IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(MWANZA SUB-REGISTRY)

AT MWANZA

(CORAM: MTULYA, F., KAMANA, S., CHUMA, W., JJJ)

MISCELLANEOUS CIVIL CAUSE NO. 22482 OF 2025

IN THE MATTER OF THE CONSTITUTION OF THE UNITED REPUBLIC OF TANZANIA OF 1977 AS AMENDED FROM TIME TO TIME

AND

IN THE MATTER OF THE BASIC RIGHTS AND DUTIES ENFORCEMENT ACT, [CAP. 3 R.E. 2023] AND THE BASIC RIGHTS AND DUTIES ENFORCEMENT (PRACTISE AND PROCEDURE) RULES, 2014

AND

IN THE MATTER OF ARTICLES 12 AND 13 OF THE CONSTITUTION OF THE UNITED REPUBLIC OF TANZANIA, 1977 (AS AMENDED).

AND

IN THE MATTER OF SECTION 194 OF THE CRIMINAL PROCEDURE ACT [CAP. 20 R.E. 2023] AND THE WITNESS PROTECTION REGULATIONS, 2025 (GN. No. 430 PUBLISHED ON 11 JULY 2025) MADE THEREUNDER

AND

IN THE MATTER OF A PETITION TO CHALLENGE THE CONSTITUTIONALITY OF SECTION 194 OF THE CRIMINAL PROCEDURE ACT [CAP. 20 RE. 2023] AND THE WITNESS PROTECTION REGULATIONS, 2025 MADE THEREUNDER, AS BEING ABSURD AND UNCONSTITUTIONAL. BETWEEN

GODFREY MJUNI MARTIN BASASINGOHE.....PETITIONER

VERSUS

THE ATTORNEY GENERAL.....1ST RESPONDENT

THE DIRECTOR OF PUBLIC PROSECUTIONS.....2ND RESPONDENT

RULING

16th December, 2025 & 16th February, 2026

KAMANA, J.

The petitioner, **Mr. Godfrey Mjuni Martin Basasingohe**, is a human rights supporter and advocate of the High Court of Tanzania, ordinarily practicing in Mwanza Region. He had approached this court challenging the constitutionality of section 194 of the **Criminal Procedure Act [Cap. 20 R.E. 2023]** (the Criminal Procedure Act) on the protection of witnesses in court proceedings. His main complaint is based on articles 12(1) & (2) and 13(6)(a)(d) of the **Constitution of the United Republic of Tanzania of 1977**, as amended from time to time (the Constitution).

The petition was instituted by way of an originating summons, expressly premised on the provisions of Articles 26 (2) and 30 (3) of the Constitution, as well as sections 4, 5, and 6 of the **Basic Rights and Duties Enforcement Act, Cap. 3 [R.E. 2023]** and Rule 4 of the **Basic Rights and Duties Enforcement (Practice and Procedure) Rules**, **2014 [G.N. No. 304 of 2014]** (the Rules). The petition is supported by an affidavit deponed by the petitioner who brought before this court two (2) Government institutions, as respondents, to reply the petition, namely: first, the Attorney General of the United Republic (AG), the principal legal

advisor of the Government; and second, the Director of Public Prosecutions (DPP), who arraigns all criminal matters in courts of law. In opposition to the petition, the respondents had filed a reply to the petition and a counter-affidavit.

In the petition, the petitioner is specifically seeking the following reliefs from this court, *viz*:

1. A declaration that section 194 of the Criminal Procedure Act and Witness Protection Regulations of 2025 are inconsistent with Articles 12(1) & (2) and 13(6)(a) & (b) of the Constitution, to the extent that they grant protection rights exclusively to prosecution witnesses and deny corresponding rights to accused persons and defence witnesses;
2. A declaration that the said provisions, in permitting *ex-parte* applications and orders without guaranteeing an *inter-partes* hearing for accused person or his advocate, unlawfully deny the right to equality before the law, a fair hearing, and the presumption of innocence;
3. An order that the Parliament and/or other competent legislative authority take steps within a specified period, as this Honourable Court shall direct, to amend Section 194 of the Criminal Procedure Act

and the Witness Protection Regulations, 2025, to ensure equality of arms between prosecution and defence, and to provide procedures for *inter-partes* hearing and protective measures for defence witnesses;

4. Pending such correction, a further order that any *ex-parte* protective measures granted under section 194 of the Criminal Procedure Act and the Witness Protection Regulations, 2025 shall be subject to urgent *inter-partes* review upon application by an accused person or his advocate; and
5. Such other or further orders as this Honourable Court shall deem necessary and appropriate to secure the enjoyment by the Petitioner, and by accused persons generally, of the basic rights and freedoms guaranteed under Articles 12 to 29 of the Constitution.

Both parties duly filed their respective written submissions for and against the instant petition. The petitioner's submissions were drawn and filed by **Mr. Elias Hezron**, learned Counsel, while the respondents' submissions were drawn and filed by **Mr. Edwin Webiro**, learned State Attorney.

On the date scheduled for oral clarifications pertaining to the filed submissions, both Mr. Hezron and Mr. Webiro appeared and represented their respective parties. This court appreciates the parties for their diligence and insightful submissions, all of which were filed in accordance with the prescribed schedules.

Before recapitulating the parties' submissions, we think it apposite to reproduce the contents of section 194 of the Criminal Procedure Act, as follows:

> *'**194. -(1)** Notwithstanding any other written law, before filing a charge or information, or at any stage of the proceedings under this Act, the court may, upon an ex-parte application by the Director of Public Prosecutions, order-*
>
> *(a) a witness testimony to be given through video conferencing in accordance with the provision of the Evidence Act;*
>
> *(b) non-disclosure or limitation as to the identity and whereabouts of a witness, taking into account the security of a witness;*
>
> *(c) non-disclosure of statements or documents likely to lead to the identification of a witness; or*
>
> *(d) any other protection measure as the court may consider appropriate.*

(2) Where the court orders for protection measures under paragraphs (b) and (c) of subsection (1), relevant witness statements or documents shall not be disclosed to the accused during committal or trial.

(3) The Chief Justice may make rules for better carrying out the provisions of this section.'

According to the petitioner, section 194 is unconstitutional as it offends the principles of equality before the law and equal protection as enshrined under article 12(1) and (2) of the Constitution. It was further the petitioner's case that section 194 violates the right to a fair hearing as guaranteed under article 13(6)(a) of the Constitution. The respondents held an opposite view.

Expounding on the alleged unconstitutionality of section 194 of the Criminal Procedure Act in relation to the principles of equality before the law and equal protection, Mr. Hezron submitted that these principles underpin the broader doctrine of equality of arms in criminal proceedings. He contended that the concept of equality of arms demands that both the prosecution and the defence be granted equal procedural opportunities to present their respective cases. In substantiating the argument, Mr. Hezron referred us to the case of **Alex John v. Republic**, Criminal Appeal No. 129 of 2006-CAT (Unreported), in which the Court of Appeal had this to state:

'According to the European Court of Human Rights (the ECHR hereafter:- .... One of the elements of the broader concept of a fair trial is the principle of equality of arms, which requires each party to be given a reasonable opportunity to present his or her case under conditions that do not place him or her at a substantial disadvantage vis-a-vis his opponent." See, ***NID HUBER v. SWITZERLAND*** *[1997] ECHR 18990/91 at para 23, 18th February, 1997.'*

According to him, section 194 of the Criminal Procedure Act falls short of the constitutional standard by conferring the right to apply for witness protection exclusively upon the prosecution, thereby creating a procedural imbalance that undermines the accused's right to a fair trial. The learned Counsel contended that, by empowering only the prosecution to seek protective measures, such as the use of anonymous witnesses, the provision introduces an inherent and unjustified asymmetry. This, he argued, denies the defence equal recourse to protective mechanisms for its witnesses who may also fear reprisals, thereby offending the principles of equality before the law and equal protection guaranteed under Article 12(1) and (2) of the Constitution.

Reinforcing his submission, Mr. Hezron argued that the respondents' assertion in their reply, suggesting that section 194

permits the DPP to apply for protection of the accused's witnesses, is misconceived. He maintained that the plain reading of section 194 reveals that the DPP is empowered to apply only for the protection of prosecution witnesses. He argued that it is evident from that section that once an order for protection is granted, the accused is denied access to statements or documents that would disclose the identity of the protected witnesses. On that basis, Mr. Hezron was firm in his view that section 194 was never intended to extend to defence witnesses.

Assuming, for the sake of argument, that section 194 of the Criminal Procedure Act empowers the DPP to apply for protection of the accused's witnesses, Mr. Hezron maintained that the provision nonetheless remains unconstitutional, as it subjects the defence to the discretion of the prosecution, its direct adversary in criminal proceedings. When invited to clarify this contention, he submitted that in such a setting, the DPP would be inherently incapable of fulfilling that mandate, since he would need to know the identities of the defence witnesses. Mr. Hezron argued further that it would be illogical and procedurally untenable to expect the prosecution to seek protection for witnesses whose testimony may undermine or contradict the prosecution's case.

On the alleged unconstitutionality of section 194 in relation to the right to a fair trial as enshrined under Article 13(6)(a) of the

Constitution, Mr. Hezron submitted that the principle of fair trial requires that a person be afforded an opportunity to be heard before any decision affecting his rights is made. He further argued that the right to a fair trial is not confined to the courtroom or the trial stage alone, but rather begins at the moment of arrest. In his view, from the time of arrest, an accused person must be treated with dignity and afforded full protection of his fundamental rights throughout the entire criminal justice process.

In that context, Mr. Hezron contended that section 194 of the Criminal Procedure Act systematically infringes the principle of fair trial as it only allows the DPP to obtain ex-parte court orders that materially impair the accused's ability to prepare an adequate defence. He argued that such orders may result in the concealment of the identities of prosecution witnesses without affording the accused the opportunity to be heard or even made aware of the application. In his view, this undermines the adversarial nature of criminal proceedings and offends the foundational principles of natural justice.

To bolster his arguments, Mr. Hezron invited this court to be guided by the position of the Court of Appeal in the case of **Alex John (Supra)**, where the Court stated that:

> *'It is settled law which binds us that fair trial guarantees must be observed and respected from the*

moment the investigation against the accused commences… until the final determination of the proceedings, the appeal is inclusive.'

Mr. Hezron concluded his submissions by asserting that section 194 is constitutionally offensive for its failure to provide the accused with a remedy to challenge ex-parte orders issued for the protection of prosecution witnesses. He argued that this omission is particularly egregious given that the DPP may obtain such protective orders even before a formal charge is preferred. In such circumstances, he argued that the accused is left without a legal forum to assert or safeguard his rights at a critical pre-trial stage, thereby undermining the guarantees of procedural fairness and the right to be heard enshrined in the Constitution.

In reply to the petitioner's claim that section 194 contravenes the principles of equality before the law and equal protection, Mr. Webiro contended that the provision in question does not offend either the constitutional right to equality or the principle of equality of arms. He argued that section 194 merely vests the DPP with the authority to apply for protective measures in respect of witnesses, whether before the institution of charges or at any stage of the criminal proceedings. According to him, this mechanism is designed to ensure the safety of witnesses and the

integrity of the trial process, without creating any undue advantage or procedural imbalance in favour of the prosecution.

The learned State Attorney contended that the impugned provision does not limit the DPP to apply for protective measures solely in respect of prosecution witnesses, as the petitioner had asserted. He submitted that section 194 is broadly framed and permits applications for witness protection without distinguishing between prosecution and defence witnesses.

According to him, any witness, irrespective of the side he is called by, may benefit from protective measures under the provision, provided he faces threats or intimidation. It was thus his view that the provision does not create a substantial or unjustifiable procedural imbalance, and that the petitioner's interpretation imposes a restrictive construction not supported by the plain language of the statute.

To support his contention as far as the interpretation of the clear wording of section 194 of the Criminal Procedure Act, Mr. Webiro cited, among others, the case of **Principal Secretary Ministry of Finance and Planning Zanzibar v. Said Ally Usi & 9 Others**, Civil Appeal No. 300 of 2021-CAT (Unreported), in which the apex Court had this to state:

'The golden rule for the interpretation of this [CPC] as well as other Acts is to consider the plain meaning of the words

used. ***The Court's function is not to say what the legislature meant but to ascertain what the legislature has said it meant****. The Court cannot proceed on the assumption that the legislature has made a mistake. Even if there is a defect, it is not for the Court to add to or amend the words of a statute or to supply a casus omissus...When the language is clear, it is the duty of the court to give effect to it without calling in aid outside considerations to ascertain the intentions of the legislature.' (Emphasis added).*

Mr. Webiro further argued that, pursuant to Article 59B(4) of the Constitution, the DPP, in discharging his duties, is required to ensure justice, prevent abuse of legal processes and safeguard the public interest. He contended that, within this constitutional framework, the legislature deemed it appropriate to vest the DPP with the mandate to apply for the protection of witnesses, whether for the prosecution or the defence. In justifying his argument, Mr. Webiro contended that the DPP, in the broader interest of justice, has on various occasions supported appeals lodged against the Republic, thereby demonstrating impartiality and commitment to fair administration of justice.

On the alleged unconstitutionality of section 194 in relation to the right to a fair hearing under Article 13(6)(a) of the

Constitution, Mr. Webiro submitted that the ex-parte nature of witness protection orders is both necessary and justified. He argued that the primary objective of such orders is to shield witnesses from threats, intimidation or potential harm. Given that the application may contain sensitive information, including the residential address, family background and security arrangements, he contended that conducting the hearing in inter-partes would undermine the protective purpose of the provision by exposing the very details it seeks to conceal.

In buttressing his submission, the learned State Attorney implored this court to be persuaded by the position in Kenya, where applications for witness protection are determined ex-parte, as seen in the case of **Republic v. Amos Kipchumba & Others**, Miscellaneous Criminal Case E364 of 2023. He further reinforced his argument by citing the case of **Jean Claude Garofoli v. Her Majesty the Queen** [1990] R.C.S 1421, wherein the Supreme Court of Canada upheld the constitutionality of issuing ex parte orders for the interception of private communications under Section 185(1) of the Canadian Criminal Code. In this case, the court held that such an ex-parte procedure was lawful and consistent with section 8 of the Canadian Charter of Rights and Freedoms, which guarantees the right to be secure against unreasonable search and seizure.

Mr. Webiro proceeded to argue that witness protection orders are issued ex-parte primarily to safeguard the identity and security of witnesses, particularly in situations where disclosure may expose them to threats or harm. He contended that such orders do not prejudice the accused, as the accused still retains the fundamental right to be informed of the substance of the witness's evidence and to cross-examine them during trial. In his view, the ex parte nature of the application is a procedural safeguard aimed at balancing the accused's constitutional right to a fair and public hearing, including the right to confront accusers, with the equally important need to preserve the witnesses' right to life, safety and inherent human dignity.

The learned State Attorney submitted that Mr. Hezron's contention that section 194 of the Criminal Procedure Act is unconstitutional for failing to afford the accused an avenue to challenge an ex-parte protection order is misconceived. He referred the Court to Regulation 8 (1) of the Witness Protection Regulations, which expressly provides that a protection order may be set aside or varied either by the Court *suo motu* or upon application by a party. In his view, this regulatory framework establishes a clear remedial mechanism accessible to both the defence and the prosecution, thereby addressing concerns of procedural fairness and ensuring compliance with the right to a fair hearing.

In that context, the learned State Attorney further submitted that sections 380 and 394 of the Criminal Procedure Act provide avenues for any person aggrieved by an order or proceedings of a subordinate court to appeal or seek revision before the High Court. He added that where such orders are issued by the High Court, recourse may be employed to the Court of Appeal by way of revision under section 6(3) or appeal under section 9 of the **Appellate Jurisdiction Act** [Cap. 141 R.E. 2023] (the Appellate Jurisdiction Act).

In his view, these statutory provisions apply equally to protection orders issued under section 194 of the Criminal Procedure Act. Therefore, he contended that the petitioner's argument that the impugned provision is unconstitutional for lacking an avenue to challenge protection orders is devoid of merit.

As indicated in this ruling, the parties were accorded an opportunity to offer oral clarifications on their respective submissions. Upon review, it is apparent that both parties opted to adopt their written submissions and proceeded to reiterate the arguments already advanced therein, without introducing any new or substantive clarifications. After reviewing the parties' submissions, we are of the considered view that the issues that invite our determination are as follows:

1. Whether the impugned provisions, by granting the prosecution the exclusive right to seek witness protection, and failure to provide the defence with the corresponding right, violate the right to equality before the law and equal protection of the law under article 12 (1) and (2) of the Constitution; and
2. Whether the impugned provisions, by permitting ex-parte witness protection application and orders without guaranteeing the defence the right to challenge the said orders, violate the right to fair hearing under article 13(6) (a) & (b) of the Constitution.

Concerning the first issue, it is relevant to reproduce the contents of article 12(1) and (2) of the Constitution, which the petitioner claims to have been contravened by section 194 of the Criminal Procedure Act, as it violates the right to equality before the law and equal protection as follows:

'12 (1) Binadamu wote huzaliwa huru, na wote ni sawa.

(2) Kila mtu anastahili heshima ya kutambuliwa na kuthaminiwa utu wake.'

This article affirms that all human beings are born free and equal. It recognises that every individual is entitled to dignity, respect and legal recognition. In essence, Article 12(1) & (2) can be

regarded as the foundation of all human rights, as it firmly establishes the principle that all human beings are equal. With that in mind, we are of the considered view that although the article does not expressly provide for equality before the law and equal protection, as embodied in article 13(1) of the Constitution, the alleged infringed rights are nonetheless equally embodied in article 12(1) and (2). Having taken that position, we are of the considered view that it is necessary to appreciate the contents of article 13(1) of the Constitution:

> *'13 (1) Watu wote ni sawa mbele ya sheria, na wanayo haki, bila ya ubaguzi wowote, kulindwa na kupata haki sawa mbele ya sheria.*

Loosely interpreted, the article affirms that all persons are equal before the law. It further guarantees that all persons, without discrimination, are entitled to equal protection of the law and enjoyment of legal rights. In that situation, we consider it relevant to analyse, albeit in brief, the meaning and scope of the doctrines of equality before the law and equal protection of the law.

Equality before the law entails that people, regardless of status or position, should be treated the same by the law. It guarantees formal equality by ensuring that no person enjoys privilege or suffers discrimination in the application and enforcement of the law. In other words, the principle gives effect to

the maxim *nemo est supra leges*, meaning that no person is above the law.

To support this proposition, we refer to the case of **Zimbabwe Lawyers for Human Rights and the Institute for Human Rights and Development (on behalf of Andrew Barclay Meldrum) v. Republic of Zimbabwe**, Communication No. 294/2004, in which the **African Commission on Human and Peoples' Rights** (the African Commission) stated:

> *'The right to equality before the law means that individuals legally within the jurisdiction of a State should expect to be treated fairly and justly within the legal system and be assured, of equal treatment before the law and equal enjoyment of the rights available to all other citizens. Its meaning is the right to have the same procedures and principles applied under the same conditions. The principle that all persons are equal before the law means that existing laws must be applied in the same manner to those subject to them.'*

Regarding the equal protection of the law, it entails that persons in similar circumstances must be treated alike. However, the law may permit reasonable classification to provide special measures or protections for disadvantaged or marginalized groups, so as to promote substantive fairness and equity. In this regard, we

are again persuaded by the African Commission in the case of **Zimbabwe Lawyers for Human Rights and the Institute for Human Rights and Development v. Republic of Zimbabwe**, Communication No. 293/2004, where it remarked:

> *'…equal protection of the law refers to the right of all persons to have the same access to the law and courts and to be treated equally by the law and courts, both in procedures and in the substance of the law. It is akin to the right to due process of law, but in particular applies to equal treatment as an element of fundamental fairness.'*

That being the position, our review of section 194 of the Criminal Procedure Act reveals that the power to apply for witness protection is vested solely in the DPP. Both the petitioner and the respondents agree on the position. However, the parties are sharply at odds over the scope of the DPP's mandate. The petitioner contends that the DPP's authority to apply for witness protection is limited to prosecution witnesses. In contrast, the respondents assert that the statutory powers of the DPP under section 194 of the Criminal Procedure Act extend equally to defence witnesses.

Before resolving the constitutionality of section 194 of the Criminal Procedure Act, we had the opportunity to invite Mr. Webiro to clarify his assertion that the DPP can represent the defence side

in an application for the protection of defence witnesses. In his response, Mr. Webiro submitted that the legislature, mindful of article 59B(4) of the Constitution, which requires the DPP to perform his functions with regard to, among other things, the public interest, intentionally conferred upon the DPP the power to represent the defence in applications under section 194 of the Criminal Procedure Act.

In this regard, we hasten to agree with Mr. Hezron that Mr. Webiro's contention is misconceived. As correctly submitted by Mr. Hezron, the DPP, notwithstanding his constitutional office and duties, stands on equal footing with the accused in criminal proceedings. In this respect, we are supported by the position of the Court of Appeal in the case of the **Attorney General v. Dickson Paulo Sanga**, Civil Appeal No. 175 of 2020 (CAT), in which the apex Court took the stand that:

> *'In criminal proceedings before the courts, the DPP is not more than a party who along with the accused person…all deserve equal treatment and protection before the law.*

It is therefore both unthinkable and impracticable for the DPP to act on behalf of the accused in an application to protect the accused's witnesses. With that in mind, the reasoning of the Court of Appeal in the case of **Principal Secretary, Ministry of**

Finance and Planning, Zanzibar (Supra) cited by Mr. Webiro, that the words of a statute, when clear and unambiguous, should be interpreted plainly, is inapplicable to section 194 of the Criminal Procedure Act, that the DPP has powers to apply for the protection of the defence witnesses.

Having taken that position, we now turn to consider whether section 194 of the Criminal Procedure Act violates the doctrine of equality before the law. At the outset, we wish to emphasize that a breach of this doctrine is not determined by the wording or contents of the impugned section or legislation, but rather by its application in practice. In other words, the doctrine of equality before the law is designed to ensure that the law is applied equally and uniformly by courts or administrative authorities, thereby preventing arbitrariness and unjust discrimination in its operation.

In this situation, we are fortified by the cited case of **Zimbabwe Lawyers for Human Rights and the Institute for Human Rights and Development (on behalf of Andrew Barclay Meldrum)** (supra), where the African Commission remarked that:

> *'The right to equality before the law does not refer to the content of legislation, but rather exclusively to its enforcement. It means that judges and administrative officials may not act arbitrarily in enforcing laws.'*

That being the position, we are of the considered view that the impugned section, in its present form, does not violate the doctrine of equality before the law. This is because, under section 194 of the Criminal Procedure Act, the power to apply for the protection of prosecution witnesses is vested in the DPP. For the section to constitute a violation of the doctrine, its provisions would need to be susceptible to arbitrariness or discriminatory application, which is not apparent in the statutory scheme as it currently stands.

Regarding the doctrine of equal protection of the law, our examination of section 194 of the Criminal Procedure Act reveals that the impugned provision, as we have held hereinabove, vests the DPP with the power to apply only for the protection of prosecution witnesses. Consequently, the section does not allow the defence side to apply for the protection of its witnesses.

In light of the foregoing, it is our considered view that section 194 of the Criminal Procedure Act does not violate the principle of equality before the law, but rather it violates the doctrine of equal protection of law. The impugned provision denies the defence the right to apply for the protection of its witnesses, thereby creating unequal protection of law between prosecution and defence witnesses. This disparity is evident in the fact that only prosecution witnesses are accorded the right to protective measures, while defence witnesses are excluded from similar legal

safeguards, which affects the defence's right to equal protection of law.

Regarding the second issue, the petitioner contended that section 194 of the Criminal Procedure Act violates article 13(6)(a) of the Constitution, which guarantees the right to a fair trial. The hub of the complaint is that, while section 194 of the Criminal Procedure Act permits the DPP to apply for ex-parte protection of prosecution witnesses, the provision does not afford the defence an opportunity to challenge, vary or seek the discharge of such protection orders.

The respondents, on their part, took a contrary position. They contend that, having regard to the nature and object of an application under the section, such an application must necessarily be made ex-parte. According to the respondents, requiring an inter-partes hearing at the initial stage would defeat the very purpose of the provision, namely, the effective protection of vulnerable or threatened witnesses.

The respondents further contended that the right to a fair trial is adequately safeguarded, even in the context of ex-parte applications under section 194 of the Criminal Procedure Act. They submitted that the accused is not left without recourse, as they may appeal or seek revision under the Criminal Procedure Act and the Appellate Jurisdiction Act if aggrieved by protective orders.

In addition, the Respondents cited Rule 8 of the Rules, which empowers the court, either on its own motion or upon application by a party, to rescind, vary or alter a protective order. They argued that this judicial oversight ensures that protective measures remain proportionate and justified, and that the accused retains a meaningful opportunity to challenge the order at an appropriate stage, thereby preserving the fairness of the trial process.

According to the respondents, the ex-parte nature of section 194 of the Criminal Procedure Act does not, in itself, constitute a violation of the right to a fair trial, as the accused has statutory and procedural avenues to contest the order.

To resolve the matter, we thought it relevant to reproduce the contents of Article 13(6)(a) of the Constitution. The article provides that:

> *'(6) Kwa madhumuni ya kuhakikisha usawa mbele ya sheria, Mamlaka ya Nchi itaweka taratibu zinazofaa au zinazozingatia misingi kwamba -*
>
> *(a) wakati haki na wajibu kwa mtu yeyote inapohitajika kufanyiwa maamuzi na mahakama au chombo kingine chochote kinachohusika, basi mtu huyo atakuwa na haki ya kupewa fursa ya kusikilizwa kwa ukamilifu, na pia haki ya kukata rufani au kupata nafuu nyingine ya kisheria kutokana na maamuzi ya*

mahakama au chombo hicho kinginecho kinachohusika'

We have respectfully considered the arguments advanced by the parties. At the outset, we agree with Mr. Webiro's contention that applications under section 194 of the Criminal Procedure Act must necessarily be heard and determined ex-parte. This is because requiring such applications to be heard inter-partes would undermine the very purpose of protecting the witness, potentially exposing the witness to intimidation, harassment or other threats, and thereby defeating the protective object of the provision.

Further, it is important to note that an order issued under section 194 is, by its very nature, interlocutory. In other words, a protective order under this provision does not determine the final outcome of the criminal proceedings. Rather, it regulates the manner in which evidence is adduced during the trial, including measures to safeguard the safety and security of witnesses, without affecting the ultimate determination of guilt or innocence.

However, in light of the foregoing, it is our considered view that the avenues for appeal or revision under the Criminal Procedure Act or the Appellate Jurisdiction Act are inapplicable to protective measures issued under section 194 of the Criminal Procedure Act. This is because those remedies are designed to address decisions or orders that determine the criminal charge to its

finality. An order under section 194 of the Criminal Procedure Act, being interlocutory in nature, does not fall within the scope of such finality-based remedies, and therefore cannot be challenged through the ordinary appeal or revision mechanisms provided for final judgments or orders.

In the same vein, the purposive interpretation of article 13(6)(a) & (b) of the Constitution reveals that the article was designed to apply to determinations that finally resolve the rights and obligations of the parties. Interlocutory matters, by their very nature, are provisional and procedural, and therefore fall outside the ambit of the article, unless the interlocutory order conclusively disposes of the rights of the parties. In this regard, we are inclined to safely conclude that section 194 of the Criminal Procedure Act does not violate article 13(6)(a) & (b) of the Constitution.

Based on the foregoing, it is hereby declared that:

1. Section 194 of the Criminal Procedure Act violates the principle of equal protection of law as enshrined under article 12(1) of the Constitution and expressly stated under article 13(1) of the Constitution to the extent that it grants protection rights exclusively to prosecution witnesses and denies corresponding rights to the defence witnesses; and

2. Within twelve months from the date of this ruling, section 194 of the Criminal Procedure Act be amended by the Parliament of the United Republic of Tanzania to uphold the principle of equal protection of the law, and failure of which, the said section shall have no legal force.

Order accordingly.

We make no order as to costs.

DATED at **MWANZA** this 16th February, 2026.

F. H. MTULYA

JUDGE

KS KAMANA

JUDGE

W. M. CHUMA

JUDGE