



This document has been provided by the International Center for Not-for-Profit Law (ICNL).

ICNL is the leading source for information on the legal environment for civil society and public participation. Since 1992, ICNL has served as a resource to civil society leaders, government officials, and the donor community in over 90 countries.

Visit ICNL's **Online Library** at
<http://www.icnl.org/knowledge/library/index.php>
for further resources and research from countries all over the world.

Disclaimers

Content. The information provided herein is for general informational and educational purposes only. It is not intended and should not be construed to constitute legal advice. The information contained herein may not be applicable in all situations and may not, after the date of its presentation, even reflect the most current authority. Nothing contained herein should be relied or acted upon without the benefit of legal advice based upon the particular facts and circumstances presented, and nothing herein should be construed otherwise.

Translations. Translations by ICNL of any materials into other languages are intended solely as a convenience. Translation accuracy is not guaranteed nor implied. If any questions arise related to the accuracy of a translation, please refer to the original language official version of the document. Any discrepancies or differences created in the translation are not binding and have no legal effect for compliance or enforcement purposes.

Warranty and Limitation of Liability. Although ICNL uses reasonable efforts to include accurate and up-to-date information herein, ICNL makes no warranties or representations of any kind as to its accuracy, currency or completeness. You agree that access to and use of this document and the content thereof is at your own risk. ICNL disclaims all warranties of any kind, express or implied. Neither ICNL nor any party involved in creating, producing or delivering this document shall be liable for any damages whatsoever arising out of access to, use of or inability to use this document, or any errors or omissions in the content thereof.

IN THE HIGH COURT OF TANZANIA
(Main Registry)
AT DAR ES SALAAM

(Petition)

MISC. CIVIL CAUSE NO OF 1997

IN THE MATTER OF THE CONSTITUTION
OF THE UNITED REPUBLIC OF TANZANIA, 1977

AND

IN THE MATTER OF THE SOCIETIES ORDINANCE, CAP. 337

AND

IN THE MATTER OF THE CANCELLATION OF
THE REGISTRATION OF BARAZA LA WANAWAKE, TANZANIA

BETWEEN

- (1) BARAZA LA WANAWAKE, TANZANIA (BAWATA)]
- (2) PROFESSOR ANNA KAJUMULO TIBAIJUKA]
- (3) SHERBANU NASSER KABISA]
- (4) ROSE TEMU MUSHI]
- (5) MARY CHIONJO MAREALLE]
- (6) SALMA KHATIM KAULI]

PETITIONERS

AND

- (1) REGISTRAR OF SOCIETIES]
- (2) HON. ALI AMEIR MOHAMED]
Minister for Home Affairs]
- (3) HON. ATTORNEY GENERAL]

RESPONDENTS

P E T I T I O N

Under Articles 13(6), 15, 18, 20(1), 24, 26(2)
and 30(4) of the Constitution of the United Republic
of Tanzania, 1977; Sections 4 and 5 of
the Basic Rights and Duties Enforcement Act, 1994;
And Section 95 of the Civil Procedure Code, 1966

To:
The Honourable Judges
The High Court of Tanzania
(Main Registry)
Dar es Salaam

The HUMBLE PETITION of the Petitioners named hereinabove sheweth as follows:-

1. (a) The 1st Petitioner ("BAWATA") is a society registered under the Societies Ordinance, and Societies Rules, Cap. 337 of the Revised Laws of Tanzania with Certificate of Registration No. SO. 8408 dated 16th day of May, 1995, a true copy of which is annexed hereto and marked **Exhibit P1**.

The address of the 1st Petitioner is P. O. Box 11669, Dar es Salaam and its registered office is situate on the 2nd Floor Raha Towers, corner of Bibi Titi/Maktaba Streets in the city of Dar es Salaam.

(b) The 2nd Petitioner is a Tanzanian citizen resident in Dar es Salaam and whose address is P. O. Box 35096, University of Dar es Salaam, Dar es Salaam. She is the national chairperson of BAWATA.

(c) The 3rd Petitioner is a Tanzanian citizen resident in Dar es Salaam and whose address is P. O. Box 7170, Dar es Salaam. She is the national vice-

chairperson of BAWATA and chairperson of the Kinondoni District branch of BAWATA.

(d)The 4th Petitioner is a Tanzanian citizen resident in Dar es Salaam and whose address is P. O. Box 78207, Dar es Salaam. She is the Deputy Secretary General of BAWATA.

(e)The 5th Petitioner is a Tanzanian citizen resident in Dar es Salaam and whose address is P. O. Box 72871, Dar es Salaam. She is the national treasurer of BAWATA.

(f)The 6th Petitioner is a Tanzanian citizen resident in Dar es Salaam and whose address is P. O. Box 72582, Dar es Salaam. She is a member of the BAWATA Executive Committee ("BEC") and also the deputy chairperson of Kinondoni Branch of BAWATA.

(g)The 2nd to 6th Petitioners are all in the national secretariat of BAWATA.

(h)The address for service of all the said-Petitioners is in the care of Issa G. Shivji, Advocate, University Legal Consultancy Services Committee of the Faculty of Law, University of Dar es Salaam, P. O. Box 35093, University Hill, Dar es Salaam.

2. (a)The 1st Respondent is an officer in the service of the United Republic of Tanzania and also holds the position of the Principal Secretary to the Ministry of Home Affairs whose address for service is P. O. Box 9223, Dar es Salaam.

(b)The 2nd Respondent is the Minister of Home Affairs and a member of the Cabinet of the United Republic of Tanzania whose address for service is P. O. Box 9223, Dar es Salaam. By virtue of Government Notice No. 720 of 1995 registration of societies falls within the portfolio of the Ministry of Home Affairs.

(c) The 3rd Respondent is an officer in the service of the United Republic of Tanzania and who is required to be impleaded by virtue of section 7 of the Basic Rights and Duties Enforcement Act, 1994.

3. (a) The idea of forming a non-partisan women's organisation was born sometime in 1991 in the course of discussion between the 2nd Petitioner and Honourable Kate Kamba who was then a prominent member of *Umoja wa Wanawake* ("UWT") which is the women's wing of the ruling political party *Chama Cha Mapinduzi* ("CCM").

(b) Eventually, on 22nd day of September, 1993 the then chairperson of UWT the late Mrs. Sophia S. Kawawa wrote a letter inviting the 2nd Petitioner to assist in convening a conference on the issue of the "position of women in the multi-party democracy in the country" and solicit funds for the same. Hereto is annexed a true copy of the said letter and marked **Exhibit P2**.

(c) With the assistance of her academic colleagues, the 2nd Petitioner subsequently managed to convene a 'National Conference on Women and Multi-Party Democracy in Tanzania' which was held at the University of Dar es Salaam from 24th to 27th July, 1994 ("university conference"). The said conference was attended by some 400 delegates.

(d) At the said conference it was resolved to form a non-partisan national, women's organisation to be called *Baraza la Wanawake Tanzania*. A draft constitution was adopted in principle. Hereto is annexed a true copy of the draft constitution and marked **Exhibit P3**. The delegates to the said conference also elected an Interim Committee ("Interim Committee") of ten persons with the mandate to (i) finalise the constitution and in particular look further into a suitable structure of the proposed organisation; (ii) get the organisation

registered and (iii) organise a general meeting to elect permanent leaders. The 2nd, 5th and 6th Petitioners were duly elected as members of the Interim Committee. At a subsequent meeting of the said committee held on the 30th day of July, 1994, the 2nd Petitioner was elected chairperson and the 5th Petitioner the treasurer. On the 4th day of October, 1994 the 1st Respondent was informed of the process of finalising the formation of the said organisation. Hereto is annexed a true copy of the said letter and marked **Exhibit P4**.

4. (a) Between 10th January and 15th February, 1995, the Interim Committee collected views from different regions of Tanzania and numerous women groups on the structure of the organisation. Hereto is annexed a true copy of the summary record of the said views and marked **Exhibit P5**.

(b) On the 18th day of February, 1995 a symposium was held at the British Council Hall in Dar es Salaam to analyse the views and finalise the adoption of the constitution. Hereto is annexed a true copy of the list of participants at the symposium and marked **Exhibit P6**. The said symposium adopted the constitution and resolved to register the said society BAWATA.

5. A letter of application for registration of BAWATA to the 1st Respondent dated 27th of February, 1995 together with 12 enclosures disclosing the full history and background to the formation of BAWATA was sent soon after the adoption of the constitution. Hereto is annexed a true copy of the said letter and marked **Exhibit P7**. Hereto are also annexed true copies of the enclosures to the said letter material to this Petition and marked as follows:-

- (i) Application for Registration, SO 1, **Exhibit P8**.
- (ii) Statement of Particulars to Support in Application for Registration, SO 2, **Exhibit P9**.
- (iii) A Summary of the Record of the Deliberations

of the Conference at the University of Dar es Salaam held between 24-27, July, 1994, **Exhibit P10**.

- (iv) BAWATA Journal file recording discussion with the Registrar of Societies, **Exhibit P11**.
- (v) Letter to Hon. Anna Abdallah & Hon. Rhoda Kahtano (being prominent delegates at the university conference) informing them on the structure of BAWATA, **Exhibit P12**.
- (vi) The Constitution adopted at the British Council referred to in paragraph 4(b) hereinabove, **Exhibit P13**.
- (vii) Record of the deliberations and resolutions at the British Council Symposium, **Exhibit P14**.
- (viii) A signed list of some 540 women from Dar es Salaam showing intention to join BAWATA as soon as the same was registered, **Exhibit P15**.

6. (a) While the registration of BAWATA was still pending before the 1st Respondent, undisclosed sources apparently made allegations for which the 2nd Petitioner had to provide explanations. Hereto is annexed the said letter (without enclosures not directly relevant to this Petition) to the Hon. Prime Minister's Office and marked **Exhibit P16**.

(b) The Attorney General's Office supported the registration of BAWATA. A true copy of the said letter is annexed hereto and marked **Exhibit P17**.

7. (a) On 20th day of June, 1995, that is to say, only about a month after its registration, the 1st Respondent acting in his capacity as the Principal Secretary to the Ministry of Home Affairs sought further information from the 1st Petitioner to clarify allegations from undisclosed sources. Hereto is annexed a true copy of the said letter and marked **Exhibit P18**. Out of goodwill and so as not to antagonise the Government, the 1st Petitioner through its Secretary General replied to the said letter on behalf of BAWATA. Hereto is annexed a true copy of the letter and marked **Exhibit P19**.

(b) The Petitioners will say and submit that the kind of information (based as it was on unsubstantiated allegations) demanded by the Principal Secretary in his letter (**Exhibit P18**) was beyond the powers of the Registrar of Societies and *a fortiori* the Principal Secretary the effect of which was to unsettle the Petitioners and thereby interfere with the full enjoyment of their constitutional right to individual freedom (contrary to article 15(1) of the Constitution) and rights of expression, assembly and association in terms of articles 18 and 20 of the Constitution of the United Republic.

8. Following the registration of BAWATA, the Interim Committee set to organise its grass-root branches and districts conducting leadership elections at that level. Eventually a General Meeting was held between 18-20 October, 1995 in terms of articles 22 and 14(3) of the registered BAWATA constitution to elect the national leadership. The Interim Committee resigned at the said meeting and the national leadership duly elected. Hereto is annexed a true copy of the record of the said General Meeting and marked **Exhibit P20**.

9. Since its formation BAWATA expanded its membership and activities such that by September, 1996 it had:
 - (a) a membership of over 150,000 members spread all over the country;
 - (b) some 111 district and over 2000 branches;
 - (c) involved itself in social, economic and educational activities at local village and grass-root levels so as to uplift the economic well-being and social equality of the female gender in the country.
 Hereto is annexed a true copy of the establishment report and the publicity brochure marked **Exhibit P21(a)** and **21(b)** respectively.

10. On the 17th day of September, 1996, the Principal Secretary purported to suspend the activities of BAWATA on the alleged grounds that -
 - (i) BAWATA was being run like a political party having a network like a political party;

- (ii) the constitution of BAWATA had not been approved by all women/general meeting nor were its leaders elected by a general meeting;
- (iii) instead of organising women economically and socially BAWATA was indulging itself in politics; and
- (iv) BAWATA had a network at regional, district and village levels like a political party.

The Principal Secretary further directed that the said suspension would be in force until such time as BAWATA would call a general meeting in terms of articles 5 and 22 of its constitution to elect its leaders; have its constitution passed by all women and change its structure so that it did not resemble political parties and that it should be a co-ordinating body of women's activities for development rather than pursue political and administrative matters.

Hereto is annexed a true copy of the said letter and marked **Exhibit P22**.

(b)The 2nd Petitioner, as the chairperson of BAWATA, gave a long response pointing out *inter alia* that the leadership of BAWATA had been elected in a general meeting held between 18-20 October, 1995 (see Exhibit P20 referred to in paragraph 8 hereinabove). A true copy of the reply is also annexed hereto and marked **Exhibit P23**.

11. (a)The Petitioners will say and submit that the whole of the letter and action of the Principal Secretary (that is to say **Exhibit P22**) referred to in paragraph 10(a) hereinabove was *ultra vires* the Societies Ordinance and in addition to, and/or in the alternative, a serious infringement of the constitutional rights of fair hearing, expression, assembly and association in terms of articles 13, 18 and 20 of the Constitution of the United Republic and in direct breach of the international law obligations of the United Republic of Tanzania undertaken in various International and Regional Human Rights Instruments, including though not limited to, the International Covenant on Civil and Political Rights ("ICCPR"), Convention on the Elimination of All Forms of Discrimination against Women ("CEDAW") and the African Charter on Human and Peoples'

against Women ("CEDAW") and the African Charter on Human and Peoples' Rights ("ACHPR") to all of which the United Republic of Tanzania is a State Party in that -

(i) the Principal Secretary purported to impose a particular kind, character and structure of association on the Petitioners individually and collectively contrary to the right of individual freedom enshrined in article 15(1) of the Constitution; articles 18(1) (freedom of expression and communication); article 20(1) (freedom of assembly and association); and article 20(4) (freedom to associate or not and to choose the kind of association to associate with);

(ii) the purported suspension of the activities of BAWATA and issue of directives was *ultra vires* the Societies Ordinance in that the said Ordinance does not provide for such a power;

(iii) in addition thereto, and/or in the alternative, the purported suspension was in breach of principles of natural justice and right to be heard enshrined in article 13(6) of the Constitution in that the said suspension was imposed without the Petitioners, and or any of them, being given an opportunity to be heard;

(iv) to the extent, and if at all, the said Ordinance and or any of its provisions may be construed to include the power of suspension or issue of directives, such a construction would be invalid and unconstitutional in that it would amount to an infringement and impairment of, and/or an unfair and unjustified restriction on, the right to be heard and the right to appeal (article 13(6), rights of expression, assembly and association (articles 18 & 20); and

(v) to the extent that the structure of BAWATA may be construed to be contrary to section 2(2) of the Societies Ordinance in terms of which every branch with ten or more members is deemed to be a society, to that extent the whole of section 2(2) is invalid being an infringement and impairment of, and or an unreasonable and unjustified restriction on the right of expression, assembly and association.

12. (a) The Principal Secretary purporting to respond to the letter of the 2nd Petitioner (**Exhibit P23**) on the 11th day of October, 1996 besides reiterating

some of the alleged grounds for suspension dropped without notice the issue of the leadership not being elected mentioned in his earlier letter **Exhibit P21**. He added, again without notice, two new grounds:-

- (i) that the problem lay in the aims and objectives of BAWATA which allegedly resembled those of political parties; and
- (ii) that the structure permitted BAWATA branches at places of work.

(b) The letter directed that the suspension shall remain in place until such time that BAWATA has amended its constitution to remove:-

- “(i) Malengo na madhumuni ya kisiasa.
- (ii) Muundo wa chama wenye mtandao sawa na vyama vya Kisiasa.
- (iii) Muundo unaoruhusu kuweka matawi mahali pa kazi na
- (iv) Taratibu za uendeshaji zenye kuzingatia uhamasishaji wa vikao badala ya utendaji.”

(c) The letter, without contrition and without providing better particulars, purported to admit that the original registration of the BAWATA constitution was done by mistake and that such a state of affairs could not allegedly be allowed to be permitted.

Hereto is annexed a true copy of the said letter and marked **Exhibit P24**.

(d) The Petitioners will say and submit that the purported addition of new grounds referred to in paragraph 12(a) hereinabove and the continued suspension of the activities of BAWATA and the issue of directives referred to in paragraph 12(b) hereinabove were all invalid and bad in law being *ultra vires* the powers of the 1st Respondent in that capacity and or in the capacity of the Principal Secretary to the Ministry of Home Affairs under the Societies Ordinance and or an infringement of the Petitioners' individual and collective rights and freedoms of expression, assembly and association enshrined in the Constitution of the United Republic.

(e) The Petitioners will further say and submit that the registration of BAWATA under the Societies Ordinance was proper, valid and subsisting and that there was no mistake at all of law or fact or no mistake justifying the purported exercise of power of suspension and issue of directives (whose validity is strenuously challenged).

(f) Without prejudice to paragraph (e) hereinabove, and without admitting that there was any mistake in the registration of BAWATA constitution, the Petitioners will contend in the alternative that even if there was such a mistake, the registration amounted to an undertaking by a public officer creating a legitimate expectation that it would be abided by and, therefore, the purported exercise of power and discretion in terms of the said letter were bad in law being in breach of the said undertaking.

(g) In relation to the purported exercise of powers of suspension and issue of directives, the Petitioners *mutatis mutandis* reiterate the grounds enumerated in paragraphs 11 hereinabove.

13. (a) In response to the letter of 11th October, 1996 (**Exhibit P24**), the 1st Petitioner wrote three letters under the signature of its chairperson, the 2nd Petitioner. In the letter dated 12th day of October, 1996 the 1st Petitioner explained that under its constitution amendment required calling several meetings and requested the Government to lift the suspension so that such meetings could be convened. Hereto is annexed a true copy of the said letter and marked **Exhibit P25**.

(b) In the letter dated 14th day of October, 1996, the 1st Petitioner sought further and better particulars on the several directives issued in the letter of 11th October, 1996 (**Exhibit P24**) and raised some doubts as to the legality of the said directives. Hereto is annexed a true copy of the said letter and marked **Exhibit P26**.

(c) In the letter dated 29th day of November, 1996, the 1st Petitioner *inter alia* sought guidance from the Ministry of Home Affairs on the wisdom of the Petitioners or any one of them announcing the suspension and expressed a view that only the Government could openly announce the measures taken by it. Hereto is annexed a true copy of the said letter and marked **Exhibit P27**.

(d) None of the letters mentioned in paragraph (a) to (c) immediately above was responded to or any guidance given to BAWATA on the several matters raised therein. Instead, without information to BAWATA or its officers, Government departments communicated to international agency and certain Government employees of the said suspension of BAWATA. As examples, a true copy of the letter from the United Nations Development Programme dated 4th day of December, 1996 is annexed hereto and marked **Exhibit P28(a)** and a true copy of the letter from the Prime Minister's Office dated 5th December 1996 is annexed hereto and marked **Exhibit P28(b)**.

(e) The Petitioners will contend that the letters referred to in paragraph (d) immediately above could only have the effect of undermining BAWATA's image, reputation and standing among its supporters and members thus impairing the free exercise of expression, assembly and association of the Petitioners in their capacity as office bearers and members of BAWATA.

14. (a) Meanwhile, newspapers carried reports of interviews with one Frolian Mushi (which have not been denied to the best of the Petitioners' knowledge) a public officer in the Ministry of Home Affairs with veiled threats of banning BAWATA and making allegations of disobeying Government orders against the 2nd Petitioner and BAWATA's Secretary General thus presenting the officers of the 1st Petitioner bad light in the eyes of the public, all calculated to intimidate the Petitioners and thereby interfere with their individual and collective freedoms and rights of expression, assembly and association. Copies of *MAJIRA* of 18th December, 1996 (marked **Exhibit P29(a)**); the *GUARDIAN* of 19th December, 1996 (marked **Exhibit P29(b)**) and *UHURU*

of 19th December, 1996 (marked **Exhibit P29(b)**) and *UHHURU* of 28th December, 1996 (marked **Exhibit P29(c)**) are annexed hereto as examples.

(b) The information and interviews carried by the newspapers referred to hereinabove was apparently similar to that contained in the letter of the Principal Secretary to BAWATA signed by F. W. P. Mushy on the former's behalf dated 19th day of December, 1996. The said letter was received in the BAWATA office on the 31st day of December, 1996, that is to say, after publication in the newspaper reports mentioned in paragraph (c) hereinabove. Hereto is annexed a true copy of the said letter and marked **Exhibit P30**.

(c) The said letter **Exhibit P30** was answered by the 1st Petitioner in its two letters both dated 6th day of January, 1997 and also enclosing its audited accounts as directed in **Exhibit P30**. Hereto are annexed true copies of the said letters and marked **Exhibit P31(a)** and **Exhibit P31(b)**.

15. (a) Around the same time, that is to say, in the months of December 1996 and January 1997, newspaper reports quoting undisclosed sources carried stories implying misuse of funds by BAWATA and casting aspersions of lack of integrity on its leadership. Copies of *MTANZANIA* of 1st December, 1996 (marked **Exhibit P32(a)**), *UHHURU* of 6th December, 1996 (marked **Exhibit P32(b)**), *NIPASHI* of 1st January, 1997 (marked **Exhibit P32(c)**), *UHHURU* Editorial of 2nd January, 1997 (marked **Exhibit P32(d)**), and *SUNDAY NEWS* of 5th January 1997 (marked **Exhibit P32(e)**) are annexed hereto as examples.

(b) The Royal Norwegian Embassy in a statement dated the 6th of December 1996 clarified that there was no investigation on the alleged misuse by BAWATA of the Nordic grant and that the evaluation exercise of BAWATA was routine. Hereto is annexed a true copy of the said statement and marked **Exhibit P33**. Around the same time, BAWATA also issued a Press Release to clear its name and answer some of the allegations labelled against it. Hereto is annexed a true copy of the said Press Release and marked **Exhibit P34**.

16. (a) On 4th January, 1997, the Ministry of Home Affairs under the name of the 2nd Respondent Hon. Ali Amcir Mohamed issued a Press Statement repeating several allegations made previously in the letters of the Principal Secretary and adding new ones. Among these the said Statement raised questions and implicitly doubted the propriety of the use of funds by BAWATA notwithstanding the clarifications contained in the Statements referred to in paragraph 15(b) hereinabove (that is to say, **Exhibit P33** and **Exhibit P34**). The said Press Statement further cast aspersions on the 2nd Petitioner and the Secretary General of BAWATA all calculated to present them in bad light in the eyes of the public. A true copy of the said Press Statement is annexed hereto and marked **Exhibit P35**.

(b) As part of follow-up, the Secretariat of BAWATA met the 2nd Respondent on the 21st day of January, 1997 and, among other things, requested for the extension of time within which to effect amendments to BAWATA constitution.

17. (a) In a letter dated the 28th day of January, 1997 the Principal Secretary extended the date for amending the BAWATA constitution to 31st January, 1997. Hereto is annexed a true copy of the said letter and marked **Exhibit P36(a)**. The Principal Secretary wrote another letter dated the 29th January 1997 with the same reference number as that of 28th January, 1997 repeating verbatim the first five paragraphs and adding the following new directives:-

- (i) that the extension of time was final;
- (ii) that a sub-committee of BAWATA should prepare the draft of the amendments of the constitution;
- (iii) that the general meeting that should approve the draft should be that of the "founders" which for the first time met at the University of Dar es Salaam in 1994; and

(iv) that it should be the draft adopted by the said meeting that should be submitted to the Ministry of Home Affairs together with a Report on the said meeting.

Hereto is annexed a true copy of the said letter and marked **Exhibit P36(b)**.

(b) The Petitioners will contend that the directives and instructions that the Principal Secretary purported to give were *ultra vires* his authority, bad in law and invalid in terms of the Societies Ordinance and or in breach of the rights and freedoms of expression, assembly and association of the Petitioners in that-

(i) it sought to impose a procedure and method of amending the constitution contrary to the subsisting registered constitution of BAWATA; and

(ii) it sought to impose an organ, the so-called general meeting of founders, which was not and is not provided in the registered BAWATA constitution and therefore was *inter alia* tantamount to intimidation and inducing a breach of contract.

18. So as to inform and involve its membership, the 2nd Petitioner as the chairperson of BAWATA published in several newspapers a letter to its members informing them of the permission of the Government to call meetings necessary to amend the constitution and that the time for doing so had been extended. To authenticate and support the same, the 2nd Petitioner in good faith attached the letter of 28th January, 1997 (that is **Exhibit P36(a)**) which is what had been received at the BAWATA office by then. Hereto is annexed a true copy of the said advertisement and marked **Exhibit P36(c)**.

19. (a) In a Press Release purporting to be that of the Government released through the Tanzania Information Services, the chairperson of BAWATA was accused of deliberately omitting certain paragraphs from the letter purporting to be that of the Principal Secretary. These paragraphs were exactly those that did not appear in the letter of the 28th January, 1997 (**Exhibit P36(a)**) but were added to in the letter of the 29th January, 1997 (**Exhibit P36(b)**). The said Release accused the 2nd Petitioner of "distortion and disinformation" and

of publishing Government official records. Hereto is annexed a true copy of the said Press Release and marked **Exhibit P37**.

(b) The Petitioners will contend that the whole of the Press Release (**Exhibit P37**) was calculated to intimidate, harass, discredit and interfere with the enjoyment of the constitutional rights of communication, expression, assembly and association of the 1st and 2nd Petitioners and was an abuse of public authority.

20. On the 17th day of February, 1997 the 2nd Petitioner on behalf of the 1st Petitioner wrote to the 1st Respondent respectfully pointing out *inter alia* that the 1st Petitioner could not possibly have the amendments approved by the "founders meeting" because such an organ did not exist under the subsisting BAWATA constitution. Hereto is annexed a true copy of the said letter and marked **Exhibit P38(a)**. A similar letter was written to the 3rd Respondent seeking his intervention in the matter. A true copy of the said letter is annexed hereto and marked **Exhibit P38(b)**. The 1st Petitioner was not favoured with any response from either the 1st or the 3rd Respondent.

21. (a) The Petitioners set in motion the process of amending the constitution of BAWATA in accordance with the procedure provided in the subsisting BAWATA constitution. The amended constitution together with the application for approval dated 28th day of March 1997 and the several resolutions passed by the Extra-Ordinary General Meeting of BAWATA held on 24th and 25th day of March, 1997 were submitted to the Registrar of Societies for his permission and approval. A true copy of the whole of the bundle of the said process is annexed hereto and marked **Exhibit P39**.

(b) The application for permission and approval of the amendments was not acknowledged until the 12th day of May, 1997 after repeated enquiries by the 2nd Petitioner. The said letter of acknowledgement purported to reimpose

suspension of activities on BAWATA. Hereto is annexed a true copy of the said letter and marked **Exhibit P40(a)**.

(c) The 2nd Petitioner responded in a letter dated 15th May 1997 seeking clarification on several matters; challenging the continued suspension of activities and reminding the 1st Respondent of inordinate delay in considering its application for approval of the amendments. Hereto is annexed a true copy of the said letter and marked **Exhibit P40(b)**.

(d) The Petitioners will contend that the continued suspension of the activities of BAWATA under the terms of the letter **Exhibit P40(a)** was invalid, bad in law and *mala fides* on grounds and for reasons enumerated *mutatis mutandis* in paragraph 11 hereinabove. The Petitioners will also contend that the continued suspension was in breach of the implied undertaking creating legitimate expectation in the original letter of suspension (**Exhibit 22** referred to in paragraph 10 hereinabove) that suspension would lapse as soon as the constitution had been amended.

22. (a) On the 5th day of June, 1997 the 1st Respondent purporting to exercise powers under section 12 of the Societies Ordinance issued a Notice of Intention to Cancel the Registration of BAWATA and a Notice to show cause within 21 days why the registration of BAWATA should not be cancelled. The grounds and reasons of the proposed cancellation were given in the said letter as "that the particulars in the application for registration of that society were false, that is to say, that the said society was formed on 27th July, 1994, when in fact no such society had been formed on that date." Hereto is annexed a true copy of the said notice and marked **Exhibit P41(a)**.

(b) Before the receipt of the said notice at the BAWATA office around 12.30 p.m. on the 5th of June, 1997, the newspaper *UJHURI* quoting an unidentified source in the Ministry of Home Affairs carried a story headlined that BAWATA had been deregistered and that the Minister of Home Affairs was

scheduled to give a Press Conference on that day. Hereto is annexed a copy of the report and marked **Exhibit P41(b)**.

(c) On the same day, that is to say, 5th of June, 1997, the 2nd Respondent held a Press Conference informing the public of the issue of the Notice of Intention to Cancel the Registration of BAWATA on the grounds some of which were not included in the Notice itself. The 2nd Respondent further referred to the General Meeting which had adopted the amendments to the BAWATA constitution and the application for whose approval was pending before the 1st Respondent in the following terms:

“Vivyo hivyo, mkutano ulioitishwa tarehe 24-26 Machi 1997 ukidaiwa kuwa ni wa kurekebisha Katiba ya BAWATA kwa mujibu wa maelekezo ya Serikali nao pia haukuwa na mamlaka ya suala la BAWATA na ulifanana sana na Kongamano lile lile lililopitisha Katiba hiyo. Hivyo dosari zilizopo ndani ya BAWATA zinabakia palepale na ndio maana Serikali haitaruhusu hali hii iendelee.”

Hereto is annexed a true copy of the said Press Statement and marked **Exhibit P41(c)**.

(d) The Petitioners will contend that the whole of the said statement **Exhibit P41(c)** was part of the pattern of vilification, humiliation, intimidation, unfairness and inconsistency towards the Petitioners individually and collectively demonstrating departmental bias against the Petitioners in breach of their fundamental human rights of freedom, dignity, expression, assembly and association.

(e) Instructed by the 2nd Petitioner on behalf of the 1st Petitioner, the advocate Issa G. Shivji raised a preliminary objection to the said Notice of Intention to Cancel the Registration and, in the alternative, applied for further and better particulars so as to be able to make effective representation on behalf of his client. Hereto is annexed a true copy of the said letter and marked **Exhibit P41(d)**.

(f) The Petitioners will say and submit that the said Notice of Intention to Cancel the Registration of BAWATA (**Exhibit P41(a)**) and the powers and discretions sought to be exercised thereunder were wholly void, invalid and bad in law on the grounds that:-

- (i) the reasons given therein were vague, insufficient and incomplete;
- (ii) consequent to (i) the 1st Petitioner could not possibly have made effective representation not knowing the case against them thus in effect depriving the Petitioners of an opportunity to be heard;
- (iii) that the context and circumstances under which the said Notice came to be issued had the effect that the representations of the Petitioners could not have received an impartial, fair and just consideration given the consistent departmental bias and prejudice shown by the 1st and 2nd Respondents;
- (iv) the whole of the said Notice was an exercise in futility because the issues had been prejudged;
- (v) the provisions under which the said Notice was issued, that is to say, section 12 of the Societies Ordinance and the Rules made thereunder are *ultra vires* articles 13(6)(a), 18 and 20 of the Constitution of the United Republic; and
- (vi) the purported exercise of power and discretions under the said Notice was in bad faith, oppressive, arbitrary and unconstitutional entitling the Petitioners jointly and severally, in addition to other reliefs, to exemplary damages against the 1st and 2nd Respondents.

23. (a) The 1st respondent in a letter dated 23rd June, 1997 responded to the letter of Advocate Issa G. Shivji by asserting that the registration of BAWATA was "defective" and that BAWATA had failed to rectify the defect without making specific or any ruling on the objection raised and the applications made for and on behalf of the 1st Petitioner. Hereto is annexed a true copy of the said letter and marked **Exhibit 42(a)**. Advocate Issa G. Shivji replied to that effect in the letter dated 25th June, 1997 a true copy of which is annexed hereto and marked **Exhibit P42(b)**.

24. (a) In a Notice dated 30th June, 1997 received on 1st July, 1997, the 1st Respondent purported to cancel the registration of BAWATA on the ground that BAWATA "has failed to comply with the provisions of the Societies Ordinance Cap. 337 of 1954". Hereto is annexed a true copy of the said Notice and marked **Exhibit P43(a)**.

(b) On the same day, that is, 1st July, 1997 the 1st Petitioner through its office bearers served Notice of Intention to appeal to the 2nd Respondent and applied for extension of time. Hereto is annexed a true copy of the said Notice and marked **Exhibit P43(b)**. The Petitioners do not intend to proceed with the appeal for reasons *inter alia* that in law there is no decision to appeal from and other reasons apparent in the following paragraphs.

(c) The Petitioners will say and submit that the Notice of Cancellation of Registration of BAWATA is wholly invalid, void and without effect in law on the following grounds:-

- (i) the said Notice is unreasonable and irrational in that the purported reasons for cancellation, namely, that BAWATA has breached the provisions of the Societies Ordinance are so vague, insufficient and incomplete that they do not constitute any reason at all;
- (ii) the said Notice breaches the principles of natural justice in that the Petitioners or any one of them were not given an effective and genuine opportunity to be heard and make representations in their defense contrary to article 13(6)(a) of the Constitution of the United Republic;
- (iii) that the 1st and 2nd Respondents consistently showed bias and prejudice against the Petitioners and therefore rendered themselves incompetent to hear and determine fairly and justly matters relating to the Petitioners;
- (iv) that sections 2(2), 12 and 13 of the Societies Ordinance, its pith and substance and the basic scheme underlying the said provisions are invalid being an infringement and impairment of, and or an unjustified and unreasonable restriction on the constitutional right to a fair hearing (article 13(6)(a)), right of expression (article 18) and right of assembly and association (article 20) and in

breach of the international law obligations of the United Republic under International and Regional Human Rights Instruments; and

(v) that the whole of the exercise of powers of suspension, issuing of inconsistent directives, Notice of Intention to Cancel the Registration and ultimately the Notice of Cancellation of Registration of BAWATA were *ab initio* tainted with bad faith, actuated by extraneous pressures and irrelevant considerations amounting to abuse of public authority, power and discretion on the part of the 1st, 2nd and 3rd Respondents (the last as a representative of the Government). And that the whole of the exercise of powers and discretions underlying the Notice of Cancellation of Registration of the 1st Petitioner and the circumstances leading up to it were oppressive, arbitrary, unfair, unreasonable and unconstitutional and therefore bad in law and void entitling the Petitioners jointly and severally to exemplary damages.

25. Given the circumstances of this Petition narrated herein the Petitioners are apprehensive that their fundamental constitutional rights and freedoms of fair hearing, assembly and association are likely to be infringed by the exercise of powers of the President under sections 6 and 12A of the Societies Ordinance and therefore will invoke the jurisdiction of this Honourable Court to declare the said provisions unconstitutional.
26. Given the circumstances of this Petition the Petitioners are apprehensive that that their fundamental constitutional rights to fair hearing and protection of property (article 24 of the Constitution) are likely to be infringed by the exercise of powers of the President under section 24 of the Societies Ordinance and therefore will invoke the jurisdiction of this Honourable Court to declare the said provision unconstitutional.
27. The grounds for the apprehension referred to in paragraphs 25 and 26 hereinabove are that the President is likely to be advised to exercise his powers by the relevant departments which have consistently shown bias against the Petitioners as narrated in this Your Humble Petition and that His Excellency the

President is likely to accede to such advice as he is reported implicitly to have made prejudicial remarks on the 1st Petitioner. A copy of the newspaper report (*Daily News* 9/07/97), which to the best of Petitioners' knowledge has not been denied, is hereto annexed and marked **Exhibit P44**.

28. Since the 1st Petitioner has its registered office in Dar es Salaam, the 2nd to 6th Petitioners reside in Dar es Salaam and all the Respondents have their offices in Dar es Salaam and the entire course of action arose and arises in Dar es Salaam, this Honourable Court therefore has jurisdiction to entertain and dispose of the present Petition under Articles 30(4) of the Constitution of the United Republic and Sections 4 and 5 of the Basic Rights and Duties Enforcement Act, 1994.

29. The Petitioners have no other efficacious remedy and the reliefs prayed herein if granted will give complete relief to the Petitioners.

30. The Petitioners rely on the documents a list whereof is annexed hereto.

30. WHEREFORE the Petitioners pray:-

(a) That this Honourable Court may be pleased to declare: -

(i) the cancellation of the registration of BARAZA LA WANAWAKE, TANZANIA (BAWATA) invalid, null and void and inoperative in law;

(ii) the purported exercise of the whole of the powers and discretions and the issue of directives and instructions by the 1st and the 2nd Respondents in terms of the letters and communications marked and annexed hereto as **Exhibits P18, P22, P24, P30, P35, P36(a), P36(b), P37, P40(a), P41(a), P41(c), P42(a) and P43(a)** invalid, null and void and inoperative in law;

(iii) the registration of BARAZA LA WANAWAKE TANZANIA (BAWATA) as a society under the Societies Ordinance was and is valid and that its original constitution accompanying the application for registration is lawful;

(iv) sections 2(2), the whole of section 6, section 9(a) and 9(d)(iii), the whole of section 12, the whole of section 12A, the whole of section 13, the whole of section 24 and any subsidiary legislation made under the impugned sections or in relation thereto invalid, null and void;

(v) that the purported exercise of power and discretion of the 1st and 2nd Respondents in respect of the Petitioners was oppressive, arbitrary, unfair, inconsistent and unconstitutional entitling the Petitioners jointly and severally to exemplary damages;

(vi) that the application for permission and approval of the amended constitution of BAWATA has been overtaken by events and lapsed unless the Petitioners in their absolute discretion and in accordance with their constitution wish to pursue it.

(b) That this Honourable Court may be pleased to Order that:-

(i) certiorari or an order in the nature thereof issue quashing the cancellation of registration of BARAZA LA WANAWAKE TANZANIA (BAWATA) and a mandatory injunction to the 1st Respondent or an order in the nature thereof restoring the said BAWATA on the Register of Societies;

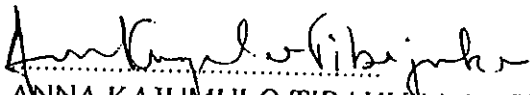
(ii) sections 2(2), the whole of section 6, section 9(a) and 9(d)(iii), the whole of section 12, the whole of section 12A, the whole of section 13, the whole of section 24 and any subsidiary legislation made under the impugned sections or in relation thereto be struck off the statute book;

(iii) that the 1st and 2nd Respondents pay to the Petitioners exemplary damages in the amount that the Honourable Court may deem fit and proper in the circumstances;

(iv) costs of this Petition to be paid by the Respondents;

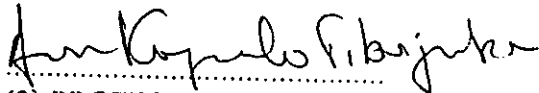
(c) That this Honourable Court may be pleased to grant any further and other reliefs that it may deem fit and proper.

Dated at Dar es Salaam this.....day of July, 1997.




ANNA KAJUMULO TIBAIJUKA (as Chairperson)
(1) BARAZA LA WANAWAKE, TANZANIA (BAWATA)

]



(2) PROFESSOR ANNA KAJUMULO TIBAIJUKA

]



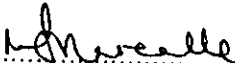
(3) SHERBANU NASSER KABISA

]




(4) ROSE TEMU MUSHI

]



(5) MARY CHONJO MAREALLE

]

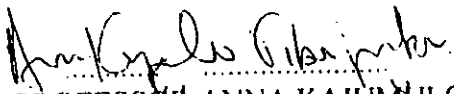


(6) SALMA KHATIM KAULI

PETITIONERS

VERIFICATION

Save as otherwise appears the statements in the Petition are true to the best of my personal knowledge or derived from the documents exhibited to this Petition of which I have personal knowledge or based on information from our Advocate Professor Issa G. Shivji, all of which I verily believe to be true.



PROFESSOR ANNA KAJUMULO TIBAIJUKA
(in her personal capacity & as chairperson of BAWATA)

Presented for filing thisday of July, 1997.

REGISTRY OFFICER

TO BE SERVED UPON:

(1) REGISTRAR OF SOCIETIES
Ministry of Home Affairs
P. O. Box 9223
Dar es Salaam

(2) HON. ALI AMEIR MOHAMED
Minister for Home Affairs
P. O. Box 9223
Dar es Salaam

(3) HON. ATTORNEY GENERAL
 Attorney General's Chambers
 Kivukoni Front
 P. O. Box 9050
 Dar es Salaam

DRAWN AND FILED BY:

Issa G. Shivji
 Advocate
 Legal Consultancy Services Committee
 Faculty of Law
 University of Dar es Salaam
 P. O. Box 35093
 Dar es Salaam

ISSA G. SHIVJI
 Advocate, Faculty of Law
 & Committee for Dar
 Dar es Salaam

LIST OF DOCUMENTS ANNEXED TO THE PETITION

NO	BRIEF TITLE OF THE DOCUMENT	PARA	EXHIBIT NO	PAGE NO.
1	Certificate of Registration (16/5/95)	1(a)	P1	1
2	Letter from UWT Chairperson, Mrs. Kawawa (22/9/93)	3(b)	P2	2
3	Draft Constitution Presented to University Conference	3(d)	P3	3
4	Report to Registrar on Impending Formation (4/10/94)	3(d)	P4	17
5	Summary Record of Views on Structure	4(a)	P5	19
6	List of Participants at the British Council Symposium	4(b)	P6	36
7	Letter of Application for Registration (27/2/95)	5	P7	39
8	Application for Registration, Form SO1	5(i)	P8	41
9	Statement of Particulars, Form SO2	5(ii)	P9	42
10	Record of Deliberations at University Conference	5(iii)	P10	43
11	BAWATA Journal File- discussion with Registrar	5(iv)	P11	52
12	Letter to Hon. Anna Abdallah & Rhoda Kahtano	5(v)	P12	53
13	Constitution adopted at British Council Symposium	5(vi)	P13	55
14	Record of Deliberations & Resolutions at British Council	5(vii)	P14	81
15	List of members with intention to join	5(viii)	P15	100
16	Letter to PMO with Explanation	6(a)	P16	147
17	AG's letter supporting BAWATA Registration	6(b)	P17	156
18	Principal Secretary's letter seeking more information (20/6/95)	7(a)	P18	158
19	Reply to Principal Secretary	7(a)	P19	159

20	Record of the General Meeting of 18-20 October, 1995	8	P20	162
21	Establishment Report	9	P21(n)	179
22	Publicity Brochure	9	P21(b)	208
23	Letter of Principal Secretary Suspending BAWATA Activities (17/9/96)	10(n)	P22	209
24	BAWATA's Reply to letter of suspension	10(b)	P23	211
25	Principal Secretary's Letter Adding New Grounds of Suspension (11/10/96)	12(c)	P24	214
26	BAWATA letter requesting lifting of suspension to enable meetings (12/10/96)	13(n)	P25	215
27	BAWATA's letter seeking further & better particulars (14/10/96)	13(b)	P26	216
28	BAWATA's letter on wisdom of announcing suspension (29/11/96)	13(c)	P27	217
29	UNDP letter (4/12/96)	13(d)	P28(n)	218
30	PMO's letter (5/12/96)	13(e)	P28(b)	219
31	MAJIRA Clipping - (18/12/96)	14(n)	P29(n)	220
32	GUARDIAN Clipping - (19/12/96)	14(n)	P29(b)	221
33	UHHURU Clipping - (28/12/96)	14(n)	P29(c)	222
34	Letter from Principal Secretary (19/12/96) [allegations against chair]	14(c)	P30	223
35	BAWATA's answer (6/1/97)	14(c)	P31(n)	224
36	BAWATA's answer with Audited Accounts (6/1/97)	14(c)	P31(b)	227
37	MTANZANIA Clipping - (1/12/96)	15(n)	P32(n)	247
38	UHHURU Clipping - (6/12/96)	15(n)	P32(b)	248
39	NIPASHE Clipping - (1/1/97)	15(n)	P32(c)	249
40	UHHURU Clipping - (2/1/97)	15(n)	P32(d)	250
41	SUNDAY NEWS Clipping - (5/1/97)	15(n)	P32(e)	251
42	Statement of the Norwegian Embassy (6/12/96)	15(b)	P33	252

43	BAWATA's Press Release on Funds (6/12/96)	15(b)	P34	2 54
44	Press Statement of Hon. Ali Ameir Mohamed (4/1/97)	16(a)	P35	2 56
45	Principal Secretary's letter extending time to 31/1/97 (28/1/97)	17(a)	P36(a)	2 62
45	Principal Secretary's letter repeating letter of 28/1/97 and Adding New Directives requiring adoption of	17(a)	P36(b)	2 63
46	BAWATA's Newspaper Advertisement (HEKO 4/2/97)	18	P36(c)	2 65
47	Government's Press Release accusing BAWATA chairperson of "distortion and disinformation"	19(a)	P37	2 66
48	BAWATA's letter explaining that "founders" meeting not in the constitution (17/2/97)	20	P38(a)	2 68
49	BAWATA letter to AG requesting intervention (17/2/97)	20	P38(b)	2 70
50	Bundle of papers application for approval for amendment (28/3/97)	21(a)	P39	2 72
51	Principal Secretary's letter acknowledging application and re-imposing suspension (12/5/97)	21(b)	P40(a)	3 27
52	BAWATA letter seeking clarification on continued suspension (15/5/97)	21(c)	P40(b)	3 28
53	Notice of Intention to Cancel Registration (5/6/97)	22(a)	P41(a)	3 30
54	UURU story (5/6/97)	22(b)	P41(b)	3 31
55	Hon. Ali Ameir Mohamed's Statement on Notice of Intention to Cancel Registration Adding New	22(c)	P41(c)	3 32
56	Advocate Shivji's letter raising preliminary objection and seeking further and better particulars on Notice	22(e)	P41(d)	3 35
57	Registrar's response to Shivji's letter (23/6/97)	23(a)	P42(a)	3 43
58	Advocate's Shivji's Reply (25/6/97)	23(a)	P42(b)	3 44
59	Notice of Cancellation of Registration (30/6/97)	24(a)	P43(a)	3 46
60	BAWATA's Notice of Intention to Appeal & Application for Extension of Time(1/7/97)	24(b)	P43(b)	3 47
61	Report of DAILY NEWS on President's Remarks (9/7/97)	27	P44	3 49

(Affidavit)

IN THE HIGH COURT OF TANZANIA
(Main Registry)
AT DAR ES SALAAM

MISC. CIVIL CAUSE NO OF 1997

IN THE MATTER OF THE CONSTITUTION
OF THE UNITED REPUBLIC OF TANZANIA, 1977

AND

IN THE MATTER OF THE SOCIETIES ORDINANCE, CAP. 337

AND

IN THE MATTER OF THE CANCELLATION OF
THE REGISTRATION OF BARAZA LA WANAWAKE, TANZANIA

BETWEEN

- (1) BARAZA LA WANAWAKE, TANZANIA (BAWATA)]
- (2) PROFESSOR ANNA KAJUMULO TIBAIJUKA]
- (3) SHERBANU NASSER KABISA]
- (4) ROSE TEMU MUSHI]
- (5) MARY CHIONJO MAREALLE]
- (6) SALMA KHATIM KAULI]

APPLICANTS/PETITIONERS

AND

- (1) REGISTRAR OF SOCIETIES]
- (2) HON. ALI AMEIR MOHAMED]
Minister for Home Affairs]
- (3) HON. ATTORNEY GENERAL]

RESPONDENTS

AFFIDAVIT

In support of an Application for
Interim Orders pending trial

I, ANNA KAJUMULO TIBAIJUKA, a Christian resident of Dar es Salaam, of Post Office Box 35096 , Dar es Salaam do hereby SOLEMNLY MAKE OATH and say as follows:

1. That I am the 2nd Petitioner herein and the chairperson of BARAZA LA WANAWAKE TANZANIA (hereinafter "BAWATA"), the first Petitioner.
2. That as the chairperson of BAWATA since its inception, I am aware of its affairs and closely acquainted with the facts and happenings which are the subject-matter of this Petition.
3. That the Petitioners have petitioned to this Honourable Court for declaratory and other orders and reliefs under Basic Rights and Duties Enforcement Act, 1994.
4. That I annex hereto this my Affidavit all the documents exhibited to the Petition and exhibit the same to this my Affidavit as if they were set out herein *seriatim* and form part of this my Affidavit.
5. That BARAZA LA WANAWAKE TANZANIA was registered as a society under the Societies Ordinance Cap. 337 and issued with a certificate of registration dated 16th day of May 1995 (see Exhibit P1).
6. (a) That on the 17th day of September, 1996, the 1st Respondent in his capacity as the Principal Secretary to the Ministry of Home Affairs purported to suspend the activities of BAWATA and gave several disparate directives and instructions (see Exhibit P22) to be followed before the suspension could be lifted.

(b) That since then the 1st and 2nd Respondents have continued to impose suspension on BAWATA activities and continued to issue other varied directives and instructions (see , *inter alia*, Exhibits. P24, P30, P35, and

(c) That the legal and constitutional validity of the diverse exercise of powers and discretions referred to in paragraphs 6(a) and (b) are the subject of challenge in the main Petition.

7. That on the 5th day of June, 1997, the 1st Respondent purported to issue a Notice of Intention to Cancel the Registration of BAWATA (see Exhibit 41(a)). The legal and constitutional validity of the said Notice is the subject of challenge in the main Petition.

8. (a) That on the 30th day of June, 1997, the 1st Respondent purported to cancel the registration of BAWATA giving it 21 days within which to appeal to the 2nd Respondent (see Exhibit P43(a)).

(b) That the said exercise of power of cancelling registration and the whole of the provision of the Societies Ordinance (section 12) purporting to give the Registrar such powers and the whole of the provisions and procedure of appeal therefrom (section 13) are a subject of constitutional challenge on the ground that they infringe Petitioners' fundamental human rights of fair hearing, individual freedom, expression, assembly and association enshrined in Articles 13(6), 15(1), 18(1) and 20(1) of Part III of Chapter One of the Constitution of the United Republic of Tanzania and in violation of the international law obligations of the United Republic under various International and Regional Human Rights Instruments.

(c) That the 1st Petitioner through its office bearers have already filed their intention to appeal to the 2nd Respondent (see Exhibit P43(b)) but on filing this Petition and on legal advice has taken the view that there is no valid decision to take on appeal and therefore does not intend to proceed with the said appeal in which case the Applicants/Petitioners are under apprehension that on expiry of the 21 days BAWATA would become an unlawful society thus potentially liable to penalties under the Societies Ordinance and possibly be exposed to irreparable public opprobrium unless the Applicants are granted by this Honourable Court the interim orders prayed for herein.

9. In apprehension of the breach of their fundamental rights of expression, assembly, association and property, the Petitioners also challenge the constitutional validity of sections 6, 12A and 24 of the Societies Ordinance the powers and discretions under which are being sought to be restrained by this Application for temporary injunction.

10. That unless the interim orders prayed for herein are granted the present Petition would be rendered infructuos.

11. That the Petitioners need continued access to the premises of BAWATA's registered office for consulting records, writings, membership register and data bank and for the use of hardware and software and need access to the accounts

12. That the Petition raises serious triable issues. It has a chance of success. Fairness, justice and balance of convenience require that the interim orders prayed herein be granted. That the grant of the said orders will do no damage to the Respondents who are all public officers while the denial of the same will do irreparable damage to the Petitioners who are all private citizens and members of civil society.
13. That what is stated in paragraphs 1 to 5, 6(a) and (b), 7, 8(a), 10 and 11 is true to the best of my personal knowledge and what is stated in paragraphs 6(c), 8(b) and (c), 9 and 12 is derived from information from my advocate, Professor Issa G. Shivji, and which I verily believe to be true.

SWORN by the said

ANNA KAJUMULO TIBAIJUKA

Anna Kajumulo Tibaijuka
ANNA KAJUMULO TIBAIJUKA

at Dar es Salaam this

16th day of July, 1997

BEFORE ME:

NAME:

H - Bayona

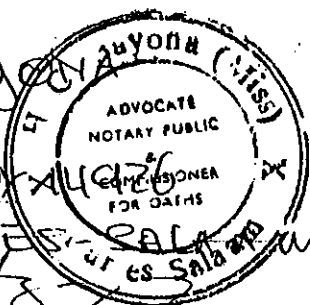
ADDRESS:

PO - Box 4976

DAR - ES - SALAM

SIGNATURE:

Commissioner for Oaths



TO BE SERVED UPON:

(1) REGISTRAR OF SOCIETIES

Ministry of Home Affairs

P. O. Box 9223

Dar es Salaam

(2) HON. ALI AMEIR MOHAMED
Minister for Home Affairs
P. O. Box 9223
Dar es Salaam

(3) HON. ATTORNEY GENERAL
Attorney General's Chambers
Kivukoni Front
P. O. Box 9050
Dar es Salaam

DRAWN AND FILED BY

Issa G. Shivji, Esq.,
Advocate
Legal Consultancy Services Committee
Faculty of Law
University of Dar es Salaam
P. O. Box 35093
Dar es Salaam

ISSA G. SHIVJI
Advocate, Notary Public
& Commissioner For Oaths
DAR ES SALAAM

(Chamber Summons)

IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM
(Main Registry)

MISC. CIVIL CAUSE NOOF 1997

IN THE MATTER OF THE CONSTITUTION
OF THE UNITED REPUBLIC OF TANZANIA, 1977

AND

IN THE MATTER OF THE SOCIETIES ORDINANCE, CAP. 337

AND

IN THE MATTER OF THE CANCELLATION OF
THE REGISTRATION OF BARAZA LA WANAWAKE, TANZANIA

B E T W E E N

(1) BARAZA LA WANAWAKE, TANZANIA (BAWATA)

]

(2) PROFESSOR ANNA KAJUMULO TIBAJUKA

]

(3) SHERBANU NASSER KABISA

]

(4) ROSE TEMU MUSHI

]

(5) MARY CHONJO MAREALLE

]

(6) SALMA KHATIM KAULI

]

APPLICANTS/PETITIONERS

A N D

(1) REGISTRAR OF SOCIETIES

]

(2) HON. ALI AMEIR MOHAMED
Minister for Home Affairs

]

]

(3) HON. ATTORNEY GENERAL

RESPONDENTS

CHAMBER SUMMONS

Under Articles 13(6), 15, 18, 20(1), 24, 26(2)
and 30(4) of the Constitution of the United Republic
of Tanzania, 1977; Sections 4 and 5 of
the Basic Rights and Duties Enforcement Act, 1994;
And Section 95 of the Civil Procedure Code, 1966

LET ALL PARTIES CONCERNED attend the Honourable Judge in Chambers on
..... day of, 1997 at 9.00 O'clock in the forenoon or so soon thereafter as
Counsel can be heard on the hearing of an Application on behalf of the Applicants for
the following orders:

1. That pending the hearing and disposal of the present Petition or further
order this Honourable Court be pleased pursuant to Articles 26(2) and 30(3)
of the Constitution of the United Republic of Tanzania and Sections 4 and
8(1) of the Basic Rights and Duties Enforcement Act, 1994 to issue an
Order of temporary injunction restraining the Respondents, their officers,
servants and agents from:-

(i) cancelling the registration of BARAZA LA WANAWAKE
TANZANIA (BAWATA), the 1st Petitioner, and or striking it off the register
of societies;

(ii) exercising any of the powers and discretions under Sections 6, 12A
and 24 of the Societies Ordinance or Societies Rules made thereunder and
relevant and material to the provisions cited herein;

(iii) in any way interfering or tampering with the hard and soft copies of
membership register, books, accounts, records, computer disks, writings,
insignia, banners and such other records of the 1st Petitioner;

(iv) barring in any manner whatsoever peaceful access of the BAWATA
officers, employees, visitors and their agents from the premises of the

the 1st Petitioner being situate on the 2nd Floor of Raha Towers, corner of Bibi Titi/Maktaba Streets and other respective places in the country;

(v) barring legitimate access to and or restraining operation of, in any manner whatsoever, the bank accounts of the 1st Petitioner.

2. That pending the hearing and disposal of the present Application or further order this Honourable Court be pleased to issue an *ex parte* Order of temporary injunction restraining the Respondents, their officers, servants and agents from exercising any of the powers and discretions enumerated hereinabove in paragraphs 1(i) to 1(v).

3. Costs of this Application be provided for.

Dated at Dar es Salaam this.....day of July, 1997.

REGISTRAR

This Chamber summons has been taken out by Issa G. Shivji, Advocate for the Applicants and the Affidavit of Professor ANNA KAJUMULO TIBAJUKA annexed hereto will be read in support.

REGISTRY OFFICER

To be served upon:

(1) REGISTRAR OF SOCIETIES
Ministry of Home Affairs
P. O. Box 9223
Dar es Salaam

(2) HON. ALI AMEIR MOHAMMED
Minister for Home Affairs
P. O. Box 9223
Dar es Salaam

(3) HON. ATTORNEY GENERAL
Attorney General's Chambers
Kivukoni Front
P. O. Box 9050
Dar es Salaam

DRAWN AND FILED BY

Issa G. Shivji, Esq.,
Advocate
Legal Consultancy Services Committee
Faculty of Law
University of Dar es Salaam
P. O. Box 35093
Dar es Salaam

RECEIVED
28/07/2011
00000000000000000000
DAR ES SALAAM

IN THE HIGH COURT OF TANZANIA
(AT DAR ES SALAAM MAIN REGISTRY)
MISC. CIVIL CAUSE NO. 27 OF 1997
IN THE MATTER OF THE CONSTITUTION
OF THE UNITED REPUBLIC OF TANZANIA, 1977
AND
IN THE MATTER OF THE SOCIETIES ORDINANCE, CAP. 337
AND

IN THE MATTER OF THE CANCELLATION OF
THE REGISTRATION OF BARAZA LA WANAWAKE, TANZANIA
BETWEEN

(1) BARAZA LA WANAWAKE, TANZANIA (BAWATA)]	
(2) PROFESSOR ANNA KAJUMULO TIBATJUKA]	
(3) SHERBANU NASSER KABISA]	
(4) ROSE TEMU MUSHI]	
(5) MARY CHONJO MAREALLE]	
(6) SALMA KHATIM KAULI]	... APPLICANTS/ RESPONDENTS

AND

(1) REGISTRAR OF SOCIETIES]	
(2) HON. ALI AMETR MOHAMED]	
(Minister for Home Affairs]	
(3) HON. ATTORNEY GENERAL]	... RESPONDENTS

O R D E R

The Applicants applying for the order of temporary injunction
retarding the respondents from:-

- i) cancelling the registration of BARAZA LA WANAWAKE
TANZANIA (BAWATA), the 1st petitioner, and or striking
it off the register of societies;
- ii) exercising any of the powers and discretions under
Sections 6, 12A and 24 of the Societies Ordinance of
societies Rules made thereunder and relevant and
material to the provisions cited herein;
- iii) in any way interfering or tampering with the hard and
soft copies of membership register, books, accounts,

- records, computer disks, writings, insignia, banners and such other records of the 1st Petitioner;
- iv) barring in any manner whatsoever peaceful access of the BAWATA officers, employees, visitors and their agents from the premises of the registered office and branch and district offices and office equipment therein of the 1st Petitioner being situate on the 2nd Floor of Raha Towers, corner of Bibi Titi/Maktaba Streets and other respective places in the country;
- v) barring legitimate access to and or restraining operation of, in any manner whatsoever, the bank accounts of the 1st Petitioner

2. That pending the hearing and disposal of the present Application or further order this Honourable court be pleased to issue an ex parte Order of temporary injunction restraining the Respondents, their officers, servants and agents from exercising any of the powers and discretions enumerated hereinabove in paragraphs (i) to (v).

3. Costs of this Application be provided for.

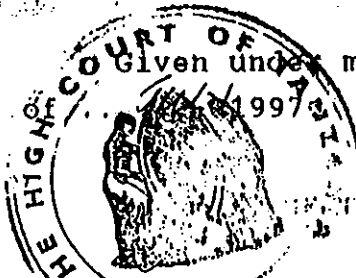
This application coming on this 17th day of July 1997 before Hon. Justice Chipeta in the presence of Prof. Shivji Advocate for the Applicants and in the absence for the Respondents.

THIS COURT DOTH HEREBY ORDER THAT

The respondents be and are hereby restrained from cancelling the registration of BAWATA and striking it off the Register of Societies, exercising any of the powers and discretions conferred under the Societies Ordinance, in any way interfering or tampering with documents, books, records, hard and soft copies thereof and other documents or properties of the applicants, barring in any manner whatsoever peaceful access of BAWATA officers, employees and visitors to BAWATA offices and equipment therein, and barring legitimate access to the BAWATA bank accounts, pending the determination of the application for temporary injunction which shall be heard inter partes.

It is so ordered.

BY THE COURT

Given under my hand and the seal of the court this 17th day

DISTRICT REGISTRAR, NAIROBI, 1977

TO BE SERVED UPON: ORDER OF THE SOCIETIES ORDINANCE, 1933

(1) Registrar of Societies,

Ministry of Home Affairs, OF THE CAPS

DAR ES SALAAM

(2) Hon. Ali Ameir Mohamed,

Minister for Home Affairs,

DAR ES SALAAM

(4)

(3) Hon. Attorney General,

General Chambers,

Kivukoni Front,

DAR E SALAAMAPPLICANTS/
RESPONDENTS

RESPONDENTS

Municipal Council

MADIBA LA M. BAWALE

Municipal Council of Mombasa

Municipal Council of Mombasa

Municipal Council of Mombasa

Municipal Council of Mombasa


Municipal Council of Mombasa

Municipal Council of Mombasa

Having heard learned counsel for the applicants/petitioners, I am satisfied that a case has been made out for granting an ex-parte order pending the hearing inter partes of the application for a temporary injunction.

For these reasons, it is hereby ordered that the respondents be and are hereby restrained from cancelling the registration of BAWATA and striking it off the Register of Societies, exercising any of the powers and discretions conferred under the Societies Ordinance, in any way interfering or tampering with documents, books, records, hard and soft copies thereof and other documents or properties of the applicants, barring in any manner whatsoever peaceful access of BAWATA officers, employees and visitors to BAWATA offices and equipment therein, and barring legitimate access to the BAWATA bank accounts, pending the determination of the application for temporary injunction which shall be heard inter partes.

It is so ordered.


B. D. CHAPPETA
JUDGE

AT DAR ES SALAAM.

17TH JULY, 1997

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

MISCELLANEOUS CIVIL CAUSE NO.27 OF 1997

BARAZA LA WANAWAKE TANZANIA (BAWATA)
AND 5 OTHERS

APPLICANTS

VERSUS

REGISTRAR OF SOCIETIES AND 2 OTHERS

RESPONDENTS

R U L I N G

CHIPETA, J.:

This is an ex-parte application for a temporary injunction pending hearing of an application for a temporary injunction inter partes.

The background of the matter is that the applicants/petitioners, namely, BARAZA LA WANAWAKE, TANZANIA (BAWATA) and five others, have petitioned this court for declarations, inter alia, that the cancellation of the registration of BAWATA is invalid, null and void and inoperative in law, and that the registration of BAWATA as a society under the Societies Ordinance was and is valid and its original constitution lawful; and further, this court be pleased to order that certiorari or an order in the nature of quashing the cancellation of registration of BAWATA, and a mandatory injunction to the first respondent or an order in the nature thereof restoring the said BAWATA of the Register of Societies be made.

The petition also seeks an order striking off the statute book certain sections of the Societies Ordinance.

Pending the hearing of the petition, the petitioners have filed an application for a temporary injunction.

During the hearing of this application, ex-parte, Professor Shivji informed the court that the time for appeal to the Registrar of Societies expires on 21st July, 1997, that is within the next three days.

IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM
(Main Registry)

MISC. CIVIL CAUSE NOOF 1997

IN THE MATTER OF THE CONSTITUTION
OF THE UNITED REPUBLIC OF TANZANIA, 1977

AND

IN THE MATTER OF THE SOCIETIES ORDINANCE, CAP. 337

AND

IN THE MATTER OF THE CANCELLATION OF
THE REGISTRATION OF BARAZA LA WANAWAKE, TANZANIA

BETWEEN

- (1) BARAZA LA WANAWAKE, TANZANIA (BAWATA)
- (2) PROFESSOR ANNA KAJUMULO TIBAIJUKA
- (3) SHERBANU NASSER KABISA
- (4) ROSE TEMU MUSHI
- (5) MARY CHIONJO MAREALLE
- (6) SALMA KHATIM KAULI

APPLICANTS/PETITIONERS

AND

- (1) REGISTRAR OF SOCIETIES
- (2) HON. ALI AMEIR MOHAMED
Minister for Home Affairs
- (3) HON. ATTORNEY GENERAL

RESPONDENTS

To:
Hon. Jaji Kiongozi
The High Court at Dar es Salaam
Main Registry
Dar es Salaam

CERTIFICATE OF URGENCY

I, ISSA GULAMHUSSEIN SHIVJI, Advocate of the High Court of Tanzania, duly instructed by the above-named Applicants/Petitioners to represent them in the above-

of the above-mentioned application for injunctive relief is of the most Extreme Urgency for the following reasons:-

1. That I have filed a Constitutional Petition in this Honourable Court challenging the validity of the cancellation of the registration of BARAZA LA WANAWAKE, TANZANIA (BAWATA) as a society in which, among other things, several provisions of the Societies Ordinance are being impugned.
2. That on or about 22nd day of July, 1997, the time for appealing to the Honourable Minister for Home Affairs from the decision of the Registrar of Societies cancelling registration in terms of the said Societies Ordinance would expire and thereafter the said society, the BARAZA LA WANAWAKE, TANZANIA, will become an unlawful society. In which case the Petitioners could be denied access to the premises, equipment, records, data bank, books and accounts. This would deny the Petitioners the fulsome opportunity to prosecute their petition properly and effectively and vindicate their fundamental human rights under the Constitution of the United Republic doing an irreparable damage to the Petitioners and to the cause of justice.
3. For these reasons, I am filing this Certificate of Urgency for the prompt hearing of the *ex parte* application for temporary injunction against the Respondents pending the *inter partes* hearing of the application for the temporary injunction pending the final disposal of the Petition

WHAT IS STATED hereinabove is based on the information from my Clients which I verily believe to be true and my understanding of the law.

DATED at Dar es Salaam on this 17th day of July, 1997.

ISSA G. SHIVJI
ADVOCATE

AFFIRMED by the said
ISSA GULAMHUSSEIN SHIVJI
at Dar es Salaam on this 17th,
day of July, 1997.

BEFORE ME:

COMMISSIONER FOR OATHS

DEPONENT

Presented for filing this day of, 1997.

.....
REGISTRY OFFICER

COPY TO BE SERVED UPON:

(1) Registrar of Societies
Ministry of Home Affairs
P. O. Box 9223
Dar es Salaam

(2) Hon. Ali Ameir Mohamed (MP)
Minister for Home Affairs
P. O. Box 9223
Dar es Salaam

(3) Hon. Attorney General
Kivukoni Front
P. O. Box 9050
Dar es Salaam

Drawn and filed by:

Issa G. Shivji
Legal Consultancy Services Committee
University of Dar es Salaam
P. O. Box 35093
Dar es Salaam

ISSA G. SHIVJI
Attorney General
& Counselor for Office
DAR ES SALAAM