

LEGAL DILEMMAS ON APPLICATION OF OVERRIDING OBJECTIVE PRINCIPLE IN THE COURT OF APPEAL OF TANZANIA

*Noel Edward Tagagas Nkombe**

Abstract

In 2018 the government of the United Republic of Tanzania introduced a new legal principle commonly referred to as “the overriding objective principle.” This was done through Written Laws (Miscellaneous Amendments) Act, 2018 (Act No. 8 of 2018). It was said that the aim of the legislative process was to promote substantive justice and to give statutory effect to the contents of Article 107A (2) (e) of the Constitution of the United Republic of Tanzania, 1977. Article 107A (2) (e) of the Constitution directs the courts of law: To dispense justice without being tied up with technicalities provisions, which may obstruct dispensation of justice. Therefore, strictly speaking, the new law was not creating anything new, but rather amplifying what the Constitution had already provided back in 2005 when that provision was entered into the mother law. However, since the enactment of this law, the principle of “overriding principle” has become a cause célèbre issue in legal circles in the United Republic of Tanzania. The judiciary under the guidance of the Court of Appeal of Tanzania has woken up from a long slumber to fight legal technicalities in the name

* An assistant Lecturer, Faculty of Law, the Open University of Tanzania, an active member of Tanganyika Law Society (TLS), a PhD candidate at the University of Dar es Salaam-School of Law, formerly the Faculty of Law. He can be contacted through Email: noel.nkombe@gmail.com

of justice. This is the preoccupation of this article under review.

Key Words: *Overriding objective principle, legal dilemma and Court of Appeal of Tanzania*

1. INTRODUCTION AND BACKGROUND

Justice system in any society is one of the key indicators of adherence to rule of law. It differentiates between a democratic and an authoritarian system of government.¹ Thus, the system of administering justice ought to promote substantive justice in order to create confidence in society. Courts of law have often been regarded as temples of justice as it was held in the case of *Kivuyo and others v. Regional police Commander Arusha and Another*.² Administration of justice in the United Republic of Tanzania consisting of two partners in the union, mainland Tanzania (formally Tanganyika) Tanganyika Zanzibar has a long history. It passed through three major phases, which are pre-colonial phase, colonial phase and post-colonial phase. During the pre-colonial era the administration of justice depended much on the social economic and political organisation of a particular society. Thus, there were two systems of administration of justice during this period namely; the centralised and the non-centralized. In the centralised society chiefs played the roles of administration of justice.³ Nevertheless, in both systems there were no formal procedures to be followed in administration of justice.

¹ Rainer M.B., and Chris, M.P., “Administration of Justice in Tanzania and Zanzibar: A Comparison of Two Judicial Systems in One Country”, 38 (2), *Cambridge University Press on behalf of the British Institute of International and Comparative Law*, 1989, p.395 at pp. 395–12, available at <https://www.jstor.org/stable/760038> accessed on 30 September 2020.

² *Kivuyo and others v. Regional police Commander Arusha and Another*, the High Court of Tanzania at Arusha, Miscellaneous Civil application No. 22 of 1978, (Unreported), at p. 7.

³ Rainer, M.B., and Chris, M.P., Administration of Justice in Tanzania and Zanzibar: A Comparison of Two Judicial Systems in One Country, above note 2 at p. 392.

During the colonial period the land currently covering Mainland Tanzania, was placed under the German Colonial Rule from 1886 up to the end of the First World War, 1918.⁴ The German administration system was racial based. It had two systems of justice administration; one for natives and another for non-natives. After the defeat of Germany in the First World War, the area currently covering Tanzania mainland was placed under the British Protectorate Mandate. The British rule introduced two separate structures of judicial hierarchies namely the High Court and Subordinate Courts which operated according to English laws on one hand and on the other hand it catered for matters where both disputants were natives applying customary laws.

British rule introduced laws and a formal court system. In order to obtain substantive justice one had to follow the prescribed procedures established under the colonial legal system. Principally, during this period the concept of overriding objective existed though in different forms. The Tanganyika Order in Council (TOC) required courts to do justice without undue regards to technicalities. TOC provided *inter alia* that, in all civil and criminal cases to which natives are parties, every court must decide all such cases according to substantive justice without undue regard to technicalities of procedure and without undue delay.⁵ The aim of this provision was to promote substantive justice. Thus, this was a concept of overriding objective principle during the colonial period.

Post independence period (from 1961) Tanganyika now Mainland Tanzania, attained its independence. The court system was reformed, however some of the colonial law continued to be applicable and High Court and subordinate courts were retained. In 1977 the Constitution of the United Republic of Tanzania came into force and followed the establishment of the Court of

⁴ Chipeta, B.D., *Civil Procedure in Tanzania; A Student Manual: Dar es Salaam: Dar es Salaam University Press, 2002*, at p. Xiii.

⁵ Ibid.

Appeal of Tanzania in 1979. Thus the Court of Appeal of Tanzania became a union matter, the High Court and other subordinate courts remained to be a non-union matter. The CAT is the highest Court in the Hierarchy in the judicial system in Tanzania. The noble duty of the CAT is to administer Justice.⁶

In 2000, the Constitution of the United Republic of Tanzania amendments incorporated the provision that recognized the judiciary as the authority with the final decision in dispensation of justice in the United Republic of Tanzania.⁷ In 2005 there was another Constitutional amendment which required the court to dispense justice without being tied up with technicalities provisions which may obstruct dispensation of justice.⁸

The Constitution requires the courts to dispense justice without being tied up with technicalities provisions, which may obstruct dispensation of justice⁹ the Tanzania Court of Appeal Rules requires that¹⁰ the CAT in administering justice to have due regards to achieve substantive justice.¹¹ Basically, the Court in administering justice should focus on substantive justice and not procedural requirements. However the importance of rules of procedure cannot be ruled out as they facilitate substantive justice in the justice administration system.

⁶ Mashamba, C.J., *Annotated Procedure and Practice in Court of Appeal of Tanzania*, Law Africa Publishing (T) Ltd, Dar es Salaam-Tanzania, 2016, at p. 22.

⁷ Act No. 3 of 2000.

⁸ Act No. 1 of 2005, G.N. No. 150 of 2005.

⁹ Art.107A (2) (e) of the Constitution.

¹⁰ G.N No. 368 of 2009.

¹¹ Rule 2(2) of the Tanzania Court of Appeal Rules G.N No. 368 of 2009.

2. SUBSTANTIVE JUSTICE AS OPPOSED TO PROCEDURAL TECHNICALITIES

Justice is intimately related with legal rights. It is embodied in universally accepted norms and principles of law considered to be fair.¹² Ramadhan¹³ observes that litigation must not turn into a contest of technicalities. It should not be theatrics in advocacy. There is a constitutional principle which requires that substantive justice should prevail over legal technicalities in administration of justice.¹⁴ He argues that it is unworthy for both bench and bar to complain on procedural technicalities. He gives an example of how the members of the bench are bitterly complaining that procedural technicalities hamper the administration of justice.

The late Honourable Mkapa, the former president of Tanzania once commented on the problem of procedural technicalities and its adverse effect on obtaining justice. He says inaccessible justice is justice which is denied. According to him justice is impeded with two main obstacles namely, costs in terms of time and money and the second one is procedural and bureaucratic complexity that does not serve substantive justice. Where justice is taken out through a right window it is obvious that chaos, conflict and impunity enter through another window.¹⁵

¹² Lawson, J.D., "Technicalities in Procedure, Civil and Criminal, *Journal of Criminal Law and Criminology*", 1(1), 1910, pp. 73-110 at p. 83.

¹³ Ramadhani, A.S.L., "Twenty-Five years of Court of Appeal of Tanzania and the Establishment of East African Court of Justice", *Law & Justice in Tanzania*, Peter, C.M., & Bisimba, H.K., (Eds), MkukinaNyota Publishers, Dar es Salaam, 2007, at p. 223.

¹⁴ Art. 107 A (2) (e), Id, at p.1.

¹⁵ Mkapa B.W. "Address at the Silver Jubilee Anniversary of the Court of Appeal of Tanzania", 2004.

The CAT has been complained for being too technical in dispensing justice. In the case of *Denis Kasege v. the Republic*¹⁶ the CAT raised *suo moto* on a point of law as to the competency of the appeal and for that matter it wanted to satisfy itself as to the correctness or otherwise of the legality of the notice of appeal lodged in Court. This was due to the fact that the Court detected the appellant's notice of appeal not to have indicated the true and correct name of the court judge who presided over the case. The notice of appeal mentioned 'Bongole' J instead of 'Bongore' J. as the judge who presided over the case. The Court decided that, it is apparent clear the notice of appeal in the instance case has failed to insert the correct name of the High Court Judge who presided over the case whose decision is appealed against. The defects admittedly rendered the notice of appeal defective and the appeal was struck out.

In the case *Marwa Kachang'a v. The Republic*,¹⁷ the respondent raised the preliminary point of objection to the effect that the Notice of Appeal failed to mention a true and correct name of the Judge who presided over the case in the High Court. It mentioned 'Twarib' instead of 'Twaib'. The Court in its final determination held that the appellant did not insert in his Notice of Appeal the true and correct name of the Judge who presided over the matter. The court went on to state that, the appellant instead of inserting the name of Twaib J, he slackly inserted Twarib J. consequently it rendered the notice of appeal incurably defective and the intended appeal was therefore incompetent and consequently struck out.

3. OVERRIDING OBJECTIVE PRINCIPLE IN TANZANIA

The principle as hinted earlier intends to cure the mischief of procedural rules in attaining substantive justice. Basically, rules of procedure are not meant to

¹⁶ *Denis Kasege v. The Republic*, Court of Appeal of Tanzania at Dar es Salaam, Criminal Appeal No. 359 of 2015 (Unreported), pp. 3 and 5.

¹⁷ *Marwa Kachang'a v. The Republic*, Court of Appeal of Tanzania at Dar es Salaam, Criminal Appeal No. 84 of 2015 (Unreported), at p. 9.

hinder the attainment of substantial justice. Procedural rules have often been said to be the handmaiden of justice and not mistress of justice.¹⁸ The primary objective of the rules of procedure is to show the litigant and the court how rights of the parties ought to be handled smoothly. They provide for the guidance on how pleadings are drawn, how cases are handled and the way remedies are obtained.¹⁹ They intend to facilitate the proper access to justice in court of law.

Fundamentally, the Principle in Tanzania when broadly viewed is not a new aspect in the legal system. This is on the ground that the Constitution²⁰ prior to the introduction of overriding objective, it had a provision which had elements of overriding objective principle.

It can be argued that, the introduction of the principle in Tanzania in 2018²¹ is just an intensification of the existing constitutional provision which required the court to do justice without being unduly tied up with procedural technicalities. The Written Laws (Miscellaneous Amendments) Act 2018 amended the Civil Procedure Code²² and the Appellate Jurisdiction Act²³ by introducing the principle. The amended Civil Procedure Code²⁴ and the Appellate Jurisdiction Act²⁵ (briefly referred to as amended Acts) have addressed several issues in relation to the principle. The addressed issues include; courts, parties to proceedings and advocates if any have a duty to facilitate the achievement of the principle for the purposes of facilitating the

¹⁸ *Re Coles v. Ravensbear* [1907] 1 KB, at p. 1.

¹⁹ Chipeta, B.D., *Civil Procedure in Tanzania: A student Manual*, above note 5, at p 3.

²⁰ The Constitution, above note 9, at Art. 107 A (2) (e).

²¹ The Written Laws (Miscellaneous Amendments) Act, 8 of 2018.

²² CAP 33 [R.E 2019].

²³ CAP 141 [R.E 2019].

²⁴ *Ibid.*

²⁵ S. 3 of the civil procedure Code, above note 23, as amended by S. 6 of the Written Laws Miscellaneous Amendment Act No. 8 of 2018.

just, expeditious, proportionate and affordable resolution of civil disputes governed by the amended Acts.²⁶

The amended Acts further require the courts in the exercise of their powers under the amended Acts or the interpretation of any of its provisions; seek to give effect to the principle specified in the amended Acts.²⁷ The amended Acts clarifies on how the court should handle the disputes or matters presented before it for the purposes of fostering the principle. Courts are required to handle all matters presented before them with the view of attaining the following: Just determination of the proceedings presented before it,²⁸ efficient use of the available judicial and administrative resources including the use of suitable technology in dispute resolution²⁹ and timely disposal of the proceedings at a cost affordable by the respective parties.³⁰ The amended Acts further put an obligation or duty to a party to civil proceedings or an advocate for either party or for both parties as the case may be to assist the court to promote the principle introduced in the amended Acts by participating in the process of the court by complying with the directions and orders of the Court.³¹ Finally, the amended Acts give discretionary powers to the Chief Justice to make rules for the better carrying of the provisions of the amended Acts in so far as overriding objective principle is concerned.³²

²⁶ S. 3 A (1) of the Appellate Jurisdiction Act CAP 141 [R.E 2019] as amended by S. 4 of the Written laws Miscellaneous Amendment Act N0. 8 of 2018 and S. 3A (1) of the Civil Procedure Code CAP 33 [R.E 2002] as amended by S. 6 of the Written laws Miscellaneous Amendment Act No. 8 of 2018.

²⁷ *Id.*, at S 3 A (2).

²⁸ *Id.*, at Section 3 B (1).

²⁹ *Ibid.*

³⁰ *Id.*, at Section 3 B (1).

³¹ *Id.*, at Section 3 B (2).

³² *Id.*, at Section 3 B (3) *Ibid.*

3.1 An Overview of the Application of Overriding Objective Principle in Reference to Some Decided Cases by the CAT

*3.1.1 Yakobo Magoiga Kichere v. Penina Yusufu*³³

Upon establishment of the overriding objective principle in Tanzania, the CAT for the first time tested the principle on 9th October 2018. In this case the appellant Yakobo Magoiga Kichere, sued the respondent at the Ward Tribunal for Turwa Ward in Tarime District complaining that Penina Yusuf Werema, who is the respondent, had invaded his family's three-acres parcel of land in the village of Nkende. The dispute was filed to the Ward Tribunal of Turwa for determination. In its decision, the Ward Tribunal decided in favour of the appellant. The respondent unsuccessfully appealed to the District Land and Housing Tribunal for Tarime at Tarime. The respondent further appealed to the High Court of Tanzania as the second bite in which the High Court decided in her favour. The appellant in the CAT Magoiga Kichere appealed to the CAT on the ground that the learned High Court judge erred in law for failure to see and hold that the Ward Tribunal of Turwa was not properly constituted. The appellant pressed the CAT to nullify the proceedings on the ground that the Ward Tribunal lacked jurisdiction as neither the Chairman nor any member appointed to preside over the proceedings of the Tribunal in several dates when the matter came for hearing.

The CAT while addressing the above issue stated that, the court should not read additional procedural technicalities into the simple and accessible way to Wards Tribunals in Tanzania while conducting their daily business. The advent of overriding objective principle requires the court to deal with cases justly and have regard to substantive justice. The court finally concluded that failure to identify the member who presided over the proceedings in the Ward Tribunal when the chairman was absent, did not cause any failure of

³³ *Yakobo Magoiga Kichere v. Penina Yusufu*, Court of Appeal of Tanzania at Mwanza, Civil Appeal No. 55 of 2017 (Unreported), at p.11.

justice to the appellant. The appeal was dismissed in its entirety. This case brought a new development on an omission to indicate a member appointed to preside over a Ward tribunal in absence of chairperson is a minor irregularity which cannot vitiate the proceedings. The rationale behind is that it does not cause any injustice to the parties provided that the tribunal was well constituted.

3.1.2 *The Case of Charles Bode v. the Republic*³⁴

The appellant Charles Bode was charged with the offence of murder. It was alleged that the appellant and the deceased used to live together in Dar es Salaam as husband and wife. Sometimes in 2007 the deceased shifted from Dar es Salaam to Msoga Village in Bagamoyo District, with the appellant staying in Dar es Salaam. They however continued to maintain their relationship. On 30th March 2008 the appellant visited the deceased who was killed on the same day. The Republic claimed that it was the appellant who killed the deceased by stabbing her with a knife. Upon the completion of the trial the appellant was found guilty of the offence of murder and he was convicted accordingly. The appellant appealed to the CAT, and one of the grounds of appeal which made the court to invoke an overdoing objective principle was whether failure of the successor judge to explain the appellant's right was fatal and an occasion for injustice. The CAT while responding to the issue before it said that, since the learned counsel represented the appellant during the trial, there was no injustice at all which occasioned on part of the appellant. Therefore the CAT considered the wide interest of substantive justice rather than procedural technicalities.

This case is different from the case discussed herein above on the ground that: it is a criminal case. Although the Criminal Procedure Act was not amended to incorporate the Overriding objective principle yet the principle

³⁴ *Charles Bode v. the Republic*, Court of Appeal of Tanzania at Dar es Salaam, Criminal Appeal No. 46 of 2016 (Unreported), at p.12.

is applicable in criminal cases. Secondly the case draws some attention that not all violations of the accused person's rights may nullify the proceedings. Some may not and it will depend on the nature of such violation. Where the violation does not amount to any injustice they may be ignored. Also, where the appellant or an advocate for the appellant had knowledge of that right but opted not to demand it, no injustice can be considered to have occurred. Thus the case led to development of the principle in criminal cases.

*3.1.3 Mondorosi Village Council and 2 Others v. Tanzania Breweries Limited and 4 Others*³⁵

In this case, the appellants herein sued the respondents before the High Court of Tanzania at Arusha (for recovery of land known as Sukenya Farm or Enavisha Nature Refuge comprising about 12,167 acres within Ngorongoro District Council. The appellants lost the suit they appealed to the CAT. However, before the appeal could be heard, the 2nd respondent's counsel filed a notice of preliminary objection to the effect that: the Appellants have omitted to include in the Record and Memorandum of Appeal a letter to the lower court requesting for copies of judgment, decree and records of proceedings was missing.

In deciding this issue the CAT stated categorically that, in terms of Rule 96 (3) of the Tanzania Court of Appeal Rules, it is only a justice of appeal or the registrar of the High Court or tribunal who may direct the document to be excluded from the record upon application of either party. Thus a letter requesting for the copies of judgment, decree and records of proceedings was an essential document in instituting an appeal before the CAT. The Court further held that, regarding the overriding objective principle, the same cannot be applied blindly against the mandatory provision of the procedural law which goes into the very foundation of the case and the proposed

³⁵ *Mondorosi Village Council and 2 others v. Tanzania Breweries Limited and 4 others*, Court of Appeal of Tanzania at Arusha, Civil Appeal No. 66 of 2017 (Unreported), at p. 14.

amendments are not designed to blindly disregard the rules of procedure that are couched in mandatory terms. The application of the principle was rejected and the appeal was struck out for being incompetent.

This case has created confusion and it is distinguished with the two cases discussed above. As it has been indicated the appeal was struck out for being incompetent merely because the appellant did not attach the letter requesting copies of the record of appeal. The court insisted that this document was necessary in instituting the appeal. There are some unresolved issues in this case on the proper application of the principle. It is opined that, the letters requesting for the copies of judgment, decree and records of proceedings was necessary, however its absence cannot vitiate the appeal since it does not go into the root of the case. Thus this decision made a U-turn development of the overriding objective principle in Tanzania.

3.1.4 *SGS Societe Generale De Surveillance SA and Another v. VIP Engineering & Marketing Limited and Another*³⁶

In this case the 1st respondent VIP engineering & Marketing Limited instituted a suit against the appellant herein and Tanzania Revenue Authority who is the 2nd respondent. The suit originated from a breach of contract. The suit which was commercial in nature was heard and determined against the appellant by the High Court of Tanzania Commercial Division. Being aggrieved by the said decision the appellants appealed to the CAT on several grounds of appeal. However before the appeal could be heard, the 1st respondent raised a preliminary point of objection. The preliminary objection based on the facts that, first, the record of appeal is incompetent for want of properly and duly indorsed exhibits that were tendered and received in evidence, second, the records is incompetent or incomplete for omission or

³⁶ *SGS Societe Generale De Surveillance SA and Another v. VIP Engineering & Marketing Limited and Another*, Court of Appeal of Tanzania at Dar es Salaam, Civil Appeal No. 124 of 2017 (Unreported), at p. 8.

non inclusion therein, the issues that were determined of the suit and third, copies of memorandum of appeal served on the 1st respondent.

Thus, the CAT in this case was invited by way of preliminary objection to address the issues of incompetence of the records of Appeal where the admitted exhibits were not indorsed as required by law and failure to include the framed issues in the records of appeal. During the hearing of the preliminary objection the appellant sought a mercy of overriding objective principle to cure such anomaly and the court proceeded to hear the appeal on merit. However, this was not possible and the CAT held that the overriding objective principle does not and cannot apply in the circumstances of this case since its introduction was not meant to enable the parties to circumvent the mandatory rules of the court or to turn blind to the mandatory provisions of the Procedural law which goes into the foundation of the case. The objection was sustained and the appeal was struck out for being incompetent.

The decision in this case also is distinguishable with the other discussed cases. It develops jurisprudential application of the principle in different situations. It presents the status and the legal effects of admissibility of exhibits not indorsed and including the same in the records of appeal, it further indicates the effects of failure to indorse the memorandum of appeal by the registrar or any other court officer and the effects of omission of issues which were framed during the hearing. It was the firm findings of the court that all these were the mandatory requirements of law, which ought to be followed by the applicant. They cannot be considered as mere technicalities to be cured by the overriding objective principle.

3.1.5 *Gaspar Peter v. Mtwara Urban Water Supply Authority (MTUWASA)*³⁷

This was a labour dispute where the appellant entered into a fixed term employment contract with the respondent, the Mtwara Urban Water Supply Authority (MTUWASA). He held the post of Finance and Administrative Manager. The term of contract was four years with an option by either party to terminate it upon issuing to the other party a three months' notice. Having worked for one and a half years, the appellant issued to his employer (the respondent) a notice of resignation from his employment. His notice was accepted and after its expiration he resigned from employment.

Following his resignation, the appellant claimed terminal benefits; cost of transporting him, his family and personal effects to Moshi, the place of his recruitment. The respondent refused to pay the benefits claimed by the appellant on account that he did not qualify for such benefits because he decided to resign before expiration of the fixed term of employment. The dispute was filed at the CMA which decided in favour of the appellant, the respondent was aggrieved with the award of CMA where it filed revision in the High court. Consequently the High Court revised the award entered by CMA and decided in favour of the respondent. The appellant was aggrieved by the decision of the High Court and appealed to the CAT.

Before the appeal could be heard the respondents raised several preliminary point of objection but the one which this work discusses is that, the filed memorandum of appeal is incompetent for failure to include some necessary documents in the records of appeal such as certain document in the record of appeal, including the pleadings filed in the CMA, copy of the proceedings in the CMA and some of the tendered exhibits.

³⁷ *Gaspar Peter v. Mtwara Urban Water Supply Authority (MTUWASA)*, Court of Appeal of Tanzania at Mtwara, Civil Appeal No. 35 of 2017 (Unreported), at p. 13.

However, the CAT did not uphold the preliminary objection rather it invoked the principle to cure the complained mischief. The CAT insisted that, following the introduction of the principle with a view of facilitating the just, expeditious, proportionate and affordable dispute resolution of all matters governed by the Appellate Jurisdiction Act. Hence the records existing were considered to be enough for determining the issue in dispute.

This case developed another jurisprudence in labour matters on the application of the overriding objective principle. It is distinguished from other discussed cases herein above like the *VIP Engineering case* on the grounds that first it a labour case, second, it development the principle that, where the record is adequate for determination of the issues raised in the appeal without the missing documents, the appeal cannot be found to be incompetent. Thus, it is possible to determine an appeal where the existing documents are sufficient to determine the appeal. It further insisted that the cardinal principle is that the law does not demand a hundred perfect records of proceedings. The court continued to entertain the appeal notwithstanding the missing records of appeal because they were not essential. However, in the *Mondorosi case* and *VIP Engineering case* the court struck out the appeal merely basing on the missing letter requesting for a copy of judgment and proceedings which were not essential in determination of the appeal.

3.1.6 Martin D. Kumaliya and 117 Others v. Iron and Steel Ltd³⁸

In this application the applicant moved the Court to strike out the notice of appeal since the respondent failed to take essential steps to institute the intended appeal for over two years. Also, there was no proof that the appellant ever requested to be supplied with copies of proceedings and judgment within thirty days and the same was not served to the respondents, thus as matters stand, there is no proof that the appellant requested for a copy of proceedings from the High Court for the purpose of his intended

³⁸ *Martin D. Kumaliya and 117 others v. Iron and Steel Ltd*, Court of Appeal of Tanzania at Dar es Salaam, Civil Application No. 70 of 2018 (Unreported), at p. 9.

appeal within thirty days of delivery of the impugned decision. Moreover, even if it is assumed that such a request was ever made, there is no indication that the respondent copied and served that letter on the applicants in terms of Rule 90 (2) of the Rules for it to be availed with the exclusion under the exception to Rule 90 (1) of the time required for preparation and delivery of the copy from the sixty days' limitation for instituting an appeal.

Furthermore, in this case the CAT was invited to invoke the overriding objective principle to cure the mischief on the part that failed to take essential steps to institute the appeal. The court held that the introduction of an overriding objective intends to facilitate the just, expeditious, proportionate and affordable resolution of disputes. The court insisted that; since this principle is a vehicle for attainment of substantive justice, it will not help a party to circumvent the mandatory rules of the Court. Hence the CAT did not invoke the principle because the respondent failed to take essential steps to institute an appeal as required by the law. This decision developed jurisprudence on application of the overriding objective principle and failure to take necessary steps on time cannot be cured by an overriding objective principle. The CAT in the case of *Erick Raymond Rowberg, Hartley David Kinga and Emokloloseki Spsiring Farm Ltd v. Elisa Marcos and David Elisa Marcos* invoked the same principle.³⁹

3.1.7 *Commissioner General Tanzania Revenue Authority v. JSC Atomredmetzoloto (ARMZ)*⁴⁰

The appellant, Commissioner General of Tanzania Revenue Authority (CGTRA), challenged the decision of the Tax Revenue Appeals Tribunal (the Tribunal) which sustained the decision of the Tax Revenue Appeals Board

³⁹ *Erick Raymond Rowberg, Hartley David Kinga and Emokloloseki Spring Farm Lts v. Elisa Marcos and Davit Elisa Marcos*, Court of Appeal of Tanzania at Arusha, Civil Application No. 571/02 of 2017 (Unreported), at p. 9.

⁴⁰ *Commissioner General Tanzania Revenue Authority v. JSC Atomredmetzoloto (ARMZ)*, Court of Appeal of Tanzania at Dar es Salaam, Consolidated Civil Appeal No. 78 of 2018 (Unreported), at p. 10.

(the Board). Having been unsuccessful in the first and second appeal, the appellant lodged an appeal to the Court challenging the decisions of the Board and the Tribunal.

Before the appeal could be determined, it was confronted with three preliminary points of objections which the CAT had to determine first before determining the appeal. The preliminary objection was that, the appeal is without the record of appeal on the ground that the supplementary record was filed out of time and supplementary record was served out of time on the respondent.

In this case, the court was invited to strike out the appeal which was incompetent for filing incomplete records of appeal to wit documents which were annexed in written submission and by including different matter from what transpired during the proceedings. However, the CAT unanimously applied an overriding objective principle to cure the mischief by stating that, upon our nature consideration, we think this is a case where the court should have due regard to the need to achieve substantive justice. Thus in the spirit of the overriding objective of the court, we accordingly grant leave to the appellant to lodge the omitted copies of the written submission within 21 days from the date of this ruling, the appeal stands adjourned until the time when the registrar will notify the parties. The CAT this time did not strike out the application instead it adjourned the hearing to give room to the parties to file a supplementary record of appeal. This approach has been subsequently applied in the case of *Jeremiah Kunsindab v. Leila John Kunsindab*.⁴¹ and the case of *Jovet Tanzania Limited v. Bavaria N.V*⁴²

⁴¹ *Jeremiah Kunsindab v. Leila John Kunsindab*, Court of Appeal of Tanzania at Mwanza, Civil Appeal No. 260 of 2017 (Unreported), at p. 9.

⁴² *Jovet Tanzania Limited v. Bavaria N.V*, Court of Appeal of Tanzania at Dar es Salaam Civil Application No. 207 of 2018 (Unreported), at p. 7.

The approach adopted in this case on the application of overriding objective principle is commendable and contributed to the development and application of the principle in Tanzania. However, in other instances cited above, the court did not invoke the same approach instead it struck out the appeal for being incompetent instead of adjourning the appeal and giving the party an opportunity to file supplementary records of appeal for the purposes of promoting substantive justice.

3.1.8 *Sanyou Station Ltd v. BP Tanzania Ltd (Now Puma Energy (I) Ltd*⁴³

The applicant in this application applied for extension of time in which to apply for revision of the judgment and decree of the High Court in Land Case No. 148 of 2005. The respondent resisted the application by filing a preliminary point of objection basing on the competence of the application on account of the supporting affidavit bearing a defective verification clause. The second point of objection was that, the application for revision is not maintainable because the order sought to be revised is appealable. The basis of preliminary objection of the affidavit was the wrong numbering of the affidavit indicating the first paragraph as Number 6 instead of Number 1, then going about to *verify* the paragraphs whose numbers are wrong. Also some of the paragraphs, number 10 to 13, have not been verified.

The respondent pressed the court to strike out the application for revision since the sought affidavit bears defective verification clause. The CAT invoked the overriding objective principle to cure the mischief in the affidavit by stating that true rules of procedure should be followed but not without a sense of reasoning and justice. The preliminary objection was overruled and the CAT gave an order to amend the affidavit in order to cure the defective verification clause.

⁴³ *Sanyou Station Ltd v. BP Tanzania Ltd (Now Puma Energy (I) Ltd*, Court of Appeal of Tanzania at Dar es Salaam Civil Application No. 185 of 2018 (Unreported), at p. 10.

The decision in this application is also peculiar and distinguishable with other discussed decisions. It invoked the application of the overriding objective principle on the verification clause. This position cured the rigid position of the CAT that failure to verify some paragraph in the affidavit renders the application incompetent. Or the paragraphs with defects are expunged from the record. However the court gave an opportunity to the parties to amend and file supplementary affidavits for the purpose of promoting substantive justice.

3.2 Analysis of the Legal Dilemmas on Application of Overriding Objective Principle by the CAT

The procedural law is not free of obscurities.⁴⁴ There is no great complaint in regard to substantive law. This is because courts recognize rights and wrongs, and as new conditions arise new rights are judicially declared.⁴⁵ However, procedures are not static, and their applications depend on many factors thus creating legal dilemmas. The overriding objective principle generally speaking, is procedural in nature as it intends to facilitate substantive justice in the courts of law.

The following is a brief analysis of the legal dilemma on application of the principle by the CAT. The analysis will base on the already cited decided cases above and the amended Acts which established the principle. It is through this analysis the legal dilemmas will be indicated in regard to the application of the principle. The following are legal dilemmas on the application of the principle by CAT:-

⁴⁴ Mulla D. F., & Venkarama, T.L, *Mullas Code of Civil Procedure*, (13th Edn.), New Delhi: Law Publishing Company, 1965, at p. 1.

⁴⁵ Lawson J.D., (1910) "Technicalities in Procedure, Civil and Criminal", (1)1, *Journal of Criminal Law and Criminology*, p. 63, at pp. 73–10.

3.2.1 *Errors to draw a proper Link Between Article 107A (2) (e) of the Constitution and the Principle*

The author also had an opportunity to interview one of the judges of the High Court⁴⁶ at Dar es Salaam on the application of the principle. He profusely responded that the principle intends to amplify what was directed by the Constitution. It is therefore wrong for some people to over emphasise on principle without first taking into account the Constitution which is the mother law directing for the same aspect of handling procedural technicalities. It was his humble view that, in order to invoke proper interpretation of the principle; provision that ought to be considered is article 107A (2) (e) of the Constitution.

He further opined that, where parties appear before him with technicalities issues, be as what it may he is interested with the merits of the case. In regard to the principle, he was of the view that it intended to minimise procedural technicalities and fasten the hearing of cases before the court. He is aware that the principle cannot be applied in every situation but most of the situation may be cured by the principle when Constitutional spirit is properly considered.⁴⁷

The said interviewee cited a copy of ruling of *Alliance one Tobacco Tanzania Limited and Another v. Mvujuma Hamisi Another*⁴⁸ where the High Court applied an overriding objective principle. In this case there was an application seeking extension of time for the applicants to file an application for leave to appeal to the Court of Appeal of Tanzania where in reply the respondent raised a

⁴⁶ High Court Judge, Interview by the Author (24 January 2020, UDSM, Dar es Salaam).

⁴⁷ High Court Judge., Interview by the Author (25 March 2020 at UDSM, Dar es Salaam).

⁴⁸ *Alliance one Tobacco Tanzania Limited and Another v. Mvujuma Hamisi Another*, High Court of Tanzania at Dar es Salaam, Misc. Civil Application No. 803 of 2018 High (Unreported), at p. 5.

'plea in *Limine Litis*⁴⁹ to the effect that the applicant application is incompetent for being filed under wrong provision. The court overruled the objection and allowed the applicant to insert the proper provision of law through a hand written form. He insisted that this is a spirit of overriding objective principle.

3.2.2 *The CAT has not Properly Directed on the Object and Reasons Stipulated in the Bill in Order to Explore the Intention of the Principle*

The major object of the principle is to give effect to Article 107 A (2) (e) of the Constitution by doing away with procedural technicalities that circumvent substantive justice and to timely dispose of cases at a reasonable cost. However, the court in the case of *Mondorosi Village Council and 2 others v. Tanzania Breweries Limited and 4 others*, just quoted few words on the objects and reasons in the Bill⁵⁰ by stating that, the proposed amendments are not designed to blindly disregard the rules of procedure that are couched in mandatory terms.

However, that was a narrow interpretation of the Bill because the said bill elaborates further than what the court applied. It says on the same aspect that: the proposed amendment is not designed to blindly disregard the procedural rules that are couched in mandatory way but it aims at tasking the CAT before striking out the matter on procedural technicalities to weigh out the interest of substantive justice and decide whether there is an alternative available instead of striking the matter before it.

Therefore, the Court in Mondorosi's case had to weigh out by looking at the interest of substantive justice and find out the possibility or an alternative instead of striking the matter which was placed before it. That is why this

⁴⁹ Preliminary point of objection.

⁵⁰ Bill Supplement to the Gazette of the United Republic of Tanzania No. 23 Vol. 99 dated 8 June 2018.

article insists the CAT should scrutinize more on the object purposes of establishing the principle in order to cure some obvious legal dilemmas.

3.2.3 *Uncertainty on the Type of Missing Documents in the Records of Appeal that may be Cured By the Principle*

A missing letter requesting records of Appeal in the case of *Mondorosi Village Council and 2 others v. Tanzania Breweries Limited and 4 others*⁵¹ was held to be fatal and it could not be cured by the principle. On the other hand in the case of *Gaspar Peter v. Mtwara Urban Water Supply Authority (MTUWASA)*⁵² the missing copy of proceedings and admitted exhibits was held not to be fatal and the Court invoked the overriding objective principle to promote substantive justice.

It is strongly argued that, with due respect, this is a misconception of the application of the principle. Ordinarily a mere letter requesting for the records of appeal does not in any way determine the rights of the litigants after all it is a document written by a party after adjudication for the purposes of requesting records of appeal. The missing of admitted exhibits and proceedings in the records of Appeal goes to the root of the case, which is subject of appeal. This type of application created a legal dilemma that this article addresses for the better application of the provision of the principle.

3.2.4 *Remedies which the Court Should Order in Case It Allows the Application of Overriding Objective Principle are not Clear*

The court has invoked different remedies in cases where it applied the principle. This creates uncertainties as to what remedy exactly is available to a party in case the court invokes the principle. A good example is the case of *Commissioner General Tanzania Revenue Authority v. JSC Atomredmetzoloto*

⁵¹ *Mondorosi Village Council and 2 others v. Tanzania Breweries Limited and 4 others*, above note 33, at p. 14.

⁵² *Gaspar Peter v. Mtwara Urban Water Supply Authority (MTUWASA)*, above note 35, at p. 13.

(ARMZ)⁵³ where the court was invited to struck out the appeal on the ground of incompetence, it invoked the principle and gave a party a distinct remedy by adjourning the appeal pending the filing of supplementary records of appeal. The CAT briefly stated that: “*In the meantime the two appeals stand adjourned to a date to be fixed by the registrar*”.

On the other hand in the case of *Jovet Tanzania Limited v. Bavaria N.V*⁵⁴ the Court invoked the principle but it did not stay the proceeding pending the filing of supplementary documents. The argument here is that, what remedy does the court ought to give to parties in respect of the filed incomplete records of appeal as to whether the same should be stayed pending the filing of the missing documents in the prescribed time or the court should strike them out of the court records until when they conform with the requirements of law. This aspect unduly creates a legal dilemma in terms of the application of the principle by the CAT.

3.2.5 *Another Legal Dilemma is on the Application of the Rule that Parties Have no Mandate to Choose Which Document to Include in Record of Appeal and which One not to Include*

The court has sometimes stated that as a general principle parties to appeal have no mandate to choose which documents to include in the record of appeal and which one should not be included. In the case of *Mondorosi Village Council and 2 others v. Tanzania Breweries Limited and 4 others*⁵⁵ the court was confronted with the issue on the legal status on the missing letter requesting for records of appeal, and at this instance the CAT did not invoke overriding objective principle by stating that:

⁵³ *Commissioner General Tanzania Revenue Authority v. JSC Atomredmetzoloto (ARMZ)* above note 41, at p. 14.

⁵⁴ *Jovet Tanzania Limited v. Bavaria N.V*, Court of Appeal of Tanzania at Dar es Salaam Civil Application No. 207 of 2018, (Unreported) at p. 7.

⁵⁵ *Mondorosi Village Council and 2 others v. Tanzania Breweries Limited and 4 others*, above notes 36, at p. 14.

“The appellants thus, have no mandate to choose which documents are important and which are not, to be included in the record of appeal.”

Whilst in the case of *Commissioner General Tanzania Revenue Authority v. JSC Atomredmetzoloto (ARMZ), Jovet Tanzania Limited v. Bavaria N.V, and Gaspar Peter v. Mtwara Urban Water Supply Authority (MTUWASA)*⁵⁶ the CAT invoked the principle by allowing necessary inclusion of the missing documents in the record of appeal. This implies that the parties can choose which documents to include and which one not to include hence creates a legal dilemma.

It is the strong contention in this article that the CAT has created a legal dilemma where at some instances some parties are allowed to choose which document to be included in the record of appeal while others are not. This creates a double standard in application of the principle which is not tenable in administration of justice.

3.2.6 *Parts of Defective Affidavit which can be Cured by the Principle are not Clear*

In Tanzania affidavit is governed by several laws including Civil Procedure Code⁵⁷ and the Notaries Public and Commissioners for Oaths Act.⁵⁸ According to those laws governing affidavit there are matters which must be included in the affidavit such as the *jurat* of attestation, verification and the facts which are within the knowledge of the deponent or which he is able to explain its sources. The CAT in addressing the principle, it has not deliberated clearly which defects in the affidavit does or does not render the affidavit defective. In the case of *Sanyou Station Ltd v. BP Tanzania Ltd (Now*

⁵⁶ *Commissioner General Tanzania Revenue Authority v. JSC Atomredmetzoloto (ARMZ)*, above notes 41 at p.15 and *Jovet Tanzania, Limited v. Bavaria N.V, and Gaspar Peter v. Mtwara Urban Water Supply Authority (MTUWASA)*, above notes 37 and 48, at p. 7.

⁵⁷ O. XIX R. 1,2 and 4 of the Civil Procedure Code CAP 20 [R.E. 2019].

⁵⁸ Notaries Public and Commissioners for Oaths Act CAP 12 [R.E 2019].

*Puma Energy (T) Ltd*⁵⁹ it was held that defective verification clause could not render an affidavit defective. The CAT is required to go further to explain even where the matter was not in issue as to what matters generally in an affidavit do not render it defective in order to create certainty in the application of the principle.

3.2.7 The Roles of the Parties and Advocate to Further Overriding Objective Principle are not Clear and Create Difficulties in Application of the Principle

The amended Acts imposes duty to a party to civil proceedings or an advocate for either party or for both parties as the case might be. Their duties are to assist the court to promote the principle provided in the amended Acts by participating in the court process and to comply with the directions and orders of the Court.⁶⁰ Ideally, advocates and parties have to participate in proceedings and comply with the court orders.

It is strongly argued in this article that this provision leaves much to be desired hence creating a legal dilemma in terms of application of the principle. The participation of court proceeding and complying with court order by itself does not promote the principle. Sometimes court orders are completely in breach of principle, perhaps parties will not be actively involved in the proceedings as expected.

3.2.8 Application of Overriding Objective is Considered as a Game of Chance

The findings on an interview⁶¹ conducted between the author and an advocate on the application of principle by the CAT revealed that, the application of the principle is considered as a game of chance. This happens

⁵⁹ *Sanyou Station Ltd v. BP Tanzania Ltd (Now Puma Energy (T) Ltd*, above note 44, at p.10.

⁶⁰ Section 3 B (2) of the Appellate Jurisdiction Act CAP 141 [R.E 2019] as amended by Section 4 of the Written laws Miscellaneous Amendment Act, No. 8 of 2018 and Section 3B (2) of the Civil Procedure Code CAP 33 [R.E 2019].

⁶¹ Advocate, Interview by the Author (20 January 2020, Kariakoo Dar es Salaam).

when there is a pending matter in court of law which is confronted with some procedural irregularities. Normally, an advocate cannot be sure on the application of the Principle by the CAT until the time the court gives its decision. He further said that he has seen most advocates resorting to an overriding objective principle wherever there is a preliminary point of objection, which in his opinion the principle cannot cure every shortfall in preliminary point of objection. When he was further interviewed to his opinion on what type of objections which can be cured by the principle and the one which cannot be cured, he quickly responded that the principle cannot cure the issues of jurisdiction of court and time limitation.

When he was further questioned on the appropriateness of the application of the principle by the CAT, he strongly remarked that still there is confusion. He could not remember cases where the Court applied the principle; however its application has created confusion. Finally, he insisted that to the best of his knowledge there is a great confusion in the interpretation of the principle by the CAT and he considers its application as a game of chance.

4. RECOMMENDATIONS

4.1 Change of the Mindset of the Justices of Appeal and Other Judicial officers

The CAT justices of appeal and other Judicial Officers should completely change their mindset on the application of procedural rule. The rules of procedures should be applied with a sense of reasoning and flexibility. The draconian approach of dismissing the appeals on minor errors like misspelling the name of the judge as it has been shown in the case of *Marwa Kachang'a* ought to be avoided at the costs of justice. The spirit of concentrating on substantive justice ought to be overemphasised to all judicial officers. It is through the transformation of the mindset of judicial officers where substantive justice may be achieved.

4.2 Amendment of Other Procedural Laws to Give Effect to the Principle and Simplify the Procedural Rules

The parliament should amend the Criminal procedure Act,⁶² Government Proceedings Act⁶³ and other procedural law to give effect to the principle. From the objects and reasons for introducing the overriding objective principle it is apparent that it does not cover Criminal Procedure Act when the matter is before the District Court or Resident Magistrate Court of the High Court. Thus, the principle should be incorporated in other procedural laws in Tanzania as explained above.

Honourable Chande in his address to the Bar on Law day 2012, made a critical observation regarding application of procedural technicalities. He opined that efforts must be made to simplify and streamline court procedures to render them more user friendly and less technical. He noted that:

“Procedural justice constitutes another imperative challenge to the system of administration of justice. It has a direct influence on justice delivery. Article 107A (1) (e) of the Constitution enjoins the Court to dispense justice without being tied up with undue procedural technicalities.”⁶⁴

4.3 CAT Should Depart from the Previous Decisions through Its Powers of Review and Reference

The CAT has powers to rectify the contradicting decision through review and reference.⁶⁵ In order to enhance proper application of the principle, the

⁶² Criminal Procedure Act CAP 20 [R.E. 2019].

⁶³ Government Proceedings Act CAP 5 [R.E 2019].

⁶⁴ Othman, M.C., (2012), Keynote Address of Chief Justice on the occasion of the Annual Conference of the Tanganyika Law Society, 17 February 2012, Arusha, Tanzania at p. 21.

⁶⁵ Fimbo G.M., *An Exposition of the Court of Appeal Decisions on Procedural Law; Hand Book*, Breakfast Talk at the University of Dar Salaam, New Board Room on 2nd December, 2017, p. 157.

Court of Appeal of Tanzania ought to correct itself through the power of reference and review by departing from previous decisions, resolution of conflicting decisions and overriding previous decisions. Wherefore this will enhance certainty on the application of the Principle. For example, as discussed earlier it is not clear on which missing documents in the records of appeal are cured by the principle. This aspect has two conflicting decisions where the missing of a letter requesting for records of appeal was held fatal and missing of exhibits and copy of proceedings in the records of appeal was easily cured by the principle. On the basis of the above reasons, this type of decision ought to be harmonised by the CAT in order to facilitate consistent application of the principle.

4.4 The CAT Ought to Redirect Itself Properly to the Object and Reasons for Introducing the Overriding Objective Principle

In order to establish the scope and application of the principle, it is pertinent for the CAT to direct itself properly to the objects and reasons for establishment of the principle as stated in the Bill.⁶⁶ This article over emphasised on the importance of objects and reasons of the Bill for obvious two reasons. Firstly, the traditional approach of dealing with the substantive justice as required by the Constitution⁶⁷ proved futile and secondly it is through objects and reasons where the purpose of enacting a particular law can be identified and the existing mischief which a particular law intends to cure. It is supposed that this may be one of the starting points for proper understanding and interpretation of the principle by the CAT.

Thus, the object and reasons that amended the Appellate jurisdiction Act and the Civil procedure Code which introduced the overriding objective principle is geared on the following reasons: - That despite the provision of art. 107 A (2) (e) of the Constitution directing the Court in Tanzania to dispense Justice.

⁶⁶ Bill Supplement to the Gazette of the United Republic of Tanzania, above note, 61 at. 17.

⁶⁷ The Constitution, above note, 16 at p. 5.

There are so many appeals, revision, review and other applications that have been stuck out on the grounds of procedural technicalities. This implies Article 107 A (2) (e) did not resolve the problem of procedural technicalities hence substantive justice is obstructed (emphasis supplied). It is strongly recommended that the CAT of Tanzania ought to redirect properly on the objects and reasons of establishing the principle for its proper application.

4.5 The CAT Must Reconsider the Spirit of Article 107(A)(2)(e) When Applying the Principle

The syndrome of the CAT to decide cases on technical grounds cannot be ruled out. Ironically some practitioners have been referring to it as a court of technicalities.⁶⁸ It is high time for the CAT to negate that assumption in order to facilitate substantive justice as required by the Constitution. It must be noted that the principle is not greater than the Constitution. Pertinently the Court should adhere to the spirit of the said Constitution provision which will enable it to properly apply the principle.

It is worth remembering that procedural law is not to be tyrant but a servant, not obstruction but an aid to justice. It has to be wisely observed that procedural prescriptions are handmaid and not mistress, a lubricant, not a resistant in administration of justice. Courts are to do justice and not to wreck this end product of technicalities.⁶⁹ CAT should strike a balance between respecting procedural rules on one hand and the effect of breaching them on the other hand.⁷⁰ The aim is to ensure that substantial justice is achieved.

⁶⁸ Advocate Id, note 62 at p. 23.

⁶⁹ Takwan, C.K., *Civil Procedure*, (6thEdn.), Lucknow: Eastern Book Company, 1968 at p. 9.

⁷⁰ Utamwa, J.H.K., “Investigation for Promoting Fair Trials in Tanzania: The Case of Conducting Proceedings and Preliminary Hearing Sequentially”, PhD Thesis, University of Dar es Salaam, 2018 at p. 104.

4.6 The CAT Should Interpret the Scope of Using Suitable Technology and Participation of Parties in Promoting the Principle

The use of the terms suitable technology and participation by the parties in proceedings as used in the principle are too general. The court should interpret the scope of the use of technology for the purposes of promoting the principle. It is suggested that the use of technology ought to be considered in terms of electronic filing of the documents, video conference hearings, the use of cellular phone and email in communication to reduce litigation costs and serve time of courts and litigants. Also, the scope and extent of participation of parties in litigation for promoting the principle ought to be clarified. It is supposed that participation of parties should involve filing the required document on time as required by law. To assist the court in case it overlooks the rules guiding it, to make research where an advocate is involved on a matter in dispute and to take all necessary steps in litigation as required by the law.

4.7 Conducting Further Legal Research on the Proper Application of Principle is Highly Recommended

The author recommends further legal research on proper application of the principle. The academia, researchers, law practitioners, members of the bench and other stakeholders are called upon to indulge in making legal research pertaining to the application of the principle. The research may be viewed from different perspectives such as the practice in some other selected jurisdiction and the existing rules on the application of the overriding objective principle. It is through this practice the dilemma in the application of the principle can be minimised. It is vivid that out of ten cases on the application of the principle examined in this work neither the advocate nor the court took trouble to compare the practice of the principle from other jurisdictions. This alone shows that not much research has been done on this aspect. It is high time to conduct more research on the application of the principle in order to come out with the proper application and interpretation of the principle in Tanzania.

5. CONCLUSION

Generally, in enunciating the overriding principle, the courts of law and the Court of Appeal of Tanzania was not saying something new. It was stating what was expected of courts and other dispute settling institutions over the years. Thus, the introduction of the principle is a good step towards facilitating substantive justice in the CAT and other subordinate courts to it. However, it has been noted that there are some legal dilemmas in terms of the application of the principle. The dilemmas have been culminated by rigidity of justices of appeal on strict adherence of procedural, failure to understand the objects and reasons for the establishment of the principle. The CAT also has been considered to be rules oriented hence misconstruing the overriding objective principle.

CAT has shown intention to embrace the principle in some situations. Notwithstanding the good intention by the CAT, it is unsettled as to at what point in time the court will invoke the principle. It is discretion because it is applied at the whims of the Court, there is no hard and fast rule on the application of the principle. It is a principle of law that similar cases must be treated in similar manner unless there are material differences recognized by law. The author commends the introduction of the principle and its application by the CAT.

In order to achieve the intended purposes of the principle, it is pertinent to have the rules on the application of the principle. The CAT must properly interpret the principle depending on the circumstance of each case. The author recommends further legal research in order to improve the application of the principle. Academia, practising advocates and the Court have a primary duty of making research in order to promote development of law under this aspect. This can be done by revisiting the application of the principle in other jurisdictions and to find out the possibilities of adopting selected practices from other jurisdictions with a similar justice system with that of Tanzania.