APPLICATION OF PREROGATIVE REMEDIES AGAINST ADMINISTRATIVE ACTIONS IN TANZANIA: ANALYSIS OF THE LAWS AND PROCEDURES

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A THESIS SUBMITTED IN FULFILLMENT OF THE REQUIREMENTS FOR DEGREE OF MASTER OF LAWS OF THE OPEN UNIVERSITY OF TANZANIA

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CERTIFICATION

The undersigned certifies that he has read and hereby recommends and approve for acceptance by the Open University of Tanzania, a Thesis entitled: "**Application of Prerogative Remedies Against Administrative Actions in Tanzania: Analysis of the Laws and Procedures"**, in fulfillment of the requirements for the Degree of Master of Laws (LL.M) of the Open University of Tanzania.

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Date

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DECLARATION

I, **Deusdedit Sospeter Mukama,** do hereby declare that this thesis is my own original work, and it has not been submitted for a similar degree in any other University.

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Signature

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Date

DEDICATION

This work is respectfully dedicated to my family. In memory of my beloved late mother, Elizabeth Andrew Mitaro, who sadly would have undoubtedly loved to educate her children. To my father Sospeter Mukama, my sister Domina Mukama, my son Emmanuel, my daughter Elizabeth and my wife Lydia Malauri whose persistent prayer has enabled me to achieve, assisted me morally and encouraged me to pursue this course to the end.

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Finally, I would like to say Thank you God. His protection and blessings have been the light towards the accomplishment of this thesis.

ABSTRACT

The aim of this study is to examine laws and procedures governing the applications of prerogative remedies against administrative actions in Tanzania. Here the researcher intended to make analysis of laws and procedures used in the legal system of Tanzania compared to other legal systems. The study is made up of six chapters; starting with an introduction of the study which is presented in chapter one, followed by conceptual framework of the study that has been clearly elaborated in chapter two. Chapter three makes analysis of laws and procedure in application for prerogative remedies in other legal system. Under this chapter the researcher tried to indicate different provisions related to applications of prerogative remedies and its procedures in tracing the different aspects. Chapter four elaborates laws and its procedures for the application of prerogative remedies in Tanzania. Discussion of findings and data analysis are expressed under chapter five. Last chapter includes summary of findings, recommendations and conclusion. The researcher's recommendations on this research are based on many issues that were raised during this study. It was observed that there is ample evidence to support that laws and procedures of applications for prerogative remedies in the legal system of Tanzania is the issue, that such is complicated and has a lot of technicalities.

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The Law Reform Act No. 26 of the Laws of Kenya.

United Kingdom Supreme Court Act No. 54 of 81

LIST OF ABBREVIATIONS

A.G	Attorney General
AIR	All Indian Reports
All ER	All England Reports
C.J	Chief Justice
Cap	Chapter
E.A	East Africa Law Report
HC	High Court
HDC	High Court Digest of Tanzania
J	Judge
KB	King Bench
LRT	Law Reports of Tanzania
No.	Number
P.	Page
Pp.	Pages
QB	Queen Bench
R. E	Revised Edition
SC	Supreme Court
TLR	Tanzania Law Reports
TLR ®	Tanganyika Law Reports (Revised)
V	Versus
Vol	Volume
W.L.R	Weekly Law Reports

CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

In Tanzania, the history of prerogative remedies has a direct link with the English legal system; its origin in Tanzania can be traced from the vestiges of the common law of England under the Law Reform (Fatal Accidents and Miscellaneous Provisions) Ordinance[1]. Tanzania abolished prerogative writs and replaced them with orders, the change was similarly one of form rather than substance, and the legislative did not go further to provide for rules of procedure until 2014[2]. Still these procedures are complex hence this research.

Immediately after independence, neither the Independence Constitution of 1961 nor the Republican Constitution of 1962, apart from conferring legislative powers on the parliament, laid down what was to be the law of Tanganyika, a matter which until independence has always been dealt with in the Constitutional instruments. To remedy the situation, a provision was made to take effect simultaneously with independence.[3] Section 2 of the said law states that the provisions of this Ordinance, the jurisdiction of the High Court shall be exercised in conformity with the written

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[1] Law Reform (Fatal Accidents and Miscellaneous Provisions) Ordinance of 1968

[2] Government Notice No. 324 published on 05/09/2014

[3] Judicature and Application of Laws Ordinance No. 57 of 1961

laws which are in force in Tanganyika on the date on which this Ordinance comes into operation … and shall be exercised in conformity with the substance of the common law, the doctrines of equity and the Statutes of General Application in Force in England, on 22, July 1920, provided always that the said common law, doctrine of equity and Statutes of General Application shall be in force only so far as the circumstances of Tanganyika and its inhabitants permit, and subject to such qualifications as local circumstances may render necessary.

Again prerogative remedies applied for have thus remained to be an inherent power of the High Court as a part and parcel of the legal system in Tanzania through the doctrine of judicial review, this is evidenced in the Constitution of United Republic of Tanzania even though it does not expressly provide for the power of judicial review, but impliedly may be inferred from some articles including article 30 (3) and article 108 (1) which provide that, there shall be a High Court of the United Republic … the jurisdiction, which shall be as specified in the Constitution or in any other law.[4]

Sub - article 2 states that if the constitution or any other law does not provide that any specified matter shall first be heard by a court specified for that purpose, then the High Court shall have jurisdiction to hear every matter of such type. Similarly, the High Court has jurisdiction to deal with any matter, which, according to legal traditions obtaining in Tanzania is ordinarily dealt with by the High Court. Therefore,

[4] The Constitution of the United Republic of Tanzania, 1977 as amended time to time

the concept of prerogative remedies in Tanzania is a part of the legal system like other countries that follow the common law traditions. From this introduction above, the applications for prerogative remedies in the legal system of Tanzania seem to be so complex and uncertain.

1.2 Statement of the Problem

The structural foundation of prerogative remedies in Tanzania is in the nature of Constitution and its relationship with the public officers. The Constitution of the United Republic of Tanzania is the creation of the people and such the government exercises power only because it serves as the agent of the people's will in order to maintain justice in Tanzania and not otherwise.

Article 13 (6) (a) [5] states that, to ensure equality before the law, the state authority shall make procedures which are appropriate or which take into account the principles, namely that when the rights and duties of any person are being determined by the court or any other agency, that person shall be entitled to a fair hearing and to the right of appeal or other legal remedy against the decision of the court or of the other agency concerned. Here other legal remedy refers to the judicial review in terms of prerogative remedies.

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[5] *Ibid*, article 13 (6) (a)

Article 30 (3)[6] stipulates that, any person claiming that any provision in this part of this chapter or in any law concerning his right or duty owed to him has been, is being or is likely to be violated by person anywhere in the United Republic of Tanzania may institute proceedings for redress in the High Court.

Even though these provisions under our constitution impliedly explain those procedures for applying prerogative remedies through judicial review, there are some cases that have been decided showing that laws and procedures used are uncertain, taking an example in the case of **Timothy Mwakilasa v. The Principal Secretary (Treasury**),[7] that applicant applied for mandamus to compel the respondent to release his pension and the application was brought under section 349 of the Criminal Procedure Code[8]. The section provided that 'the High Court may in the exercise of its criminal jurisdiction issue any writ which may be issued by the High Court of Judicature in England'. Unfortunately, the application was disposed of on other grounds; Sammatta J, having decided to deny himself the opportunity of expressing any view as whether the application was properly brought under section 349. It is observed that if there is no specific section under Civil Procedure Code[9], that gives the court the power to make such orders for the purpose of facilitating equality.

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6 *Ibid*, article 30 (3)

7 Miscellaneous Criminal Cause No. 14 of 1978 (Mbeya Registry), unreported

8 Civil Procedure Code No. 49 of 1966

9 Civil Procedure Code No. 49 of 1966

Being the problem to the study, it is aspired to make a critical analysis on laws and procedures for applications of prerogative remedies in Tanzania against the administrative actions, since those laws and procedures used in applications for prerogative remedies seem to be uncertain especially for aggrieved person once his/her right is violated by the administrative agencies, as those prerogative remedies are not granted as the right but only as discretion, under judicial review through the High Court.

1.3 The Objectives of the Study

1.3.1 General Objective

The main objective of this study was to examine laws and procedures used in the applications of prerogative remedies against administrative actions if it appears that decisions that have been decided by the administrative agencies are improper.

1.3.2 Specific Objective

1.3.2.1 To examine the steps taken by the High Court once the aggrieved person intends to file the application contesting the decision decided by administrative departments or agencies.

1.3.2.2 To assess the role of the High Court on reviewing actions or decisions done by administrative agencies if they act beyond the power by looking at the scope and its jurisdiction.

1.4 Hypothesis

The laws and procedures used in the applications of prerogative remedies in Tanzania are adequate in dispensing justice.

1.5 Significance of the Research

The significance of the research is to assess laws and procedures in the applications for prerogative remedies against administrative actions in Tanzania which will help the government to enact and amend laws if it appears that, the laws and procedures have technicalities which either delays justice or altogether prevent it.

Again it will help the government under administrative agencies or departments to act in accordance with laws and rules and to understand that no one is above the law and rules, once they act *ultra vires* or excessive power, the court will intervene those decisions to see the substance on that decisions and grant the prerogative remedies after the aggrieved person to file the petition to the High Court.

Once more, it will help the aggrieved people once they see their rights are infringed by the administrative departments to take another step forward to the High Court to review those actions done by those organs. Similarly, to create awareness to the people by knowing that the administrative decisions are not final and conclusive because the High Court has the supervisory power, under article 108 of the Constitution of United Republic of Tanzania to supervise the executive once it goes beyond the powers or procedures provided.

1.6 Literature Review

Many authors have written on the phenomena of judicial review remedies in general, however how much those authors wrote on the laws and procedures used in the applications of prerogative remedies against the administrative actions is not known. The researcher will pass through different books and other materials on the said study in order to make observation on the said study.

Chipeta, **J**[10] observed that many such applications have foundered for the simple reason that the applicants did not comply with the correct procedure that one such procedural requirement is that an applicant seeking prerogative remedy must first obtain leave of the court to make such an application. He noted that among other matters which the courts consider in applications for leave to apply for prerogative orders or remedies include, whether the facts contained in the affidavit in support of the application if true, would constitute a reasonable ground for the form of relief sought, whether the applicant has a sufficient interest in the matter to which the intended application relates, whether the applicant has not been guilty of dilatoriness and whether there is no other speedy and effective remedy available to the applicant and if such alternative remedy is available. However, it is generally accepted with his arguments but whether this requirement for leave apply for prerogative remedies

[10] Chipeta, B.D. (2009), Administrative Law in Tanzania: A Digest of Cases: Mkuki na Nyota – Dar Es Salaam . p. 1

should be insisted upon in all cases even when there is an urgent matter needing a temporary injunctions seems to be questionable.

Craig[11] stated that a citizen who is aggrieved by a decision of a public body has a variety of remedies available, these are the prerogative orders of certiorari, prohibition and mandamus; that certiorari and prohibition have long been remedies for the control of administrative actions, whereas certiorari operated retrospectively to quash a decision already made; prohibition was more prospective in its impact, enjoining the addressee from continuing with something which would be an excess of jurisdiction. It was a particularly useful weapon wielded by the King's Bench Division in the struggles between it and the more specialised or ecclesiastical courts.

The law reports are replete with judges of the King's Bench castigating such assumptions of authority, prohibition was however used more generally, like certiorari, to control a wide spectrum of inferior bodies both before and after the reforms in municipal government of 1833, and statements approbating its liberal usage were not uncommon. The gap found by the researcher is that the law of prerogative remedies was still highly complex with differing procedures of application for prerogative orders.

[11] Craig, P.P., (2001), Administrative Law, 4th ed. Sweet and Maxwell, A Thomson Company, pp. 721 – 723

Harry[12] explained the essential elements of an administrative quasi - judicial action/ order as distinguished from an administrative or ministerial order as follows; one; a quasi – judicial action imposes a liability on or affects a legal right or an interest of a person or is likely to have civil consequences; two, the administrative authority making a quasi - judicial order is required to act judiciously, if not judicially and the authority should act according to the principles of natural justice. If administrative authority fails to act accordance with laws and regulations thereupon is where now the court can intervene and grant the prerogative remedies under judicial review. However, the author did not take part to express more on procedures to be used for applying prerogative remedies under judicial review rather he explained the role of administrative bodies to act according to the natural justice.

Denham[13] explained that, since 1977 in public law applications for certain orders, for an injunction or for a declaration or damages have been as applications for judicial review, that judicial review is the process by which a person aggrieved by a decision of anybody or organisation carrying out quasi- judicial functions, or established to perform public acts or duties may apply to the High Court for relief if the process of the tribunal has been unfair or improper or lacking or exceeding its powers. The researcher in explaining on how leave should be granted to the aggrieved person, has doubted that the procedures to the High Court to issue the leave as the first stage are

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[12] Harry, E.G. (2001), Comparative Constitutional Law: Cases and Materials, Burtteworths – London, p. 90

[13] Denham, P. (1990), Law, A Modern Introduction, 4th ed, Hodder and Stoughton, pp. 73 - 75

so complicated enough to lead the aggrieved person to lose his/her right, hence he supported the researcher to see that gap as the problem in that study.

Diwan[14] defined the meaning of administrative action that is the residuary action which is neither legislative nor judicial; it is concerned with the treatment of a particular situation and is devoid of generality. It is based on subjective satisfaction where the decision is based on policy and expediency. It usually does not decide right thought it may affect a right. Again he put more emphasis that in order to determine whether the action of the administrative authority is quasi- judicial or administrative, one has to see the nature of power conferred and its consequences.

He said, administrative action may be classified as a statutory administrative action and non - statutory administrative action, that the former has the force of law while the latter has not. Hence, judicial quest in the administrative matter has been to find the right balance between administrative discretion to divide matters whether contractual or political in nature or issues of social policy, thus they are not essentially justifiable and need to remedy any unfairness. Such unfairness is set right by judicial review through prerogative remedies. In this perspective, the researcher added that the power of the review is exercised to rein in any unbridled executive functioning. It is concerned with reviewing not the merits of the decision to support which the application for judicial review is made, but also the decision making

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[14] Diwan, E. ((2004) Administrative Law, Towards New Despotism, 3rd ed, Narula Enterprises Faridad, pp. 80 - 81

process itself, it has two contemporary manifestations, one is the ambit of judicial intervention and second one; the other corner of the scope of the court's ability to quash an administrative decision on its merits. The author expressed that when the administrative agencies act beyond the power, the aggrieved person may file a petition to the High Court in order to be compensated where necessary, even though the procedures for the application of the prerogative remedies are complicated.

Foulkes[15] was of the view that, the procedures should be followed when the aggrieved person needs to apply for prerogative remedies, after the decision or action done by the administrative body is so difficulty. He emphasised on distinguishing between grounds and methods of judicial review, that grounds for review' we mean the defects which must be shown to be present in the decision if the court is to be able to intervene, by methods of review' we mean the procedures by which decision can be reviewed and the prerogative orders available by the court.

He went further that the ground for review are twofold, that means, the order if was *ultra vires* the authority that made or conformed it, or that the correct procedure had not been followed, and the method of review was by application to the High Court followed by a court order questioning the order complained of. The researcher by using this aspect expressed the grounds for and methods of reviewing the courts power, maybe expressly thus it may quash the decision if satisfied that the decision is

[15] Faulkes, D. (1972) Introduction to Administrative Law, Butterworths- London pp. 125 -126

not within the powers of the act, or that the interests of the applicant have been substantially prejudiced by failure to comply with any of the relevant requirements, hence quashing those administrative actions is through the prerogative remedies.

Giussani[16] wrote that, in 1978, however a new procedure was introduced to standardise the application and procedure according to Rules of Supreme Court, the main element being given effect by the Supreme Court Act 1981, was to establish judicial review as the main mechanism for challenging public law decisions regardless of remedies. While certiorari (quashing order), mandamus (mandatory order) and prohibition (prohibitory order) could still only be granted in judicial review applications; declarations and injunctions could now also be granted as a remedy, these having only been previously possible in private law. The author has been shown the complaints on the application of prerogative orders, that judicial review remedies procedures are also characterised by a number of hurdles, which the applicant must surmount in order to proceed. Researcher was of a view that, the requirements for permission be obtained and the short time limits designed to protect public bodies from frivolous action. As a result of these stringent requirements, applicants seeking a declaration or injunction could want to bring their public law grievance in private law. It is evidenced that the laws and procedures of the applications of prerogative remedies are not well settled almost in the legal systems of the world.

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[16] Giussani, E. (2007) Administrative Law, Sweet and Maxwell – London, pp. 248 - 249

Jain and Jain[17] explained on the role of the courts that, courts have expounded certain proposition and taken recourse to certain principles or tests to control discretionary powers in certain situation and contingencies; primarily the courts seek to ensure that discretion is exercised by the authority concerned to law. It is regarded as the first principle of any jurisprudence based on the rule of law that the executive should not exceed its powers.

They said that all principles of judicial review of discretionary powers fall into major classifications; one is abuse of power by the authority and two is excess of the power, the first classification includes exercise of power *malafide,* or in bad faith, or for an improper purpose or after taking into account irrelevant or extraneous considerations or after leaving act of account relevant, considerations in a colourable manner, or unreasonably; second classification falls under acting dictation, acting mechanically or fettering discretion. He went further that, prerogative orders have been borrowed in India from England where they have had a long and chequered history of development, and consequently, have gathered a number of technicalities but he emphasised that their Constitution provisions are significant as they indicate that the courts are not bound to follow all technicalities of the English law surrounding these writs, or the changes of judicial opinion there from case to case and time to time. He adds that what the Indian courts have to do therefore is to keep to the

[17] Jain, M.P. and Jain, S. N. (2005) Principles of Administrative Law; An Exhaustive Commentary on the subject containing Case – Law Reference (India and Foreign), 4th ed, New Delhi: Wadhwa and Company, p. 534.

broad and fundamental principles underlying these writs in the English law. The author with other among things, has shown that the application of prerogative remedies is the problem in the sense that the laws and procedures are difficult to apply which also may lead the aggrieved people not to acquire their rights/goals, hence he supported the researcher to find that, the procedures on the application of judicial review remedies are so complicated that there is a need to change them.

Jones[18] supported that the rules for applying prerogative remedies are not well settled. He said that remedies were discretionary and there were particular rules governing them not only the kinds of decisions or acted that, could be reached by each remedy, but also surely matter of *locus standi*, whether interlocutory relief was available and the grounds the remedy could be refused, he said that even those prerogative remedies are provided under their laws, yet there are many challenges including the *locus standi*, time limit and the like, those are the challenges which the researcher intended to deal with them as the problems.

Kagzi[19] in his views expressed the role of the administrative power by observing that the administrative discretion means power of being administratively discreet. It implies authority to act, or to decide matter discretion. The administrative authority

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[18] Jones, B., elt. (2005), Cases, Materials and Commentary on Administrative Law, 4th ed, Sweet and Maxwel – London, p. 921

[19] Kagzi, M.C. (2002), The Indian Administrative Law: Universal Law: Publishing Co. Photo Ltd. pp. 98 -99

rested with discretion is suffered with an option, and thus is free to act in its discretion. It cannot be legally compelled to act, or if it decides to act, it cannot be restrained from doing so, if given a choice to intervene officially in the situation or if prudence dictates to let the things take their course. Legally, he cannot be compelled to pass an order if he is satisfied with the immediacy of the official action on his part in a law court. His responsibility lies only to his superiors and the neglect or refusal to act in such a case; He said that the administrative authority must not act dishonestly, vindictively or capriciously. He should exercise his judgment in the matter and should not decide it on guess work. Though he may act on his own opinion or satisfaction, yet he cannot act without a basis and a reason. The guess work if any in the decisional process should be honest guess work reasonably made in the context of the attendant circumstance. It should no abuse the discretion. He should apply his mind properly to the circumstances of a given case and inquire into the merits of the matter.

Leyland and Woods[20] elaborated more on the emergence of judicial review that, in Medieval and Tudor periods, before the Civil War in the 17th century, government was in the hands of the monarch, and increasingly, over the centuries, parliament locally, justices of the peace had complete control both in terms of the judicial system, and in administration of policy, (in so far as this existed). Their extensive powers virtually uncontrolled, other than through the Pricy Council, which during the period of the Tudor monarchy developed a prototype notion of *ultra vires*. Control

[20] Leyland, P. and Woods, T. (2002), The Textbook on Administrative Law, 4th ed., p. 233

over both central and local government was sporadic. The result was that firstly, the government had to be confined to act within the powers granted to it. Secondly, it came to be recognised that it was the task of the courts to ensure that this occurred, especially followed the civil war, and subsequent events which led to an irrevocable shift of power away from monarchical government. In this circumstance the writer did not engage in examining the procedures to be followed in applying for prerogative remedies against administrative actions instead he emphasised that the government should act within the jurisdiction. The researcher tried to address this problem in this thesis.

Millet[21] discussed on the judicial review of public administration that is not a cure-ill however to compel effective process to curbing excess of power, not toward compelling it exercise constitutional limitations. As a practical matter, be effectively used for that purpose without being assimilated into the administrative structure and losing their independent organisation. The researcher observed that the writer did not go further on expressing the procedures for applications of prerogative remedies rather he emphasised on laws, that to assure enforcement of the laws by administrative agencies within the bounds of their authority reliance must be placed on controls other than judicial review, internal controls in the agency responsibility to the legislature or the executive careful selection of personnel pressure from interested

[21] Millet, J.D. (1959), Government and Public Administration: The Question, For Responsible Performance. McGraw, Hill Book Company, Inc. The Maple Press Company, York, P.A.

parties and professional or lay criticism of the agency's work. An administrative agency which takes action beyond the legal competence or authority conferred upon it behaves as unlawful administrative agency which acts without observing certain standards of procedure or without giving careful attention to facts of behaving unreasonably. The ordinary courts of law in our judicial system endeavour to ensure that public administration, especially administration of a regulatory nature shall be both legal and reasonable in order that the rule must be maintained.

Nyamaka[22] in his handout observed that the laws governing prerogative remedies under judicial review in Tanzania are uncertain, that when the basic rights and duties enshrined in the Bill of Rights, the party should decide to make application under Cap. 310 for prerogative orders and not under Cap 3 because the procedures for and the power of the High Court to issue prerogative remedies do not apply for the purposes of obtaining redress in respect of matters covered by Cap 3, hence he shows his doubt on the complexity of the laws governing those remedies.

This statement is well evidenced in the case of **Timothy Mwakilasa v. The Principal Secretary (Treasury**)[23], when the applicant applied for mandamus to compel the respondent to release his pension and the application was brought under section 349 of the Criminal Procedure Code, but Samatta J. decided to deny himself

[22] Nyamaka, D.M. (2011), Judicial Review of Administrative Action/Decision as the Primary Vehicle for Constitutionalism: Law and Procedures in Tanzania. (Handout)

[23] (Supra)

the opportunity of expressing any view as to whether the application was properly brought under section 349. It should be noted that in the absence of specific provisions in that behalf, the application could have been brought under section 95[24] which saves the inherent power of the court to make any orders as may be necessary for the ends of justice.

Parpworth,[25] entails the court upholding making laws and not to derive from the prerogative powers. Even though the author wrote more on the procedures for applying prerogative remedies, however the researcher found out that since the remedies granted by the court are still discretionary, the court can grant it or not, yet the researcher intended to re- examine those procedures whether they are *pari materia* to Tanzania legal system.

Peter[26] explains the rules of natural justice, by elaborating that rules of natural justice are about fairness and justice in the society. They should address how judicial, administrative and other organs are to function in the process of reaching a fair decision in determination of any issue before them. He said that, these rules of fair-play in the administration of justice are regarded as universal and rules of the wise and are an integral part of the doctrine of rule of law, He emphasised that, when those

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[24] Civil Procedure Code of 1966

[25] Parpworth, N. ((2000), Lectures on Administrative Law, 3rd ed Oxford University Press - London p. 276

[26] Peter, C. M. (1997), Human Rights In Tanzania, Selected Cases and Materials, pp. 300-429

rules are ignored by the executive or any other organs, the aggrieved person may apply judicial review in order to be compensated through prerogative remedies.

He cited an example of **Said Juma Shekimweri's case**[27], when the High Court challenged the power of the President to remove the public servant with the reason of public interest without giving him the right to be heard; The High Court granted him the prerogative remedies available to him. Even though the author did not touch the procedures to be followed on the application of prerogative remedies, he still pressurised on how the rules of natural justice should be maintained and observed to all organs of the state in order to maintain the rule of law in Tanzania.

Poland[28] also stated that those remedies which the High Court may grant are discretionary remedies, hence the court may decide to grant or not. That, the claimant for judicial review remedies may seek one or more of several remedies that are potentially available to him. Those remedies are certiorari, prohibition, mandatory, declaration, injunction interim declaration and habeas corpus. However, it was evidenced that, the procedural for applying prerogative remedies under judicial review in world legal system are the problem.

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[27] (1997) TLR 3

[28] Poland, D. (1990), Constitutional and Administrative Law, Text and Materials, Butterworth's London, p. 239

Rao[29] states that the strength and the role of judiciary in espousing the cause of a common man for justice that the judicial review should be free to interpret in a progressive way of the constitution and in doing so; the laws enacted open up certain interesting features of the judicial freedom. The judicial review gives freedom to judges to express their mind on any question. The aim of law is to put spokes to the functioning of the government when it exceeds its powers and to protect citizens against of abuse or misuse of power by government agencies; this is called judicial review. The author tried a lot on the explanation of judicial review but he did not touch on the procedures being used to apply judicial review remedies against the administrative action hence the assessment of this problem.

Swenson[30] explained that the methods of review prescribed by a statute are controlling subject only to constitutional requirements, in the absence of a specified statutory procedures, the common law remedies are available. But the great judicial writs have only limited use as instruments for control of administrative actions. Consequently, injunction, mandamus, prohibition, quo warrantor, or certiorari will not issue where there is an adequate legal remedy and even so the jurisdiction of the several courts, particularly federal courts to issue the writs is limited considerably, The author explained that the absence of specified statutory procedures for the

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[29] Rao, M. G. (2006) Constitutional Development Through Judicial Process, Saraswathi Offset Printers Hydrable, p. 238

[30] Swenson, R.J, (1952), Federal Administrative law; A study of the Growth , Nature and Control of Administrative Action, New York, pp. 214 -215

application of prerogative remedies the common law remedies are available. He explained more that the great judicial writs have only limited use as instruments for control of administrative action; however he did not include the procedures for applying judicial review remedies once aggrieved person needs to file the petition in order to get those remedies. After the researcher seeing that gap he decided to make the assessment on that problem.

Takwani[31] explained that, the High Court may issue writs in the nature of prerogative writs as understandable in England for doing substantial justice, while exercising powers, the court must keep in mind, the well - established principles of justice and fair play and should exercise the discretion if the ends of justice require it. The author elaborates some procedures used in applications for prerogative remedies according to their legal system. But the researcher intends to make an analysis whether those procedures are the same in the legal system of Tanzania.

Vijay[32], in his notes of judicial review, doubted that the application of prerogative remedies in Tanzania is uncertain, that applicable rules are unknown and cannot be easily found and he noted that those procedures are archaic and unrelated to the judicial and administrative set up in legal system of Tanzania. He further said that, to file a case before the High Court is not that simple, there are a number of

[31] Takwani, C.T., (2007), Lectures on Administrative Law, 3rd ed, Lucknow; Eastern Book Company pp. 290 -300

[32] Vijay, G. (2012), General Principles of the Constitutional Law, notes on the Judicial Review.

technicalities which a layman may not be able to know and follow them; those technicalities are leave permission to the high Court. However, it is evidenced that, the application of prerogative remedies under judicial review are so complicated and more difficult to apply since many writers are eager on that, therefore it is the time now to the researcher to make a critical analysis on those laws and procedures in order that at the end of the day the solution should be found.

Wade and Bradley[33] provided the importance of judicial review and the potentiality of courts to control administrative action. The book talks about the various grounds for judicial review and the forms of relief when administrative action is challenged in the courts. Again they discussed on the scope and extent of judicial review. They observed that the most difficult situation is that of regulatory bodies which derive their powers neither directly from statute nor from contract. However, no detailed discussion is made by these two authors to show how the procedures for applications of prerogative remedies can be applied to the aggrieved person on the decision done by the administrative bodies.

Wade[34] in his book shows dissatisfaction with the procedures for applying prerogative remedies that were particularly acute in the case of habeas corpus, no right of appeal used to exist against refusal of the writ in case of imprisonment where

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[33] Wade, E. C. S and Bradley, A. W. (1993), Constitutional Law and Administrative Law. 11th ed. New York – London, pp. 299 - 990

[34] Wade, H. W. R. (1977), Administrative Law, 4th ed, Oxford London, pp. 519 - 552

there was a charge of a criminal nature – a grave and irrational defect which was not remedied until 1960. That, in criminal cases, there was no right to dispute the truth of facts stated in golfer's return to the writ, so that important questions of fact could not be investigated. In the civil cases which fall within administrative law this obstacle was removed by the Habeas Corpus Act 1816 and affidavit evidence is given as to facts.

The author contended that in order to obtain certiorari, prohibition or mandamus a motion must first be made to the High Court for leave to apply, this is made *ex parte* i.e. without notice to the respondent public authority. The rules of court prescribe a time limit of six months (relatively to most other proceedings a very short time) for certiorari, though the court has discretion to extend it and even within this time limit the remedy may be refused if the applicant has been guilty of delay and so caused hardship to the other party, no time limit is prescribed for prohibition.

There is no proper interlocutory process as there is in ordinary actions so that there is no regular procedure for obtaining an order for discovery of documents by the other side, or for serving interrogatories. When leave has been granted, the application itself is made by originating motion. Wade among other things supports the researcher for saying that the laws and procedures for applying prerogative orders are not well certain at all in the following words a serious defect of prerogative remedy procedure is its incompatibility with the procedure for obtaining private law remedies. But the prerogative remedies can be sought only by their own special procedure, in

which the court is asked to extend a royal privilege to a subject. The courts have mitigated this disadvantage by allowing great freedom of amendment, so that an appeal can be made and with the minimum formality, nevertheless the difficulty remains and proposals for the reform of administrative law give prominence to the need to make all the remedies interchangeable in one form of proceedings.

Wade and Forsyth[35] considered the scope of remedies available under the system of judicial review; they said that the scope of remedies and their boundaries are fairly clear; one is where bodies which are unquestionably governmental do things for which no statutory power is necessary, such as issuing circulars or other forms of information. The other category is where judicial review is extended to bodies which, by the traditional test would not be subject to judicial review and which in some cases fall outside the sphere of government altogether. Those authors also support the researcher that the scope of applying prerogative remedies is uncertain.

Wheare[36] in his book explains the complexity of procedural and application of prerogative remedies in the following words, that, one of the best features of administrative law in Britain is in the range and effectiveness of the remedies. Its worst feature, by general consent, is the thicket of technicality and inconsistency which surrounds them. And the Law Commission, in a submission to the Lord

[35] Wade, E C. S and Forsyth; (2004), Administrative Law, 9th ed., Oxford Universtity Press,

[36] Wheare, K. C. (1973), Maladministration and Its Remedies, Stevens and Sons – London, pp. 22- 25

Chancellor in May 1969, referred to" a widely held feeling that the remedies available in the courts for the review and control of administrative action are in urgent need of rationalisation. The procedural complexities and anomalies which face the litigant who seeks an order of certiorari, prohibition or mandamus have long been the subject of criticism, while the circumstances in which injunctions and declarations are obtainable would also appear to call for review.

The law of judicial control, it has been argued, is at present at the mercy of a formulary system of remedies. The technicalities and uncertainties which, mainly for historical reasons, are a feature of judicial control of public authorities under our legal system contrast sharply with the simplicity with which administrative proceedings may be started in other systems example of France.

However, many authors tried according to their level understanding to explain the original, scope, limitation, nature and to some extent the procedures for the application of prerogative remedies under their legal systems, but many of them deeply commented that those laws and procedures to be followed when the aggrieved person intends to file a petition to the High Court in order to review the decision done by the administrative agencies are so complicated and difficulties with a lot of technicalities, those technicalities include leave to apply, *locus standi***,** time limits and the jurisdiction of the High Court which may lead the aggrieved person to lose his/her rights when filing a petition.

It follows therefore that those authors did not provide the solution on what to do in order that those laws and procedures should be well stable. It was upon this research to make a critical analysis on laws and procedures for the application of prerogative remedies against the administrative actions in Tanzania after seeing that gap as the problem.

1.7 Research Methodology

The study adopted the following methods to obtain information:

1.7.1 Research Design

The researcher used different design by studying and reviewing different documents to obtain data. Questioners were distributed to different groups for collection of data.

1.7.2 Sampling Techniques and Sampling Procedure

The selection of respondents was random so as to get the required data and avoid bias. The sample however was drawn from relevant institutions such as the Judiciary, State Attorney Chamber (SAC), Law firms, Tanzania Police Force, Tanzania Prison Service, Tanzania Peoples Defence Force, Local Government Authority, Universities and Activists.

1.7.3 Sample Size

The targeted groups of people were in Morogoro Municipality. Given the objective of the researcher the targeted groups of people were 80 persons from different

institutions. 15 Members from the judiciary (Judges and Magistrates), 20 legal officer (Law Firms, State Attorney Chamber), 15 administrators (Tanzania Police Force, Tanzania Prison Service, Tanzania Peoples Defence Force, Local Government Authority), 15 academicians (Muslim University, Jordan University, Sokoine Universit and Mzumbe University) and 15 activists (Tanzania Women Lawyers Association, Haki Ardhi and Legal and Human Rights Center.

1.7.4 Data Collection Methods

The study involved two types of data that is primary and secondary data.

1.7.4.1 Primary Data

This was used to obtain data from the said institutions with the aim of answering the research question.

1.7.4.1.1 Questionnaire

Questionnaires were distributed to the afore mentioned institutions who have knowledge or awareness of prerogative remedies as applied in the administration system in Tanzania.

1.7.4.1.2 Interview

Interview method was applied to get information.

1.7.4.2 Secondary Data

This was done through documentary review and electronic sources of relevant materials such as case laws, different writings and different websites. Libraries were fully utilised.

1.7.4.2.1 Electronic Sources

Electronic sources made a significant contribution in this study, various Websites, Electronic Journals, Books and Reports were accessed.

1.7.4.2.2 Documentary Review

This was a descriptive study, describing the efficacy of laws. The Libraries were visited in order to gather secondary data to enrich this study. The materials were drawn from Open University of Tanzania Library (Morogoro Branch), Morogoro Region Library, Sokoine University of Agriculture Library, Mzumbe University Library and High Court Library.

1.7.5 Data Processing and Analysis

The collected data was scrutinised and examined in detail before being analysed. This used to assist the researcher to determine whether the data collected are in accordance with the objective of the study. The researcher used qualitative data analysis to describe and analyse the collected data.

1.8 Scope and Limitations of the Study

The study was focused on the application of prerogative remedies against administrative actions in Tanzania, which gives a critical analysis of the laws and procedures applicable. The research was in Morogoro Region as a study case, where the researcher had opportunity to collect data relevant to the study.

1.9 Conclusion

As the researcher passed in different literatures on the said problem, he recognised that, laws and procedures governing the applications for prerogative remedies in some legal systems seem to be uncertain in their practice since many scholars are just lamenting on the said topic, with this observation that is why the researcher intended to make a critical analysis on that problem to come up with good conclusion and recommendations.

CHAPTER TWO

CONCEPTUAL FRAMEWORK OF PREROGATIVE REMEDIES

2.1 Introduction

This chapter is devoted to the theoretical and conceptual framework concerning the topic. The following matters are addressed in this chapter; the meaning of prerogative remedies, types of prerogative remedies, grounds for judicial review in granting prerogative remedies over administrative actions and then conclusion.

2.2 Meaning of Prerogative Remedies

Prerogative remedies are remedies issued by the High Court for the supervision of inferior courts, tribunals and other bodies exercising judicial or quasi-judicial functions. The aim is to keep inferior courts, tribunals and other bodies exercising judicial or quasi-judicial functions to act within their proper jurisdiction.[37] Like the Courts in England, the High Court of Tanzania does issue prerogative orders in the exercise of its power of judicial review by virtue of the Judicature and Application of Law Act Cap. 310 R.E. 2002 under section 2.

Generally, those remedies are being issued by the High Court and have provided to be a very effective means of securing the rule of law as explained in the case of **Lausa Alfan Salum and 116 others v. Minister for Housing and Urban Development**

[37] Olumede, P. A. Administrative Law in East Africa, p.187

and National Housing Cooperation[38], that whether prerogative orders may be issued and when judicial review of administrative action is possible, stated that any action of a public official done in official capacity is challengeable on the ground of illegality, irrationality and procedure impropriety may be issued in certain cases either quash a decision in the cause of performing a public duty or to prohibit the performance of a public law. Remedies to discuss are certiorari, prohibition and mandamus.

2.3 Types of Prerogative Remedies

2.3.1 Certiorari

Certiorari means 'to be informed.' It is an order issued by the High Court to an inferior court or any other authority exercising judicial or quasi – judicial functions to investigate and decide the legality and validity of the orders passed by it. Its object is to keep inferior courts and quasi – judicial authorities within limits of their jurisdiction and if they act in excess of their jurisdiction their decision can be quashed by superior courts by issuing this order.[39]

2.3.1.1 Its Scope and Nature

By setting aside a defective decision, certiorari prepares the way for a fresh decision to be taken (quashing order). The exact history of the development of the writ is

[38] (1992) TLR 293 HC

[39] Takwani, *op.cit.* p. 319

complex but Rubinstein argues convincingly that certiorari was originally developed to fill a gap left by collateral attack and the writ of error. Collateral attack, in the form of an action for assault, trespass etc, lay only for jurisdictional defects, while the writ of error was restricted to some courts of record. It developed to fill a gap that might arise. The area left unfilled was an error within jurisdiction by an institution not amenable to the writ of error. The remedy was thus initially aimed at errors within as opposed to errors going to jurisdiction.[40]

It was in response to the development of finality clauses that certiorari began to be used more generally for jurisdictional defects. The courts construed such clauses restrictively to render them applicable only for non- jurisdictional error; where the error went to jurisdiction, certiorari was held to be still available. The reach of certiorari was augmented further by the acceptance of affidavit evidence to prove that a jurisdictional defect existed.[41]

It does not remove an arbitrator for misconduct but application may be made to the High Court for this. Also, it will not ensure to quash the order of a body that has acted in a purely ministerial or executive capacity, notwithstanding of a judicial character of another body. It lies on the following bodies, courts of inferior jurisdiction, area courts and tribunal administrative and disciplinary. It is used or awarded to secure an

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[40] Takwani, *op.cit* p. 319

[41] De Smith, (1980), Judicial Review of Administrative Action, 4th ed., App. 1

impartial trial to review an excess of jurisdiction challenge an *ultra* – act, to quash a judicial decision made contrary to the record.

By granting a quashing order does not impose its own decision, it implies invalidates the original decision, which may result in the matter going back to the original body to reconsider afresh. In applications for prerogative orders the court investigates the legality of an action or decision of an inferior tribunal or authority.

2.3.1.2 Grounds for Awarding Certiorari

There are different grounds for awarding certiorari such as excess or lack of jurisdiction, errors of law on the face of record, breach of rules of natural justice and the like, as been explained in the case of **Sinai Murimbe and Another v. Muhere Chacha,**[42] held that an order of certiorari is one issued by the High Court to quash the proceedings and the decision of a subordinate or a tribunal or a public authority where, among others, there is no right of appeal. The High Court is entitled to investigate the proceedings of a lower court or tribunal or a public authority on any of the following grounds, one, that the subordinate court or tribunal or public authority has taken into account matters which it ought not to have taken into account, two, that the court or tribunal or public authority has not taken into account matters which it ought to have taken into account, three, lack or excess of jurisdiction by the lower authority, four, that the conclusion arrived at is so unreasonable that no reasonable

[42] [1990] TLR 54 Court of Appeal of Tanzania

authority could ever come to it, five, rules of natural justice have been violated and six illegality of procedure or decision.

Errors of law on the face of record

This is occurred in the rejection of admissible evidence is error of law on the face of record, that admission of inadmissible evidence is error of law on the face of record. In the case of **R. v. Industrial Injuries Commissioner Ex. Parte Ward**[43], it was explained that if the record of proceedings shows that inadmissible evidence was admitted or admissible evidence was rejected, that would be error of law on the face of record. Where the tribunal mistook burden of proof, it was held that it amounted to error of law on the face of record.

Breach of rules of natural justice

Certiorari lies to quash judicial decision made contrary to principle of natural justice. These rules have been epitomised by use of Latin expressions viz – *Audi Alteram Partem* rule and *Nemo judex in causa sua* rule. These rules are formulated to ensure minimum procedural safeguard or fairness. So fundamental in this principle that it has been held that if a tribunal violates this principle, its decision will be vitiated. It matters not that even if the principle had not been followed, the same decision would have been arrived at. Lord Wright in the English case of **General Medical Council v.**

[43] (1965) WLR 21

Spackman[44], held that, if principles of natural justice are violated in respect of any decision, it is indeed immaterial whether the same decision would have been arrived at in the absence of the departure from the essential principles of justice. That decision must be declared to be no decision.

2.3.1.3 Certiorari Distinguished from other Remedies

Certiorari differs from mandamus in that while mandamus acts where the tribunal declines jurisdiction, certiorari corrects while mandamus compels to act. Whereas certiorari can be issued against judicial or quasi – judicial authorities, mandamus is available against administrative authorities also. It has to be noted that order of certiorari controls all courts, tribunals and other authorities when they purport to act without jurisdiction, or in excess of it. It is also available in cases of violation of the principles of natural justice.

2.3.2 Prohibition

Prohibition is an order issued primarily to prevent an inferior court or tribunal from exceeding its jurisdiction or acting contrary to the rules of natural justice (prohibiting order). In the case of **Re. Godden**[45] held that a Chief Medical Officer of police authority certified that Godden was suffering from disorder, the authority, employer of Godden wished to retire him compulsorily, to do this; the authority was required

[44] (1943) AC 62

[45] (1971) 3 All. ELR 20

by a statute to refer Godden's condition to a doctor. The High Court held that the decision of the Chief Medical Officer virtually affected Godden's whole future career and therefore, he had to act judicially. Therefore, the court issued the order to prevent the Chief Medical Officer from acting. Prohibition is a discretionary remedy. The existence of another alternative, adequate and equally efficacious remedy is a matter which may be taken into consideration by the High Court in granting a writ of prohibition.[46]

2.3.3 Mandamus

Mandamus means a command to a person to do something which is his/her legal duty. It is discretionary remedy. It will not issue where there is a plain, speedy, and adequate remedy at law; and it is the inadequacy not the mere absence of other legal remedies that generally determines the propriety of issuing a writ of mandamus. Many courts refuse the writ when it will not serve a useful purpose or where it would be ineffectual as where the defendants cannot perform the duty; or where the act in issue is expressly prohibited by statue or judicial decree.[47]

In the case of **Obadia Salehe v. Dodoma Wine Company Ltd**[48] held that the authorities go on to state that such alternative remedy should be speedy, convenient, beneficial or effective. That is far from saying that the existence of alternative remedy

[46] Takwani, *op.cit* p. 310
[47] Swenson R. J. *op. cit.* p. 216

[48] (1990) TRL 113

is an automatic bar to judicial review. The availability of an alternative remedy is only one of the matters to be taken into account by the court.

It is issued upon the application of one who has a clear right to demand such performance, and who has no other alternative remedy. Mandamus is different from certiorari or prohibition that it used to compel a public officer or body to perform its duty correctly. It will lie to any person who is under a duty imposed by statute or by the common law to do a particular act. If that person refrains from doing the act or refrains from wrong motives from exercising power which it is his duty to exercise this court will by order of mandamus direct him to what he is supposed to do.[49]

2.4 Other Remedies

Under this category other remedies include injunction, declaration and *habeas courpus* as knows as non- prerogative remedies.

2.4.1 An Injunction

An injunction is an order of the High Court addressed to a party to proceeding before requiring it to do refrain from doing, or to do a particular act. It is a negative remedy in administrative law; it is granted when an administrative authority does or purports to do anything *ultra vires*, the leading case is **Metropolitan Asylum District v.**

[49] Commissioner *ex parte* Parker (1954) 2 All ER 717

Hill[50], the relevant act empowered the authority to build a hospital for children for treatment of small – pox. A prohibitory injunction was obtained by the neighbouring inhabitants on the ground of nuisance. An injunction was granted to prevent such expulsion.

In the case of **V.G. Chavda v. Director of Immigration Services and Another**[51] the applicant had been given a deportation order by the Minister for Home Affairs under the Immigration Act, He then filed in the High Court an application seeking leave to apply for orders of certiorari, mandamus and prohibition and an injunction restraining the Minister and the Director of Immigration Services, Later, when the application for temporary injunctive relief was called on for hearing the Senior State Attorney raised a point in liming that under section 11 of the Government Proceedings Act the Court had no power to make an interim injunctive order against the Government, its minister or officials. In rejecting the preliminary objection, the High Court held that, thus, constitutional proceedings and proceedings which are instituted under this Court's supervisory jurisdiction that is to say, the jurisdiction to supervise statutory and domestic tribunals conferred on the court by section 17 of Law Reform.

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[50] (1980) 1. Ch. 921

[51] [1995] TLR 125 HC

2.4.2 A Declaration

A declaration is a statement of the legal position in the matter before the court. The court may simply declare that neither administrative action nor decision is valid or not. A declaration lacks coercive power as the case has been in Tanzania with High Court declaring some statutes null and void and wait for responsible authority to rectify the situation. The essence of a declaratory judgment is that, it states the rights or the legal position of the parties as they stand without altering them in any way though it may be supplemented by other remedies in sustainable cases. A declaratory judgment by itself merely states some existing legal situation. It requires no one to do anything and to disregard it will not amount to contempt of court.[52].

The remedies available for judicial review in Tanzania are the prerogative remedies namely mandamus certiorari and prohibition as per section 17 of Cap. 310. However, it should be noted that in Tanzania declaration is not party of prerogative remedies available under Cap 310. This is a remedy falling under civil proceedings under the Government Proceeding Act. As to injunction this can be obtained as an interim measure to restrain unlawful act about to be, or in the process of being committed. It is a tool to maintain *status quo ante*.

[52] Takwani, *op.cit*

2.4.3 Habeas Corpus

Is an order requiring a person having custody of a prisoner to bring him before a court of law together with the grounds for detention. The court then tests the legality of the detention and directs release of if the imprisonment is found to be unlawfully.

Land marker case on this non- prerogative order is **Sheikh Abdulla v. Regional Police Commander, Dar es Salaam and Two others**[53], in this case the President of the United Republic of Tanzania had made an order that the applicant should be deported to Zanzibar from Tanzania Mainland that is, Tanganyika, under section 2 of the Deportation Ordinance (Act). The applicant made an application in the High Court which was in the nature of *habeas corpus*, a writ directed to a person who detains another in custody and commands the person to whom it is directed, in this case the respondents, to produce the body of the person so detained before the court for a specified purpose.

The applicant challenged the order on the ground that the President had exceeded his powers under the said law. In granting the application the Court held that a decision or order is ex - facie bad. The court added that a President's order was "gravely flawed".

[53] [1985] TLR 1 HC

2.5 Grounds for Judicial Review to the High Court Issuing Prerogative Remedies

There are numerous ways in which administrative agencies may usurp, exceed, abuse or fail properly to exercise their common law duties or statutory functions; hence there are various grounds of challenges as been explained by many authors as shown below:

Lord Diplock is accredited with the criteria or grounds for judicial review as he identified in the case of **Council of Civil Service Unions v. Minister of State for Civil Service**[54], in this case Lord Diplock identified three broad grounds for judicial used to issue prerogative remedies under judicial review namely illegality, irrationality and procedural impropriety.

In Tanzania, Moshi, J. pointed out three grounds above for judicial review in the case of **Lausa Alfan Salum and 116 others v. Minister for Lands Housing and Urban Development and National Housing Corporation**[55], and he had this to say:

Prerogative orders of certiorari and prohibition may be issued in certain cases, either to quash a decision made in the course of performing a public duty or to prohibit the performance of a public duty, where the injured party has a right to have anything done, and has no other specific means of, either having the decision quashed or the performance of the duty, prohibited, when the obligation arises out of the official

[54] (1985) AC 374

[55] (1992) TLR 293 (HC)

status of the party or public body complained against… had an imperative legal duty of public nature which they had to perform in their official capacity. He said that, in my considered view, any of their actions or decisions is challengeable; firstly, if it is tainted with illegality, which is the power exercised is *ultra vires* and contrary to the law.

He went further that, if it is tainted with irrationality that is, the action or decision is unreasonable in that it is so outrageous its defiance of logic or of accepted moral standards that no sensible person who has rightly applied his mind to the matter to be acted upon or to be decided could have thus acted or decided. Again, he said that, if the action or decision is tainted with procedural impropriety, that it, failure to observe basic rules. Below are the explanations on those grounds of issuing prerogative remedies under judicial review:

2.5.1 Illegality

In the principle of judicial review is limited to review of the lawfulness or legality of a decision or action by a public bodies act legally within their powers i.e**.** *intra vires* and the principles of natural justice are observed in making decisions by these bodies. Public bodies derive their authority from the constitution and ultimately from the electorate, and it is not for judges to step into their shoes but ensure fair treatment to the people by the authority[56].

[56] As per Lord Hailsham in the Chief Constable of North Wales Police v. Evance (1982)

By illegality as a ground for the application of prerogative remedies under judicial review, Lord Diplock said that the decision maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is a question to be decided in the event dispute by judges. This would mean that when a power vested in a decision maker is exceeded, acts done in excess of the power are invalid as being *ultra vires (*substantive *ultra vires).*

Illegality is extended to include exceed of jurisdiction, errors of law, failure to fulfill a statutory duty, acting for an improper purpose, delegating discretionary powers unless permitted by law, failing to take into account all relevant considerations, fettering discretion, and interference with fundamental rights.

Error of law

Error of law simply means any misdirection in law that would render the relevant decision *ultra vires* and a nullity. The case of **Anisminic Ltd v. Foreign Compensation**[57] made it clear that all errors of law are now subject to judicial review and thus cleared doubt as whether errors of law by an inferior court, or tribunal or public authority within jurisdiction (which were not reviewable could be subject to review).

[57] (supra)

Also the case of **Said Juma Muslim Shekimweri v. Attorney General**[58] where the applicant sought an order of certiorari to bring up and quash a decision of the President of the United Republic of Tanzania retire ring the applicant, an immigration officer, in the public interest. It appeared that the applicant had been employed by the government of Tanzania for some years without having been subjected to any disciplinary sanction. The applicant had read a newspaper report of his dismissal for allegedly bribes. About two months later the applicant received a letter informing him of his retirement. The High Court developed the principle that:

The common law principle is that a civil servant was dismissible at pleasure of the President was not part of the law of Tanzania; That the letter informing the applicant of his retirement cited provisions of law which were incompatible and this had caused the applicant considerable embarrassment; standing order f 35 which provided that all appointments were at the pleasure of the President was invalid as it was in conflict with the provisions of article 22 and 36 (2) of the Constitution of United Republic of Tanzania.

The only legislative provision which permitted the compulsory retirement was paragraph (d) of section 8 of the Ordinance which would be utilised only for the purpose of facilitating improvement in the organisation of the department to which the civil servant belonged. It was clear that the applicant's removal had not been

[58] (1997) TLR 3 (HC)

sought on these grounds. Therefore, the President's dismissal is null and void since it was lies on the simple *ultra vires* under the error of law.

Exceed of jurisdiction

This consists of using powers in a manner totally different from that envisaged, for the public body, departments or tribunals to take a decision or to embark upon a decision process without authority or power, means that it acts *ultra vires* or without jurisdiction. In the case of **R. v. Secretary of state for the Home Department Ex. Parte Leech**[59], a prisoner who was involved in various civil actions feared his correspondence with his solicitor was being conserved under Prisoner Rule 1964, He applied for judicial review to quash the Governor's power of censorship over letters between himself and his legal adviser as being *ultra vires* were not removed either expressly or by necessary implication.

Bad faith

Bad faith can be a ground of the judicial review act whereby the claimant recognises that during the decision, the decision maker was in likelihood dishonest. In the case of **Cannock Chase District Council v. Kelly**[60], is observed that, bad faith put lack of good faith, means dishonest not necessarily for a financial motive but still dishonest, it always involved a grave charge. It must not be treated as a synonym for an honest

[59] [1994] Q. B. 198

[60] (1978) QB

although mistake or taking into consideration of a factor which is irrelevant. Since bad faith involved a grave charge against a public authority, it will be necessary to ensure that the matter has been clearly pleaded.

Fettering of a discretion

Decision-makers are clearly put in a position where they have a large measure of discretion as to the decision which they reach in a particular case. Even where a decision is based on relevant considerations, a decision maker must ensure that such considerations have not fettered their discretion and to take care by ensuring that they have regard to relevant considerations and disregard irrelevant considerations.

2.5.2 Irrationality

This is the second ground, that a decision- making which is an outrage in its defiance of logic or of accepted moral stands that no reasonable person who had applied his mind to it could have made such a decision. The decision maker to whom a discretionally power is vested must not exercise that power in a way that no reasonable body will, a good example is referred to Wednesbury unreasonableness in the case of **Associated Provincial Picture Houses Ltd v. Wednesbury Corp**[61], the Court of Appeal held that a court could interfere with a decision that was so unreasonable, that no reasonable authority could ever have come to it. Irrationality applies to a decision which is so outrageous in its defiance of logic or of accepted

[61] (1948) 1 KB. 229

moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. This ground has been used to uphold constitutionalism as it prevents powers from being abused by. For example, exercising discretion for an improper purpose or without taking into account all relevant considerations. In doing so, courts have been in return protecting human rights through judicial review.

In **R. v. Ministry of Defense *ex parte* Smith**[62] the court reviewed a decision to discharge a number of individuals from the army of the basis of their homosexuality. The basis for the decision was that the presence of homosexuals in the armed forces would have a substantial and negative effect on the operational effectiveness of the armed forces. The court of appeal affirmed the decision of the government and developed the principle of anxious scrutiny. But the case was again referred to the European Court of Human Rights as **Smith v. United Kingdom**[63] where it was held that there had been violation of right to private life and the right to an effective remedy. The court held the irrationality test in judicial review provided an insufficiently effective means of scrutiny in the circumstances.

However, Lord Green said that, taking irrelevant considerations into account and exercising a discretionary power for an improper purpose would constitute

[62] [1996] Q.B. and Smith v. United Kingdom [1999] 1

[63] (1960) E.A

unreasonable action, hence unreasonableness is also in itself an invalidating factor, including irrelevant consideration and improper purpose.

Irrelevant consideration

In exercising discretion, a decision- maker must have regard to relevant matters and must disregard irrelevant matters, taking example in the case of **R. Somerset Country ex. p. Fewings**[64], the local authority owned common land, its environment committee meets to consider stay hunting and resolved that it should be allowed to continue on the land. All full authority meeting, a resolution was passed banning stage hunting. Most of those when voted inform of ban influenced by the argument that hunting unacceptably and unnecessarily cruel.

The claimants who regularly hunted on the land sought judicial review. It was held that the resolution was unlawful exercise of its power under the Local government Act 1972, to acquire and manage land for the benefit, improvement or development of their it the judgment, hearing could only be banned if it were decided that there were better ways of managing the deer herd because it was necessary to preserve or enhance the enmity of the area. The argument was that, hunting was morally repulsive an irrelevant consideration.

[64] [1995] 1 W.L.R. 1037

Improper purposes

Administrators must not exercise their discretion for an improper purpose, in the case of **Wheeler v. Leicester C.C.**[65]; the fact was that, three members of the Leicester rugby team were selected to play for England on tour of South Africa. The team used a ground belonging to council questioned the club as to whether it would press the players not to take part in the tour, it was held that the council had power to consider that best interest of race relations when exercising its discretion to manage the ground, but in the absence of any unlawfully or improper conduct by the club, the ban was unreasonable and a breach of the council's duty to act fairly. The council's actions were a procedural impropriety and a misuse of its statutory power.

2.5.3 Procedural Impropriety

Procedural impropriety as a third ground for judicial review when the aggrieved party intends to apply prerogative remedies, it covers the failure by the decision-maker to observe procedural rules that are expressly laid down in the legislation by which its jurisdiction is conferred or a failure to observe basic rules of natural justice, or a failure to act with procedural fairness i.e. procedural *ultra vires*.

Lord Diplock said that, procedural impropriety rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review

[65] [1985] A.C. 1054

under this, covers also the failure by an administrative tribunals to observe procedural rules that are expressly laid down in the legislative instruments by which its jurisdiction is conferred *ultra vires* which is encompass two areas of failure to observe procedural rules laid down in statute and failure to observe the basic common law rules of natural justice.[66]

Where public body acting in reliance upon statutory powers has failure to comply with the procedures laid down in the relevant Act, it can be said to have acted *ultra vires,* for example when a minister may be under a statutory duty to consult certain specified organisation or such organisations as he thinks fit prior to making a decision and the requirement to consult is a mandatory, a failure to comply with it may mean that the procedure is thereby *ultra vires*, this procedure impropriety as well as explained in the case of **R. v. Aylesbury Mushrooms***[67]*, that since the consultation is mandatory, failure to consult the board concerned is the breach of procedural regulations.

Again, a case of **Ridge v. Baldwin**[68] is a good example of this ground that, the chief constable of Brighton was tried for conspiracy to obstruct the course of justice. During the trial he was suspended from office. He was acquitted but the judge told

[66] Layland, *op. cit* p. 137

[67] [1972] 1W.L. R. 190

[68] [1964] A.C. 40

him he lacked the professional and moral readership. The public was entitled to expect.

He sought judicial review to challenge the dismissal as a breach of natural justice. It was held that, the watch committee was in breach of the principles of natural justice as well as of the statutory regulations governing policy discipline. It was contrary to natural justice to decide the issue without hearing the chief constable. Hence, natural justice was not confined to situations where a judicial or quasi- judicial function was being exercised. This landmark decision is recognition of the impact of decisions of administrative bodies on people's life.

Therefore, a breach of common law rules and natural justice based on the right to a fair hearing (*audi alteram partem*) to hear the other side and the rule against bias (*nemo judex in causa sua*). Therefore, if the administrative makers fail to undergo these rules is where now the court can intervene through judicial review.

2.5.4 Proportionality

Proportionality is concerned with the way in which the decision maker has ordered his priorities, the very essence of decision – making consists in the attribution of relative importance to the factors in the case. In the human rights context, proportionality involves a balancing test and the necessity test. The former scrutinises excessive and onerous penalties or infringement of rights or interest whereas the later

takes into account other less restrictive alternatives.[69] This doctrine ordains that administrative measures must not be more drastic than is necessary for attaining the desired result.

If an action taken by an authority is grossly disproportionate, the said decision is not immune from judicial scrutiny. Apart from the fact that it is importer and unreasonable exercise of power, it shocks the conscience of the court and amounts to evidence of bias and prejudice.[70]

The case of **R. v. Secretary of State for the Home Department**[71], noted that the criteria of proportionality that; proportionality may require the reviewing court to assess the balance the decision – maker has stuck, not merely whether it is within the range of rational or reasonable decisions. Proportionality may go further than the traditional test as it may require attention to be directed to the relative weight accorded to interest and consideration.

In the case of **Peter Ng'omango v. Gerson Mwangwa and Attorney General**[72], in declaring the section unconstitutional and so void, the court held that the principle of proportionality or reasonableness requires that the means employed by the

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[69] Takwani, op.cit. p.273

[70] *Ibid*

[71] [2001] UKHL 26

[72] [1993] TLR 77

Government to implement matters in public interest should be no more than is reasonably necessary to achieve the legitimate aim. That the government must show that the restriction imposed on a basic human right is required by compelling social need and that it is so framed as not to limit the right in question more that is necessary or proportionate to achieve a legitimate objective.

In **R. v. Secretary of State for the Home Department**[73], Lord Steyn noted that the criteria of proportionality are more precise and more sophisticated than the traditional grounds of review and on to outline three concrete differences between the two; that proportionality may require the reviewing court to assess the balance the decision–maker has struck, not merely whether it is within the range of rational or reasonable decisions. Proportionality test may go further than the irrational test as it may require attention to be directed to the relative weight accorded to interest and considerations and even the heightened scrutiny test developed in **R. v. Ministry of Defense ex.p, Smith**[74] is not necessarily appropriate to the protection of human rights.

2.6 Conclusion

To sum up, the aggrieved party to be succeed in applying for prerogative remedies against administrative actions, must be observed and maintained the procedures laid down under those types of it and grounds for applying it under judicial review.

[73] [2001) 2 A.C. 532

[74] [1966] Q. B. 517

Nevertheless, types of prerogative remedies and its some parties are seem to be more complicated and so uncertain to obtained because its conditions are so prolonged in the mantic that layman can’t understand what is going on the matter. It is the time now, through debating or seminars to educate different people with different caliber in order to go hand in hand with the legal system of Tanzania.

CHAPTER THREE

ANALYSIS OF LAWS AND PROCEDURES IN APPLICATIONS FOR PREROGATIVE REMEDIES IN OTHER LEGAL SYSTEMS

3.1 Introduction

This part introduces different laws and procedures in application for prerogative remedies in other legal systems with the aim that, the researcher intended to make an analysis on it by revealing whether the application that has been used in other legal systems is similar with the legal system of Tanzania.

3.2 Procedures for Application of Prerogative Remedies in England

The remedies themselves are at the heart of judicial review; these are quashing order, prohibiting order and mandatory order formerly known as certiorari, prohibition and mandamus. Prerogative is an ancient source of power. Understanding of what it comprises has changed over time. It can be used to mean (a) those power peculiar and rights not derived from statute but from (or recognised by) common law; (b) personal rights enjoyed by the monarch, which principally concerned with prerogative in the sense of that body of powers, rights, immunities and duties belonging to the Crown and not statute based.[75]

[75] Peter, Leyland (2005). Texbook on Administrative Law, 4th ed, Oxford University Press, p.504

Due to the complexity and difficulties on the application of the said remedies. The writs of certiorari, prohibition and mandamus were replaced by orders of similar title and scope, so that they were further simplified. In order to obtain certiorari, prohibition or mandamus a motion must first be made to the High Court for leave to apply. This is made *ex parte* i.e. without notice to the respondent (public authority). Refusal is subject to appeal, and the Court of Appeal may then dispose of the whole case itself. The rules of court prescribe a time limit of six months relatively to most other proceedings (a very short time) for certiorari, though the court has discretion to extend it. And even within this time limit the remedy may be refused if the applicant has been guilty of delay and so caused hardship to the other party.[76]

No time limit is prescribed for prohibition. There is no proper interlocutory process, as there is in ordinary actions, so there is no regular procedure for obtaining an order for discovery of documents by the other side or for serving interrogatories. When leave has been granted, the application itself is made by originating motion. Evidence is given on affidavits. The court's only means of deciding disputed issues of fact in the normal manner is to direct a special issue to be tried; but that is a roundabout procedure, and the court may dismiss the application rather than resort to it.[77]

If the case turns upon a conflict of evidence, certiorari and prohibition may therefore involve difficulties. It has been said of them, that they, afforded speedy and effective

[76] *Ibid*. p.551

[77] *Ibid*, p. 551

remedy to a person aggrieved by a clear excess of jurisdiction by an inferior tribunal. But they are not designed to raise issues of fact for the High Court to determine *de novo* ...where the question of jurisdiction turns solely on a disputed point of law; it is obviously convenient that the court should determine it there and then. But where the dispute turns on a question of fact, about which there is a conflict of evidence, the court will generally decline to interfere.[78]

The Crown has a privileged position for obtaining its own prerogative remedies. Where the Attorney – General applies for certiorari on the Crown's behalf, he does not require leave of six months' time limit. But the court retains all its normal control over the merits of the case. Likewise the Crown may obtain prohibition in case of an excess of jurisdiction, even though the party affected cannot do so because his conduct has disentitled him to the remedy. A serious defect of prerogative remedies procedure is its incompatibility with the procedure for obtaining private law remedies. In principle a litigant ought to be able to ask for all possible remedies in the alternative. Prerogative remedies can be sought only by their own special procedure, in which the court is asked to extend a royal privilege to a subject.[79]

The prerogative remedies were left on one side, so that they are isolated survivors from the old era of separate forms of action. In consequence they have their own

[78] Wade, p. 551

[79] Wade, *op. cit.* pp. 551-552

special procedure which cannot be combined with applications for any other form of relief.[80] Formerly, this required the applicant to obtain rule, an order of the court calling upon the other party to show cause why the prerogative writ should not issue, if this was done successfully at the hearing, the rule was discharged otherwise it was made absolute and the remedy was granted.[81]

3.2.1 Leave/permission to Apply Prerogative Remedies

Elizabeth in her book elaborates procedures to be followed in the legal system of England, that application for prerogative remedies under judicial review must followed administrative act which differs in many ways from the procedures for bringing a private action. The author specified the standing requirements for applying prerogative remedies under judicial review as found into their laws, that is the Supreme Court Act 1981, through the pre - action protocol and claim, which stipulates as follows; before commencing proceedings, the claimant should write to the public body identifying the issues at stake to which the defendant should reply. The purpose of the protocol is to avoid litigation and achieve a settlement, so the court will normally expect all parties to have complied with it. Non - compliance can be taken into account when giving directions for case management or consideration an award of costs[82].

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[80] Wade, p.550

[81] Wade, *Ibid*. p. 550

[82] Giussani, E. *op.cit* pp. 259- 231

The author went further that, claim for prerogative remedies under judicial review are made to the Administrative Court and follow two stages: (i) permission and (ii) the substantive hearing, that the applicant requires the court's permission; this is formerly known as leave to apply.

She said that, the aim of permission hearing acts as filter allowing the court to sift the vexatious claims. It protects public bodies and facilitates good administration by ensuring public bodies are not hampered by unnecessary litigation in discharging their public duties. She went further that, permission was formerly sought *ex parte* i.e. without the other side but the application is now *inter parte* allowing the court to be better informed about both sides of the matter. Permission hearing is largely based on written submissions, though an oral hearing might be convened if necessary on the facts.[83]

3.2.2 Time Limit

In order to obtain certiorari, prohibition and mandamus were a motion must first be made to the High Court for leave to apply, The rules of court prescribe a time limit of six months for certiorari, though the court has discretion to extend it as explained in the case of **R. v. Bloomsbury Country Court ex p. Villerwest Ltd**[84] that, there is a wide inherent jurisdiction to extend time limit.

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[83] Ibid p. 231

[84] [1971] 1 W. L. R. 362

Again in the case of **Stratford- on – Avon DC ex.p. Jackson**[85] it was held that, time should be extended but the court would still have discretion to consider the delay at substantive hearing. The claims for judicial review must be brought promptly and in any event within the specified time of the event complained of it, that these time limits mean applications should be made as soon as possible once it is clear that the case is suitable for judicial review.[86]

3.2.3 Locus Standi

That permission will not be granted unless the applicant has standing. The case of the **R v. National Federation of Self Employed and Small Business Ltd**[87] outlined different categories have been granted standing, these are individuals, representative standing, pressure groups and organisations, local government and human rights representatives.

In deciding whether or not to grant permission a judge has considerable measure of discretion, where permission to proceed is given. It may include directions. Such directions may include a stay of proceedings to which the claim relates. The decision to either grant or refuse permission may be made by the court without a hearing. Whether or not a hearing has taken place, the court must serve the order

[85] Spencer, M. and Spencer, J. Constitutional and Administrative Law, Sweet and Maxwell, p. 96.

[86] Sita Ltd. v. Greater Machester Weste Disposal Authorities [2011]EWCA Civ Case No. 156

[87] [1982] A.C. 617

giving/refusing permission on; the claimant, the defendant and any other permission who filed an acknowledgement of service.

The crucial aspect of *locus stand* is the meaning of sufficient interest in the case of **R.v. Inland Revenue Commissioner Ex. Parte National Federation of Self - Employed and Small Business Ltd**[88], stated that, the general trust of the decision has two elements to it, first, the applicant must show his or her relationship what the matter is and establish an arguable, second, the applicant must show his or her relationship to that matter, thus the test is a mixture of the fact and law and it is clear the merits to show *prima facie case*. The court would be in error if grants permission under this test, the court can consider issues such as the matter of the power involved, the seriousness of the alleged breach, the subject matter of the claim and the likelihood success.

The Judge Over Your Shoulder[89] states that, "If the person challenging the decision can say that he is affected by it and there is no more appropriate challenger, and there is substance in his challenge, the court will not usually let technical rules on whether

[88] [1982] A. C. 617

[89] The Judge Over Your Shoulder, A Guide to Judicial Review for UK Government Administrators, 4th ed. 2006 Treasury Solicitor, para 3,4, referring to the case of R. DPP ex part Bull and Another [1998] 2 All ER 755 OBD in which Amnesty International UK was held to have standing.

he has sufficient interest stand in its way." Both representative groups and pressure groups acting in the 'public interest' of the people directly affected.

In the case of **R. v. Monopolies and Mergers Commission, *ex - parte*, Argyll Group plc**[90] Lord Donaldson observed that, the first test which is applied on the application for leave permission stage will lead to a refusal if the applicant has no interest whatsoever and is, in truth, no more than a meddlesome busybody. If the application appears to be otherwise arguable and there is no other discretionary bar, such as dilatoriness on the part of applicant, the applicant may expect to get leave to apply, leaving the test of interest or standing to be re-applied as a matter of discretion on the hearing of the substantive application. At this second stage, the strength of the applicant's interest is one of the factors to be weighted in the balance.

The court has been very flexible and has granted standing in a variety of situations where the merits of the case appear to justify intention. Where is direct or indirect, an effected by a decision taken by a public body, and can show an arguable case on the merits. The grant of standing straightforward, it is explained in the case of **R. v. Secretary of state for foreign and commonwealth affairs ex. parte Ress Mogg.**[91] Groups and organisations may be granted standing if they are recognised group acting in the interests of the wider public. In the case of **R v. HM inspectorate of Pollution**

[90] [1986] 1 WLR

[91] [1994] QB 582

ex. parte Greenpeace[92], held that, the applicant was a respected body with a genuine interest in the issues raised, the applicant need to have a sufficient interest in a matter to be allowed to seek prerogative remedies.

The relationship between standing at the leave stage and at the substantive hearing has been explained in the case of **Argyll**[93] by Lord Donaldson as follows, at the leave stage , an application should be refused only where the applicant has no interest whatsoever and is a mere meddlesome busybody, however the application appears to be arguable and there is no other discretionary bar such as dilatoriness, the applicant should be given leave and standing can then be reconsidered as a matter of discretion at the substantive hearing. At this stage, the strength of the applicant's interest will be one of the factors to be weighed in the balance. He emphasised that standing will, in substance, vary from area to area, this will depend upon the strength of the applicant's interest, the nature of the statutory power or duty in issues, the subject matter of the claim and the type of illegality which is being asserted.

Wade in his book had the following to say on those procedures that prerogative remedies as a body have hereditary defects, which are attributable to the fact that they escaped the radical reforms of the ninetieth century in which the old forms of action, with their multifarious peculates, where swept away and replaced by a single and

[92] [1994] 4 All E.R 329

[93] [1982] A.C. 617

greatly simplified scheme procedure, the prerogative remedies where left on one side, so that they are isolated survivors from the old era of separate forms of action. In consequence they have their own special procedure which cannot be combined with applications for any other form of relief[94].

3.3 The Laws Relating to Applications for Prerogative Remedies in England

In discussing laws and procedures for applications of prerogative remedies in the legal system in England, the report was made and recommended the following, that *locus standi* which is mentioned in section 31(3)[95] of the Supreme Court Act, should be abolished, stating that no other jurisdiction had been found in which the citizen needed leave from a court to challenge the legality of administrative acts.

It was also noted that no leave requirement was as to be found in the case of statutory application to quash, on which the view to be found in the case of **O' Reilly v. Mackman**[96] that leave *inter alia* was required to protect the administrative was rejected in the report. Again the report recommended further that, time limit is too short, therefore, the suggestion was that, there should be no time limit for challenging some administrative law matters.[97]

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[94] Wade, p 550

[95] Supreme Court Act of 1981

[96][1983} 2 . AC. 237 HL

[97] Beaton, J and Mattew, M. H. (1993), Administrative Law: Cases and Materials, Oxford University Press, pp. 424

3.3.1 The Power of the Court Against Administrative Action in England

The most important part of the oversight of tribunals and inquiries is directed to ensure that they act in accordance with the law. This applies to the whole range of administrative action. The most obvious of all forms of maladministration is illegal action. And in this area it is to the ordinary courts of law that we must look for remedies.

The wider powers of the British courts to control action by officials are based upon the doctrine of *ultra vires* and, in a more restricted area, on error on the face of the record. So far as *ultra vires* is concerned the principle is: if an act is within the powers granted, it is valid. If it is outside them, it is void. Somehow cases have to be brought within this principle. If necessary the court reads the statute as containing an implied limitation that the administrative decision shall be reasonable or that it shall conform to certain implied purposes or that particular facts shall exist.[98]

The simple situation in which the citizen would look to the courts for assistance against acts of maladministration would be, first, a failure by the official to take some action which it was his duty to take; secondly, the use of a power for a purpose for which it was not intended; thirdly, the use of a power beyond the limits placed upon it, though not for an unauthorised purpose. There are well-known remedies in English law for these situations and they may be briefly noticed. There are remedies of

[98] Wheare *op. cit*. pp. 690 - 695

certiorari, prohibition, mandamus and habeas corpus. Certiorari calls a public authority to account for exceeding or abusing its power. Mandamus calls for the proper discharge of some public duty, and is available against Ministers of the Crown as well as other public authorities. It plays an important and efficient part in public law.[99]

The prerogative orders are bedeviled by a complex and restrictive procedure and practice. It is a weakness of the orders that discovery of documents cannot be obtained. Moreover, it may be that a potential applicant who did not know of the illegality of the administrative action for some time after it was taken will be unable to use the orders after the lapse of six months.

Hence, the Law Commission put forward therefore, as their provisional views, the proposal that there should be a single remedy and procedure for the prerogative remedies under judicial review against administrative actions and orders, which might be called the application for review. Under this single procedure, they wrote, we envisage that the applicant would be able to ask for any form of relief at present obtainable for the control of administrative action in the High Court. Thus the applicant seeking review might ask the court to *quash* the particular administrative decision or order, to enjoin the administrative authority from exceeding its

[99] *Ibid.*

jurisdiction or powers, to *command* the authority to act where it is under a duty to do so, or to *declare* the action or order invalid and of no effect.

The Law Commission produced in October 1971 a working paper 32 intended for circulation to persons and bodies interested with a view to comment and criticism. In this paper they reiterated their views on the unsatisfactory nature of the remedies available. This proposal, though relatively simple to make or state, involves many consequential problems, and in particular questions of *locus standi*, time limits, and exclusion clauses together with alternative remedy. The working paper deals with them lucidly, putting forward arguments on both sides. One final point in their proposals should be mentioned. The specialised supervisory jurisdiction which we regard as essential to the consistent application of principles of administrative law could be secured by the assignment of judges with particular experience of administrative law to hear applications for review.

3.4 Application for Prerogative Remedies in the Legal System of India

In the legal system of India, there are provisions in the Constitution which empower the Court to issue remedies when the rights of an individual s at stand.[100] that, the declaration of fundamental rights would be meaningless unless these rights can be enforced at the instance of the persons on whom they are conferred. The Constitution itself has laid down the following provisions for the enforcement of the fundamental

[100] Takwani, op.cit. p. 290 and India Constitution, article 32 and 226

rights. The Supreme Court and the High Courts are empowered to issue writs for the enforcement of fundamental rights against any authority of the State. A proceeding under the said articles described as a constitutional remedy and the right to bring such proceedings before the Supreme Court is itself a fundamental right.[101]

Article 32 stipulates that remedies for enforcement of rights conferred by this part (1) the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this part is guaranteed. (2) The Supreme Court shall have power to issue directions, orders or writs, including writs in the nature of *habeas corpus* mandamus, prohibition, *quo warranto* and *certiorari* whichever may be appropriate for the enforcement of any of t rights conferred by this part. Without prejudice to the powers conferred on the Supreme Court by clauses 1-2, Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause 2.[102]

3.4.1 Power of the High Court to Issue Prerogative Remedies in India

The High Court have a power throughout the territories in relation to which its exercises jurisdiction to issue to any person or authority including in appropriate cases any Government, within those territories directions orders or writs including

[101] India Constitution 1950

[102] *Ibid*

prerogative remedies. Under article 226, The High Court may issue writs in the nature of prerogative writs as understood in England for doing substantial justice.[103]

3.5 Prerogative Remedies in United States of America

In the United States federal court system, the issuance of writs is authorised by U.S. Code, Title 28 and Section 1651. The language of the statute was left deliberately vague in order to allow the courts flexibility in determining what writs are necessary in aid of their jurisdiction. Use of writs at the trial court level has been greatly curtailed by the adoption of the Federal Rules of Civil Procedure and its state court counterparts, which specify that there is "one form of action". Nevertheless, the prudent litigator should familiarise himself or herself with the availability of writs in the jurisdiction in which he or she is admitted to practice. In the case of **Marbury v. Madison**[104] is well explained in the legal system of United America of the application for prerogative remedies.

Although much criticised, they have been almost entirely abandoned in the federal sphere in the United States. This is of course, an enormous exception involving remedies over a wide field of administrative actions affecting all the citizens of almost all the individual states of the Union. We must not exaggerate the extent of the reforms in the United States, while acknowledging that in the federal sphere and in

[103] *Ibid*, article 226

[104] 5 US (I Cranch) 137, 2L ED, 60

states such as New York and Illinois, the American citizen has a simpler remedy than the British citizen. In another sphere, however, the citizen in Britain is better placed than the citizen of the United States and surprisingly so in the sphere of sovereign immunity, by which a government may claim that it cannot be sued without its own consent. It is, of course, extraordinary that in a country where there is no king, where sovereign power is understood to be in the hands of the people, the doctrine should have been accepted that the state was not liable for[105] damages inflicted by its agents on private individuals.

3.6 Application of Prerogative Remedies in Kenya

In Kenya also the procedures in application of prerogative remedies are also derived from the legal system of England. And the law relating those procedures is the Law Reform Act under section 8 which stipulates that, to grant orders of mandamus, prohibition and certiorari is conferred upon the High Court, hence the High Court have inherent powers to issue the orders of prohibition and certiorari.[106]

3.6.1 Application for Leave

That the first step is to apply to the High Court for leave to apply for judicial review, Application for leave is *ex parte* by way of chamber summons. The chamber summons contains the following particular, a statement setting out the name and

[105] Schwartz and Wade, *op. cit.*, pp. 221-222.

[106] Kenya Law Reform Act. Cap 26 2009 (R. E. 2002)

description of the application. The relief sought, the dates that are sought and grounds in which the orders are sought.[107]

The application must be accompanied by an affidavit verifying the facts relied upon. This is provided for under the Civil Procedure Rules Orders LIII[108] rule 1 which states that no application for an order of mandamus, prohibition or certiorari made unless leave that for has been granted in accordance with this rule.

An application for such leave as aforesaid shall be made *ex- parte* to adjudge in chambers and shall be accompanied by a statement out the name and description of the applicant, the relief sought and the grounds on and by affidavits verifying the facts relied on. The judge may, in granting leave, impose such terms as to test and to give security as he thinks fit[109].

3.7 Conclusion

In making analysis over other legal systems in the laws and procedures used in application for prerogative remedies, all its applications are difficult to apply, but England has made the different reforms which adhere to the easiest of its applications to lead many aggrieved people to apply those prerogative remedies. Either in Britain

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[107] *Ibid*

[108] Kenya Civil Procedure Rules Orders 53. 2010

[109] Lumumba, P.L.O. (2006), 2nd ed, Judicial Review in Kenya, Law Africa p. 59

and the federal government of the United States has been mentioned already in the position of the prerogative orders as remedies against maladministration.

The United States inherited these writs from Britain. But all in all the procedures and applications for prerogative remedies in other legal systems seem to be the same even though laws differ according to one country to another, cases itself and the circumstances.

CHAPTER FOUR

LAWS AND PROCEDURES FOR THE APPLICATIONS OF PREROGATIVE REMEDIES IN TANZANIA

4.1 Introduction

Under this topic, the researcher revealed the different laws and its procedures in application of prerogative remedies particularly in the legal system of Tanzania, here the researcher intended to examine those laws that to what extent those laws as been used in the legal Tanzania are adequate, therefore, the following variables were discussed, laws, procedures, the power of the High Court and natural justice.

4.2 Procedures for Application of Prerogative Remedies in Tanzania

An application for prerogative remedies can only be made by the High Court through the judicial review as the supervisory power as it been stipulated in the Constitution of the United Republic of Tanzania article 108, that … the High Court shall have jurisdiction to hear every matter of such type according to legal traditions obtaining in Tanzania.[110]

In application for prerogative remedies, the High Court investigates the legality of an action or decision of an inferior tribunal or authority through judicial review, that when subjecting some administrative action or order to judicial review the court is

[110] The Constitution of United Republic of Tanzania, (supra)

concerned with its legality, it review question whether is lawful or unlawful.[111] In order the aggrieved person to be granted prerogative remedies, the different procedures must be observed as the researcher explained hereunder;

4.2.1 Leave/Permission Stage

The first stage that is leave stage to apply prerogative remedies is instituted by; chamber summons accompanied by a statement of grounds for seeking the relief and affidavit. The purpose of this stage is to weed out frivolous and vexatious, hence leave stage is an procedural requirement as was been explained in the case of the **Republic *ex – parte* Peter Shirima v. Kamati ya Ulinzi na Usalama, Wilaya ya Singida, the Area Commissioner and the Attorney General**[112] whereby the applicant had been arrested and charged with selling goods at prices in excess of the maximum prices set under the Regulation of Price Act. Some goods were confiscated from his shop and produced as exhibits in the proceedings, subsequently, the charges were withdrawn and in consequence the trial magistrate ordered the goods to be restored to the Police. The applicant appealed against this order, but before it was heard, the Officer Commanding District (OCD) informed him that the goods were to be sold by the police, his trading license had been revoked and he had to leave Singida town within a specified period.

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[111] Wade, *op.cit*. p. 36

[112] (1983) TLR 375 (HC)

The applicant applied for remedies of certiorari and prohibition to quash the orders of the OCD and to restrain him from carrying out the order of expulsion. The application was granted, he later learnt that the OCD was acting on the orders of the Area Commissioner and the District Defense Committee (Kamati ya Ulinzi na Usalama). He then applied for leave to apply for the orders of certiorari and prohibition against the Area Commissioner and the District Defense Committee.

The court held as follows:

(i) The practice of seeking leave to apply for prerogative orders has become a part of our procedural law by reason of long use.

(ii) The existence of the right of an appeal itself is not necessarily a bar to the issuance of prerogative orders; the matter is one of judicial discretion to be exercised by the court in the light of the circumstances of each particular case.

(iii) Where an appeal has proved ineffective and the requisite grounds exist, the aggrieved party may seek for, and the court would be entitled to grant, relief by way of prerogative remedies.

Hence, the court responded that the leave was a legal requirement has become a part of our procedural law.Stamata, J. was uncertain whether the application was competent in the absence of prior leave and being handicapped by the extremely poor library at Mbeya, he took a leaf from **D. C. Kiambu v. *ex. parte*. Ethan Njau**[113], in which Gould, J. A. made allusions to leave to apply being obtained before the crown

[113] (1960) E. A. 109.

was joined in mandamus proceedings. Samatta, J. said that, "I recognise, of course, the desirability of making proceedings before courts as simple and as short as possible, but I think I should follow at a respectable distance behind the learned Justice of Appeal and hold that his observation, obiter dictum as it was, represents also the practice which ought to be followed in this country.

Taking in account in the case of **Mohamed v. Regional C.I.D. Officer, Mbeya**[114] whereby a question was raised in a preliminary objection and it was whether an application for mandamus could be entertained in the absence of prior leave, Mwakibete, J. stated, *inter alia* that:

The urgency of the matter, the subject of this application – cannot be overemphasised. There is an allegation – albeit impliedly – of flagrant misuse of authority to the suffering of the applicant. Surely the circumstances demand that the application is heard with dispatch on its merits… It is a case properly crying for dispensation of the alleged leave. Thus by virtue of this court's inherent powers I hereby order that the leave to file the application be dispensed with.

From the wordings of Mwakibete J. it is implicit that the learned judge acknowledges the desirability of an application for prior leave but he develops a principle that the court may dispense with the requirement of a leave on the exigencies of the case before it.

[114] Miscellaneous Criminal Case No. 29 of 1978 (Mbeya Registry)

Since the leave is the procedural requirement there was the misconduct between judges, taking an example in the case of **Lakarau v. Town Director Arusha**[115] where an application for mandamus had similarly been brought without prior leave. It was there stated by Maganga, J. that:

… it still appears to me that the application as filed is incompetent for the reason that no leave to file the application had been granted. The procedure for orders of Mandamus and other orders as stated at page 70 of Halsbury's Laws of England, 3rd ed, Vol.11 make it mandatory for leave to apply to be obtained before an application for any of the writs is made. It is stated therein that … no application can be made unless leave therefore has been granted.[116] What court of laws ventured to say in the above cases are that the High Court has the power to grant an interlocutory injunction before hearing an application for leave to apply for a prerogative order if it deems fit.

Different view was taken by Mroso J. in the case of **Makule v. The R.P.C. Kilimanjaro**[117] whereby he was considering an *ex- parte* application for leave to apply for mandamus and ruled that leave to apply was not part of the law of this County, Citing the case of **D.M.T Ltd. v. The Transport Licensing Authority**[118]

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[115] Miscellaneous Criminal Cause No. 14 of 1978 (Mbeya Registry)

[116] Halsbury's Law of England, 3rd ed. Vol. 11

[117] Miscellaneous Civil Application No. 87 of 1979 (Arusha Registry)

[118] [1959] E. A. 403

and section 2(2) of the Judicature and Application of Laws Ordinance[119], he therefore struck out the application.

Responding to above arguments, Lugakingira J. (as he then was) stated that it is clear from section 2(2) of Judicature and Application Law Ordinance, that what the High Court is expected to apply is the substance only of the English Common law, the doctrines of equity and the statutes of general application in force on the 22nd July, 1920. He continued to ascertain that it is evident that prior leave has been the accepted procedure before the High Court for long use.

Lugakingira cited the case of **Re Fazal Kassam** (**Mills) Ltd**[120] that where an application for writs of certiorari and mandamus, leave had been applied for and granted. Again in the case of **Re Hirji Transport Service**[121] was ruling on application for leave and it was granted. Lugakingira concluded that it is therefore clear that the efficacy of applying for leave as a procedure has never before been questioned or doubted. Those two laws create a requirement for leave to apply for prerogative orders, thus one may argue basing on these provisions that leave is both statutory and procedural.

Prerogative remedies are not available as a right; hence the application requires the courts' permission as held in the case of **Tanzania Dairies Ltd. v. Chairman,**

[119] Cap 453

[120] [1960] E.A 1002

[121] [1961] E. A. 88

Arusha Conciliation Board and Isaack Kirangi[122] that the orders of certiorari and mandamus among other prerogative orders are discretionary and the High Court may refuse to grant them even where the right has been established.

However, leave as statutory and procedural requirement, it is originated from the English Common Law, to be applied in the legal system of Tanzania, but taking into account this procedural stage is so complicated not only for judges but also to the aggrieved parties when they intend to file a petition to the High Court to challenge the decision over administrative actions, hence it is a time now to revise out those laws and procedures which are repugnant to the legal system of Tanzania in order to ensure justice of the aggrieved person and societies as well. In hearing permission/leave stage; three important things should be well considered these are time limit, standing (*locus standi*) and alternative remedy, these also been applied in other legal systems including Tanzania.

4.2.1.1 Time Limits

In the case of **Alfred Lakarau v. Town Director**[123] (Arusha) in dismissing the application. Held that the reasons for the five-month delay in challenging the order terminating the tenancy have not been given. The principle in granting orders of *mandamus* is that except where the delay is duly accounted for, mandamus will not be granted unless applied for within a reasonable time after the demand and refusal to do

[122] [1994] TLR 33 HC

[123] [1980] TLR 326

the act. This application could not therefore have been granted in the absence of reasons for the delay even had the application been filed. Hence the time in application for prerogative remedies is essential requirement. In Tanzania, time limit has been stated under section 19 of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act;

… that application for an order under section 17, shall, in specified proceedings, be made within six months or such shorter period as may be prescribed after the act or omission to which the application for leave relates". The time starts to count from the date on which the decision or action which is challenged was made, and this is a condition precedent to application for judicial review.[124]

4.2.1.2 Locus Standi

The question of sufficient interest in the case that is *locus standi is* determined by examining the relation of the applicant and the all the circumstances of the case. In some cases interests may not be personal but of public nature that the court will have to grant leave on public basis though applied by an individual. Some statutes make it clear that any person may institute a proceeding on behalf of the society. For example, if the action or decision is affecting the environment one may apply for leave for judicial review under section 4 of the Environment Management Act, 2004.[125]

[124] Law Reform, *op. cit*

[125] The Environment Management Act, 2004

In the case of **John M. Byombalirwa v. The Regional Commissioner and Regional Police Commander Bukoba**[126] held that in order application to be granted, the applicant must have a *locus standi* that is he must have sufficient interest in the matter he is applying for.

Taking in the said study both England and Tanzania legal systems, procedures in applications for prerogative remedies are almost the same even though there are so slight differences in some procedures, hence it can be concluded that applications for prerogative remedies in the legal system of Tanzania are enshrined from the legal system in England.

4.2.1.3 Alternative Remedies

Prerogative remedies under judicial review are discretionary remedy. It is within the mandate of the court (High Court) to grant leave or to refuse it. The court may refuse to grant leave if it is of the view that there is another adequate remedy available or that the applicant has not exhausted all available avenues or that there are no merits in the application or that the applicant has not *locus standi* or on the ground that the application is time bared. However, existence of other remedies in favour of the applicant may not bar the court to grant leave particularly when those remedies are effective or the procedure to obtain is hard to the applicant.[127]

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[126] (supra)
[127] Nyamaka, D. M, *ibid*,

In **R v. Ministry of Agriculture, fisheries and food exp. Live Sheep Traders Ltd**[128] in exceptional circumstances a court may allow an application for prerogative remedies to proceed even where an alternative remedy is available.

4.2.2 Substantive Hearing Stage

After permission stage successful, substantive hearing stage follows. At this stage, the court gives detailed consideration of whether the public body has infringed on the more grounds of judicial review. Also under this stage the issue of standing is also considered.

In Tanzania, section 11 of the Basic Rights and Duties Enforcement Act[129] states that, the High Court shall set down the petition for hearing as soon as may be convenient after filing and shall notify the date of hearing to the petition and to each of the persons whom a copy of the petition is required to be served. The petitioner and any person on whom a copy of the petition is required to be served may appear either in person or by advocate at the hearing of petition and may adduce evidence.

As common law to Tanzania, the application for prerogative remedies under judicial review is in two stages; leave and the hearing stages. That leave stage is basically the filtering stage, and is therefore intended to weed out frivolous and vexatious application and any other application which in the face of it does not exhibit good

[128] [1995]

[129] Basic Rights and Duties Enforcement Act. Cap. 33, 1994

faith or ex- facie in an abuse of the legal process. Of interest to note and particularly in relation to Tanzania is the legal requirement by the law to have the Attorney General as the necessary party in judicial reviews proceedings as the leave stage.

The Law Reform requires the court to summon the Attorney General to appear as a party has the objective which is not clear and it makes the process of judicial review in Tanzania more cumbersome. As a result, this provision is seen to function as a stumbling block, in the process of seeking legal redress against any arbitrary actions of administrative authorities. The procedure for accessing prerogative remedies is required to be as simple and user – friendly as possible. Where the appearance of the Attorney General is necessary, his role needs to be made clear and should be to defend the rule of law and the sovereignty of the people.

4.3 The Role of the High Court Against the Administrative Actions

The role of the High Court to review administrative actions are empowered by different provisions of our laws, these include section 2 (2) of the Judicature and Application of Laws[130] together with the Constitution of the United Republic of Tanzania article 30 (3) which stipulates that, any person claiming that any provision in this part of this Chapter or in any law concerning his right or duty owed to him has been, is being or is likely to be violated by any person anywhere in the United

[130] Cap 453. and Halsbury's Laws of England, 3rd ed, vol.2 p. 84

Republic, may institute proceedings for redress in the High Court[131], hence High Court is a supervisory power. Hereunder are cited cases which explain on the power of the High Court to review different administrative actions.

In the case of **Palm Beach Inn Ltd and another v. Commission for Tourism and Two Others**[132], where the second applicant, Ms. Naila Majid Jiddawy, was operating a tourist hotel, on the eastern coast of the Island of Zanzibar. The first respondent's employees the closure of the hotel, cancelled her business license, and ordered her to vacate the premises for good. The applicants challenged those three orders in the High Court of Zanzibar which made a number of findings: one, the respondents exceeded their powers in closing the hotel and revoking the applicants' license. Two, the respondents' actions were *ultra vires.* Three, the order served on the second applicant deprived her of freedom of movement. Four, the applicants were denied the right of a hearing in spite of their demands to know what were their faults. Orders of certiorari were granted to quash the 2nd respondent's decisions to close the hotel and canceling the license.

A prohibition order was also issued to restrain the 2nd respondent from purporting to act as the Commission for Tourism while no commissioners had been appointed responding to the above argument.

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[131] The Constitution of United Republic (supra)

[132] High Court of Zanzibar Civil App. No. 30 of 1994 (unreported)

In the connection above, the case of **Ally Linus v. Tanzania Harbors Authority**[133], is very relevant in the supervisory of High Court in the case of prerogative remedies, whereby Nyalali, C.J. who remarks that … it is clear that the basic structure of the Constitution of this country vests the judicial power of the state in the judicature, that is, the judicial function and for that reason the judicial arm of government has the final word about the meaning of the laws of this country.

That is the objective basis of the supervisory function of the High Court, which it exercises by certiorari, mandamus and prohibition; hence it is evident that the scope of judicial review has become almost unlimited. The hallmark of this development is that even purely administrative decisions are amenable to judicial review in order of prerogative remedies to be issued where it seems necessary.

To be sure, ouster clauses are ineffective to exclude the power of the High Court to exercise its supervisory role as conferred on it by article 108 (2) of our Constitution over inferior tribunals and public authorities. It is axiomatic that all statutory power conferred to public officers including the President are subject to supervision by the High Court exercising its classic and traditional function of judicial review notwithstanding an ouster clause.

Taking an example of the case of **James F. Gwagilo v. Attorney General**[134], the judiciary of Tanzania, could intervene even where it is the President himself who had

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[133] (1982) TLR 311
[134] (1994) TLR 73, (HC)

acted. Under this case the plaintiff, a seasoned civil servant was removed from office by His Excellence President directing that he was removed in the public interest. The court reviewed the President's order and held that, statutory clauses ousting the jurisdiction of the courts are ineffective to exclude the power of the High Court to exercise its supervisory role of judicial review conferred on its by article 108 (2) of the Constitution.

In the case of **Juma Yusuph v. Minister for Home Affairs**[135] the applicant was a Tanzanian of Somali origin, the minister for Home Affairs issued a deportation order against him under section 24 of Immigration Act, was arrested and the deportation order was served on him. The applicant then filed an application seeking an order of certiorari, claiming that he was a citizen of Tanzania and had a Tanzania passport which fact the court accepted to be true, in granting the application, the court held that even though it is not an easy or simple matter to interfere with or quash a Minister's decision or order, courts have authority or power, even a duty to quash them in proper and fitting cases.

In doing so, of course the courts are not acting as appellate bodies over the minister's decisions or orders, they only investigate the legality or otherwise of a decision or order and make determinations on these accordingly. In other words, this power of the courts to review or investigate is not based on merit, but on the legality of the

[135] [1990] TLR 80

Minister's decision or order. I am satisfied beyond doubt myself that the applicant is a citizen of Tanzania …the minister acted beyond his power in making the deportation order against the applicant and acted plainly in breach of the provisions in the Immigration Act, 1972.

To be noted that procedures in applications for prerogative remedies are so complicated with a lot of technicalities as which transpire that applicants have shown persistent uncertainty as to the appropriate order to apply for, but even where the appropriate order is sought, problems have arisen to the appropriate procedures. In the case of **Timothy Mwakilasa**[136] Samatta J. held that in the absence of specific provisions the applicant could have been brought under section 95 of Civil Procedure Code, 1966 which saves the inherent power of the High Court to make any orders as be necessary for the ends of justice.

4.4 The Enabling Legal Provisions for Issuing Prerogative Remedies in Tanzania

There are different laws governing the procedures for prerogative remedies in Tanzania under judicial review as shown hereunder;-

[136] (Supra)

4.4.1 The Constitution of United Republic of Tanzania 1977, as Amended

Under this Constitution there are some provisions which guide the prerogative remedies to be served in the legal system of Tanzania as shown below[137]:

Article 13 (6) (a) stipulates that to ensure equality before the law, the state authority shall make procedures which are appropriate or which take into account the principle that, when the rights and duties of person are being determined by the court or any other agency, that person shall be entitled to a fair hearing and to the right of appeal or other legal remedy against the decision of the court or of the other agency concerned, under this provision other legal remedy is judicial review through prerogative remedies.

Again article 30 (3) provides that, any person claiming that any provision in this Part of this Chapter or in any law concerning his right or duty owed to him has been, is being or is likely to be violated by any person anywhere in the United Republic, may institute proceedings for redress in the High Court as a supervisory body under article 108 (2).

Apart from above also article 64 (5) and article 8 (1) of the said constitution provide the same in the following words[138] … where a person alleges that any provision of this part of this chapter or any law involving a basic right or duty has been is being or

[137] The Constitution of United Republic of Tanzania of 1977 as amended time to time

[138] (Supra)

is likely to be contravened in relation to him in any part of the United Republic of Tanzania, he may, without prejudice to any other action or remedy lawfully available to him in respect of the same matter, institute proceedings for relief in the High Court.

4.4.2 Law Reform (Fatal Accidents and Miscellaneous Provisions) Act Cap 310 R.E 2002

This law provides the different prerogative remedies to be issued when the aggrieved person intended to file a petition against the administrative actions or agencies, as explained hereunder:[139]

Section 17 (1) provides that, the High Court shall not, whether in the exercise of its civil or criminal jurisdiction, issue any of the prerogative writs of mandamus, prohibition or certiorari.

(2) In any case where the High Court would but for subsection (1) have had jurisdiction to order the issue of a writ of mandamus requiring any act to be done or a writ of prohibition prohibiting any proceedings or matter, or a writ of certiorari removing any proceedings or matter into the High Court for any purpose, the Court may make an order requiring the act to be done or prohibiting or removing the proceedings or matter, as the case may be.

(3) No return shall be made to any such order and no pleadings in prohibition shall be allowed, but the order shall be final, subject to the right of appeal there from

[139] CAP 310 (R. E. 2002)

conferred by subsection (5) that, any person aggrieved by an order made under this section may appeal the to the Court of Appeal.

Again section 18 of the said law stipulates that where the leave for application for an order of mandamus, prohibition or certiorari is sought in any civil matter against the government, the court shall order that the Attorney General be summoned to appear as a party to those proceedings; save that if Attorney General does not appear before the court on the date specified in the summons, the court may direct that the application be heard *ex parte*.

In connection to above, section 17A requires a court to summon to Attorney General to appear as a party at the leave stage, and if fails to do so at the date mentioned the court may precede *ex- parte*. The requirement is that the Attorney General should appear at leave stage is mandatory but at the hearing stage when the application is bring on it, Attorney General is not a necessary party. It can be sounded that the requirement of the Attorney General to appear at leave stage is not clear, however it has been observed that through section 17A, the Attorney General participated more in the matter considered by the executive which has been filling a fully blown defense with preliminary objections and challenging every small fact at detail that he can hence leave stage turns out to be fully fledged hearing.[140]

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[140] Law Reforms (Fatal Accidents and Miscellaneous Provision) Act, CAP 310 (R. E 2002)

4.4.3 Basic Rights and Duties Enforcement Cap. 3, R.E 2002

The law directs some procedures to be follow in the process of judicial review, starting with section 4 which stipulates that if any person alleges that any of the provisions of sections 12 to 29 of the Constitution has been, is being or is likely to be contravened in relation to him, he may without prejudice to any other action with respect to the same matter that is lawfully available, apply to the High Court for redress.

Section 5 also add that an application to the High Court in pursuance of section 4 shall be made by petition to be filed in the appropriate registry of the High Court by originating summons, but that act does not explaining the meaning of originating summons. While in English practices defines originating summons to mean summons for instituting actions other than summons to appear.

Under section 10 (1) of the said Act, states that, the determination as to whether an application is frivolous or vexatious or otherwise fit for hearing may be determined by a single judge but where the petition is committed to the second stage, that is hearing stage three judges serve that determination, it is important to take note of the two provisions relating to the procedure, section 8 (4) states that, for the avoidance of doubt, the provisions of part VII of the Law Reform (Fatal Accidents and Miscellaneous Provision) Act, which relate to the procedure for and the power of the High Court to issue prerogative orders shall not apply for the purposes of obtaining redress in respect of matters covered by this Act.

The important issue from this provision is whether under the Basic Rights and Duties Enforcement Act, the High Court is barred from granting remedies in the nature of prerogative remedies such as certiorari, mandamus and prohibition because these are remedies covered under chapter 310.

In answering the question Issa Shivji, in his book[141], argued that; the Basic Rights and Duties Enforcement Act must be read together with article 30 (3) of the Constitution of the United Republic of Tanzania which stipulates that any person claiming that any provision in this part of this chapter or in any law concerning his right or duty owed to him has been, is being or is likely to be violated by any person anywhere in the United Republic, may institute proceedings for redress in the High Court. The Basic Rights and Duties Enforcement Act's aim is to facilitate access to the court and not to obstruct it.

Hence, the author concluded that the remedies that can be granted by the High Court in constitutional cases are wide and its list is not closed. What is important is to grant an appropriate remedy that would redress the wrong adequately... this means that, under section 8 (2) the High Court can grant any appropriate remedy including orders in the nature of certiorari, mandamus without bound by the procedures stipulated in part VII of Law Reform (Fatal Accidents and Miscellaneous Provisions) Act.

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[141] Shivji, G. I. (1998), Development in Judicial Review in Mainland Tanzania; Paper presented in Judges, Course on Constitutionalism and Human Rights.

There are some provisions which barred the supervisory power of the High Court, taking an example article 30 (5) that, where in any proceedings it is alleged that any law enacted or any or any action taken by the Government or any other authority abrogates or abridges any of the basic rights, freedoms and duties set out in articles 12 to 29 of this constitution and the High Court is satisfied that the law or action concerned, to the extent that it conflicts with this Constitution is void, or is inconsistent with this Constitution, then the High Court if it deems fit or if the circumstances or public interest so requires instead of declaring that such law or action is void, shall have power to decide to afford the Government or other authority concerned an opportunity to rectify the defect found in the law or action concerned within such a period and in such manner as the High Court shall determine and such law or action shall be deemed to be valid until such time the defect is rectified or the period determined by the High Court lapses whichever is the earlier.

4.4.4 Civil Procedure Code and Criminal Procedure Code Cap 33 R. E. 2002

Samatta J. on his words argues that it should be noted that in the absence of specific provisions on the application of prerogative remedies under judicial review the applicant could have been brought her/his petition under section 95 of the Civil Procedure Code, which saves the inherent power of the court to make any orders as may be necessary for the ends of justice. That in the absence of proviso in the applicable statutory provisions, the establishing of sufficient grounds for leave is

wholly left to the judicial discretion. Such a discretional approach vested upon the courts in primarily due to the fact that in Tanzania.[142]

It is the opinion of the researcher that, the High Court powers to grant relief under these provisions will depend on how the High Court itself exercises the power given to it under the said provisions. However, these laws used in issuing the prerogative remedies in the legal system of Tanzania have been used in interchangeably which may bring a conflict in the legal system of Tanzania, it has just been pointed out that in Tanzania, provisions have not been made clear for the laws to be adopted in applying for prerogative remedies.

4.5 Administrative Actions which Transpire the Rule of Natural Justice

This concept was developed by courts as a remedy to statutory gaps on the rules of procedure. Some statutes are silent on the procedures to be followed in the handling of grievances and some statutes provide for procedure but their provisions are so incomplete that they do not comprise a complete cure to the problem. In view of this fact, courts of law felt the need to supplement statutory provisions by requiring administrative power to be exercised in conformity with the rules of natural justice.

Natural justice has the meaning of justice that is simple or elementary. It is comprised of two basic rules namely; *Audi alteram parteram and nemo judex in causa sua*. The

[142] Timothy Mwakilasa v. The Principal Secretary (Treasury) (1978) LRT

former rule the right of party to be heard before any decision is taken against him. Both parties to the dispute must be given an equal chance to give their version of events. So, in order for them to be able to give their version of events they must have some idea of the case.

It held that in the case of **Franklin v. Minister of Town and Country Planning**[143] the Minister had made a draft order under the New Town Act 1947, designating Steven age as a new town, Objections were lodged and a public local inquiry was held, the minister later confirmed the order. In reply to a certain criticism the Minister said, it is no good you're jeering; it is going to be done. The legality of the minister's order was challenged on the ground that inter alia, this remark and others showed that he was bias. The House of Lords held that the Minister's statutory duties were purely administrative and that any reference to judicial duty or bias on the part of the minister was irrelevant.

When the decision done by the executive or authorities body is where the court can intervene if it appears that those authorities are *ultra vires*, taking example in the case of **Sheikh Abdulla v. The Regional Police Commander Dar es Salaam and others**[144] in this case the President of the United Republic of Tanzania had made an order that the applicant should be deported to Zanzibar from Tanzania Mainland, that

[143] (1947) 2 All ER. 289
[144] (1985)TLR 1

is, Tanganyika, under section 2 of the Deportation Ordinance. The applicant made an application in the High Court, which was in the nature of *habeas corpus*, by challenging on the ground that the President has exceeded his power under the said law. In granting the application, the Court held that a decision or order of the executive will be pronounced as illegal by the court that a decision or order is ex- face bad, or is contrary to the principles of natural justice.

Again in the case of **John Byombalirwa v. The Regional Commissioner and Regional Police Commander, Bukoba**[145] the applicant then filed an application in the High Court for an order of mandamus, in the ruling/order granting the application, which reads more of a thesis, the learned Judge exalted judicial review as an important weapon in the hands of judges of this country by which an ordinary citizen can challenge an oppressive administrative action.

He dwelt at length on the changes that were taking place in the field of administrative law and the need for judges to keep abreast with those changes so as to protect the rights of the citizen against the abuse of power which is entrusted to those who have a public duty to decide on the rights of the citizen. He also took the opportunity to state the conditions which ordinarily have to be proved for an order of mandamus to issue; but he was quick to add that those conditions were not immutable since they were made by judges and so judges can change them so as in suit changing circumstances

[145] (1986) TRL 73

in order to effectively protect individual citizens from oppressive administrative action and that the existence of an alternative remedy is not necessarily a bar to the granting of prerogative orders although it is one to be taken into account in the court's exercise of its discretion.

It is held that in the case of **De Souza v. Tanga Town Council**[146], if a statute prescribes or statutory rules or regulations bindings on the domestic tribunal prescribe, the procedure to be followed, that procedure must be observed, and if no procedure is laid down, there may be an obvious implications that some form of inquiry must be made such as will enable the tribunal fairly to determine the question at issue. In such a case the tribunal, which should be properly constituted, must do its best to act justly and to reach just ends by just means … it must act in good faith and fairly listen to both sides. Again it held that a fair opportunity must be given to those who are parties to the controversy to correct or contradict any statement prejudicial to their view... and to make any relevant statement they may desire to bring forward.

In **Ndensaburo v. Attorney General**[147] the applicant was allocated Plot. No.3 at Ununio area Kinondoni District, Subsequently he read in Uhuru Newspaper that his title for the plot had been revoked by the Minister for Lands and Housing upon the President so signifying. The applicant contended that he had partially developed the plot and produced a receipt of his application for a building permit.

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[146] [1961] E. A 377

[147] [1997] TRL 137 HCD

The applicant gave reasons why his title should not be revoked, but it would see that his reasons by way of showing cause had not been taken into account by the Minister or the President. The applicant then filed an application in the High Court for orders of certiorari and mandamus.

It held that the principle of natural justice which requires a person to be afforded opportunity to defend himself necessarily implies that the person determining the matter will consider the party's defense before making a decision which affects the rights of such party. Failure to consider such defense is a bad as not affording the party an opportunity of the right of hearing.

M. A. Ndolanga v. National Sports Council[148], Bubeshi, J. held that it is trite to remark that an administrative body exercising functions that impugn directly on legally recognised interests. Owes it as a duty to act judicially in accordance with rules of natural justice which basically means the adoption of fair procedure, which fundamentally demands freedom from interest and bias on the part of the administrative body and the right to a fair hearing for those who are immediately affected by its decision.

4.6 Conclusion

I can conclude that, even though prerogative remedies are drawn from England over the years; England itself tried to make amendment and revise time to time the

[148] [1996]TLR 325 HC

procedures for application of prerogative remedies in order to make it easy for those who are going to use.

Different changes have been made; taking for example reforms were made only with the aim of making it easier for the user. Again in India legal system these remedies and its procedures are well explained in the Constitution which is the mother law, this is very important because it helps the aggrieved person to understand where to start and where to end, unlike in Tanzania's legal system which its procedures and laws are still difficult as the aggrieved persons are concerned and even the advocates who dispense justice.

In studying the analysis of different legal systems in England and India many issues were discussed, but one thing to take into consideration is that, laws related to the application for prerogative remedies in the legal system of Tanzania should be looked in the positive respect in the sense that there is a need to compel them in one single legislation in order to simplify those procedures and enhance application for those who are going to use the prerogative remedies.

CHAPTER FIVE

FINDINGS AND DATA ANALYSIS

5.1 Introduction

This chapter presents findings and data analysis from the hypothesis of the study. The researcher addressed different aspects according to the questions raised and answered by respondents in the study. All findings are well presented, analysed and discussed. The findings have been presented in the descriptive way and its analysis is well done by using qualitative together with quantitative techniques, as shown below:

5.2 Respondents Distribution Structure

Distribution structure of respondents who participated in this study was as follows:

Ten respondents were magistrates, twenty were legal officers, fifteen were administrators under the executive rank, five were judges, fifteen were activists and fifteen were academicians.

5.3 Laws Applicable in Application for Prerogative Remedies in Tanzania

The questions were aimed to understand whether respondents were aware of the laws applicable in applications for prerogative remedies. It was revealed that a large number of respondents were not aware of laws applicable in applications for prerogative remedies in the legal system of Tanzania. However, some of them revealed that those laws are not well known by many people together with themselves because its application is so complicated and uncertain; this was tested through

several instruments that were fixed to the targeted respondents. Valid and reliable information were obtained from seventy five respondents through interviews and questionnaires. However, information obtained from the respondents were as follows;

Information was collected through questionnaires and interviews. A total of 40 % respondents who participated in this study, said yes, means that they understood laws been applied under prerogative remedies. However, 60% of respondents said that laws and procedures are not well known to many people.

Hence, the researcher concluded that many people in Tanzania are not aware of laws applicable of applications for prerogative remedies in the legal system of Tanzania.

5.4 Procedures used in Application for Prerogative Remedies

The study also assessed whether procedures used in application for prerogative remedies are adequate or not, hence the respondents responded as follows:

Seventy five per cent (75%) of respondents said that procedures for applying for prerogative remedies are not adequate while only 25% revealed that such procedures were adequate. But their applications are complicated.

5.5 The High Court as the only Supervisory Body for Issuing Prerogative Remedies

The study intended to assess the power of the High Court as a supervisory body in dispensing justice over prerogative remedies under judicial review. This question was tested through questionnaires and interviews together with documentation conducted

by the researcher himself and reliable information was obtained. About 60% of the respondents were of the view that, the power of the High Court to dispense justice is good. The problem remains to the aggrieved parties to obtain their rights in the High Court because the aggrieved person needs to travel from her/his original place to the registries. However, 40% of respondents suggested that, to ensure that the High Court dispenses justice to the aggrieved party or to any person who claims rights thereof, the government should make sure that all regions of Tanzania have High registries.

They also revealed that, the power of the High Court for issuing prerogative remedies is not formed as it might require because of difficulties rendered to it especially for the person who is aggrieved to follow the said procedures which are not known to some extent. They suggested that it should be better to distribute the said jurisdiction to other courts with the aim that justice should be well dispensed. However, respondents exposed that other courts such as Resident's Magistrates Court and District Courts be empowered with such jurisdiction to ensure that prerogative remedies are well granted easily.

5.6 The Adherence of the Principle of Natural Justice Over Administrative Actions

Again the study intended to examine whether the principles of natural justice were adhered to when the administrative authorities made decisions. This question was directed to the administrators and academicians, and was tested through questionnaires and interviews, reliable information was obtained. About 70%

respondents were of the view that, to some extent the right to be heard as one rule of natural justice was not adhered to by authorities which were making decisions. Many administrators are not aware of the rules of natural justice. Hence, they act according to their will and personal interest.

About 20% of respondents were of the view that, principles of natural justice were observed by administrators because they must act according to the power conferred upon them by law. Ten per cent (10%) of respondents said that, they don't know the said principles; they added that there is a need to educate them through seminars on how to observe the principles of natural justice in Tanzania adjudication.

5.7 Findings from other Documents

Many scholars revealed that laws and procedures concerning the applications for prerogative remedies in Tanzania are not settled and not adequate. And some of the learned advocates and learned magistrates practicing are not aware of the application and procedures for the prerogative remedies as examples shown below:

In the case of **Adelina Chugulu and 99 others v. The National Examination Council of Tanzania**[149], that Adelina Chulugu and 99 others filed a chamber summons under section 2 of the Judicature and Application of Laws Act, Cap 358 (R.E 2002), Law Reform (Fatal Accidents and Miscellaneous Provisions) Act Cap 310 and section 95 of the Civil Procedure Code, 1966, The chamber summons was

[149] Misc. Civil. Cause No. 55 of 2005, The High Court of Tanzania (unreported)

for the grant of the order for certiorari quashing the decision of the 1st respondent dated 23rd March 2005, that the High Court may be pleased to grant the order for mandamus compelling the 1st respondent to release forthwith all the National Form Four Examinations results of the applicants, costs and other relief deemed fit. Among other things, the crux of the matter here is whether the provisions of the Civil Procedure Code apply in the applications for prerogative orders, which orders are questioning the already decisions made by public authorities. 'It was held that the answer is 'no' that, there is are different procedures applied in the applications for prerogative orders from those used in instituting civil proceedings under the Civil Procedure Code.

The application of prerogative remedies a party files a chamber summons supported by an affidavit and a statement for the grant of leave first. It is only after leave has been granted will the petitioner petition for the order sought. Hence, the application by Adelina Chigulu which is supported by the affidavit of Lilian Novat Rutenge is for the prerogative orders of the certiorari, to call and quash the decision of the 1st respondent and to compel the 1st respondent to release the examination results of the 100 students, the court emphasised that the application having its own procedures is not governed by procedures found under the Civil Procedure Code 1966.

In this case, the researcher revealed that, since there are no special procedures in applications of prerogative remedies, even learned advocates sometimes find themselves citing different laws or using entirely different procedures.

The case of **Timothy Mwakilasa v. Principal Secretary** (**Treasury)**[150], that the applicant applied for mandamus to compel the respondent to release his pension and the application was brought under section 349 of the Criminal Procedure Code.[151] The section provides that the High Court may in the exercise of its criminal jurisdiction issue any writ which may be issued by the High Court of Judicature in England.

Unfortunately, the application was disposed of through other grounds that Sammatta J. having decided to deny himself the opportunity of expressing any view as to whether the application was properly brought under section 349. It should be noted that in the absence of specific provisions, the application could have been brought under section 95 of the Civil Procedure Code, which saves the inherent power of the court to make any orders as may be necessary for the ends of justice. Seeing the complexity of the applications for prerogative remedies, the questions to ask ourselves is to what extent the learned advocate can understand the usage of enabling provisions in the absence of specific provisions, obviously the matter will remain to be difficult to apply, hence there is a need to amend them.

Taking another example by Jain[152], provided that there is no need to carry out those laws which are borrowed from England, he said that the prerogative orders have been

[150] (Supra)

[151] Cap. 20

[152] Jain, op.cit, p. 534

borrowed in India from England where they had a long and chequered history of development, and consequently, have gathered a number of technicalities, but he emphasised that their constitutional provisions are significant as they indicate that the courts are not bound to follow all technicalities of the English law.

The author among other things, showed that in the applications of prerogative remedies, the problem is in the sense that laws and its applications are so difficult to apply which also leads to aggrieved parties not to obtain their rights. In the aspect of maintain natural justice under the executive is not well observed, since many departments and agencies bypass the existence of the principle of natural justice, taking an example in the case of **Pitman Gatman Garment Industries Ltd. v. Tanzania Manufacturers Ltd**[153], in this case which was a struggle over a piece of land, the Court of Appeal did away once and for all with the ever recurring attempts to distinguish between the so called administrative and judicial functions in decisions making. The Court of Appeal held that the rules of natural justice must be strictly observed by anybody or person performing any function which involves determination of rights, duties or interests of any person or people.

Since the principles of natural justice are unwritten provisions, any infringement of the rights of individuals as a result going contrary to the said principle calls for review of the action by the High Court to find out if there is violation of the principles of natural justice. Taking an example in the case of **James F. Gwagilo v. Attorney**

[153] [1981], TLR 303

General[154], it was held that when the rights are infringed by the executive or administrative departments the right of judicial review, from any decision affecting citizen's rights should be reviewed by the High Court which has supervisory power to dispense justice.

In the finding and analysing the data, most of respondents tried according to their best understanding to assure that the researcher's questionnaires were answered in good faith by fulfilling in those questionnaires sensitively. Data collected were summarised and analysed by using qualitative and quantitative techniques as the result shown hereunder. However, the error which existed was corrected by the researcher before starting to analyse them.

Through questionnaires served, at least 85% of respondents revealed that laws and procedures of applications for prerogative remedies against the administrative actions in the legal system of Tanzania are unclear and uncertain. Based on the laws themselves and its procedures especially on leave to apply and substantive stage, the respondents argued that laws are unclear with a lot of technicalities whereby the laymen or any person without jurisprudential experience cannot understand those procedures.

On the other hand, they argued that, since the High Court is one of the supervisory bodies to dispense justice over prerogative remedies through judicial review is not

[154] High Court of Tanzania at Dodoma, Civil Case No. 23 of 1993 (Unreported)

sustained because aggrieved people are around over the whole country especially in the rural areas, so it becomes difficult to those people to travel from the interior place up to the High Court to find out their rights, hence most of respondents suggested that there is a need to establish or to delegate the said power to other courts in order that, the justice should be well granted under judicial power in issuing the prerogative remedies.

Further, respondents argued that there is a need to revise those laws and procedures governing the applications for prerogative remedies in order to maintain and to enhance the rule of law and justice in the legal system of Tanzania. Even though the procedures are provided, it prolongs time to seek the leave to apply to the High Court and hence can lead to delay of justice.

Other scholars argued that laws and procedures of applications for prerogative remedies are complex to apply hence there is the need to remove those technicalities and to state afresh on those prerogative remedies in the case may refrain to do under *ultra vires*.

5.8 Conclusion

To sum up on what respondents responded it is generally safe and just to say that in all processes of the application for prerogative remedies in Tanzania's legal system is uncertain, neither laws themselves nor their procedures. However, the thing to be taken into account is that, since granting prerogative remedies is the discretion of the

court itself, the changes are needed, as it has been argued by different judges on their views that, the changes that were taking place in the field of administrative law and the need for judges to keep abreast with those changes so as to protect the rights of citizens against the abuse of power which is entrusted to those who have a public duty to decide on the rights of citizens is of paramount importance.

Lord Diplock in the case of **IRC v. Small Businesses**[155] said that, the rules of prerogative remedies were made by the judges and by judges they can be changed, and so they have been over the years to meet the need to preserve the integrity of the rule of law despite changes in the social structure, method of government and the extent to which the activities of private citizens are controlled by governmental authority. With regard to the call to judges to change with times so as to safeguard and promote the rule of law and justice, judge should always be ready to accommodate these changes in order to move with time.

[155] (1962) AC. 617

CHAPTER SIX

CONCLUSION AND RECOMMENDATIONS

6.1 Introduction

This chapter started with conclusion and recommendations from this study. The researcher makes conclusion and recommendations through data collected.

6.2 Conclusion

As it may be noted under each chapter, some specific observations and recommendations have been made in appropriate cases. Under this chapter only general conclusion of the whole work will be made. It was observed that there is ample evidence to support the conclusion that laws and procedures of applications for prerogative remedies in the legal system of Tanzania is the issue, that such is complicated and has a lot of technicalities. Though the Government established[156] as procedures to be followed, it is suggested by the researcher that technicalities should be removed so that the aggrieved party can file petition easily so as to maintain justice.

6.3 Recommendations

The researcher's recommendations are as follows:

The laws relating to applications for prerogative remedies through judicial review are unclear; hence a positive response is needed in order to put the legal system of Tanzania in conformity with the current changes of the legal system and social-

[156] Government Notice No. 324 published on 05/09/2014

economic dynamics. The procedures of applications for prerogative remedies need to be improved, in such a way that all technicalities as adapted from the common law tradition be demolished. For example, the requirement for leave to apply for remedies of certiorari, mandamus and prohibition, is not a user friendly for ordinary people, therefore it is better that it should be certain in one way track as normal proceedings.

To encourage more administrators to act in accordance with the rules and regulations rather than to act according to their personal interest as the respondents revealed in the questionnaires and to enhance the ability of executive on dispensing justice to the people. More effort is needed to make sure that, administrative departments and agencies they should act within their powers and jurisdiction and not to a breach the rules of natural justice.

The skill of applications for prerogative remedies under judicial review will be only meaningful if the majority of people can have access to the court of law and if appropriate and adequate remedies are readily available for anyone who approaches the court for remedies. Hence, the quick considerations are needed to make review of the administrative justice in Tanzania in the light of the changes which have taken place in the system of administrative since independence and determine how much changes have affected administrative justice and particularly the scope of the supervisory jurisdiction of the High Court in the exercise of its power of judicial review.

Lawyers are confronted with growing difficulties in advising prospective applicants as to the precise criteria for being granted leave to apply for prerogative remedies. Hence, there is a need to improve the levels of consistency in leave decisions and to confine and structure the discretion of the judges in this respect.

The right of an access to justice is one of the fundamental aspects of the rule of law. The Chief Justice should also use his power to make rules that will help to clear all technicalities in the system in the applications for prerogative remedies from time to time. However, the following recommendation has been drawn by respondents during the study that, to improve the system of applications for prerogative remedies in the legal system of Tanzania, the power to issue them should be well extended in other courts.

A single legislation has to be enacted which will govern the principle of judicial review especially in the application for prerogative remedies against administrative actions. Those prerogative remedies need to be included in our mother law that is the Constitution of the United Republic of Tanzania, in order that, it can help any person who needs to apply them to understand the starting point because those said remedies are indicated in the law which is not easy to an aggrieved person to understand it.

Many reforms need to be established in order to make the easiest process for every one whom needs to apply those remedies.

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APPENDICES

Appendix 1: Respondents' Questionnaires

I am LL.M student from the Open University of Tanzania, currently conducting a research with the aim of fulfilling the academic requirements; the topic is **Applications of Prerogative Remedies Against Administrative Actions in Tanzania** '**Analysis of Laws and Procedures'**. You are humbly asked to participate in filling in these questionnaires in order to provide me with information that will help me to get the necessary data for the said topic. Confidentiality remains assured and no individual's data will be reported or disclosed.

With thanks.

1. Laws applicable in applications for prerogative remedies in the legal system of Tanzania are adequate?

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2. Procedures used in applications for prerogative remedies in the legal system of Tanzania are clear and well known to applicant?

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3. Do you think the High Court being the only body with such jurisdiction is proper?

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4. Do you think the stage of leave to apply is adequate in the legal system of Tanzania today?

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5. Since many administrators are not lawyers, do you think the principles of Natural Justice are observed by administrators in Tanzania?

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