

# Judicial Responses to Climate Change in Tanzania: Has the Paris Agreement Sparked Emerging Jurisprudence?

**Gervas E. Yeyeye**

Assistant Lecturer and a PhD Candidate, at the Open University of  
Tanzania,  
*gervas.emmanuel@out.ac.tz*

## **Abstract**

*The Paris Agreement has set a legally enforceable legal framework that has enjoyed substantial international support thus creating a global context for climate litigation. This, however, has prompted an increase in climate change cases in many jurisdictions with courts in the global north and south forming new laws to ensure that governments and businesses are held liable for climate-related damages, although this trend has not been uniform across all countries. This study aims to analyze the role of the judiciary in addressing climate change in Tanzania, with a specific focus on the influence of the Paris Agreement in shaping emerging climate change jurisprudence. Through doctrinal research and expert survey, the study finds that Tanzanian courts primarily rely on domestic laws enacted before the Paris Agreement, and the lack of consistency with the Paris Agreement prevents the incorporation of its concepts into judicial decisions. The study suggests modernizing Tanzania's legal structure to reflect international climate commitments and increasing the judiciary's ability to handle climate-related disputes.*

**Keywords:** *Climate Litigation, Paris Agreement, Tanzanian Judiciary, Environmental Law, Jurisprudence*

## **1.0 Introduction**

Addressing climate change as a global issue requires the participation of all levels of government and working together because each level has its specific role.<sup>1</sup> In Tanzania, the legislature, the executive, and the judiciary are all vital in addressing the global effects of climate change. The consequences of changing climatic conditions are seen in the new trends in weather frequency of droughts and floods and increasing high temperatures that affect the economy and setbacks development in the nation.<sup>2</sup> To lessen these effects, the Tanzania government has implemented a national legal framework and policies meant to reduce climate change's effects through various international benchmarks.

---

<sup>1</sup> B.J. Preston, The Contribution of the Courts in Tackling Climate Change, *Journal of Environmental Law*, Vol. 28, No. 1, 2016, pp. 11-17

<sup>2</sup> United Republic of Tanzania, *National Climate Change Response Strategy 2021-2026* (Division of Environment, Vice President's Office 2021), p. 26.

Policies come up with such provisions as the management of the environment, the design of urban areas, land aspects, water, health care, and the management of disasters. In turn, the Tanzania government has responded to the issue of climate change as well as the provisions of the Paris Agreement by formulating Nationally Determined Contributions (NDCs)<sup>3</sup> and the National Climate Change Response Strategy (NCCRS).<sup>4</sup> These strategies aim to prepare the country for effective climate change and adaptation through resilience policies in different areas including social, economic, and ecological aspects.

Despite these steps, there remains a notable gap in how the judiciary interprets and enforces these measures, particularly when it comes to harmonizing national strategies with some global commitments like the Paris Agreement. Tanzania's inconsistency with the Paris Agreement significantly undermines efforts for global climate change mitigation. The country finds it hard to harmonize its policies with what other nations of the world have committed to, and this weakens the collective struggle against adverse climatic change. This inconsistency may be observed in various ways, at both local and global levels. For example, Tanzania aims to reduce its greenhouse gas emissions by 30-35% by 2030, but the implementation of this target remains unclear.<sup>5</sup> It is the case that not only such government and legislative actions are important, but also the dimension of mapping and drafting detailed analysis of the effectiveness, compliance, and localization of the said policies is missing. Furthermore, there is a scarce appraisal of the initiatives concerning the socioeconomic conditions set forth combating climate change or the global frameworks set forth for effectiveness and equity purposes.<sup>6</sup> This underscores that there is an urgent need to assess the effectiveness of the judiciary particularly in addressing those challenges and holding the government of Tanzania accountable for its climate action.

Furthermore, the judiciary ought to be the strength in fighting climate change as it is a tool through which governments and corporations can be held accountable for their activities that damage the environment, and

---

<sup>3</sup> Art 3 of the Paris Agreement, 2015, obligates states to undertake and communicate ambitious nationally determined contributions (NDCs) to the global response to climate change.

<sup>4</sup> NCCRS, *ibid*, (n.3).

<sup>5</sup> P.M. Ndaki, et al. Role of Renewable Energy Policies for Effective Climate Change Mitigation Actions in Tanzania, (2022) *Journal of The Geographical Association of Tanzania*, 42(2), 23-52. doi: 10.56279/jgat.v42i2.159.

<sup>6</sup> The Paris Agreement, *ibid*, n.4, art 7.

citizens who have been affected in one way or another can get redress. Judges from different jurisdictions are increasingly taking matters into their own hands and defying the ignorance of their parliaments, claiming that they must interpret and apply the law in a manner that deals with the present environmental issues. Notable figures like Justice Douglas of the American Supreme Court and Lord Carnwath of the British Supreme Court underline the judiciary's critical role in holding governments and corporations responsible for environmental damage.<sup>7</sup> Their viewpoint emphasizes the judiciary's responsibility in translating international obligations, such as those established in the Paris Agreement, into concrete environmental safeguards. Justice Benjamin of the Federal District Court of Curitiba in Brazil expresses this stance, emphasizing the need for the court to effectively enforce environmental legislation and preserve the right to a healthy environment.<sup>8</sup> His perspective highlights the crucial need for judicial intervention in locations where climate change is a direct threat to community health and livelihoods. This proactive approach is critical to effectively fighting the negative consequences of climate change.

Justice Preston of Australia goes on to argue that environmental rules should be actively implemented through rigorous judicial reviews rather than becoming just ambitions.<sup>9</sup> His emphasis on investigating both public and private players guarantees that environmental legislation and international commitments are followed, increasing the judiciary's role in the implementation of climate change mitigation initiatives. In Tanzania, the ideals of judicial independence and integrity, as defined by former President Julius Nyerere and Justice Mwalusanya, are critical considering climate change. Nyerere's claim that judicial independence does not imply isolation from national life underlines the significance of judges exercising their judgment and integrity to serve justice without extraneous interference. Justice Mwalusanya advocates a balanced approach in which courts navigate between government instructions and social realities, making rulings that consider current community needs and long-term environmental implications.<sup>10</sup> The court in diverse countries agrees

---

<sup>7</sup> See *ClientEarth v. Secretary of State for the Environment, Food and Rural Affairs*, [2015] UKSC 28.

<sup>8</sup> A.H. Benjamin, Ruling in *Federal Public Ministry v. Union of Brazil and Others*, Federal District Court of Curitiba, Retrieved from <https://climatecasechart.com/non-us-case/federal-public-prosecutors-office-mpf-v-brazil-and-others-sea-advance-and-coastal-erosion/>. (Last Accessed August 28, 2024).

<sup>9</sup> *Gloucester Resources Limited v. Minister for Planning* (2019) NSWLEC 7,

<sup>10</sup> J.L. Mwalusanya, Checking Abuse of Power in a Democracy, Constitutionalism and the Legal System in a Democracy, in S. H. Bukurura, *Judiciary and Good Governance in Contemporary Tanzania. Problems and*

that it must actively deal with and adapt to the difficulties presented by climate change.

Despite the courts' commendable role, the judicial response to climate change in Tanzania faces significant challenges that undermine effective litigation and policy enforcement. These barriers arise from a combination of legal, institutional, political, and economic factors that collectively constrain the judiciary's capacity to address climate-related issues comprehensively. The lack of a strong legal framework particularly designed for climate change considerably hinders the court's capacity to settle such cases successfully. Lacking clear legislative regulation, courts frequently rely on legal doctrines, which are insufficient to address the complex nature of climate challenges.<sup>11</sup> Additionally, judicial unwillingness to contest climate change cases, frequently dismissing them on grounds of justiciability, involving doctrines of *locus standi* and political questions, further limit progress.<sup>12</sup> Moreover, the implementation of the Paris Agreement introduces its own set of issues that confuse the international efforts to fight climate change. The principle of differentiated responsibilities which is considered an international environmental standard giving rights and duties among developed and developing nations, creates difficulties in achieving consensus on emissions reductions and financial commitments.<sup>13</sup>

The introduction discussion of this study revolves around the submission that, the judicial response to climate change in Tanzania is coiled into legislative and institutional constraints, judicial conservatism, justiciability issues as well as political and economic challenges. However, there are indeed notable ways that the judiciary can help in shaping or formulating such policies by adopting a proactive approach to influencing environmental policies that extend beyond short-term political and electoral cycles.<sup>14</sup> Tanzanian courts can emphasize the crucial role of judicial activism in climate change litigations by encouraging judges to address environmental issues that may not be adequately managed by

---

Prospects, Chr. Michelsen Institute Report, Bergen Norway, 1995, retrieved from <https://core.ac.uk/reader/59168440> (last accessed on 20/08/2024).

<sup>11</sup> H. I. Majamba, *Emerging trends in addressing climate change through litigation in Tanzania*. *Utafiti*, 18(1), (2023) 1–23. <https://doi.org/10.1163/26836408-15020070>.

<sup>12</sup> K.K. Fischer, 'The Legitimacy of Judicial Climate Engagement' (2020) 46(3) *Ecology Law Quarterly* 731.

<sup>13</sup> L. Wu, 'Paris Agreement: A Roadmap to Tackle Climate and Environment Challenges' (2016) 3(2) *National Science Review* 153. <https://doi.org/10.1093/nsr/nww030>.

<sup>14</sup> A. Luttenberger, and L.R. Luttenberger, (2015). *The role of the judiciary in combating climate change and environmental protection*. 54(169), 515–531.

legislative bodies. Judicial activism often manifests through the judiciary's willingness to expand the locus stand and interpret laws in ways that prioritize addressing climate protection.<sup>15</sup> Though these limitations are constraining in terms of Tanzania's judicial response, these opportunities illustrate the likely substantial transformational possibilities afforded the judiciary system in advancing climate change within an emerging jurisprudence framework and for adopting national efforts on international climate change commitments. This introductory analysis supports the study's objective through doctrinal research and expert surveys examining the judiciary's role in climate change in Tanzania while considering the Paris Agreement on climate change issues and environmental justice.

## **2.0 Integrating the Principles of the Paris Agreement into Tanzanian Judicial Practice: Progress and Challenges**

The principles of the Paris Agreement and their application within the Tanzanian judiciary have both achievements and difficulties. One of the most notable is the common progress that exists between the United Nations Framework Convention on Climate Change (UNFCCC)<sup>16</sup> and the Paris Agreement, in particular, these two documents are united in the aim of fighting climate change through resilience and adaptation.<sup>17</sup> Both documents emphasize sustainable development, human rights protection, precautionary measures, and resilience and adaptation strategies, all of which become visible at certain levels in Tanzania's judicial decisions. Such court decisions do not appear to cite the Paris Agreement but pronounce the jurisprudential reasoning regarding environmental protection stated under the UNFCCC.

### **2.1 Tanzania's Legal Commitment to the UNFCCC and the Paris Agreement**

The judiciary plays a significant role in fulfilling a state's international legal obligations in relation to the climate through the application and enforcement of national and international laws. Courts can order states to take more aggressive climate measures and consequently serve as change agents when the government fails to act.<sup>18</sup> Tanzania's legal commitment

---

<sup>15</sup> D. Castagno, (2024). *Challenging legal standing in climate change litigation*. 14(1), 47–72.  
<https://doi.org/10.1163/30504856-14010003>.

<sup>16</sup> The United Nations Framework Convention on Climate Change, (UNFCCC) 1992.

<sup>17</sup> Yamineva, Y. and Löther, N. *The UNFCCC and the Paris Agreement* (2024) 249–252  
<https://doi.org/10.4337/9781802209204.ch47>.

<sup>18</sup> In *Festo Belegele and Others v. Dar es Salaam City Council*, Miscellaneous Civil Cause No. 45 of 2001,

to UNFCCC and the Paris Agreement is an indication of the readiness to take part in international efforts geared towards addressing issues dealing with climate change and sustainable development. This commitment is evident through the integration of climate principles into national policies and strategies, but the effectiveness of these efforts links very much on the ability of the judiciary to enforce adherence to the concepts that will be articulated.

Tanzania is a signatory to the UNFCCC and the Paris Agreement, and the two treaties are part and parcel of their overall policy on environment and sustainable development.<sup>19</sup> UNFCCC provides a global response to climate change by reserving legally binding commitments on countries to reduce pollution emissions, develop plans for adaptation and provide means and technology to developing countries.<sup>20</sup> For Tanzania, this commitment has materialized in several national policies such as Tanzania National Climate Change Strategy that facilitates climate change adaptation and mitigation integration in the agriculture, energy and forestry sectors among others.<sup>21</sup> For the Paris agreement, Tanzania has presented its Nationally Determined Contributions (NDCs) in which it has pledged to abate the gas emission rate by 30-35% by the year 2030 whereby about 138 - 153 Million tons of Carbon dioxide equivalent (MtCO<sub>2</sub>e)-gross emissions is expected to be reduced.<sup>22</sup> This means that the set targets complement the Paris Accord's objectives, which aim to keep the global temperature rise above pre-industrial levels to no more than 2 degrees. At the same time, it is pursuing efforts to restrict the rise of global temperature to 1.5 degrees. The incorporation of such principles within Tanzania's policy context particularly through NDCs is an indication of understanding the pressing need to act toward dealing with climate change issues. This is supported and empowered by the NCCRS policies such as the Environmental Management Act<sup>23</sup> including the

---

High Court of Tanzania at Dar es Salaam, the Court compelled the Dar es salaam City Council to adopt appropriate waste management practices and stressed on the constitutional provision of the fundamental right to a healthy environment creating a strong legal framework for future controversies regarding climate change.

<sup>19</sup> Tanzania became a signatory to the UNFCCC on June 12, 1992, and ratified it on April 17, 1996, and became a signatory to the Paris Agreement in 2016, and ratified the agreement in 2018.

<sup>20</sup> UNFCCC, *above at note 17*, art 4.

<sup>21</sup> The National Climate Change Strategy (NCCS), 2012-2018, which is now been replaced by NCCRS 2021- 2026, *above at note.3*.

<sup>22</sup> URT-Vice President Office, National Determined Contributions (NDC's), 2021, p. 12, <https://droughtclp.unccd.int/node/2190/printable/pdf> (Accessed on 14.12.2024)

<sup>23</sup> Cap. 191, R.E. 2019.

commitments made towards impact assessments, sustainable land use, and forestry management practices.

The mechanism of accountability in the climate change agenda is addressed in the Paris Agreement's transparency provisions which include regular reporting by participating nations of Green House Gasses emissions, and measures to reduce and shift the effects. Tanzania has established the Climate Change Technical Committee to assist in the reporting process of the country and ensure that the country meets its obligations under the UNFCCC.<sup>24</sup> Yet the achievement of these obligations through the legal system still presents a gaping problem. Most of the policies for climate change in Tanzania are governed by enacted legislations in particular the Environmental Management Act and EIA regulations<sup>25</sup> which provide those major developments should be subjected to environmental impact assessment. These regulations arguably serve the purpose of article 4 of the UNFCCC of fostering development by promoting projects that do not destroy the ecosystem and contribute great GHG emissions. Nevertheless, the enforcement of these provisions is not uniform. In 2019, the Tanzania National Environmental Management Council (NEMC) issued an Environmental Protection Order (EPO) that provided directives to Acacia Mining (now part of Barrick Gold) to address pollution issues surrounding the tailings storage facility.<sup>26</sup> The fine imposed on the mine at that time was 5.6 billion Tanzanian shillings (\$2.4 million), accompanied by a strict ultimatum to comply with environmental laws or face serious consequences. This came after several previous fines and disputes regarding the discharge of toxic substances and failure to follow environmental guidelines.<sup>27</sup> The reason cited for the NEMC order was non-compliance with environmental safeguards, raising major concerns about the legal compliance of significant development projects. In this context, the fine highlighted the urgent need for legal instruments that are more aligned with the Paris

---

<sup>24</sup> Tanzania and the United Nations Framework Convention on Climate Change: Functions of the National Climate Committee, <https://unfccc.int/resource/ccsites/tanzania/coord/function.htm> (last accessed on 15.12.2024).

<sup>25</sup> The Environmental Management (Environmental Impact Assessment and Audit (Amendment) Regulations, 2018.

<sup>26</sup> Mining Technology, Tanzania fines Acacia \$2.4m over environmental damage, May 2019 <https://www.mining-technology.com/news/tanzania-fines-acacia-2-4m-over-environmental-damage/?cf-view> (Accessed 15.12.2024).

<sup>27</sup> Mining Technology, Tanzania fines Acacia Mining for breaching environmental regulations, January 2019, <https://www.mining-technology.com/news/tanzania-fines-acacia-mining-environmental/> (last accessed 15.12.2024).



Agreement and clearly outline how to achieve climate goals through government, corporate, and individual actions. While this dispute emphasized the need for environmental protection, there has not been a broader judicial movement toward deeper climate justice accountability.<sup>28</sup> The legal commitment by Tanzania to the UNFCCC and the Paris Agreement principles is indeed a major move that can be seen to be directing the efforts of the country to global climate governance. The translation of these signatures into measures that can be reinforced through the courts still stands out as a major issue.

## 2.2 Judicial Reasoning on Environmental Protection and Climate Resilience in Tanzania

Judicial reasoning on environmental protection and climate change in Tanzania is governed by the principles of sustainable development, respect for human rights, and adaptation to climates. The judiciary normally applies a precautionary approach that emphasizes on protection of the environment and the ecosystem for the benefit of humanity as well as for the fulfillment of global commitment on climate change including the Paris Agreement.<sup>29</sup> Economic activities such as land and industry use are often litigated against the constitutional right to a clean environment in an attempt to strike a balance and ensure justice and corporate responsibility. This perspective ties up environmental concerns and human rights and forms the basis for climate change mitigation strategies.

In *Chama cha Wafugaji Tanzania (CCWT) & Others v. Tanzania Forest Services Agency & Others*,<sup>30</sup> the court sought to appreciate the economic needs of pastoralist people while protecting the environment. While unfounded conservation efforts sought to stop the former, the court's decision to deny the *mareva injunction* sought to stop the latter reinforced the broader public good and the long-term ecological perspective. This assertion proved that the judiciary has business of following the precautionary principle which is meant to avoid the occurrence of environmental degradation by acting in anticipation of national and international obligations on environmental issues. The court also stressed the interdependence of the human rights and the environmental resources,

---

<sup>28</sup> S. Jodoin, 'Transnational Legal Process and Discourse in Environmental Governance: The Case of REDD+ in Tanzania' (2019) 44(4) *Law and Social Inquiry* 1019, doi: 10.1017/LSI.2019.7.

<sup>29</sup> O. Kelleher, *incorporating climate justice into legal reasoning: shifting towards a risk-based approach to causation in climate litigation* (2022) *Journal of Qualitative Research in Tourism*, 13(1) doi: 10.4337/jhre.2022.01.12.

<sup>30</sup> [\(Misc. Civil Application No. 22804 of 2024\) \[2024\] TZHC 9262 \(5 November 2024\)](#).



stressing the people's right to a clean environment. It admitted that the forest was important for climate resilience, such as prevention of soil erosion and increasing carbon sequestration, thus complementing Tanzania's climate change adaptation measures within the framework of international agreements such as the Paris Agreement.

Similarly, in the case of *Mohamed Abdallah Champunga and others v. Nliendele College of Agriculture (MATI)*,<sup>31</sup> the courts further observed the importance of land-grabbing protection in the development context. In this case, the judges acknowledged that the plaintiffs depend on land for their livelihoods and therefore emphasized fairness in the process of acquiring land. The court also emphasized the need to consult people, pay them for land reasonably, and follow legal processes, which reestablished human rights principles provided in the laws of Tanzania and in international treaties as the African Charter on Human and Peoples Rights. The judgment also promoted smallholder agriculture, which contributed to food security and climate change resilience, and stopped the increase of climate-related vulnerabilities arising from involuntary resettlements. In *Bismark Hotel Mining Company Limited v. Pangea Minerals Limited*,<sup>32</sup> matters related to the environment within industrial practices were addressed. Although some aspects remain obscure, the judgment placed emphasis on the need for companies to take responsibility and comply with environmental laws as part of sustainable development principles. The judiciary emphasized the right to a clean and healthy environment by holding mining activities responsible for environmental and climate matters. This also touches on the issue of human rights and the expected outlook of industrial activities.

In urban environmental instances, *Festo Belegele & Others v. Dar es Salaam City Council*,<sup>33</sup> and as well as *Felix Joseph Mavika v. Dar es Salaam City Commission*,<sup>34</sup> it was ruled that the municipalities were liable for the failure to manage waste correctly as well as the failure to plan the cities in ways that reduced the environmental impact and hence contributed to challenges of climate, flooding for instance. These decisions forced local governments to comply with effective waste management practices, hence the constitutional right on the right to a

---

<sup>31</sup> [2021], HC 2 of Tanzania, Mtwara District Registry.

<sup>32</sup> [2024] TZHC 7434.

<sup>33</sup> Festo Kabelege case, *above at note 18*.

<sup>34</sup> Miscellaneous Civil Cause No. 316 of [2000], High Court of Tanzania at Dar es Salaam.

clean and healthy environment was firmed. The courts tackled aspects of global warming and targeted enhancing the adaptation capacity at the local authority level, this stood as the precursor to engendering growth of Tanzanian climate change jurisprudence. It is quite clear that the judicial arm is key to fostering climate resiliency for the people of Tanzania. The courts display the ability to interpret laws in a manner that takes into account international obligations on climate change and constitutional law by harmonizing development with environmental protection. This provides a basis for the development of climate change case law, which enhances the accountability of parties and encourages the adoption of more sustainable activities.

The problems of enforcement and compliance, as already mentioned, point to the need for strong judicial measures to fill the gaps between legal pronouncements and how these decisions are affected in practice. These challenges also point to the fact that the consolidation of the court system of the law not only prevents the resolution of conflicts but also assists in establishing practices that comply with the requirements of the Paris Agreement. Thus, the judiciary serves as a key driver in the transformation of climate governance in Tanzania, making its role central to achieving the objective of this study.

### **2.3 Integrating the Paris Agreement into Judicial Decisions in Tanzania: Issues and Barriers**

Even though Tanzania signed the Paris Agreement on Climate Change, the court system in that country has not seemingly participated much in climate change-related litigation. This is even though Tanzania has made a formal commitment to the Agreement. Numerous other factors hinder the adoption of the Paris Agreement in the legal frameworks implementing the agreement. A few examples of these challenges are legal loopholes, limitations in institutional structures, and other barriers.<sup>35</sup> The cumulative effect of these factors makes it more difficult for the judiciary system of Tanzania to link the country's different legal structures with the requirements of the Paris Agreement. This has to do with the fact that Tanzania signed the Paris Agreement.

The main challenge faced by the judiciary sector of Tanzania in enforcing climate change enacted under the framework of the Paris Agreement is

---

<sup>35</sup> R. Kibugi et al, *Enabling Legal Frameworks for Sustainable Land-Use Investments in Tanzania: Legal Assessment Report* (2015) <https://doi.org/10.17528/CIFOR/005755>. (Last accessed 16.12.2024).

the lack of Comprehensive international laws enacted domestically.<sup>36</sup> This problem arises out of two legal aspects: the shortcomings and weaknesses of the Environmental Management Act (EMA) and the provision in the constitution to the effect that every international treaty has to be incorporated into domestic law through parliament. The EMA, as the main law of the environmental management of Tanzania, is indeed concerned with sustainable management of the environment and natural resources, however, it is not directed at climate change or the obligations established under the Paris Agreement.<sup>37</sup> Elements of climate change governance and management such as mitigation, adaptation strategies, or greenhouse gas compliance mechanisms such as carbon trading, are simply not existent. This barely enables the courts to have any legal basis to hear and determine cases arising out of climate change issues or to seek to implement international climate obligations within the jurisdiction of Tanzania. Another thorn in their flesh is Tanzania's constitutional requirement under Article 63(3)(e) which provides that treaties are self-executing after Parliament has domesticated them.<sup>38</sup> Even though the Paris Agreement has been ratified by Tanzania since 2018, no law has been enacted to bring the terms into the domestic law meaning it has no binding force in terms of the country. Therefore, it follows, that unless the principles of the Paris Agreement were incorporated into domestic legislation or other laws fortified them, the judiciary cannot apply the terms of the agreement and give effect to it.<sup>39</sup> This legislative limitation affects the ability of the judiciary to deal with issues relating to climate change. The courts do not have the power necessary to enforce the observance of international climate change commitments, which means the implementation of international climate obligations remains on paper only. In contrast, neighbouring countries such as Kenya and South Africa have enacted strong climate laws, including international treaties and the Paris Agreement. A national disaster fund is also set up considering the Climate Change Act in Kenya<sup>40</sup> as well as the National Environmental Management Act of South Africa<sup>41</sup> which strengthens their climate jurisprudence. To address these gaps, Tanzania should revise the

---

<sup>36</sup> H.I. Majamba, *Emerging trends in addressing climate change through litigation in Tanzania*, above at note 11.

<sup>37</sup> *Ibid.*

<sup>38</sup> The Constitution of the United Republic of Tanzania, 1977, Cap. 2, as amended from time to time

<sup>39</sup> R. Kabugi, *Enabling Legal Frameworks for Sustainable Land-Use Investments in Tanzania: Legal Assessment Report*, above at note 36.

<sup>40</sup> The Climate Change Act, 2016, sec 25.

<sup>41</sup> National Environmental Management Act, 1998 (NEMA), sec 24F

Environmental Management Act so that it pays attention to climate change and provisions that complement the Paris Agreement. The parliament should also consider the enactment of the Paris Agreement into law as a way of enforcing international obligations at the national level.

Tanzania's scarcity in legal precedents on climate change and the Paris Agreement inhibits the application of the judiciary in climate change governance.<sup>42</sup> Considering the international operational context and the growing climate change law, the courts have faced minimal claims of climate law violations in seeking redress to development goals. This problem is compounded by the fact that the judiciary tends to follow domestic law and ignore international law in the absence of legislative backing. A typical illustration is the litigation of *Chama cha Wafugaji Tanzania v. Tanzania Forest Services Agency*.<sup>43</sup> In this case, the court discussed issues that pertained to the environment and land rights; however, it was silent on the international environmental principles that would have bolstered the claims of the plaintiffs. Such situations highlight a more general issue which is, that judges are limited partly by the fact that domestic law does not conform with international treaties such as the Paris Agreement.

This situation is self-perpetuated where the absence of judicial experience discourages litigants from instituting climate-related cases which in turn stunts the judiciary from acquiring the requisite skill and confidence to handle such matters.<sup>44</sup> Therefore, Tanzania does not have a binding precedent for the distribution of expenses in such matters, which weakens the Paris Agreement and the judiciary's role in establishing climate change policy. Hence it hinders the implementation of the Paris Agreement. Thus, it inhibits the implementation of the Paris Agreement. In this regard, the specific recommendations would be to train the nation's judiciary on the specific mandates of the Paris Agreement, promote litigation campaigns to build precedent and empower Tanzania's domestic legal framework. Such a measure will help the judiciary better deal with the problems posed in the context of climate change and improve the national structure for climate governance.

---

<sup>42</sup> H.I. Majamba, *Emerging trends in addressing climate change through litigation in Tanzania*, above at note 11.

<sup>43</sup> *Chama cha Wafugaji case*, above at note 31.

<sup>44</sup> M. E. Burge, 'Without Precedent: *Legal Analysis in the Age of Non-Judicial Dispute Resolution*' (2013) Social Science Research Network.

Another existing challenge is the unreliability of the Nationally Determined Contributions (NDCs) in Tanzania which present substantial challenges to the constituency's effective compliance and implementation of the goals enshrined in the Paris Agreement. More legally binding, the Paris Agreement that Tanzania signed in 2015 has committed to reducing global warming to at least two degrees Celsius on pre-industrial levels in principle means reducing more than half of Greenhouse gas emissions per capita by 2050.<sup>45</sup> These critical climate change mitigation targets have been on tables without specific details on how nations intend to achieve them after most nations ratify this agreement. Tanzania has not submitted any other NDC since 2021, which further complicates the situation created by the voluntary submissions of the NDCs under the Paris Agreement.<sup>46</sup>

Article 4, the Paris Agreement obliges every nation to submit NDCs and update them regularly. Even though the Agreement does not have punitive measures for violation, embedding these obligations into national legislation or associating them with constitutional provisions, like the right to a customary climate, provides grounds for intervention by the court. National and international courts can order states to start performing their NDCs based on the principles of reasonable expectations, consideration of the public interest, and climate change policies that have been enforced through litigation. For example, in *Ashgar Leghari v. Federation of Pakistan*,<sup>47</sup> the State was required to adopt its climate change policies for the right of the people to be protected. The absence of clear commitments weakens the application of Paris Agreement principles, which depend on robust and transparent national frameworks to support judicial enforcement.

Moreover, procedural barriers present significant drawbacks to obtaining justice for the claimants who wish to initiate climate cases. One such constraint involves the high-standing requirements in the Tanzanian courts regarding whom may bring a case.<sup>48</sup> Standing is the legal right to

---

<sup>45</sup> NDCs, 2021, *above at note 22*.

<sup>46</sup> UN Climate Change, Nationally Determined Contributions Registry, 2024  
[https://unfccc.int/NDCREG?gad\\_source=1&gclid=CjwKCAiA9vS6BhA9EiwAJpnXwwo6lyfei2JBiFkbrReyLGVjSS2pk\\_V9SDVf-WX3SpqVMehDmijRRRoCpkIQAvD\\_BwE](https://unfccc.int/NDCREG?gad_source=1&gclid=CjwKCAiA9vS6BhA9EiwAJpnXwwo6lyfei2JBiFkbrReyLGVjSS2pk_V9SDVf-WX3SpqVMehDmijRRRoCpkIQAvD_BwE) (last accessed 16.12.2024).

<sup>47</sup> [2015] W.P. No. 25501/2015 (Lahore High Court),

<sup>48</sup> The Constitution of the United Republic of Tanzania, Cap. 2, Art 30 (3); Order VII Rule 1(e) of the Civil Procedure Code, Cap. 33 R.E. 2019 and the Basic Rights and Duties Enforcement Act, Cap. 3 R.E 2019, sec 4(1) 5 and 6.

initiate a lawsuit. To have standing, a person must be sufficiently affected by the matter at hand, and there must be a justifiable issue that the court can resolve.<sup>49</sup> Such a situation presents difficulties for public interest litigants as in the case of civil society organizations or public citizens interested in protecting the environment or climate change to initiate litigations on behalf of their communities or the future generation, who are vulnerable to climate change. In the absence of simple participation rules, climate litigation is confined to several participants, restricting the reach and effectiveness of litigation measures. For example, civil society members or groups who wish to challenge government policies concerning climate change are often denied because they cannot meet the requirement of harm showing direct personal suffering. Public interest litigation on contemporary Maasai displacement from their ancestral land linked to conservation strategies and climate change mitigation efforts in Tanzania are made hard to achieve.<sup>50</sup> For a more varied judicial response to climate concerns, there is a need to reconsider the standing requirements so that wider participation can be allowed and those cases dealing with the environment and public interest can be in focus.

Furthermore, the existence of non-justiciable directive principles in Tanzania's Constitution constitutes a great challenge to the realization of crucial policies aimed at sustainable development and conservation of the environment through judicial means. This limitation is spelled out in the Constitution of Tanzania which in straightforward language says "the provisions of the Fundamental Objectives and Directive Principles of State Policy...are not enforceable by any court" and also that "no matter which court shall have the competency to adjudicate whether or not any person or any court action or omission, any legislation or judgment is consistent with the provisions of this Part of this Chapter"<sup>51</sup> Directive principles contain guidelines and straight goals that should be followed by the government in the formulation of policies, but which courts cannot put an enforceable law upon. This creates a gap that exists between what is written in the constitution and what must be implemented. The lack of judicial enforceability means that even where there is a policy agreement to the effect that within the framework of that policy, sustainable development, or environmental protection is recognized, such

---

<sup>49</sup> Garner, B.A. *Black's Law Dictionary* (11th Edition), Thomson Reuters, 2019.

<sup>50</sup> Gloppen, S. 'Public Interest Litigation, Social Rights and Social Policy' (2005).

<sup>51</sup> The Constitution of the United Republic of Tanzania, *ibid*, n. 49, Art 7(2).

commitments cannot be determined by any court of law at all. This limitation creates a barrier to communities and individuals trying to hold the government liable for climate change, emissions cuts or natural resources depletion or non-implementation of climate change commitments.

Combating these issues and barriers calls for a comprehensive strategy that encompasses legal reforms, improved training for judges, and greater involvement of the public in order to empower the courts to take effective action against climate change in Tanzania. This measure will enhance the contribution of the judiciary to the overall climate change governance of the country, especially considering the relevance of the Paris Agreement in the processes of development of climate change laws.

### **3.0 The Role of the Judiciary in Advancing Climate Accountability: Lessons from Tanzania and Beyond**

As a party to the UNFCCC, Tanzania has incorporated important principles into its legal framework whereby courts have continued rendering decisions based on principles of jurisprudence for environmental protection. Cases in Tanzanian courts regarding these principles have already been decided in respect of the country's obligations under the UNFCCC. It should be noted that although none of the specific principles of the Paris Agreement are mentioned in Tanzanian judgments, some aspects of these principles can be seen in the supporting opinions of decisions on environmental and climate-related cases. Understanding the role of the judiciary in promoting climate accountability both in Tanzania and beyond, is crucial for identifying judicial approaches and precedents that can effectively integrate Paris Agreement principles into Tanzanian climate change jurisprudence.

#### **3.1 Landmark Tanzanian Cases: Contributions to Combating Climate Change and Adaptation**

Landmark climate change cases in Tanzania have been profoundly associated with the development of the legal framework in the country regarding environmental issues, focusing on combating climate change and assisting in its adaptation. Analyzing these cases, however, a clear division in context becomes evident, that is the division between the cases decided before the signing of the United Nations Framework Convention on Climate Change (UNFCCC) and those decided after. The earlier cases mostly discussed other forms of environmental disputes without any



direct focus on climate issues. In *Festo Belegele and Others v. Dar es Salaam City Council*,<sup>52</sup> the plaintiffs maintained that the City Council was unable to manage garbage disposal activities conveniently harming the environment and increasing floods which was alarming to climate change. In this case, the action was brought before the high court against the city council and the government for failing to regard the environmental management orders from the ministry which was a breach of the law. The judgment compelled the City to adopt appropriate waste management practices and stressed on the constitutional provision of the fundamental right to a healthy environment creating a strong legal framework for future controversies regarding the protection of the environment.

In the same fashion, in *Felix Joseph Mavika v. Dar es Salaam City Commission*,<sup>53</sup> also, the high court examined and determined the issue of environmental degradation resulting from ineffective garbage disposal and haphazard town planning by the city authorities. The court found in favour of the plaintiff, arguing that the City Commission's decision violated environmental laws and that the development would cause significant ecological harm. The judgment underscored the need for proper compliance with environmental regulations in development projects. Similarly, in the case of *Construction Company Limited v. Peter E.M. Shayo*,<sup>54</sup> the court examined a case that arose from an argument regarding a construction project and the environmental curb of the neighboring property. The plaintiff, Shayo, contended that however careless construction plans were and the absence of environmental measures, most of his land and, indeed, the environment was treated badly. The court upheld the appeal by Shayo, emphasizing the need for environmental impact assessments and the strict adherence to building regulations to avert ecological damage. Such a case was a turning point in making it mandatory to take care of the environment while carrying out any developmental works, impressing upon the companies the obligation to do so as a part of compliance standard.

Moreover, the case of *the National Agricultural and Food Corporation v. Mulbadaw VC and Others*<sup>55</sup> involved the negative environmental impact resulting from intensive farming practices. The court highlighted the

---

<sup>52</sup> Festo Belegele Case, *above at note 18*.

<sup>53</sup> Felix Joseph Mavika case, *above at note 34*.

<sup>54</sup> [1984] TLR 127.

<sup>55</sup> [1985] TLR 88.

responsibility of both the state and business sectors to respect the principles of sustainable development and the threats of environmental degradation. The verdict recommended a middle ground between agricultural development and environmental protection, thus reaffirming the courts' responsibility to protect the environment and accountability for offenders. It may be noted from the above court decisions that all centred on various environmental disputes without specifically addressing climate change concerns. However, the precedents set in these rulings provide a foundation for future court decisions, guiding reasoning on climate change mitigation and adaptation measures.

After the adoption of the UNFCCC, the climate change concerns expanded in the cases decided by the courts and their judgments revolved around the theme of environmental adaptation and mitigation. This evolution is evident in landmark cases where courts have increasingly emphasized sustainable development and environmental protection while aligning their reasoning with principles under the United Nations Framework Convention on Climate Change, particularly equity, sustainable development, and the precautionary approach. Although the court decisions during this period do not explicitly apply the provisions of the Paris Agreement, they serve as an essential base for the future expansion of the jurisprudence on climate change adapting the understanding and computation of its goals. In *Andrew Mahundo and others v. The Permanent Secretary the Ministry of Natural Resources and Tourism and Others*,<sup>56</sup> the complainants opposed government conservation measures alleging that they trespassed on land rights and violated the socio-environmental welfare of local populations. The court agreed that there was a need for the community rights to be taken into consideration in as much as conservation initiatives were undertaken, which corresponds to the principle of sustainable development as contained in the UNFCCC.

The judgement highlighted the necessity of promoting the protection of the environment and at the same time ensuring that there are adequate strategies to provide for and respect the rights of the local people, thereby supporting the development of climate change adaptation strategies that are socially just. Similar sentiments were echoed in *Makundi and Others v. The Managing Director Bulembia Gold Mine Limited*,<sup>57</sup> where the

---

<sup>56</sup> [2018] TZHCL and D 45.

<sup>57</sup> [2013] (Unreported).

plaintiffs cited the loss of vegetation cover mining activities as well as habitat destruction and contamination of water bodies which were necessary for the support of ecosystems and the climate. The court underscored the need to conduct proper environmental assessments prior to such activities and the need to comply with the set environmental regulations to erode such consequences. This is the case for adopting a precautionary approach as posited under the UNFCCC especially regarding projects where the alteration of climate has far reached impacts, so that environmentally damaging activities are kept at bay even if there is a risk of them occurring. The displacement of populations residing in areas designated for conservation took center stage. The plaintiffs argued that the court's measures overlooked the socio-economic rights and, specifically, the climate adaptation needs of the affected people. The court stressed the need to have environmental policies fully integrating the social welfare of the concerned communities and further that conservation policies must go beyond climate change and focus on integration into a wider spectrum of development. This great decision seems to be in line with the equity principle under the UNFCCC which calls for a more holistic approach in addressing climate change especially considering the reality that the impact of climate change affects different groups differently. These cases collectively demonstrate some of the slowly and recently developing bodies of law addressing climate change and its impacts in Tanzania. The courts were able to go beyond dealing with the local environmental issues to focusing on climate change adaptation and mitigation for the subjects at hand. These decisions taken together with the above decisions also promise better development of climate change law in future.

Several climate change-related cases have been adjudicated by the judiciary following Tanzania's signing of the Paris Agreement in 2016. Despite this, a significant gap in these cases is the absence of direct references to the Paris Agreement, which could have strengthened the legal arguments supporting efforts aimed at climate change mitigation and adaptation. In *John Barnaba Macheru v. North Mara Goldmine Ltd*,<sup>58</sup> The issue was mining activity and its negative effects on those who lived in the local community and the environment. In this sense, the court recognized the environmental damage done, but tragically, because of these laws, the court did not incorporate the Paris Agreement's principle of sustainable development, which could have stressed the need to ensure

---

<sup>58</sup> [2023] TZHC 15926 .

economic advancement in conjunction with the environmental and social aspects.<sup>59</sup> In the case of *Bismark Hotel Mining Company Limited v Pangea Minerals Limited and others*,<sup>60</sup> The court dealt with mining operations that caused deforestation and other forms of ecological damage. The decision was predominantly based on compliance with national environmental laws and unfortunately ignored the Paris Agreement principle of mitigation, which requires action to prevent emissions and damage to the environment.<sup>61</sup>

Additionally, in this regard, the decision in *Tanzania Ports Authority v M/S Reza Company Limited*,<sup>62</sup> dealt with the problem of industrial activities and how they contributed to environmental degeneracy and the effect the degeneracy had on the people. In as much as the court decided the case in line with controlling the breach of environmental legislation, it did not strengthen its enforcement since it missed the opportunity to apply the Paris Agreement principle of climate adaptation which would have suggested how to strengthen measures against environmental changes.<sup>63</sup> Similarly, in the *Iddi Babu v. Grace Sillo Wawa and Others*<sup>64</sup> case stemmed out of a land contention wherein environmental degradation because of development was the topic of debate. While the parties recognized the importance of fighting for the environment, the case didn't utilize the Paris principle of sustainable development where the decision could have focused more on environmental conservation whilst making decisions on how the land would be allocatively utilized in a fair manner discussing plans.<sup>65</sup> Furthermore, the case of *Suleiman Ryoba Chacha v. North Mara Gold Mine Ltd*<sup>66</sup> has gone into the claims that the mining sites caused water pollution that risks the community's health and living species around the area. The conclusion urged the parties to follow the local environmental rules by prevailing the compliance yet the opportunity of stating the principles of the Paris Agreement on Environmental Integrity and Environmental Justice was lost which seeks to safeguard communities who suffer disproportionate impacts from industrial activities.<sup>67</sup>

---

<sup>59</sup> The Paris Agreement, *above at note 3*, art 2(1)(a).

<sup>60</sup> [2024] TZHC 7434.

<sup>61</sup> The Paris Agreement, *above at note 3*, art 4(1).

<sup>62</sup> [2024] TZHC 1485.

<sup>63</sup> The Paris Agreement, *above at note 3*, art 7(1).

<sup>64</sup> [2018] TZHC 2724.

<sup>65</sup> The Paris Agreement, *above at note 3*.

<sup>66</sup> [2023] TZHC 20125.

<sup>67</sup> The Paris Agreement, *above at note 3*, Art 2(2).

In *Gaudensi George Milanzi & 19 Others vs. Masasi District Council & 2 Others*,<sup>68</sup> the court highlighted the issue of land allocation on developmental activities and its effects on availability of resources in the community. While the court ensured fairness in the cases of biases in the procedures of the case brought before it, the greatest Paris Agreement protection was not invoked which protects vulnerable groups from the effects of changes in the environment which is necessary in combating the negative impacts of climate change.<sup>69</sup> Similarly, in *Joseph Wilrick Marimoto v Boay Village Council & 2 Others*,<sup>70</sup> the central issue was the right to the area's communal land and the environmental degradation done without authorization. The court decided to give the affected communities access to the land in use by the communities but ignored the principle articulated in the Paris Agreement which is the requirement of the public participation in the decision-making processes concerning the use and management of the environment and land resources.<sup>71</sup> Additionally, in *Maasai Stepps Conservancy Limited v Shongon Nakuta & 5 others*,<sup>72</sup> the court was tasked to adjudicate on the issued centered on the domination of conflicts about conservation initiatives with the access of local peoples to their ancestral lands. Although the court attempted to assist in harmonizing the aim of conserving biological resources with the needs of the community, the citation of the Paris Agreement principle on global climate change adaptation to enhance adaptive capacity was neglected yet it would have emphasized the role of community resilience in conservation.<sup>73</sup>

The above cases illustrate how Tanzanian courts handle environmental and land disputes, being more sensitive to sustainable development and social issues. But failure to mention the Paris Agreement principles at all is a missed chance to strengthen arguments and substantiate the domestic decisions in line with the international obligations on climate. When the courts integrate these principles into rulings in the future, they can ensure stronger outcomes that prioritize environmental protection, community welfare, and long-term climate change resilience.

---

<sup>68</sup> [2023] TZHC 21541.

<sup>69</sup> The Preamble of the Paris Agreement, *above at note 3*.

<sup>70</sup> [2023] TZHC 22570.

<sup>71</sup> The Paris Agreement, *above at note 3*, Art 12.

<sup>72</sup> [2023] TZHC 21111.

<sup>73</sup> The Paris Agreement, *above at note 3*.

## 3.2 Global and Local Climate Jurisprudence: Bridging the Gap

### 3.2.1 Comparison of the Judicial Response to Climate Change between the Global North & South

Adopting climate change jurisprudence in Tanzania based on principles of the Paris Agreement may be sparked by the trend on climate change precedents from the Global North and Global South. The North is made up of developed nations that remain the largest contributors of greenhouse gas emissions while the South consists of the less developed countries that inflict more level of climatic impacts than their lower emissions justify. Precedents from the Global North bring experience in the implementation of environmental compliance and enforcement, whereas cases from the Global South present challenges in meeting environmental demands and developmental aspirations. The case of *Urgenda Foundation v. State of Netherlands*,<sup>74</sup> is the first of its kind wherein the judiciary was able to force the executive to act against climate change. The Supreme Court also held that the Canadian population had a reasonable expectation that their government would take necessary actions to reduce climate change risks. The Khesht court ordered a 25 percent reduction in the total greenhouse gas emissions which were recorded in the year 1990 by the Government of Canada by the year 2020. This decision not only facilitated the establishment of strong jurisprudence for climate lawsuits, it also demonstrated the importance of the court in safeguarding environmental pledges made by the governments. This court decision relied upon the European Convention for Human Rights, which cannot be overemphasized, the right to life and the right to private and family life.<sup>75</sup>

In *Neubauer and others v. Germany*,<sup>76</sup> for example, the German Federal Constitutional Court held that climate legislation in the country would not prevent future generations from the effects of climate change. The court found that existing laws breached fundamental rights because they required future generations to fight climate change. Consequently, the tribunal directed the German government to implement emission-cutting measures more strictly. This decision reemphasized the fact, which would in due course be incorporated into the environmental law

---

<sup>74</sup> *The Urgenda Foundation v The State of the Netherlands (Ministry of Infrastructure and the Environment)* [2015] HAZA C/09/00456689.

<sup>75</sup> The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) 1950, art 2 and 8.

<sup>76</sup> [2021] 1 CMLR 3.

framework, that the current generation must be proper stewards of the environment to ensure a sustainable future for the upcoming generation.

Courts in the global south have made drastic efforts in combating climate change. For instance, in *Leghari v. Federation of Pakistan*,<sup>77</sup> the High Court of Lahore was cognizant of the threat of climate change and ordered the alien government to enforce the National Climate Change Policy and Framework. The court emphasized that the government's obligation to safeguard the environment was one of the rights of the person to life. This case set an important milestone on climate litigation in developing countries, showing how the courts can be useful in advancing the rights of the citizens against the governments for breach of environmental obligations. In Kenya the case of *Save Lamu and others v. National Environmental Management Authority and Amu Power Co. Ltd.*,<sup>78</sup> marked a turning point in gods of environmental law. The Kenyan National Environmental Tribunal cancelled the license that had been issued for a coal fired power station because of inadequate public involvement and inappropriate analysis of the environmental effects of climate change. This case emphasized the importance of the judiciary in assisting the full and meaningful environmental assessments, especially in high-impact climate projects. For instance, in the Eastern Africa region, the case of *the Center for Food and Adequate Living Rights et al v. Tanzania and Uganda*,<sup>79</sup> demonstrated the importance attributing to transboundary environmental jurisdiction. Essentially, the case revolved around the construction of the East African Crude Oil Pipeline (EACOP), and the Court was invited to respond to the complaint regarding the project's environmental impacts in relation to climate change. Even though the said case is ongoing, it illustrates the increasing use and expansion of climate litigation as a legal approach for addressing the extraterritorial environmental harm perpetrated by both states and corporations.

### **3.2.2 A Connection between Tanzanian Cases and Foreign Precedents**

Climate change litigation in Tanzania is based on climate justice and accountability for environmental harm that one can find in foreign cases. While in Tanzania, the case examines land, pollution, and socio-economy

---

<sup>77</sup> [2015] W.P. No. 25501/2015.

<sup>78</sup> [2019] NEMA/30/2018.

<sup>79</sup> [2020] EACJ.



over the environment's deterioration, in foreign countries the claim is about the responsibility of the government or corporations over climate change. In Tanzania for example, in cases of *Machera v. North Mara Goldmine Ltd*<sup>80</sup> and *Suleiman Ryoba Chacha v. North Mara Gold Mine Ltd*,<sup>81</sup> it was established that communities and environments suffered because of loss of environment due to mining, especially through water degradation. This is similar to what the Niger Delta people suffered after oil exploration in Delta as was established in *Gbemre v. Shell in Nigeria*<sup>82</sup>. In this case, Shell oil exploration activities exposed the community to a polluted atmosphere thus violating their health aspect and environment. Both jurisdictions emphasize the environmental sustainability of the corporations and the welfare of the people.

Likewise, in the case of *Bismark Hotel Mining Company Limited v. Pangea Minerals Limited and Others*,<sup>83</sup> Tanzanian court focused on deforestation and destruction of ecological systems because of mining activities. This case is concurrent with the Dutch Supreme Court decision in *Urgenda Foundation v State of the Netherlands*,<sup>84</sup> which put an importance to emissions control and ecosystem management by the state. Both courts regard emission reduction as one of the prerequisites to avoidance of degradation of the environment, although Tanzanian courts have not yet undertaken the jurisprudence of international climate integration within her jurisdiction. In another case, *Tanzania Ports Authority v. M/S Reza Company Limited*,<sup>85</sup> the court decided about the issue of environmental degradation through industrial pollution and how it affects the local population. This is consistent with the case of *Massachusetts v. Environmental Protection Agency*,<sup>86</sup> in the United States where the EPA was mandated to control the emission of greenhouse gases, to protect the environment and the health of the public. Industrialization and its relationship to the climate change cycle are both recognized in these cases, further demonstrating the need for regulatory policies to be developed to address these.

---

<sup>80</sup> Machera case, *above at note* 59.

<sup>81</sup> Suleiman Ryoba case, *above at note* 67.

<sup>82</sup> [2005] FHC/B/CS/53/05.

<sup>83</sup> Bismack case, *above at note* 61.

<sup>84</sup> Urgenda case, *above at note* 76.

<sup>85</sup> Tanzania Ports case, *above at note* 64.

<sup>86</sup> [2007] 549 U.S. 497.

In *Iddi Babu v Grace Sillo Wawa and Others*,<sup>87</sup> cited issues of land grabbing and environmental degradation due to development initiatives of other resources like where *EarthLife Africa Johannesburg v Minister of Environmental Affairs*,<sup>88</sup> was involved. In the South African case, the court did highlight the need for conducting environmental impact studies of projects likely to have climatic impacts. They also indicate the gaps in development planning and regulatory practices as both are critical in development evolution and the environmental sustainability aspects. The court in *Gaudansi George Milanzi & 19 Others v. Masasi District Council & 2 Others*<sup>89</sup> have also analyzed the issues of land allocation and how it in turn influences the community's resource access in the same fashion as *Juliana v. United States*.<sup>90</sup> This understanding gains further strength when one considers the fulcrum around which the Juliana case revolves, that is, the need of the United States government to advocate policies which ensure that future generations are protected from reality of climate change, but sadly both cases aim at the defence of helpless people and quite the fair distribution of resources in all spheres. In *Joseph Wilrick Marimoto v. Boay Village Council & 2 Others*<sup>91</sup> and *Maasai Stepps Conservancy Limited v. Shongon Nakuta & 5 Others*,<sup>92</sup> land disputes were about land use, preservation and usage of community's ancestral territories. These cases parallel *Leghari v. Federation of Pakistan*,<sup>93</sup> where the court ordered the state to begin processes for the introduction of measures that will ensure the protection of the weak society from climate change. Both categories of cases are pivotal in reinforcing the messages that the creation of community resilience should inform purchase priorities and other decision-making processes regarding climate change and conservation policies.

Every Tanzanian case examined above demonstrates a slow but gradual movement of the Tanzanian judges to the importance of climate issues, only that more could have been done to better translate the problems into practical application of the tenets of the Paris Agreement. Both jurisdictions appear to indicate that the addition of international tools assists in deepening climate arguments and in achieving the best results in

---

<sup>87</sup> Babu case, *above at note 64*.

<sup>88</sup> [2017] ZACC.

<sup>89</sup> Gaudansi case, *above at note 68*.

<sup>90</sup> [2020] 947 F.3d 1159.

<sup>91</sup> Marimoto case, *above at note 70*.

<sup>92</sup> Maasai Stepps case, *above at note 72*.

<sup>93</sup> Leghari case, *above at note 77*.

said areas. Courts in Tanzania and elsewhere may also expand their participation as stakeholders in climate governance by incorporating international principles such as those enshrined in the Paris Agreement.

### **3.2.3 Future Pathways: Enhancing Climate Accountability through Judicial Reasoning**

Climate accountability has developed into an important pillar for comprehensively dealing with the ever-growing adverse effects of climate change while legal reasoning contributes significantly to this story.<sup>94</sup> As the courts begin to handle government disputes involving the environment, resource allocation, and people's rights, they become important in domesticating international climate treaties. This section summarizes the changing role of courts across the globe in enforcing the obligations of the state, private sector, and other actors about climate change. It analyses how courts can effectively achieve climate change goals, foster sustainable development, and achieve social justice in climate change.

### **3.2.4 Examining the Potential for Courts to Interpret the Paris Agreement as a Framework for Accountability**

The potential for courts to interpret the Paris Agreement and apply it to the issues of accountability is becoming stronger in climate change litigation as courts across the globe struggle with the relation of national responsibilities with international obligations on climate change policies.<sup>95</sup> The Agreement, although procedural, contains important normative content that increases the likelihood that courts will consider and intervene in enforcing state climate policies or even state inaction on climate. Such integration into arguments may constitute an important element in the quest to ensure that states are responsible for their legal and other obligations in respect of climate change policies, especially when it is invoked in the context of customary international law and human rights conventions.<sup>96</sup> The Paris Agreement is considered to be a major shift in international environmental law as it allows each country to pledge what they can minimize (NDCs) and report on their progress in a

---

<sup>94</sup> O. Kelleher, 'Incorporating Climate Justice into Legal Reasoning: Shifting Towards a Risk-Based Approach to Causation in Climate Litigation' (2022) 13(1) *Journal of Qualitative Research in Tourism* <https://doi.org/10.4337/jhre.2022.01.12>, (Accessed on 21.12.2024).

<sup>95</sup> L. Rajamani, 'Interpreting the Paris Agreement in its Normative Environment' (2024) *Current Legal Problems* <https://doi.org/10.1093/clp/cuae011>. (Accessed on 21.12.2024).

<sup>96</sup> *Ibid*,

on regular basis.<sup>97</sup> However, the absence of enforceable substantive commitments is a major problem. Courts can fill this gap by construing its provisions such as the principles of a right to development, a right to sufficient food, or a right to the protection of particularly disadvantaged groups or regions against climate change, as benchmarks for assessing national policies and actions. For instance, in the case from Tanzania, *Joseph Wilrick Marimoto v. Boay Village Council & 2 Others*, the judge was faced with contention on communal land that was destroyed due to unlicensed use that was a violation of the community's rights. Even though the court stressed the importance of restoring the land to the vulnerable communities, it failed to use this opportunity to allege the principle of public participation as enshrined in the Paris Agreement. If the court had included this principle, it would have been able to reinforce this decision by providing it with the agreement's procedural guarantees of inclusiveness and responsibility. It is therefore correct to say that the major weakness of the court was the failure to appreciate the point of public endorsement of the decision which is fair and democratic.

### **3.2.5 Fundamental and Limiting Aspects of Judicial Reasoning in International Commitment**

There are several fundamental aspects of judicial reasoning that the Tanzanian judiciary can hold significant to draw from international climate change jurisprudence to strengthen its approach to addressing climate change. Tanzanian courts have the potential to interpret the Paris Agreement as a framework for accountability. Tanzanian courts can apply the said international jurisprudence to apply them into domestic legal reasoning enhancing their response to the climate change problems in their country. Several foreign courts from the global north and global south have made landmark reasoning in the context of the application of the Paris Agreement and some factors can help in the use of the bilateral treaty as an enforcement mechanism for climate change obligations.<sup>98</sup> At the same time, this evolution has both drastic possibilities and certain restrictions that are inherent in the judicial reasoning processes of international obligations. The *Urgenda Foundation case* and the *Leghari case*<sup>99</sup> are two examples of how foreign cases force courts to look at governments through the prism of actions that have been undertaken

---

<sup>97</sup> The Paris Agreement, *above at note*, art 4(2).

<sup>98</sup> Jannika, J. 'The Paris Effect' (2024) <https://doi.org/10.59704/c52530db37e7aea6> (Accessed on 21.12.2024)

<sup>99</sup> [2015] HAZA C/09/00456689.

because of the provisions of international instruments among which include the Paris Agreement. Such cases show that courts can invoke the Paris Agreement as a form of legal claim seeking greater accountability and compliance with climate change measures even when there are no specific compliance mechanisms within the Agreement itself.

To the Tanzanian judges, such logic would also mean placing their decisions under the pillars of the Paris Agreement such as sustainable development, climate equity, and climate justice. For example, in cases where there are conflicts between land use and industrial development with negative climate impacts, they could rely on Article 7 of the Agreement, which points to the need for adaptation and resilience to climate change.<sup>100</sup> This would be consistent with the global climate targets by ensuring that domestic ones are not written on paper only but that the visions are carried out in practice to ensure that Tanzania's adaptation and mitigation targets are delivered. Other courts would rely on procedural requirements of compliance imposed on them by Article 8, which deals with self-reporting and indictment, to monitor government and business compliance with environmental requirements.<sup>101</sup>

Nevertheless, adopting foreign judicial reasoning in Tanzania is not free from limitations. One of the most critical issues of judicial reasoning concerning international obligations is the question of respect for the principle of judicial independence<sup>102</sup> as well as respect for the sovereignty of states.<sup>103</sup> It is however the case that the judicial implementation of international treaties and covenants is not done in isolation from the domestic legal sphere, these treaties and covenants are interpreted within the confines of the domestic legal system. For example, Tanzanian courts may be limited if the national legislation does not incorporate the Paris Agreement, or the national legal framework is antipodal to the obligations under international law.<sup>104</sup> Such a limitation was apparent in cases such

---

<sup>100</sup> *John Barnaba Machera v. North Mara Goldmine Ltd case*, whereby allegations of environmental degradation caused by mining activities, which impacted local communities and ecosystems

<sup>101</sup> The Paris Agreement, above at note 3.

<sup>102</sup> The Constitution of the United Republic of Tanzania, above at note 38, Art 107B.

<sup>103</sup> *Ibid*, art1 - declares the country as a sovereign state bound by its constitution.

<sup>104</sup> Monism and Dualism in International Law - As a dualist state, Tanzania requires the incorporation of international law into domestic legislation through specific acts of Parliament before it can have legal effect within the country's legal system.  
<https://www.oxfordbibliographies.com/display/document/obo-9780199796953/obo-9780199796953-0168.xml#:~:text=A%20dualist%20system%20treats%20the,application%20of%20that%20international%20norm.>

as Tanzania Ports Authority case,<sup>105</sup> in which the court was unwilling to dwell on universal law and opened its view to only local laws. The local laws' priorities dominated the centre of such an approach. The Paris Agreement is another barrier because it is declarative and self-executory without legal imposition of compliance.<sup>106</sup> Hence, the courts must try openness and original reasoning to make use of the agreed frameworks and legal regimes to check compliance with the principles and objectives of the Agreement. It demands that the judges to be partisan in that they must respect the international order they are to supervise while maintaining the correct standard of separation of powers so that their decisions do not invade those powers of the executive and legislative arms of government. Despite these limitations, Tanzania courts have the potential to build reasoning established by foreign jurisprudence to enhance climate change accountability.

## **4.0 Conclusion and Recommendations**

### **4.1 Conclusion**

This study has examined the role of Tanzanian courts in addressing climate change and examined the influence of the Paris Agreement in shaping emerging climate jurisprudence. The Paris Agreement is a landmark international treaty providing a comprehensive legal framework for climate action, especially through the Nationally Determined Contributions (NDCs), the adaptation approach, and the accountability mechanisms. However, its potential in Tanzania remains largely untapped. While the Agreement's emphasis on procedural obligations and transparency could significantly advance judicial enforcement of climate commitments, Tanzanian courts have hesitated to interpret its principles in ways that align with the local legal and institutional landscape.

The absence of explicit domestic laws mandating the enforcement of Paris Agreement provisions is a major hindrance to the effective implementation of the principles of this agreement in Tanzania. Being a dualist country, Tanzania requires legislative enactments to implement international agreements. This means that international treaties and agreements must be enacted into national law before they can be applied in Tanzania, but it is important to mention that legislation specifically on

---

<sup>105</sup> Tanzania Ports Authority case, *ibid*, n. 64

<sup>106</sup> T. Okonkwo, 'How International Law Can Deal with Lack of Sanctions and Binding Targets in the Paris Agreement' (2017) 10(5) *Journal of Sustainable Development* 225  
<https://doi.org/10.5539/JSD.V10N5P225> Last accessed on 20.12.2024).

climate change has not been effectively developed. This gap constrains the judiciary from applying the Agreement's provisions, leaving courts reliant on existing environmental laws, which often do not have the scope and flexibility necessary to incorporate in their decisions the intricate dynamics of climate change. Furthermore, judicial conservatism creates additional problems in this regard, as courts tend to focus on how rigidly defined statutory norms were enacted and not how the actual international rules could be utilized.

The contradiction between Tanzanian courts and the Paris Agreement is apparent in the limited number of climate-related cases and the absence of substantive judicial engagement with the principles of the Agreement. Unlike jurisdictions such as South Africa or Pakistan, where courts have employed innovative reasoning to advance climate accountability, Tanzanian courts have yet to embrace such approaches. This cautious stance reflects both legal and institutional constraints as well as the presence of a lack of public advocacy, as civil society and environmental groups have not exerted sufficient pressure to prompt judicial action on climate issues.

Despite these challenges, the study highlights the Paris Agreement's potential to catalyze transformative change in Tanzania's legal system. Constructing climate change as a human rights issue and adopting the Agreement's emphasis on equity and transparency, Tanzanian courts can align international commitments with domestic realities. Integrating the Paris Agreement into judicial reasoning would require deliberate efforts, including legislative reforms, judicial capacity-building, and increased public awareness of climate accountability. These measures could enable the judiciary to move beyond its current limitations and address Tanzania's pressing climate challenges effectively. This study contributes to academic and practical discourses by offering a nuanced analysis of the relationship between international climate commitments and Tanzanian judicial practices. It highlights the need for adaptive judicial reasoning and legislative coherence to bridge the gap between global frameworks and domestic action. Furthermore, it provides insights into how Tanzanian courts might draw lessons from other jurisdictions, specifically from the global north and global south to strengthen their role in climate governance.



## 4.2 Recommendations

More should be done to ensure meaningful engagement with the Paris Agreement and ensure climate change receives judicial attention in Tanzania. This requires compliance with the legislation and encouraging the judges and the public. The recommendations below present practical solutions to the identified constraints and seek to tap the opportunities provided by the Paris Agreement in building a sustainable climate law.

First, integrating the Paris Agreement into Domestic Law: Tanzania should enact comprehensive climate change legislation that explicitly integrates the principles and obligations of the Paris Agreement, including formalizing Nationally Determined Contributions (NDCs) as enforceable domestic commitments. For example, *in the Urgenda Foundation v. The State of the Netherlands* case, the Dutch Supreme Court relied on the Netherlands' NDC commitments to mandate stronger government action on emissions reductions. Enshrining NDCs into Tanzanian law and empowering courts with clear authority to adjudicate climate disputes, such legislation would establish the judiciary's role in determining compliance and holding stakeholders accountable for climate action.

Second, judicial Capacity Building: Tanzania's judicial officers require specialized training on climate change jurisprudence, including procedural and substantive aspects of the Paris Agreement. Workshops and seminars should be organized in collaboration with international legal institutions to familiarize judges with innovative judicial reasoning used by courts in jurisdictions such as the Netherlands (e.g., *Urgenda Foundation v. The State of the Netherlands* case) and South Africa (*EarthLife Africa Johannesburg v Minister of Environmental Affairs*).

Third, the establishment of specialized environmental courts: Tanzania could explore establishing specialist environmental courts or tribunals, complete with technical expertise and dedicated to adjudicating climate-related disputes. Such institutions would adopt a focused and effective strategy for climate litigation, drawing inspiration from countries like India, where the National Green Tribunal (NGT), and Kenya, through the Environment and Land Courts (ELC), have significantly contributed to advancing environmental justice.

Fourth, promoting Public Engagement and Awareness: Raising public awareness is essential to empower citizens and civil society organizations

to address climate challenges through legal avenues. For instance, in the Netherlands, public awareness campaigns and strategic litigation by NGOs such as the Urgenda Foundation led to a landmark case compelling the government to take stronger climate action. Similarly, in Pakistan, public engagement and legal activism played a critical role in the Leghari case, where a farmer successfully sued the government for failing to implement its climate policies. Strengthening the capacity of NGOs and community-based groups in Tanzania to initiate similar strategic climate litigation can significantly enhance the judiciary's role in climate governance and accountability.

Fifth, bridging Legislative Gaps: The Tanzanian Parliament should prioritize enacting strong legislative frameworks for climate change adaptation and mitigation, including clear measures for judicial monitoring. Legislative reforms must address loopholes in enforcement and court procedures (such as *locus standi*), providing judges with clear instructions for interpreting and applying international commitments under the Paris Agreement.

Sixth, adopting a Rights-Based Approach: Tanzanian courts should adopt a rights-based approach to climate litigation, viewing climate change as a violation of fundamental rights like the right to a clean and healthy environment. This technique has been successfully used by Tanzanian courts in *Felix Joseph Mavika v. Dar es Salaam City Commission* in 2000 and in *Festo Belegele and Others v. Dar es Salaam City Council* in 2002 and foreign courts such as Pakistan *Leghari v. Federation of Pakistan* in 2015, where it is compatible with Tanzania's constitutional safeguards under Article 14 and 27 of the Constitution.

Seventh, adding Climate Science to Judicial Reasoning: To align judicial decisions with the global framework for addressing climate consequences, judicial reasoning must be firmly rooted in credible climate science. Courts should integrate expert testimony and scientific evidence to substantiate their findings, ensuring credibility and adherence to international standards. For instance, in the landmark case of *Juliana v. United States*, the plaintiffs relied heavily on scientific data to argue that the government's failure to act on climate change violated their constitutional rights. Incorporating such practices in Tanzanian courts would strengthen the legal system's ability to address climate challenges effectively.

Eighth, encouraging Collaboration in Governance: The judiciary should actively foster collaborative governance by encouraging greater coordination among the executive, legislative, and judicial branches to advance climate action. This approach can accelerate the implementation of climate policies and enhance accountability across all levels of government. For example, in Tanzania, the collaboration between the judiciary and the Ministry of Lands and Human Settlements Development has been instrumental in resolving land disputes that often intersect with environmental concerns. Building on such cooperative frameworks, Tanzanian courts could work alongside other government institutions to ensure that climate policies are effectively executed while maintaining checks and balances to uphold transparency and responsibility.

Ninth, learning from Regional and Global Precedents: Tanzania's judiciary can learn from successful climate litigation in both the Global North and South, and tailor these precedents to Tanzania's sociopolitical and economic realities. Cases such as *Ashgar Leghari Case*<sup>107</sup> highlight the judiciary's ability to drive climate action, even in difficult circumstances. In related matters, Tanzania should harness international collaborations, as emphasized in Articles 9, 10, and 11 of the Paris Agreement, to enhance its legislative framework and institutional capacity for effective climate governance. Partnerships with international environmental organizations and multilateral agencies can provide essential technical expertise, financial resources, and legal support, enabling the judiciary to address climate change more effectively. For instance, Article 9 focuses on financial assistance, Article 10 emphasizes technology development and transfer, and Article 11 promotes capacity-building, all of which can be leveraged to strengthen Tanzania's judicial and legislative responses to climate challenges.

In general, it is recommended that Tanzania should develop its climate change jurisprudence and effectively address the country's environmental concerns by incorporating the Paris Agreement into domestic legal processes and encouraging judicial creativity. These proposals outline a strategy for aligning judicial practices with international climate commitments, closing gaps in legal and institutional frameworks, and empowering the judiciary to play a crucial role in Tanzania's climate governance.

---

<sup>107</sup> Leghari case above at note 77.