IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(MAIN REGISTRY)

AT DODOMA

(CORAM: HON. TIGANGA, LONGOPA & MWAKAPEJE, JJJ)

MISCELLANEOUS CIVIL CAUSE NO. 18925 OF 2025.

IN THE MATTER OF SEEKING REDRESS UNDER SECTION 4 AND 13 OF THE BASIC RIGHTS AND DUTIES ENFORCEMENT ACT (CAP 3, R. E 2023) READ TOGETHER WITH ARTICLE 30 (3) & (4) OF THE CONSTITUTION OF TANZANIA

AND

IN THE MATTER OF PETITION TO CHALLENGE VIOLATIONS BY THE RESPONDENTS OF ARTICLES 38 (2) (a), 13 AND 21 OF THE CONSTITUTION OF THE UNITED REPUBLIC OF TANZANIA, 1977 (R.E 2023)

AND

IN THE MATTER OF PETITION CHALLENGING CONTRAVENTIONS BY THE RESPONDENTS OF ARTICLES 39 (1) (a), (b) (c), (d) & (e), 104 (7) (b) AND 103 (12) (b) OF THE CONSTITUTION OF CHAMA CHA MAPINDUZI (A PARTY IN WHICH THE PETITIONER IS A MEMBER)

BETWEEN

DR. GODFREY FATAELI MLAMIE MALISA .....PETITIONER

AND

THE REGISTERED TRUSTEES OF

CHAMA CHA MAPINDUZI.....1ST RESPONDENT

KATIBU MKUU WA CHAMA CHA MAPINDUZI.....2ND RESPONDENT

RULING

19/08/2025 & 22/08/2025

TIGANGA, J.:

The Petitioner herein is a member of Chama Cha Mapinduzi with Card No. C00004714-016-1. He instituted this Petition under Article 30(3) and (4) of the Constitution of the United Republic of Tanzania, 1977 (hereinafter referred to as *the Constitution*), and Rule 4 of the Basic Rights and Duties Enforcement (Practice and Procedure) Rules, 2014. The Petition challenges the actions arising from the Chama Cha Mapinduzi Extraordinary Meeting of the National Congress held on the 19th day of January, 2025. At that meeting, Dr. Samia Suluhu Hassan was nominated as the Party's candidate to vie for the Presidency of the United Republic of Tanzania. The nomination is allegedly in contravention of the Chama Cha Mapinduzi Constitution of 1977 and the Constitution of the United Republic of Tanzania.

In particular, the Petitioner alleges that he has been denied the right to fully participate in national political affairs and the democratic rights bestowed upon all citizens of the United Republic of Tanzania. Such rights include the ability to vie for various political posts through political parties registered in Tanzania. According to the Originating Summons, the Petition is grounded on allegations that the Respondents have blatantly violated

Articles 39(1)(a), (b), (c), (d) and (e), 104(7)(b), and 103(12)(b) of the Chama Cha Mapinduzi Constitution. It is further alleged that such conduct amounts to a violation of the Political Parties Act, 1992 (as revised), and consequently infringes the provisions of Articles 13, 21, and 38(2) (a) of the Constitution of the United Republic of Tanzania.

In course of responding to the Petition, the respondents raised Preliminary Objection (PO) based on the following points of law, namely:

1. *The Petition is incompetent and barred in law for contravening the provision of S. 8 (2) of the Basic Rights and Duties Enforcement Act [CAP 3 R.E 2023].*
2. *The Petition is incompetent, bad in law and incurably defective for being supported by a defective affidavit which contain names of different person on the Verification and at the Jurat of attestation.*
3. *The Petition is incompetent, bad in law and incurably defective for being supported by a defective affidavit which contain the legal arguments and conclusions.*

When the preliminary objections were called for a hearing, the petitioner was represented by Mr. Denis Maringo, learned advocate, while the Respondents were represented by Messrs. Alex Mgongolwa and Fabian Donatus Msalya Mnada, both learned advocates.

Arguing in support of the first limb of the preliminary objection, Mr. Mnada submitted that the petition was bad in law for contravening section 8(2) of the Basic Rights and Duties Enforcement Act (BRADEA) [Cap. 3 R.E. 2023]. He explained that the petitioner challenged the internal nomination procedure of CCM and claimed contravention of its Constitution, asserting his intention to contest for leadership within the party.

He further submitted that the procedure for nominations is strictly guided by the *Kanuni za Uteuzi wa Wagombea Uongozi Katika Vyombo vya Dola*, March 2025. Regulation 12 of those Rules provides that complaints regarding the nomination process must first be addressed within party structures. This applies before, during, and after opinion polls, and also after the nomination itself. According to him, such complaints must be filed with the Party Secretary at the level where the complaint arises. At the national level, complaints are filed with the Secretary General, who forwards them to the *Kamati ya Siasa* (Political Affairs Committee) or the *Kamati Kuu ya Halmashauri Kuu* (Central Committee of the National Executive Congress) for determination.

He noted that the petitioner bypassed these internal remedies and filed the petition directly under Article 30(3) and (4) of the Constitution and section 4 of BRADEA. He submitted that section 8(2) of the BRADEA

restricts the Court's jurisdiction where alternative remedies exist. In his view, the petitioner's failure to exhaust the remedies available within CCM, therefore, rendered the petition premature and incompetent. He referred to **Alfred M. Malagila & Others v. Ministry of Lands, Housing and Human Settlements Development & Others** (Misc. Civil Cause No. 13 of 2023) [2023] TZHC 23508 (13 November 2023) to support the principle of exhaustion of local remedies before filing a constitutional petition.

In further support of the first point of the preliminary objection, Mr. Mgongolwa submitted that a preliminary objection must be founded purely on a point of law and must proceed on the assumption that all facts pleaded are true. To fortify this position, he cited the case of **Mukisa Biscuit Manufacturing Co. Ltd v. West End Distributors Ltd** [1969] EA 696. He argued that the Petitioner's claim rested on alleged violations of the CCM Constitution under Article 102 (12) (b), but no specific provision of the Constitution of the United Republic of Tanzania had been cited as having been violated.

He emphasised that, as a matter of practice before this Court, whenever a particular relief is sought in cases of this nature, it must be anchored to a specific provision of the Constitution said to have been contravened. According to him, that is not the case in the present Petition.

To cement his argument, he referred to part (f) of the Petition, titled "Nature of Redress Sought," particularly items one to five, noting that there is no reference to any provision of the Constitution alleged to have been violated. He further observed that the reliefs sought, especially the order for fresh nominations, fall beyond the Court's mandate under BRADEA and are more appropriately addressed through judicial review remedies such as certiorari, mandamus, or prohibition.

Mr. Mgongolwa further explained that section 8(2) read with section 4(5) of BRADEA required exhaustion of all available remedies before approaching the Court. He cited **Joshua Samwel Nassari v. The Speaker of the National Assembly of the United Republic of Tanzania & Another** (Misc. Civil Cause No. 22 of 2019) [2019] TZHC 15782 (29 March 2019), emphasising that premature petitions where remedies have not been exhausted must be struck out. He invited the Court to take judicial notice under section 64 of the Evidence Act, Cap. 6 R.E 2023, that the names of the nominees had already been forwarded to the Independent National Electoral Commission (INEC). He submitted that events had overtaken the matter, relying on **Felix Emmanuel Mkongwa v. Andrew Kimwaga** (Civil Application No. 249 of 2016) [2020] TZCA 333

(9 June 2020). He concluded that the petition was therefore incompetent, premature, and ought to be struck out.

Mr. Mnada then addressed the second and third limbs of the preliminary objection together, submitting that the affidavit supporting the originating summons was incurably defective and rendered the petition incompetent. He explained that the affidavit contained inconsistent and contradictory names of the deponent: in the facts deposed, the signature, the verification clause, and the jurat of attestation, different versions of the deponent's name appeared, creating ambiguity as to the true deponent. He emphasised that the law requires clarity regarding the person swearing the affidavit and that such inconsistencies render the document invalid.

He further submitted that the affidavit contained legal arguments and conclusions contrary to Order XIX Rule 3 of the Civil Procedure Code. He added that paragraphs 3, 4, 5, 6, and 7 included legal arguments and conclusions, with phrases such as "violation," "mandatory," "offends," and "directs," which were conclusions of law rather than matters of fact. He cited **VIP Engineering and Marketing Limited v. SGS Societe Generale De Surveillance SA & 2 Others** (Civil Appeal No. 65 of 2006) (unreported) and **Anatol Peter Rwebangira v. Principal Secretary, Ministry of Defence & National Service** (Civil Application No. 548 of

2018) [2019] TZCA 106 (13 May 2019) to demonstrate that defective affidavits cannot be cured by amendment and that the remedy is to strike out the application.

He also referred to **Elly Emile Kinasha v. Edgar Samwel Mo & Another** (Civil Reference No. 35 of 2023) [2024] TZHC 6110 (20 June 2024), which confirmed that affidavits containing legal arguments and conclusions are legally incurable. He concluded that since the petition was supported by the defective affidavit, its collapse inevitably led to the flop of the petition, and he prayed that both the affidavit and the petition be struck out.

In reply, Mr. Maringo submitted that the inconsistencies in the affidavit were minor and did not go to the substance of the document. To support this position, he cited the case of **Christina Mrimi v. Coca Cola Kwanza Bottlers Ltd** (Civil Application No. 113 of 2011) [2012] TZCA 1 (3 May 2012), where it was held that minor errors in names were curable. He further explained that no prejudice had been occasioned to the Respondents as a result of the inconsistencies, and that the Petitioner could, if the Court deemed necessary, clarify his correct name.

On the allegation that the affidavit contained legal arguments and conclusions, he acknowledged older authorities, i.e., **Uganda vs**

Commissioner of Prison *ex parte* Matovu, [1966] EA 514, but cited the more recent decision in **Judicate Rumishael Shoo & 64 Others v. Guardian Limited** (Civil Application No. 43 of 2016) [2016] TZCA 2413 (4th September 2016), where the Court of Appeal held that statements of belief by a deponent could be considered facts rather than legal arguments.

He noted that the Petitioner's affidavit was the first document filed in the matter, and therefore, it could not contain arguments. He reasoned that had it been a counter-affidavit, one could have said it was arguing against the contents of the original affidavit. However, since the affidavit was the initiating document, there was nothing on record for it to argue against. He further submitted that the Court had the discretion to expunge defective paragraphs while preserving the remainder of the affidavit. In doing so, he invoked the "oxygen principle" and the Constitution, cautioning against dismissal of the matter on mere technicalities. He also argued that the Petition challenged a nomination process tainted with illegality. According to him, subsequent events, such as the forwarding of names to INEC, did not oust the jurisdiction of the Court, since the election itself had not yet taken place.

Regarding exhaustion of local remedies, he submitted that the Regulations cited by respondents had no force of law and were enacted after the petitioner's grievance. He also showed his worry as to whether the regulation has been filed with the registrar of political parties for approval. So, he urged the court not to use the regulations for the reasons he has given. He also urged the court to find that there are circumstances where the court may disregard the requirement of exhaustion of local remedies. He cited the decision in the case of **Onesmo Olengurumwa vs Attorney General** (Civil Appeal No. 134 of 2022) [2025] TZCA 587 (13th June 2025). He concluded by urging the Court to exercise discretion to allow less drastic remedies, on the verge of the phrase "*any other remedy as the court shall deem fit and just to grant*" as used in the petition and originating summons, such as an amendment or filing a supplementary affidavit, rather than striking out the petition entirely, and prayed that the preliminary objections be dismissed.

In rejoinder, Mr. Mgongolwa reiterated that affidavits must contain facts within the deponent's knowledge or matters of belief and that legal arguments or conclusions render them defective, citing **Ex parte Matovu** [1966] EA 514 and **Phantom Modern Transport (1985) Limited v. D.T. Dobie (Tanzania) Limited** (Civil References Nos. 15 of 2001;

Civil References No. 3 of 2002) [2012] TZCA 508 (1st January 2012). He noted that the petitioner himself had admitted defects in the affidavit and advised that the offending paragraphs may be expunged. However, in Mr. Mgongolwa's view, once the offending paragraphs are expunged, the remaining declaration could not sustain the petition, which was therefore incurably defective.

Furthermore, Mr. Mnada, in rejoinder, added that the petitioner had failed to exhaust available forums, which were demonstrably available, and reiterated that the petition should be struck out on that ground. He further clarified that the CCM Constitution has been in force since 1977, already contained binding Regulations, and the revised edition of 2025 merely consolidated them. On the issue of names, he submitted that section 5 of BRADEA read with Rule 4 of the BRADEA Rules, 2014 requires petitions to be filed with a clear supporting affidavit, and defects cannot be cured simply because the petitioner is present.

Finally, he observed that, while guided by the fundamental principle in logic and philosophy, @ principle of argumentation, which goes with the famous adage that, "*nothing can be and not be at the same time*", the petitioner could not simultaneously deny and concede that the affidavit contained legal arguments and conclusions, and having conceded, the

petition necessarily collapses. He prayed firmly that the entire petition be struck out.

Having heard the rival submissions of the parties, guided by the provisions of Rules 7(1) and (2) as well as Rules 9(1) and (2) of the Basic Rights and Duties Enforcement (Practice and Procedure) Rules 2014 Government Notice No. 304 of 2014 dated 29th August 2014 read with necessary modifications as introduced by the Written Laws (Miscellaneous Amendments) (No. 2) Act, 2025, this Court is enjoined to address competency of the petition prior to hearing of the matter on merits.

The importance of determination of competence of the petition was reiterated in **John Seka vs Minister of State in the President's Office Regional Administration and Local Government & Another** (Misc. Civil Cause No. 28420 of 2024) [2024] TZHC 9820 (22 November 2024) (TANZLII), at pages 29 -30, where the High Court noted clearly that:

> *"In view of the above decisions of this court (**Barunguza (supra)**), and **Mwakasege (supra)**), on the one hand, one may be tempted to think the petition is competent. It has complied with section 4 of the BRADEA. **But the essence of determining competence under rule 9 of the BRADEA Rules is to sieve grain from chaff. To determine whether the case is material or meritorious so as the constitutional court can be constituted. Each case must be determined based on its own peculiar facts."***

As the petition at hand is challenging the actions by Chama Cha Mapinduzi, which allegedly violated its Constitution, resulting in a violation of this country's Constitution, it is of paramount importance to analyse the competence of the petition before this Court. It should be noted at the outset that the challenging constitutionality of the matter is a weighty issue that should not be taken lightly. As such, it is not every kind of complaint that necessitates the empanelment of the Constitutional Court.

All the three points of preliminary objections are based on non-compliance of the applicable legal principles thus it is our considered view that such preliminary objections fit well within the principle in **Mukisa Biscuit Manufacturing Co. Ltd. v. West End Distributors Ltd.** [1969] E.A. 696; **COTWU (T) OTTU Union and Another vs Hon. Iddi Simba, Minister of Industries and Trade and 7 Others** (Civil Application 40 of 2000) [2000] TZCA 14 (30 June 2000) (TANZLII), at page 3; and **Gideon Wasonga & Others vs The Attorney General & Others** (Civil Appeal 37 of 2018) [2021] TZCA 3534 (23 December 2021) (TANZLII), at page 8, to mention but few.

The first point of preliminary objection is based on a violation of the provisions of section 8(2) of the Basic Rights and Duties Enforcement Act (BRADEA), Cap 3 R.E. 2023. The provision caters for the need to exhaust

the available remedies prior to seeking the constitutional remedies. It states that:

> *"(2) The High Court shall not exercise its powers under this section* ***if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law****, or* ***that the application is merely frivolous or vexatious***." (Emphasis added)

In the instant petition, the Petitioner is challenging actions by the respondents to have violated the Party's Constitution, hence violative of the Constitution of the United Republic of Tanzania. This Court's perusal indicates that the petitioner has not challenged any particular provisions of the law enacted by the Parliament or subsidiary legislation made thereto. What he challenges are administrative actions of the political party to which he allegedly belongs as a member; therefore, there is a need to address the procedure applicable in that particular political party.

As submitted by the learned advocates for the respondents, there is recognition within the Chama Cha Mapinduzi Constitution of the Regulations, namely "*Kanuni za Uteuzi wa Wagombea Uongozi katika Vyombo vya Dola,*" which appear as item 9 in Schedule B of the Constitution.

This Schedule to the Chama cha Mapinduzi Constitution is akin to the Schedule in a written law that is treated as part and parcel of that law

under Section 25(2) of the Interpretation of Laws Act, Cap 1 R.E. 2023. As in the statutory interpretation schedules to the enactments are considered to be part of the law, this Court shall treat Schedule B to the Constitution of Chama Cha Mapinduzi, namely *"Kanuni za Uteuzi wa Wagombea Uongozi katika Vyombo vya Dola"* as part and parcel of the CCM Constitution.

The said Regulations provide for an avenue to handle complaints related to intra-party electoral processes, including nomination by the Chama cha Mapinduzi of its candidates to vie for various elective posts in elections within this Country. Given the nature of the Petition at hand, challenging alleged flaws of the Chama Cha Mapinduzi Constitution through actions of the respondents by nominating Dr. Samia Suluhu Hassan as the Party flagbearer in the forthcoming General Elections, the avenues available in the Constitution of Chama Cha Mapinduzi in addressing such lamentations are vital in the circumstances of the matter.

In this jurisdiction, it is a settled legal principle that where there is an existence of an alternative remedy to address complaints forming part of the petition, this Court is excluded from exercising its mandate on the constitutionality of the impugned actions. It is common knowledge that the jurisdiction of the Court is not invoked to every sort of litigation instituted

challenging the constitutionality of certain actions, but only in special circumstances relating to a violation of the Constitution touching on the Bill of Rights.

Such limited application of the BRADEA where there is an available remedy was illustratively articulated in the case of **Freeman Aikael Mbowe vs The Director of Public Prosecution & Others** (Civil Appeal No. 382 of 2021) [2024] TZCA 836 (30 August 2024) (TANZLII), at pages 11-12, where the Court categorically stated that:

> *"In our humble view, for the purpose of determining the appropriate forum, it was important to distinguish between a conduct which is illegal and that which is unconstitutional per se. We say so because, in a country like ours, which is governed by the rule of law and constitutionalism, whatever action the state authorities take must have its legitimate foundation from the Constitution.* ***Therefore, if this is taken literally, it may mean that, every breach of the law gives raise to a constitutional review cause of action. Definitely, this will render the Constitutional review jurisdiction as good as the general court's jurisdiction, while the intention of the legislature has been that the constitutional review jurisdiction is a special jurisdiction reserved for purely constitutional matters.*** *We took such a caution in* ***Attorney General v. W.K. Butambala*** *[1993] TLR 46 where we remarked that, constitutional matters being serious, "should be reserved for appropriate and really momentous occasions."*

Further, on page 14, the Court of Appeal of Tanzania reiterated that:

> *"It is our understanding, however, that the application of the ordinary judicial review is excluded in the above provisions where the matters complained of are covered by the provisions of the BRADEA. In this case, we have clearly held that for reasons of being mere abuses of statutory powers and the constitutionality of the respective statutes being not at issue, the complaints in question do not fall within the purview of the BRADEA."*

A similar position was reiterated in the case of **Paul Revocatus Kaunda vs Speaker of the National Assembly and Another** (Civil Appeal No. 167 of 2021) [2025] TZCA 183 (7 March 2025) (TANZLII), at pages 15 & 17, where the Court observed that:

> *"In some cases, it is difficult to draw a line between a breach of the Constitution and a breach of ordinary laws because a breach of the Constitution may also be a breach of some statute law. Where this happens, as it was stated in* ***AG v. W. K. Butambala*** *[1993] TLR 46, followed in* ***Freeman Aikael Mbowe v. DPP & Others****, Civil Appeal No. 382 of 2021, we should opt for judicial review. The exercise of the constitutional mandate should therefore be reserved for appropriate and real momentous occasions."*

However, in the instant petition, the petitioner is challenging actions of Chama Cha Mapinduzi resulting from the Extraordinary Meeting of the National Conference of Chama Cha Mapinduzi, which is alleged to have violated both the Party Constitution and the Constitution of the United Republic of Tanzania by infringing the petitioner's personal rights to participate in the national political affairs.

The main question on this aspect is whether the alleged administrative actions of the Chama cha Mapinduzi amount to constitutional breaches under the principles set in this jurisdiction. The answer is in the negative. The reasons are two-fold: **first**, administrative actions can be challenged vide the prerogative orders of *certiorari*, *mandamus,* and *prohibition* as articulated by the provisions of section 17(1) and (2) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act, Cap 310 R.E. 2023. **Second**, as the Petitioner contends, to have been denied the right to actively participate in political affairs and exercise democratic rights within the Party.

There are lucid procedures within the said party entitled ***"Kanuni za Uteuzi wa Wagombea Uongozi katika Vyombo vya Dola, Toleo la Machi 2025"*** that articulate the procedure of dealing with the complaints of a person dissatisfied with the manner in which the process of nomination was conducted, either before, during, and after the opinion polls, or after the completion of nomination. Regulation 12 (2) (a) of the said Regulations is articulate and detailed that any complaint should be submitted to the Secretary of the relevant leadership level at which the complainant seeks to participate. In this respect, for vying to be nominated

for the presidency, the appropriate authority to submit the complaint would be the Secretary General of the Party.

However, there is nothing in the petition revealing that the petitioner attempted to use either of the two means of handling the complaint at hand. The pleadings do not disclose anything meaningful regarding any attempts to challenge the alleged violation vide intra-party mechanisms.

In fact, in Clause C (3) of the Petition where grounds upon which reliefs are sought, the petitioner admitted that there exist mechanisms to redress the contravention alleged but did not use it on the following grounds: **first**, the same would be unrealistic to pursue and **second**, attempt to exhaust such remedy through that mechanisms would be impractical due to shortage of time. In our considered view, these averments are not convincing at all as the actions complained of by the petitioner arose since the 19th day of January, 2025, when Chama cha Mapinduzi convened an Extraordinary Meeting of the National Congress, whereby the complained violations were allegedly committed.

In law, blatantly ignoring or disregarding of exhaustion of available remedies by a party cannot be condoned in the circumstances where the law, section 8(2) of the BRADEA, makes it mandatory that where the alternative remedy is in place the person considering himself aggrieved

cannot justifiably skip the mandatory statutory requirement just for unsubstantiated excuse that it will not be practical to comply. To emphasise the mandatory nature of the law cited above, we find it imperative to reiterate, quoting in extenso the provision of section 8(2) of BRADEA as follows:

> *(2) The High Court* ***shall not exercise its powers*** *under this section* ***if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law****, or* ***that the application is merely frivolous or vexatious***. (Emphasis added)

Section 53(2) of the Interpretation of the Laws Act, Cap 1 R.E. 2023, provides that where the word *"shall"* is used in a written law in conferring a function, such word shall be interpreted to mean that the function so conferred must be performed. See the case of **Kyando v The Republic** (Criminal Appeal No. 118 of 2003) [2006] TZCA 428 (21 August 2006). In this petition, the law that the respondent alleges was not complied with uses the word *"shall"*, not only requiring the party to comply, but also to oust the jurisdiction of the court where the court is satisfied that there were other adequate means of redress for the contravention alleged.

In this petition, the instrument that is alleged to be violated is the Constitution of CCM for nominating the presidential candidate without adhering to the procedure provided by the said party's Constitution,

thereby denying the petitioner his right to participate in the process. The said Constitution creates the party organs, and empowers them to perform some important party duties, including nominating individual party members to vie for various constitutional and statutory leadership posts in the national general election or local government election.

The procedure of how to do so is provided under the Regulations entitled "*Kanuni za Uteuzi wa Wagombea Uongozi Katika Vyombo vya Dola,*". The said Regulations provide for the procedure for applying, processing the application, voting, nominating, and where to lodge the complaint within the party, and how the said complaints are to be processed.

We are aware that one of the arguments advanced by counsel for the petitioner is that the regulations were enacted in March 2025 after the petitioner had written his letter to the party chairman complaining of what happened. Therefore, he could not have followed them because they were not there. Further, he showed his worry that it is not the law enacted by parliament; therefore, it cannot oust the jurisdiction of the court. Lastly, he doubts as to whether the said regulations were filed with the Registrar of Political Parties in compliance with the Political Parties Act. Looking at his

attack towards the said Regulations, it goes without saying that he is challenging the legality of the Regulations.

However, we do not think this is a proper forum in terms of timing to challenge the Regulations at hand. It is a trite law that a group of people who on their own volition decide to come together and agree on a common goal and make the constitution and any other regulations to govern them are bound by the constitution and the regulations they made, in the conduct of their affairs. Even the court, while adjudicating on matters arising from their constitution or any other law made to govern their affairs, is to be bound by their wish. That means if the constitution requires or imposes the condition to be fulfilled before an individual member comes to court, the court is duty-bound to respect the wishes of the members expressed in their constitution or regulations.

Equally in this matter, the petitioner who has introduced himself to be a valid member of the 1st respondent is bound by the constitution and all other regulations made under the constitution of the 1st Respondent.

Now, the Regulations we have been referred to are "*Kanuni za Uteuzi wa Wagombea Uongozi Katika Vyombo vya Dola."* Regulation 12, which is entitled "UTARATIBU WA KUSHUGHULIKIA MALALAMIKO," provides that:

(1) Kutakuwa na nyakati mbili za kuwasilisha na kushughulikia malalamiko ya Wagombea wa CCM wa kuingia kwenye vyombo vya Dola.

(a) Kabla, wakati, na baada ya Kura za Maoni,

(b) Baada ya Uteuzi kukamilika,

(2) Malalamiko yanaweza Kuwasilishwa kabla, wakati na baada ya kura za maoni kwa kuzingatia utaratibu ufuatao;

(a) Mlalamikaji atawasilisha malalamiko yake kwa katibu wa CCM wa ngazi ya uongozi anaouomba

(b) Ili kuepuka majungu, na kwa ajili ya kulinda haki, malalamiko yatawasilishwa kwa maandishi ambayo pia itabidi yaanishwe kwa ukamilifu mambo yanayolalamikiwa, jina na anuani ya mlalamikaji lazima vionyeshwe wazi katika barua ya malamiko.

(c) – (i) N/R

(j) Malalamiko pia yanaweza kuwasilishwa baada ya uteuzi kukamilika, kwa kuzingatia utaratibu ufuatao:-

(i) Mara baada ya uteuzi kufanyika mwanachama yeyote ambaye hakuteuliwa kugombea nafasi ya uongozi inayohusika endapo anayo malalamiko kuhusu mchakato wa kumpata mgombea wa kuingia katika vyombo vyombo vya Dola, atawasilisha malalamiko yake hayo kwa katibu wa chama ngazi inayofuata. ***Isipokuwa kama malalamiko yanahusu ngazi ya taifa yatawasilishwa kwa Katibu Mkuu wa Chama.***

(ii) *Ili kuepuka majungu, na kwa ajili ya kulinda haki, malalamiko yatawasilishwa kwa maandishi ambayo pia itabidi yaanishwe kwa ukamilifu mambo yanayolalamikiwa. Mlalamikaji lazima pia ataje majina yake kamili na anuani yake.*

(iii) *Malalamiko hayo lazima yawasilishwe ndani ya siku tatu (3) baada ya uteuzi kufanyika.*

(iv) *Kikao kinachoshughulikia malalamiko kitakuwa na uwezo wa kusikiliza rufaa kutoka kamati ya siasa inayohusika pale ambapo kamati husika ilitoa amri katika kanuni ya 19 (a) na (d) lakini wahusika hawakutii amri hizo, au rufaa kutoka kwa mgombea au kiongozi na maamuzi fulani ya kamati ya siasa iliyomdhibiti.*

(v) ***Kila mgombea wa nafasi yoyote ya uongozi wa chama kuingia katika vyombo vya dola azingatie kuwa mchakato huo ni suala la kazi ya chama ndani ya chama. Hivyo CCM ina uwezo kamili wa kuyatafutia ufumbuzi malalamiko yote ya uchaguzi ndani ya chama chenyewe bila ya kushawishika kuyapeleka Mahakamani.***" [Emphasis added]

From what the Regulations provide, it is apparent that the 1st Respondent set the mechanism in place for how to receive, process, and decide the complaint pertaining to the intra-party electoral complaints.

The Regulations also, in paragraph (j) (v) of Regulation 12 (2), express the 1st Respondent's desire to resolve the dispute within the party, and members are discouraged from taking the matter to court before the dispute is referred to the party's authority. Since the constitution and regulations bind all members, the petitioner ought to have resorted to the mechanism within his party in resolving his complaints as per their constitution.

We are alive, as stated in paragraph (4) of the petitioner's affidavit, where the petitioner deposed that on 11th February 2025, he wrote to the CCM Chairperson. However, looking at the content of that letter, it was not a complaint letter; rather, it was simply informing the chairperson of the petitioner's intention to file a case against the 1st Respondent and its registered trustees. Under all circumstances, this cannot be considered a complaint to be resolved within the party as required by the regulations; it was merely a notice of the intention to sue.

Even if, for the sake of argument, we deem that to be a complaint, Regulation 12 (3) (I) requires a complainant to adhere to the modality in place of presenting the said complaints; failure of which the respective authority could not attend to the complaint. Therefore, directing the said

letter to the party's Chairperson instead of the Secretary General was fatal in the circumstances.

Lastly, the petitioner under Part (c) of paragraph 3 of the grounds on which redress is sought in the originating summons acknowledged being aware of the existence of internal alternative redress. However, he argued that these are unrealistic because the same entities and officials against whom the grievances are raised are the ones who would sit on appeal against this complaint.

Also, he stated that any attempt to exhaust such a mechanism would be impracticable since, given the short period available before the names are sent to the Independent National Electoral Commission, the party's internal grievance mechanism would take much longer. Consequently, he alleged that the petition would be liable to suffer because it would be overtaken by events.

In addressing these two issues, we find it imperative to revisit the regulation to determine who is responsible for resolving the complaints. Under Regulation 12 (3) of the said "*Kanuni za Uteuzi wa Wagombea Uongozi Katika Vyombo vya Dola,*" it is not an individual that sits to resolve the complaint; it is the "*Kamati ya Siasa*" (Political Affairs Committee) or "*Kamati Kuu ya Halmashauri Kuu*" (The Central Committee of the NEC) that

sits to resolve the complaints. Therefore, the complaint that the redress is unrealistic because the very entities and officials against whom these grievances are being brought are the very same who would sit on appeal against this complaint is unsubstantiated. We thus dismiss the complaint for being devoid of merit.

Regarding the complaint that any attempt to exhaust the party's internal mechanism would be impractical due to the short period available before the names are sent to the Independent National Electoral Commission, and that the party's internal grievance process would take much longer, thereby causing the Petition to be overtaken by events, we are, with due respect, not inclined to agree with learned counsel for the Petitioner. We do not share that line of argument. The reason is that the act complained of was allegedly committed in January 2025. The Petitioner is said to have been aggrieved and to have expressed his grievances immediately thereafter.

The evidence of this is clear in the letter he wrote to the party's Chairperson dated 11th February 2025 and proved by paragraph 4 of the affidavit, which notified the Chairperson of his intention to sue both the Party and its Registered Trustees. This act was performed almost five months later, in July 2025. That indicates that the petitioner had ample

time to exhaust the internal remedies before seeking court intervention; that ground is also without merit.

Based on what has been said, we are convinced that the petitioner was duty-bound to comply with the mandatory requirement of section 8(2) of the BRADEA, exhausting the internal party remedy before coming to court under BRADEA. Failure to do so made the petition at hand incompetent and liable to be struck out.

For the second and third grounds of Preliminary Objections regarding the affidavit in support of the petition, there are two main limbs. **First**, the affidavit is incurably defective for having different names of the deponent and the persons who verified the affidavit.

Generally, affidavits are governed by the provisions of Order XIX Rule 3(1) of the Civil Procedure Code, Cap 33 R.E. 2023, which provides that:

> *3.-(1)* ***Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove****, except on interlocutory applications on which statements of his belief may be admitted: Provided that the grounds thereof are stated.* [Emphasis added]

These general principles governing affidavits were reiterated in the case of **Jacquiline Ntuyabaliwe Mengi & Others vs Abdiel Reginald Mengi& Others** (Civil Application 332 of 2021) [2022] TZCA 748 (1 December 2022) (TANZLII), at page 27, the Court of Appeal stated that:

"In the matter at hand, it is an undisputed fact that in the verification clauses of the respective affidavits at pages 26 and 31 of the record, the deponents have not disclosed the sources of information, as both have indicated that it is according to personal knowledge of the deponents. Based on ***Jamal S. Mkumba and Another (supra)*** *and* ***Salima Vuai Foum (supra),*** *in order for an affidavit to be valid, it must show which information is true of the deponent's own knowledge and which is based on information or belief. And this is to be stated in the verification clause. Failure to do so, therefore, renders the verification clauses of the affidavits defective.*

The effect of the defective verification clauses is to render the application incompetent. This was a stance taken in the case of ***Anatol Peter Rwebangira (supra),*** *when the Court was faced with akin situation in which the applicant failed to specify the matters of his own personal knowledge or information he received and believed. The Court found that the application was incompetent and struck it out, which, in our view, would be the proper remedy in the matter at hand.*

With the foregoing, we are satisfied that the affidavits under discussion are defective for not only containing extraneous matters such as assumptions, arguments, opinions, conclusions, sentiments, and feelings but also containing verifications which do not disclose the source of information. In the event, the defects render the application to be incompetent and, hence, we accordingly strike it out."

Guided by that decision, for an affidavit to be valid, it must comply with the rules of affidavits. **One**, it must disclose the source of information, whether in the deponent's own knowledge or from third-party information.

Two, if the source is from another person, such information should be so disclosed in the verification. **Three**, failure to disclose the source of information and the reason to believe that it is true for third-party information renders the affidavit defective. **Four**, extraneous matters such as assumptions, arguments, opinions, conclusions, sentiments, and feelings should not be contained in the affidavit.

In the instant petition, it is correctly stated by the advocates for respondents that the affidavit contains legal arguments and conclusions, in particular, the contents of Paragraphs 3 (i), (ii), and (iii), and 5 of the affidavit. These paragraphs deserve nothing other than being expunged from the affidavit.

This Court is fortified by the principle in the case of **Said Omari Mamba vs Attorney General and 7 Others** (Civil Application No. 524/06 of 2024) [2025] TZCA 335 (9 April 2025) (TANZLII), at pages 6-7, the Court of Appeal held that:

> *"It is a long-settled law that, the affidavit must be confined to facts which are free from extraneous matters. Times without number, the Court has insisted on compliance with the said requirement whenever an opportunity arises. For instance, in* ***Chadha and Company Advocate vs Arunaben Chaggan Chhita Mistry and 2 Others****, Civil Application No. 25 of 2013 TANZLII, when adopting the decision of the case of* ***Uganda vs Commissioner of Prison Ex parte, Matovu*** *(1966) E. A 514 had this to say in that regard:*

As a general rule of practice and procedure, an affidavit for use in Court, being a substitute for oral evidence, should only contain statements of facts and the circumstances for which the witness depose either of his own knowledge...such affidavit should not contain extraneous matters by way of objection or prayer or legal arguments or conclusions."

To elaborate on what the preliminary objection entails, we find it apt, even at the expense of being too loquacious, to reproduce hereunder parts of the affidavits that are complained of. The affidavit in the instant petition reads as follows:

*"I, **DR. GODFREY FATAELI MLAMIE MALISA**, an adult of sound mind, Christian, and resident of Moshi District within Kilimanjaro region, DO HEREBY make Oath and state as follows:*

1. *That I am the Applicant herein, thus conversant with the facts I am about to depose.*
2. *That I am an active member of Chama Cha Mapinduzi. A copy of my membership card number issued on the 20th of November 2020 is annexed hereto and form part of this Affidavit.*
3. *That on the 19th day of January, 2025, Chama Cha Mapinduzi convened an extraordinary meeting at Dodoma and in that meeting, Dr. Samia Suluhu Hassan was nominated as a Party's Candidate to vie for the presidency of the United Republic of Tanzania, the process which I verily believe violated the party's own Constitution of 1977 and also the Constitution of the United Republic of Tanzania.*
    (i) *The said purported nomination was in violation of Article 102 (12) (b) of the Constitution of Chama Cha Mapinduzi, which mandatorily directs the Central*

Committee to recommend 3 candidates for vying for as CCM's Candidate for the Presidential Post.

(ii) *The procedure at the Extraordinary General Meeting was also in violation of Article 39 (l) (a, b, c, d, e).*

(iii) *Moreover, the process of nominations of the Candidate also offended Article 38 (2) (a) of the Constitution, which mandatorily provides that the process of electing a new President will be preceded by, inter alia, the dissolution of the Parliament.*

4. *That on the 11th day of February 2025, the Petitioner wrote a letter to the CCM's Chairperson to inform her of the Petitioner's intention to file a case against Chama Cha Mapinduzi and its Registered Trustees.*
5. *That the Respondents have nominated a Presidential Candidate, through the Respondents' Party Ticket, who will stand in the General Presidential Election of October/ November 2025 as a candidate to vie through Chama Cha Mapinduzi, and the same without adhering to the Party's own Constitution, especially by violating the CCM Constitution, the Principles of Natural Justice (the right to be heard as well as the rule against bias), in addition to offending principles of secret ballot.*
6. *The Respondents and their beneficiaries are in the verge of convening on or around 28th July, 2025 with the objective of making deliberations and thereby nominating the names of selected Party Members as candidates who will vie for various political positions during the forthcoming October/November General National Elections, inclusive of Members of the Union Parliament (Wabunge) as well as Ward Councilors (Madiwani).*
7. *That due to the fact that the Party's Nominated Candidates are intended to be filed with the Independent National Electoral Commission in few days to come, any delay by this Honourable*

Court to issue its decision prior to that date will have adverse effects on the Petitioner and the Interests of the nation at large.

8. *That on the 11th day of February 2025, I wrote a letter to her excellence, the Party Chairperson, to inform her of my intention to make her a party of a civil case against Chama Cha Mapinduzi, and the letter was posted to her excellence on the 13th day of March, 2025. The letter is hereto annexed and form part of the affidavit.*
9. *That I am filing this Petition in order to seek nullifications of the said nominations, declaratory orders stating that the Respondents violated both the Constitution of CCM and that of Tanzania, and for other remedies as prayed in the 'Contents of the Petition' section.*

DATED at Dar es Salaam, this 25th July, 2025

SGD

GODFREY FATAELI MLAMIE MALISA

VERIFICATION

I, ***GODFREY FATAELI MLAMIE MALISA****, do hereby verify that what has been stated herein above in paragraphs 1, 2, 3 (i), (ii), (iii), 4, 5, 6, 7, 8, and 9, inclusive, is all true to the best of my own knowledge.*

Verified at Dar es Salaam, this 25th July, 2025.

SGD

Deponent

SWORN at Dar es Salaam by

GODFREY FATAELI MALISA*, who*

has been introduced to me by Advocate

DENIS MARINGO*, the one known to me personally,*

on this 25th day of July, 2025

BEFORE ME:
NAME: MANGITENI MARWA
SIGNATURE: SGD
ADDRESS: 53722 DAR
QUALIFICATION: COMMISSIONER FOR OATHS

The names of the deponent in the affidavit indicate that the petitioner has the following set of names: **First**, **Dr. Godfrey Fataeli Mlamie Malisa**, as appearing in both the Petition and in the introductory part of the affidavit. **Second**, **Godfrey Fataeli Mlamie Malisa** in the verification part of the affidavit. **Third**, **Godfrey Fataeli Malisa** in the jurat of attestation.

Simply, a person who deponed the affidavit is different from the person who verified, and also quite different from the person who appeared before the Commissioner for Oaths for attestation. It is lucid that a person who appeared before the Commissioner for Oaths and was introduced by Denis Maringo is not the deponent, as per the records in the Court, it is one **Godfrey Fataeli Malisa,** while the petitioner, as he categorically introduced himself in both the Petition and the affidavit before deponing statements, is one **Dr. Godfrey Fataeli Mlamie Malisa**. With due respect to the counsel for the petitioner, these, in law, are three different persons, rendering the jurat of attestation incurably defective.

In the case of **Mabao Ying vs Mbeya City Council** (Civil Appeal No. 97 of 2013) [2014] TZCA 284 (23rd May 2014) (TANZLII), at page 4, it was observed that:

> *"An affidavit which has no jurat of attestation offends Section 8 of the Notaries and Commissioners for Oaths Act, Chapter 8 R.E. 2002 of the laws. In* ***MANTRAC TANZANIA LTD versus RAYMOND COSTA,*** *Civil Application No. 11 of 2010, amongst many other authorities, this Court has laid down the principle that to be valid, an affidavit must be sworn or affirmed before a person authorized i.e. a Notary Public or Commissioner for Oaths who must certify in the jurat of attestation the fact of making of the affidavit before him and the date and place when and where it was made. The case at hand is more serious in that the affidavit has no jurat of attestation at all, though it was signed by the appellant. We are therefore satisfied that there is no valid affidavit."*

As the person who appeared to be sworn before the Commissioner for Oaths, as introduced by Denis Maringo, learned advocate, is different from the person who deponed the said affidavit. It is the settled view of this Court that there exists no valid affidavit for lack of jurat of attestation for having the person who appeared before the Commissioners for oath being different from the one who appear to have taken the affidavit.

Given that the person who was sworn in the jurat of attestation is not the one who deponed, in law, it cannot be said that the deponent did appear to be sworn as required by law. We hold the view that one **Dr.**

Godfrey Fataeli Mlamie Malisa, who is stated to be the deponent, is not the same person who appears in the verification clause and jurat of attestation. The reason for holding that view is not far-fetched. There is nothing on record revealing that one **Dr. Godfrey Fataeli Mlamie Malisa** is the same person as **Godfrey Fataeli Mlamie Malisa** or **Godfrey Fataeli Malisa**. In the absence of an affidavit clarifying on record that three sets of names refer to the one and the same person, this Court is bound to find that the affidavit is incurably defective.

Furthermore, we are inclined to adhere to the principles in the case of **Director of Public Prosecutions vs Dodoli Kapufi & Another** (Criminal Application 11 of 2008) [2011] TZCA 46 (6 May 2011) (TANZLII), at page 3, where it was observed that:

> *"The essential ingredients of any valid affidavit, therefore, have always been:-(i) the statement or declaration of facts, etc, by the deponent; (ii) a verification clause, (iii) a jurat, and (iv) the signatures of the deponent and the person who in law is authorized either to administer the oath or to accept the affirmation. The verification clause simply shows the facts the deponent asserts to be true of his own knowledge and /or those based on information or beliefs. Of greater significance in the determination of this application, in our considered opinion, is the "jurat". The word "jurat" has its origin in the Latin word "jurare," which meant "to swear." In its brevity, a jurat is a certification added to an affidavit or deposition stating when, where, and before what authority (whom) the affidavit was made."*

In the circumstances of this petition, the declarant is introduced by a different name altogether, with the person verifying as well as the person who appeared before the Commissioner for Oaths to swear being different. It means that the affidavit is incurably defective.

In fact, the principle in **Christina Mrimi v. Coca Cola Kwanza Bottlers Ltd** *(supra)*, cited to us by learned counsel for the Petitioner, namely that minor errors in names are considered curable, does not apply to the present Petition. In **Christina Mrimi's** case, the issue concerned minor errors in the names of the parties to the suit, where the word "Bottlers" had been wrongly inserted. That situation is quite different from the matter before this Court. Here, the names of the person who deponed the affidavit are not the same as those of the person who signed and verified it, and both are, quite astonishingly, different from the person introduced before the Commissioner for Oaths in the jurat of attestation. In the circumstances, we are of the considered view that the authority cited is clearly distinguishable from the Petition presently before us.

We are also unable to subscribe to the invitation by learned counsel, Mr. Maringo, urging this Court to invoke the oxygen principle and to allow the petitioner to state his correct name during the hearing of the preliminary objection in the peculiar circumstances of this petition. While

we do not dispute the utility of the overriding objective in ensuring the just, expeditious, proportionate, and affordable resolution of matters before the Court, it is settled law that the same cannot be used as a panacea for curing non-compliance with clear and mandatory provisions of the law. In the case of **Martin D. Kumalija & others vs. Iron and Steel Ltd** (Civil Application 70 of 2018) [2019] TZCA 542 (27th February 2019), it was explicitly stated that:

> *"While this principle is a vehicle for the attainment of substantive justice, it will not help a party to circumvent the mandatory rules of the Court."*

It must be borne in mind that petitions of this nature are governed by specific rules of procedure which are to be complied with strictly. The overriding objective was never designed to cure defective pleadings or to clothe a fatally defective affidavit like the present in this petition with validity. The Rules require that a petition be by way of originating summons and the supporting affidavit be filed with scrupulous adherence to prescribed form and content. Any deviation from such mandatory prescriptions renders the pleadings incompetent ab initio.

To allow counsel's suggestion that the petitioner be permitted to correct his names in open court, contrary to what is deposed in his affidavit, would amount to the court itself participating in the rectification

of a defective affidavit, an act which the law frowns upon. Furthermore, what we were invited to rectify, which we are not inclined to do, by the counsel for the petitioner pertains to pleadings. Since parties are bound by their pleadings, and an affidavit is one of them, the same cannot be rectified by mere words from the bar, as additional contents would not be given under oath. See the case of **Yusuf Khamis Hamza vs Juma Ali Abdallah** (Civil Appeal No. 25 of 2020 [2021] TZCA 734 (3rd December 2021), which cited the case of **Mohamed Mohamed and Another vs Omary Khatibu,** Civil Appeal No. 68 of 2011(unreported).

We further reaffirm that affidavits serve as evidence on oath, and any material defect therein goes to their root and is not curable by cosmetic amendments from the bar. See the case of **Phantom Modern Transport (1985) Ltd v D.T. Dobie (Tanzania) Ltd,** Civil Appeal No. 141 of 2006 *(supra).*

On the second limb, the respondents stated that the affidavit is defective for containing legal arguments and conclusions. On perusal of the affidavit, it can be discerned vividly from the contents of Paragraphs 3 (i), (ii), and (iii) and 5 of the affidavit that there are legal arguments and conclusions.

In the case of **Said Omari Mamba vs Attorney General and 7 Others** (Civil Application No. 524/06 of 2024) [2025] TZCA 335 (9th April 2025) (TANZLII), at pages 5-6, it was held that:

> *"It is a long-settled law that, the affidavit must be confined to facts which are free from extraneous matters. Times without number, the Court has insisted on compliance with the said requirement whenever an opportunity arises. For instance, in* ***Chadha and Company Advocate vs Arunaben Chaggan Chhita Mistry and 2 Others****, Civil Application No. 25 of 2013 TANZLII, when adopting the decision of the case of* ***Uganda vs Commissioner of Prison Ex parte, Matovu*** *(1966) E. A 514 had this to say in that regard:*
>
> > *"As a general rule of practice and procedure, an affidavit for use in Court, being a substitute for oral evidence, should only contain statements of facts and the circumstances for which the witness deposes either of his own knowledge...such affidavit should not contain extraneous matters by way of objection or prayer or legal arguments or conclusions."*

As the affidavit in support of the Originating Summons is marred with defects on account of the same containing the legal arguments and conclusions, the affidavit suffers from legal impediments. The paragraphs containing arguments and conclusions should be discarded from the affidavit for being violative of the law.

Indeed, the effect of a defective affidavit is to expunge the offending paragraphs from the affidavit. In the case of **MANTRAC Tanzania Limited vs Goodwill Ceramics Tanzania Limited** (Civil Appeal No.269

of 2020) [2023] TZCA 17506 (21 August 2023) (TANZLII), the Court of Appeal at pages 11 and 12 stated that:

> "*However, with respect, we do not agree with the course taken by the trial Judge in disregarding the witness statement without considering and determining if the remaining paragraphs of the affidavit could sustain the witness statement.* ***We say so because it is settled law that where the offensive paragraphs of the affidavit are inconsequential, they can be expunged leaving the substantive parts of the affidavit remaining intact."*** [Emphasis added]

It is pertinent at this juncture that the contents of Paragraphs 3(i), (ii) and (iii) and 5 of the affidavit are hereby expunged from the record. In our settled view, Paragraphs 3 and 5 of the affidavit are forming the crux of the matter before this Court. The two paragraphs are the backbone of the whole affidavit. In the absence of these paragraphs, the remaining paragraphs cannot sustain the Petition.

As a result, on basis of the strengths of the available legal principles both legislative and case law jurisprudence, the petition is bound to fail at this competence stage for being incompetent. This is due to the defectiveness of the affidavit and failure by the petitioner to exhaust available remedies under the Constitution of Chama Cha Mapinduzi and statutory law that provides that where alternative remedies exist and not utilized, the Court should not entertain a constitutional petition.

That being the case, this Court finds that all the preliminary objections raised by the respondents are merited and upholds them. Consequently, the petition before this Court is hereby struck out for being incompetent. In the circumstances, we make no orders as to costs, it being noted that respondents did not insist on the same.

It is so ordered.

DATED at **DODOMA** this 22nd day of August, 2025

J.C. TIGANGA
JUDGE

E.E LONGOPA

JUDGE

G.V. MWAKAPEJE
JUDGE