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LEGAL REGIME ON STABILIZATION CLAUSES IN THE EXTRACTIVE SECTOR IN TANZANIA

Kennedy Gastorn

Abstract

This article analyses stabilization regime in the extractives sector in Tanzania from the perspective of the State's sovereign legislative and regulatory rights. Inherently, stabilization clauses are mitigation tools that seek to limit host States' legislative and administrative actions to the respective agreements in enhancing investors' legitimate expectations and protections.

This paper advances the argument that a government of a sovereign State cannot, as a matter of principle, fetter its duty to act for the public good and interest by binding itself through stabilization clauses. However, the government must do so while also honouring its international contractual commitments. It must therefore act fairly, reasonably and equitably under the power of eminent domain and public powers against the ill-gotten unbalanced terms including investment agreements.

This article also discusses the concept of unconscionability including the practical limitations for the States to use it as a defense, especially, in investment treaty claims. The principle of *pacta sunt servanda* as it relates to the stabilization clauses in the extractive sectors arrangements is also discussed. In this context, this paper argues that stabilization clauses cannot blindly be enforced against a State under the auspices of the *pacta sunt servanda* principle.

Key words: *stabilization clauses, legitimate expectations, unconscionable terms, regulatory autonomy, pacta sunt servanda.*

THE BASIC STRUCTURE DOCTRINE AND CONSTITUTIONAL RESTRAINT IN UGANDA: THE “AGE LIMIT” CASE

Benson Tusasirwe

African dictatorships never lose elections because such elections are neither peaceful, free nor fair.

Willy Mutunga

ABSTRACT

This Article discusses the scope and application of the Basic Structure Doctrine, against the background of the judgment of the Constitutional Court and Supreme Court of Uganda in the case of *Male Mabirizi Kiwanuka and Others v. Attorney General*, wherein the two courts found that an amendment to the Constitution of Uganda removing the “age-limit” qualification to stand for president did not violate the Doctrine and was valid. It is argued that given Uganda’s political history the clause, which was designed to prevent the sitting president from taking advantage of his incumbency to perpetuate himself in power, was part of the basic structure of the Constitution. As it was, the impugned amendment removed the last measure against a life presidency, and is a recipe for instability. The court decisions were a missed opportunity to assert the power of the Judiciary as the foremost defender of constitutionalism and the rule of law.

Key words: *Basic Structure, Constitution, Constitutionalism, amendment, age-limit, life-presidency.*

**INPUT OF THE EACJ IN DEVELOPING THE JURISPRUDENCE ON FREEDOM OF
THE PRESS
IN EAST AFRICA**

**ANALYSIS OF *MCT, LHRC, THRDC v. A.G OF TANZANIA* ON THE MEDIA
SERVICES ACT, 2016**

James Jesse

Abstract

The Parliament of the United Republic of Tanzania enacted the Media Services Act on 5 November 2016 and the President assented to it two weeks later. The Act was enacted largely for the purposes of promoting professionalism in the media industry, regulating media services in the country, establishing the Journalist Accreditation Board and establishing the Media Services Council. Media stakeholders and Civil Society Organisations criticized the Act, arguing that it was meant to muzzle media freedom in the country contrary to the prevailing human rights standards. In January 2017 these organisations filed a case at the East African Court of Justice (EACJ) challenging the said law. After hearing both parties, i.e., the Applicants and the State Attorneys who represented the Attorney General of Tanzania, on 28 March 2019 the First Instance Division of the EACJ made a judgement to the effect that the Tanzania Media Services Act unjustifiably infringe the freedom of expression which is one of the human rights standards Partner States to the East African Community are required to respect and protect. This article provides critical analysis of the decision.

Key words: *Freedom of expression, press freedom, criminal defamation, sedition, proportionality test.*

THE EXERCISE OF DISCRETIONARY POWER BY DISTRICT COMMISSIONERS IN TANZANIA: THE PARADIGM OF THE POWER TO ARREST

Leonard Chimanda Joseph and Nuru Benjamin Komba

Abstract

Discretionary power exists to ensure decisions of administrators are not caged by silent elucidation of the law. It allows administrators to use their reasonable common senses but which are controlled by law, to decide over various matters that come before their competence. This article aims at critically discussing the exercise of discretionary powers by District Commissioners (DC's) in Tanzania especially with respect to power of arrest. The article begins by giving the meaning and application of discretionary powers to DC's in Tanzania. The article further traces the historical development of laws and policies relating to exercise of discretionary powers by DC's in Tanzania and analyses the current laws which give mandate to the DC's to exercise discretionary powers. The article cites and discusses few cases where DC's exercised the power of arrest. Prior to conclusion and recommendations, the article discusses the exercise of discretionary powers in a human rights perspective.

Key words: *discretionary powers, District Commissioners, power to arrest, abuse of exercise of power, right to disobey unlawful order.*

REGULATORY JUSTICE EFFICACY IN TANZANIA: A CASE OF THE ENERGY AND WATER UTILITIES REGULATORY AUTHORITY

Allan Syril Mlulla

Abstract

Economic regulation and competition are frameworks to ensure efficient functioning of markets for the benefit of the consumer through competitive prices and acceptable standards and quality of products service delivery. EWURA and its tribunal are among instruments used in providing regulatory justice in Tanzania. This paper evaluates delivery of regulatory justice as administered by EWURA with a view to establishing its efficacy, shortcomings and providing possible solutions. Findings and conclusions of the study have shown that the EWURA tribunal is relevant in discharging the spirit of the EWURA Act. It has also been found out that decisions made by the Tribunal conform to the EWURA Act and, that; generally, the performance of the EWURA tribunal is very good. The good performance notwithstanding it is recommended that the EWURA tribunal should expand its activities countrywide so as to reduce the time within which the complaints are completed by the tribunal.

Key words: *Competition, EWURA, Regulatory justice, Regulatory Authorities, Efficacy.*