

## **Landmark Victory for Constitutional Rights: Court of Appeal Declares Key Provisions of BRADEA Unconstitutional**

In a historic judgment that reaffirms the supremacy of the Constitution and the right of every citizen to defend it, the Court of Appeal of Tanzania on 13<sup>th</sup> June 2025 declared the provisions of section 4 (2), (3), (4) and (5) of the Basic Rights and Duties Enforcement Act (BRADEA), as amended by the Written Laws (Miscellaneous Amendments) (No. 3) Act, 2020, to be unconstitutional.

The case, brought by human rights defender Onesmo Olengurumwa, challenged the constitutionality of amendments that imposed procedural barriers on individuals seeking to file public interest litigation under Article 26(2) of the Constitution. The Court's decision is a significant affirmation of the right of every Tanzanian to access justice and defend the Constitution without undue restrictions.

The amendments to section 4 of BRADEA introduced several controversial requirements, including the need for petitioners to demonstrate personal interest through an affidavit, a requirement that all petitions under Article 26(2) comply with Article 30(3) which is intended for personal rights violations, a provision that only the Attorney General could be sued in cases involving top constitutional office bearers, and a requirement to exhaust all available remedies before filing a constitutional petition.

Mr. Olengurumwa, represented by a team of prominent legal minds including Prof. Issa Shivji, Mpale Mpoki, Dr. Rugemeleza Nshala, and John Seka, argued that these provisions effectively nullified the right to public interest litigation and undermined the constitutional role of the Judiciary.

The Court of Appeal, in a unanimous decision delivered by Justices Levira, Rumanyika, and Ngwembe, made several important findings. It held that requiring petitioners to prove personal interest in public interest litigation contradicts the spirit of Article 26(2), which allows any citizen to defend the Constitution. The Court emphasized that Articles 26(2) and 30(3) serve different purposes, Article 26(2) for public interest and Article 30(3) for personal rights and cannot be procedurally merged. It found that subsection (4) of section 4, which barred direct suits against top officials like the President and Chief Justice, violated the principles of accountability and equality before the law. The requirement to exhaust other remedies was deemed vague and impractical, especially since no clear alternative remedies exist for public interest litigants. The Court also clarified that the standard

of proof in constitutional petitions is on a balance of probabilities, not beyond reasonable doubt.

This judgment is a monumental step in restoring the constitutional right of Tanzanians to challenge violations of the Constitution without facing procedural hurdles that deter access to justice. The Court has directed Parliament to repeal the offending provisions within 12 months, failing which they will cease to have legal effect.

Legal and Human Rights Centre (LHRC) welcomes this judgment as a victory for constitutionalism, rule of law, and human rights in Tanzania. It confirms the role of citizens as guardians of the Constitution and strengthens the Judiciary's independence in interpreting and enforcing constitutional rights. We urge Parliament to act swiftly in compliance with the Court's directive and call upon all stakeholders to remain vigilant in defending the democratic values enshrined in our Constitution.