

**LAW AND PRACTICE ON THE ENJOYMENT OF CONSTITUTIONAL
RIGHT ON CLEAN HEALTHY ENVIRONMENT:
A CASE OF DAR-ES-SALAAM REGION.**

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**A DISSERTATION SUBMITTED IN PARTIAL FULFILLMENT OF THE
REQUIREMENTS FOR THE DEGREE OF MASTER OF LAW OF
THE OPEN UNIVERSITY OF TANZANIA**

2018

CERTIFICATION

The researcher certifies that he has read and hereby recommends for acceptance by the Open University of Tanzania a dissertation entitled: *law and practice on the enjoyment of constitutional rights on clean healthy environment case study Dar-es-salaam Region*, in partial fulfillment of the requirements for the award of Masters in Law (LLM) of the Open University of Tanzania

.....

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Date

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I, **Sylvester Faustine Shilikale** do hereby declare that, this dissertation is my own work and that it has not been presented and it will not be presented to any other University for a similar or any other degree award.

.....

Signature

.....

Date

DEDICATION

I specially dedicate this work to my beloved late parents Lukanya Shilikale and Maguhwa Salu who sent me to school from the early days of my childhood, also my wife Martha Emmanuel for her patient and tolerance when I was engaged in this course. To my children's Emmanuel Sylvester (Mbuke), Michael Sylvester (Lukanya) Monica Sylvester (Maguhwa) Baraka Sylvester (Kulola) and Joseph Sylvester (Matinde) for forgiving me when I did not take care for them due to presence of academic work.

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ABSTRACT

Law and practice on the enjoyment on constitutional right on clean healthy environment case study Dar-es-salaam Region, has since time immemorial an eminent problem. Despite many efforts taken by the government to solve it, there still more challenges to strength the laws relating to environmental management so as to ensure clean healthy environment. The study is aimed at insightful analysis designed to suppress the problem of dumping wastes in settlement areas resulting from ineffectiveness of laws governing wastes management. The study is divided into six chapters, namely, chapter one which is comprises of background of the study, statement of the problems, literature review, and hypotheses, significant of the study and research methodology. Chapter two discusses the Law and practice on the enjoyment on constitutional right on clean healthy environment in Dar-es-salaam Region, chapter three environmental impact assessments in respect of waste management in Dar-es-salaam Region, chapter four data analysis, result and findings. Chapter five discussions of key findings, Chapter six Conclusions and Recommendation on how to redress the situation in the society. The findings are that, there is no provisional on the environmental law which specifies the actual distance to be considered when of selecting a dump sites or reservoirs from or towards the residential areas, no assessment is done before established a dump or reservoirs, hence right of clean environment ends by the statute and practice.

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- National Environmental Policy 1997
- National Health Policy 2003
- National Land Policy 1995
- National Water policy [R.E 2002]
- Penal Code (Cap 16 R.E 2002)
- Public Health[Sewage &Drainage] [Cap 336 R.E 2002]
- Tanzania Investment Act (Cap 38 R.E. 2002)
- The Water Utilisation (control and regulation Act (Cap 331 R.E. 2002)
- Village Land Act (Cap 114 R.E. 2002)

LIST OF CASES

Felix Joseph Mavika.VS. Dar-es-salaam City Commissioner (Civil case No. 316 of 2000) (HC) Dar-es-salaam (unreported case)

Festo Balegele.VS. Dar-es-salaam City Council (Msic civil case NO 91 of 1991 (HC) Dar-es-salaam (unreported case)

*General Secretary West Pakistan Salt Miners Labour Union. VS. The Director of Industries and Mineral Development*1994's CMR 2061

Social Economic Rights Action Centre (SERAC) and the centre for Economic and Social Rights .VS. Nigeria (case No 155/1996 court of Nigeria)

United State .VS. plaza health Laboratories 3F.3d643(2d cir. 1993)

Zia .VS.Wapda Pld [1994] SC 693

LIST OF ABBREVIATIONS

2 nd	Second
Cir	Committee of Intents and Research
CMR	Christian Michelsen Research
CO.tz.	Com Tanzania
DAWASCO	Dar-es-salaam Water and Sewerage Corporation
EIA	Environment Impact Assessment
EMA	Environment Management Act (2004)
HC DSM	High Court Dar-es-salaam.
HC	High Court
Ibid	In The Same Source
LEAT	Lawyers Environmental Action Team
Misc	Misellinius
NEMC	National Environmental Management Council
NGO'S	Non Government Organization
NO	Number
P	Page
Popn	Population
PVC	Polyvinyl Chloride
Sc	South Carollina
Vs	Versus

CHAPTER ONE

1.0 INTRODUCTION

This chapter presents the general context of the study, it covers the introductory part of the whole study beginning with background of the study, statement of the problems, literature review, hypotheses, significant of the research and research methodology.

1.1 Background to the Study

Dar es Salaam city is the largest city in Tanzania, was established in 1862 as a port and trading center to support new caravan routes opening into the interior of Africa. It became the national capital city in 1891, acquired municipal status in 1949 and achieved city status in 1961. In the mid-1970s, it lost its official status as the capital city to Dodoma. It accommodates the largest share of the urbanization challenges in the country.

It is located in the eastern part of the country, borders the Indian Ocean to the east and grows west, north and southwards from the Indian Ocean. It is one of the East African large cities covering an area of 1800 square kilometers (1350 land), with a total population of 4.36million (2012 popn. Census), growing at a rate of 4.3% per annum between 1988 and 2012. The City had areas which planned for residential development like Kariakoo, Magomeni, Kinondoni A and B, Mikocheni and Masaki, most of this area were built National Housing resident and government Houses, but the rest areas were not planned authority. This rate indicates that Dar es Salaam is one

of the rapidly urbanizing cities due to the number of population entering daily which needs basic needs. The City is a country's administrative, commercial, industrial and transportation center. Due to its functions it attracts a larger number people than any other region in Tanzania. The rapid population of Dar-es-salaam Region has been posing a number of developments challenges including; development of unplanned settlements (about 70% of its population lives in unplanned areas), traffic congestion, poor and insufficient social and economic services, land use conflicts environmental degradation, and poor sewerage systems, the area was planned to a specific number of person who living in Dar-es-salaam Region, by looking human services, which are infrastructure, residential Houses, Hospital, Police Stations, and sewerage system which is connected in the Indian Ocean up to now, mostly from University of Dar-es-salaam, Magomeni residential area, Muhimbili National Hospital, Amana hospital, Kariakoo residential Houses and Sinza. The sewerage systems were built according to population which was living in the city by that time, road were mud and morum and other were ram, houses were built by woods, few people who were living in the city of Dar-es-salaam producing wastes, but few of them are connected to the sewerage constructed to the Indian Ocean for disposal, therefore in those days, it was difficult to see wastes poured out of the chambers on the streets like now days, the act which had been defined to be normal. Most roads were constructed without trenches or drainage systems which could use to collect rain water during rain season as the result water spreaded in the road. Like areas of Magomeni, Mikumi, Posta, Keko, Banda la Ngozi at Nyerere road along Tazara are examples of roads that lack trenches as a result misdirection of rain water.

Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and bears a solemn responsibility to protect and improve the environment for present and future generation.

The word Environment commands a very broad meaning. This includes: air, land, and water; plant and animal life including human life; the social, economic, recreational, cultural and aesthetic conditions and factors that influence the lives of human beings and their communities; buildings, structures, machines or other devices made by man; any solid, gases liquids, odors, heat, sound vibration or radiation resulting directly or indirectly from the activities of man; and any part or combination of the foregoing and the inter-relationships between two or more of them.¹

The lives of all Tanzanians are intimately connected to the Environment; Human survival, and that of our future generation depends on the harmonious relationship with the natural elements. The Tanzanians do not have the luxury of ignoring the fundamental stresses at the interface of the Right to a clean and healthy Environment which go hand in hand with life of a person. Both are needed for survival and prosperity.²

Since 1862 approximately more than ten million people of the Dar-es-salaam city population live in Kariakoo, Ilala and Kinondoni areas where those people produce

¹ National Environmental Policy 1997

² ibid

more than 25% of the gross domestic products every day. As a result the area has suffered for decades of uncontrolled of solid and liquid waste, to make the area two thirds of the sewage systems and trenches/drainages be contaminated of Carbon monoxides, dirty water regularly emitted from over the chambers in Dar-es-salaam city which leads to the disasters of cholera, typhoid and malaria which are the result of domestic waste industrial and commercial products which contaminate the sewages and trenches which hinder smooth flowing of water during rain season.

The area had been involved in numerous daily human activities, which had been the primary source of serious Environmental pollution through sewage system. Also encounters restructuring and transitional problems, by lacking of basic community infrastructure service, including water supply sewage systems, drainage and solid waste management systems. About 40-70% of the urban residents live informal settlements. Until to this time the overall urban environment had been deteriorated to the extent that less than 5% of the solid and liquid waste is collected³. Therefore increase of population in Dar-es-salaam made destruction of environment, through technological development and human activities of the society. Environment has been a peripheral issue for years with evidence of the speed of the destruction and realization of the fact that environment as a common heritage of mankind can only be protected by mankind as a whole, more and more calls for co-operations in the endeavor are coming all corner of the globe.⁴

³ <http://www.un.org/news/press/docs/2001/ga9872.doc.htm> (visited on 12/09/2014)

⁴ Chris. M. Peter, Human rights in Tanzania, p 148

The geographical area of Dar-es-salaam City is not flat, the area is hill and downs, where that on that downs there sewerage which allow water to pass to the Indian Ocean, this natural ways of water like river Msimbazi, Mzinga, and other many rivers or ways of water which flows water to the Indian Ocean, this rivers or ways of water are not constructed with walls by cement in order to allow water to pass easily during the rain period, if these ways of water constructed by cement and stoppage of human activities to this rivers will enable water to pass smoothly and for very shortly time direct to the Indian Ocean, if people are not allowed to construct Houses near or in the ways of these river, act which blocks water to pass easily during the rain season as result flood occurs hazardous areas in the city of Dar-es-salaam especially Mwananyamala in kinondoni District, Jangwani bridge in Ilala District and Kurasini in Temeke District.

The citizens of Dar-es-salaam Region also appear to be the contributor of the situation of unhealthy environment for their habit of dumping wastes on the road sides, near sewage systems or they are parking wastes aside the road, dumping wastes to the sewage systems or middle the roads, this situation seen to several areas in Dar-es-salaam Region especially Mwananyamala in Kinondoni District, Jangwani bridge in Ilala District and Kurasini in Temeke District.

According to that reasons given above roads constructed in the city of Dar-es-salaam without drainage systems or trenches to pass rain water, this causes chaos during rain period, whereby water spread, into streets due to lack of drainage systems to pass water to the proper areas, those areas are like Posta, all Kariakoo Roads, Nyerere

Road, Kawawa Road, Ally Hassan Mwinyi Roads MwaiKibaki Road and other Roads which are constructed without drainage or sewerage systems in order to drain water easily during the rain period. Jangwani bridge is one of the example which was constructed without environmental impact assessment as the result clusters on the bridge has been an obstacle to solid waste carried by water to the extent that smooth running of water is always barred hence floods which has been the bottleneck to the free passage of the road during rain season⁵.

In Tanzania liberalization of the economic has led to the influx of international investors and attractions of local investor to new opportunities, which has resulted into overpopulation and more struggle on natural resources. These have caused not only the development of the economy but also adverse impact on the environmental entity bringing in complex environmental issues. Development of some areas from Municipals to the Cities; have resulted into growth of unplanned urban cities, while both sewage systems and drainage system remain of old fashion , systems not only but also no new sewerage or drainage systems are being constructed to suit the fastest urban growth like it can now be observed in Dar-es-salaam, Arusha and Mwanza cities.

Centralization of Government offices and other human basic needs to the same area, accelerates dirty environment due to unwanted domestic and industrial materials which is dumped or emitting to sewages or drainage which is caused by the

⁵ Direct interview with Bonaventura Bayi director of NEMC on 15 /06/2015

population, but authority responsible for waste management both solid and dirty water remaining uncertain. Hence neither sewage system nor drainage systems accommodates wastes. Rain water is also left to flow smoothly due to backwardness of solid wastes thrown into the drainages. Collection of wastes aside the Roads is the thing which exists for a long time all over the country especially in Dar-es-salaam city. Even to the river channel passing into their areas, Most people throw wastes directly into the drainage in their surroundings, while others direct dirty water from toilets to drainages of the streets as a result of regular outbreak of communicable diseases such as cholera, typhoid, diarrhea and others, in Kinondoni, Ilala and Temeke municipal an act which cause loss of man power and deterioration of economy.

But it is the duty of city council to stop create nuisance. People's health and enjoyment of life depending on living in health surrounding⁶. Also right's to health surroundings is constitutionally protected under article 14 of the constitution of the united Republic of Tanzania (as amended time to time) that every person has the right to live and to protection of his life by the society in accordance with law⁷. The best principle on waste management illustrated in Pakistan case, that residents who connected to salt mining in their area resulted in contamination of the local watercourse, reservoir and pipeline. The residents petitioned to Supreme Court of Pakistan to enforce their right of having clean, unpolluted water and filed their claim as human rights under article 184(1) of the Pakistan Constitution. The Supreme court

6 Fetso Balegale and 974 others .v .Dar-es –salaam city, Msic civil case NO 91 of 1991 (HC) Dar-es-salaam (unreported case)

7 The constitution of the United Republic of Tanzania 1977

held that as article 9 of the Constitution provided that “no person shall be deprived of life or liberty save in accordance with the law, the word “life” should be given expansive definition, the right to have unpolluted water was a right to life itself⁸.

Furthermore people health and enjoyment of life has been in risk, though there is a clear provision of law under section 4 of the environmental Management Act 2004, which requires that every person living in Tanzania shall have a right to clean, safe and healthy environment.⁹

Thus this research intended to remind not only the government but also all stakeholders to be conscious on people’s right to clean healthy environment by constructing enough drainage systems which will drain wastes to areas which intended, reservoirs, dumps of solid waste management and establish a mechanism as well as dealing with waste management for fore sing the effect of reservoirs and dumps sites which is situated near residential houses, because causes air pollution to residential areas who are near that drainages example drainage which is passing Keko residents from Keko Prisoner compounds.

“The Constitution guarantees dignity of man and also right to “life” under article 9 and also both are read together¹⁰, question will arise whether a person can be said to

8 General Secretary West Pakistan Salt Miners Labour Union v The Director of Industries and Mineral Development (1994’s CMR 2061.)

9 The environment Management Act 2004

10 Zia v Wapda Pld [1994] SC 693

have dignity man if his right to life is below bare necessity line without proper food, clothing, shelter, education, healthcare, clean atmosphere and unpolluted environment.” Draining waste water from the residential houses to the streams or rivers which are ether used by other persons or organisms is the violation of right to healthily environment.

1.2 Statement of the Problem

Despite many efforts to maintain environment by the government and other stakeholders, still there is an increasing problem in contamination both sewages and drainage in Dar-es-salaam, most areas of Dar-es-salaam sewage and drainages are crowded with garbage and lavishes from residential areas. Regularly people dump garbage and lavishes either near or into drainage which when rain falls they block rain water from smooth running as a result of floods to many areas of Dar-es-salaam. The dilapidation of sewage system have all the time been the cause of dirty water be discharged along the roads and even into the drainage system as a result of air pollution due to spreading of liquid from both residential and industrial areas based on their vicinity with sewages.

Lack of provisional sections from environmental law that provide actual distance in kilometers or miles in allocation of dumping sites or reservoirs from residential, accelerates random dumping of garbage’s and lavishes anywhere by the people who are not properly guided as to what distance should be considered before dumping any garbages. The law provides that the selected area to be adequate in size and be

situated away from residential Areas¹¹.The determination of distance is left to an individual who decides the extent of adequacy size. The right to healthy environment in controlling, monitoring sewerage system and dumping of wastes in settlement areas is accelerated by the law itself.

Not only that but also expansion of settlements and human activities towards dump sites or reservoirs due to the lacks of prohibitory provisions to settlement. Human activities established in areas where already there are dumping and reservoirs sites greatly endanger right to health environment. Areas like Kigogo dumping, Buguruni and Pugu kinyamwezi dumping sites, are best examples whereby right to health environment has been affected due to inability of controlling, monitoring sewerage systems and dumping wastes in settlement areas. As the result of locating wastes stations near residential areas; as it is the situation at Mabibo, kurasini, Buguruni, Mikocheni and Ukonga Magereza, where these reservoirs are near residential areas. But Municipal councils are the only body which would control dumping wastes in residential areas as it is decided in Vingunguti streaming dirty water from the abettors of Vigunguti, polluting residential areas, the plaintiffs applied for an interim order to restrain the respondents severally and jointly by themselves or through their agents, work person from dumping solid wastes and liquid wastes in Vingunguti areas. It causes pollution to the areas by air or floods during rain period, environment as well

11 Section 118 (2) (b) provide that before a local government authority designates an area to be a waste transfer station for the purpose of collection of solid waste it shall; ensure that the selected area is adequate in size and situated away from residential area;

as endangering the health and lives of the applicants, their families and other residents¹².

As it is on distance for locating dump sites and reservoirs, environmental law in Tanzania does not provide a clear direction to dilapidation of sewage systems as guidance to the authority concern so as to prevent mismanagement of domestic and industrial wastes.

Further, the law lacks provisional section that directs authority to ensure regular cleaning due to obstruction of sewages motion as a result of solid wastes being contaminated from residential areas and cause spillage of sewages which result into nuisance to land and air; hence heath environment gets more affected. Good examples are spillage of sewage at Lumumba/Aggrey-Street, at Ilala Municipality, sewages flowing along drainages of Mwaikibaki road at kwa Warioba and Migombani street in Kinondoni Municipality. Hence the right to clean healthy environment in Dar-es-salaam is greatly affected by environmental laws of Tanzania, which is very lenient and lacks directory provisions that would suffice better environmental management.

The problem of dilapidation of sewages, blockage, spillage of sewages and dumping sites located closer to residential areas, is not adequately reported. It is not well known as to what extent inadequacy of the law on sewage management result in to catastrophic heath environment hence communicable diseases like cholera and diarrhea in Dar-es-salaam.

¹² Flex Joseph Mavika .vs. Dar-es-salaam city commissioner(Civil case No. 316 of 2000)

Thus, this study on Law and practice on the enjoyment on constitutional right on clean healthy environment was in response using the case study of Dar-es-salaam Region.

1.3 Objective of the Research

1.3.1 General Objectives

The general objective of the study is to examine resident's accessibility, knowledge and their vicinity or remoteness to the reservoirs and dumping sites resulting from ineffectiveness of environmental law on Law and practice on the enjoyment on constitutional right on clean healthy environment in Dar-es-salaam Region.

1.3.2 Specific Objections

In order to realize the general objective, the study is based on the following specific objectives,

- i) To identify environmental laws provisions that governing residents accessibility, knowledge and their vicinity or remoteness to the reservoirs and dumping sites on Law and practice on the enjoyment on constitutional right on clean healthy environment in Dar-es-salaam Region.
- ii) To assess environmental laws provisions on waste management.

1.4 Research Questions

In this study residents accessibility, knowledge and their vicinity and or remoteness to the reservoirs and dumping sites was based on the following assumption.

- i) To what extent Environmental law failure to provide actual distance as guidance, in locating waste stations from residents or residents towards sewage systems decelerates right of enjoyment on clean healthily environment as the Constitutional right.
- ii) Do environmental laws ensure public education to waste management?

1.5 Significant of the Study

The study findings is beneficial to policy makers like members of Parliament NEMC, Non organizations dealing with environmental activities, District Councilors and Police officers as law enforcers had to be aware with protection of right to clean healthily environment as the Constitutional right. Future researchers may refer to the study to find out researchable areas or use it as a source.

1.6 Literature Review

Through the Library of Open University of Tanzania, University of Dar-es-salaam, Tumaini University, LEAT and Dar-es-salaam Police Academy are the library which passed through for collection of data's concerning problem of waste management in sewerage systems in documentary review.

One of the researchers who tried to address this matter of waste management is *John Gergaez and Doulgas Whitemen*,¹³their book provides a general overview concept of

¹³ John Gergaez and Doulgas Whitemen, The legal environment of business 2nd edition p 603

environmental pollution. The authors postulate that, the environment consists of all physical element of the world except human beings.

According to them, environmental law acts to protect the environment in order to preserve it for people to use and enjoy. They further argued that there are three major benefits of the environment which may be noted. First, the environment provides a place for life, clean air and pure water which is essentials to human life and healthy. However the author did not go further to discuss the effects and solution of right of enjoyment on clean health environment as the constitutional right. This study looked into the shortcoming of the author and tries to fill the foregoing gaps on waste management in the society.

Another auther, *Ida. J. Mawalla*¹⁴ has confined her study to the Constitution rights. She argued that people are neither aware of their right to a clean and healthy environment nor are sure of which avenue they should opt for determination of their rights. The author adds that, this is not only a big challenge to the country but the educated masses do not bother to educate those who are ignorant of their rights.¹⁵ However the author failed to consider the ineffectiveness of Environmental law governing allocation of dumping sites, reservoirs and cleaning of sewerages as a bottleneck to the right to a clean and healthy environment. This study sought to cover

¹⁴ Ida. J. Mawalla Environmental law and human rights in Tanzania an appraisal of the constitutional right to clean and healthy environment, the Open University of Tanzania 2004,

¹⁵ Ibid

the impending on right to a clean and healthy environment based on ineffectiveness of Environmental law.

*Jewell Andrew Waite and Tim*¹⁶These author directed himself on waste management especially on air pollution but did not concern on waste management on sewage system, but suggested several methods of disposing industrial and household wastes by landfill only, the way which is termed to be increasingly by incineration of unhealthy environment, that became to be the land pollution.¹⁷But did not say anything on enjoyment of Constitutional right to clean health Environment, which came to be the problem in low income settlement in the term of clean, safe and healthy environment, this study had digested well on waste management.

*Justine Thornton and Silas Beckwith*¹⁸ both explained well in waste management in transport of those wastes in the term of carries, which is governed by the statute of control of pollution Acts 1989 England under section 1 which makes a criminal offence to any person who transport controlled waste in the course of business or otherwise for the profits, unless he is registered as carrier of controlled wastes,¹⁹ but the authors do not say anything to clean health sewage systems in the settlement area, the thing that growing alarming and make contradiction as to who is responsible to the situation in those are, this study concerning transportation of waste in the society in the term of sewage systems.

¹⁶ Environmental law in property Transactions Butterworth 1977 p 315

¹⁸ Environmental law p 207

Not only that also *Simon Ball and Stewart Bell*²⁰ wrote on disposal on wastes of large quantities that are discharged to sewer or to natural waters, that the methods itself create it is own pollution to water which is controversial to Environmental law, these author had not written extensively on how sewage systems should be preserved for clean environment, in order to ensure clean, safe and healthy environment to resident.

*Kathellen F. Brickey*²¹, in her book of environmental crime wrote much on water pollution and prosecution of the wrong door, emphasize much industries which pollute waterways and not to individual one on how to avenue the clean environment where they are living by controlling and managing sewage systems which passing to their residence.

*Isac Constantino Luwango*²² wrote on electronic waste management in Dar-es-salaam region by looking the effect of waste product of electronic to the society and human life, but did not wrote anything how the industries that produced those electronic waste products are obliged to control the waste product which produce by those industries, instead of it directed to the drainage near by the drainage or sewage system passed as a result cause effect to organism which use those drainage for human activities.

20 Environmental law 2nd edition p 305

21 Environmental crime 2008

22 Assessing challenges of E- waste management regulations in Tanzania case study Dar-es-salaam
Dissertation 2014 at Open university of Tanzania.

*Ngollo John*²³, wrote on waste to be dumped in the street of Mwanza to chaos to citizen and authority of Mwanza City, but explain the causes of wastes to seen every corner of Mwanza city that are lacks of vehicle to carry those wastes to dumping sites, but did not say or write anything on the place where those wastes are dumped before to be transported to Buhongwa damp is it complying the environmental law to be away the resident area, and the situation of collecting wastes along the road and sewage system is it the requirement of the law, this research will be the solution of the citizen of this country by educating them the effect of dumping wastes along the road and sewage or drainage system affects the healthy environment and bring chaos to the citizen and the authority.

1.7 Research Methodology.

Two main research techniques were used in this research, namely documentary review and field research.

1.7.1 Field Research

Field research was done by interview and questionnaires used to extract views opinions criticism and suggestions from different five classes of people. The following places were visited for interview namely Kinondoni Magistrate Court, Mwananyamala Kisiwani area, Temeke Municipal, Ilala Municipal, Kurasini Area, Ukonga Magereza Pugu Kinyamwezi, LEAT, Non Organization and Higher Learning institution.

23 Mwananchi. Co.tz , ISSN 0856-7573 NO 6142 of May 22, 2017

1.7.2 Documentary Research

A review of Primary and secondary methods were used to investigate the enjoyment on constitutional right on clean healthy environment in Dar-es-salaam Region, to obtain data from different Libraries in Dar-es-salaam City.

1.7.2.1 Primary Data Collection

Primary data collection used statutes and court decisions, as primary source of information in this study. Also the researcher used this method of data collection through reading statutes and decided case on the enjoyment on constitutional right on clean healthy environment in Dar-es-salaam Region.

1.7.2.2 Secondary Source

These are sources of data which discuss, explain, interpret and analyze what law is or what it should be in relationship with the issue under study. They provide data which cannot be described as original. In this study secondary data were obtained through documentary researches, law review, legal news, law reference books, articles about law, books about law, interments, journals and reports relating to the study were consulted from various libraries, such as Open university of Tanzania, Dar-es-salaam Kinondoni branch, University of Dar-es-salaam, Tumaini University Library Kinondoni branch, LEAT Mikocheni head office and Dar-es-salaam Police Academy library kilwa road.

According to *Isaac and Michad*²⁴, the method is used to describe systematically, a situation or area of interest factually and accurately. The Targeted population for this study included people of different levels of education, different classes of residencies and from various public and private Institutions in Dar-es-salaam region. The research methodology was employed because it allowed various method of data collection to be used. Moreover, for the case study approach to facilitate conducting of empirical investigation on enjoyment on constitutional right on clean healthy environment in Dar-es-salaam Region, using people who are familiar with environmental laws and the environmental problems in Dar-es-salaam City area as case study.

1.7.3 Area of Study

This study was conducted in Dar-es-salaam City which comprises of three Municipals that it is Kinondoni, Ilala and Temeke. This made the study easy for research to conduct an investigation to the area of Mwananyamala Kisiwani in Kinondoni District, Pugu Kinyamwezi, Ukonga magereza, Vingunguti and mazizini abettor at Ilala District and Kurasini in Temeke District, the area which had population density of 4.36 million people of different character, to obtain substantial data as the research had easy access to respondents in Dar-es-salaam City, Magistrates of three District court, Advocates with offices in three District and University student who leaving Dar-es-salaam City, the reason why it is Dar-es-salaam City was preferred as the case study, this is after realizing that much liquid wastes are being complained against by

24 Handbook in Research and evaluation, California: Edits publishers1978

various environmental stakeholders, that the sewage are very old and poor. The study wanted to determine to what extent sewages in Dar-es-salaam especially in three Municipals at Dar-es-salaam City Area which had a real problem of waste management and to establish solution to the problem. Purposive sampling method of data collection has been used to select participant to this study provided that, the area is too huge with high population density. It is difficult to interview everybody but representatives used in collection of data

1.7.4 Sample Size

The researcher supplied 75 questionnaires to participant of five category group of people who are knowledgeable with environmental law according to stratified sampling method which was used to select the samples, that is, five lectures, fifteen advocates, thirty five University Students and eighteen law enforcers, two magistrates were interviewed as part of the target population, but 50 participant responded to the researcher. The respondents were selected on the basis of their nature of work and educational experience to the problem, so that to ensure chances or operation of probability be utilized, as each individual in the population had an equal to be selected for the sample.

1.7.5 Sampling Design/Methods

A stratified random sampling of five category groups of people sharing attributes of common was preferred by the researcher for the present study. In this stratified sampling, a population of the study was limited to five subset category groups of Advocates, University Students, Magistrates, law enforcers and residents in Dar-es-

salaam City which made of Kinondoni, Ilala and Temeke District. The study used purposive sampling to draw the required samples from Municipals in Dar-es-salaam City.

1.7.6 Data Analysis Method

Data collected will be analyzed by the use of qualitative method of data using simple statistics such as the use of factual and logical interpretation obtained through interview and questionnaire to the respondents.

1.8 Scope and Limitation of the Study

Investigation of Law and practice on the enjoyment on constitutional right on clean healthy environment in Dar-es-salaam Region, involve sensitive and confidential individual character on his/her disposal behavior at individual residence which may have resulted in biased responders. This is because individual may not want to tell the truth over his or her waste disposal behavior. Some target respondents may not attend the interview because they knew that may be the researcher is investigated them or had nothing to the problem they face as far as waste disposal is concerned. The study concentrated mainly on waste management as in dependent variables against right to clean healthily environment as the dependent variable, which may have in adequately provided a clear picture of the problem.

CHAPTER TWO

2.0 LAW AND PRACTICE ON THE ENJOYMENT OF CONSTITUTIONAL RIGHT ON CLEAN HEALTHY ENVIRONMENT

2.1 Introduction

This chapter examined waste management in Dar-es-salaam Region, individual's involvements as the most beneficiary of the right to healthy environment. It has assessed the linkage between the National environmental Policies of 1997, the Environmental Management Act, 2004. However, under this chapter, the researcher had observed greater discrepancies which exist between National environmental Policy, the environmental Management Act, other laws and policies which provide for legal and institutional framework for sustainable management of environment as a whole²⁵.

2.2 The National Environmental Policy 1997

This study reflects the National Environmental Policy, 1997 which states at paragraph 17 of the policy document seeks to provide the framework for making fundamental changes that are needed to bring environmental consideration into the mainstream of decision making in Tanzania. It seeks to provide policy guidance, plans and gives guidance to the determination of priority actions and provides for monitoring and regular review of policies, plan and programmes. It further provides for sectoral and cross-sectoral policy analysis in order to achieve compatibility among sectors and

25 National Land policy 2003, The Public Health (Sewage & Drainage) [Cap 336 R.E 2002], National Water Policy of 2003, Penal code [Cap 16 R.E 2002], Water Utilization (Control and Regulation) Act [Cap 331 R.E 2002] of the laws of Tanzania.

interest group and exploit synergies among them.²⁶Policy statement 36 provides for the responsibilities of the Government on waste management. Policy statement 51(iii) provides that the transport sector shall focus on the environmental activities spill prevention and standards shall be formulated for transport action of dangerous materials of both water and solid state.

However it does not provide for the specific distance to be considered while allocating both reservoirs and dumpsites whose proximity to the residential areas have resulted into embarrassment to people near them and endanger their health. The policy revolves around the ideas of transport sector to focus on the environmental activities spill, prevention and standards that shall be formulated for transporting dangerous materials of both water and solid state.

The policy goes further stressing on strategies of preventing, reducing, control and limitation of damage and minimization of the risk from the generation, management, transportation, handling and disposal of hazardous wastes and other wastes emissions. The Policy provides that industries shall be planned in a manner minimizes adverse effects on the environment at all stages. It does not indicate any as to the distance relating to waste disposal or compulsory connection to the main sewerage system.²⁷ But it does not provide any provision which ensures individuals especially industrial owners to ensure proper waste disposal of both liquid and solid like spilled metals; plastics material, glasses and sewage which are likely to be discharged and leave to

²⁶ The National Environmental Policy 1997

²⁷ National Environmental Policy paragraph 56(i)

flow through drainages and river channels. No any policy statement which ensures creation of safe zones for sewages leave distant dumping sites as a result waste generating people of all levels are neither legally banded nor directed on proper treatment and disposal of waste for health environment in Dar-es-salaam City.

2.3 The Environmental Management Act 2004

This has directly been reflected the National environment Policy 1997, the Act outlines principles for waste management, environmental quality standards public participation, compliance and enforcement. The Act empowers any person to bring an action against the person who act or omission is likely to cause harm to human health or the environment.²⁸

The Act requires both the urban and rural areas to prescribe the best ways possible for the collection of various classifications of solid and waste from generation sources by either it is own or with any commercial or private sector arrange ways to recover the cost incurred in collection of the solid waste and appropriate equipment, time and routes for solid waste collection.²⁹

Like the National Environmental Policy, 1997; the Environmental Management Act does not provide guidance as to distance be considered when allocating reserviours and dumping sites. It has remained to be the discretion of the Municipal Council to decide how closer the residential areas may be, the law has left some important

²⁸ Environmental Management Act 2004, section 5(1)

²⁹ Ibid section 117(a) & (b)

matters concerning waste management to be decided at the discretionary powers of some of the government institutions hence experience decisions which hinder health environment. Unexpressed powers of Dar-es-salaam Water and sewerage Corporation (DAWASCO) to register any Scavenger and tax collection for dumps and cesspools add more costs to people and scavengers drivers and waste management project runners as a result many people in Dar-es-salaam have resorted into short cut means or ways of connecting locally PVC outlets directly from their toilets to the drainages where they discharge the same during rain season.

Means while, with all the lacuna of the National Environmental Policy and the Act yet the few reservoirs and dump sites are not found in all District of Dar-es-salaam. For example sewage all liquid wastes from Kinondoni and Ilala Districts are poured at Temeke reservoirs, the same as solid waste of all districts of Dar-es-salaam are dumped at Pugu Kinyamwezi dump site.

2.4 National Land Policy (1995)

National Land policy adopted of 1995 among others, the policy promotes equitable land requisition to all citizens. The main object of policy is to promote and ensure the good use of land, allocation and prevention degradation and to resolve conflicts on the issue related to Environment conservations. The land policy is one of the major sources to the Local Government which are in dire to the need of the decision making mandate on the land use and resources. ³⁰ The policy protects highly sensitive area

30 The National Land policy 1995

such as water catchments area; it declares mechanisms for protecting sensitive areas to be created³¹. Further the existing conflict between the National Land Policy 1995 and the Environmental Policy creates a gap of the law which endanger right to health environment. The Land Policy recognizes hazardous areas as protected by law contrary to the environmental Policy which remains silent on hazardous areas as a result many unprotected hazardous areas in Dar-es-salaam are locally used as dumping sites, hence harming right health environment of the surrounding residents.

Therefore land users and occupiers shall be responsible for the protection improvement and nourishment of the land, and using it on the environmental sustainability manner³², not only that but also the statute provide that the management and utilization of land shall be in accordance with the prevailing land laws provided that where there is any conflicts on environmental aspect of land management the provisional of this Act shall prevail³³.

However the problem of the policy is unclear devolution on land management, responsibilities from the commissioner to the local government, and the authorities' failure to survey land before settlements established squatter and hence impassable roads.³⁴

31 Eugen M & Vicent S. Decentralization process and its impact on environmental and National Resources management in Tanzania p 59

32 Section 72 of the Environmental Management Act 2004

33 Ibid Section 50

34 <http://www.toolkparticipation.nl/cases/13> visited on 15/09/2015

2.5 The National Health Policy 2003

The vision in Tanzania is to improve the health and well-being of all Tanzanians with a focus on those most at risk, and to encourage the health systems to be more responsible to needs of the people to live in good and safe Environment. The policy enunciates about health promotion and protection of individuals from ill health condition which will result from dirty Environment. Therefore the main object of this policy is to protect public health, not in the narrow though indispensable sense of curing diseases, but in the broad sense of promoting human well-being and informed participation in primary environmental care, the policy enunciate that the main to be pursued are provision of community needs for environmental infrastructure, such as safe and efficient water supplies, sewage treatment and waste disposal services, promotion of other health-related programmers such as food hygiene, separation of toxic/ hazardous wastes and pollution control at the household level.³⁵

2.6 Public Health [Sewage & Drainage] [Cap 336] R.E 2002

The purpose of this statute is for maintaining the public health by making sure that the sewage system is clean and safe to the citizen all the time. However, the said Public Health [Sewage & Drainage] Act does not provide for any proper maintenance organ from the Municipal on sewages. No specific organ within the Municipal Councils responsible with maintenance of sewage system. Matters related to environmental management are decided by the Municipal Councils to provide tenders to either individual or private Companies with poor infrastructures and tools to facilitate

³⁵ Paragraph 50 of the National Health Policy 2003

proper maintenance of sewage systems, rather than that Municipalities could take that responsibilities of waste management, so as to ensure regular clean environments,

This statute applies to the municipal township. The statute instructs the municipal to construct and maintain the sewage system all over the time.³⁶ Therefore this, statute is mostly applied by DAWASCO in Dar-es-salaam to make sure that the sewage system is clean all over the time. In that respect it does not allow any person to direct any intentional water in the sewage system which is constructed for emergence water like rain, under this law the authority may within its area construct and maintain public sewer, construct and maintain sewerage disposal in the public land acquired or lawfully appropriate for the development.³⁷

The Act on section 9 (a) (i) prohibits any discharge either directs indirect into any public sewer³⁸. The law restrict discharge of wastes into the sewer without an appropriate hook-up to be secured from the Municipal authority not only that but also the foul or dirty water from the manufacturing industries without the agreement of the Municipal authority. The discharged material into the sewer should be of that type which is going to the corresponding type of drain. That it is soil and wastewater should not go into drain for dirty water. The dirty water should not go into the drain for foul water without special permission of the Municipal authority. Therefore every Municipal should arrange the place for disposal of foul water, wastewater and dirty water, or other suitable place in the sanitary and efficient manner to the satisfaction of

³⁶ Section 3 of the Public Health [sewage & Drainage] Cap 336 R.E 2002

³⁷ Section 9 ibid

³⁸ section 9 (a) (i) Public health[sewage & drainage]Cap 336 R.E 2002

the authority³⁹, on practice this is not done due to the poor implementation and low fines imposed by the Act of Environmental Law. In order to prove that the law restrict to drain water but practice show that there areas where waste water is connected to the sewerage system without fear of the law is to Mzinga river, Msimbazi river and Mazizini river all the rivers are connected with waste water through either Industries or human settlements, some of them taken action after cry of people who living to that areas, but no officer either from NEMC or Municipal made inspection of that areas to observe this acts.

2.7 National Water Policy [2002]

Water is the basic natural resource which is needed by human being and to provide social and economic needs, water is an integral part of the environment whose quantity and quality determine how it can be used⁴⁰. Tanzania signed Agenda 21 of National Water Policy which is the outcome of the United Nation environment meeting in Rio de Janeiro 1992, which emphasize all Nations to protect natural resources against pollution. However the National water policy of 1991 can be identified in the implementation strategy which emphasized the central government to be the sole investor and has responsibility in protecting the water resources⁴¹.

The revised policy developed a comprehensive framework for sustainable development and management of National water resources in which an effective legal and framework will take place. The aim of this policy to the citizen is to have full

39 Section 18 ibid

40 The National Water Policy [2002] p 17

41 Ibid p 3

participation in decisions of Environmental issues in order to preserve hygiene's environment.

The policy also addresses urban water supply and sewerage system to be safe guarding health through safe disposal of excreta, solid wastes, liquid wastes and adequate safe water to be encouraged by integrating water sanitation and hygiene education programs. It sets a framework for achieving an efficient development and management of urban water supply and sewerage systems, to guide the development and management of efficient effective and sustainable water supply and waste water disposal system in urban centers, also enabling environment and appropriate incentives for the delivery of reliable sustainable and affordable urban of sewerage system, to enhance water management and waste water disposal⁴².

2.8 Penal Code [Cap 16 R.E 2002]

The facts that Penal Code, laws of Tanzania does not imposes stiff punishment against all those who dumps wastes in an authorized areas also those who discharges sewage into drainages or river sources, which resulted into poor waste management in Dar-es-salaam, the statute provides that any person who involuntarily corrupts or fouls the water of any public spring or reservoir so as to render it less fit for the purpose for which it is ordinarily used is guilty of a misdemeanor⁴³. It is important for the Penal Code to be embodied provision that could not only be binding to residents

42 The National Water Policy [2002] pg 68-69

43 Section 184 of the Penal code [Cap 16 R.E 2002]

of Dar-es-salaam but also to the government especially Municipalities as the organs of the government which implements the laws on environment.

Infringement of right to health environment by responsible organs has been treated to be civil offence due to inadequacy of penal sanction. In the case of *Flex Joseph Mavika.v. Dar-es-salaam city commissioner and Fetso Balegale and 974 others .v .Dar-es –salaam city*⁴⁴, where right of lives of people were seriously violated and to some extent people's health got injured as a result of sewages spilled from the Vigunguti abettor and dumping sites which located in residential areas was treated as civil case despite it is a criminal case in some other Country. In similar circumstance in Nigeria in the case of *Social Economic Rights Action Centre (SERAC) and the centre for Economic and Social Rights .v. Nigeria*⁴⁵ in this case the judge decided that the Nigerian government was found liable for violation of the Right to health and a clean environment because of pollution of soil, water and air which harmed the health of the Ogoni people.⁴⁶ According to that, this was not only a nuisance case but also criminal case in the sense of negligence. In Tanzania the aftermath of locating dump sites and reservouirs near settlements areas the Criminal Law should be Revised and termed as criminal rather than now to be termed as civil incidents.

2.9 The Water Utilization (Control and Regulation Act [Cap 331 R.E 2002]

This is the law which deal with control and regulation of water in the society, it prohibit the act of discharging waste water in the rivers or conducting activities which

⁴⁴ Msic case No 39 of 2001(HC) Dar-es-salaam (unreported case)

⁴⁵ Case No 155/1996 court of Nigeria

⁴⁶ Article 16&24 of the African Charter

are unhealthy to environment, also empowers other bodies to deal with environmental violators that EWURA, DAWASCO and NEMC may, upon recommendations by the Central Water Board⁴⁷, make provisions for the regulation of discharge of effluent into underground strata⁴⁸, provide the powers of the Ministers on environmental laws in making bylaws of environmental law.

That it is how laws emphasize the management of wastes in the society, but how is the practice in the city of Dar- es-salaam, more areas are not planned that to make more residence to be living in squatted areas, where it is difficult to construct sewerage systems or street roads for them which will allow even collector of wastes to pass through each family to collect those wastes produced daily, these areas are, Mwananyamala dump, Msasani bonde la mpunga, Namanga, Buguruni kwa mwinyi- amani, Buguruni malapa, Ukonga kichangani, Mtongani darajani and keko. But the laws restrict people to construct house without permit from the municipal or to unplanned areas.

More people in Dar-es-salaam region they had no knowledge of environment laws which may help to separate solid wastes and liquid wastes for disposal as a result they are mixing all together at the same, which made difficult to transport and disposal them and to be the source of blocking sewerage when dumped in that sewages during the rain season. For example the main sewage system which collecting rain water

⁴⁷ Water supply and sanitation Act No 12 of 2009

⁴⁸ Section 21 of the Water supply and sanitation Act No 12 of 2009

latrine wastes center of Dar-es-salaam several times it blocked and emitting wastes along the roads due to plastics bag which dumped in that sewage and block it.

Dumpsites are located along the river valleys, act which become a creation of pollution to other living things and other user of that water valleys when needs to use, also are located not so far from the city and be the quails to the residents near that areas, Slidge from septic tanks and pit on latrines is discharged into wastewater during the rain season, acts which cause pollutions to that water ways to other user, Pepsi Industries, Vigunguti pits, Ukonga pits, and many individuals, also the areas had no formal storm water drainage systems whereby season water could be directed. There is only one site of dumping wastes in Dar-es-salaam region which is located at Pugu Kinyamwezi, which make more collector of wastes to face difficult of transportation of that wastes as a result fails to collect that wastes at the right time. Vehicles which used to carry that wastes are not in good condition to carry that wastes.

2.10 Conclusion

The problem of waste management does not lie with the policies touching to the subject as addressed, but it is revealed that the implementation is still questionable. The law which has to effect policies has been found with several weakness, these include poor planning of settlement area which cause people to build houses without arrangement, negligence of the government leaving people live in hazard areas cause the sewage system to be difficult to construct and made the area to be impassable, low penalties to the wrong door and the citizen are not aware with Environmental law in

order protect the environment. The National Environmental Policy would have policy statement for sitting distance if dumping wastes that could be observed by other law. Ministry of Land could survey the area before people invaded for settlement so that streets could be planned. Low penalties to people who violate the environmental law increase the problem of areas to be contaminated, environmental officers they are not committed to educated people the right of healthily environment and hygiene in the society. Enforcement laws and regulations make people to participate in cleanup campaigns and to sort out wastes according to their nature, raise people awareness and understanding on waste management issues and make them to pay services which will be prescribed by the waste collector, to encourage the private sector to partner with the local Government in developing a sustainable waste management in the city of Dar-es-salaam in term of investments, to encourage people who leave to unplanned areas to demolish their building in order to allow street road to pass through that areas to enable waste collector to pass through that residence for collection of wastes. Municipal to select more dumps of wastes to each municipal to so that it can be easy to dump those wastes.

CHAPTER THREE

3.0 ENVIRONMENTAL IMPACT ASSESMENT IN RESPECT OF WASTE MANAGEMENT IN DAR-ES-SALAAM REGION

3.1 Introduction

The chapter intends to examine the Environment impact assessment conducted to any project established in our country in consideration of right to clean environment, who is responsible, under what provision environmental impact assessment required to be conducted, at what stage of the project environmental impact assessment be conducted, powers of the Minister on environmental impact assessment, action taken to violator of environmental impact assessment, what action taken to project where environmental impact assessment not conducted,

3.2 Definition

Environmental Impact Assessment is a formal process used to protect the environmental consequences of a plan, policy, program, or project prior the implementation or decision; it proposes measures to adjust impacts, or to investigate new technological solution. But on the Environmental impact Assessment Act defined as systematic examination conducted to determine whether or not a programmer, activity, or project will have any adverse impacts on the environment⁴⁹. Although it can lead to difficult economic decisions, strong political and social commitments, but it protects environment which sounds basis for effective and sustainable development.

49 Section 3 of the Environmental management act 2004

Also it is a brief discussion of the purpose and need of the proposal of the human environmental impacts resulting from and occurring to the proposed actions or project intended to be constructed and alternatives considered practicable, plus a listing of studies conducted by agencies and stakeholders consulted to reach these conclusions. The action agency must approve an environmental assessment before it is made available to the public. The environmental assessment is made in public through notices of availability by local, state, or regional clearing houses, often triggered by the purchase of a public notice advertisement in a newspaper of general circulation in the proposed activity area.

All this process is to be done before the project constructed anywhere, public to give option, suggestion and expertise on that project that an environmental impact assessment study shall be carried out prior to the commencement or financial of a project or undertaking,⁵⁰ and a certificate to be issued to that permit or license for carrying out of any project or undertaking in accordance with any written law, shall not entitle the proponent or developer to undertake or to cause be undertaken a project or activity without an environmental impact assessment certificate issued under this Act⁵¹. This is how Environmental law proponent on how projects could be undertaken in order to observe laws as directed, but practically is quietly different many houses in Dar-es-salaam Region are constructed without comply the law of environment as the result endanger human life. An example of this two apartment constructed opposite

50 Section 81 (2) of EMA 2004

51 Ibid 81(3)

National Bank of Commerce aside Taifa at Temeke in Dar-es-salaam Region is constructed differently with the permit given prior by the authorities.

3.3 Provision Related to Environmental Impact Assessment

According to article 9 of the Constitution of the United Republic of Tanzania 1977 requires the government to ensure that National resources are harnessed, preserved, and applied toward the common good⁵². Therefore the constitution of the United Republic of Tanzania 1977 respecting natural resources management established and implementing by the central government, parliament has exercised its constitutional authority to make laws concerning resources and the environment, the local governments have been delegated specific powers of implementation and enforcement that differ depending on the particular resources and laws involved.

Tanzania Investment Act 1997 provide that enforcers to ensure investment projects use of environmentally sound, technologies and restore, preserve and protect the environment provide that before preparing the project they had to consult with the Government institutional and agencies concerning with environmental Impact assessment for conduct or accessing the project if had no effect to the area and health to the people around that project before established.⁵³

According to common laws as the main source of environmental laws in Tanzania refers to binding rules and principles of laws developed by the courts over time as

⁵² Constitutional of the United Republic of Tanzania 1977.

⁵³ Section 6(c) of the Tanzania Investment Act

opposed by the laws enacted by the parliament, because common law are applicable in Tanzania and developed by the Tanzanian courts. The most important common laws and principles that are relevant to environment are torts of negligence, nuisance and the rules; they have evolved in common wealth countries they may be argued to apply in Tanzania as persuasive authority to the courts. All laws enacted by the parliament in Tanzania are known as principle legislation and the act that deals with environment management in Tanzania is known as principle legislation of environment management Act of 2004. This Act enacted by the parliament of Tanzania where more powers of this Act vested to the Minister responsible for environment, that the minister shall make regulations and guidance's on how environmental impact assessment shall be conducted under this act and under any other written laws⁵⁴,

3.4 Powers of Ministers in Environmental Issues

In Tanzania to be appointed as a Minister of a department you must be member of a Political party on power, also is participating for making Laws and rules of it is organization, these are enormously power to the minister in the organization⁵⁵ , Ministers are presidential appointee serving interest of the ruling part and not in accordance with the law, to be the maker and decision on legal issues concerning environmental is not fair with due respect that appointment of these Ministers does not consider professional and knowledge of the person required to be the Minister. That it is why many projects in Tanzania had problems either lacking professional

⁵⁴ Section 82(2) of the environmental management act 2004

⁵⁵ Subject to the provisions of section (2), the Minister shall make regulations and guidance's on how environmental impact assessment shall be conducted under this Act and under any other written laws.

advice from the competent person as required to Environment Impact Assessment to be done to particular projects which is intended to be open in order to safeguard the area and health of the people around areas selected. The National Environment Management Council on this issue had the role to examining the project brief and writing a statement of the environment impact assessment in accordance with the regulations made by the Minister.⁵⁶ In that sense the National Environmental Management Council is an advisory body to the Minister who had the mandate to made the rules and regulation of how environmental impact assessment to be done to that project, this is not fair and professionally, because the power of making rules and regulation could be left to the National Environmental Management council, which had people with knowledge of how to conduct environmental Impact assessment to project which is intended to be established.

The aim of environmental impact assessment is to achieve the sustainable development of the area, human activity and to maintain the lives of all organism to that area, in real sense it seems to be contrary to the Environmental Management Act, 2004, which provide that any person, being a proponent or a developer of a project or undertaking of a type specified in the third schedule to this Act requires environmental impact assessment before establishing any project in order to comply with environmental impact assessment⁵⁷. But it is quietly different to projects to different area in Tanzania which are under environmental pollution like, Nyamongo, Geita and kahama mining, these mines draining chemical into rivers which used by

⁵⁶ Section 86 of the environmental management Act 2004

⁵⁷ Section 81(1) of Environmental Management Act, 2004

the people who live around that area for human consumption, as they affect them biologically, not only that but also emitting dust to the settlement area. Violation of the law had been observed on the city of Dar-es-salaam to Ilala Municipal Council by locating the Dump to residential area an act which is unconstitutional and unhealthy to the people living in those areas, again controversial to the Environmental Management Act 2004 under section 4⁵⁸, as it is illustrated in the case of *Festo Balegele V Dar-es-salaam City Council*⁵⁹, which decided that persons who live in Tabata are entitled to a healthy environment, therefore Ilala Municipal Council should stop making the area to be the dump and they are violating the plaintiff's constitutional rights to a healthy environment.

*But also in the case of Felix Joseph Mavika V Dar-es-salaam City Commissioner*⁶⁰.

The plaintiff instituted the main suit for claiming remedies from the defendants and an interim order to restrain the respondents severally and jointly by themselves or through their agents, work persons from dumping solid and liquid wastes in Vingunguti area because of pollution of the area environment as well as endangering the health and lives of the applicants, their families and other residents for temporary injunction, not to use the abattoir located in Vingunguti area for slaughtering of animals due to dilapidation and total disrepair as well as due to its vicinity to the dumping sites and the use of polluted water from a water hole dug near the dumping site, Judge granted the prayer of the plaintiff and ordered the trial from as is expedient; The question here is there any environmental impact assessment done

⁵⁸ Right of healthy environment

⁵⁹ Misc civil case no. 90 of 1991 HC DSM

⁶⁰ Misc civil case no 316 of 2002 HC DSM

before locating the dump of lag ages into the residential area, which body or institution conducted or which guidance prepared to conduct environment impact assessment to that area and who instructed that body to conduct environmental impact assessment, lastly is there any professional consideration on conducting environmental impact assessment, the answer is no any environmental impact assessment made to that project but was established without the consideration on environmental impact assessment. The situation had been observed at Kilimanjaro Region in Karanga River where that about 1000 people living along to the village of Chekeleni Weruweru and Relini are affected by chemical which drained by the industries which are along that river for more than fifteen years⁶¹, if the situation is that it means that environmental management and social management plan as conditions for project implementation not conducted, where the implementation of the law of environmental Management Act is preserved as to section 109 (1) and (2) of the Act which prohibit this act,⁶² this is caused by extremely poor environmental management to the extent that it had only marginal impact on decision-making and planning, and that it is the reason which cause unhealthy environment in Tanzania. It is observed that in the year 2005-2009 in Dar-es-salaam city number of building was issued for construction projects that would have require mandatory environmental impact assessment, this decision of the administration goes contrary to the provisions of the First schedule of the environmental impact assessment regulation on the category of projects that require mandatory EIA, that item 14 (i) and (ii) of the First Schedule refer to industrial and housing estates and major urban projects such as

61 Tanzania Daima news paper of June 08, 2013,ISSN 08569762 Toleo Namba 3109.

62 Prohibition of water pollution

multi-storey buildings, motor terminals and markets as projects that require mandatory and participatory environmental impact assessment prior to construction.

One of the proof of this is the Machinga complex in Dar-es-salaam constructed without consideration of traffic effects to the user, parking space, security, waste management and convenience space in doing business, not that but also the National Tourism college that took large part of the only remaining botanical garden in Dar-es-salaam, the headquarters of the Ministry of Natural Resources and Tourism, built along a very busy road and too close to one of the Dar-es-salaam squatters, the expansion of the National museum in Dar-es-salaam, the Headquarters of the Prisons departments, two towers of central bank of Tanzania and the Headquarters of the Minister of state, President's office,⁶³ all these are the examples where the law of environmental impact assessment is invoked by the administrative by issuing permit without consideration of environmental impact assessment. This project given permit of construction by the minister of land and urban settlement, but the Minister of Environmental Management had the reliability to issue the guidance of environmental impact assessment in order to know if that project will had effects to the human and environment at all, therefore if this projects of the Government constructed without considering Environmental impact Assessment, how the projects which not concerning the Government is there any environmental impact assessment could be done, this is according to the fact that the minister is there to serve the interest of the

63 <http://www.academicjournals.org/AJEST>

President remains silent of not to go contrary to the agenda because this projects are in the political parties constitution agenda for leading the government.

On the East Africa Treat on environment provides that development activities (such as road construction projects) may have negative impacts on the environment leading to the degradation of the environment and depletion of natural resources and that clean and healthy environment is a prerequisite for sustainable development⁶⁴. Not only that but also Article 112(1)(a), calls for development of a common environmental management policy that would sustain the eco-systems of the Partner States, prevent, arrest and reverse the effects of environmental degradation. Besides, Article 112(1)(c) commands Partner States to take measures to control trans-boundary air, land and water pollution arising from developmental activities.(development activities include road construction projects) and integrate environmental management and conservation measures in all developmental activities such as trade, transport, agriculture, industrial development, mining and tourism in the Community. More importantly, Article 112(2) commits the Partner States to adopt common environmental control regulations, incentives and the law emphasized to manage environment and natural resources in the Community in accordance with, among others, for following environmental principles:

- a) The principle of the fundamental right of the people to live in a clean and healthy environment;
- b) The principle of sustainable development;

⁶⁴ Article 111(1) of the Treaty

- c) The principle of public participation in the development of
- d) policies, plans, processes and activities;
- e) The principle of notification in cases of activities with
- f) Trans-boundary impacts;
- g) The principle of environmental impact assessment;
- h) The principle of environmental audit and monitoring;

The National Environmental Policy has the overall object to ensure sustainable and equitable use of resources without degrading the environment or risking health or safety, to prevent and control degradation of land, water, vegetation, and air which constitute the essential life support systems, to conserve and enhance natural and man-made heritage, including the biological diversity of the unique ecosystems of Tanzania; to improve the condition and productivity of degraded areas including rural and urban settlements in order that all Tanzania may live in safe, productive and aesthetically pleasing surrounding; to raise public awareness, to promote individual and community participation, and promote international cooperation⁶⁵, that anybody who will do contrary to the objectives will be sued as the environmental Management Act provide under section 16 by the body known as National Environmental Management Council (NEMC), which has observed in Dar-es-salaam Region for difference occasion after issuing environmental protection order to different industries which emitting/draining wastes to the drainage which affect the health condition of the people around drainage, where the body itself declared that Pet-Pack Industries

⁶⁵ Tanzania National Environmental Policy 1977, section 18

Limited and Hengji Investment Co Ltd,⁶⁶they had not conducted Environment Impact Assessment, which is contrary to section 109 (1) and (2)⁶⁷ which now remain as the inspectors or advisory body only, due fact has declared that those industries were not conducted Environmental Impact Assessment by violating the First Schedule of the EIA & audit Regulations, 2005 (GN No 349/2005) by declaring those projects are illegally because are operating without EIA certificate.

This has remain to be the politics aspects because environmental issues were responsible by-sectoral ministries, being as the only person who had powers to make rules and regulation on how environmental impact assessment will be conducted on the projects which is intended to be established in Tanzania. Therefore, it is required and recommended that before establishing any project shall be conducted environmental impact assessment in order to know if there is any effect will result from that project to environment and human at all. The area sampled is affected by sewage systems which constructed for draining water without Environmental Impact Assessment, as the result sewages are thin which cannot accommodate wastes intended to be drained by that sewages.

3.5 Actions to Violator of Environmental Impact Assessment

In Tanzania, Environmental Management Council(NEMC) is the only body which receive complains on environmental issues and make for up of the complains brought by the residence concerning violation of environment, on view of that NEMC is

⁶⁶ NEMC/04/92/VOL.I/50 of 04th day of October 2012, and NEMC/04/92/VOL.I/93 of 19th day of June,2013

⁶⁷ The environmental Management Act 2004

required to inspect complains arise⁶⁸, and if they found any offence punishment is awarded to the wrongdoer of environment, NEMC after satisfied that the area is polluted sanction is imposed to that organization of either paying money or demolishing the project declared to be polluter of environment due to failure of preparing an environmental impact assessment report as required under any provision of this Act, commits an offence and is liable on conviction to a fine of not less than five hundred thousand shillings but not exceeding ten million shillings or to imprisonment for a term of not less than two years but not exceeding seven years or both⁶⁹, these fines are not equivalent to the waste management control to violator of the law for essence of preserving environment, for example Mazizini abettors sanctioned for emitting wastes in drainage which passes into residential area, as a result odour air is emitted to that areas, not only that but there are several municipals and government department sanctioned by failure to supervised environmental impact assessment or conducting projects which had not conducted environmental impact assessment.

3.6 Conclusion

This chapter discussed the environmental law, policy and institutions in Tanzania. Which dealing with environmental laws issues it can be seen that the environmental impact assessment is often complex issue to any project which is intended to be

68 section 15 (1) (d) of the environment Management Act, 2004, On matters pertaining to the management of the environment, the Director of environment shall, monitor and assess activities, being carried out by relevant agencies in order to ensure that the environment is not degraded by such activities, environmental management objectives are adhered to and adequate early warning on impending environmental emergency is given.

69 Section 184 (b) environmental Management Act, 2004

established in Tanzania and less addressed. This is due to the powers that embodied to the sectoral Minister of responsible department to be the one who made the rules and guidance on how the environmental impact assessment to be conducted to that project prior, this concept is new as far as the legal part of it is concerned. This being the case, the environmental issues are not adequately addressed by the laws. The Bill of Rights chapter in the Constitution of the United Republic of Tanzania (URT) directly and adequately address environmental matters.

It does not directly spell out the environmental rights, which could prompt the development of environmental laws and other laws, which are relevant to the subject. We should also note that the constitutional provision of the same is important to provide the framework for the administration of environmental laws. The Environmental Management Act, 2004 came into force after being assented by the President of the United Republic of Tanzania in February 2005, This Act provides for the detailed measures for the protection of ecological processes,⁷⁰ the sustainable utilization of ecosystems⁷¹ and for the environmental protection as a whole, but is not effective Act as it, until the rules and regulations are made by the sectoral Minister to be implement it to any project which is intended to be established anywhere in Tanzania. This is because practice has shown that there is a lack of capacity to enforce environmental laws and lack of working tools.

70 Section 48 of the environmental management act 2004

71 Section 51 *ibid*

National Environment Management Act (NEMC) as the body embodied the mandate to enforce the environmental issues but lacking of force because it remains as an advisory body instead of enforcement institution as it intended in the Act, therefore in order to be the active body all mandate of environmental issues could be exercised by that body without remit. Powers of the sectoral Minister could be reduced, as well as the power of the Local Government could be reduced in order to control the environment through one organ instead of more than one body to the last say on issues which require the person who had knowledge of environmental issues. There is a need to develop and implement new integrated enforceable and effective laws that are based upon sound social, ecological, economic and scientific principles on Environmental issues. Many project in Dar-es-salaam and country wide established without environmental impact assessment instead done with directive of ministerial powers as a result constructed without consideration of waste management.

CHAPTER FOUR

4.0 DATA ANALYSIS, RESULTS AND FINDING

4.1 Introduction

This chapter makes a concise but critical analysis of the findings by the researcher visa – a – vis Law and practice on the enjoyment on constitutional right on clean healthy environment in Dar es Salaam region. The analysis is based on the research objectives and questionnaires as addressed in chapter one. By and large, it exposes the extent on which people have access to sewerages or the law lacks prohibitory provisions against settlements be established either near dumping sites or reservoirs and people lack knowledge on maintenance of sewerages as a result their right to clean healthy environment is affected due to ineffectiveness of the law governing environmental management in Tanzania.

The research was conducted through face to face interviews in all three Municipalities of Dar-es-salaam. The standard forms of questionnaires were used to collect primary information on challenges of waste management from regulatory framework perspective with focus on safe environment. A standard form of questionnaire is shown in Annex

4.2 Directly Connected to Sewage System

There has been mounting of complaints that there are people who directly connected to the sewage system which had been the major cause of contamination of sewerages as it affects other respondents. About 33.3% of the respondents interviewed

responded that are directly connected to sewage system. This implies that most residents are not directly connected to sewerages. It is a sign that the local government authorities have failed to prescribe and issue guidelines on how liquid waste from domestic and commercial premises is to be treated and finally disposed of both within the site and outside the premises as advised under section 123 (1) of environmental Management Act, 2004 on site disposal of liquid waste⁷². Few of the respondents disagree to be directly connected to sewage systems. This implies that there few people in three District in Dar-es-salaam City whose role in ensuring right to clean health environment by controlling and monitoring sewages is still too minimal, suggesting that the authority concerning with waste management should improve strategies that will ensure proper control and monitoring of wastes for clean health environment for all citizen of three Municipal of Dar-es-salaam City.

4.2.1 Partially Connected to Sewage System

According to the data collected by researcher, about 33.3% of the respondents interviewed strongly disagree that, they are partially connected to sewage system. This implies that most residents in Dar-es-salaam city, are not connected to sewage systems as a result ensuring right to clean heath environment remains difficult, the situation made many people to be not part of controlling and monitoring of sewages also not to comply with section 123 (1) of the Environmental Management Act, 2004⁷³. About 16.7% of the respondents agree that, they were partially connected to

72 The local government authorities may prescribe and issue guidelines on how liquid waste from domestic and commercial premises is to be treated and finally disposed of both within the site and outside the premises

73 Ibid 62

sewage system suggesting that controlling and monitoring of sewages in Dar-es-salaam still encountering problems and not effective, unless authorities concerning make programmes to ensure all.

4.2.2 Only Discharge Liquid Waste to Sewage System

About 33.3% of respondents strongly disagree that they only discharge liquid waste to sewage system, compared to 16.7% who agreed to discharge liquid waste in sewage system. This indicates that most of the residents in Dar-es-salaam City were discharging waste anywhere as a result dilapidation of wastes in the residents.

4.2.3 Linked to Sewage System

According to the data collected by researcher, 33.3% of the respondents agreed that they are linked to sewage system, compared to 16.7% who do not agree to be linked to sewage system; this indicates that knowledge of waste management to residence of Dar-es-salaam City is adherence.

4.2.4 Lightly Not Connected to Sewage System

The respondents of about 16.7% strongly agree compared to 33.3% who disagree that they are lightly not connected to sewage system. The findings have revealed undeniable fact that good number of people in Dar es Salaam city has no access with sewerages. The findings have shown clearly that half of respondents are connected and other half is not connected, this made difficult to control and monitoring safe environment by discharging wastes in the sewages.

4.2.5 Not Aware about Sewage System

Data analysis describe that the respondents of about 33.3% who answered the question agree that they were not aware about sewage system compared to 16.7% respondents who strongly agree that not aware about sewage system, this implies that the environmental waste management to majority is not known. It serves as a work up call to the responsible authorities, both governmental and non -governmental institutions and other stakeholders to take viable measure to curb escalating problem. Most areas of Dar-es-salaam City such as Mwananyamala kisiwani, Buguruni kwa Mwinyi-Amani, Vingunguti Abettors area, Mtoni kwa Azizi Ally and Mazizini area the best examples of the affected parts.

4.2.6 Connected With Sewage System Which Accommodates Nicely Sewages

Also, 33.3% of the respondents who were interviewed concerning the question above agree that, they are being connected with sewages which accommodate nicely sewages, compared to 16.7% respondents who strongly agree. Suggesting that sewage systems in Dar-es-salaam are in-adequate. The rationale behind is that right to clean health environment remains remote into the minds of many people which is based on ineffectiveness of the laws governing environmental management.

4.2.7 Connected to a Very Old Sewage System

About 50% of the respondents highly strongly disagree that they are connected to very old sewage system, compared to 16.7% respondents who agree and strongly agree that they connected to old sewage system. Implies that sewage system needed to be repaired and where necessary lay down new pipes for easy transmission of

sewages. Examples of this area are junction of Agrey and Lumumba at Ilala, Mwai Kibaki Road at Kinondoni, where several time sewage system emitting wastes on the Road.

4.2.8 Connected to a Sewage System Which Discharge Sewages Improperly

The respondent disagree to be connected to a sewage system which discharge sewages improperly by 33.7%, compared to 16.7% to those who either strongly agree/agree to the question, this implies that there are some respondents who connected to sewage which discharge sewages improperly as a result control and monitoring of the environment is difficult.

4.2.9 Connected to Sewage System Which is Not Proportional with the Population

Respondents for about 50% to this question strongly agree that connected to sewage system which is not proportional with the population of their areas, compared to 16.7% those who agree and other disagrees to the question. This implies that to avenue safe environment in the society it is difficult due overflow of wastes in the sewages.

4.2.10 Have Knowledge about Reservious and Dumping Sites

33.7% of the respondents strongly disagree to have knowledge about reservious and dumping sites, compared to 16.7% those who neither agree nor disagree to the question above. This implies that may be respondents fear to the question above that they are investigated because they are leaving near those reservious. This had been

observed to the area of Keko Prisoner where people leaving across the sewage systems and complained to be polluted with wastes from Prisoner area also residents of Pugu Kinyamwezi where now the dump sites is situated leaving near that dumps, complains of wastes from that dump, not only that but also people leaving along reseviors of Kurasini Ukonga Magereza and Mabibo there some residents who agree to have knowledge of reseviors.

4.2.11 Only Knows Reservoir Closer to It

Additionally respondents agree by 66.7% that they know reseviors as they are closer to it, compared to 16.7% respondents who disagree to know and be closer. This implies that it is contrary to section 118 (2) (b) of the Environmental Management Act, 2004⁷⁴, that reseviour are in the residential area, where it is nearly to their residents to indicate that the presence of reseviors to their areas is meaningless and contravention to the law.

4.2.12 Very Familiar with Dumping Sites According To Their Vicinity with Our Houses

About 16.7% respondents are equal in percentage to the question agree, strongly agree, disagree and strongly disagree that they are very familiar with dump sites according to their vicinity with their house. This implies that safe environment is difficult because the respondents know dumping sites but had no knowledge of using them, other residents fear to express their opinions due to the fear of being

⁷⁴ Before a local government authority designates an area to be a waste transfer station for the purposes of collection of solid waste it shall ensure that the selected area is adequate in size and situated away from residential area:

investigated, nor they do not had knowledge about dumping sites, that it is why are leaving closer to dumping sites. Likewise many respondents agree that there is no law or guidelines giving details on what distance should be considered before of when establishing settlements, be it planned or unplanned. All respondents have suggested that the law should state the actual distance essential for establishing settlements or locating dumping sites.

4.2.13 Knows Nothing about Reservoirs and Dumping Site

50.0% of the respondents strongly agree that they know nothing about reservoirs and dump sites, compared to 16.7% those who disagree, This implies that the respondents who answered the question above are either fearing of the researcher that investigating them, because their leaving closer to dump sites and reservoirs, hence safe environment is difficult to avenue. However, many respondents agree that there is no law or guidelines giving details on what distance should be considered before of when establishing settlements, be it planned or unplanned. All respondents have suggested that the law should state the clear distance essential for establishing settlements or locating dumping sites and reservoirs the situation which have resulted into their being closer to the reservoirs and dumping sites.

4.2.14 Very Much Embarrassed By the Reservoir and Dumping Sites with Bad Odour

Respondents in this question for about 16.7% equally they neither agree nor disagree that they are very much embarrassed by reservoirs and dumping sites as bring out bad odour, this show that the government did not consider environmental, hygienic and

social benefits section 119 (d)⁷⁵. This implies that people who embarrassed by the bad odour of either reservoir or dump sites, in this situation the right to clean healthy environment is difficult to them by failure of controlling and monitoring of sewages due to ignorant of that people.

4.2.15 Throws Solid Waste near the Road

33.7% of the result collected indicates that respondents strongly disagree that they throw solid waste near roads, compared to those who agree the question; this implies that the issue of safe environment to them is difficult because there those who agree to throw those wastes near the road which contaminate the sewage system and drainage during the rain reason.

4.2.16 Discharges Liquid Waste through Drainage

The research conducted at Dar-es-salaam Region 33.7% of the respondents strong agree that they discharge liquid waste through drainage, this indicates that most of the residence violates section 110 of the Environmental Management Act, 2004⁷⁶ compared to 16.7% respondents who disagree. This implies that people they had knowledge with environment law, law enforcer could educate them that it is an offence discharge liquid waste through drainage.

75 The local government authorities shall, in choosing the best method of solid waste disposal for geographical areas of jurisdiction, consider the following environmental, hygienic and social benefits.

76 No person shall discharge any hazardous substance, chemical, oil or mixture containing oil in any waters or any other segment of the environment except in accordance with guidelines prescribed under this Act or any other law.

4.2.17 Drainage near My Home Is Full of Solid and Liquid Wastes

33.7% respondents strongly disagree that drainage near my home is full of solid and liquid wastes, this indicates that people comply with section 111 (1) of the Environmental Management Act, 2004⁷⁷, where that people were making clean less every Saturday as it directed by Dar-es-salaam Regional commissioner, compared to 16.7% those who agree. This implies that residents of Dar-es-salaam City are cleaning sewages according to order of the President of the United Republic of Tanzania who starts the campaign of cleanliness once per month, those who agree drainage to be full of solid and liquid waste are those who are against the law.

4.2.18 Always Cleans the Drainage near My Home

50.0% respondents strongly disagree to be not always cleaning the drainage near their home, compared to 16.7% of those who strongly agree to clean always. This implies that more people right to clean environment is not mandatory as required by law, that it is the drainage and sewage systems are full over wastes, as a result of eruption of disease like cholera several time in Dar-es-salaam City.

4.2.19 Never Cleans Drainage near My Home

In comparison of data findings comes with the result of 33.7% respondents strongly disagree that never clean drainage near my home, compared to 16.7% of those who agree that, they never clean drainage near my home, this implies that there is number of people in the society who go contrary with the law or they had no knowledge of

⁷⁷ It shall be the duty of the council in collaboration with any other organ to closely follow developments in technology and techniques for preventing or reducing pollution of the environment due to release of substances from prescribed process

environmental law and by laws of the local government, hence law enforcers had the responsibility to educate them to make safe environment.

4.2.20 Unplugs Sewage Systems during Rainy Season

33.7% of respondents who answered this questions agree and disagree that unplug sewage system during rain season, this means that there residence who comply and those who did not comply with section 109 of the Environmental Management Act, 2004⁷⁸, this implies that sewages that seen in the sewage system during rain season is unplugged by some people who not wish to have safe environment.

4.2.21 Always Municipal Council cleans Drainage Systems

Also responded by 16.7% agree, disagree and strongly agree/disagree, that always Municipal Council clean drainage systems, this implies that even Municipal Council are not responsible to clean the drainage instead leave it with garbages which thrown by the residents who leave near that drainage system. Municipal Council announce tender to other companies which some of them had poor instrument for collection and cleanness of the sewages. This analysis is contrary to section 129 (3) (b) of the environmental Management Act, 2004 as the result unhealthy environment⁷⁹.

78 Any person who knowingly puts or permits to be put or to fall or to be carried into any stream, so as either singly or in combination with other similar acts of the same nature or interfere with due flow or pollute its waters, or puts solid refuse of any manufactory or manufacturing process, or puts any rubbish or any other waste or any putrid solid mater into such stream

79 The Minister may make rules providing for, the periodic cleaning of storm water drains to remove deposits.

4.2.22 Municipal Council never cleans Drainage System

The respondents agree by 33.7% that Municipal Council never clean drainage system compared 16.7% who disagree, this implies that unsafe environment is contributed by Municipal Council who are responsible with by laws which govern people to make safe environment. As the result the President of the United Republic of Tanzania Dr John Pombe Magufuli inciate the campaign of monthly clean less after seen the environment is contaminated gabages.

4.2.23 Municipal Council Either Repair Sewages System or Cleans Drainage

Finally 33.7% of the respondents disagree that Municipal Council repair sewage or clean drainage, this indicates that the Municipal Council did not pray it is role as per section 129 (1) and (3) (b)⁸⁰, compared to 16.7% who agree that they are repairing the sewage system and also clean drainage, this suggest that right to clean environment be one of good reason why Municipal neglect or ignore to clean both sewage and drainage as people at least are satisfied.

4.3 Conclusion

The above data analysis using percentage indicate that enjoyment of constitutional right on clean health environment on dumping of waste in settle mental areas in three Municipal of Dar-es-salaam Region is very worse, because more person they did not understand the environmental law, other had no knowledge of safe environment, more people direct wastes in drainage system during rain season, this is because of

⁸⁰ Every local government authority shall, within its area of jurisdiction, build or prepare storm water Drains (3) (b) The Minister may make rules providing for, the periodic cleaning of storm water drains to remove deposits.

maximum price needed by scavengers to collect wastes from their residents to dump sites or reservoirs which are situated far away from their residents, also there is no road to allow that vehicle to pass to collect that waste from residential houses, other residents they are dumping solid wastes near the road as a result during rain season collected by water in the drainages, also we discovered the problem that there is no specific person who is responsible of cleaning the sewage and drainage when full over with wastes, also there is not enough vehicles from Municipal Council to collect wastes which collected by the residence as a result leave along the road, not only that but also there is no specific distance for locating the dumping sites and reservoirs from residents, low fines that are given to the wrong doer also increase/facilitate industries to connect wastes in drainages as a result injure other beneficiaries of that drainage, therefore the law had lacunae of the section to cover the problem above.

CHAPTER FIVE

5.0 DISCUSSION OF KEY FINDINGS

5.1 Discussion of Findings

5.1.1 Research Question One

To what extent Environmental law failure to provide actual distance as guidance, in locating waste stations from residents or residents towards sewage systems decelerates the enjoyment on constitutional right on clean healthy environment in Dar-es-salaam Region

This study reveal the failure of the law to provide specific distance as a guidance in locating waste stations from residents or residents to sewage systems ,the inadequacy of provisional sections regulating the distance to be considered when dumps or reservoirs are located has manifested into many reservoirs and dumping sites be found closer to the residents. Majority of 33.3% of the respondents who were interviewed agreed that the environmental laws lack some provisions to provide guidance in terms of kilometers or miles on what distance(s) should be considered when locating dumping sites or reservoirs in order to ensure that right to health environment is protected by the law.

According to some respondents who were interviewed, it was observed that people are living near-by dumps and reservoirs due to lacunae of the law in failing to give actual distance to be considered when locating these dumps and reservoirs. Section 118(2) (b) of the Environmental Act, 2004 requires area stations to be adequate in

size and situate away from residential area. This has been a loop hole of inhabitants establishing settlements closer to the area as the word away as provided by the law does not define exactly the distance to guide the local government to monitor and control inhabitants from building closer to waste stations.

The vivid example is the dumping site of Pugu Kinyamwezi whereby now people have developed settlement closer the dumping site despite the fact that, people agree knowing the effects of living in the area but only that they are not prevented by any law to build and live there. People accepted that solid waste is a breeding ground for disease vectors also agreed that many diseases such as cholera and typhoid persist in the city of Dar-es-salaam as a result of living closer with the dumping sites and reservoirs which are to the greater extent source of bacteria leading cholera and typhoid. These findings are in the line with the people of Mwanayamala kisiwani, Pugu Kinyamwezi, Mikocheni, Kurasini, Keko and Ukonga Magereza where dumping of wastes in settlement areas is greatly, polluted air from dumping sites and reservoirs refuse gives out bad odour which causes respiratory diseases. The research findings have established that there must be a actual distance specified in kilometers or miles by the law while locating the dumping sites or reservoirs or allowing human activities from or towards dump sites or reservoirs.

It has also established that it is wise for the law to guide the whole system relating to final disposal of both solid and liquid waste by ensuring that the law on environment in Tanzania establishes some provision that provide exactly actual distance to be

considered when locating dumping sites and reservoirs or human activities along sides dumping sites and reservoirs in terms of either kilometers or miles.

5.1.2 Research Question Two

Is there any relationship between lacks of public environmental education on the enjoyment on constitutional right on clean healthy environment in Dar-es-salaam Region?

This study reveal education to the people living to area where the research conducted and observe that, a significant of public environment education programmes by mass media, the thoroughness of those programmes are in doubt. Majority of the respondents agreed that mass media are not doing enough because not all people are listening or reading those media due to their economic status. They also opined that mass media are not sufficient educating people about health environment on solid or liquid waste management in the society. The method or strategies used by mass media are not adequate to create sufficient awareness among residence of Dar-es-salaam City. Also the language which used by the environmental registrations appears difficult to most people as it carries more technical legal words which cannot be easily understood by normal people.

Hence, change of strategies and focus are required to create meaningful impact on the behavior of the people. Therefore, lack of print and electronic media to the society which could educate people on healthy related issues in their society, features,

articles, environmental sports, panel discussion on environmental waste management could be excised in order to create awareness of environmental health in the society. This opinion should be emphasized that there is urgent need for mass media to intensify their effort in educating people about environmental waste management issues in the society. Based on observation is the fact that children dump wastes more than adults although adults generate refuse than children. In many homes it is the duty of children to empty the dustbin where they throw it anywhere on the roads or sewage systems. Also children 's lack education of waste management at primary school levels so that they can be aware of right to healthy environment, the same as to secondary school there is no lesson of environmental management.

CHAPTER SIX

6.0 CONCLUSION AND RECOMMENDATIONS

6.1 Conclusion

It is glaring that people are not ignorant of the effects waste management or general poor sanitation. Dumping sites are located so far, it costly to transport wastes for dumping, fees used by the local government for collection of wastes in settlement areas, based on the situational factors people are sometimes forced to do what they knew for dumping wastes everywhere as a result scare garbage's everywhere, I suggest dumping sites to be in every District in Dar-es-salaam City, government be effective in collection of wastes in the society and those dumping sites could be situated at least 3 kilometer from the residential areas towards those dumping sites and human activities towards dump sites or reservoirs.

Public environmental education can go a long way in changing people attitude and behaviors towards the environment, Government and non-governmental organizations have role to play in enlightening the populace on the need to treat environment with respect and stop indiscriminate refuse dumping. Awareness creation through mass media on the implication of indiscriminate waste dump is a necessity. This could be done in a clear and simple language. Education of environmental management could be taught from the level of primary with simple language which everyone can read and understand. People should be taught how to convert waste product to wealth, this will help in minimizing the volume of waste that are regularly thrown away in the residential areas, both children and adults are involved in waste management and

waste disposal but children tend to dump refuse at undersigned places than adults. Hence environmental education is not only needed for people at home but in schools for children as well. Place of worship can also assist in educating their adherents on the interrelationship between humans and the environment and the need to be environment friendly.

Promoting environmental behavior in urban areas in waste management has to be addressed simultaneously at all levels, from household and business centers. In order to alter behavior, awareness must be increased, with an associated reduction in situational barriers. This can be altered through the provision of relevant information. Furthermore, although some levels of behavioral change may be achieved: additional monitoring, controlling and a sustained behavioral change programme over a longer time period is necessary and indicating that environmental behavior has a plethora of determinants that can be changed or influenced by adequate communication.

Tanzania has a number of other statutes dealing with environmental matters. These are National Environmental Policy 1997, Environmental Management Act 2004 National Land Policy 1995, The National Health Policy 2003, Public Health Cap 336 R.E 2002, National Water Policy and Penal Code Cap 16 R.E 2002. The challenge ahead is to incorporate the requisite institutional machinery enforcement authority, including effective judicial procedure and compliance with international agreement into these laws, and to ensure their periodic review of laws. Poor coordination of some government departments like NEMC, DAWASCO, Ministry of land and Settlements, TAMISEMI and the Ministry of health which laws aforementioned

vested them with the mandate to involve with environmental management is another contributing factor to the problem.

6.2 Recommendations

After conducting this research and found factors that led to poor waste management in Dar-es-salaam region and elsewhere the research have the following recommendations:

Firstly, it is recommended that Environmental Management Act could be revised again in order to comply with environmental issues and powers of the National Environmental Management Council (NEMC) should be given more powers in Environmental issues rather than to remain as the advisory body as now it is.

Secondly Environmental Officers could be employed up to the level of Village in order to make people be aware on anything done contrary to the environmental law, including all projects which is intended to be established in Tanzania should be assessed before implemented in order to get participation of citizen to environment and know the effect before establishment that project to environment and healthy to the society.

Also Tanzania Investment Act should be revised in order to add section or part of mandatory environmental Impact assessment be conducted to any project established in Tanzania, the land law must have part of environmental issues in it in order to conserve the environmental to any degradation and assessment at all.

Moreover there should be participation of society in environmental issues in order to avoid conflict in that society when privatization taken place, compensation of the area to be done in accordance with the economic levies to people who will be required to shift the area which is intended to be privatized. The law that used for compensation should be revised in order to avoid complains to people who compensated to area which is suspected to be of worth.

Furthermore sanctions be very high to those who will go contrary to the law embodied in Tanzania concerning environmental issues because the penalties prescribed is far below the cost of compliance, and it accelerating unhealthy environment because it is not painfully to wrong doer Not only that but also power of issuing permission of building permission should be given to National Environmental management council and not other institution or the Sectral minister as now, and laws that enacted by the Parliament must understood or currently and not to be enforced by the authority.

Finally education of environmental law should be taught from the level of primary school where right to clean environment be observed early.

BIBLIOGRAPHY**BOOKS:**

- Ball, S. and Bell, S. (1997). *Environmental Law*, second edition. Vancouver: Blackstone Press Limited.
- Gergaez, J. and Whitemen, D. (1988). *Legal Environment of Business*. New York: Penguin Random House.
- Isaac, S. and Michael, B. W. (1978). *Handbook in Research and Evaluation*. California: Edits Publisher.
- Kathellen, F. (2008). *Brickey Environmental Crime*. New York: Aspen Publishers Inc.
- Kothari, C. R. (2004). *Research Methodology, Methods and Technique*. New Delhi: New Age International (P) Ltd.
- Malcoln, N. Shaw, M. N. (2008). *International law*, fifth edition. Oxford: Butterworth Heinemann.
- Peter, C. M. (1997). *Human Rights in Tanzania*. Koln-Mungersdorf: Rudinger Koppe Verlag.
- Thornton, J. and Beckwith, S. (1997). *Environmental Law*. Oxford: Sweet and Maxwell Limited
- Waite, J. A. and Jewell, T. (1977). *Environmental law in property Transactions*. Oxford: Butterworth Heinemann.
- Walker, D. M. (1980). *The Oxford Companion Law Dictionary*. New York: Oxford University Press.

PAPERS/ REPORTS & DESSERTATION

Mawala, I. J. (2004). *Environmental law and Human Rights in Tanzania* an appraisal of the Constitutional right to a clean and healthy environment. The Open University of Tanzania, Dar es Salaam, Tanzania.

Luwango, I. C. (2014). *Assessing challenges of E-waste Management Regulations in Tanzania*. The Open University of Tanzania, Dar es Salaam, Tanzania.

WEBSITES

1. <http://www.un.org/news/press/docs/2001/qa9872.doc.htm>
2. <http://www.toolkitparticipation.nl/cases/13>
3. <http://www.lead-journal.org/content/07026.pdf>
4. Mwananch.co.tz ISSN 0856-7573 No 6142 Of May 22,2017

APPENDICES

APENDEX 1: OPEN ENDEDQUESTIONNAIRES

These questionnaires were delivered to the respondents at different places including their working places for the civil servants and at their residential areas for the normal civilians by the researchers, where they were used to gather information's which facilitated the writing of this research.

1. In your understanding what is;-

a) Health environment?

.....

b) Environmental waste management?

.....

1. What factors contributing to the healthy environment?

.....

2. What factors contributing to un healthy environment?

.....

3. What happens if the environment is not clean and safe?

.....
.....
.....

4. Is there any authority or person responsible with environmental management in Tanzania?

Yes/no

i.If yes, explain how does the authority or person ensure healthy environment

.....
.....
.....

ii.If no, what are effects?

.....
.....
.....

5. Is it necessary to state specific distance before allocating reservoirs and dumping stations? Why?

.....
.....
.....

6. Do you think in Tanzania we have good system for controlling and monitoring wastes? yes/no.....

i. If yes, explain if the system satisfactorily controls and monitors wastes to facilitate healthy environment.

.....
.....
.....

ii. If no, what should be done?

.....
.....
.....
.....

7. Do you think the environmental laws and Regulations are adequate in curbing waste management? Yes...../No.....

Explain.....
.....
.....
.....

8. Do you think Tanzanians are aware of environmental laws?

Yes...../no.....

Explain.....
.....
.....
.....

9. How should Tanzanians be made aware of environmental law as a constitutional right?

.....

.....
.....

10. What are your recommendations regarding right to healthy environment and proper waste management in Tanzania?

.....
.....
.....
.....

All in the questionnaires above have enabled me to succeed in the compilation of this research.

APPENDIX 2: CLOSED QUESTINNAIRES

Dear/Madam/Sir

I am currently pursuing my masters in law (LLM) at the Open University of Tanzania as part of my studies; I am doing a research titled right to healthy environment in controlling, monitoring sewage systems and dumping wastes in settlement area, law and practice a case study Dar-es-salaam City. I humbly request you to complete this brief questionnaire so as to facilitated research. All information will be treated with strict confidentiality and shall only be used for the purpose of this academic research. Your participation in this research will be highly appreciated. Please tick where appropriated.

PART A: BACKGROUND INFORMATION

1.0 GENERAL

MALE	FEMALE

2.0 AGE GROUND

18-22yrs	22-26yrs	26-30yrs	30-34yrs	34-39yrs	39-44yrs	44-49yrs	50 and about

3.0 WORK EXPERIENCE

1-5yrs	5-10yrs	10-15yrs	15-20yrs	20-25yrs	25-29yrs	29yrs and above

4.0 YOUR HIGHEST ACCADEMIC QUALIFICATIONS

Certificate	Diploma	Undergraduate	Post graduate degree

PART B: CONNECTED WITH SEWAGE SYSTEM:

Please rate the words at your work/ understanding as they apply to you.

NO	DESCRIPTION	DISAGREE	STRONGLY DISAGREE	AGREE	STRONGLY AGREE
1	Directly connected to sewage system				
2	Partially connected to sewage system				
3	Only discharge liquid waste to sewage system				
4	Linked to sewage system				

B NON CONNECTED TO SEWAGE SYSTEM

1	Not connected to sewage system				
2	Lightly not connected to sewage system				
3	Used to be connected to sewage system				
4	Have never heard about sewage system				
5	Not aware about sewage system				

C DILLAPIDATION AND DISREPAIR OF SEWAGE SYSTEM.

1	The sewage system connected with accommodates nicely sewerages				
2	Connected to a very old sewage system				
3	Connected to a sewage system which discharge sewages improperly				
4	Connected to sewage system which is not proportional with the population				

D. ACCESS TO RESERVOIR AND DUMPING SITES

1	Have knowledge about reservoirs and dumping sites				
2	Only know reservoir closer to it				
3	Very familiar with dumping sites according to their vicinity with our houses				
4	know nothing about reservoirs and dumping sites				
5	Very much embarrassed by the reservoir and dumping sites as bring out bad odour				

E. CONTAMINATION WITH SOLID AND FLOW OF LIQUID WASTES INTO DRAINAGE

1	Throws solid waste near the road				
2	Discharge liquid waste through drainage				
3	Drainage near my home is full of solid and liquid wastes				
4	Always clean the drainage near my home				
5	Never clean drainage near my home				
6	Unplug sewage systems during rain season				
7	Always municipalities Council clean drainage systems				
8	Municipal Council never clean drainage system				
9	Municipal Council either repair sewage system or clean drainage				