

# **RUAHA UNIVERSITY COLLEGE**

*(A constituent college of St Augustine University of Tanzania)*



**RUCO**

**Faculty of Law**

**License for Keeping Domestic Animals: a Comparative Analysis on  
Tanzania and South Africa on the Law Governing Animal's Liability  
Research Paper Submitted in Partial Fulfilment of the Requirements for  
the Award of the Bachelor of Laws Degree (LLB) of Ruaha University  
College.**

By

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Prepared under Supervision of

**Mr. Mwakisoma Messiah**

At the Faculty of Law

**June 2014.**

## **CERTIFICATION**

The undersigned hereby certify that, he has read and hereby recommends for acceptance by the Ruaha University College, for a Dissertation titled **License For Keeping Domestic Animals: A Comparative Analysis On Tanzania And South Africa On The Law Governing Animal's Liability** in the fulfilment of the requirements of the Bachelor degree in law (LL.B) at the Ruaha University College.

.....

Mr. Mwakisoma Messiah

(Supervisor)

On the .....day of ..... 2014.

**DECLARATION**

I, **MOLLEL THOMAS ISRAEL**, do hereby declare that the work presented in this dissertation is based on my own original research and has not been submitted to any other University or Institution for a similar or any other degree award. All literature referred to and used in this work have been sufficiently cited and acknowledged accordingly.

.....

Mollet Thomas Israel

**(Author)**

On the .....day of.....2014

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## **DEDICATION**

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## **LIST OF STATUTES**

The Animal Welfare Act [no.19 of 2008]

The Animal Disease Act [no.17 of 2003]

The Animal Act 1971

The Cape Town Animal Bylaw Act 2005

The City of Johannesburg Metropolitan Municipality Bylaw Relating to Dogs and Cats [2010]

The Constitution of United Republic of Tanzania 1977 (as amended time to time)

The Constitution of the Republic of South Africa [no.108 of 1996]

The Local Government Municipal System Act [no. 32 of 2000]

The Performing Animal Protection Act [no.24 1935]

The Society for the Prevention of Cruelty to Animals Act

The Police Force and Ancillary Service Act

The wildlife Convention Act [no.05 of 2009]

## **LIST OF ABBRIVIATION**

TAWESO- The Tanzania Animal Welfare Society

TAPO- The Tanzania Animal Protection Organization

WSPA- The World Society for the Protection of Animals



## LIST OF CASES

*Brock vs. Richards* (1951) 1 KB 529

*Ellis v. John stone* (1963) 2 Q.B. 8

*Gomberg v. Smith* (1963) 1 Q.B. 25

*Searle v. Wall bank* (1947) AC 341

*William Alfred's case* (1610), 9 CO.REP. 576

## **ABSTRACT**

Basically this research examines the law that regulate the licensing process for domestication of animal in United Republic of Tanzania in comparison analysis with the Republic of South Africa. The main coverage is on the licensing and registration requirement for domestic animal like cats and dogs in Tanzania.

In the course of this study it was revealed that in Tanzania, there is no law that require or regulate the registration of domestic animal such as cats and dogs. Therefore in Tanzania any person can domesticate pet/companion/ domestic animal without any due restriction by the law. The researcher examine that the situation is not the same in the Republic of South Africa where the law is very clear as to the law that regulate the domestication of animal.

The research show that because of the absence of the law that regulate the domestication of animal in Tanzania, then majority of the people have a tendencies of domesticating pet animal more than how they can provide for the basic requirement and ensuring they welfare at large. It is in this regard therefore that in Tanzania there are so many stray animals wondering here and there without knowing what and where to eat.

Finally, the researcher concludes this work by advising the government and parliament at large to come up with a law that will regulate the domestication of the animal in Tanzania

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## CHAPTER ONE:

### GENERAL INTRODUCTION

#### 1.0 Backgrounds to the Problem

The domestication of animals in the oldest documented instance of keeping animals in captivity<sup>1</sup>, this process eventually resulted in a company or by labour of human being probably the earliest known domestic animal was dog, likely 1500B.C<sup>2</sup> among hunters and gathers in several locations<sup>3</sup>perhaps the internal steps towards domestication were largely through the widespread human practice of making pets captured young wild animals<sup>4</sup> In the Egyptian paintings Assyrian sculptures reveal that by the time of civilization there are different shapes of sized of dog are likely the present day “Pekingese” existed by 1<sup>st</sup> century AD in china.<sup>5</sup> The first animal known to have been domesticated as a source of food are sheeps in the Middle East north Iraq as called now?<sup>6</sup>From 400BC oxen are harmless and put to work as well as goats cattle and pigs in 700BC in western Asia and domestication date is estimated to fall between (9-11 thousand years) ago.<sup>7</sup> In United Kingdom not only domestic animals were kept but also dangerous (wild) or domesticated animals<sup>8</sup> also in 1875 the formation of the national anti-vivisection society and the first law and concerning the use of animals in science passed in 1876<sup>9</sup>

However since the domestication of animals have got two major impact, that is to say, domestication of animals is likely to injure or cause damage to other and also depriving of the

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<sup>1</sup> B. Stephen, why animals choose domestication, the covenant Yale university of the wild,(1999),252

<sup>2</sup> E. O. Price, Animal Domestication and behaviour, CABI Publishing 2002.11

<sup>3</sup> [www.historyworld.net/wrldhis/plaintexttheories.asp?](http://www.historyworld.net/wrldhis/plaintexttheories.asp?)(accessed on 7<sup>th</sup>novermber 2013)

<sup>4</sup> [www.britannica.com/EBchecked/topic/453505](http://www.britannica.com/EBchecked/topic/453505).(accesed on 7<sup>th</sup>novermber 2013)

<sup>5</sup> *Supranote,4*

<sup>6</sup> *ibid*

<sup>7</sup> *Supranote,1*

<sup>8</sup> <http://www.rspca.org.uk/allaboutanimals/wildlife/captivity/licences>.(accessed on 8<sup>th</sup> November 2013)

<sup>9</sup> [Http://www.animallaw.info/article/ousawa.htm](http://www.animallaw.info/article/ousawa.htm)(accessed on 6<sup>th</sup> November 2013)



animal welfare and rights, this process have been not without regulations to cater for that problem. The earliest legal regime to exist is that which relating to the animal liability and the current one is that which relating to the welfare and rights of animals. Therefore some countries like Republic of South Africa made an attempt to come up with the regulations that requires the keeper of domestic animals like cats and dogs to register and licensing their animals.

In Tanzania there about 129 recognized tribes with the distinctive features and reputation and about 500BC Bantu speakers seems to have adopted production and cattle keeping.<sup>10</sup> One of them is Maasai who lived and survived with milk, meat and blood it is believed that over 200years they grazed animals<sup>11</sup>

Although an Animal welfare issue seems to have been linked to the development which took place in the United Kingdom the same efforts have been adopted in Tanzania.<sup>12</sup>The Tanzania society for prevention of cruelty to animals in (1960-1980) to an extent of acquiring landed property in dare salaam was an earliest effort in our country but faded away in 1990-2000.<sup>13</sup> However to enhance animal welfare like of<sup>14</sup> also there were other acts like *Animal Pound Ordinance cap 151*, *Cattle Grazing Ordinance, cap 155*, *Animals Disease Ordinance cap156*. In addition the 1995<sup>15</sup> conference in Arusha pointed out the absence of Animal Welfare in the country and that animals are in so many aspects neglected and mistreated and tortured, no program for animal control which is under Tanzania Society for prevention of cruelty to

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<sup>10</sup> A. skinner, Tanzania and Zanzibar, new Holland publishers(2005),56

<sup>11</sup>*supranote,138*

<sup>12</sup> D. M. boom, Indicators of Poor Welfare, British veterinary journal,1986,438-439

<sup>13</sup> <http://www.mifugo.go.tz> accessed on 13<sup>th</sup> November 2013

<sup>14</sup> Animal protection ordinance cap 13 of 1947

<sup>15</sup> <http://infojep.com/aspa/index.htm#>.(accessed on13<sup>th</sup> November 2013)

animals.<sup>16</sup> Because of lack of clear law for regulating domestic animals, things like registration and licensing are not well provided by the law.

## 1.2 Literature Review

The concept of registration of animal especially pet in Tanzania seems to be a new issue. The reasons for this can as well be stated to be a little influence that is in existence in relation to animal welfare in our country. That is to say, very little has been therefore written down in as far as animal registration is concerned. But again it should be remembered that in other jurisdictions there are so many authors who have devoted much of their effort to discuss about the animal welfare and registration at large. Their writings are of very importance if discussed in this part since they have a great relation with this research and in Tanzania at large.

Gerald<sup>17</sup>, the author of Anglo-American law regarding animals is almost totally devoted to the pragmatic study of the nature and extent of ownership of animals and the rights and responsibilities arising there from. This narrow view of the bond between men and animals is eloquently expressed in the confident and innocent assertion of William Blackstone that "In the beginning of the world we are informed by holy writ, the all bountiful creator gave to man dominion over all the earth, and over the fish of the sea, and over the fowl of air, and over every living thing that moves upon the earth<sup>18</sup>. This is the only true and solid foundation of man's dominion over external things. Despite the presence of this divine authority that man has been given by the Gods toward animals of taking control and care to them, in Tanzania there is no

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<sup>16</sup> *Supra note, 13*

<sup>17</sup> G. Magavero, *Animals and the Law: A Selected Bibliography*, fall winter, (1973)<sup>1</sup>133-136

<sup>18</sup> This domination of man to animal is traced from the biblical point of view, See Genesis Chapter 1 verse 27-30 of the King James Version.

positive steps in case of registration and control of stray dogs and cats in our major cities. This research is intending to highlight this problem

Brooman<sup>19</sup> in the process of explaining the term domestic animal he defined domestic animal as any horse, ass, mule, bull, sheep, pig, goat, dog, cat, and other animals of whatsoever kind or species and whether quadruped or not which fame is or which has been or is being sufficiently tamed to serve same purpose for the use of man. The author pointed out the importance which animals have to the man, but in reality the writer has fail to entertain the animal liability case and how to keep and applications on the permits which it will be explained in this research.

Shanthakumar<sup>20</sup> emphasized on preventions of cruelty to animals and preventions against the inflictions of unnecessary pain and suffering on animals, animals always play a central role in Hindu perception, thus every God and Goddess is associated with a partial or animals as its vehicle or vahana<sup>21</sup> in this India especially wild animals and little about domestic animals example cow, On the other side of the coin another group of author have contended on prevention animals cruelty and not license to keep animals and its obtainment.

However on the other hand the author, LEE <sup>22</sup> scrutinized as to what presents an innovative animal rights theory. He put forward that wild animals, due to their autonomous nature, are endowed with rights, but domesticated animals lack rights because they are not autonomous. With that theory in mind, Hall outlines ideas about how humans are obligated to treat both wild and domestic animals. Hall first argues that the rights of wild animals require that humans let them alone. Yet, despite the fact that domestic animals lack rights under Hall's theory, Hall

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<sup>19</sup> S. Brooman, law relating to animals, Cavendish publishing, 1997, 227

<sup>20</sup> S. Shanthakumar, Introduction to Environmental Law, wadhaw & company Nagpur publishers 2003<sup>23</sup>301

<sup>21</sup> *Supra note 19*, 309

<sup>22</sup> L. Hall, Bringing Animal Rights Philosophy Down to Earth, hereinafter Hall, 2010,243

argues that humans are required to care for them because it is humans who brought them into existence. While the many people believes that Hall's theory is indeed innovative and appealing, they ultimately concludes that it cannot explain why domestic animals completely lack rights and that the implications of the theory for how they are to be treated are unsatisfactory. On the other side of the coin another group of author has contended on prevention animal's cruelty and not license to keep animals and its obtainment.

David<sup>23</sup> this author was stress much on injury caused by animals or liability for domestic animals, for instance, "strict liability to animals especially domestic animals, under common law both from 1857 until today, an owner of domestic animals not to be known to be abnormally dangerous is strict liable only for harms caused by animals while trespassing"<sup>24</sup>generally the author stress on the liability caused by domestic animals when trespassing but he failed do stress on licence of keeping the domestic animals which will be covered in this research

### **1.3 Statement of the Problem**

In Tanzania license to domestic animals seems to be clear that, the procedures to obtain license to domestic animals is only provided to companion animals as under the Animal Welfare Act<sup>25</sup>. It only stated license on animal breeding<sup>26</sup>and the law does not states how many companion animals are to be kept and the prescribed fees per year and what are the penal sanction for those who delay payment. License to keep animals like, sheep, goat, cow, horse, rabbit and domestic birds are similarly not mentioned at all. Accordingly the condition subject to which license is held is not enumerated and this can have two possible effects: one is that the keeper of animal is capable of escaping liability whenever harm or injury is caused by the said

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<sup>23</sup> W.D.david, Basic Tort law,cases statutes and problems, Aspen publishers, 2006, 633-640

<sup>24</sup> *Supra note 23*

<sup>25</sup> No.19of 2008

<sup>26</sup> S.21 of Animal Welfare Acts no.19 of 2008

animal. The second probable consequence for failure to have registration and licensing process is that the animal welfare protection will be at stake.

In South Africa the system is defiantly different. The Municipal Manager of the Municipality of Modimolle provides in extensor the requirement of licensing procedures for the dog and cats. By invoking the power under section 13 of the Local Government; Municipal System Act<sup>27</sup> read with section 162 of The Constitution of the Republic of South Africa, 1996<sup>28</sup>, publishes the Modimolle Local Municipality: By-laws Relating to Keeping of Animals, Birds and Poultry and Businesses involving the Keeping of Animals, Birds, Poultry or pets, which have been approved by the Municipal Council was passed. The application of and renewing of license is governed with The Performing Animals Protection Act<sup>29</sup>, under S.2 (2)<sup>30</sup>, state that, *“a report from the district commissioner of police of the district in which applicant resides regarding fitness to be a licensee”*, it must be accompanied with R.50 in case an application for granting of a licensee and R.30 for the renewal<sup>31</sup>, as under S.2(3) of the said act, *“the magistrate before considering an application for granting or renewal of the license; he may request all available information regarding the applicant from the record of local animal welfare organization and such other information as he may require”* and every applicant for the renewal of a license shall be made on or before 31<sup>st</sup> day of December of the year in respect as provided under S.2(4)<sup>32</sup> there are several conditions in which the license shall be followed including a police license and certificate as provided under S.3<sup>33</sup>. Further, the Johannesburg Dogs and cats by laws provide the procedures

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<sup>27</sup> Act 32 of 2000

<sup>28</sup> Act 108 of 1996

<sup>29</sup> The Performing Animals Protection Act No.24 of 1935

<sup>30</sup> *ibid*

<sup>31</sup> S.2(2)(b) The Performing Animal Protection Act

<sup>32</sup> *supra note, 27*

<sup>33</sup> No.24 of 1935

and condition for license in that city. The same things can be seen in the Cap Town Animal by law 2010.

#### **1.4 Hypothesis**

It seems clear that, procedures to obtain license to domestic animals in Tanzania are not well stated and analyzed under Tanzanian statutes compared to the same procedures as are provided by the law in the Republic of South Africa.

#### **1.5 Objectives of the Study**

The objectives of this research have been divided in to general and specific objectives.

##### **1.5.1 General objective**

In this research, the general objective was focused on making a thorough study and investigation on the Laws governing license and permits to keep domestic animals and nature of animal's liability in comparison analysis between republic of South Africa and United Republic of Tanzania.

##### **1.5.2 Specific objectives**

- This research was specifically aimed at making findings as to the circumstances where the license is to be held and authorization of keeping domestic animals in Tanzania.
- Accordingly, this research focused on observing the situation where the license is held and all procedures for obtaining the same license.
- Once again, this research devoted on making a close examination the law governing animal liability for the keeper who have no license in comparison to the one who is having the license

## **1.6 Significance of the Study**

It is expected that at the end of this research many significances or otherwise advantages shall be accrued from this work.

- To advice the government bring out improvement/amendment of animal licensing laws in Animal Welfare Act of 2008 through enactment by the parliament
- It will be used as basic teaching material in a field of tort concerning animal liabilities, animal licensing and permits
- To bring awareness to the people concerning the keeping of animals and their related right at large

## **1.7 Research Methodologies**

The whole process of collecting information for the purpose of accomplishing this research shall use both primary and secondary method of collecting data.

### **1:7.1Primary method**

Primary method of data collection was employed in my research where upon distant interviews with some knowledgeable person in the field of tort Law was employed to a large extent. In this method, correspondence through telephone communication and E-mail communication created an environment for gathering the information related to my research problem. The most favoured group in this method were an officials from international and non international organization, officials from South African embassy in Dares Salaam Tanzania and the prominent lawyers from inside and outside Tanzania.

The reasons for using this method of data collection was to get the first hand information and this counted much on my research problem

### **1.7.2 Secondary methods**

The research methodology which was adopted at large is library research and in this regard therefore, Ruaha University College Library, Tumaini University library, South African library in Dar salaam and university of Dar Es Salaam library was visited in most cases. Under this method of data collection the documentary research/ survey was given much concern and consideration. This is to say the information from different books, Articles of the journals, case laws, conventions, newspaper, presentation paper or speeches and commentary were of very importance in the process of gathering the information. The advantages of this method is that it helps in gathering second hand data that relate most to the research problem and hence possible a comparison analysis to the already existing literature on the same matte

### **1.8 Scope and Limitation**

The coverage of this research was on the rules regulating license and animal liability in Tanzania and South Africa. The case study was therefore on the Tanzania and South Africa conducts particularly in discussing a license to keep domestic animals in most circumstance. Accordingly it should be recalled that license to keep domestic animals as used in this research it meant the application of license, the prescribed fee to be paid, and to grant permit



## **CHAPTER TWO**

# **INTRODUCTION TO ANIMAL DOMESTICATION: HISTORICAL PERSPECTIVE**

### **2.1 Introduction**

In this chapter the researcher is intending to provide the general overview as to what does animal mean and its categories, the history of animal domestication in mankind, the beginning of the emergency of the laws that regulate the animals keepers and those who do not keep the animals.

### **2.2 Definition of Animal**

Generally, animals have played a large part in the lives of humans throughout our history, becoming integral to our survival, our history and our very identity. It seems natural when incorporating and include animals in people's lives as much as possible for food, companionship, clothing, milk and slew. Bearing in mind the important nature of animal to human being it is therefore wise to know the meaning of the term animal.

It is somehow difficulty to define the word animal and that is why the term can be explained differently by different category of people .Owing to the difficulty surrounding the proper definition of the term animal the biological meaning of the term shall be used to narrate this term. Basically in biological sense, the term animal has been defined somewhere else to mean a living organism vertebrate which feeds on organic matter, typically having specialized sense organs and nervous system and able to respond rapidly to stimuli<sup>34</sup>. For the purpose of this research animals has to comprise those animals which are domesticated by man like Cows, goats, sheeps Rabbits,

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<sup>34</sup> T.Ingold, What is an Animal? Psychology Press.1994.8

horses etc and these are called domestic animals<sup>35</sup> and those animals which by their very nature are not domesticated by Human being like lion, zebra, monkeys, giraffes, Buffalo, elephants etc and these animals are famously known as wild animals<sup>36</sup>. In common law animals are divided into domestic and captive animals.

### **2.3 The History of Domestication of Animals.**

Before tracing the history of animal domestication the researcher thinks it is proper to elucidate and provide detailed meaning of the term animal. Animal domestication is what scholars call the process of developing the mutually useful relationship between animals and humans. It is the process of changing the character and behavior of a wild animal to suit the human environment<sup>37</sup>. Over the past 12,000 years; humans have learned to control their access to food and other necessities of life by changing the behaviors and natures of wild animals<sup>38</sup>. All of the animals that we use today, such as dogs, cats, cattle, sheep, camels, geese, horses, and pigs, started out as wild animals but were changed over the centuries and millennia into tamer, quieter animals. Some of the ways people benefit from a domesticated animal include keeping cattle in pens for access to milk and meat and for pulling plows; training dogs to be guardians and companions; teaching horses to adapt to the plow or take a rider; and changing the lean, nasty wild boar into a fat, friendly farm animal.

Different animals were domesticated in different parts of the world at different times. For instances Dog is approximated to have been domesticated since 30000 BC, sheeps 8500BC in Western Asia, Goats 8000BC in Western Asia, Cattle 7000BC in Eastern Sahara, Chicken

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<sup>35</sup> B.Kalman and G.Nickless, What is the animal kingdom? Grabtree Publishing Company,1998.4

<sup>36</sup> M.E.Fowler, Restraint and Handling of wild and domestic animal Wiley,2009, 7

<sup>37</sup> E.O.Price Animal Domestication and behaviour, CABI Publishing 2002.11

<sup>38</sup> *ibid*

6000BC in Asia, Donkey 40000BC Africa and Honey Bee Western Asia 3000BC just to mention a few<sup>39</sup>

## **2.4 History of the Growth of the Law of License for Domestication of Animal under Common Law**

Before examining the history of the license for domestication of animal it is better to bear in mind that license is two folded purposes that are:-

- **Protection of animal welfare:** Animal welfare is the physical and psychological well-being of animals. Animal welfare science uses measures such as longevity, disease, immune suppression, behavior, physiology, and reproduction, although there is debate about which of these indicators provide the best information about the condition of animal but at least they provide a basic guideline as to the behavior of animal in particular time. Animal welfare means how an animal is coping with the conditions in which it lives<sup>40</sup>. An animal is in a good state of welfare if (as indicated by scientific evidence) it is healthy, comfortable, well nourished, safe, able to express innate behavior, and if it is not suffering from unpleasant states such as pain, fear, and distress. Good animal welfare requires disease prevention and veterinary treatment, appropriate shelter, management, nutrition, humane handling and humane slaughter<sup>41</sup>. Therefore, since animals need a special protection in order to maintain their welfare some authorities may impose restrictions on

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<sup>39</sup>K.K.Hairst,Animal domestication, Available on <http://archaeology.about.com/od/dterms/a/domestication.htm> Retrieved on 20 December 2013

<sup>40</sup> M. Bekoff and C. A. Meaney, Encyclopedia of animal rights and animal welfare, Rout ledge Publishing,2013.58

<sup>41</sup> R. P. Haynes, Animal Welfare: Competing conception and their ethical implication ,University of florida.2010.97

the domestication of a certain category of animal especially when it is in the opinion of the public or authority that the intended keeper cannot in reasonable circumstances provide the necessary environment to the animal welfare. That is why the requirement of license for the domestication of a certain animal is mandatory in the modern world.

- In developed country like United State of America (USA) licensing your pet is the best way to make sure that the owner will be reunited again with his/her pet when get lost. The Pet License office number is on the license. If someone finds your pet, they will call the number, get your contact information, even after hours, and reunite you and your pet

License fees which are paid to the authority support the return of hundreds of lost pets to their homes and help adopt thousands of homeless pets to new families every year<sup>42</sup>. Pet license fees also fund investigation of animal neglect or cruelty, spay/neuter programs to reduce pet overpopulation, and community education services

- **Liability purpose:** Some animals are too dangerous (*Ferae Naturae*) to be domesticated in the same manner as farm animal can be domesticated. Animal like lion, leopard, Rhino and many carnivorous animals cannot in an ordinary circumstance be domesticated without causing substantial damage to the people, property and even to the fellow animals. Therefore, in order to ensure the safety and security of other people and their property, an approved authority may impose an obligation and duties to the keeper of the aforesaid animals. These duties and obligations include among other things the requirement of obtaining a license for the

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<sup>42</sup> M.C Jasper, Pet Law, Oceana Publication, 2006.14

domestication of those animals which will contain condition like quality of the premises where an animal will be kept under control.

Historically a man could domesticate an animal without any complication or the requirement of obtaining a license from an approved authority for that purpose. That being the case any person who was capable of capturing an animal any domesticate the same then was free to do so. The requirement of having a license to domesticate animal was not known in the history of mankind. The history only shows that a person (keeper of a dangerous animal) was strictly liable for the harm or injury that was caused by his animal<sup>43</sup>. This history goes as far back from the biblical point of view. And for non dangerous animal (Natural mensuae) a keeper of the same was only liable for the harm that was caused by the animal if that animal though not dangerous by nature by had tendency of turning into hostile and that character was known to the keeper. In the bible in the book of

"If an ox gores a man or woman so that they die, the ox is certainly to be stoned and its flesh may not be eaten, but the owner of the ox is free from liability. If, however, the bull has had the habit of goring and the owner has been warned but has not kept it penned up and it kills a man or woman, the bull is to be stoned and its owner also is to be put to death'<sup>44</sup>.

The same trend of liability was seen under common law. Generally under common law the owner or keeper of an animal may become liable under the general principles of tort law just as the owner of any chattel may become so liable. If, for example, a person brings a dog onto the highway he may be liable in Negligence if he does not exercise reasonable care

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<sup>43</sup> C. W. White, Essays in European History: Selected from annual meeting of 1990-1991 volume III, University Press of America, 1996.23

<sup>44</sup> King James Version, Holy Bible in the book of Exodus Chapter 21 verse 27-28, Remnant Publication. 2007.54.

controlling the dog<sup>45</sup> however, as a general proposition, the owner of animals is under no liability to prevent them from straying, even though the straying may take a form of leaping over or through hedges.<sup>46</sup> No liability attaches to the owner of such animals simply because he has allowed them to escape from his land.

There is no obligation in such circumstances to fence one's land and to keep one's domestic animals in. The rule although found in earlier common law is usually referred to as the rule in *Searle v. Wall bank*<sup>47</sup>, the plaintiff was injured when at 1.30 a.m. on 1 April 1944 the bicycle which he was riding collided with the defendant's horse on a public highway. The plaintiff's front light was masked in accordance with war-time regulations at the time of the accident. The field, in which the horse was kept, with other animals, adjoined the highway and the horse escaped because of a defective fence. The House of Lords in dismissing the plaintiff's appeal held that the owner of a field adjoining the highway is under no *prima facie* legal obligation to users of the highway so to keep and maintain his hedges and gates along the highway as to prevent his animals from straying onto it. Nor is he under any duty to users of the highway to take reasonable care to prevent any of his animals, not known to be dangerous, from straying onto the highway.

The justification for the rule in *Searle v. Wall bank* seems to be historical. It has been stated that "in early times, very few roads were fenced off from the adjoining land, and it would have been a considerable imposition on the owner of cattle if he had been compelled to prevent them from straying". Moreover, road users were usually taken to have accepted the risks inherent in road travel and this seems to have included the possibility of the

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<sup>45</sup> *Gomberg v. Smith*, [1963] 1 Q.B. 25; [1962] 1 All E.R. 725

<sup>46</sup> *Brock vs. Richards*

<sup>47</sup> [1947] A.C 341

presence of straying animals. In recent years, however, because of the increasing speed with which road traffic moves, because of the increasing number of wide and fast-surfaced roads, and because of the serious consequences which may occur nowadays if fast moving traffic collides with animals on the highway,

A great deal of dissatisfaction has been expressed about the rule in *Searle v. Wall bank*. Judicial precedents have put limits on the scope of the rule is;

- First it seems that it does not apply in Ireland, if the animals are straying on the roadway in sufficiently large numbers to cause an obstruction.
- Second, it was held in *Brock vs. Richards*<sup>48</sup> that the rule does not apply to wild animals or to domestic animals who show peculiar characteristics or where scienter is proved. Thus, if a person knows that his dog has a mischievous propensity to chase passing motor-cyclists he may be liable in scienter if he allows his dog to stray onto the highway.
- Third, it was held in *Gomberg vs. Smith*<sup>49</sup>, it does not apply if animals are brought onto the highway.
- Fourth, in *Howard v. Bergin*, the judge O'Connor & Co. O'Connor J. was inclined to limit the application of *Searle v. Wall bank* to rural conditions. He was of the opinion that the defence that there was no obligation on adjoining owners to fence and that there was no liability for any damage caused by straying animals in any circumstances, was too wide a proposition to be accepted as law. Although it was unnecessary for him to decide the question in the case before him, and although he could find no authorities to support him, he was inclined to the view that the common law which relieves occupiers of land

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<sup>48</sup> [1951] 1 K.B 529,535

<sup>49</sup> [1963]1Q.B25

adjoining the highway from fencing does not apply to cities. City dwellers should according to O'Connor's view, be obliged to fence.

- Lastly in the case of *Ellis v. Johnston*<sup>50</sup> it was stated that where there were special circumstances such as peculiar topography or where the animal was engaged in an activity which could only be carried on under a high degree of human control it has been suggested that liability might also arise.

Again, if a person keeps animals in such numbers that they unreasonably interfere with his neighbours' enjoyment of his property then the owner of the animals may be liable in Nuisance<sup>51</sup>. Similarly, will the owner be liable if the noise or stench which such animals emit unreasonably interferes with the quiet enjoyment of adjoining property. The long history of liability for keeping animal also became evident when one realized that French Civil Code 1804 devote one of its rare five Articles on the law of delict to the problem. Article 1385 was first interpreted to mean that in the event of damage by animal a rebuttal presumption arose in the part of the keeper<sup>52</sup>.

It should be born in mind that the above explanation is just the history of animal liability in common law and thus in relation to the history of the license for the domestication of animal is somehow obscured. It is only within the 20<sup>th</sup> century when the concept of license for domestication of animal came to emerge. For instance the minority rule in South Africa in 1935 passed the law Known as The performing animal protection Act<sup>53</sup>In Britain, the keeping of some dangerous animal like wolves is strictly controlled under the Dangerous Wild Animals Act 1976 and a license is needed to own one.

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<sup>50</sup> [1963] 2 Q.B. 8

<sup>51</sup> *William Aldred's Case* (1610), 9 Co. Rep. 576

<sup>52</sup> G.Bruggemeier, *Mordenizing Civil Liability Law in Europe, China,Brazil,and Rushia*, Cambridge University Press.2011.105

<sup>53</sup> The performing Animal protection Act ( Act No24 of 1935)



Again in United Kingdom Zoo Licensing Act 1981 .The main effect of the Act is to regulate zoos by requiring them to be licensed by local authorities. However the Act did not extend pet shops. The key point to note here is that premises keeping wild animals that are open to the public may require consideration for a license under the Zoo Licensing Act. Such premises include not only “traditional” zoos, but also public aviaries, butterfly houses, safari parks, rescue centers, farm parks, sanctuaries<sup>54</sup> etc. In the United States, the keeping of pure wolves is prohibited by the U.S. Endangered Species Act of 1973

## **2.4 The history of license for domestication of animal in Tanzania**

Administration of justice during the pre colonial time depended heavily on the social economic and political organization of the society in Tanganyika. Two systems of administration of justice namely; The Centralized and the Non-Centralized systems could be identified at the time<sup>55</sup>. The Centralized Systems was applicable to societies with chiefs who played both roles of adjudicators and that of governors. In the Non-Centralized systems the entire community took part in the adjudication of disputes. However in both systems there were no formalization of procedure in adjudication, the customs of the respective societies prevailed in the process<sup>56</sup>.

During the colonial period in both German colonial period and British colonial time various laws were enacted to cater for the need of administration of justice and colonial need. Generally the animal laws as it is known today in Tanzania did not existed before colonialism. In essence there were no laws governing the licensing process for domestication of certain animals before

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<sup>54</sup> <http://www.bornfree.org.uk/campaigns/zoo-check/zoos/zoos-in-the-uk/zoos-and-sanctuaries>

<sup>55</sup> C.M.Peter and H.K.Bisimba, Law and Justice in Tanzania: A quarter of century of the Court of appeal, Mkuki Na Nyota publisher 2007.30

<sup>56</sup> J.D.Moor et al, Our Laws, Their Land: Land Law and Land use in modern Colonial societies, Lit verlag, 1994.54

colonialism. However after the introduction of the German colonial rule some law that in one way or another relating to the aspect of animal was also introduced though did not touch the licensing process for domestication of animal as shall be discussed in this research. In 1891, the German colonial rule introduced the laws controlling hunting<sup>57</sup>. These laws regulated the off take, hunting methods and trade in wildlife, with some endangered species being fully protected. Selous Game Reserve was the first game reserve established in 1905 by the Germans and was gazetted in 1922.

After independence in 1974, the parliament passed Wildlife conservation Act<sup>58</sup>. Under this law the requirement of license for hunting, capturing any wild animal is mandatory.

## **2.5 Categories of animals**

Animals as we know them today are of different types depending on who classifies them. There are those who classify animals as wild animals and domestic animal, male and female animal, farm animal and companion animal etc. However, for the purpose of this research, animals are hereby categorized in to Dangerous and non dangerous animals, and farm and pets animal or companion but much concern shall be on procedures or licensing process for domestication dangerous animal by nature and pets. The main goals of classifying these animal into dangerous and non dangerous is to establish liability for the harm that may in one way or the other be caused by either of the category. It should be recalled that the classification of animal is very important because one category of animal created a liability to the keeper of the same animal which is very distinct from the liability that may be caused by other category of animal.

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<sup>57</sup> <http://www.wildlife.go.tz/page.php%3Fid=10.html>

<sup>58</sup> Wildlife Conservation Act( Act No 12 of 1974)

Correspondingly, it is in the opinion of the researcher that procedural requirement for domestication of animal differs from one category of animal to another. That is to say, for instance the requirement of license for domestication of animal is very strictly observed for an intended keeper of dangerous animal and pet animals compared to an intended keeper of farm animal (or any animal known by its nature that is not dangerous animal) . But again the researcher is intending to look as to whether there is any procedural requirement for domestication of these animal and if yes then whether there is any substantial differences of the procedures for domestication of these animals in Tanzania and south Africa.

### **2.5.1. Dangerous animal**

The word dangerous animal may seem to be very normal and ease to be understood but legally it may pose a great challenge in the sense that different jurisdiction treat animals differently. For example in Thailand elephants are not regarded as dangerous animal while the same animals in Africa are regarded as dangerous<sup>59</sup>. In one jurisdiction dangerous animal was once defined to mean:-

‘An animal which is owned or harboured for the purpose of fighting; or Has twice within a forty-eight-month period bitten a person engaged in a lawful activity; or Has once bitten a person engaged in a lawful activity, causing death or serious injury; or Has twice within a forty-eight-month period shown the disposition, tendency, or propensity to attack, bite, or otherwise cause injury to a person engaged in a lawful activity; or Has three times within a forty-eight-month period killed, seriously bitten, inflicted injury, or otherwise attacked any animal off the property of the owner or keeper; or Has twice within a forty-eight-month period killed, seriously

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<sup>59</sup> [https://www.google.co.tz/?gws\\_rd=cr&ei=v6geU8DlCoPOhAehrICIBQ#q=elephant%20in%20Thailand](https://www.google.co.tz/?gws_rd=cr&ei=v6geU8DlCoPOhAehrICIBQ#q=elephant%20in%20Thailand)

bitten, inflicted injury, or otherwise attacked any animal, on the property where that animal is kept'<sup>60</sup> However, in this research the word dangerous animal let it be understood in a simple language as an animal that is hostile by nature and can cause injury to human being, or to other fellow animal or property . In addition to that, even those animals that are not dangerous by their nature but have a tendency of turning into hostile animal in some specified period of time then will be regarded as dangerous animal. The free online dictionary defines a dangerous animal as an animal that involving or filled with danger; perilous or being able or likely to do harm<sup>61</sup>. And a more comprehensive definition of dangerous animal as suggested in this definition is that dangerous animal is that animal which has inflicted severe injury on a human without provocation while on public or private property or has killed a domestic animal without provocation while on public or private property or has been previously found to be potentially dangerous, the owner has received notice of such potential and the animal subsequently bites, attacks or endangers the safety of humans or domestic animals.

### **2.5.2 Non Dangerous Animal**

The difficulty that surrounded the definition of dangerous animal should not be expected in the way to define non dangerous animal because the later can be assessed as an opposite of the other. What the researcher is trying to impute is that non dangerous animal is that one which is not dangerous. Therefore as it is in this research non dangerous animal is any animal which is not hostile to human being by nature<sup>62</sup>

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<sup>60</sup> Available on [http://qcode.us/codes/elcajon/view.php?topic=6-6\\_22-6\\_22\\_010&frames=on](http://qcode.us/codes/elcajon/view.php?topic=6-6_22-6_22_010&frames=on)

<sup>61</sup> Dangerous animal, The Free online Dictionary, available on <http://www.thefreedictionary.com/dangerous> Retrieved on 27 january 2014

<sup>62</sup> S.P.Sigh, The Law of tortuous; includes compensation under consumer Protection Act. Universal law publishing co. 2010.286

### 2.5.3 Pet / Companion Animal/Domestic Animal

Another category of animal which is very important in this research is pet/ companion animal. Pet is any animal kept by human beings as a source of companionship and pleasure. However while a pet is generally kept for the pleasure that it can give to its owner, often, especially with horses, dogs, and cats, as well as with some other animals, this pleasure appears to be mutual. Thus, pet keeping can be described as a symbiotic relationship, one that benefits both animals and human beings<sup>63</sup>. As the keeping of pets has been practiced from prehistoric times to the present and as pets are found in nearly every culture and society, pet keeping apparently satisfies a deep, universal human need.

### 2:5:4. Farm Animal

Farm animals are those animals that are housed on a farm. Their primary purpose is to produce a product of some kind, whether that is fibres (wool etc), meat (beef etc), milk (cow or goat), eggs, and so on<sup>64</sup>. Farm animals can be kept by full time farmers, that is, their income is solely derived by what they produce on the farm, but they can also be kept by hobbyists, who do it more for the experience than the potential income<sup>65</sup>

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<sup>63</sup> Encyclopedia Britanica, available on <http://www.britannica.com/EBchecked/topic/453505/pet> Accessed on 27 January 2014.

<sup>64</sup> [http://www.petpages.com.au/find/farm\\_animal\\_breeders](http://www.petpages.com.au/find/farm_animal_breeders), Brock v

<sup>65</sup> F.J.M.Smulder, Welfare of production animal, Assessment and Management of risk, Wageningen Academic Publishingn 2009.391.

### **2.5.5 Conclusive Remark**

From the foregoing it is can be said that man and animal have lived together throughout the history of mankind. Similarly as the time went on, men have been able to control animals and these animals have been capable of being classified into various group.

## **CHAPTER THREE**

### **LICENSE FOR DOMESTICATION OF ANIMAL IN TANZANIA AND SOUTH AFRICA: LEGAL AND INSTITUTIONAL FRAMEWORK**

#### **3.1 Introduction**

In the previous chapter, the researcher tried to highlight the general introduction in the concept of animal domestication. In that chapter the researcher showed the historical background of the domestication of animals in various part of the world. It was therefore revealed that different kinds of animal were domesticated in different part of the world at a different time. In the same vein the research revealed that in ancient time people domesticated animals without any due restriction with an exception of the liability that could be imputed to the keeper of the said animal. Various kinds of animals were enumerated and finally the research showed the development and growth of the laws that regulated the domestication of animal in both Tanzania and Republic of South Africa.

Generally, in this Chapter the researcher is intending to go through the licensing process for the domestic animal only like Dogs and cats (Companion animal) in both Tanzania and Republic of South Africa. The researcher will revisit the legal and institutional framework for the domestication of animal in both Tanzania and Republic of South Africa. Accordingly the researcher will examine the meaning of license, conditions attached thereto and the consequences/ penalty for the breach of the said condition. Among other things this chapter will examine in detail the prescribed fees for license for the domestication of animal if any in both Tanzania and Republic of South Africa

The substantial differences between the licensing process for domestication of animal in Tanzania and the Republic of South Africa will be examined in detail.

### **3.2 Legal and Institutional Frame Work**

The regulation of animal in Tanzania and South Africa is subject to various law and Institution thereto. The following are just an elaboration of the legal and institutional framework governing the licensing of animal in both countries.

#### **3.2.1 Legal Framework**

Animal domestication in both Tanzania, Republic of South Africa and even in international arena is governed by multiple laws and institutions. It should be born in mind that, there is no law that specifically regulate the licensing process in either of the jurisdiction. However one should not misinterpret this assertion because license in various laws relating to animal will be discussed. Among of the laws in Tanzania that deal with licensing process includes:-

#### **3.2.2 Wildlife Conservation Act (Act no 5 of 2009)**

This law was passed by the parliament of the United Republic of Tanzania in 2009 to repeal and replace the Wildlife conservation Act<sup>66</sup>, and its main purpose is to protect and conserve the wildlife resource in the Country. The law creates some of the offences relating to hunting process. Under Section 40 it is an offence to hunt without license. Accordingly this law provide mandatory requirement of license for any person who wishes to engage in breeding,

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<sup>66</sup> Act no 12 of 1974



game sanctuaries, zoos, ranching, orphanage centers or farming game animals on the land he occupies<sup>67</sup> .

### **3.2.3. Animal Welfare Act<sup>68</sup>**

This law was passed for the purpose of ensuring the protection of the animal welfare and rights in accordance with the international standard for the protection of the animal rights. Under this law any person who intends to breed any companion animal for commercial purpose is required to obtain a license from an authorized officer<sup>69</sup>. The purpose of this license is to ensure that the whole process of breeding does not affect the welfare and the rights of such animal at all.

### **3.2.4. Animal Disease Act<sup>70</sup>**

This is an Act which was enacted to make provisions for control and prevention of animal diseases for monitoring production of animal products, for disposal of animal carcass and for other related matter. Just like other laws, Animal Disease Act under its section 22(1) and (2) <sup>71</sup> provides that any person who desires to deal with the farming import or export of fish, birds, reptiles, mammals, mollusks and animals other than livestock shall, for the purpose of disease control, register with the Director and Director shall upon registration and after consultation with the Directors responsible for Wildlife and for fisheries, issue a certificate that will require a license holder to keep records regarding tracking of animals, export and imports.

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<sup>67</sup> Section 89 of the Wildlife conservation Act

<sup>68</sup> The Animal welfare Act ( Act No 19 of 2008)

<sup>69</sup> *Ibid* Section 20

<sup>70</sup> Act No 17 of 2003

<sup>71</sup> *ibid*

### **3.3 Institutional Framework in Tanzania And The World**

#### **3.3.1 Animal Welfare Society (TAWESO) 1 Tanzania**

Tanzania Animal Welfare Society is registered non-profit organization with registration number (00/NGO/0492) which works to fight against all forms of animal cruelty and advocates public awareness campaigns on Animal Welfare in Tanzania. It address societal causes for poor animal welfare through advocacy of legislations and public awareness campaigns, humane animal education in schools and finding immediate improvement, handling and control of stray animals<sup>72</sup>.

#### **3.3.2 Tanzania Animal Protection Organization (TAPO)**

The Tanzania Animals Protection Organization (TAPO), a registered non-government organization, which has the mission of protecting all Animals from Tortures, Cruelty, Abused, Diseases and killings in the country of Tanzania. Its main aims are to foster and promote the compassionate to Animals improvement and development of any matter concerning the protection of Animals. It further aimed at providing understanding and appreciation of the Animals among the people of Tanzania without getting any profit.

#### **3.3.3 The World Society for the Protection of Animal**

The World Society for the Protection of Animals (WSPA) is an international organization which has been working to promote animal welfare for more than 25 years. Working on the ground with communities, owners and local partners, WSPA is active in over 50 countries. It has consultative status at the Council of Europe and the United Nations and collaborates with

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<sup>72</sup> Tanzania animal welfare society available <http://taweso.blogspot.com/> Retrieved on 3 February 2014

national governments, The Food and Agriculture Organization and the World Organization for Animal Health. WSPA is also the world leader in animal-focused disaster response and risk reduction working with partner organizations, governments, humanitarian groups and international agencies<sup>73</sup>. With 30 years of experience, we are often the only animal organization able to access disaster-struck regions.

### **3.3.4 The Police Force**

The police force is another important institution that normally essential in maintaining the peace and security, protecting people and their property in Tanzania<sup>74</sup>. It is established by the Police Force and ancillary Service Act. In relation to the animal welfare and protection in Tanzania it is the organ or institution which can play a very fundamental rule in doing so even if it is not provided specifically.

### **3.3.5 The Judiciary**

This is an adjudicative body in the Country. It is constitutionally established to determine the rights and duties of the people in the country<sup>75</sup>. Though the issue of license for the domestic animal is not provided in the constitutional but the court in deriving its power to dispense justice on every matter in Tanzania then even this can fall under its ambit.

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<sup>73</sup> World Society for the Protection of Animals October 2011 Submission from the World Society for the Protection of Animals International to the compilation document in preparation of the Rio+20 zero draft, Available on <http://www.uncsd2012.org/content/documents/121RiosubmissionWSPAinternational31oct.pdf>

<sup>74</sup> The police Force and Ancillary Service Act

<sup>75</sup> Article 107 of the Constitution of the United Republic of Tanzania 1977 ( Amended from time to time)

### **3.4 Legal and Institutional Framework in Republic South Africa**

The care of animals in South Africa is regulated by two Acts – namely the Animals Protection Act<sup>76</sup>, and the Performing Animals Protection Act. A third Act, the Societies for the Prevention of Cruelty to Animals Act<sup>77</sup>. This Act (governs the organization and management of animal welfare associations

#### **3.4.1 The performing Animal protection Act<sup>78</sup>**

This was the earliest Act which was enacted by the minority regime in the Republic of South Africa in 1935. This Act aimed at regulating the exhibition and training of the performing animal and use of dogs for safeguarding. In relation to licensing process the Act prohibit the training of the animal especially dog for exhibition and performing without a license.

#### **3.4.2 The Societies for the Prevention of Cruelty to Animal Act**

This Act establishes the National Council of Societies for the Prevention of Cruelty to Animals for purposes of control of societies for the prevention of cruelty to animals<sup>79</sup>. The society shall, among other things: determine, control and coordinate the policies and standards of societies, in order to promote uniformity, promote cooperation among societies, and prevent the ill-treatment of animals. The Board of the Council has certain regulatory powers in respect of

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<sup>76</sup> The Animal protection Act 1962 (Act 71 of 1962)

<sup>77</sup> The Society for the prevention of the Cruelty to animal Act , No. 169 of 1993

<sup>78</sup> The performing Animal Protection Act (Act No 24 of 1935)

<sup>79</sup> The South African Government Gazette No.15347, available on [http://faolex.fao.org/cgi-bin/faolex.exe?rec\\_id=108030&database=faolex&search\\_type=link&table=result&lang=eng&format\\_name=@ERALL](http://faolex.fao.org/cgi-bin/faolex.exe?rec_id=108030&database=faolex&search_type=link&table=result&lang=eng&format_name=@ERALL) Retrieved on 13February 2014

societies. Societies must be registered with the Council and shall comply with other rules set out by the Act<sup>80</sup>.

### **3.4.3 The Cap Town Animal by laws 2005.**

This is the bylaws that have been enacted by the council of the city and it mainly deals with the registration and licensing procedures, conditions, offences and penalty of dogs and cats in Cape Town. However by virtue of its Section 35 this by law does not only apply to the council only but it apply even to the state at large.

### **3.4.4 Johannesburg by Laws Relating To Dogs and Cats 2010.**

Just like the Cap Town Animal by law, this law deals with regulations of the cat and dogs in Johannesburg. It provide for the procedure of registration, requirement of license for the keeper of the domestic animals but also it provides for the offences and penalty for any person who contravene this by laws.

## **3.5 The Concept of License**

Generally speaking, the term license can be defined to mean a permit from an authority to own or use something, does a particular thing, or carry on a trade. It is a permission to engage in a certain activity, granted by the appropriate authority<sup>81</sup>. In most cases the license is given under the operation of law. That means, it is the provisions of the law which stipulate that a certain activities cannot be carried out without a valid license or permission from an approved

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<sup>80</sup> *Supra note 36, Section 4*

<sup>81</sup> J.William et al, *Defending the social license of farming: Issues, Challenges and New Direction for Agriculture*, Csiro Publishing, 2011.11.

authority<sup>82</sup>. Similarly, the same law should also stipulate as to which is the responsible authority for issuing a license and for what duration of time.

### **3.5.1 License for Domestication of Animal in Tanzania**

The United Republic of Tanzania like any other states in the world is composed of its main three arms of the state: Executive which is responsible for formulation and implementation of various policies and enforces the laws of a country<sup>83</sup>, parliament/legislature which is responsible for passing various legislation and judiciary that is responsible for interpreting the law and resolving dispute in the country<sup>84</sup>.

Now parliament in the process of performing its function of making the law, it has enacted various legislations which are in one way or the other have a direct or indirect relationship to the domestication, hunting, selling, breeding, and farming of animals in the land of United Republic of Tanzania. In those legislations there are some of acts or activities like hunting a wild animals or domestication of a wild and companion animal that cannot be done without a valid license from an authorized officer.

Before even going into the details of the licensing procedures and conditions for domestic animal in Tanzania, the reader should bear in mind that the rationale for having a requirement for the licence for the domestic animal is as pointed earlier in the previous chapter that it aimed at protecting the welfare of an animal. If animals are licensed, enforcement agencies are better able to identify and reunite them with their owners especially when got lost<sup>85</sup>. Confinement and

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<sup>82</sup> G.C.Oke, The laws as to licensing Inns&C.&C: Containing The license Act 1872, Butterworth Publishing (1972).18.

<sup>83</sup> J.Rabin, Encyclopedia of Public Administration and Public Policy:A-J, CRCPress.2003.561.

<sup>84</sup> S.Shetreet, The role of court in Society, Martinus Nijhoff Publisher.1988.1

<sup>85</sup> J.F.Wilson, Law and Ethics of veterinary profession, Order from Priority Ltd, 1988.74

control of animals is justified by the need to control diseases or prevent animals from becoming nuisances or injuring people<sup>86</sup>.

### **3.5.2 License under the Animal Welfare Act**

As it has been noted earlier this Act was enacted for the purpose of protecting the welfare of animal in Tanzania. The primary objective of this law was to ensure that any act/ activities done or which is performed to any animal especially farm animal and companion animal does not prejudice the standard welfare and rights of animal. Therefore, in this Act there are some of the activities that cannot be done to animal unless licensed. Two important activities shall be discussed here:-

### **3.5.2 Keeping and Breeding of a Companion Animal**

Keeping a companion animal is not a new term but it is like domesticating the same. However a new terminology has been introduced by the Act and this is breeding the companion animal. The question which can be raised at this juncture is what it means by breeding? The science of animal breeding is defined as the application of the principles of genetics and biometry to improve the efficiency of production in farm animals<sup>87</sup>. These principles were applied to change animal populations thousands of years before the sciences of genetics and biometry were formally established. The practice of animal breeding dates back to the Neolithic period (approximately 7000 BC)<sup>88</sup>, when people attempted to domesticate wild species such as caribou, goats, hogs and dogs.

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<sup>86</sup> R.J.Huss, “ Separation, Custody and Estate planning issues Relating to companion animal”<sup>74</sup> University of Colorado law Review,2003,196.

<sup>87</sup> W.J.Nauta, et al, Animal breeding in organic farming : A discussion paper, Luis Bolk Institute,2011.12, Available on <http://orgprints.org/4824/1/4824.pdf>

<sup>88</sup> L.Oliver, Scientific challenge to animal breeding and genetics, AgBiotect Net publisher, at 25 available on <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.41.4374&rep=rep1&type=pdf>

Section 20<sup>89</sup> prohibit the breeding of companion animal without a license and it is proper to reproduce it here

*“Any breeder or breeding establishment for producing a companion animal for commercial sale shall be licensed and regulated by a competent authority”*<sup>90</sup>. By virtue of this section any person who breeds a companion animal for commercial sale is required to be licensed by a competent authority. It should be emphasizes here that the competent authority vested with the power to oversee the animal welfare in Tanzania by virtue of this Act is the Animal welfare Advisory council.

### **3.5.3 Observation from the Animal Welfare Act**

From the observations which have been made in the Animal welfare Act, few important comments are demanding to be narrated in this juncture and these include the following:-

- The Act strictly provides and put it to be mandatory requirement that any breeder of the companion animal for sale must obtain a license for that purpose. The reason for it being as aforementioned that is for the purpose of ensuring that the welfare of animal is not prejudiced because that is the general objective of the animal welfare Act. John Magufuli when he was the minister for live stock said to the guardian News paper that

“According to the universal animal protection instrument, all animals deserve freedom that includes freedom from thirst, hunger and malnutrition, freedom from discomfort due to environmental hazards, freedom from suffering pains, injury and disease”<sup>91</sup>.

The then minister proceeded to remind that the Animal welfare Act has been enacted to carter for that purpose and therefore it should be complied with.

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<sup>89</sup> the Animal welfare Act[ no. 2008]

<sup>90</sup> Section 20(1) of The Animal welfare Act

<sup>91</sup> *Tanzania Penalty for Animal Cruelty upped to 10000*, The Guardian 5 November 2010



- The Animal Welfare Act though providing for the requirement of license to any breeder of the companion animal for sale it does not provide as to how that license can be obtained, fees for that service and the duration for the expiration or renewal of the said license and finally how many companion animal for sale a person may be required by law to breed.
- Accordingly the law does not provide for the requirement of license for the domestication of home companion animals (pet animals) like cat and dogs which are not for sale. It should be recalled in this circumstances that in country like Tanzania the requirement for the license of domestication of companion animal at home could be of very importance because the research shows that most of Tanzania domesticate cats and dogs at home however since there is no any legal restraint in the domestication process a single family can domesticate even more than four dogs and at least two cats. Nevertheless the welfare of these animals cannot be secured to the extent that it is obvious and apparent to see these animals wondering in streets and towns looking for food<sup>92</sup>. One reporter noted that Kinondoni Municipal is the largest of the three Municipals of Dar es salaam City with a population of about 2 million people; the Municipal is estimated to have more than 3000 stray dogs and feral cats with many colonies in old garages and areas around hotels and school dormitories where they scavenge to the rubbish pits to get their food. The stray dog and feral cat population has been increasing with time due to uncontrolled breeding<sup>93</sup>. This real

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<sup>92</sup> Dar Es Salaam flood disaster : Post flood animal helps Report by Tanzania Animal Welfare Society available on <http://www.animalkind.org/tanzania/Dar%20Floods.%20%20Post%20Floods%20Animal%20Help%20Report...pdf>

<sup>93</sup> Cold noses Foundation Available on <http://www.coldnosesfoundation.org/1000-dogs-and-cats-helped-in-tanzania/> ( Retrieved on 24 February 2014)

goes against the requirement of the universal recognition of the animal rights and welfare<sup>94</sup>

- The second important thing to note under the Animal welfare Act is that it has established Animal Welfare advisory council<sup>95</sup>. As it was pointed earlier in this chapter, this council is a creature of animal welfare Act and its purpose is to oversee all animal matters in Tanzania mainland. This council at first time was constituted in 3 November 2010<sup>96</sup>. It should be born in mind that the only competent authority established by the Act which reasonably could deal with licensing process for breeding of companion animal is this council. But the research shows that as for now, there is no any uniform licensing procedure for breeding of aforesaid animals in Tanzania. Apart from having no any uniform procedures for licensing there is no even a rule which have been passed to deal with that very sensitive issue

### 3.5.4 Animal disease Control Act

In Tanzania the other law that require careful elucidation is the Animal disease control Act. This Act does not deal specifically with the domestication of the companion animal or domestic animal but since the requirement of license for a certain activities has been narrated the researcher think it proper to deal with it perpendicularly. Under this Act there are some of the activities that need to be licensed. Section 22 (1) and (2) is of virtual importance to be reproduced verbatim in this juncture

“ Any person who desire to deal with the farming, import or export of fish, bird, reptiles, mammal, mollusc and animal other than livestock shall for the purpose of disease control register with the director.....The director shall

<sup>94</sup> D.I. Grant, Perceived and Actual Welfare Issues Companion Animals. In Ethics, Law and Market Forces: Universities Federation for Animal Welfare, 1998,112.

<sup>95</sup> Section 5(a) of Animal Welfare Act

<sup>96</sup> [http://www.mifugo.go.tz/documents\\_storage/Baraza.pdf](http://www.mifugo.go.tz/documents_storage/Baraza.pdf)

upon register issue a certificate that will require a licence holder to keep record regarding the tracking of animal export and import”<sup>97</sup>

From the above quoted provision of animal disease control Act few important points have to discussed and these are that (1) the provisions deals with animals other than companion animals such as dogs and cats which are the centre of this discussion (2) Even if the domestic animal or companion animal can be imputed to be one of the category still the provision is not so exhaustive as to the procedures for acquiring that licence. The law only provide that the director shall issue a certificate for that the purpose of exporting and importing these animal but it is not dealing with the domestication of the same. No regulations that guides the director in issuing the said licence.

### **3.5.5 The wildlife conservation Act<sup>98</sup>**

Before analysing the provision relating to the procedures and condition for granting of license for the domestication of companion animal it should be born in mind that this law is dealing with the wildlife management and control. It does not speak about the companion at all but be that as it may the researcher have decided to make a thoroughly perusal of this Act because it provide for the requirement of license in hunting the wild animals. More importantly the conditions and procedure for obtaining that license are somehow very clear to be used as role model in other circumstances like in domestication of companion animals.

Under its Section 40<sup>99</sup> the Act provide that no person is allowed to hunt a wild animal without a license. Therefore the requirement of license under this section is mandatory. The question that can be asked up to that juncture is who is responsible to issue the aforesaid license and what are the procedures and condition for the same objective? Section 43 answer the first

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<sup>97</sup> Section 22 of Animal Disease control Act

<sup>98</sup> The wildlife Conservation Act( Act no 5 of 2009)

<sup>99</sup> *ibid*

question as to who is responsible for issuing a license and it provide that the license is issued by the licensing officer and it is upon an application by a person in prescribed form. The second question as to the conditions of the license this law provide under its section 43(2)<sup>100</sup> and these are as follow

- That the applicant for the license must have at least attain the apparent age of 18 years
- That the applicant must have a valid firearm license in respect of the fire arm intended to be used for hunting
- That he is a resident of Tanzania and he has been in Tanzania for a period not less than twelve months before his application
- That he has a reasonable knowledge of the firearm
- That he has not been convicted of an offense under the said Act
- That he has reasonable knowledge about the wildlife laws

Despite the fact that this wildlife conservation Act seem to elaborate in detail the requirement of license, this is only in hunting. If these procedures were applicable in domestication of companion animals like cats and dogs one could be in a position of saying that the law is exhaustive enough for that but is not so.

### **3.6 License for Domestication of Companion Animal in South Africa**

The researcher has observed the situation of licensing process for domestication of companion animals in Tanzania and the way on how the law is inadequacy to deal with that matter. Now in Comparison analysis let now observe some of various laws and regulations in the Republic of South Africa and how do the same deals with the matter. But one should first remember that system of license for domestic animal in Republic of South Africa has been put very clear in

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<sup>100</sup> *ibid*

comparison to the situation in Tanzania. It should also be recalled once again that the reason or main goal of registration and license for domestic animal is first to protect and ensure maintenance of animal welfare and the second one to reduce the animal liability or to be able to determine in whose faulty the harm caused by an animal should be placed. These laws include the followings to wit:-

### **3.6.1 The Constitution of the Republic Of South Africa<sup>101</sup>**

The Constitution of the Republic of South Africa especially under its Part B, it provide the power and competence to the city to pass by laws relating to control of public nuisances, pounds, facilities for the accommodation, care and burial of animals, licensing of dogs, municipal roads, traffic and parking and has the competence in terms of Part B of Schedule 4 of the Constitution relating to municipal health services. Now Acting on those guideline the Local government Municipal System Act has under its Section 13 allow the publication of any by laws relating to domestic animal control.

### **3.6.2 The Local Government Municipal System Act<sup>102</sup>**

This is an Act of parliament which was passed and assented in 14 November 2000 and came into operation or started to commence officially on 1 March 2001. It provides the general framework for the administration of various Municipals in The Republic of South Africa and it allow these municipals to enact by laws for the proper management of the municipals. By virtue of Section 8 read together with Section 13 of the same Law the municipals have been vested with the power to pass the bylaws. Now in the course of doing so The City of Johannesburg

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<sup>101</sup> No.108 of 1996

<sup>102</sup> Act No 32 of 2000.

Metropolitan Municipality has passed the Bylaw relating to domestic animals especially dogs and cats.

### **3.6.3 The City of Johannesburg Metropolitan Municipality Bylaw Relating To Dogs and Cats<sup>103</sup>**

This bylaw together with other some laws applicable to some other city like the city of Cape Town provide a number of guideline on the registration and license of dogs and cats in South Africa. The reader should bear in mind that this Law does not prohibit keeping of domestic animals per se but it put a limit upon which a person cannot keeps the said animals without a license. In its section 2<sup>104</sup> the bylaw provides as follows

No person may keep more than:-

- (a) two dogs, or allow more than two dogs, over the age of six months to be kept in or at a dwelling unit;
- (b) four dogs, or allow more than four dogs, over the age of six months to be kept in or at premises containing one or two dwelling houses;
- (c) six dogs, or allow more than six dogs, over the age of six months to be kept on an agricultural property; or
- (d) four dogs, or allow more than four dogs, over the age of six months to be kept on or at any other premises”

From the above quoted section, that is a general permit for domesticating or keeping dogs and as it can be seen it is clear that if a person has only one house that is dwelling premises he/she cannot keeps more than two dogs unless he has a valid permit and this shall only apply as an exception to the general rule. If the premises contain two dwelling houses then they may by

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<sup>103</sup> This bylaw was passed by the council of the city in January 2010.

<sup>104</sup> *ibid*

virtue of this section be allowed to keep four dogs and if the purpose of domesticating is in the agricultural property protection, then six dogs are allowed to be kept. The same formula or permissible amount or rate for keeping dogs under this law applies equally to the one who intends to domesticate or keeps cats<sup>105</sup>. There is no difference in rule for a person who wants to keep dogs and the one who needs to keep cats.

### **3.6.4 Requirement of License/ Permits for Dogs and Cats**

Under this law together with Cap town Animal by law of 2010<sup>106</sup> keeping of dogs and cats may require license from an approved authorities. This is situation which can only happen when a person is intending to keep dogs or cats above the required minimum number by the law. Section 3(1)<sup>107</sup> provide that any person who wants to keep dogs in a premises more than the required number must make an application to the council for permit. The law further provides that this application must be made in prescribed form and it has to be accompanied by the prescribed fee, an affidavit by the applicant and other documentary evidence that the applicant has for a period of 14 days prior to the date of the application in a place on the premises concerned within one metre of, clearly visible from, a public street, displayed and maintained in a prescribed form, notice of his or her intention to apply for a permit in terms of subsection (1) and inviting inhabitants of the area to lodge with the applicant during such period, in writing, any objection to, or representations relating to, the granting of the application.

It has to be born in mind that the intention of having the requirement of giving the prior notice of his intention to make an application for permit to keep these domestic animals is to ensure that the surrounding dwellers will have an opportunity to lodge their objection or

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<sup>105</sup> Section 9 (1) and (2) of the Dogs and Cats by law *supra* note 61.

<sup>106</sup> The Cap Town Animal By law , 27 October 2010

<sup>107</sup> Dogs and cats by laws

representation. The objection normally will contain a reason as to why the applicant should not be allowed to keep dogs or cats in that particular premise<sup>108</sup>. In most circumstances, these reasons base on the protection of the dweller from nuisance or that the applicant cannot in ordinary circumstances be able to protect and maintain the welfare and rights of animals. This can be inferred by reading the intention of Section 3(5)<sup>109</sup> which also requires a report from public health officer stating as to whether the intended animal cannot cause the environmental and health hazard to the public. On the other hand the representations are the statement in a prescribed form in support of the application<sup>110</sup>.

### **3.6.5 Registration of Domestic Animals**

Despite the facts that an owner of the domestic animals like cats and dogs south Africa may have a license another fundament requirement that relate much with license is registration of the same animal. This requirement is confined to the holder of the license alone but it applies to everyone who owns these domestic animals whether under licence or under the permissible limits. Section 3(1)<sup>111</sup> The owner of a property where one or more dogs are kept must register the dog or dogs with the Council. (2) Dog registration must take place within four months of the dog's birth or within 30 days of acquiring a dog on property within Council's jurisdictional boundaries.

### **3.6.6 Offences and Penalty**

For the purposes of making this by law relating to dogs and cats, there are some of the offences and penalty that have been enumerated therein. The law therefore provides that Any

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<sup>108</sup> Department of planning and community development, Victoria, 2008.29

<sup>109</sup> *Supra note 61*

<sup>110</sup> Section 3(2) (b) *supra note 61*.

<sup>111</sup> Cape Town Animal By law 2010



person who;– (a) contravenes or fails to comply with any provision of the Bylaws; or (b) fails to comply with any notice issued for the purposes of these Bylaws; or (c) fails to comply with any lawful instruction given for the purposes of these By-laws; or (d) obstructs or hinders any authorised official or employee of the Council in the execution of his or her duties under these By-laws , is guilty of an offence and liable on conviction to a fine or in default of payment to imprisonment for a period not exceeding six months and in the case of a continuing offence, to a further fine not exceeding R50, or in default of payment to imprisonment not exceeding one day, for every day during the continuance of such offence after a written notice has been issued by the Council and served on the person concerned requiring the discontinuance of such offence<sup>112</sup>. The same kinds of offences are provided under the Cap town Animal By law 2010<sup>113</sup> except that for the punishment this law has maximum term of two year imprisonment.<sup>114</sup>

### **3.6.7 The Scope of the Application of These by Laws**

It should be noticed at this juncture that, although these are just or mere by law they do apply not only to those council which promulgated them but they apply to the whole state of South Africa at large. That is to these by laws has got general application in the state of South Africa<sup>115</sup>

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<sup>112</sup> Section 17 of By laws relating to dogs and cats

<sup>113</sup> Section 34 of Cape Town Animal Bylaw 2010

<sup>114</sup> *Ibid*

<sup>115</sup> Section 35 of the Cap Town By law 2010, and Section 18 of the Bylaw Relating to dogs and Cats

## **CHAPTER FOUR**

### **RESEARCH FINDINGS, CONCLUSION AND RECOMENDATION**

#### **4.1 Introduction**

In the previous chapter the research tried to examine in detail in comparison analysis between the laws of Tanzania and those of the Republic of South Africa in relation to licensing process for the domestication, of animal. Both laws were critically examined and it was observed that despite the fact that no law in both states which is so exhaustive enough in relation to that purpose, South African law is somehow clear in relation to licensing process for the domestication of the aforesaid animals. In this last chapter the researcher is intending to analyse the finding in relation to hypothesis and statement of the problem. Finally the researcher is going to provide the recommendation and conclusion.

#### **4.2 Research Findings In Relation To the Statement of Problem**

Throughout the whole work in this research the researcher has gathered various data that directly impute the fact that in Tanzania the law relating to the license for the domestication of animal especially pet or companion animal is like not in existing compared to the situation in South Africa. The provision for instance relating to the breeding of companion animal for sale does provide for the requirement of license in Tanzania. However, the said provisions are not so exhaustive to cater for that purposes and no any regulations which has been issued either by the minister or any authority vested with that duties.

### **4.3 Research Finding In Relation To Hypothesis**

The hypothesis in chapter one above state that the law relating to licensing for domestic animal are not well stated under the Tanzanian statutes compared to that of the Republic of South Africa. Actually in relation to this hypothesis the data so collected and analysed reveal that the hypothesis is positive and the problem real exist. The laws of Tanzania that are relating to the domestic animal like companion animal does not require any license for the keeper of the said animal like dog and cats. It is only those who are breeding for sale who are required to obtain license and as well this is not so clear. Who is going to issue the license, for how long will that license be valid, fees for that purpose and even the renewal of the license the law is silence and no rule or regulation which cater for that purpose.

### **4.4 Conclusion**

Generally speaking it suffices to say that among other things the main purpose of the licensing process for the domestic animal was to ensure welfare of animal and their rights at large. Absence of the license for domestic animal in Tanzania has resulted into many problems. Because of having no restriction as to the number of pet/ companion/ domestic animal that a person can keep and the condition to be met for that purpose the majority of Tanzanian tend to domesticate companion animal like dog and cat beyond their capacity to take care for them and as a result animals right and welfare standard have been subject to violation from day to day. In this light, one cannot amaze seeing a crowd of dog and cat wondering in street looking for something to eat, very slander and having no hope to live.

## 4.5 Recommendation

The researcher wishes to use his time to advice various category of people and therefore these advices shall be as follow:-

### 4.5.1 Recommendation to the Parliament

The parliament of the United Republic of Tanzania is the main legislative body of the country<sup>116</sup>. Its importance cannot be over emphasized and it is obvious that whenever there is any problem that requires an act of the parliament to be promulgated it is its duty to do so<sup>117</sup>. Now in this research the researcher has revealed that the requirement of license for domestication of companion animal like cat and dogs is very important but such requirement is not provided by the law. Therefore, the researcher strongly advice the parliament to enact or amend the existing law and incorporate the provision which will specifically deals with the licensing process for domestication of companion animals. The following elements are advised to be incorporated in that provision:-

- That license for domestication of companion animal is mandatory
- Establishment of board which is vested with the power to grant and revoke the license throughout Tanzania
- The time for validity of license and renewal of the same
- Procedures to be followed in obtaining the aforesaid license
- The category of person who can obtain license including their ages
- Provision relating to housing system of the aforesaid animals
- Number of domestic animal that a household is allowed to keep

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<sup>116</sup> Article 64 of the Constitution of the United Republic of Tanzania of 1977 ( As amended from time to time)

<sup>117</sup> J. J. Almagro, Fisca Aspect of PRSP implementation in Tanzania, World Bank Institute,2000.1

- Penalty for failure to abide to the conditions and that the license holder have not been convicted of an offence of the violation of animal rights
- The declaratory statement by the applicant that he will abide to the condition and ensure the protection of animal welfare
- Any other conditions that the parliament may think proper to incorporate so long they relate to the protection of animal welfare and their rights

If these provisions will be included in the statute then it is in the authors views that any person who domesticate the companion animal like cat and dogs will endeavour to abide to the laws and ensure the protection of animal's rights and welfare. This will reduce the problem stray cat and dogs wondering in street as we have today.

#### **4.5.2 Recommendation to the Government**

The government of the United Republic of Tanzania is responsible for the formulation and implementation of many policies in the country. Now in the course of doing so the researcher is hereby advising that through the ministry of, livestock and fisheries, it must strives to come up with policy or circular that will regulate the registration and license of the domestic animals such as dogs and cats.

#### **4.5.3 Recommendation to the Local Government Authorities**

The local government authorities in Tanzania both in rural local government authorities and urban local government authorities have been vested with the power to make or pass various by laws that will regulate their day to day activities so long they do not contravene with the parent

legislations<sup>118</sup>. Now just like what the two councils in the Republic of South Africa have done in promulgating the bylaws, then our council and municipals in Tanzania by invoking the powers under the local government laws they have to make regulations that will deal with the animal registration and licence in their respective area of operation. This will help to reduce the stray animal like dogs and cats in large part of our country.

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<sup>118</sup> Read Local government (Urban Authorities) Act No 8 of 1982 read together with Local government (District Authorities) Act No7 of 1982.

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