



THE UNITED REPUBLIC OF TANZANIA
OFFICE OF THE SOLICITOR GENERAL



**ATTORNEY GENERAL & 2 OTHERS v. BOB CHACHA
WANGWE**

COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPEAL 138 OF 2019

(Mwarija, J.A., Mugasha, J.A., Mziray, J.A., Mkuye, J.A and Mwambegele J.A)

(Appeal from the Judgement and Drawn Order of the High Court of Tanzania (Main Registry) at Dar es Salaam in Misc. Civil Cause No. 17 of 2018 by Ngwala, J., Matogolo, J., and Masoud, J.)

Constitutional Law- Participation of Directors in Election- whether the appointment and participation of the Directors in the Election as returning officers violates Article 21(1), (2), 26(1) of the Constitution?

Constitutional Law- Appointment of Directors by President-Whether the declaration or oath taken by the Directors as Returning Officers in the administration of elections after being appointed by the President is a safeguard against bias?

Civil Law and Practice- Affidavit- Admissibility and Probative Weight of the Electronic Annexure to the Affidavit?

This is an appeal from the High Court's judgment, which declared the appointment and participation of Directors as returning officers in elections to be unconstitutional. The main question before the Court of Appeal was whether the involvement of the Directors in the election violates Article 21(1)(2) of the Constitution despite the existing safeguards under Article 74(14) of the Constitution. The Appellants argued that there are sufficient safeguards to deter the Directors from being biased in the election, while the respondent aligned with the High Court decision to the effect that the manner of appointment and participation of Directors in the Election as returning officers is unconstitutional as they are not impartial for being appointed by the President and continue to be members of Chama Cha Mapinduzi.

Held:

- (i) The appointment of Directors by the President as Returning Officer while taking the oath of secrecy and making a declaration of not joining or withdrawing membership



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- (ii) from the political party is a sufficient safeguard in an election intended to ensure compliance with Article 74(14) of the Constitution.
- (iii) Impartiality of the Directors as Returning Officers in an election, while they are appointed by the President, ought to have been presumed unless proved otherwise.
- (iv) Admissibility and Probative value of the electronic evidence attached to the Affidavit have to comply with the requirements under the Electronic Transactions Act when they are denied in a counter-affidavit.

Appeal allowed.

Statutory Provision referred to:

- (i) Articles 21(1)(2), 26(1), 27(2). 74(14) of the Constitution of the United Republic of Tanzania, 1977
- (ii) Sections 6(1), 7(1), (2), (5) of the National Elections Act
- (iii) Sections 110(1) of the Evidence Act, [Cap 6 R.E 2019]
- (iv) Section 18(1) and (2) of the Electronic Transactions Act, 2015

Case Law referred to:

- (v) Makori Wassaga v. Joshua Mwaikambo and Another [1987] TLR 88,
- (vi) Peter Karanti v. Attorney General, Civil Appeal No. 3 of 1998;
- (vii) Elisa Moses Msaki v. Yesaya Ngetau Matee, Civil Application No. 2 of 1999 (both unreported);
- (viii) James Funke Gwagilo v. Attorney General [2002] TLR 455;
- (ix) Capt. Harry Gandy v. Gaspar Air Charters Ltd [1956] EACA 139
- (x) Central Bank of Kenya v. Nkabu [2002] 1 EA 34
- (xi) Attorney General v. W.K. Butambala [1993] TLR 46
- (xii) BAWATA and Others v. Registrar of Societies, Misc. Civil Cause No. 27 of 1997 (unreported)
- (xiii) Rev. Christopher Mtikila v. Attorney General [1995] TLR 31
- (xiv) U.S. v. Bulter 297 U.S. I. [1936],
- (xv) Attorney General and 2 Others v. Aman Walid Kabourou [1996] TLR 156

Representation of the parties

Dr. Clement Mashamba, learned Solicitor General, assisted by a team of learned State Attorneys; Messrs Mark Mulwambo and George Mandepo, Ms. Alesia Mbuya, Ponsiano Lukosi, Evarist Mashiba, Lucas Malunde, all learned Principal State Attorneys, Ms. Tumaini Mfikwa, learned Senior State



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Attorney, Ms. Grace Lupondo, Ms. Narindwa Sekimanga, Mr. Yohana Marco, and Ms Fausta Mahenge, all learned State Attorneys for the appellants; Mr. Mpale Mpoki, Dr. Rugemeleza Nshala, Fulgence Massawe, Jeremia Mtobesya, and Jebra Kambole, learned advocates for the respondent.

