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FACULTY OF LAW

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**THE EFFICACY OF THE NATIONAL LAWS IN TANZANIA
ON CITIZENSHIP BY BIRTH**

By

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**A Research Dissertation Submitted in Partial Fulfillment of the Requirements
for the Master of Law (LL.M) of Mzumbe University**

2013

CERTIFICATION

We, the undersigned, certify that we have read and hereby recommend for acceptance by the Mzumbe University, a dissertation entitled: **The efficacy of the national laws in Tanzania on Citizenship by Birth** in partial fulfilment of the requirements for award of the degree of Master of Laws in Constitutional and Administrative Law (LL.M) of Mzumbe University.

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DEDICATION

I dedicate this work to my beloved family, especially to my son, MUSA ALLY MAKUNGU and my mum MWANAMIZE KHAMIS BAKARI who bore with my absence during the whole time of my study.

ABBREVIATIONS

A.C.J.H.R	African Court of Justice and Human Rights
ACHPR	African charter on Human and Peoples' Rights
AU	African Union
Cap.	Chapter
CEDAW	Convention on Elimination of All Forms Discrimination on Women
E.A.C.J	East African Court of Justice
EAC	East African Community
I.C.J	International Criminal Justice
I.C.T.R	International Criminal Tribunal for Rwanda
I.O	Immigration Officer
ICCPR	International Convention on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICWR	International Convention on Women's Rights
R.E	Revised Edition
R.I.T.A	Registration, Insolvency and Trusteeship Agency
T.C.A	Tanzania Citizenship Act
TANU	Tanganyika African National Union
U.R.T	United Republic of Tanzania
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHCR	United Nations Commissioner for Refugees

LIST OF STATUTES

Principle Legislations

The Constitution of the United Republic of Tanzania, 1977 (R.E 2002)

The Constitution of Zanzibar, 1984 (Toleo la 2010)

The Germany Constitution Adopted on 23rd May, 1949

The Nationality and Naturalization Decree, 1911 (Cap. 134)

The British Nationality Act, 1948 (Cap. 56)

The Nationality Decree, 1952 (Cap. 39)

The Citizenship Act No. 3 1961

The Zanzibar Decree No. 5 1964

The Citizenship Ordinance Cap. 452

The Citizenship Act No. 15 of 1962

The Tanganyika (Constitution) Order-in-Council, 1961

The Constitution of Tanganyika 1961

The Extension and Amendment of Laws (No. 5) Decree 1964

The Tanzania Citizenship Act No. 6 1995 (R.E 2002)

The Interpretation of Laws Act, Cap. 1(R.E 2002)

The Birth and Death Registration Act, Cap 108 (R.E 2002)

The Births and Deaths Registration Act, No. 10, 2006 (R.E 2006)

Subsidiary Legislation

The Tanzania Citizenship Regulations 1997

The Tanzania Citizenship Regulation, G.N No. 432 R.E 2002

The Register of Birth form found in the Schedule Forms under Rule 8 of the Births and Deaths

The Registration Rules, G.N No. 245 of 2000

International Convention

UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III)

UN General Assembly, *International Covenant the Elimination of All Forms of Racial Discrimination* , 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195

UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171

UN General Assembly, *Convention on Elimination of All Forms of Discrimination against Women*, 18 December 1979, A/RES/34/180

UN General Assembly, *Convention on the Rights of the Child*, 20 December 1989, United Nation Treaty Series, vol. 1577 p.3

LIST OF CASES

Afroyim V. Rusk (1966) 387 U.S 253,

Liechtenstein V. Guatemala, ICJ Reports, 1955,

Mario Vicente Micheletti and others V. Delegacion del Gobierno en Cantabria,
Case C-369/90

Mesbah [1999] ECR 1-7955, Case C-179/98

United States V. Wong Kim Ark (1898) 169 U.S 649.

Zhu and Chen [2004] ECR 1-9925, Case C-200/02

ABSTRACT

This study is about the legal rationale and shortcomings of the Tanzania Laws on citizenship by birth. There are different pieces of legislation which deal with Tanzania citizenship in general. But, these laws do recognise different classes of citizens who bear different characteristics. Of importance to this research is the citizenship by birth category which, within itself, raises legal segregation and discrimination, a fact which is not to be expected under the law. The research was aimed at finding the available shortcomings that hinder the efficacy and sufficiency of the laws on who a Tanzania citizen by birth is and all the rights and duties that relate to such kind of a citizen. It was also the aim of this research to assess the competency of the laws relating to Tanzania citizens by birth in providing equal rights and protection to the citizens by birth without any discrimination or favours. This study is basically a qualitative research which was aimed at enabling collection of detailed information about the problem under study. The researcher has employed interview guides and questionnaires as tools of collecting detailed information from the respondents. Kind of sampling used in this study is the purposive sampling where quite a number of respondents were interviewed from different classes of people from the community at large.

The study findings reveal that the laws on Citizenship by birth, starting from the mother law of the land, which is the Constitution of the united Republic of Tanzania to the other pieces of Legislations, fail to cater for the provisions of equal rights as well as protecting the citizens by birth who are entitled to equal treatment. Most of these laws do have some discriminatory effects as well as some favouritism amongst the same citizens by birth. The ignorance of law of some of the citizens by birth has to some extent led to some citizens by birth to lose their Tanzania citizenship and to other; it has gone to an extent of making them stateless in their own country. The researcher recommends that the Laws relating to citizenship by birth be repealed and new laws be enacted to remove the ambiguity, favouritism as well as the discriminatory effect brought about by these laws. The researcher also strongly recommends that the Constitution of the Country should effectively and sufficiently cover for the citizens by birth and that strict adherence to the international norms and standard should be observed.

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CHAPTER ONE

INTRODUCTION

1.1 Background of the Problem

Citizenship is the status of a person legally belonging to a particular country or State and the rights, duties and responsibilities inherent thereof, whether one lives in that particular country/State or not. This status of belonging is normally subject to determination by individual States whereby the States legislate different laws and rules which categorize it into various classes of citizenship. These classes include citizenship by birth, citizenship by descent, citizenship by registration and citizenship by naturalization.

Laws and rules governing citizenship vary from one country to another, but of importance is that, it is widely acknowledged that when a person is born in a country, he automatically becomes a citizen of that country, if that country follows the “jus soli” rule, or for those countries which are for the “jus sanguine” rule, citizenship is determined by descent. Citizenship has inherent rights which include inter alia, the right to vote, the right to enjoy social privileges like pension and health care subsidies¹.

‘Jus soli’ is a Latin word which means right of soil. The ‘Jus soli’ rule therefore, is the legal rule that a person’s citizenship is determined by his or her place of birth. Where a person is born in the territory of a state then he or she has a right to nationality or citizenship of that particular state. On the other hand, the Latin term ‘Jus sanguine’ which means right of blood, provides for a principle of nationality law by which citizenship is not determined by place of birth but by having instead one or both parents being citizens of a certain state. The ‘Jus sanguine’ rule therefore is a principle that a person’s nationality at birth is the same as that of his natural parents².

¹ Bronwen Manby, **Citizenship Law in Africa: A comparative study**, (2009) p. 1.

² <http://www.businessdictionary.com/definition.html>

Citizenship by birth is a fact which has been peculiarly addressed by the laws generally dealing with citizenship matters in Tanzania. The citizenship laws of Tanzania have undergone various changes due to the existence of various stages of administration where these stages of administration saw to different meanings and categories of citizens of the United Republic of Tanzania. From this contention it is very clear that when determining a person's citizenship then one has to apply the laws in force at the time of the birth of the said person. And since in Tanzania, a person's citizenship entails with that of his or her parents, then confusion is likely to rise for various laws are to be applied. Therefore, the definition of Citizenship by birth given by the laws has brought various confusion to the readers and various stakeholders of the said laws as well as producing different class amongst the citizens under this group i.e citizenship by birth.

It is for this reason that this study attempts to study all the laws in the United Republic of Tanzania relating to citizenship by birth and to see how relatively sufficient or deficient these laws are. In order to realize this objective, the researcher uses a range of data to check if the hypotheses are positively and well cleared and the legal rationale of the research is met.

In many African countries, like Botswana, Ivory Coast, Democratic Republic of Congo, Ethiopia, Kenya, Mauritius, Nigeria, Sierra Leone, Swaziland, Tanzania, Uganda, Zambia, Zimbabwe, to mention but a few, as it is seen in most countries of the world, the laws governing citizenship reflect a compromise between two basic concepts: *jus soli* (literally, law or right of the soil), whereby an individual obtains citizenship because he or she was born in a particular country; and *jus sanguinis* (law or right of blood), where citizenship is based on descent from parents who themselves are or were citizens. In addition to these two principles based on birth, two other factors are influential in determining citizenship for adults: marital status, in that marriage to a

citizen of another country can lead to the acquisition of the spouse's citizenship, and residence within a country's borders³.

Tanzania is one among the countries which apply an absolute *jus soli* rule by granting automatic citizenship to any child born on its national soil with parents who trace origin to the Tanzanian soil except for the children of diplomats or other representatives of foreign states⁴.

Before independence, citizenship matters in Tanganyika were governed by the British Nationality Act 1948, Chapter 56 which regulated citizenship in British colonies whereas in Zanzibar citizenship matters were governed by various laws which came into force from time to time. These laws include the Nationality and Naturalization Decree 1911, Chapter 134 and the Nationality Decree 1952, Chapter 39.

In Tanganyika, the British Nationality Act⁵ categorized nationality/citizenship into citizenship by birth, citizenship by descent, citizenship by registration, citizenship by naturalization and citizenship by incorporation of territory. For one to be a citizen by birth the requirements were that he/she should have been born within the United Kingdom and colonies after the commencement of the British Nationality Act⁶ provided that that person shall not be such a citizen if at the time of birth his father possessed such immunity from suit and legal process as was accorded to an envoy of a foreign sovereign power accredited to His Majesty territory, and is not a citizen of the United Kingdom and Colonies. Also at the time of his birth his father was not to be an enemy alien and his birth should not have occurred in a place then under occupation by the enemy⁷, A citizen by descent was a person born outside the United Kingdom and

³ Bronwen Manby, **Citizenship Law in Africa: A comparative study**, (2009) p.5.

⁴ Ibid

⁵ 1948, (Cap. 56)

⁶ ibid

⁷ Section 4 of the British Nationality Act, 1948 (Cap 56).

colonies after the commencement of the Act⁸ and the father was a citizen of the United Kingdom and Colonies other than by descent at the time of the birth⁹; a citizen by registration should be a citizen of Canada, India, Pakistan, Australia, New Zealand, the Union of South Africa, Southern Rhodesia and Ceylon, being a person of full age and capacity, makes an application to be registered as a citizen of the United Kingdom and Colonies to the Secretary of State¹⁰; a citizen by naturalization was a person who was an alien or British protected, being of full age and capacity, made an application in a prescribed manner to Secretary of State and upon granted citizenship, was to take an oath of allegiance¹¹; and last but not least is citizen by incorporation of territory which was acquired by a territory becoming a part of the United Kingdom and Colonies. His Majesty may by Order in Council specify the persons who shall be citizens of the United Kingdom and Colonies by reason of their connection with that territory; and those persons shall be citizens of the United Kingdom and Colonies as from a date to be specified in the order¹².

In Zanzibar, the Nationality and Naturalization Decree¹³ classified the Zanzibar citizenship into three categories, namely citizenship by birth, citizenship by Naturalization and citizenship by marriage. Citizenship by birth was divided into three parts; A Zanzibari by birth was either (i) a child, whether born in the Dominions of His Highness the Sultan or not, of a Zanzibari father who was born within or became a subject of His Highness the Sultan by naturalization, (ii) a child born in the Dominions of His Highness the Sultan of parents unknown or whose nationality is unknown or (iii) a child born in the Dominions of His Highness the Sultan of an alien father born in the Dominions of His Highness the Sultan¹⁴.

⁸ The British Nationality Act, 1948 (Cap 56)

⁹ Section 5 of the British Nationality Act, 1948 (Cap 56).

¹⁰ Ibid Section 6.

¹¹ Ibid Section 10.

¹² Ibid Section 11.

¹³ 1911, (Cap 134).

¹⁴ Section 3 of the Nationality and Naturalization Decree, 1911, (Cap. 134)

After independence, citizenship issues were regulated under the Citizenship Act No.3 1961(cap. 512) which stipulated that the acquisition of citizenship in Tanzania (then Tanganyika) was explicitly by birth, by descent and by registration. Unlike the Mainland, Zanzibar used the Zanzibar Nationality Decree of 1952 which also stipulated that acquisition of nationality was by birth, by descent and by naturalization.

These laws were amended in 1964 to accommodate citizenship issues in the newly born United Republic of Tanzania. After the Zanzibar Revolution in January 1964 and the unification of these independent countries, Tanganyika and Zanzibar in April 1964, issues of citizenship were partly unified by amending Citizenship Act No. 3 1961, and passing of the Zanzibar Decree No. 5 of 1964. In spite of the Union, citizenship laws were not harmonized until 1995, with the coming into force of the Tanzania Citizenship Act No. 6 of 1995 and its subsequent Regulation.

The Citizenship Act¹⁵ has categorized the acquisition of Tanzanian citizenship into, acquisition by birth, by descent and by naturalization. Tanzanian citizenship by birth can only be acquired when one is born in the United Republic of Tanzania and that at the time of one's birth one of the parents is a citizen of the United Republic and that the father does not possess the immunity from suit and legal process which is accorded to any envoy of a foreign sovereign power accredited to the United Republic; or any of his parent is not an enemy and the birth did not occur in a place then under occupation by the enemy¹⁶.

Acquisition of citizenship by decent occurs when one is born outside the United Republic on or after Union day, if at the date of birth one's father or mother is or was a citizen of the United Republic other than by descent¹⁷. Whereas acquisition of citizenship by naturalization is attained by any person who is a non-citizen of the

¹⁵ No. 6 1995

¹⁶ Section 5 of the Citizenship Act, No. 6 of 1995, (Cap. 375)

¹⁷ Section 6 of the Citizenship Act, No. 6 of 1995, (Cap. 375)

United Republic, who is of full age and capacity, on making an application in that behalf to the Minister, and on satisfying the requirements of the relevant laws, be naturalized as a citizen of the United Republic, and be granted a certificate of naturalization¹⁸.

Citizenship or nationality is the status of an individual legally belonging to a certain State or is a member of that community by origin. The acquisition and loss of this status are regulated by the national legal order, which, normally, makes this status the condition of certain duties and rights inherent thereof. Therefore, since citizenship brings this sense of belonging, then the laws of any country with regards to it should be well defined and appropriately cover the matter without ambiguities that can give rise to loopholes for segregation or building up of classes amongst its citizens. It is the aim of this study to generally review all the laws in Tanzania relating to citizenship by birth and see how adequate the laws are, and where flaws are evident in the laws, suggest best ways for reforms and redress.

1.2 Statement of the Problem

Nationality is often determined by State laws. It is the principal link between an individual and international law. Since the onus to make conditions for grant of nationality has been left to the domestic jurisdictions, it is for this reason that most States in the world have incorporated their nationality qualifications in their national constitutions for recognition and protection. Citizenship or nationality in Tanzania has been accompanied by a long trail of discrepancies due to complication of its relevant laws. Currently the only law which deals with citizenship is the Citizenship Act, Act no. 6, 1995(Cap 357) and its Regulation¹⁹. As aforesaid, Tanzania strictly applies an absolute *jus soli* rule by providing citizenship to any child born on the national soil with an exception for the children of diplomats or other representatives of foreign states.

¹⁸ Part III of the Citizenship Act, No. 6 of 1995, (cap. 375)

¹⁹ 1997

Section 5 of the Citizenship Act²⁰ expressly explains on how citizenship by birth can be acquired. And this only occurs when one is born in the United Republic of Tanzania and that at the time of his birth one of his parents is a citizen of the United Republic and that his father does not possess the immunity from suit and legal process which is accorded to any envoy of a foreign sovereign power accredited to the United Republic; or any of his parent is not an enemy and the birth did not occur in a place then under occupation by the enemy.

Although this section explains on who is a Tanzanian citizen by birth, it impliedly allows dual citizenship, a fact which is not accepted by the same law. The section states that,

5-(1) Subject to the provisions of subsection (2), every person born in the United Republic on or after Union Day shall be deemed to have become and to have continued to be a citizen of the United Republic with effect from the date of his birth, and with effect from the commencement of this Act shall become and continued to be a citizen of the United Republic, subject to provisions of section 30.

(2) A person shall not be deemed to be or to have become a citizen of the United Republic by virtue of this section if at the time of his birth-

(a) Neither of his parents is or was a citizen of the United Republic

The implication of dual citizenship comes in the sense that a citizen by birth as per the laws of the United Republic can also be a citizen of another country if one of his/her parent is a citizen of that other country of which the laws of the said country recognizes him/her as their own citizen. Upon the attainment of the age of 18 years any citizen of the United Republic with dual citizenship, ceases to be a citizen of the United Republic unless he previously renounced his/her citizenship of that other country and takes the oath of allegiance.

²⁰ No. 6, 1995 (Cap. 375)

Another implication of dual citizenship is seen when a citizen of the United Republic by birth, possessing citizenship of other country through one of his parents, having attained the age of eighteen years, he acquires the citizenship of some country other than the United Republic by a voluntary act of marriage²¹.

This element of dual citizenship raises a problem on the point of deprivation of citizenship. Section 13 of the Citizenship Act²² allows any Tanzanian citizen to renounce his/her citizenship at his own will. And section 14 of the same Act allows the minister by order to deprive any person, other than a person who is a citizen by birth, of his citizenship if that person exercises certain rights in other countries. Does this mean that a Tanzanian citizen by birth has a right to dual citizenship if he/she does not chose to renounce his/her citizenship as per section thirteen of the Citizenship Act?

Also, from the same section it can be understood that where one is born in the United Republic of Tanzania and that his mother possess the immunity from suit and legal process which is accorded to any envoy of a foreign power accredited to the United Republic then he/she becomes a Tanzanian citizen by birth. Here the law is seen to discriminate amongst its own citizens.

Another problem lies on the point of reversion of citizenship where one renounces his/her citizenship by birth. The Citizenship Act²³, section 13(3) allows only a woman married to a foreigner, who has renounced her citizenship by birth, to revert to her citizenship by birth on any condition imposed by the minister. Why only a married woman and not all citizens who have renounce their citizenship by birth for different reasons?

²¹ Section 7(4)(a) of the Citizenship Act, No. 6 of 1995, (Cap. 375)

²² Ibid

²³ No. 6, 1995 (Cap. 375)

It is beyond dispute that the Tanzanian citizenship by birth laws has brought more about discrimination amongst its citizen and clarity on it is an urgent and crucial matter which needs to be tackled. There is a need to have an examination of the legal regime in order to have tentative understanding of the efficiency of the same to deal with the problem that diminishes the citizen's confidence in their own state. A thorough attention is needed on the legal framework in order to avoid all the differences.

If the Tanzanian citizenship by birth is to be protected then it should be well defined as to how it is attained and should be protected without any conditions subjected to it. For example the Germany citizenship has been enshrined in their Constitution²⁴ under Article 16(1) whereby it is stated that it cannot be taken away.

1.3 Objectives of the study

This work is an attempt to address the parameter of the laws related with citizenship by birth in Tanzania with the emphasis on how efficient and sufficient the laws are in addressing this issue.

1.3.1 General objective

The general objective of the study was to look into the legal framework governing citizenship by birth in Tanzania and its compliance.

1.3.2 Specific objectives

Specific objectives of the study include;

- To find out the various laws applicable to citizenship by birth.
- To identify various defects in laws applicable to citizenship by birth.
- To analyze how sufficient the national laws are on citizenship by birth.
- To improve the legal framework by suggesting suitable changes or modifications to the existing laws

²⁴ Adopted on 23rd May, 1949

1.4 Hypothesis

- i. Whether the Tanzanian national laws sufficiently cater for the legal deficiencies existing in the legal regime in respect of citizenship by birth.
- ii. Whether there are any shortcomings in the laws pertaining to citizenship by birth in Tanzania.
- iii. Whether there is any legal justification on citizenship by birth.
- iv. Whether the law in force is too defective or outdated to cater for citizenship by birth.

1.5 Significance of the study

This research is targeted to benefit the society into realizing who a real citizen by birth is as per the existing national laws. It will expose the weaknesses present in the governing laws in citizenship by birth hence providing better recommendations to the government in relation to citizenship by birth. The research is also aimed at filling any gaps or lacunae on the part of the law relating to citizenship by birth by amending the existing laws. Also where the local law fails to meet the international laws requirements on citizenship, this research is to make awareness on this and propose recommendations on suitable corrections on the flaws in order to standardize the regime on citizenship matters as a whole.

The study will help to provide vital information on such flaws and foster due harmonization on citizenship laws in general. It is hoped that the findings will help bring about rationality on the National Policy on citizenship by birth and sensitize law makers to desist from making unintelligible laws on citizenship matters that may create loopholes for segregation and classes amongst the Tanzania citizens.

The researcher hopes, that the findings will provide in depth information that will be utilized as reference material for the future researchers in similar field or related disciplines.

1.6 Scope of the study

This study is confined to the status quo on citizenship by birth in relation to the laws of the United Republic of Tanzania as well as the collection of relevant data exclusively for Tanzania.

1.7 Literature Review

Citizenship is a very important matter for any country or nation which relates to the legal relationship between the sovereign State on one hand and its citizens (the people rightfully claiming such status) on the other. It is the basic status upon which sovereign States or nations confer a wider range of rights to the citizens than resident aliens. Citizenship or Nationality has no coherent definition in international law but only conflicting descriptions under the different municipal laws of state. It is due to these existing different descriptions of citizenship or nationality concept by different municipal laws that citizens of various states receive different treatments from their respective states. But despite the fact that citizenship is described differently under different municipal laws it should not form the base of any kind of discrimination as all human beings are equal as this can beautifully be summed up in the memorable words of **Locke**: “Men (are) by Nature all free, equal and independent”²⁵.

Citizenship has been demonstrated and opined by authors explaining the extent of it being a non-international law factor on the point of its rules of determination. **Kapoor, S.**²⁶ (2007) defines citizenship/nationality as the legal status of membership of the collectively of individuals whose acts, decisions and policy are vouchsafed through the legal concept of the state representing those individuals. Thus the basis of nationality is the membership of an independent community. The rules of nationality are determined by state laws. But due to lack of uniformity in state laws in regard to the nationality,

²⁵ Locke, **Two Treatises of Government** (P. Laslett (ed.), 1998), “*The second Treatise*” para 95.

²⁶ Dr. S. K. Kapoor, **International Law and Human Rights**, (2007) p.334

many difficulties were experienced. Consequently, difficult problems of statelessness, double nationality, and many more arose.

Although **Kapoor S.** points out the consequences of the lack of uniformity of the state laws as the difficult problems of statelessness, double nationality, to mention but a few, he fails to show how exactly these consequences arise. The states duty of defining their citizenship results to different categories of citizens which bear different qualities hence raising difficult problems of statelessness, double nationality and many others.

He further points out that Nationality is the principal link between an individual and international law. Under international law, nationality has often been used as a justification for the intervention of a government to protect another country. It may, however, be noted that international law does not create a correlative right in favour of the individuals. It creates rights only in favour of the states whose nationals they are.

According to **Kelsen, H.**²⁷ (2003) citizenship as a legal status is the status of an individual who belongs to a certain state or - formulated in a figurative way- is a member of that community. The acquisition and loss of the status are regulated by the national legal order, which, normally, makes this status the condition of certain duties and rights. The most prominent among those duties that can be imposed only on citizens is the duty to do military service. The most prominent among those rights which may be conferred only upon citizens are the political rights. Only citizens have, as a rule, a right to reside within the territory of the state, that is, the right not to be expelled there from. The government may expel aliens at any time and for any reason.

As it is internationally understood that the determiner of nationality or citizenship is the sovereign state which set respective suitable rules to it, the notion of nationality has

²⁷ Hans Kelsen, **Principles of International Laws**, (2003) p.248

been summed up differently by different authors. **Henkin, L.**²⁸ (1995) maintains that the state is the principal unit of the international political system but it can act only through human beings. States act to further state interests but state interest involve and affect human beings. To express the relation of a state to its habitants for purposes of relations with other states, the inter-state developed the notion of “nationality”. We have come to use nationality also to express the relationship of a state to juristic persons such as companies created under its laws.

Henkin, L. goes on further explaining that the concept of nationality serves a state for two different inter-state purposes. A state identifies with its nationals, adopts the interests of its nationals as its own. It represents its nationals and affords the diplomatic protection vis-à-vis other states. States have also asserted authority to govern their nationals by prescribing laws for their conduct even when they are outside the state’s territory. States have both represented and regulated not only individual nationals but also “national” companies as well as registered ships and aircraft.

In so far as nationality is identified with citizenship, a state invoking nationality is in effect asserting that link of citizenship warrants – indeed may require – it to represent the individual vis-à-vis other states, especially in a system of states in which individuals cannot effectively represent themselves. A different argument is necessary to justify the state’s claim to regulate citizen’s activity when he/she is out of the country. Perhaps the argument is that citizenship implies a commitment to obey the laws and that the commitment does not lapse when a citizen, retaining his citizenship, goes abroad. Perhaps the argument is that citizenship is a mutual commitment: as citizenship requires the state to represent and protect the person in relation to other states, it commits the citizens, in exchange, to obey the laws even when he/she is abroad.

²⁸ Louis Henkin, International law: Politics and values, (1995), p.17

As regards individuals, international law has accepted the authority of a state to represent its citizens-nationals, as well as its authority to regulate their activities abroad. And for either purpose, the law has not scrutinized the basis on which citizenship-nationality is claimed. In general every state can decide its own bases for citizenship and nationality, and can itself determine whether a particular individual is or is not a citizen and a national. In general states are entitled to use the same bases for determining nationality for purpose of representing the individuals against another state for the purpose of regulating the individual abroad.

As aforementioned, Citizenship/nationality can be of different types. It is due to this factor that citizenship is seen to bring about discrimination. This is clearly demonstrated by one **Fredman, S.**²⁹ who, in the light of the International Convention on Elimination of all forms of Racial Discrimination³⁰ observed that the convention allows for discrimination to be made between citizens³¹ and gives due regard to state sovereignty in matters of citizenship, nationality and naturalization, provided states do not discriminate against categories of foreigners³². But this discrimination has been construed to be within the ambit of equality before the law must be guaranteed to “everyone” without distinction as to race or ethnic origin³³.

Fredman, S. further states that ICERD has recognized that states have the sovereign rights to impose distinctions between citizens and non-citizens in so far as their purpose or effect contains no element of discrimination based on race color, descent or national or ethnic origin.

²⁹ Sandra Fredman,(Ed), **Discrimination and Human Rights**, (2001)

³⁰ 1969

³¹ Ibid Article 2

³² Ibid Article 3

³³ Ibid Article 5

Holding the same views as other writers, **Shaw, M. N.**³⁴ also observe that since every state possesses sovereignty and jurisdictional powers and since every state must consist of a collection of individual human beings, it is essential that a link between the two be legally established. That link connecting the state and the people it includes in its territory is provided by the concept of nationality.

By virtue of nationality a person becomes entitled to series of rights ranging from obtaining a valid passport enabling travel abroad to being able to vote. In addition, nationals may be able to undertake jobs that a non-national may be barred from. Nationals are also entitled to the protection of their state and to various benefit prescribed under international law.

Having view various authors and writers on the point of nationality as shown in their discussions above, it is clear that they all dwell on citizenship in its generality. Despite the fact that states have the sovereign rights to impose distinctions between citizens and non-citizens but this distinction is not expected to reach the extent of having groups of more privileged individuals, in terms of rights, than the other among its own citizens. Citizenship by birth, though not viewed as a separate item by authors or writers, in some place it seems to pose more serious problems than it is expected.

With the development of modern constitutional state the development of the non-discrimination principle came up tied to the onset of the principle of citizenship. This principle of citizenship, traditionally at least, has been tied very strongly to the structure of nation-state. Within this context, the ambit of the non-discrimination principle has concerned not merely the politics of recognition principle, but also, equally important, the politics of non-recognition. For it has always be an expression of concern for those classes of subjects on whose behalf state claims to strive to work- an admission of claims against the political settlement. Concerned with the political

³⁴ Malcolm N. shaw, **International Law**, (1997)

direction of state, discriminations have always been drawn between “desirable” identities, subject to protection and other identities which can be discriminated against.

As aforementioned, though citizenship by birth is not largely covered, especially as a separate item of discussion in literatures, it needs to be given a closer look especially in Tanzania as it pauses lots of indifferences among its own citizens hence building classes which are unnecessarily required. Therefore there is a need to address the effectiveness of the current laws relating to citizenship by birth in Tanzania. This study thus explores the current laws relating to citizenship by birth in Tanzania.

1.8 Research Methodology

1.8.1 Research Design

The researcher employed empirical research design. Participatory methodologies used for this study, supplemented by interview schedules which were administered by the researcher at the units of inquiry. This method is appropriate because it does not restrict the researcher to what she already had in mind and is also flexible allowing for collection of more information in a short time. Interview schedules were considered appropriate for the individuals since it was not guaranteed that whoever was selected as a sample can read and write properly.

1.8.2 Area of Study

The study covers the whole of Tanzania as a country although the selected units of inquiry are the Immigration Department Offices at its Headquarters especially at citizenship division. Much interaction has been done with those who are currently or have been affected by the said laws on citizenship, in one way or another, due to its discrepancies. The choice of the above mentioned units of inquiry is due to the fact that citizenship determination issues are widely, if not wholly, dealt with the Immigration Department of Tanzania. Much has been gathered from these units of inquiry for all the determination of citizenship by birth as well as renunciations and deprivation of

citizenship by birth is completed under these units of inquiry. The research is limited on the issue of citizenship by birth and how the Tanzanian laws have generally covered it.

1.8.3 Sample population

The population for the study was from all the regions of Tanzania (where all matters in relation to citizenship from these regions are forwarded to Immigration office at their Headquarter) a fairly wide coverage of the country. It also involved both lawyers from selected institutions, all the government employees whose work and duty involve the use of the laws on citizenship matters, all citizens who by one way or another were affected by said laws and the public large. All those who were involved in the targeted population were selected by simple random sampling.

1.8.4 Sampling techniques

The researcher of this study has used a purposive kind of sampling. It is a kind of sampling that gives a researcher an opportunity to select, on the bases of his own judgment in each unit, the most useful representatives to be observed³⁵. The researcher used this kind of sampling so as to ensure that data required was feasibly attained in a limited period of time as this method of sampling allows the selection of a specific number of subjects at a specific unit, hence a useful sampling technique in this study.

The researcher collected data from various groups of people who are the stakeholders of the laws relating to citizenship matters in there day to day duties within their respective field of work and also those who become stakeholders of the citizenship laws by the mere fact of being the victims of the said laws. These groups involved Immigration Officers of different ranks with different professions from the Immigration office as well as a few officers from the office of RITA and also the public at large specifically those uniquely touched by the citizenship laws.

³⁵ Adam, J and Kamuzora, F., (2008) Research Methods for Business and Social Studies, Mzumbe Book Project Morogoro-Tanzania.

In purposive sampling, subjects were selected under established criteria from which one can learn the most. Thus selection was used under purposive sampling technique to ensure that key respondents were involved. The Immigration Officers from the Immigration office were selected purposely in order to get accurate information from specific units and to ensure that key respondents were involved like Citizenship section.

1.8.4 Data collection techniques

In the course of this study the researcher employed descriptive analysis making reference to both primary and secondary methods of data collection. Descriptive analysis describes the nature of an object or phenomenon under study hence helping in working various measures in relating variables. In accomplishing the research secondary data collection was used in the sense that various readings were consulted and examined in a detailed manner in order to have conceptual framework of guidance for the work. This phase intends to make a clear observation on what others have done or written in respect of the problem at hand both on general or specific terms and further, to have an overview on the extent of the problem.

Thereafter, the primary data collection was administered by way of unstructured and structured interviews as well as the use of questionnaires. Interviews were conducted to different members of the society including governmental entities, individuals and the society at large.

1.8.5 Data gathering instruments

The major data collection instruments that were employed are questionnaires and interview guides. The instruments designed to extract information from cases and variables were well formulated and tested. As this study required both qualitative and quantitative data, the questionnaires were drawn to comprise both closed ended questions for simple analysis of data and open ended questions with the aim of acquiring opinions and critical presentation of the ideas from the respondents. These

instruments had been retested to ensure their validity and reliability. Pilot study revealed that an interview guide was a better instrument for collecting data from all the stakeholders of the laws on citizenship by birth and the public at large. The questionnaires have shown to be suitable for respondents who are lawyers those of other professions.

1.8.5.1 Questionnaire

Questionnaires comprising close-ended and open-ended standardized questions were distributed to lawyers and to other professionals from the governmental institutions. The questions asked enabled the researcher to capture the attitude of respondents on the competency of the laws in force in dealing with citizenship matters especially citizenship by birth and the vision of the public at large in understanding their political rights.

1.8.5.2 Interview

This instrument was used for gathering information since it secures the most spontaneous reactions than the questionnaire method. It helped to collect data from the non-professions group from the public. Unlike in questionnaires, interview questions are semi-structured hence it was conducted in English and Swahili language to suit the targeted group.

1.8.5.3 Documentary review

In this study, documentary review was the major source of secondary data. The secondary data used in this study were obtained from various databases and documentation stations. Most of the documents were collected from citizenship section of the immigration offices both from the Headquarter office in Dar es Salaam and the Head Office of Zanzibar.

These documents includes the records of children who are citizens by birth but with dual nationality, various papers on Tanzania citizenship and the laws presented by the top officials of the Immigration office to various seminar groups, letters concerning citizenship matters within the Immigration office from different sources, (either other government offices, individuals or groups of individuals), statistics of those citizens by birth who were mistakenly interpreted under the existing laws to be non citizens and the non citizens who were mistakenly interpreted under the same existing laws to be citizens by birth, to an extent of being issued with Tanzanian passport, a right exclusively maintained to the citizens of Tanzania.

More materials were also extracted through the documentary review method from the local libraries like that of the Mzumbe University, University of Dar es Salaam and international libraries, that is the library to the African Court of Justice and Human Rights (A.C.J.H.R), the East African Court of Justice Library (E.A.C.J) and the library to the International Criminal Tribunal for Rwanda (I.C.T.R), where all these international libraries are located in Arusha Tanzania.

Moreover, references were made to a number of Legislations which were the mostly used materials in this research. These include the International statutes, the national statutes the parent and the subsidiary Acts, Orders, Bylaws, Policies as well as cases relating to citizenship matters.

CHAPTER TWO

CONCEPTUAL FRAMEWORK

2.1 The concept of citizenship

Citizenship is the legal relationship that individual human beings enjoy with the state to which they have close affinity either by birth, marriage, naturalization or other legally recognized processes. Citizenship carries with it certain rights and certain duties. Viewed in its narrow, literal conception, citizenship simply implies a state of belonging³⁶. Under the law, citizenship is defined to mean a legal bonding between the state and the individual in which the state recognizes and guarantees the individuals' rights³⁷ whereas the individuals are under a duty to the state in return, for example the duty to do military service. Nationality as a legal bond was also reiterated in the case of **Nottebohm**³⁸ where the ICJ stated that, "... nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with existence of reciprocal rights and duties³⁹."

The terms citizenship or nationality which are interchangeably commonly used in the modern sense, to denote, under the social science regime, the different types of belonging to a political community and the rights that such belonging brings with it. The concept of citizenship is, as aforementioned, the fact of one legally belonging to a particular country or state and the rights, duties and responsibilities that it brings with, whether one lives in that particular country/state or not.

Identity is conceptualized in terms of human beings labeling themselves as members of a particular nation, race, ethnicity, sub-culture, religion, gender vocation and/or family

³⁶ Onyango-Oloka J. (2004) *Towards a Pan-East African Citizenship and Identity: Conceptual, Political and Legal Dimensions*: A Concept Paper developed for the Kituo Cha Katiba Project on Citizenship & Identity Struggles in East Africa, November 27, 2004, p.2

³⁷ Manby, B. (2009), p.ix

³⁸ ICJ Reports, 1955

³⁹ **Liechtenstein V. Guatemala**, ICJ Reports, 1955 p.23

status. Identity struggles are concerted attempts by individuals and groups of people to claim recognition and rights from state and non-state actors to enable them engage in activities of their choice that enhance or improve their general well being.

In order to successfully understand the concept of citizenship in Tanzania one must be familiar with all the laws that deal with citizenship matters currently and those which were in force in the past. Having spent enough time in the field it has increased my understanding of citizenship, particularly citizenship by birth; which is the main context of this study. In this chapter the main key concept underlying citizenship by birth as is seen in the laws of Tanzania shall be clearly explained at different times and laws passed in Tanzania, that is before and after independence (of Tanganyika), before and after revolution (of Zanzibar) and before, on and after union of the United Republic to the current times.

As it is internationally⁴⁰ understood that the determiner of nationality or citizenship is the sovereign state which sets respective suitable rules to it, it is these rules set by the sovereign states that have resulted into different classes of citizenship being reproduced. These classes of citizenship include citizenship by birth, citizenship by decent, citizenship by registration and citizenship by naturalization. The rules defining citizenship vary from one country to another, but of importance is that, it is widely acknowledged that when an individual is born in a country, he automatically becomes a citizen of that country, if it follows the “jus soli” rule⁴¹, or for those countries which are for the “jus sanguine” rule, ones citizenship is determined by his or her descendants.

⁴⁰ In case C-369/90 **Micheletti & others** at paragraph 10, an important principle that it is for each member state, having regard to EU law, to lay down the conditions for the acquisition and loss of nationality was laid down. This was also reiterated in case C-179/98 **Mesbah** [1999] ECR-I-7955 paragraph 29, case-C 200/02 **Zhu and Chen** [2004] ECR I-9925 paragraph 37.

⁴¹ In **United States V. Wong Kim Ark** (1898) 169 U.S 649 the court clearly stated that children born in the United States generally acquire United States citizenship at birth via the Citizenship Clause of the Fourteenth Amendment.

Citizenship is either by birth or by naturalization. Citizenship by birth is generally the preserve of the indigenous population of every state and is granted to the individual by the state. Citizenship by birth depends on the collective rights of the community being recognized as an indigenous community of the state. Citizenship by naturalization is granted to prescribed persons upon registration after fulfilling the required criteria⁴².

Despite the fact that there exist different types of classes of citizenship, of more importance to this paper is the citizenship by birth. The legal rationale of citizenship by birth in Tanzania is the centre of the discussion especially on how appropriate is it covered bearing in mind that Tanzania follows the “jus Soli” rule.

2.2 The Citizenship laws in Tanzania

The laws governing citizenship in Tanzania have undergone various stages of evolutions particularly after the coming of the British colonialists. In discussing issues related to citizenship in Tanzania it is very important to have a thorough understanding of previous citizenship laws both in the Tanzania mainland and the Tanzania Zanzibar for the fact that Tanzania is a union of two sovereign countries which had different historical background as well as legal regimes. Furthermore, determination of one's citizenship depends with the law which existed at the time of such person's birth. It is worth noting that in both Tanzania mainland and Tanzania Zanzibar the laws governing citizenship kept on changing considerably as these states passed through different stages of administration (that is before and after the 1961 Tanganyika independence as well as the 1964 Zanzibar revolution).

2.3 Citizenship laws in Zanzibar before her Revolution

Historically, Zanzibar Isles is known to have been under the sultanate regime for over two centuries, by the Al-Busaidy reign. There are no records showing that the Sultanate

⁴² 2 Nakayi, R. et al., *Citizenship and Identity Struggles in Uganda: Towards more Inclusive Policies and Practices*. A case study commissioned by Kituo Cha Katiba for its Citizenship and Identity Publication Series, June 2005.

Dominion did enact any laws in relation to citizenship matters despite the fact that they did colonize the Isles for a long period of time before the coming of the British. It's only in 14th June, 1890 that the Sultan did sign a memorandum of understanding for British colonies security with the British, which was for the protection of Zanzibar Isles and its territory. It is from this point that various laws by the British regime were enacted to protect the British administrations hence giving rise to the citizenship laws which were considered to be among the most important instruments for their administration⁴³.

The first legislation which governed citizenship matters in Zanzibar was the **Nationality and Naturalization Decree**⁴⁴ which dates as early as 1911. This law qualified a Zanzibari citizen and gave effect to the acquisition of Zanzibari citizenship by registration. The second law was the **Nationality Decree**⁴⁵ of 1952 which repealed the **Nationality and Naturalization Decree** of 1911. But prior to the **Nationality Decree** of 1952, the British administration did enact the **British Nationality Act**⁴⁶ of 1948 which was in force in Britain and it also applied to all her colonies for the sake of bringing common status within the Common Wealth citizens including Zanzibar and Tanganyika.

The **Nationality and Naturalization Decree**⁴⁷ categorized the Zanzibar citizenship into three categories which are citizenship by birth, citizenship by Naturalization and citizenship by marriage. Citizenship by birth was divided into three parts; A Zanzibaris by birth was either (i) a child, whether born in the Dominions of His Highness the Sultan or not, of a Zanzibari father who was born within or became a subject of His Highness the Sultan by naturalization, (ii) a child born in the Dominions of His

⁴³ Z. A. Ali (Deputy Commissioner of Immigration-Citizenship, Zanzibar) (personal communication on History of Zanzibar Nationality before the Union between Tanganyika and Zanzibar(1964), on May 20, 2013)

⁴⁴ 1911, (Cap 134).

⁴⁵ 1952, (Cap 39).

⁴⁶ 1948, (Cap 56).

⁴⁷ 1911, (Cap 134).

Highness the Sultan of parents unknown or whose nationality is unknown or (iii) a child born in the Dominions of His Highness the Sultan of an alien father born in the Dominions of His Highness the Sultan⁴⁸.

By this law, citizenship by birth meant that any child, whether or not born in Dominions of his Highness, was a Zanzibari by birth as long as his father was born within or became a subject of His Highness the Sultan by naturalization; any child born in the Dominions of His Highness the Sultan of unknown parents or whose parent's nationality is not known was also a citizen by birth and lastly any child born in the Dominions of His Highness the Sultan of an alien father born in the Dominions of His Highness the Sultan. What mattered most were either the father's place of birth or nationality and/or the child's birth place.

But the Nationality and Naturalization Decree⁴⁹ as aforementioned, was repealed by the Nationality Decree⁵⁰ which categorized citizenship into citizenship by birth, citizenship by descent, citizenship by naturalisation and citizenship by naturalisation. In this law citizen by birth were those people born (whether before or after the 27th December, 1952) within the Dominions of His Highness the Sultan⁵¹ save for those whose parents were citizens from the countries listed in the third schedule to the Act as provided under section 1(2) of cap. 39 of 1952⁵².

With the Nationality Decree⁵³, the only thing that qualified a person to become a Zanzibari citizen by birth was being born within the Dominions of His Highness the

⁴⁸ Section 3 of the Nationality and Naturalization Decree, 1911, (Cap. 134)

⁴⁹ 1911, (Cap 134).

⁵⁰ 1952, (Cap 39).

⁵¹ S. 3(1) of the Nationality Decree, 1952.

⁵² The countries listed are Australia, Belgium, Canada, Ceylon, France, Italy, New Zealand, Portugal, Republic of Ireland, Union of South Africa and United States of America.

⁵³ 1952, (Cap 39).

Sultan (whether before or after the 27th December, 1952) except for those citizens from the countries mentioned in third schedule to the Act⁵⁴.

2.4 Citizenship laws in Zanzibar after her Revolution

This law remained in force from the time it was made to the time Zanzibar became a Revolutionary Republic (12th January, 1964) and even after the Zanzibar Revolution. After the Zanzibar Revolution, the government did establish a legislative body in the name of House of Representative which enacted a new law called the Existing Laws Decree number 1, 1964. It is this law that extended the application of Cap. 39 of 1952 up to January 1964 and therefore, in determining ones citizenship by birth in Zanzibar before, on or after the revolution one should take into account the previous laws i.e. CAP 134 of 1911 and CAP 39 of 1952⁵⁵. Immediately after the Zanzibar Revolution, in 26th April, 1964 Zanzibar joined up with the then Tanganyika and formed the United Republic of Tanzania.

2.5 Citizenship laws before the Tanganyika Independence

In the then Tanganyika, the Germany administration⁵⁶ had no specific laws governing citizenship matters. It was not until when the British took over from the Germany after the Second World War that a citizenship law was enacted. This law was the **British Nationality Act**⁵⁷ which was notably the early legislation in Tanganyika to deal with citizenship matters making provisions on nationality to all British Colonies. Under this law citizens were categorized in various groups namely citizens by birth, citizens by descent, citizens by registration, citizens by naturalization and citizens by incorporation of territory. Citizenship by birth covered all those who were born within the United Kingdom and Colonies after the commencement of the Act provided that his father possesses no immunity from suit and legal process as accorded to an envoy of a foreign

⁵⁴ S. 1(2), Ibid

⁵⁵ See the Existing Laws Decree No. 1 of 1964

⁵⁶ Germany did ruled Tanganyika from 1884 to 1919.

⁵⁷ 1948, (Cap 56).

sovereign power accredited to His Majesty, and that his father is not an enemy alien and the birth of the said person did not occur in a place then under occupation by the enemy⁵⁸. This law was in force until Tanganyika attained its independence in 1961.

On 9th December, 1961, when the territory was declared independent, the British regime, arguably as a preparation of creating a conducive environment to their subjects who opted to remain behind, did adopt a **Constitution of Tanganyika**⁵⁹ under the British Colonial government, which was appended to the second schedule of the Tanganyika (Constitution) Order-in-Council, 1961. Chapter I of this Constitution provided for all Citizenship matters⁶⁰ and it's worth a mention that the provisions of this Constitution form the basis of other citizenship laws which were enacted after 1961. Another credit to this law is that it is the only Constitution ever made covering citizenship matters in both the two states which conjoined to form the United Republic of Tanzania.

The Tanganyika Oder-in-Council did try to create citizens of the incoming independent Tanganyika to be of groups of those by birth, by descent, by registration and by naturalization whereby a citizen by birth had to be a person having been born in Tanganyika, is on the 8th day of December, 1961, a citizen of the United Kingdom and Colonies or a British protected person provided that **one of his parent** was to have been **born in Tanganyika**.

2.6 Citizenship laws after the Tanganyika Independence

After attaining independence it was the responsibility of the Tanganyika nation through its interim government to recognize/identify her citizens. Through its national assembly, the then Tanganyika government did pass a law called "The Citizenship Act⁶¹". Along with the Act came the Citizenship Ordinance CAP 452 and later the

⁵⁸ Section 4 of Cap. 5, 1948

⁵⁹ made on 27th November, 1961

⁶⁰ Article 1 - 10

⁶¹ Chapter 512 of 1961.

Citizenship Act No. 15 of 1962. According to this legislation, Tanganyika citizenship was categorized into four main groups which were citizenship by birth, citizenship by descent, citizenship by registration and citizenship by naturalization.

Under this piece of legislation a citizen by birth was the same person as that who was recognised by the Tanganyika (Constitution) Order-in-Council⁶² except for the proviso which required that one of the parent of the citizen by birth to **be a citizen** of Tanganyika and not just **being born** in Tanganyika. The section states that,

“...every person born in Tanganyika after the eighth day of December, 1961, shall become a citizen of Tanganyika at the date of his birth; provided that a person shall not become a citizen of Tanganyika by virtue of this section if at the time of his birth-

- (a) Neither of his parents is a citizen of Tanganyika and his father possesses such immunity from suit and legal process as is accorded to the envoy of a foreign sovereign power accredited to Tanganyika, or*
- (b) His father is an enemy alien and the birth occurs in an place then under occupation by the enemy”*

After the independence, the first law which dealt with citizenship matters to be enacted in Tanganyika was the Citizenship Act 1961⁶³.

2.7 Citizenship laws after the Union of Tanganyika and Zanzibar

After the union between Tanganyika and Zanzibar which occurred on the 26th April 1964 Citizenship matters became a union matter.⁶⁴ Despite the fact that citizenship matters became a union matter however, each part of Union continued to apply its own citizenship laws. The mainland part (the then Tanganyika), continued to apply the Citizenship Act 1961 (CAP 512), the Citizenship Ordinance CAP 452, and the Citizenship Act No. 15 of 1961 whereas in Zanzibar, the legislature (House of Representatives) did enact the Extension and Amendment of Laws (No. 5) Decree

⁶² 1961

⁶³ Chapter 512

⁶⁴ As provided under Articles of Union between Tanganyika and Zanzibar, Act No. 22 of 1964

1964. Later on, amendments to some sections⁶⁵ of the Tanganyika Citizenship Act 1961 took place and the Nationality Decree CAP 39 of 1952⁶⁶ was repealed to unify the citizenship matters from both the two parties of the union and hence explaining who a citizen is on and after the Union day.

This position of the duality of the laws on citizenship lasted until 1995 when the Tanzania Citizenship Act No. 6 was enacted to consolidate the laws relating to citizenship in Tanzania Mainland and Tanzania Zanzibar and the law was made applicable to both Tanzania Mainland and Tanzania Zanzibar. The Citizenship Act No. 6, 1995 and its Regulations⁶⁷ is the applicable law to date and it has undergone revision lastly in 2002 having the categories of citizenship as that of by birth, by decent, and by naturalization.

Under this Act⁶⁸ citizenship by birth entails,

“Every person born in the United Republic on or after the Union Day shall be deemed to have become and to have continued to be a citizen of the United Republic with effect from the date of his birth, and with effect from the commencement of the Act he shall become and continue to be a citizen of the United Republic...”⁶⁹”

But this position of the law has to be qualified with the following sub-section which reads

“a person shall not be deemed to be or to have become a citizen of the United Republic by virtue of this section if at the time of his birth-
(a) *Neither of his parents is or was a citizen of the United Republic and his father possesses the immunity from suit and legal process which is accorded to an envoy of a foreign sovereign power accredited to the United Republic; or*

⁶⁵ section 3 to 11 of the Tanganyika Citizenship Act

⁶⁶ These legislations continued to apply until they were repealed by Act No. 6 of 1995 save for the Extension and Amendment of Laws (No. 5) Decree 1964 which was amended by deleting the whole 4th schedule to that Decree

⁶⁷ The Tanzania Citizenship Regulations 1997

⁶⁸ The Citizenship Act, cap. 357 R.E 2002

⁶⁹ Section 5(1) of the Tanzania Citizenship Act, cap 357 R.E 2002

(b) Any of his parents is an enemy and the birth occurs in a place then under occupation by the enemy⁷⁰”.

Citizenship by birth traces a long history of origin from the colonial times to the present as it has been shown above. It has undergone tremendous change with the different administrative changes that occurred in the country. These changes in citizenship by birth which have led to its present legal definition has brought with some legal confusion in determining who is a citizen by birth hence some inequalities in gender sensitivity as well as discrimination among the citizens by birth themselves.

The researcher of this study therefore is inclined in critically analyzing and making positive recommendations for consideration with regard to the laws in Tanzania relating to citizenship by birth covered by this research.

⁷⁰ Ibid section 5(2)

CHAPTER THREE

ANALYSIS AND THE SHORTCOMINGS OF THE LAWS RELATING TO CITIZENSHIP BY BIRTH

3.1 Introduction.

Citizenship by birth in Tanzania has been covered by several provisions in various pieces of legislations. Since Tanzania has undergone through various administrations in her historical background, each of these administrations, generally, had different views on laws regarding citizenship. Therefore, as aforementioned, when determining citizenship in Tanzania, specifically citizenship by birth, all previous laws are to be taken into consideration depending on the time and place of birth of the person concerned. Despite the fact that Citizenship matters are currently covered under the Citizenship Act⁷¹, it is worth noting that section 30(1)(a) of this Act takes cognizance of the application of earlier citizenship laws in determining ones citizenship, i.e for a person to qualify to be a citizen if born before the 1995 legislation must have met the conditions of the previous laws which were applicable at the time of his birth. The provision reads: *“every person attaining citizenship under the provisions of any of those laws or a combination of the provisions of any of them shall be deemed to have acquired that citizenship under this Act”⁷².*

This chapter will analyze the provisions relating to citizenship matters in the relevant legislations mainly regarding citizenship by birth and reveal existing weaknesses that frustrate the effectiveness of these laws.

3.2 The Constitution of the United Republic of Tanzania.

As is worldwide presently acknowledged, particularly in democratic countries, Tanzania included, a country’s constitution, is a vital document in its right, is

⁷¹ Cap 357, R.E 2002

⁷² Section 30(1)(a) of Cap 357, R.E 2002

paramount and the chief document setting out the legal framework and guidelines for conduct of its operations. Among the significance of a constitution is the protection of the rights of its citizens regardless of tribe, origin, extraction, religion, sex or physical appearance. A constitution, thus, can be said to be a social contract between the government and the people it governs. In any country which abides to its constitution therefore, every person is expected to be treated equally, irrespective of his/her social status or position and is required to respect and abide by the highest law of the land.

In any country, the constitution is superior to all other laws crafted within the territorial precincts of the country and any law enacted by the government in power has to be in conformity with that constitution. This not only ensures that the citizens, in turn, just abide by the law, but also conduct their affairs within the confines of the laws as laid down by the limitations of the constitution of the country.

Being no exception, the Constitution of the United Republic of Tanzania⁷³ directly stipulates that the Constitution is superior to all laws of the land. Article 64(5) reads,

Without prejudice to the application of the Constitution of Zanzibar in accordance with this Constitution concerning all matters pertaining to Tanzania Zanzibar which are not Union Matters, this Constitution shall have the force of law in the whole of the United Republic, and in the event any other law conflicts with the provisions contained in this Constitution, the Constitution shall prevail and that other law, to the extent of the inconsistency with the Constitution, shall be void.

Therefore, citizenship being a union matter⁷⁴, all the laws that relate to it must also be in conformity with this Constitution.

But before analysing what citizenship laws stipulate on citizenship matters generally, we see that as highest law of the land, the Constitution of the United Republic of Tanzania does not distinctly define who its citizens are. The Constitution of the United Republic just stipulates rights and states the duties of its citizens without stating

⁷³ The Constitution of the United Republic of Tanzania, 1977 (as amended from time to time)

⁷⁴ As stipulated in article 4(3) and exclusively mentioned as union matter no. 6 in the First Schedule to the Constitution of the United Republic of Tanzania, 1977.

categorically who a citizen of the United Republic is. For instance the mention of citizens in the Constitution of the United Republic is seen under article 5⁷⁵ which provides for the citizens right to vote; article 9(g) providing for equal opportunity to all citizens accorded from the government and all its agencies; article 17(1) providing for the right to freedom of movement and the right to live in any part of the United Republic to every citizen of the United Republic; enshrining the right not to be forced to leave or be expelled from the country and article 67(1) providing a pre-requisite condition that one must be a citizen in order to be a Member of Parliament of the United Republic of Tanzania.

Other provisions worth mentioning are article 39(1) (a)⁷⁶ and article 47(4) (a)⁷⁷ of the Constitution of the United Republic which, to be specific, have categorically mentioned a citizen of the United Republic by birth, but without clear definition being provided for it, save for the mention that a citizen of the United Republic by birth shall be in accordance with the citizenship law.

The Constitution of the United Republic, one may contend by observation, creates discrimination of its citizens by classifying them into ambiguous and conflicting categories, thus discrediting the law and giving cause for discussion of the flaws referenced to in the discussion hereunder:

3.3 The Tanganyika (Constitution) Order-in-Council, 1961

Before engaging in the discussion of the status of citizenship in the citizenship law as referred to in the Constitution of the United Republic, reference is made to the

⁷⁵ The franchise under the Constitution of the United Republic of Tanzania.

⁷⁶ This article provides for one among the mandatory requirement for a person entitled to be elected to hold the office of the President of the United Republic which is that one has to be a citizen of the United Republic by birth in accordance with the Citizenship law

⁷⁷ This article provides for one among the mandatory requirement for a person to be nominated to contest for the office of the Vice-President of the United Republic which is that one has to be a citizen of the United Republic by birth in accordance with the Citizenship law

Tanganyika (Constitution) Order-in-Council, 1961⁷⁸, the first Constitution of the newly independent Tanganyika. Worth of mention is the fact that it is the first Constitution of Tanganyika after independence from colonial rulers and is the only Constitution which has ever had provisions on citizenship matters. More so, this Constitution had a whole chapter on citizenship⁷⁹ which formed the basis of the other citizenship laws which were enacted after 1961.

Under this chapter, citizenship by birth was categorically and clearly stated as:

“Every person born in Tanganyika after the eighth day of December, 1961, shall become a citizen of Tanganyika at the date of his birth;

Provided that a person shall not become a citizen of Tanganyika by virtue of this section if at the time of his birth-

(a) neither of his parents is a citizen of Tanganyika and his father possesses such immunity from suit and legal process as is accorded to the envoy of a foreign sovereign power accredited to Tanganyika, or

(b) his father is an enemy alien and the birth occurs in a place then under occupation by the enemy⁸⁰

Despite the fact that this chapter formed the basis of the other citizenship laws which were enacted after 1961, the discriminatory stigma regarding the definition of a citizen by birth was overlooked and has prevailed to-date regardless of the Constitution of the United Republic insisting of providing for equal rights and opportunity to all its citizens from the central government and from all other government agencies⁸¹.

The discriminatory effect is seen on the proviso where it is only the father of the child born who is required not to hold or possess immunity from suit and legal process as is accorded to the envoy of a foreign sovereign power accredited to Tanganyika. May be

⁷⁸ Made on 27th November, 1961

⁷⁹ Chapter 1 of the adopted Tanganyika Constitution appended to the second schedule of the Tanganyika (Constitution) Order-in-Council, 196, from article 1-10.

⁸⁰ Section 3 of the Constitution of Tanganyika, appended to the second schedule of the Tanganyika (Constitution) Order-in-Council, 1961.

⁸¹ Article 9(g) of the Constitution of the United Republic, 1977 as amended from time to time.

this served the purpose then, but the current scenario of political freedom and social reform, this position of the law is untenable and needs urgent redress.

3.4 Citizenship laws before being consolidated into a single Act (the position of the Citizenship laws before 1995)

As explained earlier, citizenship laws before being consolidated into a single Act, various pieces of legislation were used in determining a person's citizenship. These legislations came about under various phases of Tanzania administrations, each with different perceptions on citizenship matters.

3.4.1 The laws in Tanzania Mainland (the then Tanganyika)

In the then Tanganyika, being a newly emerging “nation” in 1961, priority and focus were on political issues rather social welfare and rights and these became important and focal issues on debate⁸², eclipsing other issues. Before independence, people living in Tanganyika were legally categorized as either British citizens (mainly Europeans), British-protected persons (mainly Asians), or natives (Africans). As Africans fought for independence, one of the main issues they faced was establishing criteria for citizenship in the post colonial national community. The late Julius Kambarage Nyerere, the leader of the nationalist movements' most prominent organizations, TANU, attacked colonialism on the ground that racism, segregation and second class citizenship were morally wrong. He espoused a citizenship based on the principle of equal rights for all Tanganyikans⁸³. He reiterated his position during Tanganyika's independence ceremony on 9 December, 1961:

We have agreed that our nation shall be a nation of free and equal citizens, each person having an equal right and opportunity to develop himself and to contribute to the maximum of his capabilities to the development of our society. We have said that neither race, tribe, religion, cleverness, nor anything else,

⁸² The term “nation” is placed in quotation marks because Tanganyika, like most of the world's countries, did not have state boundaries that corresponded to a territory inhabited by a single cultural group.

⁸³ Heilman, B. (1998), *Who are the Indigenous Tanzanians? Competing Conceptions of Tanzanian Citizenship in the Business Community*. Retrived June 06, 2012 from the World Wide Web: <http://www.jstor.org/stable/4187234>

*could take away from a man his own rights as an equal member of society. This is what we have now to put into practice*⁸⁴.

Ultimately the Tanganyika Citizenship Act 1961 (Cap 5120 was enacted in accordance with Nyerere's views. The Act provided that all citizens of the United Kingdom, its colonies, and British-protected persons born in Tanganyika (including persons of Asian, Arab and European origins) and who had at least one parent born in the in the territory prior to independence would automatically become citizens of Tanganyika⁸⁵.

Along with this Act are the Citizenship Ordinance Cap 452 and the Citizenship Act No. 15 of 1962. All these laws held the same definition on citizen by birth as provided for by the Tanganyika Constitution⁸⁶. These laws remained in force until they were consolidated on enactment of the Tanzania Citizenship Act, 1995⁸⁷.

3.4.2 The laws in Tanzania Zanzibar (the then Peoples Republic of Zanzibar)

Zanzibar governed its citizenship matters legally as early as 1911 where the first relevant piece of legislation was the Nationality and Naturalization Decree⁸⁸. This law was the first law to define who a Zanzibari citizen was and laid down the procedure to be followed for acquisition of Zanzibar citizenship. This law recognized a Zanzibari by birth to be a child, whether born in the Dominions of His Highness the Sultan or not, of a Zanzibari father who was born in Zanzibar or became a subject of His Highness the Sultan by naturalization; a child born in the Dominions of His Highness the Sultan of parents unknown or whose nationality is unknown; or a child born in the Dominions of His Highness the Sultan of an alien father born in the Dominions of His Highness the Sultan⁸⁹. The Nationality and Naturalization Decree prevailed until 1952 when it was

⁸⁴ Martin H. Y. Kaniki, "TANU: The Party of Independence and National Consolidation," in Gabriel Ruhumbika, ed. *Toward Ujamaa: Twenty Years of TANU Leadership* (Dar es Salaam: East Africa Literature Bureau, 1974), p. 17

⁸⁵ Op cit

⁸⁶ appended to the second schedule to the Tanganyika (Constitution) Order-in-Council, 1961

⁸⁷ Cap. 357 R.E 2002

⁸⁸ 1911, (Cap 134).

⁸⁹ Section 3 of the Nationality and Naturalization Decree, 1911, (Cap. 134)

repealed by the Nationality Decree of 1952 which was preceded by the British Nationality Act of 1948⁹⁰ (Cap. 56).

In the Nationality Decree of 1952 citizens by birth were those people born (whether before or after the 27th December, 1952) within the Dominions of His Highness the Sultan⁹¹ save for those whose parents were citizens from the countries listed in the third schedule to the Act as provided under section 1(2) of cap. 39 of 1952⁹².

This law remained in force from that time until Zanzibar became Peoples' Republic (12th January, 1964). Thereafter the Revolutionary government, through the Zanzibar Revolutionary Council functioning as a legislative body passed the Existing Laws Decree Number 1 of 1964 which extended the application of Cap. 39 of 1952 up to January 1964. Therefore, in determining citizenship by birth in Zanzibar before, on or after the revolution one should take into account the previous laws i.e. CAP 134 of 1911 and CAP 39 of 1952⁹³. Soon after the Revolution, on 26th April, 1964 Zanzibar joined with the then Republic of Tanganyika and formed the United Republic of Tanzania.

3.5 Citizenship laws after being consolidated into a single Act (the position of the Citizenship laws after 1995)

After consolidation of the citizenship laws into a single Act⁹⁴, all citizenship matters in the United Republic of Tanzania came under one piece of legislation. But this legislation⁹⁵ retained⁹⁶ for application the provisions of all the laws relevant to citizenship matters hitherto in force. This was so because, as observed above,

⁹⁰ This law was in force in Britain and it also applied to all her colonies for the sake of bringing common status within the Common Wealth citizens including Zanzibar.

⁹¹ S. 3(1) of the Nationality Decree, 1952.

⁹² The countries listed are Australia, Belgium, Canada, Ceylon, France, Italy, New Zealand, Portugal, Republic of Ireland, Union of South Africa and United States of America.

⁹³ See the Existing Laws Decree No. 1 of 1964

⁹⁴ The Tanzania Citizenship Act, 1995(Cap. 357 R.E 2002)

⁹⁵ Ibid

⁹⁶ Section 30 of the Tanzania Citizenship Act, 1995

citizenship is determined by the time at which a person is born and the applicable laws at that material time. In case of citizens born after the Union (after 26th April, 1964) their applicable laws are in two categories. First, for those persons born on or after 26th April, 1964 but before Act No. 6 of 1995 came into force, determination of their citizenship is governed by the laws which existed at that material time⁹⁷, and second for the persons born after Act No. 6 of 1995 came into force their citizenship is determined by both Act No. 6 of 1995 and previous citizenship laws particularly in establishing their parents' citizenship. However, an important point to take careful note of is that, despite its earlier enactment, Act No. 6 of 1995 became operational on 1st February 1998⁹⁸ after its Regulations were adopted on 26 September 1997⁹⁹. Having observed this technicality of identifying the relevant law for the purpose of determining citizenship by birth on or after the Union, it follows then that for one to qualify to be a citizen of Tanzania on or after the Union one has to meet the requirements of Section 5(1) of Act No. 6. This provides that a person born in Tanzania on or after the Union is deemed to have become and to have continued to be a citizen of the United Republic from the commencement of the Act provided that for a person born before the commencement date one must have been a citizen under the previous laws as provided under S. 30 (1) (a) of Act No. 6 of 1995. Interestingly, citizenship by birth under S.5 (1) is qualified by S.5 (2) of the same Act in that, for a person to be a citizen by birth one of the parents should be a citizen of the United Republic. The provision of S.5 (2), reads:

'A person shall not be deemed to be or to have become a citizen of the United Republic by virtue of this section if at the time of his birth:-
(a) Neither of his parents is or was a citizen of the United Republic and his father possesses the immunity from suit and legal process which is accorded to any envoy of a foreign sovereign power accredited to the United Republic; or
(b) Any of his parents is an enemy and the birth occurs in a place then under occupation by the enemy¹⁰⁰.

⁹⁷ CAP 512, CAP 452, Act No. 15 for Tanganyika and CAP 134 of 1911 and CAP 39 of 1952 for Zanzibar

⁹⁸ See G.N. No. 52 of 1st February 1998

⁹⁹ See G.N. No. 658 of 26th September 1997

¹⁰⁰ S. 5(2) of Act No. 6 of 1995

From the wording of this provision it is clear that the right to citizenship by birth in Tanzania is not automatic as should be understood and perceived but rather is qualified to the extent that one of the parent should be a citizen of Tanzania and that this right is not extended to a person born to a father who is a diplomat serving his diplomatic duties in Tanzania or a person whose parent is an enemy and the birth occurs in a place occupied by the enemy.

3.6 Shortcomings of the laws relating to citizenship by birth

As aforementioned earlier, citizenship by birth in Tanzania has been covered by various pieces of legislations which saw the amalgamation of different laws then in force. This has resulted in the need for taking into account factors of time and place of birth when determining a person's citizenship by birth. The nature of these previous governing laws on citizenship by birth has contributed significantly to the existing confusion to the stakeholders in comprehending their rights and avoiding vulnerability.

3.7 The position of the Constitution of the United Republic of Tanzania on citizen by birth

As discussed earlier, the Constitution of the United Republic of Tanzania has just enshrined citizenship by birth as a pre-requisite qualification for candidates vying for the post of President¹⁰¹ of the United Republic of Tanzania and the post of Vice-President¹⁰². As per the Constitution, the citizenship status is to be determined in accordance with the citizenship law which is the Tanzania Citizenship Act¹⁰³. But the definition of a citizen by birth provided for by the Tanzania Citizenship Act gives way to some facts which are silent or rather overlooked by the Constitution of the United Republic. The interpretation section of the Tanzania Citizenship Act¹⁰⁴ defines a citizen by birth to mean,

- ... a person who is a citizen of the United Republic-*
- (a) by virtue of the operation of section 4;*
 - (b) by virtue of section 5;*
 - (c) by virtue of his birth in Zanzibar and the effects of subsection (2) of section 4.*

¹⁰¹ Article 39(1)(a) of the Constitution of the United Republic of Tanzania, 1977

¹⁰² Ibid Article 47(4)(a)

¹⁰³ Cap. 357 R.E of 2002

¹⁰⁴ Ibid

The said section 4 covers citizens of Mainland Tanzania and of Zanzibar before Union Day deemed to have become citizens on the Union Day whereas section 5 talks about persons born in the United Republic on or after Union Day. To sum up the requirements of these two sections is that they all cover for a citizen by birth of the United Republic depending on the time place of birth. Of most importance to these sections is that for one to be a citizen by birth of the United Republic then he should have been or should be born in Tanzania and that one of his parent should be a citizen of Tanzania save for those born before independence of Tanganyika, one of their parent was only required to be born (and not a citizen) in Tanganyika.

Having seen the definition of who is a citizen by birth as per the Tanzania Citizenship Act¹⁰⁵, it is clear from it that the fact of Tanzania having a president and/or a vice-president bearing another nationality/citizenship is foreseen. It is this fact that the Constitution of the United Republic of Tanzania is silent on or it did overlooked, something which is very clear that the said Constitution does not intend to entertain. This is so in that the Citizenship Law requires either one or all of the parents to be citizens of the Tanzania at the time of the birth of a citizen by birth. Therefore, the president and the vice-president of the United Republic could be, in the near future, any elected person to that posts who one of his parent is a citizen of Tanzania and the other being a citizen of another country.

3.8 Citizenship by birth under the Tanzania Citizenship Act (cap 357 R.E 2002)

The definition of who is a citizen by birth as per the Tanzania Citizenship Act has been largely stated above, but of more importance here, are the qualifying sub provisions to the definition. Despite the fact that for one to be a citizen by birth in the United Republic, his birth should occur in the United Republic and that one of his parent should be a citizen of Tanzania at the time of the said birth, there is also other requirement which goes hand in hand with it. Also, citizenship by birth in Tanzania as

¹⁰⁵ Ibid

per the Tanzania Citizenship Act does have a discrimination effects in it hence not being in conformity with the Constitution of the United Republic of Tanzania. These other requirements as well as the discrimination effects which are within the citizenship by birth provisions do contribute a lot in the shortcomings of the law these laws.

3.8.1 Discrimination effects

The citizenship by birth provisions of the law has the following shortcomings which in one way or another tend to bring about the discrimination issues among the common citizens.

3.8.1.1 Possession of immunity from legal suit

A citizen by birth as has been defined before entails a person whose birth occurs in Tanzania and that one of his parent must be citizen of the United Republic at the time of his birth. But, even where a person possesses the qualifications of a citizen by birth, he cannot be a citizen if his **father** possesses the immunity from suit and legal process which is accorded to an envoy of a foreign sovereign power accredited to the United Republic¹⁰⁶. This requirement of the law has some discrimination effect on gender. From this requirement of the legal provision it can be inferred that where the one possessing the immunity from legal suit and process accorded to an envoy of a foreign sovereign power accredited to the United Republic is the **mother**, then the child to that mother shall be a citizen by birth.

Apart from the gender inequality effect produced by this legal provision of citizenship by birth, the legal provision also raises the issue of dual nationality if the laws on citizenship matters of the country of origin of the said mother (who possesses the immunity from suit and legal process accorded to an envoy of a foreign sovereign power accredited to the United Republic) do recognise the same.

¹⁰⁶ Section 5(2)(a) of the Tanzania Citizenship Act, No. 6, 1995

3.8.1.2 Reversion of citizenship by birth

The citizenship by birth laws allows reversion of the said citizenship where one, in a prescribed manner, renounces it. But this kind of reversion has been restricted. Section 13(3) of the Citizenship Act¹⁰⁷ reads as follows:

Notwithstanding anything in this Act or any other written law to the contrary, any woman who is a citizen by birth of the United Republic who renounces her citizenship of the United Republic upon getting married to a citizen of another country may, where the marriage breaks down, revert to her citizenship by birth of the United Republic on such conditions as the Minister may, by regulations published in the Gazette impose.

This section of the said Act goes together with regulation 7 of the Tanzania Citizenship Regulations 1997¹⁰⁸. The regulation reads:

7(1) for the purpose of reversion to citizenship of the United Republic by a woman married to a foreigner as provided for under sub-section (3) of the section 13 of the Act, such a woman shall make a formal application to the minister indicating her intention of reversion accompanied by evidence that the marriage has irreparably broken down.

*(2) The Minister **shall** give his consent in writing and upon such consent such woman **shall** revert to her Tanzania citizenship by birth and her declaration of renunciation of Tanzania citizenship made when she got married to a citizen of another country **shall** be cancelled.*

(3) The Director of Immigration Services shall maintain a register of woman who have reverted to Tanzania citizenship by birth.

From the legal provisions above it is very clear that the law provides for married female bona fide Tanzania citizens holding foreign citizenship to revert to Tanzania citizenship by birth at will, where her marriage breaks down, on mere renunciation of their foreign citizenships. The formality applicable is simple and universal.

It is very prejudicial that this right is restricted to only Tanzanian married female citizens but denied to its male citizens, widows as well as the unmarried Tanzanian

¹⁰⁷ Cap. 357 R.E 2002

¹⁰⁸ G.N No. 432, R.E 2002

females, hence leading to a wild speculation and bitter conclusions on the motives for such flagrant discrimination.

Nobody chooses their sex at birth and should not therefore be discriminated against by law or custom for a mistake or accident not of their making. And the question of marriage is a personal decision left to the woman's will. Also the law should not discriminate on the Tanzanian widows to foreign husbands. Justice dictates that such a right be accorded to all and to both sexes of Tanzanian bona fide citizens, without discrimination or favour.

3.8.1.3 Legitimated children

Section 19 of the Tanzania Citizenship Act¹⁰⁹ talks of legitimated children. The section reads;

19(1) A person born out of wedlock and legitimated by the subsequent marriage or of the Commencement of this Act, whichever is the later, shall be treated for the purpose of determining whether he is a citizen of the United Republic, as if he had been born legitimate.

(2) A person shall be deemed for the purpose of this section to have been legitimated by the subsequent marriage of his parents if by the law of the place in which his father was domiciled at the time of the marriage the marriage operated immediately or subsequently to legitimate him, and not in any other way.

This provision of the law raises concern on the point where one was born out of wedlock and there was no subsequent marriage to legitimize his birth and at the same time he was born before the commencement of the Act. How will the law treat such a person when determining whether he is a citizen of the United Republic or not? Though not on practice, this legal provision can bring about the discrimination effect to that said child, if put in practice that is, an effect which can result to statelessness. On the other hand, subsection (2) of this section brings about gender discrimination by only recognising the place of domicile of the father at the time of marriage and not of the mother.

¹⁰⁹ Ibid

3.8.1.4 Dual nationality

From the definition of a citizen by birth as per the Tanzania Citizenship Act, it is very clear that citizenship by birth is of two categories. As it is earlier quoted the section¹¹⁰ reads;

5(1)..., every person born in the United Republic on or after the Union Day shall be deemed to have become and to have continued to be a citizen of the United Republic with effect from the date of his birth, and with effect from the commencement of this Act and shall become and continue to be a citizen of the United Republic, subject to the provisions of section 30.

(2) A person shall not be deemed to be or to have become a citizen of the United Republic by virtue of this section if at the time of his birth-

(a) Neither of his parents is or was a citizen of the United Republic....

From this section it can be deduced that there are those born in the United Republic with both parents being citizens of the United Republic at the time of their birth as one group and those who were born in the United Republic with only a single parent being a citizen of the United Republic at the time of their birth as the second group. Both these two people are termed as citizens of the United Republic by birth. This division of citizenship by birth has been brought about by the same law which provides for cessation of dual citizenship¹¹¹ on the person born in the United Republic with only one parent being a citizen of the United Republic at the time of that person's birth. In fact this dual nationality being brought by the law is just an assumption, for the said citizen to acquire the nationality of the other parent who is or was a non-citizen of the United Republic at the time of his birth greatly depends on the laws on citizenship of that particular nation if at all it accommodates him. The dual nationality effect is, according

¹¹⁰ Section 5(1) &(2)(a) of the Tanzania Citizenship Act, No. 6, 1995.

¹¹¹ Section 7(1) of the Tanzania Citizenship Act, No.6, 1995. This section is the one, in practice, being used to cease the other nationality supposedly acquired by such a citizen merely on the fact that his other parent is of another nationality. This section provides that; *"any person who upon the attainment of the age of eighteen years, is a citizen of the United Republic or was a citizen of the former Republic of Tanganyika or of the former People's Republic of Zanzibar and also is or was a citizen of some country other than the United Republic or either the former Republic of Tanganyika or of the former People's Republic of Zanzibar shall, subject to the provisions of sub-section (8), be deemed to have seized to be a citizen of the United Republic upon the specified date unless he previously renounces his citizenship of that other country, take the oath of allegiance, and,"*

to the Tanzania Citizenship Act, only allowed to children under the age of eighteen years.

Therefore, the division of citizenship by birth by the law brings about favouritism effect among its own citizens who do not have any influence on the choice of their parents, hence not being in conformity with the Constitution of the United Republic which is the higher law of the land.

3.9 Deprivation of citizenship of persons who exercise certain rights in other countries

Although, the laws relating to citizenship of the United Republic are not for dual citizenship, a citizen by birth of full age and capacity, under some of the same laws can impliedly hold the citizenship of another country. Section 14¹¹² gives this implication. The section reads;

The Minister may deprive any person, other than a person who is a citizen by birth, of his citizenship of the United Republic if the Minister is satisfied that that person has at any time while a citizen of the United Republic and of full age and capacity voluntarily claimed and exercised, in a foreign country, any rights available to him under the law of the country, being a right accorded exclusively to its own citizens, and that is not conducive to the public good and that he should continue to be a citizen of the United Republic.

From this section the law fails to prevent a citizen of the United Republic by birth from claiming and exercising any rights from other country available to him under the law of that country, rights which are exclusively accorded to the citizens of that country, meaning becoming a citizen of that country and at the same time maintaining the Tanzanian citizenship by birth. This is more so in that despite the fact that the Minister has no power under the law to deprive such a citizen his birth citizenship, the law itself has no provision which makes such a person to automatically lose his citizenship by birth upon making such an act of acquiring other citizenship by claiming and exercising

¹¹² Of the Tanzania Citizenship Act, No. 6, 1995.

any rights from other country available to him under the law of that country which are exclusively accorded to the citizens of that country.

In practise, such a citizen by birth is denied his citizenship by birth by the use of section 7(4) of the Tanzania Citizenship Act¹¹³, which is a wrong practise for the whole of section 7 only deals with cessation of dual nationality¹¹⁴.

3.10 The Birth and Death Registrations Laws

Other laws which relates to a citizen by birth are those laws used in the registration of births in Tanzania. In mainland Tanzania once a birth occurs (of a living child), a compulsory statutory duty is imposed upon to either the parents, the occupier of the house in which to his knowledge such a birth has occurred, any person present at the birth or any a person having charge of such a birth, to register the birth within three months of the birth¹¹⁵. Once such a birth has been lawfully registered to the relevant district registrar¹¹⁶, the district registrar of the relevant district shall, on payment of the prescribed fee, give a certified copy of any entry in any register of births in his custody¹¹⁷.

In Tanzania Zanzibar the Registrar of Birth and Deaths is the one who is assigned with the statutory powers and functions to register births and deaths and to issue certificates therefore¹¹⁸. In both cases, this certified copy or certificates should only serves as evidence that a birth has occurred in Tanzania.

¹¹³ Cap. 357 R.E 2002

¹¹⁴ According to Section 26 (1) of the Interpretation of Laws Act, Cap. 1 R.E 2002, the headings of the Parts, divisions and subdivisions into which a written law is divided form part of the law.

¹¹⁵ Section 11 of the Birth and Death Registration Act, Cap 108 R.E 2002

¹¹⁶ Ibid section 9

¹¹⁷ Ibid section 25

¹¹⁸ Section 7(a) of the Births and Deaths Registration Act, No. 10, 2006, (R.E 2006)

But the forms used for registration any of birth occurred¹¹⁹ used in Tanzania mainland go further to including the nationality of the parents of the child born¹²⁰. The inclusion of the parents' nationality of the registered child in the register of birth form makes it a determiner of a person's citizenship instead of it being just a mere evidence of birth occurrence. Since the prescribed particulars given on registering a birth only depends on the knowledge and ability of the person under the duty to register the birth, and the correctness of the prescribed particulars are certified by signing or, for the illiterate, by affixing their marks to the prescribed form on which the prescribed particulars are reported to the district registrar¹²¹, it is possible that the information given on the nationality of parents is not reliable for no concrete evidence to this is adduced. Therefore, the birth certificates issued in this nature gives rise to confusion when it comes to determining a person's citizenship for most of the people rely on the information found in it.

The certificates of birth issued in Tanzania Zanzibar are only mere evidence of the birth occurrence¹²² for they do not include the nationality of parents in its prescribed particulars but just their name, surname, occupation, race and tribe or sect.

¹¹⁹ The Register of Birth form found in the Schedule Forms under Rule 8 of the Births and Deaths Registration Rules, G.N No. 245 of 2000

¹²⁰ See appendix ...

¹²¹ Op cit Section 10

¹²² See appendix ...

CHAPTER FOUR

RESEARCH FINDINGS AND DATA ANALYSIS

4.1 Introduction

This study is about the efficacy of the Tanzania national laws on citizenship by birth. The findings of the study therefore, reflect on the set research questions which are to be answered by this study. In this chapter the researcher presents data collected in the period between November 2012 to February 2013 from various groups of people from the community as well as from various relevant documents from the Immigration Office at the Headquarter.

Citizenship by birth as a legal matter, in any country, should be sufficiently covered by the laws of that particular country without leaving any legal doubts or creating any discrimination among its own citizens. Therefore, in asserting this position in Tanzania, various views from different classes of people were collected from the community as well as various relevant materials were consulted for the most reliable data. Most of the data were collected from the Immigration Offices at its headquarter and head office of the Immigration department in Mainland Tanzania and Tanzania Zanzibar respectively. Amongst the groups interviewed from the community were some of the Immigration officers as well as their clients.

4.2 Response from the Immigration officers

Sixty questionnaires were issued to the immigration workers from both the headquarter office in mainland Tanzania and the head office of Zanzibar and forty eight of them were returned fully answered, seven of them not completely answered, and the rest (five) were never returned. The response rate of all the questionnaires returned is 88.3% and that of those which were completely answered 80%. Those which were partly answered amount to 11.7 % whereas those which were never returned comprised of 8.3%.

Eighteen of the completed questionnaires were from immigration officers who are lawyers by profession while the rest of the completed questionnaires were from those who bore different fields of qualifications.

In respect to the questions whether they were well conversant with who a citizen is and the categories of citizens in the United Republic as per the laws, fifty of the responses were positive that they well understood who a citizen of the United Republic is and the categories of citizens in Tanzania. The remaining five of the respondent, two did not answer as to these questions and three of them only answered who a citizen is but did not know how many categories of citizens are there in the United Republic.

On the question whether the section of the law which defines who a citizen by birth is being appropriate and sufficient enough, thirty eight (69.1% of the respondent) of the respondent from this group did answer in the affirmative that it is not appropriate and clear enough for it provides for a lot of contradictions hence discriminating amongst the citizens of the United Republic who fall under that definition. Eleven of the respondent (which represents 20%) said that they find the definition of who a citizen by birth is to be confusing and very difficult to apply it to their daily immigration duties. The rest six (which is 10.9%) did not respond to this question.

On the question on whether the laws are appropriate and do suffice on who a citizen by birth is, almost all the respondent under this category were of the view that the provisions and the laws should be re-visited and be re-enacted in such a way that all the confusion and discriminating effects are cleared. In other words they suggest that the provisions on citizen by birth should be stated in such a way that they avoid any ambiguity and further emphasising that citizenship matters should be included in the Constitution of the United Republic, that is the definition as to who a citizen is, it's categories and acquisition. All those who completely answered the questionnaires

recommend for changes to the citizenship by birth provisions, changes which will suit with the currents social and economical changes which affect the citizenship matters.

Table 4.1: Summary of the Answers provided by the Immigration officers

Type of question asked Type of answers given	Positive answer	Negative answer	Not sure	No answer
Do know who a citizen of U.R.T is?	53	0	0	2
Do you know the types of citizenship in U.R.T	50	3	1	1
Do you know who a citizen by birth is	43	8	0	2
Are you well conversant with the laws governing citizenship matters	50	5	0	0
Are these laws sufficient enough on citizens by birth	0	38	11	6
Does the current constitution cover for citizenship matters	5	48	0	2
Should citizenship matters be included in the Constitution	52	3	0	0

Source: own source.

4.3 Response from other members of the community (non-Immigration officers)

Interview was used as a data collection method to get information from the other members of the community who were not immigration officers. This group included people with different professions most of them being those who visited the citizenship section in the immigration offices (both the Headquarter and the Head office at Dar es Salaam and Zanzibar respectively). About forty people were interviewed and only thirty four of them agreed to be interview and showed great cooperation.

Twenty five of the respondents agreed to have knowledge of the citizenship laws, each at different level, five of them being aware of it but not knowing what it actually proclaims and the remaining four did not know the law at all.

Nine of the respondents believe that in a purely *jus soli* rule of citizenship. They believe that once a person is born in the United Republic of Tanzania he/she automatically

became a citizen of the United Republic. There are others who relied purely on the birth certificate as a proof of citizenship and not a proof of birth, taking the inclusion of parents' nationality in the birth certificate to meet the requirement of the citizenship law.

Of the twenty five respondents who understood the law, twenty of them insisted on changes to it especially on the point of dual citizenship. They said that the law is very unfair, for most of the Tanzania citizens are forced to drop their Tanzania citizenship for acquiring or retaining other countries citizenship which they have acquired or retained due to avoidable conditions. Many of these respondents were Tanzania parents with children born abroad and those with children born in the United Republic but with the other parent being a foreigner. Of concern were those parents with children born in the United Republic with the other parent being a foreigner who clearly answered that the law forces these citizens by birth to lose their citizenship at birth (which should be protected by the laws) for retaining their foreign parent citizenship.

The other five respondents who understood the citizenship laws did recommend on changes of the law too but did not specify what exactly was to be changed.

For the respondents who were not well aware of the citizenship laws insisted that the government, especially the immigration office, should educate the community at ground levels on all citizenship matters and laws so that they raise awareness to the public.

Also there were five respondents who strongly condemned the law to be very discriminative in nature and that it was unconstitutional. A one AZIZ ISSA HASSAN of Zanzibar went further to writing a letter (attached to this report as an appendix A) to the department of Immigration stating how unfair and discriminative the law on citizenship by birth is hence strongly recommending on immediate corrective changes. He was deprived of his Tanzania citizenship by birth upon acquiring the Kenyan

citizenship (under avoidable circumstances) and when he returned to Tanzania, he applied for the reversion of his Tanzanian citizenship only to be subjected to the formalities of naturalization as a foreigner, hence ending up being naturalized (and not being reverted to his citizenship by birth of the United Republic).

Another FARID JOHN GREEN who was born in Iringa with a Zanzibari mother and an England father, was deprived of his Tanzania citizenship by birth when he applied for a Tanzania passport for not renouncing his acquired citizenship from his father at the age of majority and now that he was beyond the age of majority, was asked to apply to be naturalized as a foreigner, if he was interested to be a Tanzania citizen.

Table 4.2: Summary of the Answers provided by the members of the community

Type of question asked Type of answers given	Positive answer	Negative answer	Not sure	No answer
Do you know who a citizen by birth is	30	4	0	6
Are you well conversant with the laws governing citizenship matters	25	4	5	6
Are these laws sufficient enough on citizens by birth	0	30	4	6
Should citizenship matters be included in the Constitution	34	0	0	6
The law should be repealed and be replaced with a well defined one	30	2	2	6

Source: own source.

4.4 Wrongly issued passport

The information on the wrongly issued passport was gathered by way of review of the records of the immigration officer.

As it is known worldwide, a passport is issued by a national government to its citizens; it certifies the identity and nationality of the holder. Therefore, for one to be issued with

a Tanzanian passport, then he/she must be a citizen of the United Republic. When determining a person's citizenship as was earlier observed, the time and place of birth of that particular person is of essence. The importance of the time and place of birth of person is that it enables the determiners to know what laws are to be applied.

But these laws, as have been acknowledged by the respondents, have a lot of confusion specifically the provision which cover for citizens by birth. This confusion has led to different definition of who a citizen by birth from different stakeholders. It is due to this confusion brought about by the laws that many people have been wrongly issued with Tanzania passport. By the fact of merely being born in the United Republic and the inclusion of parents citizenship in the birth certificates, many people have been termed or term themselves to be citizens of the United Republic by birth hence applying for and being issued with Tanzanian passports.

The magnitude and effect of these people who are wrongly issued with Tanzanian passport is big in that, when such persons are discovered later, their passports are withdrawn by the immigration office and they are forced to apply for Tanzania citizenship if they so wish. Statistic shows that some of these people are those citizens born in the United Republic with only one parent being a citizen at the time of their birth. These citizens are ignorant on the part of the law which says that they should renounce their other citizenship upon attaining a certain age¹²³. So when they reach the required age for renunciation they fail to do so while continuing counting themselves to be citizens of United Republic not knowing that they have legally seized to be citizens of the United Republic.

Data collected from the Immigration office which fall in this group reveal that in 2009 fourteen people were wrongly issued with Tanzanian passports, in 2010 the number decreased to ten people, eleven people in 2011 and in 2012 sixteen people.

¹²³ Section 7(1) of the Tanzania Citizenship Act, No. 6 of 1995 (Cap. 357 R.E 2002).

Table 4.3: Summary of statistics of wrongly issued passports

Time	Number of wrongly issued passports
2009	14
2010	10
2011	11
2012	16

Source: Citizenship Section, the Immigration Department Headquarters, Dar es Salaam.

A one TAJINDER SINGH BANSAL was issued with a Tanzanian passport (number A0339204) which was later replaced with the new passport (number AB 025718) and an East African passport (TA019611) for being confirmed by the immigration office with a letter dated 14/08/1996 that he was a Tanzania citizen by birth. He was born in Tanzania with a single parent being a citizen. But in 2010 when applying for a replacement of his passport for the previous one being filled up, he was inform that he is not a Tanzania citizen for he had failed to renounce his other citizenship at the required age. His passports were withdrawn and he was required to apply for Tanzania citizenship under special circumstances.

Another person who suffered the same incident in the same year of 2010 was a one DIANA NAVTEJ BRAINS who was issued with passport (number A0380922) after being taken to be a Tanzania citizen by birth with a single parent being a citizen at the time of her birth.

In 2012 a one PAMELA KIHANIRA KIBAYA was denied her Tanzania citizenship by birth on 25th November, 2009 with a letter referenced IMM/HQTR/IR/71/09 but after a thorough investigation and revisit of the citizenship laws she was later re-confirmed by a letter referenced IMM/HQTR/IR/71/09/F38 of 4th September, 2012 to be a citizen by birth. The investigation proved that she was a citizen of the United Republic and at the time of her birth one of her parent was a citizen of the United Republic.

Table 4.4: Summary of statistics of citizens by birth whose passports were termed as wrongly issued

Time	No. of passports wrongly issued	Citizens by birth whose passport was termed as wrongly issued
2009	14	2
2010	10	0
2011	11	1
2012	16	3

Source: Citizenship Section, the Immigration Department Headquarters, Dar es Salaam.

4.5 Confirmation letters as to citizenship by birth mistakenly issued

A number of confirmation letters as to citizenship by birth mistakenly issued were discovered through secondary sources. A review of the public document from the Immigration Offices was of help in the gathering of information from the records.

Due to the fact that the laws on citizen by birth are not clear many people have been issued with confirmation letters which confirm them to be Tanzania citizens by birth. The confirming authority which is the Immigration office has many a time given letters to people confirming them to be Tanzania citizens by birth only later to be discovered that they are not citizens of Tanzania by birth. Or sometimes the authority disqualifies a Tanzania citizen by birth only to be discovered later that that particular person is a Tanzania citizen by birth.

In the year 2009 eight people were discovered to have been wrongly confirmed as Tanzania citizens by birth hence they were issued with Tanzania passports. These people were issued with letters from the immigration office confirming their Tanzania citizenship by birth only to be refuted later and be asked to applying for Tanzania citizenship for they were wrongly confirmed as Tanzania citizens. These kinds of people kept on being discovered as the time went by. In 2010 four people were discovered and in 2011 another three people were also found to be wrongly possessing Tanzania citizenship. In the year 2012 the number increased to six people.

These people were issued with the confirmation letters confirming their Tanzania citizenship by birth for just being born in the United Republic without having a single parent being a citizen at the time of their birth. The only proof they had presented were their birth certificates and the birth certificates of their parents who were only born in Tanzania but who were not citizens of Tanzania.

Another group is of those who were wrongly issued with letters telling them that they are not citizens of Tanzania by birth only to be discovered later that they are actually Tanzania citizens by birth. The statistics shows that in 2012 one person was re-confirm as a citizen of Tanzania after previously being informed that she was not a citizen of the United Republic.

Table 4.5: Summary of statistics of mistakenly issued confirmation letters

Time	Wrongly confirmed as Tanzania citizens by birth	Wrongly denied Tanzania citizenship by birth
2009	8	0
2010	4	0
2011	3	1
2012	6	1

Source: Citizenship Section, the Immigration Department Headquarters, Dar es Salaam.

The issue of such letters proves that the definition provisions of the laws as to who a Tanzania citizen by birth is ambiguous in that degree of understanding it differs from one person to another. Due to this problem of different understandings of the said provision the immigration office seek a proper definition from the Attorney General's office and a proper definition of the provision was issued but it still did not clear the discriminatory effect in it. (The letter to this definition by the Attorney General is hereby attached as appendix B)

4.6 Dual nationality with regards to Citizenship by birth

Dual nationality in Tanzania is only allowed to children less than eighteen year (age of majority). Upon attaining the age of majority the law requires such children to renounce their other acquired citizenship failure to which they lost the Tanzania citizenship. But it is very unfortunate that this position of the law also covers children who are Tanzania citizens by birth who, the Tanzania law was to protect and not to deprive them of their birth citizenship. The children born in Tanzania with a single parent being a citizen at the time of their birth are presumed to have acquired the citizenship of their other parent who is a foreigner without considering that there are some other countries which do not consider such children to their citizens. Such kind of a child therefore, upon the attainment the age of majority fails to renounce that other citizenship ends up being a stateless person for the Tanzania citizenship laws do not recognise him/her.

Review of records of the Immigration offices shows that in 2008 about 156 children were issued with a re-entry visa, a visa issued to Tanzania children with dual nationality who hold foreign passports, and among these children 21 of them are citizens by birth. It is very obvious that upon attaining the age of majority and such children fail to renounce their other citizenship then their Tanzania citizenship by birth, a citizenship to be protected by the Tanzania laws, will be lost.

Statistics shows that the number of re-entry keeps on increasing as the time goes by, a fact being facilitated by the socio-economic migration currently taking place in the modern world. In 2009 a total 157 re-entry visas were issued where 32 children were citizens by birth, in 2010 out of the 208 re-entry visas issued 52 were Tanzania citizens by birth. In 2011 the number reduced to 94 re-entry visas where only 22 children were Tanzania citizens by birth and later in 2012 the number of re-entry visas shot to 459 where 58 children were citizens by birth.

Table 4.6: Summary of statistics of re-entry visas issued to children citizens by birth but with dual nationality

Time	Re-entry visas issued	Tanzania citizens by birth
2008	156	21
2009	157	32
2010	208	52
2011	94	22
2012	459	58

Source: Citizenship Section, the Immigration Department Headquarters, Dar es Salaam.

Five respondents who were interviewed agreed to either know or have children who are citizens by birth but with the other parent being a foreigner but they are not aware that those children are to renounce their other citizenship at the age of eighteen. They confirmed that those children do live in the United Republic as Tanzania citizens and some of them a past the age of majority.

4.7 Tiers of birth in determining a person's citizenship by birth

The information gathered from the public document reviewed from the immigration office shows that there is no limit to the number of tiers of birth required to prove ones citizenship. This is because the law is silent on this fact. On proving ones citizenship by birth, the parent's citizenship must also be considered especially at the time of that particular person's birth. But statistics shows that in some certain cases this has gone beyond proving citizenship of the parent, but the grand parent and great parent. And those who mostly suffer this ordeal are those with the trace of Asian origin.

A one ZEYANA ALLY HAMDAN with a letter reference DN. 268960 of 18th September, 2012 from the Immigration office, was required to produce the birth certificates of her grandparents and great grandparents from her mother's side so as to prove her citizenship by birth.

Another AHMED AWADH AHMED who was born in Tanzania and his mother being born in Tanzania was also asked, through a letter referenced DN.23000/24 of 9th November, 2012, to report at the immigration office with his and his mother's original birth certificate and the birth certificate of his either grandparent so as to prove his citizenship by birth.

Same case occurred to one MOHAMMED ABASS ROSHANAL MERAL who underwent the same ordeal of producing the birth certificates of his father, grandfather and his great grandfather. The silence of the law on this point contributes a lot to the discriminatory effects the some of the citizens of the United Republic are unfairly suffering.

4.8 Lack of Awareness of who is a citizen by birth.

From the research conducted most people from the population are not aware as to who a legal citizen of Tanzania is. Though, the laymen are by large the one who do not understand who legally a citizen of Tanzania is, it was of no surprise that part of the literate population as well as some legal professionals were not aware of the kinds of citizens legally present in Tanzania. As Twalib¹²⁴ quote Justice Nyo'Wakai asserting that:

The law is usually a jumble of pieces with the result that the legislator is nearly always faced with the task of not only updating it but having to harmonise it ...The difficulty in practice is not that we do not know that the law exists, but where to look for it. There lies the difference between the lawyer and the layman, even though sometimes some lawyers do not even know where to go for the law.

The words of Justice Nyo'Wakai above verify a statement that the general community is in the wave of ignorance of the law in many of developing countries; Tanzania is inclusive, with exclusion of lawyers. Lawyers are in advantageous position, not always

¹²⁴ Dr. Fauz Twaib, (2008), The Legal Profession in Tanzania: The law and Practice, pg 150, Law Africa Publishing (T) Ltd.

because of knowing the contents of all applicable laws, but due to the opportunity of knowing where to trace the laws.

Major causes according to him is the nature of these laws being in scattered pieces of legislation and some useful courts' decisions that establish principles are still being unreported.¹²⁵

The nature of the citizenship laws in Tanzania as explained above is scattered in different pieces of legislations for determining a person's citizenship depends on the time and his place of birth. Those born before the independence are covered by a different law from those born after independence but before the union of the two countries as well as those born after the union or after the consolidation of the laws relating to citizenship. This, therefore, calls for the needs of raising awareness within the community so that the state does not end up with stateless people.

¹²⁵ Ibid

CHAPTER FIVE

CONCLUSION AND RECOMMENDATION

5.1 Conclusion

Law and practice governing citizenship in Tanzania provide for an explicit right to nationality. Though these laws in the United Republic grant children born on the Tanzania soil the right to citizenship at birth if one of its parents is a citizen or the right to claim citizenship when they reach the age of majority¹²⁶, the observance of these laws is often lacking. This position originates from the colonial laws which were left by the British colonies in many African countries, Tanzania inclusive, and it has been so maintained to the present times only with some very few changes.

Despite the fact that the laws governing citizenship from both the Tanzania Mainland and Tanzania Zanzibar kept on changing considerably due to the fact that these states passed through various stages of administration, (the Tanganyika independence and the Zanzibar revolution), it is worth noting that all the citizenship laws enacted after the Tanganyika independence (and even after the Union of the two states) owes resemblance to the adopted Constitution of Tanganyika which was appended to the second schedule of the Tanganyika (Constitution) Order-in-Council, 1961¹²⁷. Chapter I of this Constitution provided for Citizenship¹²⁸.

The citizenship laws in the United Republic discriminate as well as do favor women. The laws discriminates women in that they are unable to pass on their citizenship to their foreign spouses and it gives them favours for it allows only them to revert to their citizenship by birth of the United Republic in case they have renounce it due to being married by a foreigner. Though the reversion is subject to some conditions impose by

¹²⁶ The age of majority according to section seven of the Tanzania Citizenship Act, Cap 357 R.E. 2002, is eighteen years

¹²⁷ Made on 27th Nov. 1961

¹²⁸ Article 1 - 10

the Minister through the regulations¹²⁹, it is only retained to women whose marriage to a foreigner has been irreparably broken down.

The Tanzania citizenship laws also lack due process protections especially on revocation of citizenship. The law gives almost unfettered discretion to the executives allowing for the abuse of law, for example the finality clause as to the decision of the Minister on any application under the Tanzania Citizenship Act. The section¹³⁰ reads; The Minister shall not be required to assign any reason for the grant or refusal to grant any application under this Act and the decision of the Minister on any application under this Act shall not be subject to appeal or review in any court.

The findings of this study show that lack of public awareness on the ambiguities in the law, which was prevalent within the community in Tanzania immensely contributed to the prolonged conflicts and confusion in citizenship matters, especially with regards to citizenship by birth. Hence, identification of such flaws and the redress thereof will bring welcome benefit to citizens adversely affected due to ignorance.

As earlier explained, citizenship by birth is of two categories. Those born in the United Republic with both parents being citizens of the United Republic at the time of their birth and those born in the United Republic with only a single parent being a citizen of the United Republic at the time of their birth. Most of those born in the United Republic with only a single parent being a citizen of the United Republic are not aware of the legal requirement which needs them to renounce their other citizenship supposedly acquired from the other non-citizen parent. Due to this fact most of these kind of citizens by birth end up being subjected to apply for citizenship, hence naturalized in their own country, because they failed to renounce their other supposedly citizenship acquired from the other parent at the required time (at the age of majority). And where

¹²⁹ The Tanzania Citizenship Regulation, G.N No. 432 R.E 2002

¹³⁰ Section 23 of the Tanzania Citizenship Act, Cap. 357 R.E 2002

this group of citizens by birth apply for citizenship upon passing the age of majority and the Minister declines their application¹³¹, and if at the same time the other supposedly acquired citizenship from the other parent is not recognised by the laws of relevant country, then this citizen might unfairly end up being stateless in his own country.

It high time that the citizenship laws in the United Republic should come into line with the international human rights norms and harmonise the national laws and ensure that they comply with the basic principles of non-discrimination and due process already enshrined in the African Charter on Human and Peoples' Rights.

The laws, preferably the Constitution, should provide for an explicit right to a nationality from birth keenly observing its imposed condition on it. In general, the laws should provide for citizenship (whether from birth or by naturalisation) to be granted on the basis of any strong connection to the country, including birth on its territory, having a father or a mother (including adoptive father or mother) who is a citizen, marriage to a citizen and long-term residence.

Citizenship rights should be based on gender equality in all respects, including the right of a woman to pass her citizenship on to her spouse and the right of reversion be accorded to all men and women. Obtaining citizenship by naturalisation should be possible for anyone able to prove legal residence in a country for a reasonable period. Any additional requirements, such as knowledge of national languages, must be reasonably possible to achieve for someone who has arrived in a country as an adult.

¹³¹ By exercising his discretionary powers given to him under the law in section 23 of the Tanzania Citizenship Act, Cap. 357 R.E 2002

5.2 Recommendations

Following the above summary and conclusion, the following steps are recommended for the attainment of the efficient citizenship laws in the United Republic of Tanzania.

- The laws, preferably the Constitution, should provide for an explicit right to a nationality from birth keenly observing its imposed condition on it. These laws should be harmonised with the international treaties which Tanzania has adopted like the African Charter on Human and Peoples' Rights which is based on the principles of the African Charter, the Constitutive Act of the African Union, the Universal Declaration of Human Rights, and the other international human rights norms.
- The laws should also come into conformity with all the relevant treaties that the United Republic has ratified like the African Charter on the Rights and welfare of the Child, the UN Convention on the Rights of the Child, the UN Convention relating to Status of Stateless Persons, and the UN Convention on the Reduction of Statelessness.
- All the laws relating to nationality/citizenship should be harmonised to avoid misinterpretation and confusion which end up bring difficulties in establishing a person's nationality. For instance the laws relating to registration of birth should be in harmony with the citizenship laws.
- The citizenship law should provide for a child to have a nationality from birth of origin if he or she is born in the United Republic and either of his or her parents are citizens; either of his parents, grandparents and great grandparent was also born in the United Republic; or he or she would otherwise be stateless.
- The citizenship law should provide that a child under the age of five years found in the United Republic territory, in the absence of proof to the contrary, be considered to have been born in the United Republic of parents possessing Tanzania citizenship, hence citizens by birth.

- All laws relating to citizenship matters should grant both men and women equal rights of changing, acquiring, retaining or reversing to nationality/citizenship and conferring nationality on their children.
- No discrimination with regard to the acquisition of nationality as between legitimate children and children born out of wedlock should be permitted by the law.
- The United Republic should make sure that equality of rights among its citizens especially the right to nationality is not undermined by discriminatory laws and practises.
- The citizenship law should provide for different documents for proof of birth from that of proof of citizenship to avoid the current confusion brought about by the current birth certificates (issued in Tanzania Mainland) which, has in its particulars, the nationality of parents of the child.
- The wide discretionary powers given to the executive by the citizenship laws should be minimised, if not removed, for justice to be observed. In the event where any application under the citizenship laws is denied then relevant authority must provide reasons in writing for the refusal and the decision should be appealable to the courts of law.
- The fees required to apply for recognition, acquisition, retention, loss, recovery or certification of nationality and to obtain necessary documents to support such application should be reasonable.
- The government of the United Republic should take steps to inform and educate all those who are eligible for the Tanzania nationality about that right and all that entails with it.
- The citizenship laws should provide that the existing citizens, whether by birth, by descent or by acquisition, may acquire other nationalities without any penalty so as to avoid the risk of creating statelessness.
- Where the United Republic of Tanzania amends its laws to allow dual nationality, it should adopt transitional provisions allowing those who had

previously lost their nationality on acquiring another to recover their former nationality on simple application formalities.

- The government of the United Republic should place narrowly defined restrictions under her national laws on the holding of public office by persons with dual nationality, restricted to the very highest offices of the United Republic.
- The citizenship laws should not provide for involuntary loss of citizenship by birth as is currently is for those who are citizens by birth with his one parent being a citizen of the United Republic at the time of his birth and upon a specified date, fails to renounce his citizenship of other country (presumably citizenship acquired from the non-citizen parent) and fails to take oath of allegiance. This category of citizens by birth end up involuntarily losing their citizenship by birth.

REFERENCES

BOOKS

- Alston, P., Steiner, H.J. (1999). *International Human Rights in Context*, London: Sweet & Maxwell.
- Detrick, S. (1999). *A Commentary on the United Nations Convention on Rights of the Child*, London: Martinus Nijhoff Publishers.
- Fredman, S. (Ed) (2001). *Discrimination and Human Rights: The cases of Racism*, New York: Oxford University Press.
- Henkin, L. (1995). *International Law: Politics and Values*, London: Martinus Nijhoff Publishers.
- Kapoor, S.K. (2007). *International Law and Human Rights*, (16th Ed.) Allahabad: Central Law Agency.
- Kelsen, H. (2003). *Principles of International Law*, New Jersey: The Lawbook Exchange LTD.
- Manby, B. (2009). *Citizenship Law in Africa; a Comparative study*, New York: Open Society Institute.
- O'Connell, D.P. (1967). *State Succession in Municipal Law and International Law*, (Vol.2) Cambridge: Cambridge University Press.
- Shaw, N. M (1997). *International Law*, (4th Ed.), United Kingdom: Cambridge University Press.
- Shaw, N. M (2008). *International Law*, (6th Ed.), Cambridge: Cambridge University Press.
- Tiilikainen, T., O'Leary, S. (Eds) (1998). *Citizenship and Nationality statute in the New Europe*, London: Sweet & Maxwell.
- Weiss, P. (1979). *Nationality and Statelessness in International Law*, Germantown:

JOURNALS/ARTICLES/MIMEO

Bendix, R. (1964) Baubuck, **Nation-Building and Citizenship**; “*Citizenship and National identities in the E.U.*,” Harvard Jean Monnet Working paper 4/97

Prof; Bonaventure, R. (2010) Dar es Salaam, **Addressing Irregular Settlement in North Western Tanzania: A Legal and Protection Perspective**. University of Dar es Salaam, *International Migration Management Project* Working Paper No. 1.

Johnson, B. and Kanyakula, M. (2011) Dar es Salaam, **Migration Situation in Southern Tanzania Regions of Ruvuma, Mtwara and Lindi: Issues and Recommendations for Action**, University of Dar es Salaam, Working Paper No. 2.

WEBSITES

Retrieved from the World Wide Web: <http://www.moha.go.tz> site visited 10/08/2012

Retrieved from the World Wide Web: <http://www.immigration.go.tz> site visited 21/09/2012

Retrieved from the World Wide Web: <http://www.citizenship.gov.au/currentcitizens> site visited 21/09/2012

Retrieved from the World Wide Web: <http://www.npr.org/templates/story/story.php?story> site visited 02/10/2012

Retrieved from the World Wide Web: <http://www.wikipedia.org/wiki/Tanzania-nationality-law> site visited 02/10/2012

APPENDICES

Appendix I: A Complain Letter from a citizen by birth whose citizenship was withdrawn

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P. O. BOX. 2069
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2 October 2006.

COMMENTS ON CURRENT TANZANIA CITIZENSHIP LAW.

INTRODUCTION

The following comments represent my personal views on some of the glaring flaws in Tanzania citizenship law currently in force.

The flaws manifest distinctive and serious negation of Tanzania's claim of a society that stands for and upholds the values of human rights, justice and fairness. It is unimaginable that such a law, which ignores basic principles of justice, could have been enacted and allowed to operate for so long to the detriment of civil rights and Tanzania's reputation.

My comments center on Naturalization and Reversion and the law here is simply absurd, discriminative, vindictive, punitive and generally in very bad taste.

NATURALIZATION

The law provides for foreign nationals/ citizens applying for Tanzanian citizenship to be naturalized after fulfilling set conditions. A fee of US \$800 is charged.

This applies to bona fide foreign nationals/citizens as well as bona fide male Tanzanian citizens holding foreign citizenships who wish to revert to their natural and native citizenship.

While it is understandable for a bona fide foreigner to be naturalized, it is ironical that a bona fide Tanzanian should be naturalized too.

Justice dictates that a bona fide Tanzanian should revert to his Tanzania citizenship with simple formalities and without fees.

REVERSION

The law provides for female bona fide Tanzania citizens holding foreign citizenship to revert to Tanzanian citizenship at will on mere renunciation of their foreign citizenships. The formality applicable is simple and universal. No fee is charged.

It is both prejudicial and ironical that this right is restricted only to Tanzanian female citizens but denied to its male citizens, leading to wild speculation and bitter conclusions on the motives for such flagrant discrimination.

No body chooses their sex at birth and should not therefore be discriminated against by law or custom for a mistake or accident not of their making.

Justice dictates that such a right be accorded to both sexes of Tanzanian bona fide citizens without discrimination or favour.

TENURE OF CITIZENSHIP BY BIRTH

The law must expressly provide that citizens of Tanzania by birth cannot and shall not be deprived of their citizenships at all. Reversion by Tanzanians holding foreign citizenships shall be open to all, automatic and granted free of charge and with minimal formalities.

Any reform of the citizenship law must address these serious flaws and provide for refund of costs suffered and fair and deserving compensation to all victims of this inappropriate and unfair law.


Aziz Issa Hassan
2/10/2006.

**Appendix II: A letter from the Attorney General's Office defining who is a legal
Tanzania citizen by birth**

KUH: TAFSIRI SAHIHI YA MTANZANIA KUPOTEZA
URAIA WAKE KWA MSINGI WA "PRESUMPTION"
KUWA ANA URAIA WA NCHI NYINGINE AMBAO
ALICHELEWA KUUKANA (DUAL NATIONALITY)

Tafadhali rejea kwenye barua yako kwa Mwanasheria Mkuu, Ki b.Na.IMM/15/92/Vol.III/269 ya tarehe 27 Oktoba, 1999, kuhusu somo hilo hapo juu. Ninasikitika kwamba imenichukua muda mrefu sana kutafuta na kupata majibu. Haikuwezekana kukamilisha majibu mapema zaidi. Tafadhali niwie radhi.

2. Napenda kwanza kuangalia tatizo la watoto waliozaliwa hapa nchini, vazazi wao wote wakiwa ni raia wa nchi nyingine. Sheria ya Uraia ya Tanzania inaimpi mtoto uraia wa Tanzania kwa sababu tu kwamba amezaliwa nchini. Aani mtu kuzaliwa Tanzania tu hakumpi haki ya kuhesabiwa kuwa ni Tanzania. Mtu ni tofauti na kampuni au taasisi. Kampuni inaposajiliwa hapa Tanzania na Msajili wa Makampuni, inahesabiwa kuwa ni kampuni ya

Kitanzania, hata kama Wakurugenzi wake ni wageni. Mambo ni tofauti kwe wanadamu wanaozaliwa nchini.

3. Ili mtu anayezaliwa nchini awe raia wa Tanzania hapana budi mmojawapo wa wazazi wa mtu huyo awe au wote wawili wawe ni raia wa Tanzania. Fungu la 5 la Sheria ya Uraia ndilo linafafanua vizuri mambo haya. Mtu yeyote aliyezaliwa Tanzania mnamo au baada ya tarehe 26/4/64 ni Mtanzania. Fungu la 5(2) linafafanua ifuatavyo:-

"(2) A person shall not be deemed to be or to have become a citizen of the United Republicif at the time of his birth -

- (a) neither of his parents is or was a citizen of the United Republic, and his father possesses the immunity from suit and legal process which is accorded to an envoy of a foreign sovereign power accredited to the United Republic; or
- (b) any of his parents is an enemy and the birth occurs in a place then under occupation by the enemy."

Kwa muhtasari ni kwamba mtu hawezi kuwa au kuhesabiwa kuwa ni raia wa Tanzania kwa kuzaliwa kama anapozaliwa angalau mmoja wa wazazi wake si Mtanzania. Kama baba au mama si Mtanzania, yaani kama wazazi wote wawili wa mtu ni wageni mtu huyo anapozaliwa, huyo mtu hawezi kuwa Mtanzania.

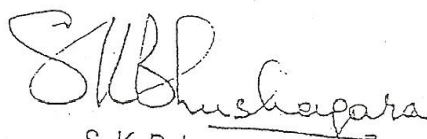
4. Kama mtu si Mtanzania kwa sababu alipozaliwa hapa nchini baba wala mama yake hakuna hata mmoja aliyekuwa Mtanzania, haiwezekani akawa Mtanzania wakati wowote baada ya hapo, kwa namna inayomfanya awe na uraia wa nchi mbili. Mtu wa namna hiyo hatakaa aweze kutakiwa kuukana uraia wake halisi ili aendeleo kuwa Mtanzania, akitimiza miaka 18. He/She was never a Tanzanian. Na hapa, nikijielekeza kwenye tatizo ulilolitaja katika aya ya 4 ya

• barua yako, ni vizuri tuelewe na tusingitize kwamba kwa mujibu wa Sheria yetu, kitendo cha kuzaliwa Tanzania pekee yake hakiwezi kumpa mtu yeyote haki ya kuwa Mtanzania. Mtu kuzaliwa hapa si hoja, hoja itajengwa ikifahamika kama huyo aliyemzaa akiwa hapa nchini ni mnini kiuraisi.

5. Nikijielekeza kwenye maelezo yako katika aya ya 7 ya barua yako, tafsiri yenu kwamba kuzaliwa hapa nchini na wazazi wageni hakumpi uraisi mtu aliyezaliwa nchini ni sahihi. Kama mtu si Mtanzania, utampa tu hati ya kusafirika kwa masharti fulani rasmi. Hati ya kusafirika anayopewa mkimbizi na familia yake haimpi huyo mtu au watoto wake haki ya kuwa raisi wa Tanzania. Kama Sheria za nchi zao haziwaruhusu watu hao kuwa raisi wa nchi hizo, hiyo si sababu automatic ya kuwapa haki ya kuwa raisi wa Tanzania. Kwani ni wapi iliposemwa kila mtu mkosa uraisi atakuwa raisi wa Tanzania?

6. Nikijielekeza kwenye aya ya 9 ya barua yako, mimi nikilisoma Sheria na kusikiliza kwa makini maelezo yaliyomo katika barua yako juu ya suala hili, kusema kweli slelewi ni mabadiliko gani mnataka yafanywe katika Sheria. Hivi sasa kama mtu anazaliwa hapa, na wazazi wake si raisi wa Tanzania (au angalao mmojawapo) mtu huyo hana uraisi wetu. Ninashauri kuwa muendeleo kushikilia na kutekeleza msimamo huo mpaka ubadilike, kama sheria itabadilishwa.

7. Kwa mara nyingine, naomba radhi kwa kuchelewesha jibu hili.



S. K. B. Lushagara

MWANDISHI MKUU WA SHERIA

Appendix III: Questionnaire

Age

Sex.....

Occupation.....

Level of education.....

Profession.....

1) Do you know who is a citizen of the United Republic of Tanzania?

(a) Yes (b) No (c) I cannot say (d) I do not know

2) How many kinds of citizenship are you aware of in Tanzania?

(a) One (b) Two (c) Three (d) More than four (e) I do not know

3) Please list down all the kinds of citizenships that you know.

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Are you a citizen of the United Republic of Tanzania?

(a) Yes (b) No (c) I cannot say (d) I do not know

4) If yes, under which category does your citizenship of Tanzania fall in?

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5) What do you understand by the term “citizenship by birth”?

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6) Can you differentiate between citizenship by birth from other categories of citizenship that you know?

(a) Yes (b) No (c) I cannot say (d) I do not know

- 7) If yes, please write down the differences in brief.
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- 8) Please list down any laws that you know which govern citizenship in Tanzania.
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- 9) Do you think these laws are sufficient enough to cover for citizenship matters in Tanzania?
- (a) Yes (b) No (c) I cannot say (d) I do not know
- 10) If no, what do you think should be done for the laws to suffice the current situation of citizenship of the United Republic?
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- 11) Are these laws also sufficient enough specifically on who is a citizen by birth in Tanzania?
- (a) Yes (b) No (c) I cannot say (d) I do not know
- 12) If no, what are your suggestions on what should be done for the laws to suffice the current situation of citizenship by birth in Tanzania?
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- 13) Do you think that citizenship matters should/must be included in the Constitution of the United Republic of Tanzania?
- (a) Yes (b) No (c) I cannot say (d) I do not know
- 14) If yes or no, please give reasons.
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NB/Please do attach extra pages (please turn over page for those answering on hard copies) where necessary