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PUBLIC LEADERSHIP AND THE RULE OF LAW IN TANZANIA: A DOCTRINAL ANALYSIS OF CONSTITUTIONAL CONSTRAINTS ON PUBLIC POWER

Leonard Raphael Mgina
Iringa University, Tanzania

Abstract
The rule of law requires public power to be exercised through, and subject to, law rather than personal discretion. In Tanzania, this principle is expressed through constitutional commitments to popular sovereignty, accountability, equality before the law, fundamental rights, judicial authority and the constitutional duty to safeguard the Constitution. Yet the existence of constitutional provisions does not by itself establish effective constitutionalism. The central problem addressed in this article is therefore the relationship between the formal constitutional allocation of public power and the legal mechanisms available to restrain its exercise. The article adopts a doctrinal legal research methodology, analysing the Constitution of the United Republic of Tanzania, 1977, relevant legislation, judicial decisions and selected international and regional legal standards. Particular attention is given to constitutional supremacy, popular sovereignty, separation of powers, presidential authority, legislative control, judicial review, public leadership ethics, fundamental rights and public-interest litigation. The analysis argues that Tanzania possesses a substantial constitutional framework capable of imposing legal constraints on public power, but that the effectiveness of the rule of law depends upon the practical relationship between constitutional norms, institutional independence, access to judicial remedies and respect for constitutional adjudication. Recent developments, particularly *Onesmo Olengurumwa v Attorney General* and the 2026 East African Court of Justice litigation concerning the restriction of public-interest constitutional litigation, demonstrate that the rule of law is not merely a principle governing citizens; it also governs the institutions that create, administer and enforce law. The article concludes that the decisive constitutional question is not whether public power is legally constituted, but whether every exercise of that power remains legally reviewable, institutionally accountable and consistent with constitutional supremacy.

Keywords: Rule of law; constitutionalism; public power; public leadership; Tanzania; separation of powers; judicial review; constitutional supremacy; accountability.

1. Introduction

Public leadership necessarily involves the exercise of power. Presidents appoint and dismiss public officials, ministers formulate and implement governmental policy, Parliament legislates and oversees public administration, courts determine disputes, and administrative authorities make decisions affecting individuals and communities. The legal problem is therefore not whether public officials should possess power, but how that power should be constituted, exercised and controlled. The rule of law provides one of the principal constitutional answers to this problem: public authority must be exercised according to law, within legally defined limits and subject to institutions capable of reviewing unlawful conduct.[1] The Constitution of the United Republic of Tanzania, 1977 ('the Constitution') begins from an important premise. Article 8 provides that sovereignty resides in the people and that government derives its power and authority from the people through the Constitution. It further states that the primary objective of government is the welfare of the people and expressly provides that government shall be accountable to the people. [2] These provisions are constitutionally

[1] Albert Venn Dicey, Introduction to the Study of the Law of the Constitution (8th edn, Macmillan 1915) 188–203.
[2] Constitution of the United Republic of Tanzania 1977, art 8(1).

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significant because they reject the conception of governmental authority as an inherently personal or unlimited possession of office. Public authority is constitutionally derived and therefore legally conditioned.

Nevertheless, constitutional government involves more than the existence of constitutional language. A constitution may distribute powers among institutions while leaving unresolved the practical question of how those powers are to be restrained when one institution exceeds its legal authority. The distinction between **constitutional government** and **constitutionalism** is consequently important. Constitutional government concerns the formal organisation of state power; constitutionalism concerns the substantive principle that public power must remain limited by law and exercised within constitutional boundaries. [3] The Tanzanian constitutional experience illustrates this distinction. The Constitution contains provisions concerning popular sovereignty, separation of state functions, fundamental rights, judicial authority, public leadership ethics and constitutional enforcement. Parliament exercises legislative power, the Executive exercises executive authority and the Judiciary exercises judicial power. Yet the effectiveness of these arrangements depends upon whether the institutions involved can perform their constitutional functions without allowing public power to become effectively immune from legal scrutiny.[4]

This article therefore does not assume that the presence of constitutional institutions necessarily produces effective constitutionalism. Instead, it examines the legal mechanisms through which public power is constrained and asks whether those mechanisms are sufficiently coherent to sustain the rule of law. Particular attention is paid to the relationship between constitutional supremacy, separation of powers, executive authority, legislative oversight, judicial review, fundamental rights and public-interest litigation.

The argument developed in this article is that Tanzania's constitutional framework contains important legal restraints on public power, but those restraints operate through a chain of institutional relationships. Constitutional rights require accessible remedies; legislative power requires constitutional limits; executive discretion requires legal standards; judicial review requires judicial authority; and constitutional accountability requires citizens to have meaningful avenues through which legality can be challenged. Where any part of this chain becomes ineffective, the formal existence of constitutional safeguards may not translate into effective limitation of public power.

The article makes three principal contributions. First, it brings together constitutional provisions that are often examined separately and demonstrates their collective relevance to the rule of law. Secondly, it examines judicial decisions as evidence of how constitutional limitations have been interpreted and enforced. Thirdly, it considers recent litigation concerning public-interest constitutional challenges as evidence that the relationship between legislative power, judicial review and constitutional supremacy remains a living question rather than a settled historical issue.

2. Research Problem and Research Gap

The literature on Tanzanian constitutionalism has long examined constitutional reform, separation of powers, fundamental rights and the relationship between state authority and citizens. Issa Shivji, for example, has approached the rule of law critically, questioning the assumption that liberal constitutional concepts can simply be transferred into the Tanzanian context without attention to the country's historical and political development.[5] G Mgongo Fimbo examined separation of powers in the context of Tanzania's transition to multiparty democracy and identified the importance of legislative and judicial functions in controlling executive authority.[6] Chris Maina Peter similarly documented the historical difficulties surrounding

[3] Martin Loughlin, Foundations of Public Law (OUP 2010) 312–315.

[4] G Mgongo Fimbo, 'Towards Separation of Powers in a New Democracy: Tanzania' (1995) 22 The African Review 16, 16–32.

[5] Issa G Shivji, 'The Rule of Law and Ujamaa in the Ideological Formation of Tanzania' (1995) 4(2) Social & Legal Studies 147, 147–174.

[6] Fimbo (n 4).

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enforcement of fundamental rights and the emergence of judicial intervention in constitutional disputes.[7] More recent scholarship has continued to examine constitutional litigation and the limits of public power. Research concerning political-question doctrine, for example, has raised questions about the circumstances in which courts should intervene in matters involving constitutional interpretation and public policy.[8] Other recent work has examined presidential authority and the constitutional implications of extensive executive discretion.[9]

However, much of the existing discussion treats these questions through separate doctrinal categories: constitutional reform, human rights, separation of powers, presidential authority or judicial review. Less attention has been given to the **integrated legal architecture of the rule of law as a constraint on public leadership**. The gap is not therefore the absence of scholarship on Tanzanian constitutionalism. Rather, it is the insufficient integration of the various constitutional mechanisms through which public power is legally constrained. This article addresses that gap by examining public leadership through a single doctrinal question: **how does Tanzanian constitutional law transform public power from an authority exercised by office-holders into a legally constrained public trust?** The question requires analysis of constitutional text, legislation and judicial decisions rather than an empirical assessment of individual leaders or governmental performance. The article therefore contributes to legal scholarship by treating public leadership not primarily as an issue of political morality or administrative efficiency, but as a question of constitutional legality.

3. Methodology and Scope

This article adopts a **doctrinal legal research methodology**. The principal sources are the Constitution of the United Republic of Tanzania, 1977, relevant legislation, judicial decisions and regional legal instruments. Secondary sources include scholarly books, journal articles and academic commentary on constitutionalism, the rule of law, separation of powers and Tanzanian public law. The analysis is primarily interpretive and critical. It examines the meaning and relationship of constitutional provisions, considers how courts have applied those provisions, and evaluates whether the statutory mechanisms supporting constitutional accountability are coherent with the constitutional allocation of public power.

The article focuses principally on the constitutional order of the United Republic of Tanzania and public power exercised under the Union constitutional framework. It does not attempt an empirical evaluation of the conduct of particular political leaders, nor does it seek to determine whether a particular administration is more or less committed to constitutionalism. References to judicial or institutional disputes are used only to illustrate legal principles and institutional relationships. This approach is important because a doctrinal paper should not confuse allegations about governmental conduct with judicially established legal findings. The article therefore distinguishes between constitutional rules, judicial holdings, scholarly arguments and institutional claims.

4. Conceptualising the Rule of Law and Public Power

4.1 The Rule of Law as a Constraint on Government

The rule of law is a contested concept, but certain core elements recur across constitutional scholarship. These include the supremacy of law over arbitrary power, equality before the law, legal certainty, independent adjudication, access to justice and the protection of fundamental rights.[10] Tom Bingham's influential formulation similarly treats the rule of law as requiring that all persons and public authorities, including government itself, remain subject to law and enjoy effective

[7] Chris Maina Peter, 'Enforcement of Fundamental Rights and Freedoms: The Case of Tanzania' (1995) 3 African Yearbook of International Law 81, 81–98.

[8] Dominic Daniel, 'Political Question Doctrine and Its Justiciability in Tanzania: A Critical Analysis of Attorney General v Reverend Christopher Mtikila' (2022) 49(1) Eastern Africa Law Review.

[9] Thomas Elisaria Yairo, A Legal Analysis of Unlimited Exercise of Presidential Authority Under the Constitution of Tanzania (LLM thesis, Open University of Tanzania 2025).

[10] Joseph Raz, 'The Rule of Law and Its Virtue' (1977) 93 Law Quarterly Review 195, 198–201.

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protection through legal institutions.[11] The central feature relevant to public leadership is therefore **non-arbitrariness**. Public officials do not exercise authority simply because they occupy public office. Their authority must derive from law and must be exercised within the purposes, procedures and limits established by law.

Joseph Raz's account of the rule of law also emphasises formal requirements such as laws being prospective, accessible, clear and relatively stable, while courts must have adequate independence to apply law.[12] These requirements become particularly important where public officials possess discretionary powers. Discretion is not necessarily inconsistent with the rule of law; modern government cannot operate without discretion. The constitutional problem arises where discretion becomes indistinguishable from unrestricted power. The Tanzanian context adds another dimension. Shivji's analysis warns against treating the rule of law as a purely technical doctrine detached from the country's historical and social conditions. [13] This critique is valuable because a formal legal framework may exist while social and institutional relationships determine whether law actually constrains authority. The rule of law must therefore be assessed not only by counting constitutional safeguards but also by examining the legal mechanisms through which those safeguards are made effective.

4.2 Public Power as Legally Constituted Authority

Public power differs from private power because it is exercised on behalf of the state and ordinarily affects persons who have not voluntarily submitted themselves to the authority of the office-holder. Its legitimacy consequently depends upon legal authorisation. Article 8 of the Constitution provides a particularly important starting point. Sovereignty resides in the people, government derives its authority through the Constitution, government must pursue the welfare of the people and government is accountable to the people. [14] This establishes a constitutional relationship between **power, source and purpose**.

The significance of Article 8 should not be underestimated. If sovereignty belongs to the people, the holder of public office cannot logically be regarded as the ultimate owner of governmental authority. The office-holder is a constitutional actor whose authority exists within a legal order. This is one reason why public leadership should be understood as an exercise of **constituted power**, rather than personal power.

5. Constitutional Supremacy and the Legal Status of Public Power

The foundation of the rule of law is the principle that public institutions are bound by the Constitution and laws made under it. Article 26(1) of the Constitution imposes upon every person the duty to observe and abide by the Constitution and the laws of the United Republic.[15] Article 26(2) goes further by recognising the right and duty of every person to protect, safeguard and defend the Constitution and the laws of the United Republic. [16] These provisions have implications extending beyond ordinary civic responsibility. They establish that constitutional compliance is not exclusively an internal responsibility of government institutions. Citizens also possess a constitutionally recognised role in protecting the legal order.

The importance of Article 26 becomes clearer when read together with Article 30. Rights and freedoms are subject to limitations intended to protect the rights of others and public interests, but such limitations themselves must operate through law.[17] The Constitution therefore attempts to balance individual liberty and collective interests without converting public interest into an unlimited justification for governmental interference. The constitutional structure consequently rejects two extremes. First, it does not treat individual rights as absolute regardless of competing constitutional interests. Secondly, it does not permit government to invoke public interest as a general licence for arbitrary action. The constitutional question is whether the limitation is legally authorised and falls within the purposes contemplated by the constitutional framework. This is precisely where constitutional

[11] Tom Bingham, The Rule of Law (Allen Lane 2010) 8.
[12] Raz (n 10) 198–201.
[13] Shivji (n 5).
[14] Constitution (n 2) art 8(1)(a)–(d).
[15] ibid art 26(1).
[16] ibid art 26(2).
[17] ibid art 30.

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supremacy becomes a practical constraint on public power. A government may pursue legitimate public objectives, but the legality of its methods remains subject to constitutional review.

6. Popular Sovereignty and the Legitimacy of Public Leadership

Article 8 places popular sovereignty at the centre of the Tanzanian constitutional order. Government derives its power and authority from the people through the Constitution, while the people are entitled to participate in governmental affairs.[18] This provision gives public leadership a constitutional character that goes beyond electoral or administrative authority. The legitimacy of public office ultimately derives from a constitutional order in which authority is exercised in the name of the people. However, popular sovereignty should not be reduced to elections. If constitutional legitimacy existed only at the moment of voting, public officials could potentially exercise extensive power between elections without meaningful legal constraint. Constitutionalism prevents this result by connecting democratic legitimacy with continuing legality. Accordingly, popular sovereignty and the rule of law are complementary. The former explains the source of public authority; the latter explains the limits within which that authority may be exercised.

The constitutional principle of accountability in Article 8(1)(c) is particularly significant. Government is expressly described as accountable to the people.[19] Accountability therefore has constitutional status rather than merely administrative or political significance. The legal implication is important: public leadership is not constitutionally complete when an individual lawfully obtains office. The continuing exercise of that office must remain consistent with constitutional duties and legal limits.

7. Separation of Powers and the Distribution of Public Authority

7.1 The Constitutional Rationale

Separation of powers is one of the principal institutional mechanisms for preventing concentration of public authority. Its basic logic is that legislative, executive and judicial functions should not be consolidated in a manner that permits unrestricted exercise of state power.[20] Tanzanian constitutional law does not replicate a rigid separation of powers in the classical Westminster sense. The Executive is politically connected to Parliament, and the Constitution creates institutional relationships between the branches. Nevertheless, the allocation of legislative, executive and judicial functions provides a framework for preventing one organ from becoming the unrestricted source of law, administration and adjudication.

Fimbo's analysis of Tanzania's constitutional development after the introduction of multiparty politics demonstrates the importance of examining separation of powers not merely as an abstract doctrine but as an institutional relationship between Parliament, Executive and Judiciary.[21] The critical issue is therefore not whether Tanzania possesses a perfectly separated institutional structure. Rather, the question is whether each institution possesses sufficient constitutional authority to perform its functions and sufficient legal limits to prevent the uncontrolled accumulation of public power.

7.2 Executive Authority

Executive authority is essential for government to function. Public administration requires decision-making, appointments, policy implementation, allocation of resources and enforcement of laws. The rule of law does not therefore require the Executive to operate without discretion. The constitutional difficulty arises where discretionary authority is insufficiently structured. Where legal powers are expressed broadly, the legality of executive action depends upon principles of proper purpose, procedural fairness, rationality, constitutional rights and statutory interpretation. The Constitution should therefore be understood as providing both **positive authority and negative constraints**. It gives government power to act while simultaneously establishing boundaries beyond which government cannot lawfully proceed.

[18] ibid art 8(1)(a) and (d).
[19] ibid art 8(1)(c).
[20] A V Dicey (n 1) 334–346.
[21] Fimbo (n 4).

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This distinction is particularly important in the context of presidential authority. The office of the President occupies a central position within the constitutional structure, and various constitutional provisions confer extensive responsibilities and powers on the office. The existence of extensive presidential powers does not, however, mean that presidential authority exists outside constitutional law. The rule of law requires the opposite proposition: the greater the legal significance of an office, the more important the constitutional definition of its powers becomes. Recent Tanzanian scholarship has specifically raised questions concerning the extent to which presidential powers are constitutionally regulated and the implications of extensive executive discretion for separation of powers and accountability.[22] Such scholarship strengthens the case for examining presidential power not simply through political practice but through the legal architecture governing its exercise.

8. Parliamentary Power and Legislative Constitutionalism

Parliament is a central institution in constitutional democracy because legislation gives legal form to public policy. Yet Parliament itself exercises constitutionally constituted power. This creates an important doctrinal principle: **legislative supremacy is not identical to constitutional supremacy**. Parliament may enact legislation, but legislation must remain compatible with the Constitution. The judicial role in constitutional review therefore does not necessarily amount to judicial government. Rather, judicial review can be understood as a mechanism through which constitutional boundaries are maintained between the legislature and the Constitution. The importance of this principle can be illustrated by *Ephrahim v Pastory and Kaizilege*, where the High Court considered the compatibility of discriminatory customary law with constitutional rights and international human rights principles.[23] The case demonstrates the capacity of constitutional adjudication to place ordinary legal rules and customary norms under constitutional scrutiny.

Similarly, in *Attorney General v Lohay Akonaay and Joseph Lohay*, the Court of Appeal considered property rights and the constitutional protection against deprivation of property without fair compensation. [24] The case remains important because it illustrates that governmental legislative action affecting property cannot be evaluated solely by reference to policy objectives; it must also comply with constitutional rights. The broader principle is that legislation is an exercise of public power and therefore must itself remain legally constrained.

9. Judicial Independence and Judicial Review

The Judiciary occupies a distinctive position within the rule-of-law framework because courts are responsible for determining whether public power has been exercised lawfully. Judicial review performs at least three constitutional functions. First, it protects individuals against unlawful governmental action. Secondly, it clarifies the boundaries between institutions. Thirdly, it gives practical meaning to constitutional supremacy. The importance of judicial review is particularly evident where the Executive or Parliament is alleged to have acted beyond constitutional authority. Without a judicial institution capable of determining such questions, constitutional limits could become largely declaratory.

Tanzanian constitutional jurisprudence has historically demonstrated an important willingness to scrutinise public authority. The jurisprudence associated with Justice Mwalusanya, for example, has been described in scholarship as significant to the development of judicial activism and constitutional rights protection in Tanzania. [25] However, judicial review itself raises constitutional tensions. Courts must protect the Constitution without unnecessarily substituting judicial preferences for choices constitutionally assigned to elected institutions. The appropriate

[22] Yairo (n 9).

[23] Ephrahim v Pastory and Kaizilege (1990) LRC (Const) 757 (HC); see also Ephrahim v Pastory and Kaizilege (2001) AHRLR 236 (TzHC 1990).

[24] Attorney General v Lohay Akonaay and Joseph Lohay [1995] TLR 80 (CA).

[25] 25. Helen Kijo-Bisimba and Chris Maina Peter, Justice and Rule of Law in Tanzania: Selected Judgements and Writings of Justice James L Mwalusanya and Commentaries (Legal and Human Rights Centre 2005).

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judicial role is therefore not to govern, but to determine legality.

This distinction becomes particularly important when courts consider politically sensitive disputes. Recent scholarship concerning the political-question doctrine in Tanzania argues that the courts have not developed sufficiently clear criteria for determining when constitutional questions should be treated as non-justiciable political matters.[26] A mature rule-of-law system therefore requires not merely judicial independence but a principled jurisprudence concerning the boundaries of judicial intervention.

10. Fundamental Rights as Limits on Public Power

Fundamental rights constitute another major constitutional restraint on government. Articles 12 to 29 of the Constitution establish a range of rights and freedoms, including equality, personal liberty, freedom of expression, association, participation, property and other basic rights.[27] The significance of these rights for public leadership is structural. Rights define areas of individual autonomy into which public authorities may not lawfully intrude except under constitutionally recognised conditions. Article 13, for example, establishes equality before the law and equal protection of the law. Article 18 protects freedom of expression, while Article 21 recognises participation in public affairs.[28] These provisions affect the relationship between citizens and public authorities because they limit the extent to which governmental decisions can lawfully restrict individual participation in public life.

The Tanzanian courts have historically contributed to this development. *Ephrahim v Pastory* is particularly significant because the High Court refused to allow discriminatory customary rules to prevail over constitutional principles of equality and human rights.[29] The lesson for public leadership is broader than the particular facts of the case. Constitutional rights transform the citizen-state relationship. The government cannot justify every exercise of authority simply by relying on the existence of public office. The exercise of authority must be reconciled with constitutionally protected rights.

11. Article 30 and the Problem of Limiting Rights

Constitutional rights cannot be analysed without considering Article 30, which recognises limitations on rights where necessary to protect the rights of others and public interests.[30] The existence of limitation clauses is not itself inconsistent with the rule of law. Modern constitutional systems commonly recognise that rights must sometimes be balanced against competing interests such as public safety, public order and the rights of others. The critical question is therefore not whether rights may be limited, but **how** they may be limited. A rule-of-law approach requires at least three considerations: legal authority, legitimate constitutional purpose and rational relationship between the restriction and that purpose. Where a restriction is imposed without adequate legal basis, applied arbitrarily or used for a purpose unrelated to the constitutional justification, the limitation risks becoming an instrument of uncontrolled public power. Article 30 therefore performs a dual function. It protects public interests while simultaneously requiring rights restrictions to remain within a constitutional framework. This illustrates a wider point: constitutionalism does not require government to choose between public order and individual liberty as absolute alternatives. Rather, it requires public authorities to reconcile competing interests through legally disciplined decision-making.

12. Public Leadership Ethics as a Constitutional Constraint

The rule of law is not limited to judicial review. Ethical regulation of public leaders also forms part of the constitutional architecture. Article 132 of the Constitution establishes the Public Leaders' Ethics Secretariat and gives it power to inquire into the behaviour and conduct of public leaders for the purpose of ensuring compliance with laws concerning public leadership ethics.[31] Parliament is also constitutionally required to enact basic rules of ethics for public leaders. The constitutional significance of Article 132 is considerable. It recognises that lawful public

[26] Daniel (n 8).
[27] Constitution (n 2) arts 12–29.
[28] ibid arts 13, 18 and 21.
[29] Ephrahim v Pastory and Kaizilege (n 23).
[30] Constitution (n 2) art 30.
[31] ibid art 132(1)–(4).

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leadership requires more than technical compliance with individual statutes. Public office creates ethical obligations concerning conflicts of interest, declarations of assets and liabilities, integrity and conduct. The Public Leadership Code of Ethics Act, Cap 398 R.E. 2023, gives statutory effect to this constitutional framework. The Act establishes mechanisms relating to the Ethics Secretariat, the Ethics Commissioner, declarations, complaints, investigation and the Ethics Tribunal.[32] The current official version confirms that the Act applies to Mainland Tanzania and to public officers holding Union Government offices in Zanzibar.[33]

The Act's importance should not, however, be overstated. Ethical regulation is only as effective as its institutional implementation. A register of assets, for example, becomes a meaningful accountability mechanism only if declarations are examined, inconsistencies can be investigated and breaches attract legally authorised consequences. The deeper constitutional issue is therefore the transformation of ethics from a statement of expected personal behaviour into an enforceable institutional obligation. Public leadership ethics should accordingly be understood as a **preventive dimension of the rule of law**. Judicial review usually addresses legality after a dispute has arisen; ethical regulation can operate before misconduct develops into a constitutional or administrative violation.

13. Public Interest Litigation and the Right to Defend the Constitution

One of the most important developments in contemporary Tanzanian constitutional law concerns the relationship between Article 26(2) and public-interest litigation. Article 26(2) gives every person the right and duty to safeguard and defend the Constitution and laws of the United Republic.[34] The provision becomes meaningful only if citizens possess an effective legal mechanism through which constitutional violations can be challenged. The Basic Rights and Duties Enforcement Act, Cap 3 R.E. 2023, provides a procedural framework for enforcing rights contained in Articles 12–29 of the Constitution.[35] Section 4 historically allowed a person alleging a violation or threatened violation of those rights to apply to the High Court for redress.

The 2020 amendments introduced additional procedural requirements. The revised section 4 required an applicant to demonstrate personally affected interests and imposed additional restrictions concerning constitutional petitions.[36] These provisions generated a fundamental constitutional question: can ordinary legislation restrict a constitutional right to defend the Constitution by imposing conditions not contained in Article 26 itself? The issue reached the Court of Appeal in *Onesmo Olengurumwa v Attorney General*, Civil Appeal No 134 of 2022, [2025] TZCA 587. The Court of Appeal declared sections 4(2), (3), (4) and (5) of the amended BRADEA unconstitutional and directed Parliament to repeal the relevant amendments within twelve months.[37]

The significance of the decision extends beyond public-interest litigation. It illustrates the constitutional relationship between Parliament and the Judiciary. Parliament exercised legislative power; an affected citizen challenged the legislation; the courts examined its compatibility with the Constitution; and the Court of Appeal ultimately held that the statutory restrictions could not stand in their existing form.

This is a practical demonstration of constitutional supremacy. It also demonstrates why access to constitutional litigation is itself a rule-of-law issue. If citizens cannot challenge unlawful exercises of public power, constitutional limitations risk becoming symbolic. Conversely, unrestricted litigation can create concerns about frivolous or abusive claims. The constitutional challenge is therefore to design procedural rules that prevent abuse without destroying access to constitutional justice. The Court of Appeal's decision represents an important judicial response to that problem.

[32] Public Leadership Code of Ethics Act, Cap 398 RE 2023, ss 19–31.
[33] Office of the Solicitor General, The Public Leadership Code of Ethics Act, Cap 398 RE 2023 (Government Printer 2023).
[34] Constitution (n 2) art 26(2).
[35] Basic Rights and Duties Enforcement Act, Cap 3 RE 2023, s 3.
[36] Written Laws (Miscellaneous Amendments) (No 3) Act 2020, Act No 6 of 2020, s 7.
[37] Onesmo Olengurumwa v Attorney General, Civil Appeal No 134 of 2022, [2025] TZCA 587 (CAT).

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14. The 2026 Regional Dimension of Constitutional Accountability

The constitutional significance of *Olengurumwa* has acquired an additional regional dimension. In March 2026, the East African Court of Justice considered related challenges to Tanzania's 2020 amendments in *Pan African Lawyers Union and Others v Attorney General of the United Republic of Tanzania* (Consolidated References Nos 25 and 27 of 2020), [2026] EACJ 2. The Court held, among other matters, that provisions concerning pre-admission personal-interest requirements and the statutory subordination of constitutional standing were inconsistent with applicable regional obligations, while also addressing the use of urgency in legislative procedure.[38]

This development is significant for two reasons. First, it demonstrates that domestic constitutional questions may have consequences under regional legal instruments. Secondly, it reinforces the proposition that the rule of law is not exhausted by the existence of domestic legislation. The regional dimension should not, however, be misunderstood as permitting regional courts simply to replace domestic constitutional institutions. Rather, it demonstrates the increasingly interconnected nature of constitutional governance, human rights and regional legal obligations. A similar point emerges from the 2026 decision of the African Court on Human and Peoples' Rights in *Legal and Human Rights Centre and Liberatus Mwang'ombe v United Republic of Tanzania*. The Court examined questions concerning exhaustion of local remedies and the availability of domestic constitutional procedures, including BRADEA-related proceedings.[39] The emerging jurisprudence therefore places Tanzania's constitutional mechanisms within a broader regional legal environment.

15. The Rule of Law and Administrative Discretion

The rule of law becomes particularly difficult where public authorities exercise discretion. Government cannot function without discretionary powers. Ministers, regulators, local authorities and administrative officials must make decisions in circumstances that legislation cannot anticipate exhaustively.

The legal problem is therefore not discretion itself but **unstructured discretion**. A discretionary power should be exercised for the purpose for which it was granted, in accordance with relevant legal standards and without arbitrary discrimination. Where discretion is exercised for an improper purpose, based on irrelevant considerations or contrary to constitutional rights, judicial review provides a mechanism for legal correction. This principle helps distinguish the rule of law from mere rule by law. A government may technically act under a statute while still exercising statutory power in a manner inconsistent with constitutional principles. Rule by law asks whether an official can identify a legal provision; the rule of law asks whether public authority is exercised within a lawful and constitutionally legitimate framework. The distinction is especially important in developing constitutional systems because the mere existence of legislation cannot be treated as conclusive evidence of legality.

16. The Rule of Law and Legislative Procedure

The rule of law also concerns how laws are made. Legislation is an important expression of democratic authority, but legislative authority must itself operate within constitutional procedures. The 2026 EACJ litigation concerning the 2020 amendments illustrates this point. The Court examined the use of a certificate of urgency and its relationship to principles of good governance and public participation under the East African Community framework.[40] This does not mean that every urgent legislative process is unconstitutional. Governments may legitimately require accelerated legislation in circumstances demanding immediate legal intervention. The deeper issue is whether procedural urgency is used consistently with constitutional and regional legal obligations. The rule of law therefore has a procedural dimension. It requires not only that laws be substantively lawful but that the processes

[38] Pan African Lawyers Union and Others v Attorney General of the Republic of United Republic of Tanzania (Consolidated References Nos 25 and 27 of 2020) [2026] EACJ 2.

[39] Legal and Human Rights Centre and Liberatus Mwang'ombe v United Republic of Tanzania (Application No 041/2020) [2026] AfCHPR 6.

[40] Pan African Lawyers Union (n 38).

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through which public power becomes law are themselves governed by legal standards.

This is particularly important because Parliament's legislative authority can otherwise become self-validating: if the institution possessing legislative power could determine the limits of its own power without meaningful external review, constitutional supremacy would be weakened.

17. Accountability, Institutional Independence and the Problem of Formalism

The preceding analysis reveals a central distinction between **formal constitutionalism** and **effective constitutionalism**. Formal constitutionalism exists where constitutional texts, institutions and legal procedures establish limits on public authority. Effective constitutionalism exists where those limits are sufficiently independent, accessible and enforceable to influence actual exercises of public power. The difference is crucial.

A constitution may establish an Ethics Secretariat, but ethical accountability requires meaningful investigation. It may establish courts, but judicial review requires access to justice and institutional independence. It may guarantee rights, but rights require remedies. It may recognise popular sovereignty, but meaningful participation requires legal and institutional avenues through which citizens can engage with public authority. Consequently, the effectiveness of the rule of law cannot be measured simply by the number of constitutional institutions that exist. The more appropriate question is whether those institutions form a functioning accountability chain:

Constitutional authority → legal limits → institutional oversight → access to justice → judicial review → remedy → compliance.

Weakness at any stage can reduce the effectiveness of the entire framework. This is also why public leadership should not be understood exclusively through the personal character of leaders. Even leaders committed to legality operate within institutional systems. Conversely, a formally sophisticated constitutional system may fail if institutional checks are unable to operate effectively.

18. Constitutionalism and the Problem of Concentrated Public Power

Constitutionalism is particularly important where political authority is concentrated. Concentration of power does not automatically establish illegality. Modern constitutional systems may deliberately give certain offices substantial powers to enable government to function effectively. The constitutional issue arises when concentration of authority is accompanied by insufficient mechanisms of legal control. This is where separation of powers, judicial review, parliamentary oversight, ethical regulation and constitutional litigation become mutually reinforcing. Shivji's historical analysis of Tanzanian constitutional development remains relevant because it warns against treating constitutionalism as an abstract institutional design detached from the distribution of social and political power. [41] Constitutional rules operate within actual relationships of authority. The rule of law therefore requires not only carefully drafted rules but institutions capable of applying those rules when powerful actors are involved. The challenge is consequently institutional rather than merely textual.

19. Constitutional Constraints on Public Leadership: A Doctrinal Synthesis

The preceding analysis permits several propositions concerning Tanzanian constitutional law. First, **public authority is constitutionally derived**. Article 8 establishes that sovereignty resides in the people and government derives authority through the Constitution. [42] Public leadership is therefore not an independent source of sovereignty. Secondly, **public officials are subject to law**. Article 26 imposes a constitutional duty to observe the Constitution and laws of the United Republic. [43] The duty applies to the citizenry but is especially important for public officials because their actions directly affect the exercise of state power. Thirdly, **fundamental rights operate as substantive constraints**. Articles 12–29 place legal boundaries around governmental interference with individuals. [44] Fourthly, **institutional separation provides structural constraints**. Legislative, executive and judicial functions are constitutionally distributed, creating the possibility of institutional checking

[41] Shivji (n 5).
[42] Constitution (n 2) art 8(1)(a).
[43] ibid art 26.
[44] ibid arts 12–30.

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and review. Fifthly, **judicial review provides an enforcement mechanism**. The jurisprudence of *Ephrahim*, *Lohay Akonaay* and *Olengurumwa* demonstrates that constitutional norms can be applied to legislation and public authority.[45]

Sixthly, **ethical regulation provides preventive accountability**. Article 132 and the Public Leadership Code of Ethics Act create a specific framework for regulating public leaders beyond ordinary criminal or administrative law. [46] Seventhly, **constitutional accountability increasingly operates within regional legal structures**. The 2026 EACJ litigation demonstrates that questions concerning domestic public power may also engage regional obligations relating to good governance, accountability and the rule of law. [47] These propositions indicate that the Tanzanian constitutional framework does not leave public leadership legally unconstrained. The more difficult issue concerns the consistency, independence and accessibility of the mechanisms through which those constraints are applied.

20. Critical Discussion: Is the Tanzanian Framework Sufficient?

The answer requires qualification. It would be legally inaccurate to conclude simply that Tanzania lacks constitutional constraints on public power. The Constitution contains substantial constraints. The legal framework includes constitutional rights, judicial review, ethical regulation, legislative institutions and constitutional enforcement procedures. At the same time, it would be equally simplistic to conclude that the existence of these mechanisms automatically establishes effective constitutionalism. The doctrinal evidence reveals several tensions. The first is the tension between **broad public authority and legal limitation**. Government requires discretion, but broad discretion creates greater demands for legal standards and judicial review. The second is the tension between **legislative authority and constitutional supremacy**. Parliament must possess sufficient power to legislate, but legislation remains subject to the Constitution.

The third is the tension between **judicial review and institutional competence**. Courts must protect constitutional boundaries without assuming the functions constitutionally assigned to elected institutions. The fourth is the tension between **public interest and individual rights**. Article 30 recognises public-interest limitations, but public interest cannot simply become an unrestricted justification for limiting constitutional rights. The fifth is the tension between **formal access to justice and effective constitutional remedies**. The controversy surrounding BRADEA demonstrates that procedural requirements can either facilitate responsible litigation or create barriers that weaken constitutional enforcement. The recent *Olengurumwa* decision is particularly instructive because it demonstrates that constitutionalism is not self-executing. A constitutional right may exist in principle, but its practical value depends upon procedural mechanisms that allow individuals to invoke it. The 2026 EACJ decision strengthens this point by demonstrating that restrictions on constitutional litigation can also engage regional legal standards. [48] The critical conclusion is therefore that the Tanzanian constitutional framework should be understood as **substantial but institutionally dependent**. Its effectiveness depends upon whether the institutions responsible for enforcing constitutional limits remain capable of doing so.

21. RECOMMENDATIONS

The preceding analysis demonstrates that Tanzania possesses a substantial constitutional and statutory framework for regulating public power, but the existence of legal rules does not, by itself, guarantee effective constitutionalism. The central concern is the relationship between constitutional norms and the institutional mechanisms through which those norms are interpreted, implemented and enforced. The recommendations below therefore focus not on creating an entirely new accountability architecture, but on strengthening the capacity of

[45] Ephrahim (n 23); Lohay Akonaay (n 24); Olengurumwa (n 37).
[46] Constitution (n 2) art 132; Public Leadership Code of Ethics Act (n 33).
[47] Pan African Lawyers Union (n 38).
[48] ibid.

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the existing constitutional order to ensure that public power remains legally limited, reviewable and accountable.

21.1 Strengthening Constitutional Clarity

There is a need for greater doctrinal clarity concerning the constitutional limits of public power. The Constitution contains provisions that confer significant authority upon public institutions, particularly the Executive, while simultaneously establishing principles of popular sovereignty, constitutional supremacy, fundamental rights, accountability and separation of powers. The coexistence of broad governmental powers and constitutional limitations is not inherently problematic; indeed, effective government requires sufficient authority to make and implement public policy. The difficulty arises where the boundaries of that authority are insufficiently clear, thereby creating space for discretionary power to operate without sufficiently identifiable legal standards. The interpretation of constitutional provisions should therefore consistently emphasise legality, constitutional supremacy and institutional accountability. Where constitutional or statutory provisions confer broad discretion, courts should, where appropriate, identify the purpose, scope and legal limits of that discretion rather than treating the existence of a statutory or constitutional power as conclusive evidence of lawful exercise. This approach would strengthen the distinction between **having legal authority and exercising that authority lawfully**. It would also reduce the possibility that broad governmental powers are interpreted as unrestricted powers.

Constitutional clarity is particularly important because uncertainty can affect both sides of the constitutional relationship. Citizens require sufficient certainty to know when public authority may lawfully interfere with their rights, while public officials require sufficiently clear legal standards to understand the limits of their authority. A stronger jurisprudence of constitutional interpretation would therefore contribute to legal certainty without undermining legitimate governmental discretion. The objective should not be to judicialise every policy decision, but to ensure that decisions involving constitutional boundaries remain capable of principled legal examination.

21.2 Protecting Meaningful Constitutional Litigation

Meaningful access to constitutional litigation should be protected as an essential component of the rule of law. Constitutional rights and limitations have limited practical value if individuals cannot obtain judicial determination when they reasonably allege that public power has exceeded constitutional boundaries. Article 26(2) of the Constitution recognises the right and duty of every person to safeguard and defend the Constitution, making access to appropriate legal mechanisms particularly significant. [49] The experience surrounding the amendments to the Basic Rights and Duties Enforcement Act demonstrates the importance of this issue. The decision in *Onesmo Olengurumwa v Attorney General* illustrates that procedural requirements can themselves become constitutionally significant where they restrict the ability of individuals to invoke constitutional protections. The Court of Appeal's intervention indicates that access to constitutional justice cannot be treated merely as a technical procedural question where the procedure substantially affects the enforcement of constitutional supremacy.

Future procedural reforms should therefore seek a balance between two legitimate concerns. On the one hand, constitutional litigation should not become a mechanism for frivolous, politically motivated or abusive proceedings. On the other hand, procedural requirements should not be so restrictive that they effectively prevent genuine constitutional questions from reaching the courts. The appropriate approach is to regulate abuse through judicial case management, costs, evidentiary requirements and clearly defined procedural safeguards rather than by creating unnecessary barriers to constitutional standing. The broader lesson is that **access to constitutional justice is itself part of constitutional accountability**. A legal system cannot effectively constrain public power if the persons affected by that power lack a realistic opportunity to challenge

[49] Olengurumwa (n 37).

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its legality. The protection of constitutional litigation should therefore be understood not as an institutional privilege for lawyers or litigants, but as an essential mechanism through which constitutional supremacy becomes practically enforceable.

21.3 Strengthening Institutional Independence

The effectiveness of the rule of law ultimately depends upon institutions being capable of performing their constitutional functions without inappropriate interference. Constitutional texts can distribute powers among the Executive, Parliament, Judiciary and oversight institutions, but institutional design alone cannot guarantee meaningful checks and balances. The decisive issue is whether those institutions possess sufficient functional independence to investigate, review or question the exercise of public power when legally necessary. Judicial independence is particularly important because courts may be required to determine the legality of actions taken by powerful public institutions. Judicial review would have limited value if courts were unable, in practice, to exercise their constitutional and statutory functions independently. Independence should therefore be understood not merely as personal security of judges but also in terms of institutional autonomy, procedural integrity, adequate resources and the capacity to make decisions according to law.

The same principle applies to institutions responsible for public leadership ethics and other forms of oversight. An institution established to supervise public officials cannot provide meaningful accountability if its capacity to investigate or act is substantially dependent upon the institutions or interests it is expected to scrutinise. Institutional independence does not mean that oversight institutions should operate without legal accountability. Rather, it means that they should be sufficiently protected from inappropriate influence to perform their legally assigned functions impartially. Strengthening institutional independence would therefore address one of the central weaknesses of formal constitutionalism: the possibility that constitutional checks exist on paper but are insufficiently effective when they confront significant concentrations of public power.

21.4 Strengthening Public Leadership Ethics

Public leadership ethics should be treated as an enforceable component of constitutional governance rather than merely as a statement of desirable personal conduct. Article 132 of the Constitution establishes the Public Leaders' Ethics Secretariat and provides a constitutional foundation for regulating the conduct of public leaders. The Public Leadership Code of Ethics Act subsequently establishes statutory mechanisms through which ethical obligations can be administered. The importance of this framework lies in its preventive function. Courts generally become involved after a legal dispute has emerged, whereas ethical regulation can identify conflicts of interest, inappropriate conduct or unexplained financial interests before such matters develop into more serious forms of legal or institutional misconduct. Ethical accountability can therefore operate as an early layer of constitutional protection.

However, the effectiveness of ethical regulation depends upon implementation. The existence of declarations, ethical standards and complaint procedures is insufficient if complaints are not independently examined, declarations are not meaningfully scrutinised or established breaches do not result in legally authorised consequences. The emphasis should consequently move from the **existence of ethical rules to the credibility of their enforcement**. The Ethics Secretariat and related institutions should therefore be provided with sufficient legal authority, professional capacity, resources and procedural safeguards to perform their functions effectively. At the same time, their powers should remain subject to clear legal standards and appropriate review so that ethical enforcement itself does not become arbitrary. The objective should be an institutional system in which public leaders understand that ethical obligations form part of the legal conditions attached to public office. This approach is preferable to relying primarily upon the personal integrity of individual leaders. Constitutional accountability should not depend on whether a particular office-holder happens to

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be personally committed to ethical conduct. It should be supported by institutions and legal procedures capable of maintaining standards irrespective of changes in individual office-holders.

21.5 Improving Legislative Constitutional Scrutiny

Greater attention should be given to the constitutional scrutiny of legislation before and after enactment. Parliament has an essential democratic function in making laws, and constitutionalism should not be interpreted as requiring courts to substitute themselves for the legislature in matters of policy. Nevertheless, legislative authority is itself constitutionally constituted and therefore subject to constitutional limits. This becomes particularly important where proposed legislation affects fundamental rights, access to justice, judicial independence or the institutional balance between organs of government. A law may pursue a legitimate governmental objective while nevertheless adopting means that are inconsistent with constitutional requirements. Effective constitutional scrutiny should therefore examine not merely the policy objective of legislation but also its legal basis, procedural integrity, effect on rights and compatibility with institutional checks and balances. Parliamentary committees and legislative drafting institutions should consequently strengthen constitutional review during the legislative process. Constitutional compatibility should be considered systematically rather than only after legislation has been challenged before the courts. Such pre-enactment scrutiny would not eliminate judicial review, but it could reduce constitutional disputes and improve the quality of legislation.

At the same time, the existence of parliamentary scrutiny should not be treated as a substitute for judicial review. Parliament is itself an interested constitutional actor when the legality of legislation is questioned. Independent judicial review remains necessary because constitutional supremacy requires an institution capable of determining whether legislation conforms to the Constitution. The appropriate model is therefore complementary rather than competitive: **Parliament should undertake serious constitutional scrutiny before enactment, while the Judiciary retains authority to determine constitutional validity when a genuine dispute arises**.

21.6 Developing Clearer Jurisprudence on Executive Discretion

The exercise of executive discretion requires further development through coherent judicial principles. Modern government necessarily involves discretionary decision-making because legislation cannot anticipate every administrative circumstance. Consequently, the rule of law cannot realistically require the elimination of executive discretion. The constitutional objective should instead be to ensure that discretion remains legally structured and reviewable. Courts should continue developing principles concerning legality, proper purpose, procedural fairness, relevance of considerations, rationality and compatibility with constitutional rights. Such principles enable courts to distinguish legitimate administrative judgment from unlawful exercises of power without unnecessarily transforming judicial review into an appeal on the merits.

This distinction is particularly important. Courts should ordinarily determine whether an official acted within the legal authority granted by the Constitution or legislation rather than whether the court would have made the same policy decision. Judicial review is concerned principally with **legality**, not judicial preference. Nevertheless, legality may require courts to examine the purposes for which power was exercised, the procedures followed and the constitutional rights affected. Clearer jurisprudence would benefit both citizens and public officials. Citizens would have greater certainty concerning when governmental action may be challenged, while public officials would have clearer standards for exercising discretionary powers. In this respect, judicial development of administrative-law principles can strengthen the rule of law without paralysing government administration.

21.7 Integrating Domestic and Regional Constitutional Standards

Tanzania's constitutional jurisprudence should continue to engage, where legally appropriate,

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with developments within the African human-rights system and the East African Community legal order. This does not mean that regional jurisprudence should automatically displace domestic constitutional interpretation. Rather, regional decisions can provide comparative legal reasoning and assist domestic courts and scholars in understanding common principles concerning constitutionalism, good governance, access to justice and the rule of law. This recommendation has become particularly relevant in light of recent regional litigation concerning constitutional litigation and access to justice. The 2026 East African Court of Justice decision concerning Tanzania demonstrates that questions initially presented as matters of domestic constitutional law may also have consequences under regional legal obligations. Such developments reinforce the importance of maintaining coherence between domestic constitutional practice and Tanzania's regional legal commitments.

However, regional engagement should be undertaken carefully. The constitutional authority of Tanzanian courts derives from the Constitution of the United Republic of Tanzania, while regional courts operate within their own treaty-based jurisdictions. The objective should therefore be **legal dialogue rather than institutional substitution**. Domestic courts can draw upon regional jurisprudence where relevant while continuing to determine constitutional questions according to the applicable domestic legal framework. Greater engagement with regional jurisprudence would also strengthen comparative constitutional scholarship in Tanzania. It would enable Tanzanian constitutional law to participate more actively in broader African debates concerning judicial independence, executive accountability, constitutional supremacy and access to justice.

21.8 Strengthening the Relationship Between Constitutional Institutions

A further reform should focus on the relationship between constitutional institutions rather than treating each institution as an isolated accountability mechanism. The rule of law depends upon interaction between Parliament, the Executive, Judiciary and oversight institutions. Weakness in one institution can consequently undermine the effectiveness of others. For example, judicial review cannot by itself guarantee constitutional accountability if Parliament repeatedly creates legal barriers to judicial access. Similarly, parliamentary oversight cannot be fully effective if relevant public information is unavailable, while ethical institutions cannot function effectively if their findings are disconnected from legally recognised consequences. Constitutional accountability should therefore be approached as an interconnected institutional system.

The objective should be to develop clearer mechanisms of institutional cooperation while preserving constitutional boundaries. Parliament should exercise legislative and oversight functions; the Executive should administer government within legal limits; independent oversight institutions should investigate and monitor; and courts should determine legal disputes and constitutional validity. None of these institutions should be expected to perform the functions of the others. Such institutional differentiation is important because accountability should not become synonymous with judicialisation. The Judiciary is an essential constitutional institution, but it cannot substitute for effective parliamentary oversight, ethical regulation, lawful administration and institutional transparency. A functioning rule-of-law system requires each institution to perform its own constitutional responsibility effectively.

21.9 Moving from Formal Constitutionalism to Effective Constitutionalism

Ultimately, the most important recommendation is to shift attention from the mere existence of constitutional safeguards to their practical enforceability. Tanzania already possesses many of the legal components associated with constitutionalism: constitutional rights, judicial institutions, legislative authority, public leadership ethics, constitutional enforcement mechanisms and regional legal commitments. The central challenge is therefore not simply institutional creation but institutional effectiveness. This requires a continuing assessment of whether citizens can access constitutional remedies,

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whether public institutions respect judicial decisions, whether oversight institutions can perform their functions independently, whether public leaders are subject to meaningful ethical regulation and whether laws affecting constitutional rights receive adequate scrutiny.

The distinction between **formal accountability and substantive accountability** is particularly useful here. Formal accountability exists when laws and institutions establish duties and procedures. Substantive accountability exists when those duties and procedures produce meaningful legal consequences for unlawful exercises of public power. The former is necessary but not sufficient for the latter. The long-term objective should therefore be a constitutional culture in which public officials understand constitutional limitations as inherent conditions of public office rather than external obstacles to governmental authority. Such a culture cannot be created by legislation alone. It requires judicial consistency, institutional professionalism, public legal awareness and sustained respect for constitutional procedures. The rule of law ultimately becomes credible when constitutional limitations continue to operate even when they are inconvenient to those exercising public power. That is the real test of constitutionalism: not the existence of restraints during ordinary circumstances, but their capacity to remain legally meaningful when questions of authority, institutional interest and governmental discretion become contested.

22. Conclusion

The rule of law is fundamentally a question about the relationship between power and law. Public leadership is legitimate not simply because an individual occupies a constitutionally recognised office, but because the exercise of that office remains within the legal boundaries established by the Constitution and law. The Tanzanian constitutional framework contains important mechanisms for achieving this objective. Article 8 establishes popular sovereignty and governmental accountability; Article 26 imposes duties concerning observance and protection of the Constitution; Articles 12–29 provide substantive rights; Article 30 structures the permissible limitation of rights; constitutional institutions distribute public functions; Article 132 provides for public leadership ethics; and judicial institutions provide mechanisms through which public power can be reviewed.

The jurisprudence demonstrates that these are not merely abstract provisions. *Ephrahim v Pastory* illustrates constitutional scrutiny of discriminatory legal norms. *Attorney General v Lohay Akonaay* demonstrates judicial protection of constitutional property rights. *Onesmo Olengurumwa v Attorney General* demonstrates judicial scrutiny of statutory restrictions affecting constitutional litigation. The 2026 EACJ decision concerning the same legislative framework further illustrates that constitutional accountability increasingly operates within a regional legal environment. the central challenge remains the movement from **constitutional text to constitutional practice**. The existence of legal restraints does not itself guarantee that public power will always be exercised within those restraints. Constitutionalism depends upon institutions, procedures and remedies capable of converting constitutional norms into enforceable limitations.

The principal conclusion of this doctrinal analysis is therefore neither that Tanzania lacks constitutional safeguards nor that those safeguards are automatically sufficient. Rather, the Tanzanian framework demonstrates a continuing constitutional project in which public authority is legally constituted but its effectiveness as a rule-of-law system depends upon the independence, accessibility and enforceability of the institutions responsible for maintaining constitutional limits. the decisive constitutional question is not whether public leaders possess power. They necessarily do. The decisive question is whether **the exercise of that power remains subject to law, reviewable by independent institutions, and accountable within the constitutional order from which the power itself derives**. That is the point at which public leadership becomes constitutional leadership and government becomes government under the rule of law.

BIBLIOGRAPHY

A. Primary Sources

Constitution

Constitution of the United Republic of Tanzania 1977.

Legislation

Basic Rights and Duties Enforcement Act, Cap 3 RE 2023.

Public Leadership Code of Ethics Act, Cap 398 RE 2023.

Written Laws (Miscellaneous Amendments) (No 3) Act 2020, Act No 6 of 2020.

Cases

Attorney General v Lohay Akonaay and Joseph Lohay [1995] TLR 80 (CA).

Ephrahim v Pastory and Kaizilege (1990) LRC (Const) 757 (HC).

Legal and Human Rights Centre and Liberatus Mwang'ombe v United Republic of Tanzania (Application No 041/2020) [2026] AfCHPR 6.

Onesmo Olengurumwa v Attorney General, Civil Appeal No 134 of 2022, [2025] TZCA 587 (CAT).

Pan African Lawyers Union and Others v Attorney General of the Republic of United Republic of Tanzania (Consolidated References Nos 25 and 27 of 2020) [2026] EACJ 2.

B. Books

Bingham T, *The Rule of Law* (Allen Lane 2010).

Dicey AV, *Introduction to the Study of the Law of the Constitution* (8th edn, Macmillan 1915).

Kijo-Bisimba H and Peter CM, *Justice and Rule of Law in Tanzania: Selected Judgements and Writings of Justice James L Mwalusanya and Commentaries* (Legal and Human Rights Centre 2005).

Loughlin M, *Foundations of Public Law* (OUP 2010).

Raz J, *The Authority of Law: Essays on Law and Morality* (2nd edn, OUP 2009).

C. Journal Articles

Daniel D, 'Political Question Doctrine and Its Justiciability in Tanzania: A Critical Analysis of Attorney General v Reverend Christopher Mtikila' (2022) 49(1) *Eastern Africa Law Review*.

Fimbo GM, 'Towards Separation of Powers in a New Democracy: Tanzania' (1995) 22 *The African Review* 16.

Peter CM, 'Enforcement of Fundamental Rights and Freedoms: The Case of Tanzania' (1995) 3 *African Yearbook of International Law* 81.

Raz J, 'The Rule of Law and Its Virtue' (1977) 93 *Law Quarterly Review* 195.

Shivji IG, 'The Rule of Law and Ujamaa in the Ideological Formation of Tanzania' (1995) 4(2) *Social & Legal Studies* 147. DOI: 10.1177/096466399500400201.

D. Other Academic Sources

Yairo TE, *A Legal Analysis of Unlimited Exercise of Presidential Authority Under the Constitution of Tanzania* (LLM thesis, Open University of Tanzania 2025).

E. Institutional and Regional Materials

Office of the Solicitor General, *The Basic Rights and Duties Enforcement Act, Cap 3 RE 2023* (Government Printer 2023).

Office of the Solicitor General, *The Public Leadership Code of Ethics Act, Cap 398 RE 2023* (Government Printer 2023).

African Court on Human and Peoples' Rights, *Legal and Human Rights Centre and Liberatus Mwang'ombe v United Republic of Tanzania*, Application No 041/2020, Judgment/Ruling of 6 March 2026.

East African Court of Justice, *Pan African Lawyers Union and Others v Attorney General of the Republic of United Republic of Tanzania*, Consolidated References Nos 25 and 27 of 2020, Judgment of 27 March 2026.