

TANZANIA / JUDGMENT

John Seka v Minister of State in President Office Local Government Authorities and AG Ruling on PO

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA MAIN REGISTRY - DODOMA
(SEATED AT DAR ES SALAAM) MISCELLANEOUS CIVIL CAUSE NO. 28420 OF 2024 JOHN
SEKA.....PETITIONER VERSUS MINISTER OF STATE IN THE
PRESIDENT'S OFFICE REGIONAL ADMINISTRATION AND LOCAL GOVERNMENT.....1ST
RESPONDENT ATTORNEY GENERAL.....2ND RESPONDENT

RULING

Date of last order: 16/11/2024 Date of ruling: 22/11/2024 AGATHO, J.: This ruling deals with a critical question of determining competency of constitutional petition challenging the restriction of independent candidate in local government elections. The petitioner contests the constitutionality of subsidiary legislation promulgated by the Minister of State in the President's Office Regional Administration and Local Government that restricts 1 participation of independent candidate in local government election. The ruling draws a distinction between judicial review and constitutional petition. It interrogates whether the court is functus officio due to the ruling in John Seka v the Minister of State in the President's Office Regional Administration and Local Government and Attorney General, Miscellaneous Civil Cause No. 27210 of 2024 where court held that the matter was res-judicata because the issue has been determined in finality by Bob Chacha Wangwe and Others v the Minister of the President's Office Regional Administration and Local Government Misc. Cause No. 23515 of 2024; and whether the issue of independent candidate is res-judicata in lieu of Court of Appeal decision in Honourable Attorney General v Reverend Christopher Mtikila, Civil Appeal No. 45 of 2009

[2010] TZCA 162 (17 June 2010) which herein is referred as Mtikila No.3. In this petition, the Petitioner by way of originating summons is challenging the constitutionality of regulation 15 (f) of the GN 571 of 2024; regulation 14(f) of GN 572 of 2024; regulation 15(f) of GN 573 of 2024 and regulation 15(f) of GN 574 of 2024. It is worth noting that the petition was brought under certificate of utmost urgency because the Local Government Elections are slated on 27th November 2024. Having warned itself that justice 2 hurried justice buried, the court treated this case with the urgency it deserves. Being a constitutional

petition, and as set out under rule 9 of the Basic Rights and Duties Enforcement Act (BRADEA) Rules G.N. 304 of 2014 before proceeding to the merit of the petition, the court is enjoined to determine its competence. Understandably, the respondents filed their reply to the petition predicated with a notice of preliminary objection (PO) alleging that this court is functus officio. This PO is inter alia the subject of the present ruling. It is on record that the petitioner appeared in person and personally prosecuted the case. The respondents on their side were represented by Daniel Nyakiha, Senior State Attorney, Francis Wisdom, Edwin Joshua Webiro, State Attorney, Erigh Rumisha, State Attorney, and Kelvin Kisayo, Senior State Attorney. Mr Webiro, learned State Attorney began his submission in support of PO by reminding the court that the objection raised is to the effect that the court is functus officio to determine the petition. He also stated that the grounds as to why the court is functus officio are in the reply to the petition. But during their submission, they expounded them. State Attorney, Webiro underscored that the petitioner had previously lodged Misc. Civil Cause No. 3 27210 of 2024 against the respondents in the High Court of Tanzania Dar es salaam sub-registry. In the said application the petitioner was challenging the constitutionality of regulation 15 (f) of the GN 571 of 2024; regulation 14(f) of GN 572 of 2024; and 15(f) of GN 573 of 2024 and regulation 15(f) of GN 574 of 2024. All of which restricts persons who are not members of registered political parties to contest in the upcoming local government election. Mr Webiro underlined that in the said application, the petitioner alleged that such restrictions contravene part III of Chapter 1 of the United Republic of Tanzania Constitution of 1977. The petitioner alleges that the restrictions contravene Articles 12-29 which are part of the said chapter. The learned State Attorney went on submitting that in response to the aforesaid application the respondents raised two POs challenging the competence of the application. And the 1st objection was in relation to the jurisdiction of the court, and since the petitioner in that application was challenging constitutionality of those regulations, he ought to have filed constitutional case as provided for in the BRADEA and not the judicial review case. According to the State Attorney the second objection was that all the reliefs sought in that application were conclusively determined by the court in the case of Bob Chacha Wangwe and Others (supra). The counsel 4 reminded the Court that in its ruling with regards to the two objections which was delivered on 7th November 2024 sustained the two objections. And regarding the second objection the court at pages 35-36 held that claims in grounds 4(b) and (c) of applicant's statement in support of application are res-judicata. The respondents attached a copy of the application filed by the petitioner in their reply to the petition as Annexure OSG - 1. The respondents' State Attorney sought to impress the court that looking at ground 4(c) in the statement in support of the application, Misc. Civil Cause No. 27210 of 2024 which declared res-judicata one notices that the petitioner in that ground was challenging promulgation of regulation 15(f) GN 571 of 2024; regulation 14(f) of GN 572 of 2024; regulation 15(f) of GN 573 of 2024 and regulation 15(f) of GN 574 of 2024. As pe the petitioner, all these regulations restrict the persons who are not members of registered political parties to contest in the upcoming Local Government Elections. And the basis of complaint was that the regulations did not

take cognizance or did not observe the provisions of part III of chapter 1 of the Constitution of 1977, which is comprised of Articles 12-32. It was Mr Webiro's submission that the petitioner was complaining that the impugned regulations contravened those Articles of the Constitution. He proceeded to submit that in the same ground (4(c)) the petitioner complained that the promulgation of the already stated regulations which have the effect of restricting the rights as submitted earlier did not consider the provisions of international treaties and conventions to which Tanzania is a party. These international instruments include but not limited to African Charter on Human and Peoples Rights, the Universal Declaration of Human Rights, and International Covenants on Civil and Political Rights. The respondents' State Attorney further submitted that the petitioner contended on the same ground (4(c)) that the impugned regulations limit enjoyment of several fundamental rights of citizens of Tanzania guaranteed by the constitution. Lastly, Mr Webiro submitted that it was the contention of the petitioner that the impugned regulations did not consider the provisions of the United Republic of Tanzania Constitution of 1977. Mr Webiro was of the view that all the grounds pointed out were essentially challenging the constitutionality of the impugned regulations and were all declared res-judicata. In relation to the petition at hand, Mr Webiro voiced the respondents' dismay that the petitioner is again challenging the constitutionality of the very same regulations. He submitted that this can be clearly seen on grounds 6 upon which the reliefs are sought which is paragraph B of the Originating Summons. The paragraph claims that the impugned regulations contravene the provisions of the United Republic of Tanzania constitutions of 1977. The State Attorney then turned to the facts relied upon by the petitioner, which is paragraph C in the originating summons. He cited for instance, facts No. 4, 5, 6 and 7. Looking at these facts, they are replica of ground 4(C) in Misc. Civil Cause No. 27210 of 2024 which was declared by the court to be res-judicata. The learned State Attorney, Webiro opined that since the Court in Misc. Civil Cause No. 27210 of 2024 pronounced that the grounds in paragraph 4(C) were res-judicata, then this Court is functus officio to determine these matters again. He clarified that the Court is said to be functus officio when it disposes off a case or matter by making some orders which finally disposes of the case. To buttress his viewpoint, he cited the case of *Scholastica Benedict v Martin Benedict* [1993] TLR 1 (CA) at pages 4-5. He also cited the case of *Tanzania Telecommunication Company Limited and Others v Tri Telecommunications Tanzania Limited* [2006] EA Law Report Vol. 1 No. 393 at page 398. In these cases, the court held that when the matter is disposed to finality it becomes functus officio to entertain that matter again. The State Attorney concluded that the petitioner is challenging what was declared by the court to be res-judicata. In that spirit and on behalf of the respondents he prayed that the Court be guided by the above decisions and find that the petition is incompetent because the court is functus officio with regards to the reliefs sought by the petitioner. Flanking Mr Webiro was Mr Rumisha, State Attorney who submitted on respondents' prayer for costs. He argued that under rule 18 of the BRADEA Rules of 2014 that it is the discretion of the Court to award costs. He rightly pointed out that such discretion must be exercised judiciously. It was Mr Rumisha's stand that they be awarded

the costs on the basis that firstly, after the ruling in Misc. Civil Cause No. 27210 of 2024 the right cause which the petitioner should have taken if aggrieved by the ruling therein was to appeal. But not to relitigate the same matter in this court. In such circumstance the State Attorney was of the view that this case is an abuse of court process, frivolous and vexatious as it was stated in *Mpaka Road Development v Kana*, [2004] EA Law Reports at page 161. 8 The State Attorney explained that it is the abuse of court process because it intends to create conflicting decisions before the same court contrary to what have been stated in the case of *ULC Tanzania Limited v NIC* and another [2003] TLR 212 which insists that a judge of the same rank should not give a conflicting decision over similar matter. Mr Rumisha submitted that the action of the petitioner bringing this matter was an abuse of court process with a view of creating conflicting decisions. The State Attorney decried that it is an abuse of court process for under adversarial system one of the principles is that there should be an end to litigation. This was emphasized in the case of *Stephen Wassira v Joseph Warioba*

[1999] TLR 332. The same was earlier on emphasized in the case of *Northwestern Water Limited v Bannier Patmer* [1990] All ER 3 at page

547. Mr Rumisha argued that an attempt to litigate in another cause, which has been fully decided in a former action constitutes an abuse of court process. Lastly, the learned State Attorney relying on the principle that parties are bound by their pleadings insisted that what is present in this court, by looking at the pleadings, reliefs sought and grounds upon which the reliefs are sought and facts relied upon between this case and the former Misc. Civil Cause No. 27210 of 2024 one will agree that this is purely an abuse of court process. It was his view that under such circumstances this will not be the first case where the court awarded costs. Mr Rumisha invited the court in exercising its discretion to be guided by the above principles. He in that understanding cited *Julius Inshengoma Ndyabo v AG* [2004] TLR at page 14 where though it was a constitutional case and public interest litigation, the court awarded costs based on the circumstance of that case and how the petitioner conducted himself. On his part Mr Seka, the petitioner while resisting the preliminary objection submitted that first and foremost that the Court was referred to the petition and contents thereof but more importantly it was referred to the respondents' reply to the petition and the attachment as evidence. He challenged the submission of respondents in that it was done contrary to the usual practice with a view to convince this court that the matters that are being raised by the respondents have been settled. Mr Seka went on responding that the fact that previously he had instituted another matter before the High Court has been pleaded in his petition. And he explained the circumstances as to why he instituted another case. The petitioner submitted that he stated in his petition that in the previous matter which the respondents cited, Misc. Civil Cause No. 27210 of 2024 was an application 10 for leave to file an application for judicial review, in which the leave was refused. The reason for refusal was that this court felt that it had no jurisdiction. Mr Seka argued that the respondents reply to the originating summons have disputed some of the averments particularly on paragraph 18 of the counter affidavit. That's where this the

respondents have attached annexure OSG-1. According to the petitioner the fact that there is an affidavit and counter affidavit makes this matter or question a mixture of facts and law. Mr Seka suggested that this court in determining whether it is functus officio it must review the evidence pleaded by the applicant in the petition and the evidence pleaded by the respondents in their reply to the petition. He continued to submit that this court is further being asked to read the application in Misc. Civil Cause No. 27210 of 2024, the respondents reply and the ruling emanating therefrom to establish whether this court is functus officio and the matter is res-judicata. The petitioner warned that the moment this court does that it is no longer determining the preliminary objection but it is being invited to dwell on the merits of the case, and at this stage of determining competence of the application this court cannot do that. It was argued by the petitioner that this is not the first time this aspect has been addressed by the court. The Court of Appeal in the case of *Shose 11 Sinare v Stanbic Bank Tanzania Limited*, Civil Appeal No. 89 of 2020, reported in TanzLII as 2021 Court of Appeal 476 had asked itself a similar question. That question is found on page 11 of typed judgment of the Court of Appeal, the issue of immunity was purely point of law in the circumstances and having cited several of its previous decision including the case *National Insurance Corporation and Another v Shengena Limited*, Civil Application No. 20 of 2007 Court of Appeal while adopting the principle stated in *Biscuit Manufacturing Co, Ltd. v West End Distributors Ltd*

[1969] E.A. 696 it held that the PO must be based on pure point of law. For the PO to be sustained it must be a pure point of law. It should not need support from evidence. In the same case the Court of Appeal cited the case of *Soitsambu Village Council v Tanzania Breweries Limited and Another*, Civil Appeal No. 105 of 2011 Court of Appeal reported in TanzLII as 2012 TZCA 2055. Mr Seka continued to submit that in *Shose Sinare* (supra) the Court of Appeal at page 12 held that PO must be free from facts calling for proof or requiring evidence to be adduced for its verification. Where a court needs to investigate such fact, such point cannot be raised a preliminary objection on a point of law. The court must therefore insist adoption of proper procedure for entertaining application of POs. The petitioner citing Court Appeal holding suggested that the court will treat as POs only those points that are pure law, unstained by facts or evidence, especially disputed points of facts or evidence. The objector should not condense to the affidavits or other documents accompanying the pleadings to support the objection such as exhibits. The petitioner lamented that the court has seen in the present case that the respondent had to rely on affidavit and exhibit attached to the affidavit to argue and support their POs. He cautioned that the Court of Appeal had refused such practice. This is relevant because the court at this stage is not reviewing the affidavits from both sides because that is done at the stage of determining the merit of the matter. The Court of Appeal held in *Shose Sinare* at page 14 that matter which it was asked to determine was premature at that stage. Mr Seka appealed to the Court that reading of *Shose Sinare* (supra), and *Soitsambu* (supra) and several decisions of Court of Appeal and High Court cited as authorities that when the PO requires evidence from the pleading then it cannot be determined as PO on pure point of

law. 13 He pleaded with the court that it is premature to determine those issues for the following reasons: if the court is to tread on factual issues: first, Misc. Civil Cause No. 27210 of 2024 was an application for leave to file application for judicial review. Therefore, it was not a decision on merit. But secondly, in that decision, Mr Seka submitted, it was the respondents who raised an issue that the case must be initiated by constitutional petition. This court luckily agreed with the submission and ruled that the case must be filed as constitutional petition. The High Court held that it lacked jurisdiction to entertain because it is matter that had to filed as constitutional petition. The petitioner argued that having complied with the above ruling it is bewildering that the respondents are now complaining that this route is not proper because the matter has been finally determined. He submitted that if the court revisits the evidence in the affidavit, it will see that the High Court is saying it has no jurisdiction. It was his view that it is a question of law that if the court has no jurisdiction how can it be said to have determined the matter on merit to render it functus officio. Regarding the question functus officio, Mr Seka suggested, it is when the court of competent jurisdiction determines the matter on merit that is when it said to be functus officio. The moment the court held that it has no 14 jurisdiction it cannot be said to be competent and to have finally determined the matter while it was clear that the proper forum for determination of the matter was a constitutional court. Therefore, the petitioner submitted that the respondents PO is not a PO on pure point of law so to speak because it requires the court to revisit the evidence adduced by both parties and satisfy itself. Mr Seka submitted that the court will notice that during submission by the respondents they asked the court to look at ground 4(c) and compare it with the present petition. The petitioner further reacted that the application referred to is part of exhibit/evidence. The petitioner urged the court not to travel that route because at proper stage evidence will be led by both parties to assess whether what was decided in Misc. Civil Cause No. 27210 of 2024 is the same as what is agitated herein in terms of reliefs sought. Mr Seka responded further that assuming that he is wrong, and the PO is proper and in compliance with the case of *Mukisa Biscuit Manufacturing Co, Ltd. v. West End Distributors Ltd* [1969] E.A. 696, he strongly argued that the matter before the court is not res-judicata. He opined that although the PO is couched as functus officio but arguments were relating to res-judicata. This was resisted by the respondents. The 15 petitioner retracted his submission on res judicata. He thus went on submitting on functus officio that this court is not functus officio because the matter relating to the complained provisions (regulations) that is the constitutionality of regulations is not the matter that has been determined by any court. It was the petitioner's submission that the matter has not been determined on merit in Misc. Civil Cause No. 27210 of 2024 because the court felt that it lacked jurisdiction, so it declined to determine them. Thirdly, this court is not functus officio because the High Court stated that the constitutional court is a proper court to determine this matter. Fourthly, Seka argued that this court is not functus officio because the application that was previously before the High Court was for seeking leave to file application for judicial review which is a screening exercise and not a determination of the merit of the case. The petitioner submitted that the authorities for that principle are

found in Court Appeal's direction in Ema Bayo v the Minister for Labour and Youth Development and two Others, Civil Appeal No. 29 of 2012 reported in TanzLII as 2013 TZCA 190. At page 8 of the typed judgment the Court of Appeal is categorical that at the leave stage courts do not determine merits of the application. The same position has been 16 reiterated recently in the Court of Appeal decision of Hamis Babu Bally v Judicial Officers Ethics Committee and Three Others, Civil Appeal No. 448 of 2021 Court of Appeal reported in TanzLII as 2024 TZCA 1010. In this decision, the Court of Appeal held that at the leave stage it is a screening process, and they do not determine matters on merit. It is that contention that the petitioner argued that this court is not in a position to state at the preliminary stage whether it is functus officio because the materials to determine that ground must be screened and obtained from the evidence to be adduced at trial on the merit. It is at that stage where this court will be in a position to evaluate what was decided at leave stage if it was a decision on merit for this court to be functus officio. Finally, on the issue of costs, Mr Seka protested awarding costs to the respondents. Although he conceded that costs is discretion of the court, under rule 18 of the BRADEA Rules implores that the court not to award costs in public interest litigation which seeks to champion fundamental rights and those seeking to strengthen human rights jurisprudence or other important matters of law such as issue functus officio. The petitioner also submitted that he is an advocate of the High Court, and he has no intention to waste resources of the court. He submitted in addition that this being an 17 important constitutional case is justified by the court's sitting on Saturday as it did. He then distinguished the cases cited in support for claims for costs. For instance, the case of Julius Inshengoma Ndyanaabo (supra) was decided before the BRADEA rules were enacted. The rules aim to encourage public interest litigation to safeguard fundamental rights. He ended his reply submission by praying that the PO be dismissed and the court certify that this matter is competent before this court. Having closed the petitioner's reply submission, Mr Webiro, State Attorney rejoined. He contended that the objection raised is a pure point of law and it complies with Mukisa Biscuit's case (supra). It was his view that the objection raised does not requires evidence contrary to what has been argued by the petitioner. It confines itself to pleadings, that is the reply to the petition, counter affidavit as well as annexures attached thereto. Mr Webiro stressed that their objection is on basis of decision of this court in Misc. Civil Cause No. 27210 of 2024. He submitted that since it is the decision of this court then it can take judicial notice. It requires no proof. As per the State Attorney, it is now a settled principle of the law that the PO cannot be from abstract, when the court dealing with PO the court confines itself to the pleadings as well as annexures attached to it. That is 18 the position of the Court of Appeal in many decisions. Three Court of Appeal decisions were cited to support the argument. First Moto Matiko Mabanga v Ophir Energy PLC and Six Others, Civil Appeal No. 119 of 2021 Court of Appeal, this case was decided after Shose Sinare's case (supra). Mr Webiro argued that in Moto Matiko Mabanga (supra), the issue was raised that the court should not look at the annexure. But the Court of Appeal at page 14 of the decision it clearly stated that in dealing with an objection the court can refer or look at the pleading and, in this case, it was a plaint and its annexure

and the court went further looking at the pleading and determined the objection. The Court of Appeal held the same position in the case of Ali Shabani and 48 Others v TANROADS and Another, Civil Appeal No. 261 of 2020 Court of Appeal at page 8 the Court of Appeal was categorical that a PO cannot be taken from abstract without reference to some facts plain on the pleadings which must looked at without reference examination of any evidence. The last decision is the case of Gideon Wasonga and Three Others v Attorney General, Civil Appeal 37 of 2018 Court of Appeal decided in 2021 the same issue that PO does not require evidence was raised. In that case it was in respect of the notice of appeal which was not served to the other party. And reliance was placed on the 19 notice of appeal which was in the record of appeal. The appellant argued that the PO was not pure point of law because it required evidence. In his submission on the objection the appellant cited many cases to buttress it including the case of Shose Sinare (supra). In that case of Gideon Wasonga (supra) at page 10 -11 the Court of Appeal held that the PO can be determined by looking at the pleadings and annexures attached thereto. But there is a case decided before Shose Sinare (supra) that is the case of COTWO (T) OTTU Union and Another v Hon. Iddi Simba Minister of Industries and Trade and Others [2002] TLR 88 (CA) the PO must arise from the parties' pleadings or necessary inference thereto. Therefore, Mr Webiro concluded that their objection is confined to pleadings and attached annexures then it was his humble submission that it qualifies to be a pure point of law in line with the decisions cited. As for allegation that the PO cannot be determined at this stage because it requires the court to determine the merit of the matter, the State Attorney rejoined that the court has jurisdiction to determine the objection at this stage on two grounds: first the competence of the petition is determined by the single judge as per Rule 9 of the BRADEA rules. The second ground is that all matters relating to the jurisdiction of the court in 20 constitutional petition are determined by a single judge in terms of Rule 7(2) of the BRADEA Rules. Therefore, the argument that this PO should be determined at the stage of determining the case on merit will render the said PO nugatory as the respondents will not have an opportunity to determine them in terms of the rules above cited. Mr Webiro reiterated his point that the issue of functus officio concerns jurisdiction has to be determined by a single judge as per the rules. There is no dispute that the court did declare that all matters alleging that the impugned provisions contravene part III chapter 1 of the United Republic of Tanzania Constitution, 1977 were res-judicata. The petitioner has not disputed that. Since in this case the petitioner challenges the same provisions that were declared to by the court that were res-judicata the respondents submitted that this court is functus officio. The High Court made a clear declaration that the impugned regulations contravene the constitution is res-judicata. Mr Webiro emphasized that the petitioner has contested this. The respondents were also displeased with the petitioner's argument that the Misc. Civil Cause No. 27210 of 2024 was not determined on merit and hence one cannot say then court is functus officio. The State Attorney 21 argued that since the court declared it to be res judicata it became functus officio to entertain it again. If the petitioner was aggrieved, he would have appealed. Regarding the petitioner's submission that he was directed by the court to file a

constitutional petition, that is why he filed this case, Mr Webiro argued that even though the court directed so, the said court declared that even the claims were res-judicata. It was his opinion that the said claims are like the ones raised in the case at hand. He closed his rejoinder with a prayer that the petition be dismissed with costs. Having keenly listened to the parties' submissions and in relation to the PO raised, the court observed the key points for determination of the PO. Namely, first: whether the PO raised was a pure point of law and reference to pleadings is barred? Second, whether this court is functus officio? Thirdly, whether the PO raised has any merit? More to that the court raised another PO suo motu, that is whether this petition is res-judicata to Honourable Attorney General v Reverend Christopher Mtikila, Civil Appeal No. 45 of 2009 [2010] TZCA 162 (17 June 2010). Lastly, if the respondents' PO is meritorious, whether they should be awarded costs. 22 To begin with, whether the PO raised by the respondents was a pure point of law and reference to pleadings is barred. The PO is that this Court is functus officio. Looking at the respondents' notice of the PO it is explicit that:

1. The Court is Functus Officio to determine the petition on the following grounds;
2. The complaint that promulgation of regulation 15 [f] of GN No. 571 of 2024; regulation 14 [f] of GN No. 572 of 2024; regulation 15 [f] of GN No. 573 of 2024 and regulation 15 [f] of GN No. 574 of 2024, which restrict persons who are not members of registered political parties to contest the upcoming local government elections did not take cognizance of, or observe the provisions of Part 3 of chapter 1 (Articles 12 to 32) of the Constitution of Tanzania was declared to be res judicata by this Court in Miscellaneous Civil Cause No. 27210 of 2024 between John Seka vs the Minister of State in the President's Office Regional Administration and Local Government and Attorney General.
3. The complaint that promulgation of regulation 15 [f] of GN No. 571 of 2024; regulation 14 [f] of GN No. 572 of 2024; regulation 15 [f] of GN 23 No. 573 of 2024 and regulation 15 [f] of GN No. 574 of 2024, which restrict persons who are not members of registered political parties to contest the upcoming local government elections did not consider the provisions of international treaties and conventions to which Tanzania is a party including but not limited to the African Charter on Human and Peoples Rights; the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights was declared to be res judicata by this Court in Miscellaneous Civil Cause No. 27210 of 2024 between John Seka vs the Minister of State in the President's Office Regional Administration and Local Government and Attorney General.
4. The complaint that promulgation of regulation 15 [f] of GN No. 571 of 2024; regulation 14 [f] of GN No. 572 of 2024; regulation 15 [f] of GN No. 573 of 2024 and regulation 15 [f] of GN No. 574 of 2024, which restrict persons who are not members of registered political parties to contest the upcoming local government elections limit enjoyment of several fundamental rights of citizens of Tanzania guaranteed by the Constitution of Tanzania was declared to be res judicata by this Court in Miscellaneous Civil Cause No. 27210 of 2024 between John Seka vs 24 the Minister of State in the President's Office Regional Administration and Local

Government and Attorney General.

5. The complaint that promulgation of regulation 15 [f] of GN No. 571 of 2024; regulation 14 [f] of GN No. 572 of 2024; regulation 15 [f] of GN No. 573 of 2024 and regulation 15 [f] of GN No. 574 of 2024, which restrict persons who are not members of registered political parties to contest the upcoming local government elections did not consider the provisions of the constitution was declared to be *res judicata* by this Court in Miscellaneous Civil Cause No. 27210 of 2024 between John Seka vs the Minister of State in the President's Office Regional Administration and Local Government and Attorney General. It is trite law that the PO must be based on pure point of law that does not require any evidence to substantiate and sustain it as correctly held in Mukisa Biscuit's case (*supra*) and in Shose Sinare's case (*supra*). However, as rightly submitted by the respondents the jurisprudence has evolved to the extent that PO cannot be raised from abstract without referring to the pleadings. Such is the position in subsequent decisions in Moto Matiko Mabanga's case (*supra*) and Ali Shabani's case (*supra*). Briefly, I find no substance in Mr Seka's stiff resistance to referring to 25 pleadings when determining POs. That said this court is not precluded from perusing the pleadings to determine the PO raised. Before going into the gist of the PO, there are principles that I should acknowledge. A public interest litigation at hand aims at testing the laws and principles to see how strong they are. The petitioner can thus be given benefit of doubt. He is performing academic work to improve jurisprudence. That said, I would firstly refer to Alexander J. Barunguza v the Law School of Tanzania, Hon. Judge Benhaji Shaaban Masoud and Attorney General, Misc. Civil Cause No. 1 of 2023 High Court Main Registry at Dar es salaam at page 24 where High Court while citing Meckzedeck Maganya v Minister of State, President's Office Regional Administration and Local Government and Another, Misc. Civil Cause No. 10 of 2023, High Court Main Registry at Dar es salaam discussed the rules and principles on constitutional petition and judicial review as follows:
 1. Application for judicial review and constitutional petitions are two distinct procedures, one being for civil actions and related matters, which is provided for under the Law Reform (Fatal Accidents and Miscellaneous Provisions), Act [Cap 310 R.E 2019], and the other being for enforcement of constitutional basic rights and duties and for related 26 matters, which is enacted under BRADEA. The difference is set by the objectives of the two Acts of Parliament above-named, as stated in their respective long titles.
 2. A question whether a matter is fit to be brought to this Court as an application for judicial review or a Constitutional petition depends on whether such matter seeks redress for civil wrongs, (remedies being typically the prerogatives orders of certiorari, mandamus, prohibition and habeas corpus), or it seeks redress for violations of constitutional basic rights and duties as clearly defined under section 4 of BRADEA.

3. the Court shall register, hear and determine a petition seeking redress for breach of basic rights and duties, for as long as the pleadings show that the complaint therein and reliefs being sought are based on violations of basic rights and duties, irrespective of whether the provisions of law being impugned are of a principal or subsidiary legislation.
4. If a subsidiary legislation is impugned for violating basic rights, and the petitioner is able to show in his petition and accompanying affidavit, how that subsidiary legislation has affected his basic rights sanctioned under a specific Article of the Constitution, and the petitioner observes 27 all the requirements under BRADEA and its rules for filing his petition, such a petitioner shall have the right to petition this Court for redress based on violations of basic rights and duties, and this Court shall be obliged to exercise its jurisdiction under section 8(1) (a) of BRADEA. The reverse, as to satisfaction of the judicial review requirements under Cap 310 R.E 2019 and its rules, is also true and distinct.
5. For purpose of determining whether the Court should invoke its jurisdiction under section 8(1) of BRADEA, where the facts pleaded in a petition plainly disclose a breach of basic rights or duties under the Constitution in relation to the petitioner, there shall be a basis for invocation of Court's jurisdiction, provided that the Court is properly moved. From the above, the High Court clearly departed from its position in *Geofrey Watson Mwakasege vs Tanganyika Law Society and the Attorney General* (Misc. Civil Cause, 23 of 2021) [2022] TZHC 11064 (19 July 2022) which held that it was not proper to challenge subsidiary legislation through constitutional petition. It is only Act or principal legislation that can be challenged by way of judicial review. 28 Further, in *Mekzedek Maganya* (supra) High Court held that there is nowhere it has been stated in the law that subsidiary legislation cannot be challenged by way of constitutional petition. This appears to be view held by the Court in *Miscellaneous Civil Cause No. 27210 of 2024*. Therefore, judicial review and constitutional petition are two different procedures. The difference is set by the objectives in the long title of the two legislation. Since the petitioner's application on judicial review was refused and now, he is seeking court's indulgence via Constitutional petition that seems to be proper. These are different regimes/procedures. But then again purpose of determining the competence and eventually the end results is to impeach the subsidiary legislation (local government election laws) which the Court has declared to be res-judicata and hence the court as submitted by the respondents is functus officio. In view of the above decisions of this court (*Barunguza* (supra)), and *Mwakasege* (supra)), on the one hand, one may be tempted to think the petition is competent. It has complied with section 4 BRADEA. But the essence of determining competence under rule 9 of the BRADEA Rules is to sieve grain from chaff. To determine whether the case is material or 29 meritorious so as the constitutional court can be constituted. Each case must be determined based on its own peculiar facts. Delightedly, the parties had an opportunity to address the court on the issue whether the petition at hand is res-judicata according to Court of Appeal decision in *Mtikila No.3* At this juncture we ponder the parties' submissions on that point. The petitioner argued that the Court of Appeal decision *Mtikila No. 3* was on whether the High Court has jurisdiction to declare a provision of the constitution unconstitutional. He also submitted that the causes of

action in Mtikila No.3 are different from the cause of action in this petition. In the former the issue was on independent candidate in presidential and parliamentary election, while in the latter we are dealing with independent candidate in local government election especially the village and street leaders' election. Mr Seka argued that the issue of independent candidate is not settled because the decision of Lugakingira J in Christopher Mtikila v Attorney General, Civil Cause No.5 of 1993, High Main Registry, herein cited as Mtikila No.1 was never appealed against. In his view, he considers that decision allowing for independent candidate to be a valid decision of the court. According to the petitioner Lugakingira J (as he then was) did not declare the provisions of the United Republic of Tanzania constitution of 1977 restricting independent candidate unconstitutional because the High Court has no such mandate. And it was his suggestion that if he would have done so, his decision would have faced the same fate that befallen the decision of High Court Mtikila v Attorney General, Misc. Civil Cause No. 10 of 2005 High Court Main Registry, herein cited as Mtikila No.2 where the Court of Appeal in Civil Appeal of 2009 ruled that the High Court does not have jurisdiction to do so. It was Mr Seka's view that the government through Hon. Attorney General has not implemented the decision of Lugakingira J in Mtikila No. 1. Therefore, this issue is not settled. But in contrasting view Mr Seka submitted that Mtikila No. 1 did not cover village and street leaders' election. He argued that the independent candidate ought to be permitted in the villages and streets chairmen's election and so far that has not been entertained by the court. The petitioner contended that this is the first case to deal with independent candidate in village and street leaders' election. In his view Article 21(2) of the constitution contain restrictions to participate in electoral processes by being a member of political party only for the post of President, Vice President and Member of Parliament. It does not extend to local government, village and street leaders' election. He tried to persuade the court to afford an opportunity for examination of this important constitutional and legal question. Mr Seka also submitted that the reliefs sought in the instant petition is different from the reliefs sought in Mtikila No. 2 that was challenging Act No. 34 of 1994 constitutional amendment that imposed the restrictions on independent candidate. He thus suggested that the doctrine of res-judicata does not apply in the present case. The respondent through Mr Nyakiha, Senior State Attorney and Mr Sanga, State Attorney vigorously opposed Mr Seka's submission. The respondents argued that as visible on page 5 of Court of Appeal decision in Mtikila No. 3 the key issue in the appeal was that of independent candidate. The learned State Attorneys further referred to page 37 of Court of Appeal decision in Mtikila No. 3 which held that: "After saying all that it is obvious that we cannot legally say that independent candidates are allowed that is the province of the parliament to amend the constitution according to Article 98(1)." The respondents did not end up there they went on submitting that the Court of Appeal in Mtikila No. 3 at page 40 ruled that the issue of independent candidate has to be settled by the parliament which has jurisdiction to amend the constitution and not the court which they found to have no jurisdiction. The respondents submitted that Mtikila No. 2 at the High Court and the case at hand are both constitutional petitions. Analogically, the State Attorney argued that *Jebra Kambole v Attorney General*, Civil Appeal No. 236 of 2019 Court of Appeal (judgment

delivered on 15th June 2022) at page 26 the CAT rejected the fact that the matter was not substantially and directly the same in two cases that were decided in that case, and resorted to the context that the death penalty has already been discussed and thus any issue pertaining to death penalty will amount to res judicata. Like the present petition the determination of independent candidate has already been settled and thus res-judicata. Interestingly, the respondents referred to page 31 of Jebra Kambole's case (supra) where the Court of Appeal held that the decision in Tete Mwamtenga's case (supra) has not been subjected to an appeal to date. But to hold that the case under scrutiny was not res judicata, in the Court of Appeal view that was erroneous and misleading. The respondents suggested that even the decision in the case of Mtikila No.1 though it was not appealed against does not mean that the case at hand is not res-judicata. 33 Mr Sanga, State Attorney took his turn to object the submission that Lugakingira J's decision in Mtikila No. 1 on independent candidate is still valid. He referred to page 13 of 2009 Mtikila No.3 where Court of Appeal cited what Lugakingira J's ruled on the right of independent candidate but underlined that he did not strike out the Article of the Constitution restricting independent candidate. The Court of Appeal held that the learned judge's failure to strike out the provisions of the constitution rendered his decision empty statements. Mr Seka rejoined on this and submitted that the High Court does not have jurisdiction to declare the provision of constitution unconstitutional. On the issue of referring the judge's stand to decline to strike the constitutional provisions as empty statements, the petitioner regarded that as Court of Appeal's obiter dictum. With respect to the decision in Jebra Kambole's case (supra), Mr Seka rejoined that the Court of Appeal in that case was of the view that the reliefs and prayers were like those of Tete Mwamtenga's case (supra). And the Court of Appeal held that unless Tete Mwamtenga's case (supra) is appealed, it was wrong for Jebra Kambole (supra) to bring to a case seeking same reliefs. It was the petitioner suggestion that this case is distinguishable because in this petition the petitioner is not seeking the same 34 reliefs. Nor is he challenging the same provisions as what was decided by the Court of Appeal in Mtikila No.3. It was further view of the petitioner that this case is different because the provisions complained of are not provisions within the competence of the parliament but are provision within the competence of the Minister for Local Government so the context of independent candidate in Mtikila No. 3 as decided by the Court of Appeal and the present petition is different. In the court's view this is academic arguments. That is because even subsidiary legislation does not escape the scrutiny of supreme law maker that is the legislature. Besides the Court of Appeal was clear that the issue of independent candidate is a political matter. On top of that Mr Seka beseeched the court to decline the invitation by Mr Nyakiha Senior State Attorney to decide the matter on the basis of the contextual theme because this court does not decide legal matter on the basis of contextual theme but only on the basis of legal issues before it. Indeed, this case contains matters of constitutional importance. However, and despite the petitioner's sentiments, the court is of the view that the decision on independent candidate as held in Court of Appeal decision in Mtikila No.3 which is a decision in rem and not in persona. It 35 was thus a decision against the whole public. I am thus in agreement with Mr Nyakiha, Senior State Attorney that legal context in the

circumstances of this petition matters. That is contextual interpretation. I am of the view that if the constitutional petition is initiated for futile pursuits that eventually hit a dead end it is incompetent. That is because the constitutional petition is sacred arena reserved for serious matters. It was thus correctly held in *Attorney General v W.K Butambala* [1993] TLR 46 that constitutional petitions are a preserve of serious proceedings of constitutional importance. They are not set for pursuing fruitless matters. It suffices to state that what is being impeached here is the election laws be it local or national/general elections. The issue of independent candidate for elections in this country is settled in *Mtikila No.3* where the Court of Appeal at pages 40-41 held that: "In our case, we say that the issue of independent candidates has to be settled by Parliament which has the jurisdiction to amend the Constitution and not the Courts which, as we have found, do not have that jurisdiction. The decision on whether or not to introduce independent candidates depends on the social needs of each State 36 based on its historical reality. Thus, the issue of independent candidates is political and not legal." In the same veins the 8th Constitutional Amendment Act, Act No 34 of 1994 made it clear that a candidate must be a member of and sponsored by a political party whose essence is to cement multiparty democracy in the United Republic of Tanzania. The Act No. 34 of 1994 amended Article 21(1) of United Republic of Tanzania Constitution of 1977 to cross refer it to Articles 5, 39 and 67 that brought into the Constitution which permitted only party members to contest for various posts during the elections. In connection to the present case, and ordinarily this court at this stage its focus is limited to determining competence. Moreover, based on the respondents' PO and looking at the pleadings (as per *Moto Matiko Mabanga* (supra), and the decision of the Court of Appeal in *Mtikila No.3* which renders it res-judicata), this petition is in my view incompetent. Luckily, the parties had an opportunity to address the issue of res-judicata. Another controversy is the principle in *ULC Tanzania Limited v NIC* and another [2003] TLR 212 that judges of the same rank should not give conflicting decisions over similar matter. Here I am referring to Misc. Civil Cause No. 27210 of 2024 which held the application for leave to apply for 37 juridical review to be res-judicata. But then again looking at *Baranguza's* case (supra) this seems to be a tough call. I am fortified in my stand that this constitutional petition cannot be res-judicata based on the ruling in Misc. Civil Cause No. 27210 of 2024 which was about judicial review. That aside, and turning to the PO itself, the respondents are of view the court is functus officio as what the petitioner is seeking through his petition has already been determined by the court in Miscellaneous Civil Cause No. 27210 of 2024. In that case the Court held that the claims, grounds and reliefs sought are res-judicata. The latter doctrine applies where the issue in dispute must have been substantially in issue in the previous case and has been finally resolved in that case. That is as per the case of *Onesmo Olungurumwa v Attorney General*, Civil Appeal No. 165 of 2021 Court of Appeal in *TanzLII* reported as [2024] TZCA 651 (29 July 2024). I have read the ruling in Miscellaneous Civil Cause No. 27210 of 2024 there is no gainsaying that the court held that the case was res judicata to the ruling in *Bob Chacha Wangwe* (supra) which dealt with the same issues. In Miscellaneous Civil Cause No. 27210 of 2024 at pages 35-36 the court concluded that there is no doubt that the matter has been conclusively adjudicated by this court in *Bob Chacha*

Wangwe's case (supra). 38 However, lest we not blinded that these cases were on judicial review while the present case is the constitutional petition. The *functus officio* principle was central in *Tanzania Telecommunication Company Limited and Others v Tri Telecommunications Tanzania Limited* [2006] EA Law Report Vol. 1 No. 393 at page 398. In the above cited cases, the court held that when the matter is disposed into finality it becomes *functus officio* to entertain that matter. I concur with Mr Seka's vigorous protesting of the *functus officio* objection for this Court is not *functus officio* because what he has brought before it is a constitutional petition. Besides that, his previous application in Miscellaneous Civil Cause No. 27210 of 2024 was for leave to file an application for judicial review. That is why he never wanted the court to refer to that ruling and even the application, affidavit and counter affidavit therein. He also raised an academic point that the respondents in their reply to the petition referred to counter affidavit in Miscellaneous Civil Cause No. 27210 of 2024. In my view, the issue of PO where the court is determining its merit it can refer to pleadings which are not restricted to plaint or counter affidavit only. The reference to pleadings therefore means any pleadings and its annexures. 39 As regards to *functus officio*, in the case at hand, we ask whether here *functus officio* applies to judicial review and not constitutional petition as Mr Seka would want this court to rule. Much as the previous application for judicial review or leave to apply for judicial review were entertained by the High Court exercising judicial review jurisdiction, here we have the same court determining the competence of the constitutional petition. The constitutional court would have had an opportunity to decide the matter on merit after this court determining the competence of the petition. Therefore, we ask if the High Court judges are the ones who determined the applications for judicial review and in the present matter the High Court judge is presiding over the matter does a legal question of *functus officio* arise? The principle of *functus officio* applies to the same court or judges of the same rank that determined the matter. See *ULC Tanzania Limited* (supra). It means this court cannot reopen what it has determined. Mr Seka argued that *functus officio* applies to decision on merit only. That certainly is misconception because the principle of *functus officio* applies even to interlocutory proceedings. However, unlike *functus officio*, the doctrine of *res-judicata* applies to all courts meaning the matter has been conclusively and finally determined. It is imperative to add at this juncture that while 40 Misc. Civil Cause No. 27210 of 2024 was an application for leave to file an application for judicial review, in which the leave was refused as this court felt that it had no jurisdiction, it did not end up there, as plainly seen on pages 35-36 of the ruling the Court also concluded that the matter was *res-judicata*. I am settled in my view that this being a constitutional petition, and in contrast to the respondents' view, the Court is not *functus officio*. That is because though the claims, grounds and reliefs sought are similar if not the same as those pleaded in Miscellaneous Civil Cause No. 27210 of 2024 where the Court held them to be *res-judicata* the matter at hand is a constitutional petition. It is incorrect to associate these two legal frameworks. I thus disagree with the respondents' suggestion that the remedy available to the petitioner was to appeal to the Court of Appeal and not filing another case. Understandably, and unlike Miscellaneous Civil Cause No. 27210 of 2024 which was the application for leave to apply for

judicial review, the present matter is a constitutional petition. Nevertheless, I firmly hold that once the court has determined the matter to finality it becomes *functus officio*. It is not open for the parties to relitigate it in the same court. However, that is subject to the nature of legal regime under which the claim is anchored. 41 Convincingly, the petitioner submitted that the High Court in Miscellaneous Civil Cause No. 27210 of 2024 had no jurisdiction to determine the matter because it ought to be a constitutional petition. But the petitioner ignored the fact that the High Court in the said ruling went on holding that the matter was *res-judicata*. Nevertheless, these are distinct legal regimes, one is for judicial review and the other is constitutional petition. I thus find this Court not to be *functus officio* or *res-judicata* to Misc. Civil Cause No. 27210 of 2014. The said principles do not apply in the present petition. Despite that the petition is *res-judicata* as per the dictates of Court of Appeal landmark decision in *Mtikila No. 3* against independent candidate to which the Court herein summoned the parties to address it. In constitutional petitions, and public interest litigation like the petition at hand, the matter is deemed *res-judicata* even though parties are not the same as in *Mtikila No. 3* so long other ingredients of *res-judicata* are present and here is the issue of independent candidate. For detailed treatment of this point see *Onesmo Olengurmwa v Attorney General*, Misc. Civil Cause No. 36 of 2019, High Court Main Registry at Dar es salaam, and *Jebra Kambole (supra)*. As a result, the PO on *res-judicata* based independent candidate Court of Appeal decision in *Mtikila No. 3* raised by the court suo 42 motu and the parties were afforded to heard on the same is sustained. That said and given that the PO has been sustained, the petition at hand is incompetent for the court entertain the matter is *res-judicata*. I am alive to the fact that the African Court of Human and People's Rights in *Mtikila and Others v United Republic of Tanzania*, Application No. 011/2011 (for consistency I shall refer it as *Mtikila No. 4*) opined that the prohibition of independent candidature in presidential, parliamentary and local council elections in the United Republic of Tanzania Constitution 1977 is discriminatory and restricts freedom of association. As it stands, the law in Tanzania is clear and *Mtikila No. 3* binds this court. This matter is thus *res-judicata*, not justiciable and hence incompetent. Elaborating further, this court is of the view that relying on Misc. Civil Cause No. 27210 of 2014 may be misleading because it was on judicial review, and it was not about constitutional petition. Although the parties in their early submissions have not directly dealt with *res-judicata*, they have touched upon it indirectly by referring to Misc. Civil Cause No. 27210 of 2014 which held the matter before that court was *res-judicata*. The parties battled on a barren issue of *functus officio* and somewhat sidestepped the *res-judicata* which prompted the court to summon them to address it on the 43 same. Therefore, it is my humble view what we should focus on is *res-judicata* in relation to constitution petition particularly on issue of independent candidate. The issue of *res-judicata* in constitutional petitions is not new as for instance it has been held in *Jebra Kambole v Attorney General*, Civil Appeal No. 236 of 2019 CAT (judgment delivered on 15th June

2022) which was challenging death penalty under Section 197 of the Penal Code [Cap 16] claiming to be unconstitutional. The issue of res-judicata in the present case emanates from Court of Appeal decision in Mtikila No.3 on independent candidate. Although this petition questions independent candidate in local government elections, in my view it still makes no difference. The matter at hand is res-judicata because the point is on independent candidate regardless of it being general elections or local government elections. Apart from above analysis, and as obiter dictum, the Court took liberty of examining the Local Authorities (Elections) (Amendment) Act, Act No. 7 of 1992 [Cap 292 R.E.2002] providing for qualifications of candidates for local authorities' election. To appreciate the dictates of the Local Authorities (Elections)(Amendment) Act, Act No. 7 of 1992, its Section 9 prescribed 44 qualifications of candidates of local authorities election including to be a member of and sponsored by a political party. This Section repealed and replaced Section 39 of the Local Authorities (Elections) Act of 1979 on qualifications of candidates for local government authorities' election. It should be noted that 1992 amendment of the Local Authorities (Elections) Act was later followed by other amendments as reflected in the Local Authorities (Elections)Act [Cap 292 R.E. 2002] particularly Section 39 providing for Qualification of candidates for Local Government Authorities election. It provides that: (1)A person shall be elected as a member of a Local Government Authority or stand as a candidate at an election for Local Government Authorities if he is qualified for election. (2)A person shall be qualified for election if he satisfies the following conditions, that is to say— (a)he is a citizen of the United Republic; (b)he has attained the age of twenty one years; (c)he is not disqualified for election under the provisions of section 40; (d)he is ordinarily resident within the area of jurisdiction of local government authority; 45 (e)he can read and write in Kiswahili or English; (f)he is a member of and sponsored by a political party registered as such by or under the Political Parties Act Cap. 258 (g)he has a lawful means of livelihood; (h)he has not been convicted for an offence of tax evasion within a period of five years before election. But aside from the above provisions of the Local Authorities (Elections) Act setting qualifications of the candidates of local authorities' elections, it is understood that the current conundrum has somewhat been brought by the enactment of the Presidential, Parliamentary, and Councillors' Elections Act No.1 of 2024 whose Section 167 repealed Local Authorities (Elections) Act [Cap 292 R.E. 2002]. In as far as local government authorities' elections are concerned, this Act covered the councillors and excluded or is silent on election of village, street and hamlet chairpersons. That is probably why the Minister of State in the President's Office Regional Administration and Local Government promulgated the impugned subsidiary legislation, regulations 15 (f) of the GN 571 of 2024;14(f) of GN 572 of 2024;15(f) of GN 573 of 2024; and 15(f) of GN 574 of 2024. These regulations require the candidates 46 for local government authorities' election of village, street and hamlet chairpersons to be a member of and sponsored by a political party. The petitioner argued without referring to the Act No.1 of 2024 that if the Parliament wanted to exclude independent candidates, it would have done so expressly in the Act. The respondents too in their submission neither cited the Act No. 1 of 2024 nor referred to the repealed Cap 292

R.E. 2002 to provide background of candidate's obligation to be member of and sponsored by the party. Deducing from the foregoing analysis is the fact that there is no principal legislation providing for qualifications of candidates for village, street and hamlet chairpersons in local authorities' elections. However, it is my profound view that despite absence of any principal legislation setting out qualifications of candidates for village, street and hamlet chairpersons' elections, the issue of constitutionality of candidate's party membership and sponsorship requirements has been tested by the Court of Appeal decision in Mtikila No.3. It is thus not open for this Court to test it again in a manner claimed in this petition. Therefore, in the spirit of Court of Appeal decision in Mtikila No.3 the petition is res-judicata. What the petitioner is asking the Court to examine is 47 a matter addressed or ought to be addressed by the parliament. Brutal as it may sound, this petition is res-judicata, misconceived and hence incompetent. It is trite that the petitioner must perform what is set by the law as his duty. That is to contest for the posts in the local government elections by being a member of and sponsored by a political party. To that end, and as above stated, this petition is dismissed for being res-judicata. This being a public interest litigation, no order as to costs is given. Order accordingly. DATED at DAR ES SALAAM this 22nd Day of November 2024. U. J. AGATHO JUDGE 22/11/2024 48 Court: Ruling delivered today, this 22th November 2024 in the presence of Fredrick Msaki, Advocate holding a brief of John Seka, Advocate and the petitioner, and Daniel Nyakiha, Senior State Attorney and Francis Wisdom, State Attorney for the respondents. U. J. AGATHO JUDGE 22/11/2024 49

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