates or restricts human rights.

The other disadvantages are as follows, first it allows people with powers to strike fear to other people as to silence them whenever they come up with matters concerning co-operative societies because of powers given from the Act. In continuation the section are used to hide evils of people with powers as it silences people when they need to appeal the decision from the Minister in co-operative disputes<sup>79</sup>. It strikes fear to the people and make the people to be victims to the people with power. *Fanuel Mantiri Ng'unda V. Herman Mantiri Ng'unda & 2 others [1995] TLR 155, CAT*, it was held inter alia that;

“It is risky and unsafe for the court to proceed with the trial of the case on the assumption that the court has jurisdiction to adjudicate upon the case. For the court to proceed to try the case on the basis of assuming jurisdiction has the obvious disadvantage that the trial may well end up in futility as a null and void on ground of lack of jurisdiction when it is proved later as a matter of evidence that the court was not properly vested with jurisdiction. The court held that on the basis of limitation alone it was in question if it was constitutional. As it was held that ‘the provision of the Cooperative Societies Act and its regulations is unconstitutional and unfair’<sup>80</sup>.

---

<sup>79</sup> A. Mruma. *Fifty Years of Cooperatives and Economic Development in Tanzania*: Moshi University College of Cooperative and Business Studies, 2011, 88.

<sup>80</sup> [1995] TLR 155 CAT.

People are infringed under this generality and favoritism to the government the law protects the government interest against people's claims over co-operatives members of the co-operatives societies live without understand when it comes to the need to appeal the decision from the Minister they are always on the virtual of asking themselves what if am going to appeal and what if I am going to appeal while the law prohibits, hence development of fear does not do well to the co-operatives members hence reducing number of the people attending various co-operative societies business because they are afraid to be penalized<sup>81</sup>. Creation of a lazier fair generation this generality of provision and favoritism of section 101(4) of the Co-operative Societies Act and Regulation 83(9) of the Co-operative Societies Regulations favoring the government or going in the favor of the government has also propelled to the extent of generation which does not care about anything going in the co-operative societies sector in the state as they are okay with everything since they know if they attend on co-operative businesses their right to appeal against decision of the Minister is not guaranteed so it is for the best to engage in other activities rather than making efforts over something which will come back to haunt them for the rest of their life's.

For most this generality in favoritism and infringement of this provision of section 101(4) of Co-operative Societies Act and Regulation 83(9) of the Co-operative Societies Regulations gives more power to the Minister, human rights are tools design to remove the oppression which may come because of power hence laws hindering such power of human rights to act as a barrier of oppression constitute to total dominance of the

---

<sup>81</sup> R. Mukama. *The Paradox of the Dispute Settlement Procedure for Co-operative Societies in Tanzania: A call for a Reform*, Mzumbe University, 2022, 53.

powered to oppress the powerless and the powerless do not have any mechanism to fight such oppression. Hence this infringement has spearheaded continuation of oppression of the powerless<sup>82</sup>.

#### **4.6 Challenges coming from the provision of section 101(4) of the co-operative societies act and regulation 83(9) of the co-operative societies regulations.**

According to the study there many challenges coming from the provision of this sections but fall under two criteria which are multiple preliminary objections before the court of law on the point of lack of jurisdiction and other<sup>83</sup> . The challenges falling under the umbrella of injustice are revocation of right to appeal against decision of the Minister, unfair right of being hearing while other challenges are poor progress of co-operative societies sector due to unsettled legal position on the authority of ordinary courts of law which they could have saved the nation development in large, continuation of violation of human rights. Continuation of oppression of powerless by the powered and lastly decline of leadership ethics.

A law having a provision of generality and favoritism to the government under the Minister responsible is not fit for the co-operative societies sector as from it is likely to affect the people who are powerless who are the many a law made as to be supportive and open to adhere full justice in the society, the Co-operative Societies Act under section 101(4) and its Regulation 83(9) of the Co-operative Societies Regulations has failed to meet the requirement of the Constitution of United Republic of Tanzania hence

---

<sup>82</sup> J. Richard. *Co-operative Societies Dispute Settlement in Tanzania and Unsettled Positions over Courts Authority*, Mkuki na Nyota, 2012, 27.

<sup>83</sup> B. Mutaha. *Co-operative Reform Process in Tanzania and Sri Lanka*, Oxford University Press, 2010, 89

for its favoritism and generality cost co-operative societies members daily as it has posed restriction on people's rights to appeal against decision of the Minister under which it is country under democratic rule which recognize human rights hence the law has become default hence threatening democratic principles of the country not to violate human rights.

The co-operative societies in the country suffer the restriction of the law which is too general and favor the government. As in the case of *Satiel S/O Duguda and Amon S/O Balavuga V. Manyovu Amcos Ltd*, in this case Satiel S/O Dugunda brought a case in District court at Kigoma as the allegation of not being provided a chance to appeal against decision of the Minister, the court held by referred article 107A(1) of the Constitution of United Republic of Tanzania, The Court held that the Judiciary shall be the authority with final decision in dispensation of justice in the United Republic of Tanzania, hence the court declared that section 101(4) of the Co-operative Societies Act and Regulation 83(9) of the Co-operative Societies Regulations both provisions is against the Constitution of United Republic of Tanzania<sup>84</sup>.

---

<sup>84</sup> Civil Appeal No. 2 of (2020) PC.

## CHAPTER FIVE

### CONCLUSION AND RECOMMENDATION

#### 5.0 Introduction

This is the last stage of the research as it includes the finalization of the research paper as based on the research findings and the hypothesis of the study as to what is concluded is derived on the basis of the test of hypothesis and what is found by the researcher. Also, the part of recommendation are the views of the researcher concerning the hypothesis and the research findings as the researcher recommends what is to be done on the basis of the problem identified by this research.

#### 5.1 Summary of the research findings

The researcher has observed that, the Co-operative Societies Act and its Regulations does not comply with the Constitution of United Republic of Tanzania. Through that, the right of appeal against decision of the Minister in the country is not provided accordingly. Due to the failure for the Co-operative Societies Act and its Regulations to comply with the Constitution of United Republic of Tanzania co-operative members and workers do not benefit from right to appeal especially the decision of the Minister.

The study also analyses on how the Tanzania Co-operative Societies Laws which are Co-operative Societies Act and its Regulations has failed to comply with the Constitution of United Republic of Tanzania on the right to appeal against decision of the Minister which is the right to every people working on both sectors. The Co-operative Societies Act and its Regulations has provided restriction for appeal and the Constitution of United

Republic of Tanzania has provided the mandatory right to appeal. So the research aimed to find the solution that will make the Co-operative Societies Act and its Regulation comply with the Constitution of United Republic of Tanzania on right to appeal against decision of the Minister.

## **5.2 Recommendations**

The researcher on the matter of this study has observed different problems regarding the generality of section 101 of the Co-operative Societies Act, and Regulation 83(9) of the Co-operative Societies Regulation which prohibits the right to appeal decision from the Minister that after being the decision or order is made no further appeal shall be allowed against such order. The provision of this sections favors the side of the government as it provides approximately every angle whereby a person cannot allowed appealing the decision from the Minister. Basing on the infringement of the Co-operative Societies Act and its Regulations to comply with the constitution of United Republic of Tanzania on right to appeal the problem stated in the statement of the problem and that of the research findings, the researcher gives below recommendations.

### **5.2.1 To the parliament**

There is the need to reform the cooperative societies law by enacting specific sections to provide the right to appeal against the decision of the Minister in Tanzania in order to comply with the Constitution standards in which it treats people equally without regarding his or her status because right of appeal under co-operative societies helping parties to find more justice before the courts of law.

The study recommends that the parliament amend the Co-operative Societies Act and its Regulation in order to grant right to appeal against the decision of the Minister, as the law in Tanzania does not comply with the constitution of United Republic of Tanzania thus there is the need to amend the law so as to give people the right to appeal against the decision of the Minister.

The study recommends that the parliament should involve the Co-operative Societies members when making amendment, there should be the involvement of co-operative society's experts who will assist in advising a proper time to be taken for appeal against the decision of the Minister. It is true that the co-operative society's cases are very complicated because of its procedures. All these are provided by the cooperative experts.

The study recommends that the experts should help in the enforcement of the amended Co-operative Societies laws in Tanzania which are the Co-operative Societies Act and its Regulation. The responsible institution could consider strengthening co-operative society's inspection and providing training to inspectors to ensure that they are able to effectively enforce society's laws and right to appeal against decision of the Minister in Tanzania.

The study recommends for the parliament to consult with members and employers of the co-operative societies to gather feedback on the Act which are the Co-operative Societies Act and its Regulation and to identify areas where improvements are done and where they need to be done this could include engaging with trade unions, employers association to gather input on the Act and implementation, by doing so the laws can be amended to comply with the Constitution of United Republic of Tanzania.



### 5.2.2 To the government

The government of Tanzania in attaining development has to observe the laws it employs in its country. Good laws are the key for development. In recommendation the research recommend that in laws concerning rights of people especially right to appeal the government should make them favorable to the people because under this laws the state obtains good governance and from good governance development is assured because from good governance resources will be well allocated and utilized ,corruption and ignorance will be eradicated ,investment will rise and many development factors will be apprehended hence right to appeal makes people to be aware that they can appeal what they feel wrong without fear of being displaced, caught and harassed.

The functions of Registrar and the Minister under co-operative societies industry are working on behalf of the government they should be specifically defined by the law and should aim at implementing cooperative values and principles. Thus, a mechanism should be inbuilt in the legal framework that would enable devolution of the responsibilities from the Minister and Registrar to the cooperative movement. The function of cooperative promotion should be left to the cooperative movement and the role of the government should be to strengthen the capacity of the movement to provide such services because co-operatives are voluntary associations and they are more often open to new membership provided that they comply with the societies' by-laws.

Co-operatives are also democratically controlled by members, they are vessels where members participate to the economic undertaking contributing to capital and equally

sharing proceeds of a surplus. The societies are required to operate with autonomy and independence.

### **5.2.3 To the public at large.**

The study recommends for educational provision meaning that public must understand well in order for the co-operatives to unleash their potentials, a comprehensive transformation of co-operatives in Tanzania is inevitable. The task is to focus on the key cooperative principles that coops are owned and controlled by their own members. The purpose of co-operatives is to fulfill their members' economic and social needs, to achieve their goals and plan; co-operatives need to be commercially viable enterprises, able to compete in the liberalized market. The problems facing cooperatives is the need for further studies on co-operative dispute settlement in Tanzania. Scholars and practitioners in relevant fields may carry out studies on, foremost the definition and scope of co-operative disputes.

Related to this is failure of the Tanzania cooperative legal regime to give a clear legal exposition on what amounts to cooperative business from which a cooperative dispute may arise. The prime importance is a study on what should strike a balance between preservation of the cooperative enterprise identity and a need to attain ends of equitable justice among the disputants. It is opinion that courts should not end up with striking out disputes brought before them, they have to go beyond expounding on whether a dispute is a co-operative dispute and guide as to where they should be handled.

### 5.3 Conclusion

In accordance to the hypothesis and the research findings it appears the section 101 of The Co-operative Societies Act and Regulation 83(9) infringes the right to appeal. As it prohibits the chance of people to find more justice for what they feel wrong under cooperative societies dispute settlement mechanisms as the law is overprotective to the government side because the Minister is given power to determine the dispute of co-operative societies.

In this research ideal requirements on settlement of co-operative disputes were discussed touching, inter alia, the requirements on the involvement of courts of law when amicable settlement fails. The unsettled position over the authority of ordinary courts of law over such disputes has also been analyzed, from the analysis the decision of High Court judges are diverging on ordinary courts authority on such pictures. The divergence paints a picture of lack of a defined precedent on the area and raises several question mark on cooperative dispute settlement framework generally.

The main objective of the research is to find solution that will make the Co-operative Societies Act and its Regulation to be applicable with the compliance to Constitution of United Republic of Tanzania. After the examination observed that the Co-operative Societies Act and its Regulation does not comply with the Constitution of United Republic of Tanzania on right to appeal against the decision of the Minister, so the Act should be amended to solve the problem caused by the Co-operative Societies Act and its Regulation.

The co-operative legal frameworks of the United Republic of Tanzania have produced co-operatives which may be referred as quasi-governmental organizations, not as private sector organizations which should be operated according to the value and principles.

This may have been influenced by the ideology and political environment that governed their past development. The implementation of the said legal frameworks has resulted in an institutional psychology which hinders co-operatives from operating as vibrant and coherent movements in Tanzania.

Under these circumstances a proper reform in the co-operative legal frameworks would involve not only amending the co-operative laws to recognize the right to appeal the decision from the Minister, but also inciting the understanding of the relevant issues within and outside government circles to change their stance towards cooperative development.

By considering that, it high time the Tanzanian parliament has to take time to overlook the law on co-operative societies industry and revise it as since it was revised in 2013, until today there are no revisions in Co-operative Societies Act as revision is inevitable so as promote the law on co-operative societies sector to be clear. If they are not adhering revising the parent statute on cooperative society's injustices in the co-operative societies industry will continue to top in the country. To make the Co-operative Societies Act and its regulation to be constitutional again the legislature has adhere to revise the law on the basis of adding what is left and removing some sections which is unconstitutional so as to promote justice as in the means of constitutionality of the statutes.

## BIBLIOGRAPHY

### BOOKS

Draza, D. *The Right to Appeal in International Criminal Law*: Martinus Nijhoff Publishers, 2019,

Damian Sambuo. *The Co-operative and Business Studies (CBS)* vol. 4, Issue 2, 2019.

Hans. M. *Cooperative Principles and Cooperative Law*: Global Book marketing .UK 2<sup>nd</sup>, revised edition 2015

Kamuli, D. *Human Rights in Tanzania*: Gunewe Publishers, Tanzania, 2019.

Komba, M. *Tanzania's Co-operatives in the environment of liberalized economy*, 2011.

Konde, H. *Co-operative Movement in Tanzania*, Eastern Africa Publications, Tanzania (2008).

Lyimo, F. *Rural Cooperation in the Cooperative Movement in Tanzania*, Mkuki na Nyota, Dar es- Salaam, 2012.

Mhihi, C. *Co-operative Development in Tanzania*: Moshi Co-operative University, Vol. 7. No.6. 2016

Mukama R. *The Paradox of the Dispute Settlement Procedure for Co-operative Societies in Tanzania: A call for a Reform*: Mzumbe University 2022.

Mutaha, B. *Co-operative Reform Process in Tanzania and Sri Lanka*: Oxford University Press. 2010

Mruma. A. *Fifty Years of Cooperatives and Economic Development in Tanzania*, Moshi  
University College of Cooperative and Business Studies, 2011

Richard, J. *Co-operative Societies Dispute Settlement in Tanzania and Unsettled  
Positions over Courts Authority*, Mkuki na Nyota, 2012

Rutabanzibwa, A. *Resilience of Traditional African Co-operatives amidst Foreign Co-  
operatives*: Vol. 6(2) of 2021

Urio, A. *The Co-operative Law in Tanzania*: Safi Publishers, 2019.

Sizya, J. *The role co-operatives play in poverty reduction in Tanzania*: Paper presented  
at the United Nations in observance of the International Day for the Eradication  
of poverty on 17 October 2001.

## JOURNALS

United Republic of Tanzania Ministry of co-operative and marketing, Vol. 6, (2021),

The Co-operative Reform and Modernization Program (CRMP), Vol. 4, (2015).

Legal Framework Analysis National Report in Tanzania Vol. 7 (2021).

## WEBSITES

[Http://www.administrativelawmatters.co](http://www.administrativelawmatters.co),

<http://www.Adrc.racinecounty.com>

<Http://www.ContemporaryAmericanSociety>

<https://www.researchgate.net>

[www.lawshelf.com](http://www.lawshelf.com)

<http://www.Scholarlycommonslaw.case.com>

[www.vocabulary.com](http://www.vocabulary.com)