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NEW RULES ON MORTGAGE OF UNDEVELOPED AND UNDERDEVELOPED LAND IN TANZANIA: ISSUES AND COMMENTS

Laurean Laurent Mussa

Abstract

In 2018 and 2019 respectively, the law of mortgages in Tanzania was amended by introducing the rules which, among others, require mortgagors of undeveloped and underdeveloped land to apply the obtained loans in developing the mortgaged land. Further, such loans should be invested in Tanzania. In this paper, it is shown that these rules have far reaching legal implications. First, they curtail the right of land holders to enjoy their interests in land by entering into mortgage arrangements for purposes of securing funds for purposes other than developing the mortgaged land. Second, the need to develop land comprised in the granted right of occupancy is already taken care of by prescribed conditions which come with the grant; the rules, therefore, amount to over-regulation. Third, third party mortgages over undeveloped and underdeveloped land are no longer possible. Fourth, the rules do not apply to mortgages of customary rights of occupancy and other informal mortgages; and this may defeat their purpose. It is recommended that the rules be abolished in order to leave room for mortgagors to enjoy their interests in land.

Key words: *Mortgage, mortgagee, mortgagor, prescribed conditions, underdeveloped land, undeveloped land.*

REGULATION OF CORPORATE SOCIAL RESPONSIBILITY IN THE EAST AFRICAN COMMUNITY: LEGISLATIVE DEVELOPMENTS IN KENYA, SOUTH SUDAN AND TANZANIA

Daniel A. M. Shayo

Abstract

The practice of companies in the East African Community (EAC) region to engage in Corporate Social Responsibility (CSR) programmes by developing their own CSR policies or by adopting existing CSR instruments developed by national or international Non-governmental Organisations (NGOs) and Civil Society Organisations (CSOs) requires an examination of its legal foundations. Relevance of this article revolves around the role played by law in promotion of meaningful and credible CSR agenda in the EAC region. In particular, it examines the laws on CSR found in the Partner States of Kenya, South Sudan and Tanzania with a view of establishing the best forms of legal regulation appropriate to the EAC region at the EAC regional level. It is concluded that although law can be used to promote meaningful and credible CSR in the EAC region, the practice of imposing a legal obligation on companies to adopt CSR policies raises many legal issues, an aspect, which makes it an unfavorable option when compared with the practice of imposing a legal duty on companies to report on CSR in the EAC region.

Key terms (phrases): *CSR and the law in the EAC, CSR reporting practices in the EAC, compulsory CSR in the EAC, CSR legislations in the EAC.*

JUDICIAL INTERPRETATION OF LIMITATION CLAUSES AT THE INTERNATIONAL AND REGIONAL HUMAN RIGHTS SYSTEMS: LESSONS FOR DOMESTIC COURTS

James Jesse

Abstract

Most human rights have no absolute character. In this sense, it is permitted to restrict them by balancing their enjoyment against other legitimate reasons or interests. For instance, the right to freedom of expressions, freedom of assembly, freedom of association and freedom of movement can be limited on grounds of national security or public order. The main challenge in many jurisdictions is how a balance is struck between the enjoyments of human rights on the one hand and the use of legitimate grounds to limit the said rights on the other. The aim of this article is to present international and regional jurisprudence to illustrate how human rights tribunals have attempted to grapple with the problematic aspect of balancing between rights and legitimate interests. This discussion is crucial in a bid to provide lessons to local courts in various jurisdictions, Tanzania inclusive, when interpreting limitation clauses in their constitutions.

Key words: *Limitation clauses, legitimate interests, the principle of proportionality, margin of appreciation.*

THE SOCIO-LEGAL CONUNDRUM OF MALE GENITAL MUTILATION OR CUTTING IN NIGERIA- A REFLECTION

Andrew Ejovwo Abuza

Abstract:

The Nigerian Government has enacted laws and taken other measures to promote and protect rights of Nigerian children. This article reflects on the socio-legal conundrum of male genital mutilation or cutting (MGM/C) in Nigeria. The research methodology adopted is mainly doctrinal analysis of applicable primary and secondary sources. The author is of the view that the practice of MGM/C of a male child which inflicts agonising pains on him is barbaric, criminal, amoral, undemocratic, unconstitutional, unlawful and contrary to international human rights' norms or treaties. It is concluded that for the scourge of MGM/C of a male child in the country to be effectively addressed, the Nigerian Government must, among other recommendations, work towards the ban of MGM/C of a male child, except for medical indication in line with the approach in other countries, including the United States of America (USA) and Iceland.

Key words: *Child, Male genital mutilation or cutting, Female genital mutilation or cutting, Child's Rights*

EFFICACY OF INTERNATIONAL HUMANITARIAN LAW IN ADDRESSING CYBER WARFARE AS A NEW WEAPON TECHNOLOGY: AN ANALYSIS OF THE GAPS AND WAY FORWARD

Joshua Mbinda Ngulu

Abstract

This article is tailored towards interrogating the efficacy of the law of armed conflict, the Geneva Convention and its Protocols, in dealing with the menace of cyber warfare. The research finds that the law is ill prepared to deal with the contemporary means and methods of warfare. The author debunks assumptions consistently made in International Humanitarian Law (IHL) that the old laws can be stretched to cub these new technologies while pointing out various areas that need reconsideration in the wake of the development of cyber warfare. Most notably, this research suggests that time has come that the pressing need, to negotiate a binding instrument, to govern cyber warfare ought to be addressed. Greater certainty is advocated for herein, on this subject matter. The international legal regime is lagging behind the problems presented by the increasingly sophisticated technological possibilities in this area, and it is time to argue less and act more.

Key words: *Law of armed conflict, cyber warfare, International Humanitarian Law*

VILLAGE LAND MANAGEMENT AND ADMINISTRATION IN TANZANIA: THE AUTONOMY OF VILLAGE COUNCILS

Aron Kinunda

Abstract

This article examines the control, management and administration of village land in Tanzania. It addresses the autonomy of village councils in the management and administration of village land. The article has generally showed that management and administration of village land is vested in the village council and the village assembly. The land allocating authority as far as village land is concerned is the village council. In some cases, however, approval of the village assembly may be required. Involvement of the village assembly shows that the village council is not autonomous in excising its powers of control, management and administration of village land. In addition to involvement of the village assembly the village council is bound by the advice, directives and guidance issued from time to time by the Commissioner and/or the district council as the case may be. It has been shown that the Commissioner or the district council has a stake in the control, management and administration of the village land.

Key words: *Village Land, Customary Right of Occupancy, Management and Administration, Land Dispute Resolution, Village Council, Village Assembly, Village Land Council.*