

RUAHA CATHOLIC UNIVERSITY



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**THE RIGHT TO VOTE IN BY-ELECTION; A Critical Examination of
Section 15(1) of the National Election Act (Cap 343 of 2010). A Case
Study of Kalenga Constituency 2014**

A Research Submitted in Partial fulfillment of the Requirements for the
Award of Bachelor of Laws Degree (LLB) of Ruaha Catholic University.

By

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At the Faculty of Law

June, 2015

Certification

I certify that, I have read and hereby recommend for acceptance by the Ruaha Catholic University, a dissertation titled: The Rights to Vote in By-election; A Critical Examination Of Section 15(1) Of the National Election Act, (Cap 343 Of 2010), A case study of Kalenga Constituency 2014 in Partial fulfillment of the Requirements of Bachelor of Law Degree (L.LB) at Ruaha Catholic University.

Signature.....

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Date.....

Declaration

I, Mwambwalo sinde, I do hereby declare that this dissertation is my own original work and that it has never been presented to any other University for a similar or any other degree award.

Signature.....

Mwambwalo Sinde.

(Researcher)

Date.....

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Lastly, I pay tribute to my family members, classmates and all who helped me to make this work perfect.

Dedication

Dedicated to all citizen who their right to vote was been violated. May God's divine protection be bestowed upon you, to my brother and his wife Mr Joseph Memba Mwambwalo and Mrs Joseph Memba Mwambwalo and who brought me up with love and care, my Brothers Mr Gabriel Mwambwalo and Richard Mwambwalo who created in me a sense of self confidence , to my lovely my wife Neema Mbughi and my son Joseph Sinde Mwambwalo who have endured me so much and yet live so large, no matter what life throws your way. Also to the family of Memba Katoto Mwambwalo who supported me morally and materially during this long journey of my education and others who I have not mention them by names ,but direct or indirectly they involved in giving me courage during my school life.

Abstract

The title of this research paper is about the RIGHT TO VOTE IN BY-ELECTION, A Critical Examination of section 15 (1) of National Election Act (Cap 343 R.E 2010), A Case study Kalenga constituency 2014, that explain about setting time and review of voters registration book by the National Electoral commission. Whereby chapter one will deal with general introduction and chapter two will deal with the historical background to the problem.

This paper will analyze the legal and institutional framework for the protection of citizen right to vote under International, Regional and National legal instruments but will focus more on the Tanzania law under section 15(1) of National Election Act (Cap 343 R.E 2010) towards the protection of citizen right to vote in by-election in Tanzania.

Also the researcher will make a critical overview of the National Election Act (Cap 343 R.E 2010) and look on the problems faced citizens in exercise right to vote in Tanzania by-election.

This research will make use of primary sources of information including international instruments, case law, legislations, executive agents such as police force, Court information and experience and administrative agencies. Secondary sources of data collection will involve library research. Among the documents that will be used include books, journal articles, commentaries, press releases, reports and any other relevant documentation.

Lastly the researcher will make a recommendation on the mechanism to solve the problem facing the protection of citizen right to vote in Tanzania by-election.

List of Cases

Attorney General V . Walid Kabourou (1996) TLR 156.

Emmanuel Abrahamu Nanyaro V. Peniel Ole Saitabau, (1987) TLR 47 (CA)

Gervas Masome Kulwa V. The Returning Officer and Others (1996) TLR 320 (HC)

Ng'weshemi V. attorney General MISC. Civ. Cause 5-M-70; (1971) HCD No 251

Ngowi V. The Returning Officer of Moshi and Lucy Lameck, MISC. Civ. Cause 9-A-70;
(1971) HCD No 238

Prince Bagenda V. Wilson Masilingi and Another (1997) TLR 220 (HC)

List of Statutes

Constitution of the United Republic of Tanzania of 1977

The Local Government Authorities (Elections) Act 1979

The National Election Act, Cap 343 of 2010)

The National Elections Act 1985

The Political Parties Act No. 5 of 1992.

List of International Convention /Treaties

African Charter on Human and Peoples' Rights

Convention on the Elimination of All Forms of Racial Discrimination, Convention on the
Elimination of All Forms of Racial Discrimination Against Women,

International Covenant on Civil and Political Rights

International Covenant on Economic, Social and Cultural Right

International Covenant on Civil and Political Rights 1976

The Universal Declaration of Human Rights 1948,

Universal Declaration of Human Rights.

List of Abbreviations

AIM	African Independence Movement
LHRC	Legal and Human Rights Centre
NEC	National Electoral Commission
PCP	People's Convention Party
PDP	People's Democratic Party
PNVR.	Permanent National Voters' Register
TAA	Tanganyika African Association
TANU	Tanganyika African national union
U.N	United Nations
UTP	United Tanganyika Party

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CHAPTER ONE

1.0 General Introduction.

The research has dealt with the citizen's rights to vote in by election based on a critical examination of section 15 (1) of National Election Act (Cap, 343 of 2010) which provides that "the Commission shall be responsible for setting time and review of registration of voters in every polling district within the constituency." Before going far, it is necessary to define the following terms, "by-election" is an election special held to fill a vacant post.¹ A by-election occurs when a seat in the National Assembly becomes vacant during the lifetime of a Parliament (i.e. between general elections).² What it means by the phrase 'vote', means a formal indication of a choice between the two or more candidates or course of action, expressed typically through ballot a show of hand.³ The right to vote means the freedom of people to choose their political leaders through free and fair elections.⁴ The right to vote is a political right, but also it is a fundamental human right that guaranteeing people's participation in governance by giving them the power to decide who will take political office.

The right to vote is the cornerstone of any democracy, if denied or abrogated, democracy in its most basic sense fails.⁵ The right to vote is essential in protecting all the other rights provided for in the constitution. Registration of voters is the first step in the conduct of any election and the second step right to vote. This was stated in the case of *Gervas Masome Kulwa V. The Returning*

¹ B.A. Garner; Black's Law Dictionary, Thomson West, New York, 2004⁸ 556.

² <http://www.parliament.go.tz/index.php/glossary/glossarylist> accessed on 12 November 2014

³ C. Soanes,etal Concise English Dictionary, Oxford University Press, New York, 2004¹⁰ 1620.

⁴ R. R. Maeda., The Second Draft Constitution and Right to Vote in Tanzania · Mar 20th, 2014

⁵ idem

Officer and Others,⁶ it was stated that “anyone who is qualified to register as a voter can only vote if he is registered. So law creates two rights. The first one is the right to register as a voter and the second one is the right to vote after registration as a voter.”

Every legal regime has a duty to protect their citizen’s right to vote due to the fact that citizen’s rights to vote by their nature can easily be abused due to their lack of verbal skills or necessary tools to protect themselves from the superior political power and other conditions which are out of their control. Thus citizen’s rights to vote are recognized under human rights discourse and they are promoted and protected internationally and nationally. According to Constitution it provides that every citizen of the United Republic who has attained the age of eighteen years is entitled to vote in any election held in Tanzania.⁷ Any citizen of the age of 18 years and above has the right to be registered as voter and to vote in any public election in Tanzania as per Constitution.⁸

There are various international and national efforts to promote and protect these rights. Internationally there are various conventions and other relevant instruments which address citizen’s rights to vote and standards. In Tanzania, for instance, there are some efforts which have been done to suit the need of protecting citizen’s rights to vote, however these efforts are not sufficient that is why there are still serious violations of citizen’s rights to vote in the society.

⁶ (1996) TLR 320 (HC)

⁷Article 5(3) of the Constitution of the United Republic of Tanzania of 1977

⁸ Constitution of United Republic of Tanzania of 1977

In this work therefore the researcher has started by giving out the background of the problem, the statement of the problem, the objectives of the intended research, the research hypotheses under which the proposed research was based upon, the scope of the study, significance of the study, the literatures reviewed by a researcher, the research designated and also the researcher methods that were used

1.1 Background to the Problem

The efforts of protecting citizen's rights to vote can be traced back from the period the colonial era, for example the early sources of citizens rights to vote evidence can be found in the colonial regime especially during British rule there is the famous political principle called one man, one vote.⁹ "One man, one vote" or ("one person, one vote") is a slogan that has been used in many parts of the world where campaigns have arisen for universal suffrage. During the 20th century period of decolonization and the struggles for national sovereignty, from the late 1940s onwards this phrase became widely used in less developed countries where majority populations were seeking to gain political power in proportion to their numbers.¹⁰ The principle of one person, one vote, it means that every one eligible citizen to vote has right to vote at once in election and only one vote is counted.

Despite of the efforts made in protecting citizen's rights to vote had a long history and can be traced back from the period the colonial era in Tanzania but the problem of violation of citizens right to vote are existing in both general election and by-election. Therefore after the restoration

⁹ www.domocracyweb.org/election/principles.php accessed on 14 November 2014

¹⁰The US Supreme Court held in *Reynolds v. Sims* (1964) that states had no basis for a senate based on geography, and it ruled that both houses of state legislatures had to be based on the one man, one vote principle.

of multiparty system it was widen citizen right to vote whereby the citizen have right to vote any registered party that he or she desire to vote in their own choice as they wishes.

The multiparty electoral system started to operate with by-elections the first was Kwahani in Zanzibar followed by Ileje, Kigoma and Tabora North on the Tanzania Mainland.¹¹ The above mentioned by-election were the first multiparty that took place 1990s which regulated by election law.¹² And this first multiparty electoral system started to operate with by-elections in all about mentioned constituencies without conducted the update the permanent national voters registration book, something which was contributed in violation of some citizen right to vote simply because there was no update the permanent national voters registration book,

The second multiparty by-election are those that took place in between the years of 2000 and 2010 which includes the by-election held Mbeya Vijijini constituency and Tarime constituency also this conduct of by-election was regulated by National Election Act, (Cap 343 of 1985).

The thirdly multiparty-by election are those that took place in between the years of 2011 up to 2014, which included the by-elections held East Arumeru constituency, Igunga in Tabora, kalenga constituency and Charinze in Pwani in which all of this by-elections were conducted without making the registration of voters but only the citizen's who have rights to vote are those who were registered during 2010 in the general election.

Therefore the registration of voter was regarded as basic requirement in which all must be registered first in order to have right to vote in any of either general election or by-election and

¹¹ A. Mhina & A. Makulilo., Consultancy on the Review of Various Aspects on Electoral Systems and the Electoral Commission in Tanzania, Dar es salaam 2013. 23.

¹² National Election Act, (Cap 343 of 1985)

must be conducted within six months before an election.¹³ In the past, the registration of voters was conducted simultaneously in all regions for the whole country whenever an election was to be conducted. In 2000 there was an amendment in the Constitution of the United Republic of Tanzania which requires NEC to establish the PNVR. In this year (2005), NEC is in the process of preparing the PNVR which was used for the first time during 2005 General Election and subsequent elections. There were only two update of PNVR which were in 2007/2008 and 2010 since NEC established 2005 up to date.

When these laws are enacted, amended, and the policies are made the society believed that this would end violations of citizen's rights to vote, but this is contrary because the violations still persist in the society. The main cause of this problem was that, there was no clear definition of time for update registration of voters to be participated in existing by-election this led to many contradictions among those laws hence made the legal protection of citizen's rights to vote to be disorganized and put the citizen's rights to vote at risk.

Currently, Tanzania has passed a single legislation which deals with the election matters The National Election Act, (Cap 343 R.E 2010) which to some extent covers many aspects relating to citizen's rights to vote as envisaged by the Universal Declaration of Human Rights and other international and regional instruments. Despite this legislation the violations of citizen's rights to vote still persist in Tanzania.

¹³ Section 15 (1) of the Election Act, No 1 of 1985(Cap 343 of 1985)

1.2 Statement of the Problem

Despite of having the new law governing citizen's rights to vote in Tanzania(herein after the National Election Act, (Cap.343 R.E.2010) under section 15(1) which provides that “the commission shall be responsible for setting time and review of registration of voters in every polling district within the constituency”, the law seems to be unsatisfactory in protecting and promoting the citizen rights to vote accordingly to the standards provided by the Universal Declaration of Human Rights, and the other regional instruments and international instruments. The new law of the election¹⁴ is not seem to be comprehensive to protect and promote all citizen's rights to vote, the Act does not provide a specific time for registration of voters as mandatory requirement to be conducted in every time before conducting by-election process regarding to the legal age which is about 18 years for any citizen have right to vote.¹⁵

Since the National Election Act¹⁶ does not provides for registration of voters to be mandatory requirement to be conducted before conducting of every by-election, this is gap of law that allow the by-election being conducted without making new registration in a few time before conducting a specific by-election something which violate the citizens rights to vote for those who were not already registered to permanent national voters registration book due to different grounds such as legal age, imprisonment conviction at the time of previous registration , citizen being non-resident of such constituency during the time of registration and many others who lack access to be registered in previous of PNVR had no right to vote in by-election.

¹⁴ The National Election Act, Cap 343 R.E. 2010.

¹⁵ Article 5(1) of Constitution of United Republic of Tanzania, Cap 2 of 1977.

¹⁶ Cap 343, R.E.2010.

For example the current event of by-election which happened at East Arumeru constituency, Igunga in Tabora, kalenga constituency and Charinze in Pwani in which by-election were conducted without making the registration of voters but only the citizen's who have rights to vote are those who were registered during 2010 in the general election.

Moreover it was reported that, Opposition party leaders complained that the update of the permanent national voters registration had not been taken place since 2010¹⁷, So that an individual who had reached the age of 18years in between that time were unable to vote for those by-election that had been taken from 2010 up 2013.

Therefore, due to this prevailing problem of violating citizen's rights to vote in Tanzania there is a need to conduct this research so as to become a tool of examining the weaknesses on the new law of the election and to make the Act to suit the requirement of protecting and promoting citizen's rights to vote and hence achieve the required standards in accordance to the international and regional instruments. Thus this research is important to be conducted at this time.

1.3 Objectives of the Study

Under this research main objective is to look at contentious question as to whether there is a real protection of the citizens right to vote in by-election under section 15(1) National Election Act¹⁸ as well as to the extent envisaged by the international and regional instruments.

To identify the factors which contribute the presence of violation of citizen's rights to vote in by-election, and

¹⁷ Report on Human Right Practices in Tanzania

¹⁸.(Cap 343 R.E. 2010)

To find out a possibility and make a way through which Tanzania will become a best citizen rights to vote friendly country.

1.4. Hypotheses

The research was based on the assumptions that; the section 15 (1) of the National Election Act, (Cap 343 R.E. 2010) does not effectively protect and promote citizen's rights to vote hence it lead to the violations of the rights to vote in by-election in Tanzania.

1.5. Scope and limitation of the Study

The researcher in this study has mainly focused his attention on citizen's rights to vote in by-election critically examining section 15(1) of the National Election Act, (Cap 343 .R.E. 2010). This is because the law seem to be incomprehensive to protect citizen's rights to vote and the problem of violating citizen's rights to vote is still persist in our society.

The intended area of study will be at Kalenga constituency in Iringa Region for the reason that this area seem to be very unfriendly to the citizen's rights to vote due to the prevalence of political complains that the by-election process is unfair.

1.6. Significance of the Study

The study will make the society to be aware on the citizen's rights to vote and to be protected and promoted, this is due to the fact that the rights to vote of citizen are highly violated in Tanzania, and thus it is very important to protect this big segment of our society. This study will also help the other researchers to observe this problem and therefore conduct researches in order to develop the law and thus help in the promotion and protection of citizen's rights to vote in Tanzania. Not only that but also the research will be used to identify the gaps in the new law of the National

Election Act in Tanzania, this will help the government and the legislature to review the law of the election and other relevant laws so as to safeguard well the citizen's rights to vote and best standards in Tanzania. And this will help in making Tanzania to be citizen's rights to vote friendly country.

1.7. Literature Review

Correspondent. D,¹⁹ has observed that, the opposition political parties have been pressing the National Electoral Commission (NEC) to upgrade the permanent voter register immediately time before conducting because there were millions of qualified Tanzanians who have not been registered and the research show that more than 5.3 millions of people cannot vote because of registration book of voters has not been updated since 2010.

Maina. C. P,²⁰ has observed that, In Tanzania provisions of the Constitution on the *election* were not strictly observed. The Constitution guarantees all citizens their *right* to be free on the basis of human equality but our election law violates constitution.

Makame .L,²¹ has observed that some political analysts agree that corruption could be the cause of low voter turnout as it is depicted from Busanda in 2009 by-election in which about 130,000 voters registered with the National Electoral Commission (NEC) but only 55,000 voted.

University of Minnesota,²² has observed that, while the rights to vote is widely recognized as a fundamental human right this right is not fully enforced for millions of individuals around the world. The consistently disfranchised groups include non-citizens, those commit crimes,

¹⁹ D. Correspondent., NEC Planning Hi-tech voter Re-registration, Dar es salam 2014.

²⁰ C. P Maina., Justice and rule of law in Tanzania: selected judgements , Dar es salaam, 2005.546.

²¹ L. Makame., Vote buying a cause of low voter's turnout. Dar es salaam 2009.

²²University of Minnesota Human Rights Center 2003., A Handbook, Minnesota 2003. 33.

homeless, disabled persons, and many others who access to the vote for the variety of reasons including poverty, illiteracy, intimidation or unfair election process.

Olengurumwa p. O,²³ has observed that, the most distinguished violation of human rights that took place during the Kikwete regime were the continued violation of political rights in context of rights to freedom association, the right to freedom assembly, participate in public affairs, free and fair elections and an inability to realize human rights

Makaramba. R,²⁴ has observed that, Tanzania has effectively participated in deliberating a number of multilateral treaties but the difficulties come in rectifying them, and the issue becomes more problematic on the implementation of these international treaties at the national level by enacting a specific legislation.

Maeda. R. R,²⁵ The right to vote is the cornerstone of any democracy, if denied or abrogated democracy in its most basic sense fails. Furthermore same position was explained in the case of *Prince Bagenda V. Wilson Masilingi and Another*²⁶ it was held that, “the franchise or right to vote is the very cornerstone of democracy; it is the one right, perhaps more than any other, upon which all other constitutional rights depend for their effective protection. When the right to vote is denial or abrogation, democracy and freedom fail”.

According to the afore cited literatures the authors had tried to show despite of enactment of the new law of the election in 2010 Tanzania that amended and repealed several laws related to

²³ O.P.Olengurumwa; Legal and Human Rights Center, Paper on State of Human Rights in Tanzania. 2000. 5.

²⁴ R.V. Makaramba., Children’s Rights in Tanzania. Dar es salaam 1997.

²⁵ R. R. Maeda., The Second Draft Constitution and Right to Vote in Tanzania Mar 20th, 2014

²⁶ (1997) TLR 220 (HC)

citizen's rights to vote, and also under this new law the violation of citizen's rights to vote are existing.

Critically speaking most of the above cited views are more theoretical, there were needed to be observed them in the field data so as to see whether the new law of the election satisfied or not in promoting and protecting citizen's rights to vote in the society. Thus there is a great need to conduct this research into the field because the violation of citizen's rights to vote in our society is a critical issue which needs more study.

1.8 Research Design and Methodology

1.8.1. Research Design

The research employed a case study design, which aims at finding out and analyzing whether the new Act of the election satisfies the need of promoting and protecting the required rights and standards of citizens right to vote in Tanzania through Kalenga Constituency by-election being the case. The case study was designated and has been selected because of the reasons that, it saves time and costs (research time was short and the researcher's fund was insufficient), it was used several methods of data collection, and it can enable the researcher to have a deep and thorough study from different aspects of phenomenon.

Kalenga has been chosen as a study area because it seem to be unfriendly to citizen's rights to vote due to the persistence of political problems like political parties complains and disputes, citizens complains about the violation of their rights to vote in by-election held in 2010.

1.8.2 Sampling Techniques

The research included the purposive and random sampling techniques. The researcher selected the units involved or specialized or experienced in this problem, these were included the court officials, political party, Human Rights Institutions, policy makers, police and prison officers, religious leaders and other stakeholders included ICCPR, UDHR and social welfare officials in Kalenga Constituency. A sample of 5 respondents from these units had been taken to form a sample size of 50 respondents. Therefore a researcher was visited the following areas in Kalenga the High of Court of United of Tanzania at Iringa registry, The National Election Commission Office, Legal and Human Right Centre at Iringa Branch, The legal Aids Office, Social Welfare Office, ordinary people, religious institutions, prisons officer and police departments in Kalenga, all of this are the places there a researcher obtained the relevant information relating this research study.

1.9. Data Collection Methods

As the research is a qualitative one, therefore the methods which had been applied included; primary sources (interviews, questionnaires and observation) and secondary sources (documentary reviews).

1.9.1 Interviews

Under this proposed study a researcher had face-to-face discussions (interviews) with the respondents in which he was be able to clarify the points which was not be understood by the interviewees. Unstructured interviews are the ones which were been preferred because these were allowed a greater flexibility in the questioning process and therefore a researcher was able to get

the concrete and relevant information which in turn was helped in getting honestly and faithful results.

1.9.2 Questionnaires

Both open-ended and closed-ended questions had been used and supplied to the respondents. The questionnaire is an advantageous method because it can cover a large area of study like Kalenga constituency and also the respondents had adequate time to give their answers.

1.9.3 Observation

A researcher was sometimes used to observe the respondents and collected the relevant data. This is because there may happen some of the respondents who was not be able/cooperative in answering the questions in interviews or questionnaires.

1.9.4 Documentary Review

In this study a researcher was visited some relevant documents like statutes, case laws, books, journals, articles, internet materials and other publications. These documents helped in getting the useful data in the proposed study, and these were obtained from the libraries of Ruaha Univeersity College, Iringa University (Tumaini University), Open University-Iringa Center, Legal and Human Right Centre at Iringa Branch, from courts of law and other agencies which deal with election and citizen rights to vote.

1.10 Methods of Data Analysis

The data which had been collected was been qualitatively analyzed through the concurrent flow activities which are data reduction (the process of selecting, focusing, abstracting and

transforming the data, and writing summaries to reduce data), data display (the process of organizing the compressed assembly of information that permits conclusion drawing), and the verification of data which had been used in the research.

CHAPTER TWO

HISTORICAL BACKGROUND TO THE PROBLEM

Before independence in 1926 the National Assembly of Tanganyika was established as Legislative Council of Tanzania Mainland, by then known as Tanganyika. The Legislative Council was established under Tanganyika Legislative Council Order and Council, a law enacted by the British Parliament.²⁷ The law was gazetted in Tanganyika on 18th June 1926 and the council was launched in Dar es Salaam on 7th December 1926 under the chairmanship of the Governor of Tanganyika, Sir. Donald Cameron. The council had 20 members all appointed by the Governor.²⁸

The first major change to the Legislative Council was done in 1953 when the first Speaker was appointed to replace the Governor as chairman of the council. The first speaker took office on 1st November 1953.

The second major change was in 1958 when for the first time the Council got few members elected by the people. This marked a very big change in the politics of Tanganyika because it was the first election to be allowed in the territory and it was the first time political parties that were already registered participated in elections. The election take place when there was no Constitution, under a tripartite voting formula and limited franchise based on income and education qualifications.²⁹ The right to vote during the colonial era were based on racial

²⁷ Tanganyika Order in Council of 1926

²⁸ *idem*

²⁹ The franchise qualifications were: 21 years of age or above and residence in the country of three years or more, possession of either educational training equivalent to standard VIII or an income of more than £150 per annum, or qualifying experience. These were applied despite the protests from the nationalists.

discrimination in nature were by white men were given high chance in right to vote and property ownership was regarded as the qualification that entitled citizens right to vote while the majority citizens who were the poor or own nothing were no right to vote.

Three political parties participated in those elections namely, Tanganyika African Union (TANU), United Tanganyika Party (UTP) and African National Congress (ANC)³⁰. However, only TANU won in some constituencies to become the first party to have members in the Legislative Council.

The third major change to the Legislative Council occurred in 1960 when the second elections of the council were held. The changes were part of preparations for the independence of Tanganyika. For the first time the people elected all members of the council after abolishment of all members appointed by the Governor. The name of the Legislative Council was changed to National Assembly. These changes were constitutionally necessary because the Queen of England or Head of the British Government accented the laws enacted by the Legislative Council. Changes to National Assembly meant that after independence the laws passed would not be sent to England for accent, instead the President of independent Tanganyika would accent all the laws.

Since change of name to National Assembly there have been few changes especially on the number and type of members. Nevertheless, its role and mandate has remained the same. These had been elected between 1958 and 1960 under a tripartite voting formula and limited franchise

³⁰ Report of the Commonwealth Observer Group Tanzania General Elections 31 October 2010, 3.

based on income and education qualifications.³¹ The 1962 Constitution gave the people of the whole country, for the first time, the mandate to elect a national leader directly.³²

The modern Tanzania In 1954, Julius Nyerere founded the Tanganyika African National Union (TANU), which became the focus of African nationalism, eventually leading Tanganyika to independence in December 1961. In 1956 the United Tanganyika Party (UTP) was formed by some unofficial members of the then Legislative Council. It drew its support from Europeans, Asians and Africans. It stood for multiracialism, equal representation in the Legislative Council for all racial groups and a qualified franchise based on property and education.³³ Between 1962 and 1963, three more political parties were formed in Tanganyika. These were the People's Convention Party (PCP), the African Independence Movement (AIM) and the People's Democratic Party (PDP).³⁴

2.1. Formation of the United Republic of Tanzania

Tanganyika united with Zanzibar on 26 April 1964 to form the United Republic of Tanganyika and Zanzibar with Julius Nyerere as President and Sheikh Karume as Vice President. This was renamed United Republic of Tanzania on 29 October 1964. In 1965 the Constitution was amended to establish a one-party system. In February 1977, the two ruling parties (TANU and the ASP) merged to form the Chama Cha Mapinduzi (CCM), or "Movement for the Revolution". All other parties remained proscribed and the distinction between the CCM and the state

³¹C. S. L. Chachage., *Globalisation and Democratic Governance in Tanzania*, Development Policy Management Forum Addis Ababa. 2003 13

³² *Ibid*, 14

³³ Report of the Commonwealth Observer Group, Tanzania General Elections 31 October 2010. 12.

³⁴ *Ibid*, 3

effectively disappeared. Mr Nyerere remained President until 1985. He was a pioneer of the African one-party state, a leader of the Non-aligned Movement, a staunch supporter of liberation struggles in Southern Africa against minority rule, and a strong advocate of African socialism. After stepping down he remained an influential figure as Chairman of the CCM. His successor, Ali Hassan Mwinyi, started a gradual process of economic liberalization and democratic reform. A constitutional two-term Presidency rule has been upheld since 1985.

2.2. Single party era between 1965-1992.

The electoral system which was established with single party rule in Tanzania and used for the first time in the 1965 Elections had several ways of translating votes to seats. The electoral system for Parliamentary elections was plurality in single member constituencies. The parliamentary elections were highly contested with high turnover of incumbents.

There were 15 MPs chosen by the National Assembly acting as an electoral college. Most of those elected by the National Assembly (NA) sitting as an electoral college came from party affiliated organs, for women, youth, workers, cooperatives and parents. In the last National Assembly under single party rule in 1990 the number of constituencies increased to 130 but the number of MPs in the NA was 284, the difference being 154. It became clear the number of directly elected MPs were a minority in the National Assembly degrading further the democratic value of the General Elections. The logic of ruling party was to allow for various groups in the society to be represented in the NA, the practice was corporatist in the sense that anyone wishing to participate in decision making in the society had to be screened by party organs. This situation fuelled the call multiparty politics and democracy in Tanzania.

2.3. Restoration of Multi-Party Politics

In 1991 President Mwinyi appointed a Presidential Commission under the Chairmanship of the late Chief Justice of Tanzania, the Honourable Francis L. Nyalali.³⁵ The task of that Commission was to collect public opinion on one term of reference - "To enquire whether the majority of Tanzania's preferred the continuation of a single-party system or the establishment of a multiparty system." the commission approached its task with such seriousness and integrity that its report earned popular acceptance. This acceptance arose mainly from the depth of analysis, the scope of the issues covered and the range of recommendations it made.³⁶ The major recommendation made by the Nyalali Commission was that Tanzania should abandon the single-party system and adopt a multiparty system in spite of the fact that many of those who made verbal or written submissions (80%) preferred the continuation of a single-party system. Three arguments were made to support this apparently anti-majoritarian recommendation. One argument was that many of those who expressed a preference for a single party insisted on major reforms. The second argument was that the 20% who preferred a multiparty system were a substantial minority whose discontent could negatively affect a democratic political system. The third argument was that given the grip of single party dominance the 80% majority could partly be explained by Plato's allegory of the cave since all Tanzanians below the age of 40 had known no other political system.

The Nyalali Commission went further than just recommending the adoption of a multiparty system. It also prescribed the necessary conditions under which the system could be established

³⁵ *Supra note*. C. S. L. Chachage., 28.

³⁶ Nyalali Commission report on introduction of multiparty in Tanzania or not. 1991 7.

and consolidated. Following the recommendations by the Nyalali Commission,³⁷ it was resulted to the effect that the Article 3 of the Constitution of the United Republic of Tanzania, 1977, and that of Zanzibar were amended in 1992 to make Tanzania a multi-party state. Therefore after the restoration of multiparty system it was widen citizen right to vote whereby the citizen have right to vote any registered party that he or she desire to vote in their own choice as they wishes.

The multiparty electoral system started to operate with by-elections: the first was Kwahani in Zanzibar followed by Ileje, Kigoma, and Tabora North on the Mainland³⁸. The above mentioned by election was the first multiparty that took place 1990s which regulated by election law.³⁹

The second multiparty by election are those that took place in between the years of 2000 and 2009 which includes the by election held Mbeya rural, Busanda and Tarime Constituency also this conduct of by-election was regulated and organized by National Election Act, Cap 343 of 1985.

The thirdly multiparty by election are those that took place in between the years of 2010 up to 2014, which includes by-elections held at East Arumeru constituency, Igunga in Tabora, kalenga constituency and Charinze in Pwani in which all this by-election were conducted without updated registration of voters but only the citizen's who had rights to vote were those who were registered during 2010 in the general election.

For purposes of conducting Multi-Party elections, there is an independent National Electoral Commission (NEC) which was established for the main functions are: Supervision and

³⁷ idem

³⁸ A. Mhina & A. Makulilo., Consultancy on the Review of Various Aspects on Electoral Systems and the Electoral Commission in Tanzania, Dar es salaam 2013. 23.

³⁹ Election Act, No 1 of 1985, (Cap 343 of 1985).

coordination of registration of voters; Conducting the election of the President of the United Republic of Tanzania, Union Parliamentarians, and councilors in Tanzania Mainland; Review and demarcation of electoral districts in the United Republic of Tanzania for purposes of Parliamentary and Councilors elections. The NEC was established under the Constitution.⁴⁰

Therefore the registration of voter was regarded as basic requirement in which all must be registered first in order to have right to vote in either general election or by-election. In the past time, the registration of voters was conducted simultaneously in all regions for the whole country whenever an election was to be conducted. In 2000 there was an amendment in the Constitution of the United Republic of Tanzania which requires NEC to establish the PNVR. The Permanent National Voters' Register (PNVR) was established by the National Electoral Commission under the Constitution,⁴¹ and Sections 11A and section 12,⁴² which were amended in April, 2004. The PNVR was used for the first time in the 2005 General Elections.

In 2005, NEC was in the process of prepared the PNVR which was used for the first time during 2005 General Election and subsequent elections. After the 2005 General Election, the National Electoral Commission updated the PNVR two times that is in 2007/2008 and 2009/2010. The updating of the PNVR covers the following:-

(a) To register new eligible voters who have attained the age of eighteen years or have qualified for registration as voters according to the electoral laws, (b) To remove from the Register voters who are dead or who are no longer eligible according to the law, (c) To rectify any inaccurate

⁴⁰ Article 74(1) of the Constitution of United Republic of Tanzania

⁴¹ Article 5(3) of the Constitution of the United Republic of Tanzania, 1977 as amended

⁴² The National Elections Act (Cap 343 R.E 2010)

information regarding registered voters or of people who request for their information to be rectified, (d) To rectify any discrepancies occurring in the Register, (e) To post fresh information of voters who may have shifted from one constituency/Ward to another Constituency/Ward, and (f) To afford opportunity to registered voters to inspect information contained in the register or information intended for updating.

Currently, Tanzania had passed a single legislation which deals with the election matters The National Election Act, (Cap 343. R.E 2010), which reversed The National Election Act of 1985 to some extent covers many aspects relating to citizen's rights to vote as envisaged by the Universal Declaration of Human Rights and other international and regional instruments. Despite of having the new election law governing citizen's rights to vote in Tanzania under section 15 (1) provides that "the commission shall be responsible for setting time and review of registration of voters in every polling district within the constituency,"⁴³ the law seems to be unsatisfactory in protecting and promoting the citizens right to vote accordingly to the standards as required by the Universal Declaration of Human Rights, and the other regional instruments and international instruments.

The main causes of this problem were that, there was no clear definition of time for update the registration of voters to be participated in existing by-election this led to many contractions among those laws hence made the legal protection of citizen's rights to vote to be disorganized and put the citizen's rights to vote at risk.

⁴³ National Election Act (Cap 343 of 2010)

For example the current event of by-elections which happened at East Arumeru constituency, Igunga in Tabora, kalenga constituency and Charinze in Pwani in which by-election was conducted without making the registration of voters but only the citizens who had rights to vote are those who were registered during 2010 in the general election. Moreover it was reported that, Opposition party leaders complained that the update of the permanent national voters registration had not been taken place since 2010,⁴⁴ So that an individual who have reached the age of 18years in between that time were unable to vote for those by-election that have been taken from 2010 up 2013.

Therefore, due to this prevailing problem of violating citizen's rights to vote in Tanzania there is a need to conduct this research so as to become a tool of examining the weaknesses on the new law of the election and to make the Act to suit the requirement of protecting and promoting citizen's rights to vote and hence achieve the required standards in accordance to the international and regional instruments. Thus this research is important to be conducted at this time.

⁴⁴Report on Human Rights Practices in Tanzania 2013

CHAPTER THREE

LEGAL FRAMEWORK

One of the most critical ways that individuals can influence the governmental decision-making is through voting. Voting is a formal expression of preference for a candidate for office or for a proposed resolution of an issue. In Tanzania legal system there are a number of international standards pertaining to protection of citizen's right to vote which serve as basis in the drafting of national or local protection of citizens right to vote program of various countries. Tanzania as a member of the U.N has signed various international and regional instruments relating to protection and promotion of citizen's rights to vote and standards conduct of election in the country these includes the followings

3.1. At International Level.

3.1.1. The Universal Declaration of Human Rights 1948, This instrument recognises the integral role that transparent and open elections play in ensuring the fundamental right to participatory government. The declaration provides that, "everyone has the right to take part in the government of his/her country, directly or through freely chosen representatives."⁴⁵

Moreover the declaration provide that the will of the people shall be the basis of the authority of government, this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret ballot or by equivalent free voting procedures.⁴⁶

⁴⁵ Article 21 of the Universal Declaration of Human Rights of 1948

⁴⁶ The Universal Declaration of Human Rights of 1948

3.1.2. International Covenant on Civil and Political Rights 1976 is the key international that guarantee the voting rights and free election without distinctions mentioned in Article 2 of the same convention and without unreasonable restriction in right to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.⁴⁷ Moreover Article 2 of the ICCPR specifies that voting and participation in elections is a universal right not to be denied because of any “status” of individuals around the world are systematically or inadvertently disenfranchised based on their status as a member of a certain group.

3.1.3. U.N Convention on the Elimination of All Forms of Racial Discrimination Against Women, The Convention provides the basis for realizing equality between women and men through ensuring women's equal access to men, and equal opportunities in political and public life including the right to vote and to stand for election it provide that Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage.⁴⁸ The afore said Convention put condition to the member states by providing that; States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone including right to vote, without distinction as to race, color, or national or ethnic origin.⁴⁹

⁴⁷ International Covenant on Civil and Political Rights 1976

⁴⁸ Article 5(c) of the International Convention on the Elimination of All Forms of Racial Discrimination Against Women

⁴⁹ idem

3.2. At Regional Level.

3.2.1. The African Charter on Human and Peoples' Rights 1981.

On the side of regional instrument in Africa right to vote has been granted in the latest of the regional instrument on human right is the African Charter on Human and Peoples' Rights (1981). On the right to vote the charter is brief and to this point of right to vote it provides that, "Every citizen shall have the right to participate freely in their government."⁵⁰ This provision has meaning that every eligible citizen has right to vote in any election that affect their government.

3.3. At National Level,

3.3.1. The Constitution of United Republic of Tanzania of 1977

Under Article 3 of the Constitution defines the United Republic of Tanzania as a democratic, secular and socialist state which adheres to multi-party democracy.⁵¹ By virtue of ratification of the ICCPR, Tanzania as a member state is bound to provide and assure or secure the right to vote in constitution. The United Republic of Tanzania Constitution of 1977 under Article 21, which gives people the right to participate in public affairs, this impliedly provides for the right to vote. Article 21(2) of the 1977 Constitution States provides that "Every citizen has the right and the freedom to participate fully in the process leading to the decision on matters affecting him, his well being or the nation"

⁵⁰ Article 13(1) of the African (Banjul) Charter on Human and Peoples' Rights 1981

⁵¹ Constitution of United Republic of Tanzania of 1977

Also Constitution of United Republic of Tanzania of 1977 on the matters relating to the citizen right to vote, under article 5(1)⁵² provides that

“Every citizen of the United Republic who has attained the age of eighteen years is entitled to vote in any election held in Tanzania. This right shall be exercised in accordance with the sub article (2), and of the other provisions of this Constitution and the law for the time being in force in Tanzania relation public elections”

Though the Constitution of united republic of Tanzania garrantee the citizen right to vote but the right to vote is not absolute, it may still be deprived under a certain circumstances as provided herein under

“Parliament may enact a law imposing conditions restricting a citizen from exercising the right to vote by reason of any of the following grounds: being a citizen of another state; being mentally infirm; being convicted of certain specified criminal offences; omission or failure to prove or to produce evidence as to age, citizenship or registration as a voter. Except for these grounds no other grounds shall disqualify a citizen from exercising the right to vote.”⁵³

3.3.2. The National Election Act. No.1 of 1985 [Cap.343 R.E. 2010]

The provision of this Act which relate to presidential and parliamentary election shall be read as one with the Constitution⁵⁴. The Act tries to highlight some conditions for purposes to safeguard citizens right to vote during the whole election process whether is the general election or is the by election that must be followed by the stakeholder.⁵⁵ The fore said Act provide that ; Every person registered as a voter under this Act shall be entitled to vote at a Presidential election.⁵⁶ Furthermore the said Act provide that ; Every voter who wishes to vote shall present himself at

⁵² the Constitution of United Republic of Tanzania of 1977

⁵³Article 5(2) of the Constitution of United Republic of Tanzania of 1977

⁵⁴ Section 1 (2) of The National Elections Act (Cap.343 R.E. 2010)

⁵⁵ The National Elections Act (Cap.343 R.E. 2010)

⁵⁶ Section 35C of The National Elections Act (Cap.343 R.E. 2010)

the polling station allotted to him in the polling district which he is registered to exercise their right to vote.⁵⁷

Also the Act safeguard the right to vote against undue influence resulted from the corrupt act and any practice regardless it has been done directly or indirectly either by the candidate or by other person on behalf of the candidate⁵⁸ it provide that

“Any person who directly or indirectly, by himself or by any other person on his behalf, makes use of or threatens to make use of any force, violence or restraints, or inflicts or threatens to inflicts by himself or by any other person, any temporal or spiritual injury, damage harm or loss, upon or against any voter in orders to induce or to compel such voter having voted or refrained from voting, at any election or who, by abduction, duress or any fraudulent contrivance, impedes or prevents the free use of the vote by any vote either to give or refrain from giving his vote at any election, commits any offence of undue influence within the meaning of this Act”.

This position of Act aim at protection of the citizen right to vote to be exercising in free will and choice as granted as the constitutional right that prohibits for any person to threatens other person from voting. The legal basis of right to vote in was explained in the case of *Attorney General V. Walid Kabourou*,⁵⁹ it was held thatit is also implicit from the provision of the Constitution concerning the people, such as the envisaging a representative parliament elected by the people; Article 5 on franchise or the right to vote; article 8(a) (b) and (c) on sovereignty of the people, democracy, accountability to the people and peoples participation in their government; Article 21 on the fundamental right to participate in the affairs of the government

⁵⁷ Section 6 1 (3) (a) of The National Elections Act (Cap.343 R.E. 2010)

⁵⁸ Section 99 Of The National Elections Act (Cap.343 R.E. 2010)

⁵⁹ (1996) TLR 156.

either directly or through freely elected representatives , that there is an underlying constitutional principle that requires democratic elections to be free and fair.

The Jurisdiction of Courts in Resolving Electoral Disputes in Tanzania, The Constitution stipulates clearly under Article 83(1)⁶⁰ that in election matters, all election complaints, except complaints pertaining to a presidential election, shall first be heard by the High Court in respect of parliamentary elections. Article 83 of the Constitution provides as follows:“83.-(1) Every proceeding for the purposes of determining the question whether –(a) the election or appointment of any person to be Member of Parliament was valid or not; or(b) a Member of Parliament has ceased to be a Member of Parliament and his seat in the National Assembly is vacant, or not, shall, subject to the provisions of sub article (2) of this Article, first be instituted and heard in the High Court of the United Republic”.

The jurisdictional basis for the High Court in conducting trial of election petitions not only is statutory but constitutionally stipulated Article 83(4) of the Union Constitution provides further that a petitioner dissatisfied with the decision reached by the High Court can appeal to the Court of Appeal. In Tanzania perhaps different from England, there is no “Election Court” in the sense of a court specifically constituted to hear only an election petition whose task terminates with the finalization of the petition.

In Tanzania, the jurisdiction of courts for conducting the trial of election petitions is statutorily provided for in the electoral laws. Statutorily there are only two courts which are specifically designated and vested with original jurisdiction to hear and determine election petitions. These are the High Court of Tanzania for parliamentary election petitions. Although these courts are

⁶⁰ Constitution of United Republic of Tanzania 1977 as amended time to time

not referred to specifically in the electoral laws as “election courts”, for our purposes however, we can safely refer to the High Court as a “parliamentary election petition court”. High Court enjoy original jurisdiction in parliamentary election petitions. They are the only courts in the Article 41(7) of the Constitution: “When a candidate is declared by the Electoral Commission to have been duly elected in accordance with this Article, then no court of law shall have any jurisdiction to enquire into the election of that candidate”.⁶¹

In Tanzania the only legally allow procedure for challenging the election results of Member of Parliament is by way of an election petition presented either to the High Court. In the case of avoiding the election of a Member of Parliament, section 108(2) of the National Elections Act. No 1 of 1985 (Cap.343 R.E. 2010). provides as follows, “The election of a candidate as a Member of Parliament shall be declared void only on an election petition if the grounds is proved to the satisfaction of the High Court and on no other ground”.⁶² This position was observed in the case of *Ng’weshemi V. Attorney General*⁶³ was stated by Onyiuke J. “This is an election petition presented by Ng’wheshemi the unsuccessful candidates at the parliamentary election in the karumo constituency. The petitioner received 7700 votes and the successful candidate polled 7707, and thus a majority of 7votes. The grounds of challenge were generally that (a) there were more votes counted than number of registered voters (b) there was failure to keep the pool open at some of the polling stations; (c) there were failure to provide screened compartment wherein electors could cast their votes secret; (d) a substantial number of voters were denied the opportunity to vote. The Court held that “The petitioner must also succeed on

⁶¹ Article 41(7) of the Constitution of United Republic of Tanzania as amended time to time

⁶² Section 108(2) of the National Elections Act. No 1 of 1985 (Cap.343 R.E. 2010)

⁶³ MISC. Civ. Cause 5-M-70; (1971) HCD No 251

issue (1). A substantial number of voters were denied the opportunity to vote and had the result of the election could have been affected having regard to the narrowness of the margin of victory.” Petition was allowed and election declared void.

Also in the case of *Ngowi V. The Returning Officer of Moshi and Lucy Lameck*,⁶⁴ The petitioner being the unsuccessful candidate for the Moshi Constituency in the parliamentary general election of 1970 sought to have the election declared void because of certain irregularities and contraventions of the Election Act 1970. He alleged; (a) that without proper and justifiable grounds there was held election for second time in 12 polling station contrary to rules and regulations and without giving the proper notification of the change of the date; (b) that four ballot boxes had no seals and two others their seals tampered with contrary to section 73(2); (c) that 58 boxes did not have proper accompanying envelopes and eleven had no envelopes, and some other administrative irregularities. The petitioner relied on S. 123(3) (c) of Election Act which permit an election to be declared void on the ground of “non-compliance with of the provisions of this Act relating to election, if it appears that the elections was conducted in accordance with the principles laid down in such provisions and that such provision affected the result of election”. It was held that “causing some voters not to cast votes does not lead to avoiding elections if majority of successful candidate is greater than number of votes prevented.

In the case of *Emmanuel Abrahamu Nanyaro V. Peniel Ole Saitabau*⁶⁵ it was held that “understandably we were not addressed on the issue of disenfranchisement. We have read the

⁶⁴ MISC. Civ. Cause 9-A-70; (1971) HCD No 238

⁶⁵ (1987) TLR 47 (CA)

evidence pertaining to this point and we may briefly say this. We entirely agree with finding of the trial judge that only 60 people were unable to exercise their right to vote, on account of the shortage of ballot papers at Olkungwendo and Ambaroni polling stations. This did not affect the result of the election, given the margin of victory''. Therefore the judge had an *Obiter dictum* that the election results cannot be affected if the margin of victory votes is greater than the number of disenfranchisement vote.

CHAPTER FOUR

RESEARCH FINDINGS AND DATA ANALYSIS

4.1. Study area description

The study was conducted in kalenga constituency in Iringa Region, because kalenga is among of constituencies in Tanzania which has recently conducted by election of member of the parliament. The Kalenga by-election was a by-election held for the Tanzanian parliamentary constituency of Kalenga. It was triggered by the death of William Mgimwa, the previous Member of Parliament (MP) and former Finance Minister, who had held the seat for the Chama Cha Mapinduzi since 2010.⁶⁶ The by-election took place on 16 March 2014 and the CCM candidate won by a landslide.⁶⁷ Therefore Kalenga constituency was taken as a case study of the research in which will bring and reflect the real situation of the protection of the citizen right to vote under the new election law herein after The National Election Act cap 343 of 2010. Also this case study of kalenga will enable us to understand the protection of the citizen right to vote in other by election that were held in recent time after the enactment of the National Election Act of 2010, that includes For example the current event of by-election which happened at East Arumeru constituency, Igunga in Tabora, kalenga constituency and Chalinze in Pwani in which by-election were conducted without making update registration of voters but only the citizen's who have rights to vote are those who were registered during 2010 in the general election. Due to fact that all by elections mentioned above were conducted without making the specific

⁶⁶ Finance Minister Dr Mgimwa dies in South Africa". IPP Media. 2 January 2014. Retrieved 16 March 2014.

⁶⁷ <http://pesatimes.co.tz/news/governance/ccm-declared-winner-in-kalenga-by-elections>, accessed on 12 January 2015.

registration of voters but only the citizen's who have rights to vote are those who were registered during 2010 in the general election, therefore that is the factor that influenced a researcher to conduct the research on the matter relating to the protection of the citizen right to vote in by-election under the new law election herein after the National Election Act, (Cap.343 R.E. 2010). Furthermore kalenga constituency had been taken as a case study for findings the truth.

4.2. Discussions and Resultss

In this study we had been assessed on whether there is a protection of the citizen right to vote in kalenga constituency by-election. Our findings suggested that we can have reasonable confidence in estimating of the protection of the citizen's right to vote. In a particular the questionnaire and structured interview captured data in relation to: Firstly, Socio- demographic data that were used as explanatory variables. These included, age, sex, religion, marital status, education and, occupation. Secondly, The setting time and review of registration of voters and protection of citizens right to vote within by-election constituency. Thirdly the irregularities in the Permanent National Voters Registration (PNVR) and right to vote in by election. Fourth, the citizen interest to exercise the right to vote in by-election. Fifth Relationship between Party Influence and Voting right. Sixth Mass media and voting participation. Seventh knowledge or awareness of voters about by-lections. Eightith, information on the processes in the 2014 kalenga by elections related to allocation of polling stations, the registering procedures, and qualification of those who were handling the general exercise were gathered. Finaly relationship between practice of corruption and right to vote in by election. All of the mentioned above were examined through interviews and focus group discussion.

4.2.1. Social demographic characteristics of respondents

The general characteristics of interviewed the respondents based on the sex. The results indicate that 70% were male and 30% were female and these were about of age group of 18 years and above years. The results further show that 65% were married and also 35% were not married. The total of 50 people who were the ordinary had been interviewed in the field of study with several NEC officers and political party leaders.

4.2.2. The setting time and review of registration of voters in protection of citizens right to vote within constituency

Section 15 (1) of the National Election Act⁶⁸ provides that, “the commission shall be responsible for setting time and review of registration of voters in every polling district within the constituency.” A researcher established that despite of acknowledged that public participation in the by-election process in Kalenga constituency, the public participation in the by-election was limited because the voters register was not been updated or reviewed. The National Electoral Commission (NEC) Deputy Chairman, retired Judge Hamid Mahamoud Hamid maintained that the government has not yet disbursed the needed funds to update the said register. “We have no money for updating the register,” the retired judge argued “...but we cannot postpone the by-elections because of this,” he insisted. As a result, the National Secretary to the political party Chama Cha Kijamii (CCK) Renatus Mwabi, is accused the government of gross negligence for

⁶⁸ (Cap.343 R.E. 2010)

failure to fund the update of the voters' register in Kalenga constituencies before the pending by-elections.

The politicians said failure to update the voters' register will deny many residents their constitutional right to vote as provided under article 5(1)⁶⁹ "Although election campaigns have already started in Kalenga the government has not yet set aside funds to update the register in those areas," Mwabi explained. "Without registering the newly qualified voters how are we to get proper representation of the people's will?" he queried. He was addressed a conference organised by the National Electoral Commission (NEC) at the turn of the week where he said the register in Kalenga constituency was last updated before the 2010 general election almost five years ago. "Therefore, if it is not updated before the two by-elections, most people who did not qualify then but now do will be denied their right to vote," said by mwabi.

Also a representative from Chama Cha Democrasia na Maendeleo, Asha Dicky said that it is best for the National Electoral Commission to update the register at time before went to election warned that failure to do so will only deprive the public their constitutional right to vote. She said it was obvious that since 2010 a number of young people who were under 18 years of age are at the time were 18years old and above meaning they have the right to vote. Therefore many number of Tanzanian citizens resides in kalenga constituent were deprived their right to vote only on the ground that there were not registered in voters register despite of having eligible age to exercise the right to vote as given in our constitution.

⁶⁹ The Constitution of United Republic of Tanzania

4.2.3. Irregularities in the Permanent National Voters Registration (PNVR) and right to vote in by election

A researcher in the field of study it was established that most irregularities in the Permanent National Voters Registration was contributed to deny the right to vote included the following; typographic errors in the listing of names, mix up of the registered voters names, and some voters incorrectly included in the list of deceased or disqualified voters. Irregularities in PNVR also had another barrier towards the right to take part in governance in the kalenga by election. Some names of voters were missing from the registers despite their having registered and being in possession of a voter card.

The PNVR was not updated prior to the 2014 by election, voters lost their cards. However, this figure raises questions of concern as in fact most registered candidates did not turn up for voting again in some areas registered was also a problem, most areas only half of the estimated number was realized during the voter registration.

Also during the whole process there were several violations of human rights. These included the use of abusive language, corruption practices, and denial of the right to vote since there was no updated Permanent Voters Registers for the by-election.⁷⁰ The PNVR was not updated prior to the April, 2012 by election, voters lost their cards. There was also some malpractice by political parties whereby voters' cards were bought and in some of the polling stations voters cards numbers did not tally with the list of the names presented.⁷¹

⁷⁰ TACCEO (2012) Report, 67

⁷¹ *Idem*

Lastly there was abuse of the process of the right to take part in governance during the by-election in East Arumeru Constituency denial of the right to vote for adult persons due to irregularities in the Permanent National Voters Registration.⁷²

According to the report many eligible voters in Igunga constituency were not take part in Sunday's by-election because the National Electoral Commission has not updated the permanent voter's register.⁷³

4.2.4. The citizen interest to exercise the right to vote in by-election

A researcher established that the Lack of interest factor it groups together those people who did not vote because they felt the by-election were uninterested, their vote unimportant, and did not encouraged people to vote the candidates. further Argued that, around over a quarter of the respondents mentioned politicians behavior to be not encouraging people to vote despite of having all qualification to vote, they said that most of the politician were not honest, responsible, accountable and not committed etc. A report produced by NEC (2014) about Kalenga by-election (Tanzania) had shown that only 29,541 out of 71,965 of registered voters voted in the by-election that year⁷⁴.

A study conducted by the Legal and Human Rights Centre (LHRC) (2014) under observation of 2014 Chalinze by-election (Tanzania) shows that only 24,422 out of 92,939 registered voters voted in the by-election, that is to say only 26.3% voted. A big proportion 73.7% of registered

⁷² Tanzania Human Rights Report 2012 82.

⁷³ *Idem*

⁷⁴ National Electoral Commission Report of 2014

voters did not turnout⁷⁵. And it is suggested that there has been poor citizen participation in voting just because leaders are not committed to solving their life challenges as well as to improving the permanent Voters' register. For example, during the above-mentioned Chalinze by-election, a large number of citizens went to their farms instead of going to vote, and when the electoral commission went around announcing the election, one of the citizens was heard saying that, "Instead of broadcasting about water, you tell us about election". In some cases, there was poor security during the whole process of election that why some citizen did not interest to vote because of feared insecurity circumstance around polling stations.

In some instances, most of the voters seemed undecided about which party to support as the competition between Chama cha Mapinduzi CCM and Chama Cha Demockrasiana Maendeleo CHADEMA was a stiff hence lost the constitutional right to vote. And as for the Chama cha Mapinduzi voters, did not do so as they did not happy with the way their party dealt with the issues of corruption that has been raised in the parliamentary meetings during the period 2005 to 2010.⁷⁶

4.2.5. Relationship between Political Party Influence and Voting Right

A researcher aimed to assess as to whether the respondents had voted for particular political parties or for certain reasons, the respondents were asked whether they had been convinced by the manifestos of the political parties, whether they trusted political parties, whether they

⁷⁵ Observation by the Legal and Human Rights Centre (LHRC) (2014)

⁷⁶R. Kappia, Electoral Behaviour in Tanzania: why Few Voters Turnout in 2010 General Elections - A Case of Kinondoni -Dar es Salaam 2011, 13.

preferred the candidates, or whether they were motivated by the incentives provided by the parties. About 60% of all the respondents claimed that the manifesto of the political parties had convinced to participate in the elections to vote in by election, and about 40% of all the respondents argued that they were not impressed by the manifestos of political parties and they considered other factors such as adherence to political parties. For the most citizens who did not interested by political parties was not interested exercise their constitutional right to vote simply because was not influenced by political party.

4.2.6. Mass Media and Voting Participation.

This subsection was aimed at determining the relationship between the Mass media and voters' participation in by-election. Respondents were asked to verify the role of Mass media in by election. The findings were observed that about 57% of the respondents agreed that the role of mass media is central to support the by-election. This could be supported by the argument by political scientist who argued that media outlet can affect what viewers perceive as news worth and relevant. Furthermore, about 40% of all the respondents disagreed with the role of mass media in election and voter turnout in this aspect. Also it was argued that the role of media in elections it act as a source of information especially during campaign to voting. It is from this where by political bias evident itself. Again Mass media sometimes operate in a way which influence voters positively or negatively especially in an environment where voting is not mandatory. While about 3% of the respondents were undecided. Therefore in this case, in the 2014 by Election in Tanzania mass media played its role

4.2.7. Knowledge or awareness of Voters about by Elections

Under this aspect a researcher wanted to know about the Knowledge of voters about by elections. It was established that the Knowledge of Voters about by elections categorized into two levels i.e. lower knowledge and higher knowledge which was set for the purpose of analysis in this study. Lower knowledge of voters towards by elections was about 20% while higher knowledge of voters towards by elections was about 80% of the all respondents. However, results showed that the majority of the respondents had higher knowledge of by elections in kalenga Constituency that is about 80% and this group is the one who had higher possibility to exercise the right to vote rather than for those who had lower knowledge. The above results can be justified on the fact that the study was conducted in rural area where there was inadequate access to information through public and private media.

4.2.8. Inadequate social services in relation with voter attendance in by-election 2014.

A researcher established there were inadequate provisions of social services which affect the attendance of voter in by election 2014. The findings were portrayed by the respondents as follows: “Agree” were 69.1% exceeded the other, followed by “disagree” were 25.4%, and finally “Undecided” were 5.5%. According to the respondents there is great relationship among social service provided to the citizen and voting behavior as indicated in the above whereby more than 69.1% agreed to social service to affect by-election to a greater extent. Today some political scientists have argued that citizen demand highly openness in what the government is planning and the way he/she is implementing his decisions. High voter turnout may define the public trust in government while low voter turnout may define the mistrust of citizens to its

government. The mistrust on the basis of inadequate provisions of social services among the citizens of kalenga against the political leaders was the factor that made some citizen did not exercise the right to vote in by-election.

4.2.9. The relationship between the civic education and right to vote during by-election

A researcher established that there was low of civic education during the by-election 2014. A research was proved that during campaign there was special time where citizen get to know, to be educated on policy issues. It is the civic education campaigns which help voters to get interested, to search for information about contesters whom they think they would like to vote for.⁷⁷ The idea seems to coincide with the findings of the researcher whereby about 49% agreed that low voter participation was caused by low voters education something which contributed many citizens not enjoy their constitutional right to vote simply because of having low civic education. It has been reported that campaigns were conducted according to schedule; this was due to election Regulation of 2010. This caused many citizens not to attend civic education rallies and thus low education.⁷⁸,

⁷⁷ Himmelweit,Hilde et al How Voters Decide: model of vote, choice based on a special Longitudinal Study extending Over Fifteen Years and the British Election Survey of 1970-1983, Open University Press. Dar es Salaam 1981 25.

⁷⁸ REDET., “Special Workshop on TEMCO Report and the 2010 Election Study” held on 20th-21st May, 2011 at Bagamoyo (Unpublished) 2011 35.

4.2.10. Information on the process in the 2014 kalenga by elections related to allocation of polling stations, the registering procedures, and qualification of those who were handling the general exercise were gathered.

The question was designed to extract the information on how election process influenced citizen right to vote in by election. The results were as follows: “most qualified to vote” were 32.7%, polling stations allocated far away especially in the village were 29.1%, and the system of registering is not experienced by citizens were 20% and the last was Misplacement of voters identity card 18.2%. As you can read from the findings it is indicated that 32% the polling stations were very far from residential areas something that caused some of the citizen not enjoy the right to vote.

Again it is also observed that loss of voter identity card was also added to the factor which had contributed to violation of the citizen’s right to vote in by election. Some polling officials were not able to adequately direct people to their correct voting place or deal with questions and problems arising in many polling stations. It was evidenced that election officials lacked familiarity with the voting procedure and this was manifest throughout the process from the opening through the voting to the counting stage.

4.2.11. The relationship between practice of corruption and right to vote in by-election.

The respondents were requested to respond to the question basing on corruption, researcher wanted to know whether there was any relationship with the exercise of the citizen right to vote in 2014 by election and corruption. The result was as follows: 50% has a great yield to election; followed by “No” being 12.5% and finally the “Undecided” were 37.5%.

Some political analysts agree that corruption could be the cause of low voter turnout as it is depicted from Busanda Constituency in 2009 by-election in which about 130,000 voters registered with the National Electoral Commission (NEC) but only 55,000 voted.⁷⁹ In a research study conducted about 50% respondents said that there was relationship between corruption and the low voter turnout in 2014 by Election. Furthermore, in the discussion with citizens in the field study area, most of them said, corruption undermines democratic participation, it undermines attitudes toward political institutions, and it can make citizens hastate to vote. In correlation with TEMCO report of 2010 General Election, the report argues that there were a lot of corruption incidences during the campaigns, various TEMCO reporters stated that registered card were bought to greater extent, money were given to voters, some contesters resigned from contesting by receiving bribe.⁸⁰ Political Scientists argued that corruption has statistically significant and substantially relevant negative impact on voter turnout Examples were taken from countries like Luxembourg, Belgium, Germany and Chile as modal in fighting corruption and their correspondence voter turnout were very high about 80%.⁸¹

4.2.12. The foremost reason which affected the citizen right to vote.

The respondents were asked to tick on the foremost reason which caused violation of the citizen right to vote in Tanzania by-election, the results show that Corruption exceeded by having the respondents 38.2%, followed by poor government policy which was 32.7% and the last was un-

⁷⁹L. Makame., Vote buying a cause of low voter`s turnout. Dar es salaam 2009 23.

⁸⁰ TEMCO, 2010

⁸¹ D. Stockermer and L. Scruggs., Bribes and Ballots: The Impact of Corruption on Voter Turnout in Democracies: University of Ottawa. Ottawa 2012.

fair election that earned 29.1%. The results indicate corruption has a great response to election in violation of citizen right to vote. Poor government policy also seems to have some impact on the rate of voting, as it is observed to have scored 32.7%. This could be true because from focus group discussions citizens were complaining to hear the same policy proposal during the campaign, no party conveyed a new idea on issues related to planning on how to combat persistent poverty.⁸² It should be understood that the consumer model explains to why people vote, it describes that people vote because of future benefit.⁸³ In the case of 2014 by-election there was no indicator of where the country was focusing as far as policy issues are concerned.

4.2.13. A general attitudes of people towards voting in by-election.

A researcher asked the question basing on the attitudes of voters towards by-election in Tanzania and the respondents were asked to put tick on the particular answer. Where the results showed that most citizens 21.8% believed that there is too much forging during by-election, others want to avoid witness to the contestants 32.7%, citizens are discouraged by poor commitment of political leaders 29.1%, and that most citizens undergo dilemma during by-election were 16.4%. The majority agreed on people wanted to avoid being the witnesses which were 32.7%. Reflecting through the findings it is clear that in most cases measuring attitude in relation to voting behavior is very difficult there so many factors which may lead an individual to vote.

⁸² REDET., "Special Workshop on TEMCO Report and the 2010 Election Study" held on 20th-21st May, 2011 at Bagamoyo (Unpublished) 2011 25.

⁸³Himmelweit, Hilde et al How Voters Decide: model of vote, choice based on a special Longitudinal Study extending Over Fifteen Years and the British Election Survey of 1970-1983, Open University Press. Dar es Salaam 1981 82.

4.2.14. Change of the citizen resident and the right to vote in by-election

A researcher aimed to extract the position of the citizen right to vote for those citizen who change or shift from one constituency to another for the various reasons. In the field of study the respondent citizen responded that all of the citizen who are new resident in kalenga and who come after completion of the Permanent National Voters Registration (PNVR) of 2010 had not been given the right to vote in kalenga by election 2014 simply because since 2010 the PNVR was not updated up to the date of by election so that to cover the new residents who come after registration of 2010. On other hand the researcher established that there are some citizen who shifted outside of the kalenga constituency and this group of citizen had right to vote in the polling station that has been registered within the polling station district simply because have procession of all qualification required by citizen to have in order to enjoy the right to vote.

4.3. Conclusion

Generally from the research findings and data analysis had proven that the violation of the citizen's right to vote is very high and is very serious problem in kalenga by-election. In most cases the violation citizen's rights to vote in by-election were contributed much by several factors, but the core factor was non compliance of the requirement of law as per section 15(1) of the National Election Act (Cap.343 R.E. 2010), that give power to commissioner on the setting time and review of registration of voters in protection of citizens right to vote within constituency. However there are other factors that contributed on the violation citizen right to vote such as corruption practice, irregularities in the PNVR, poor civic education of voters and

poor handling and management by National Electoral Commission agencies and staff who are given the supervisory power over whole process of by-election.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1. Conclusion

The study discover a combination of factors to explain that prove the violation of the citizen's right to vote in by-election and low voter attendances as follows, inadequate of civic education, poor administration, poor provisions of social services, low civic education to the residents of kalenga in respect to by-election matters. Corruption was also identified to be the cause of apathy among registered candidates. Also irregularities in the Permanent National Voters Registration (PNVR) and information on the process in the 2014 kalenga by elections related to allocation of polling stations, the registering procedures, and qualification of those who were handling the general exercise were gathered were identified to be among factors that had been contributed much in violation of the citizen right to vote.

5.2. Recommendations.

Based on the conclusion the following recommendations are made to help different development stakeholders at various levels and including voters themselves,

The National Electoral Commission (NEC), should be mandatory to observe the requirement of election law before starting the conduct of by-election which state that the commission shall be responsible for setting time and review of registration of voters in every polling district within the constituency as per section 15(1) of the National Election Act, (Cap.343 R.E. 2010).

The National Electoral Commission (NEC), should strengthen efforts in expanding and increasing adequate information about the importance of by-elections to all citizen so that to make all citizens to exercise their right to vote in by-election.

More specifically, the National Election Commission should establish the various civic education programmes or projects in order to raise knowledge on the importance of participating in voting. More knowledge on civic education may influence rapid increase of participation in voting. Seminars and workshops should be conducted by the National Electoral Commission (NEC) for local leaders to sensitize them on various election issues, such as the implication of low participation in elections on consolidation of true democracy. The leaders would then spread the messages to the electorates.

National Election Commission should find out on how to have polling stations near home of voters for maximum in order to facilitate smooth and good environment to the citizens to participation in by-election

National Electoral Commission (NEC), Training for government officials should be given to strengthen professional skills, in handling matters related to election.

National Electoral Commission (NEC), should to accomplish the registration of voters in an accurate, timely, and transparent manner, and to give individuals effective opportunity to understand their rights, check the accuracy of their registration, and ensure that errors are corrected in the Permanent National Voters Registration book. This will avoid the irregularities in the permanent national voter registration (PNVR) as it was been in the research finding.

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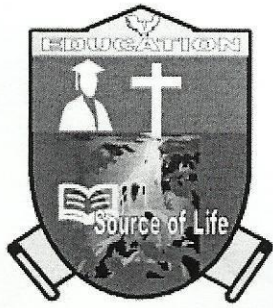
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