

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
DAR ES SALAAM SUB REGISTRY  
AT DAR ES SALAAM**

**MISCELLANEOUS CIVIL CAUSE NO. 7635 OF 2024  
(Phillip, Kirekiano, Mtembwa, JJJ)**

**IN THE MATTER OF THE CONSTITUTION OF THE UNITED REPUBLIC OF  
TANZANIA 1977 AS AMENDED FROM TIME TO TIME**

**AND**

**IN THE MATTER OF THE BASIC RIGHTS AND DUTIES ENFORCEMENT  
ACT (CAP. 3 R.E. 2019)**

**AND**

**IN THE MATTER OF THE BASIC RIGHTS AND DUTIES ENFORCEMENT  
(PRACTICE AND PROCEDURE) RULES, 2014**

**AND**

**IN THE MATTER OF A PETITION TO CHALLENGE CONSTITUTIONALITY  
OF SEVERAL REGULATIONS OF ILALA MUNICIPAL BY LAW NAMED  
"SHERIA NDOGO ZA (KUTHIBITI OMBA OMBA) ZA HALMASHAURI YA  
MANISPAA YA ILALA, TANGAZO LASERIKALI NAMBA 529 LA TAREHE  
19/7/2019"**

**BETWEEN**

**KUSEKWA MELICKI KAZIMOTO.....PETITIONER**

**VERSUS**

**THE HONOURABLE ATTORNEY GENERAL .....1<sup>ST</sup> RESPONDENT**

**MINISTER OF STATE IN THE PRESIDENT'S  
OFFICE (REGIONAL ADMINISTRATION AND  
LOCAL GOVERNMENT) .....2<sup>nd</sup> RESPONDENT**

## **RULING**

*Date of last Order: 28<sup>th</sup> May 2024*

*Date of Ruling: 20<sup>th</sup> June 2024*

### **MTEMBWA, J.:**

As discerned from the pleadings, the Applicant herein is an illiterate Tanzanian born sometime in March 1981 in Mwanza City and currently living for gain in Dar es Salaam City. By blessings, he was born normal but while still a child suffered from poliomyelitis, an illness caused by poliovirus that mainly affects nerves in the spinal cord of the brain stem. As such, he cannot properly move his upper and lower limbs extremities as a normal human being. In that, he cannot move his legs in a normal way or hold things properly with his arms. His bones and joints cannot work properly. However, he is married to one lovely wife blessed with nine (9) issues both dependent on him.

Having been unable to secure support from his family in Mwanza City, the Applicant relocated to Dar es Salaam City Centre for better survival as a beggar in various city areas. Under ***section 89 of the Local Government Authorities (Urban Authorities) Act, Cap 288 RE 2019***, on 22<sup>nd</sup> March

2019, Ilala Municipal Council passed a By-laws that was ultimately published in the Government Gazette No. 529 dated 19<sup>th</sup> July 2019. The said By-laws have the effect of controlling the beggars within the vicinity and province of the 3<sup>rd</sup> Respondent.

Offended by the said By-laws, the Applicant has filed to this Court a Constitutional Petition under **articles 26 (2) of the Constitution of the United Republic of Tanzania, sections 4 and 5 of the Basic Rights and Duties Enforcement Act, Cap 3 (R.E 2019)** (hereinafter "BRADEA") and **Rule 4 of the Basic Rights and Duties Enforcement (Practice and Procedure) Rules, 2014**) to challenge the constitutionality of the following provisions;

*(a) The provisions of Regulations 3 definition of eneo la wazi "open area", hifadhi isiyo rasmi "unspecified reserve area", mtaa "street", omba omba "beggars", na wakala "agency" 4(1), 4(2), 4(3), 6(1) and 6(2), 8(1 )(a), (b), (c), (d), (e), (f), (g), 8(2), 9(1), 9(2), 9(3) and 10 of GN 529 of 2019 Sheria Ndogo za (Kudhibiti Omba omba) Za Halmashauri ya Wilaya ya Ilala promulgated and accepted by the Respondents are unconstitutional for offending the provisions of Articles 12(2), 13(1), 13(2) and (4), 13(6)(a), 15(1) and (2), 17, 19, 22(1) and 29 (1) of the Constitution of the United Republic of Tanzania of 1977, as amended from time to time.*

*(b) That the provisions of Regulations 3 definition of eneo la wazi "open area", hifadhi isiyo rasmi "unspecified reserve area", mtaa "street",*

*omba omba "beggars", na wakala "agency" 4(1), 4(2), 4(3), 6(1) and (2), 8(1 )(a), (b), (c), (d), (e), (f), (g), 8(2), 9(1), 9(2), 9(3) and 10 of GN 529 of 2019 Sheria Ndogo za (Kudhibiti Omba omba) Za Halmashauri ya Wilaya ya Ilala Tangazo la Serikali Na 529, promulgated by the Respondents be declared unconstitutional and expunged from statute immediately without allowing the government to amend the same.*

*(c) Declaration that the By-laws contravene the principles of criminal law, including that offences must be precise and not overbroad, and that offences ought not to criminalize persons based on a status involuntarily entered into and which cannot voluntarily or easily be abandoned, in this case the status of being a beggar (Omba Omba).*

*(d) Declaration that all persons, irrespective of their social status, are human beings deserving of respect and dignity, and that the By-laws undermine the right to dignity and equal protection before the law.*

Upon service, the Respondents resisted the Petition and in addition raised a preliminary objection to the effect that;

*The Petition is incompetent for contravening the provision of section 8(2) of the Basic Rights and Duties Enforcement Act (Cap 3 R.E 2019)*

When the matter came for orders on **28<sup>th</sup> May 2024**, the Petitioner was represented by **Mr. Jebra Kambole**, the learned counsel, while the Respondents were symbolized by the presence of **Ms. Narindwa Sekimanga** assisted by **Ms. Lucy Kimaryo**, both learned state attorneys. By consent, both counsels agreed to argue the preliminary objection by way

of written submissions. Having passed through the records, we are satisfied that both counsels adhered to the agreed schedule which we intensely recommend. Given the circumstances, we are constrained to look into what has been argued for and against the preliminary objection by both counsels before we embark into the crux of the matter.

Taking the podium, Ms. Sekimanga observed that the provisions of section **8(2) of the Basic Rights and Duties Enforcement Act (supra)** require that, before approaching a Constitutional Court, the Petitioner must ensure that there are no other means of redress under any other law. She added further that the Petitioner is challenging the provisions of the By-laws named ***Sheria Ndogo za (Kudhibiti Omba omba) za Halmashauri ya Wilaya ya Ilala, Tangazo la Serikali Na, 529 la Mwaka 2019*** involving understanding of the legal framework and processes for enacting and enforcing them. That, the By-laws are delegated legislation with a limited application made by local authorities to deal with matters which affect their locality and thus they are peculiar creatures in administrative law. She argued further that the By-laws are seemingly laws made by legislative bodies like Parliament and the provincial and territorial legislatures but they are made by bodies that are administrative or executive in nature. To fortify,

the learned counsel cited **Keyes, J.M** titled **Judicial Review of Delegated Legislation: The Long and Winding Road to Vavilov [2020] University of Ottawa.**

Ms. Sikimanga continued to argue that, the power of the Local Government Authorities particularly Urban bodies to make By-laws is provided for under ***section 89 of the Local Government (Urban Authorities) Act (supra)*** and based on that, the impugned By-laws were made and are being enforced by the Dar es Salaam City Council. Since By-laws are made by the local government authority, they are administrative in nature and therefore can be challenged by way of Judicial Review.

As to what judicial review entails, the learned state attorney submitted that Judicial Review means Judicial scrutiny and determination of the legal validity of instruments, acts, decisions, and transactions of administrative organs. She referred this Court to page 23 of an article by **De Smith** titled **Judicial Review of Administrative Action.**

It was her further submissions that the Local Government is an administrative body and its acts, decisions and or instruments are challenged by way of Judicial Review. That, thus, the right to challenge the impugned By-laws is provided for under the ***Law Reform (Fatal Accidents***

**Miscellaneous Provisions) Act Cap 310, RE 2019** and its rules. To buttress, she cited the case of **Catalyst Paper Corporation Appellant Vs. Corporation of the District of North Cowichan [2012] 1 R.C.S** where the Applicant challenged the Municipal Taxation By-laws by way of Judicial Review.

Ms. Sekimanga observed further that, since there is a redress provided for by another law, then the Petitioner is barred from instituting a Constitutional Petition under **section 8(2) of the Basic Rights and Duties Enforcement, Cap 3, R.E 2019**. She referred this Court to **Article 26(2) of the Constitution of the United Republic of Tanzania** which states that, every person has the right, by the procedure provided by law, to take legal action to ensure the protection of the Constitution and the laws of the land. To cement the obvious, the learned counsel argued that taking legal action to ensure protection of the Constitution must be as per the procedure provided for by the laws of the land. She insisted that the impugned By-laws could be better challenged by way of Judicial Review as opposed to a Constitutional Petition. Lastly, she beseeched this Court to strike out the Petition.

In rebuttal, Mr. Kambole prefaced that the Petitioner is an individual with disability, a beggar and living for gain within Ilala Municipal Council in Dar es Salaam City. That, he is seeking for declaratory orders on the unconstitutionality of several provisions contained in the impugned By-laws. The counsel observed further that the said By-laws were enacted by the Ilala Municipal Council on 22<sup>nd</sup> March 2019 and subsequently published in the Government Gazette No. 529 dated 19<sup>th</sup> July 2019. That, the petitioner has been offended by **regulations 3 on the definition of eneo la wazi "open area", hifadhi isiyo rasmi "unspecified reserve area", mtaa "street", omba omba "beggars", na wakala "agency" 4(1), 4(2), 4(3), 6(1) and 6(2), 8(1 )(a), (b), (c), (d), (e), (f), (g), 8(2), 9(1), 9(2), 9(3) and 10 of Sheria Ndogo za (Kudhibiti Omba omba) Za Halmashauri ya Wilaya ya Ilala** promulgated and accepted by the Respondents which are unconstitutional violating the provisions of **Articles 12(2), 13(1), 13(2) and (4), 13(6)(a), 15(1) and (2), 17, 19, 22(1) and 29 (1) of the Constitution of the United Republic of Tanzania (supra).**

Mr. Kambole joined hands with the learned state attorney on the procedural aspects of enacting the By-laws and the purpose of delegated legislation. However, he was not ready to agree with her on the assertion



that the constitutionality of the By-laws cannot be determined by this Court if brought by way of a Constitutional Petition. He added further that, the By-laws can be challenged through Judicial Review if only the intended Petitioner is contesting either the procedure of its enactment (procedural ultra vires) or the legality of the By-laws itself (substantive ultra vires). That, in this Petition as per the Originating Summons and supporting affidavit, the petitioner is explicitly challenging the constitutionality of the By-laws, in which case, coming to this Court by way of a Constitutional Petition is a proper recourse.

The learned counsel faulted the learned state attorney on her suggestion that the legal validity of the By-laws should be challenged by way of Judicial Review as she did not explain and lay a ground on the procedure to be taken if a party is interested to challenge the constitutionality of it.

In his further submissions, Mr. Kambole noted that the petitioner claims for violation of human rights guaranteed under ***the Constitution of the United Republic of Tanzania*** enhanced by the provisions of the ***Basic Rights and Duties Enforcement Act (BRADEA)***. He referred this Court to the case of ***Meckzedeck Maganya Vs. Minister of State, President's Office, Regional Administration and Local Government & Another,***

**Misc. Civil Cause No. 10 of 2023**, handed down on 15<sup>th</sup> December 2023, where it was observed that;

*Therefore, since the instant petition befits the bill of a constitutional petition on its own merits, there is no remedy for the petitioner to exhaust as the procedure under BRADEA is the only way to go to seeking readdress for alleged violations according to Article 30(4) of the Constitution.*

Mr. Kambole also contended that if this Court focuses on the Originating Summons and affidavit, it will find out that the petitioner's claim concerns the violation of fundamental human rights guaranteed under **Article 12 to Article 29 of the Constitution of the United Republic of Tanzania**. As such, it is only this Court sitting as a Constitutional Court that has mandated authority to declare the particular provisions of the impugned By-laws unconstitutional. He recited the case of **Meckzedeck Maganya (Supra)** where the Court observed that;

*In my opinion, the court shall register, hear and determine a petition seeking redress on the grounds of basic rights and duties, for as long as the pleadings show that the grievances therein and reliefs being sought are based on violations of basic rights and duties. It appears to me that, this criterion shall apply irrespective of the category of legislation the provisions of which are being impugned. This is to say, the criterion has to be the same for both principal and subsidiary legislations. For this reasons, 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, and he observes 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*

Based on the above cuts and paste passages, Mr. Kambole implored this Court to subscribe to the above position because it is a sound legal principle and a proper interpretation of the ***Basic Rights and Duties Enforcement Act (supra)***. He added further that, the proposition ensures that the fundamental rights of individuals are upheld and that any legislation whether principal or subsidiary that infringes upon these rights can be subjected to judicial scrutiny.

The learned counsel was of the view that since the petitioner does not challenge the procedural aspect of the enactment of the impugned By-laws titled "**Sheria Ndogo za (Kudhibiti Omba Omba) za Halmashauri ya Wilaya ya Ilala, Tangazo la Serikali Namba 529 la Mwaka 2019**" under ***section 89 of the Local Government (Urban Authorities Act)***, nor does he challenges the ultra vires nature of the said By-laws, instead challenges the constitutionality of it as per the Originating Summons and

Affidavit, this Court is pleased to find out that it has jurisdiction to grant what has been asked for.

The learned counsel for the Petitioner also distinguished the cited case of ***Catalyst Paper Corporation Appellant Vs. Corporation of the District of North Cowichan (supra)*** on the ground that, ***firstly***, the same does not address what should be done when a person challenges By-laws by way of a constitutional petition. And, ***secondly***, the tax By-laws were challenged on grounds of judicial review for being ultra vires which differs from the present case. He further observed that it is not the first time this Court or the Court of Appeal has been called upon to determine the constitutionality of the By-laws, delegated legislations, orders or circulars. That, one such case is ***Zakaria Kamwela and 126 Others v. The Minister of Education and Vocational Training and Another (Tanzilii (2013) (TZCA 256)*** where the constitutionality of a circular issued by the commissioner for education was called into question.

Based on the foregoing, Mr. Kambole implored this Court to find out that the preliminary objection is devoid of merit and thus proceeds to determine the Petition on merits.

In rejoinder, Ms. Sekimanga was again on duty. She rejoined that the By-laws, unlike Regulations, are not tabled in the parliament in the same way the Acts of parliament do. Conversely, By-laws are made by following procedures in the local governments. In other words, By-laws are administrative proceedings in nature and thus are challengeable by way of judicial review as opposed to Constitutional Petition, Ms. Sekimanga observed.

The learned counsel noted further that, the By-laws are challenged by way of judicial review irrespective of whether the dissatisfaction is on the substance or procedure. That, since the Petitioner is challenging the substance of the impugned By-laws, this Petition is incompetent as it was supposed to be preferred by way of Judicial Review as opposed to Constitutional Petition. In addition, the learned counsel contended that, the cited case ***Meleckzedck Maganya Vs. Minister of State, President's Office, Regional Administration and Local Government (supra)*** is distinguishable and not binding to this Court. That what could be gathered from the rejoinder submissions by the learned state attorney.

Having dispassionately considered the rival arguments by both parties, the question before us is whether there is merit on the preliminary objection

raised by the Respondents. Before determining the objection, we find it important to venture into the powers of this Court in relation to the Constitutional Petition. ***The Constitution of the United Republic of Tanzania (supra)*** gives mandate to this Court (Constitutional Court) to hear cases regarding violation and infringement of basic rights which are provided for under part III of chapter one of the Constitution. ***Article 30(3) of the Constitution*** lucidly states as follows;

*Any person claiming that any provision in this Part of this Chapter or in any law concerning his right or duty owed to him has been; is being or is likely to be violated by any person anywhere in the United Republic may institute proceedings for redress in the High Court*

Before the enactment of ***BRADEA***, the Court of Appeal of Tanzania had this to say in ***Director of Public Prosecution Vs. Daudi Pete (1993) TLR 22***, thus;

*The Constitution confers upon the High Court original jurisdiction to entertain proceedings in respect of actual or threatened violations of the basic rights and freedoms and, until Parliament enacts the procedure for the enforcement of those rights and freedoms, the same may be enforced using the procedure available in the High Court in the exercise of its original jurisdiction*

After the enactment of ***BRADEA***, this Court enjoys its powers under section 4 as amended by the ***Written Laws (Miscellaneous***

**Amendment) Act No. 3 of 2020.** Under subsection (1) thereof, the law says, thus;

*If any person alleges that any of the provisions of sections 12 to 29 of the Constitution has been, is being or is likely to be contravened in relation to him, he may, without prejudice to any other action with respect to the same matter that is lawfully available, apply to the High Court for redress.*

Giving effect to the cited law above, the Court in ***Re Dezydelius Patrick Mgoya and Another Vs. Attorney General and Others (Misc. Civil Cause No. 19 of 2019) [2020] HCT 2982; (08 September 2020)***

had this to say;

*Basing on the position governing this petition; which as aforesaid, was filed on 23/08/2019 it is patently clear that the textual presentation of the natural wordings of the quoted provisions above leaves no doubt that, the Court is vested with jurisdiction to adjudge allegations regarding any of the provisions of articles 12 to 29 of the Constitution which has been, is being or is likely to be contravened.*

*.... On the other hand, the Court is also vested with jurisdiction to adjudge allegations relating to violation on basic rights and duties emanating from any provision in any law other than articles 12 to 29 of the Constitution which are clearly pleaded under the second part of article 30 and 26(2) of the Constitution amongst others, as the case may.*

In the exercise of such powers therefore, this Court has original jurisdiction to hear and determine any application made before it in response to any violation of fundamental rights in view of **section 8(1)(a) of BRADEA**. It has also mandate to determine any question in the course of the trial of any case which is referred to and may give orders or directions whichever is desirable for securing and enforcing basic rights under section (b) thereof. In addition, it has powers to determine issues arising from trials from the subordinate Courts in view of section 9(1) thereof.

However, although the law imposes such powers to the Constitutional Court as we have so observed hereinabove, the right to petition to this Court has never been absolute. There are always limitations to litigants in view of **section 8(2) of BRADEA** which dictates that this Court shall not exercise its powers under if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under **any other law**, or that the application is merely frivolous or vexatious. Giving it thoughtful attention, this Court in ***SP Christopher Bageni Vs. Attorney General, Misc. Civil Cause No. 1 of 2021, High Court (main Registry), Dar es Salaam*** observed;

*Despite the functions of the constitutional court provided by the foregoing sections, still there are limitations which are stipulated by*



*the law when the constitutional court exercises its powers conferred to it; **One**, the court cannot exercise its powers when there are other means of redress provided by other law(s) or if the application is merely frivolous or vexations; **Two**, the court can dismiss the application if the application claims infringement of the basic rights in the proposed Bill which is not yet a Law; **Three**, no prerogative orders shall be ordered by this court when enforcing rights provided by the Basic Rights and Duties Enforcement Act, the same are provided under section 8(2),(3) and (4) of BRADEA; **Four**, under the provisions of section 8 and 9 of the BRADEA this court cannot enforce rights, the infringement of which arises in the judicial proceedings/trials in courts other than subordinate to it.*

The preliminary objection has been predicated on **section 8(2) of BRADEA**. The learned state attorney was not amused at all by the Petitioner's act of preferring this matter by way of a Constitutional Petition. She observed that the correct avenue was to prefer it by way of Judicial Review under the provisions of **Law Reform (Fatal Accidents Miscellaneous Provisions) (supra)** and its rules. To fortify, she cited the case of **Catalyst Paper Corporation Appellant Vs. Corporation of the District of North Cowichan (supra)**. It was her view further that this Court is mandated to determine the matter of this nature brought to it by way of judicial review irrespective of whether the dissatisfaction is on the procedure or substance.

On his part, the learned counsel for the Petitioner did not find it worth the purchase. He observed that since the petitioner does not challenge the procedural aspect of the enactment of the impugned By-laws nor does he challenge the ultra vires nature of the said By-laws, instead, he challenges the constitutionality of it, this Court has jurisdiction to determine the matter. He was fortified by the decision of ***Meckzedeck Maganya (Supra)***.

We have given deserving attention to the submissions for and against the raised preliminary objection and we are of the considered opinion that ***section 8(2) of BRADEA*** needs no interpolations. As correctly prefaced above in ***SP Christopher Bageni case***, this Court cannot exercise its powers conferred to it if there are other means of redress provided for by other law (s) or if the application is merely frivolous or vexatious. The rationale behind this rule is to uphold the presumption of constitutionality of all Acts of Parliament and the obligations they impose to Courts. In ***Tanzania Cigarette Company Limited Vs. the Fair Competition Commission and Another, Misc. Civil Cause No. 31 of 2010, High Court of Tanzania at Dar es Salaam***, we noted;

*Apart from the principle of constitutionality of Acts of Parliament, we think, law in Tanzania is also settled on the principle that litigants should first exhaust other lawfully available remedies under statutory*

*or case law, before they can seek remedies under the **Basic Rights and Duties Enforcement Act**. This principle of resorting to lawfully available remedies before seeking basic rights remedies complements the principle of constitutionality of Acts of Parliament. The duty to exhaust other lawfully available remedies before resorting to basic rights and duties remedies is borne out from our reading of **sections 4 and 8 (2) of Basic Rights and Duties Enforcement Act**. **Section 4 of the Basic Rights and Duties Enforcement Act** in essence restates the position of law that is the Enforcement Act in essence restates the position of law that is also articulated under subsection (2) of section 8. We think that these provisions exhort litigants to first exhaust other lawfully available remedies before seeking remedies under the Basic Rights and Duties Enforcement Act.*

In our determination of the preliminary which, as we see it, is premised on the jurisdictional issue, we shall continue to seek guiding principles from the decisions of this Court and those of the Court of Appeal of Tanzania, which have interpreted the said provisions in question. For example, it is now settled law that until the contrary is proved, a piece of legislation or a provision in a statute shall be presumed to be constitutional. The Court of Appeal in **Julius Ndyanabo Vs. Attorney General [[2004]] TLR 14**, regarded it as a sound principle of constitutional construction that, if possible, legislation should receive such a construction as will make it

operative not inoperative. So, we shall construe the alleged contravened section with the view to make it operative.

Before we venture to resolve as to whether the instant Petition falls under the rubric of “other means of redress provided for by other law (s)” we shall first look into what judicial review entails.

According to the ***Black’s Law Dictionary***, Judicial review is defined as a Court’s power to review the actions of other branches or levels of government; especially the court’s power to invalidate legislative and executive actions as being unconstitutional. The power of judicial review may be defined as the jurisdiction of superior Courts to review laws, decisions and omissions of public authorities to ensure that they act within their given powers.

According to **Justice Ssekaana Musa** of the High Court of Uganda (in his paper presented to East Africa’s Emerging Public Interest Advocates Programme at MS TCDC in Arusha on 1<sup>st</sup> March 2023), **the Court has power in a judicial review application, to declare as unconstitutional, laws, By-laws or governmental action which are in inconsistent with the Constitution.** This involves reviewing governmental action in the form of laws or acts of the executive for

consistency with the Constitution. Judicial review also establishes a clear nexus with the supremacy of the constitution, in addition to placing a grave duty and responsibility on the judiciary. Therefore, judicial review is both a power and duty given to the courts to ensure the supremacy of the Constitution.

In the course of discharging such duty, the Court moved by way of judicial review has mandate to issue the following discretionary remedies; Injunction, Certiorari, Mandamus, Prohibition, Declaration and Damages (as compensation) to mention but few. The Court may not grant any such remedies even where the applicant may have a strong case on the merits, so the Courts would weigh various factors to determine whether they should lie in any particular case (See *R vs Aston University Senate ex p Roffey* [1969] 2 QB 558 and *R vs Secretary of State for Health ex p Furneaux* [1994] 2 All ER 652).

In Tanzania, the law governing Applications brought by way of judicial review is the *Law Reform (Fatal Accidents Miscellaneous Provisions) Act, Cap 310, RE 2019* as amended and *the Law Reform (Fatal Accident and Miscellaneous Provisions) Judicial Review Procedure and Fees) Rules, GN No. 324 of 2014*. According to rule 4 of the Rules;

*A person whose interests have been or believes will be adversely affected by any act or omission, proceeding or matter, may apply for judicial review."*

In ***Iddi Haruni Vs. the Permanent Secretary President's office, Public Service Management and Good Governance & 3 Others, Misc. Civil Cause No. 59 of 2022***, this Court noted that;

*Considering **Rule 4 of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules of 2014** the person whose interests have been or believes that his interests shall be adversely affected by any act, omission, proceeding or matter can file for judicial review. One shows interest in a case by showing how he has or shall be affected by the actions of the administrative authority.*

**Black's Law Dictionary** defines By-laws as a law of local or limited application, passed under the authority of a higher law specifying what things may be regulated by the By-laws or it can refer to the internal rules of a company or organization. According to **Oxford Advanced Learner's Dictionary**, 7<sup>th</sup> Edition, By-laws means a law that is made by a local authority and that applies only to that area (see page 198 thereof). **Cambridge Dictionary** widely defines By-laws to mean a law made by the local government that only relates to its particular Region.

Basing on the above observations, thus, there is no dispute that the impugned By-laws were promulgated by Ilala Municipal Council in its administrative meetings. Similarly, there is no dispute that the said council is a local Government Authority discharging a public duty within its jurisdiction. In that stance, we are constrained to hold, as a point of law that the impugned By-laws emanate for judicial review as opposed nearly to Constitutional Petition. We are not far from agreeing with the learned state attorney for the Respondents that **section 8(2) of BRADEA** acts as a bar to litigations brought to this Court by way of Constitutional Petition in the circumstances where there are other adequate means of redress.

This Court has held times without number that constitutional proceedings are not expected to be pursued as alternatives to ordinary proceedings. They are preferable as a matter of necessity and where the law does not provide for the avenues or where judicial processes in ordinary suits or applications have been blocked. The rationale behind, as said before is to uphold and comprehend the presumption of constitutionality of all Acts of Parliament and the duties they impose to Courts. In other words, being a mother law to which all laws draw authority therefrom, coming to this Court by way of a Constitutional Petition should be the last resort a party may take

having considered unavailability of other judicial processes. For this reason, we entertain no doubt that the matter has been brought prematurely (see also ***Philip Samson Chigulu t/a Philip Samson Chugulu Agent Vs. Judge of the High Court of Tanzania & 7 Others, Misc. Civil Application No. 23 of 2021, High Court, Dar es Salaam***).

As said before, ***section 8(2) of BRADEA*** is essentially a bar and shield to the Constitutional Petitions brought before this Court in blatant disregard of other available means of redress available to the potential litigant. We thus make as a point of law that this Court has no jurisdiction to entertain any Constitutional Petition in contravention of the cited law above. ***In Tanzania Cigarette Company Limited Vs. the Fair Competition Commission and Another (supra)***, this Court firmly noted on pages 21 and 22, thus;

*In our interpretation, **subsection (2) of section 8** suggests that recourse to provisions of the **Basic Rights and Duties Enforcement Act** is not to be resorted to where there are other adequate means of redress available to a potential petitioner. **Subsection (2) of section 8 of the Basic Rights and Duties Enforcement Act** provides that the jurisdiction of High Court is not to be exercised if **the High Court is satisfied that adequate means of redress are or have been available to the person concerned under any other law, or that the application is merely***



*frivolous or vexatious. In fact, this interpretation of **section 8 of the Basic Rights and Duties Enforcement Act** gives effect to the presumption of constitutionality of statutory provisions.*

***(emphasis supplied)***

Mr. Kambole implored this Court to disregard the objection as long as the Petitioner intends not to challenge the procedural aspect of the enactment or the ultra vires nature of the said By-laws, instead, he intends to challenge the constitutionality of it. With respect, we hasten to say that the counsel's arguments are manifestly flawed. We think he appears to have misinterpreted the law. The clear interpretation of **section 8(2) of BRADEA** leaves no room for interpolations of any kind. We cherish the learned state attorney's far-reaching interpretation resulting in restricting the litigants from filing Constitutional Petitions where there are other adequate means of redress irrespective of whether they intend to challenge the procedure, ultra vires nature or the constitutionality of the act complained of. To hold it as a point of law, will lead to creating a new pigeonhole to which, as of now, we are not ready.

To that end, we agree with the learned state attorney for the Respondents that the Petitioner has not adequately resorted to the remedies available under the **Law Reform (Fatal Accidents Miscellaneous**

***Provisions) Act, Cap 310, RE 2019*** as amended and ***the Law Reform (Fatal Accident and Miscellaneous Provisions) Judicial Review Procedure and Fees) Rules, GN No. 324 of 2014***. In fine, we sustain the preliminary objection and proceed, as we hereby do, struck out the Petition. Since it is a public interest case, we enter no order as to costs. We order accordingly.

Right of appeal explained.

**DATED** at **DAR ES SALAAM** this 20<sup>th</sup> June 2024.



**H.S. MTEMBWA  
JUDGE**