

ARTICLES

Assessing Certification on Points of Law as a Gatekeeper to the Court of Appeal of Tanzania: Implications for Access to Civil Justice

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Abstract

This article assesses the mandatory requirement for a certificate on a point of law, granted by the High Court as a jurisdictional gateway to the Court of Appeal of Tanzania (CAT) under the Appellate Jurisdiction Act. The Tanzanian constitutional and statutory framework recognises appeal rights, subject to legislative and procedural limits. However, in matters requiring a certificate on a point of law, the requirement remains mandatory, and when the High Court with exclusive jurisdiction refuses it, the refusal is not appealable. The study adopts a doctrinal methodology. It finds that, although certification aims to limit appeals to points of law, strict compliance often hinders access to civil justice in the CAT. The article recommends explicit, prescriptive standards supported by a purposive judicial approach that prioritises ensuring that procedural rules do not undermine the constitutional principle of access to justice.

Keywords: Certification, point of law, gatekeeping, Court of Appeal of Tanzania, and Access to justice

1.0 Introduction

The right to appeal is widely recognised as a constitutional right in most jurisdictions.¹ It is considered a crucial safeguard for ensuring fairness, accuracy, and legitimacy in adjudication, as well as respect for individual dignity and predictability.² Appeals provide an opportunity for higher courts to correct errors committed by lower courts and to ensure uniformity in the interpretation and application of the law. The outcome of an appeal is what matters if it resolves the issue in dispute.³ Although

¹ P. D. Marshall, 'A Comparative Analysis of the Right to Appeal', *Duke Journal of Comparative & International Law*, Vol. 22, 2011 (1–13), p. 1.

² C. B. Robertson, 'The Right to Appeal', *North Carolina Law Review*, Vol. 91, 2013 (1219–1229), p. 1220.

³ A. N. Steinman, 'Law, Fact, and Appellate Review', *Iowa Law Review*, Vol. 110, 2024 (1–15), available at: <https://scholarship.law.tamu.edu/facscholar/2150> (accessed 24 March 2026).

the right to appeal is recognised in most of the legal systems, its exercise is commonly subject to constitutional and statutory limitation that regulates such an appeal.¹ Most legal systems, including Tanzania,² impose procedural requirements on how to appeal and ensure that the Court of Appeal handles issues with legal points and significances, and avoid the possibility of frivolous litigations and maintain judicial capacity in the dispensation of justice. Some scholars have even proposed the imposition of sanctions on litigants who file frivolous lawsuits to maintain the capacity of the higher courts to adjudicate disputes.³

Procedural justice scholars have emphasised that procedural rules play an important role in determining the rights of individuals.⁴ Cappelletti and Garth argue that a mere formal recognition of right does not entail access to justice. It depends on the effective mechanisms of enforcement through a user-friendly procedure that supports litigants in pursuing their remedies in courts of law. Thus, access to justice requires not merely the formal recognition of rights, but effective mechanisms for their enforcement, and individuals to pursue legal remedies.⁵ Deborah argues that access to justice depends on recognition of that right, which can only be realised after doing away with procedural technicalities.⁶ From this perspective, the requirement of leave to appeal or certification on a point of law may serve legitimate institutional objectives while simultaneously raising concerns about fairness and equality in access to appellate justice.

The Tanzanian appellate structure entails a similar challenge regarding the limitation on access to the Court of Appeal of Tanzania, hereinafter referred to as the CAT. The CAT is the apex Court established under the Constitution of the United Republic of Tanzania of 1977.⁷ Its jurisdiction includes hearing appeals from the High Court from the High Court, while the High Court exercises original or appellate jurisdiction.⁸ In the appeal

¹ Marshall, 'A comparative analysis of the right to appeal' (note 1).

² The Appellate Jurisdiction Act, Cap 141 (R.E 2023), s 8(2)(iii)(c).

³ F.H. Newark, 'The Boundaries of Nuisance,' *Law Quarterly Review*, Vol. 65, No. 2, 2010, (460-497), p. 480.

⁴ M. Cappelletti and B. Garth, 'Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective', *Buffalo Law Review*, Vol. 27, 1978, p. 181.

⁵ *Ibid.*, pp. 182-183.

⁶ D. L. Rhode, 'Access to Justice', *Fordham Law Review*, Vol. 69, 2001, p. 1785, available at: <https://ir.lawnet.fordham.edu/flr/vol69/iss5/11> (accessed 27 March 2026).

⁷ The Constitution of the United Republic of Tanzania, 1977 (Cap. 2 R.E. 2002) (as amended), art. 117.

⁸ *Ibid.*

process, not every litigant has an automatic right to appeal before the CAT. In matters originating from Primary Courts, and following the ladder of appeal to the CAT, the High Court must certify the point of law before an appeal can be lodged to the CAT. The prospective appellant must obtain a certificate that a point of law is involved. This requirement, though intended to admit the arguable appeal in CAT, which involves a significant point of law, may nevertheless act as a stumbling block to accessing justice for the aggrieved appellant.

Despite its real-world significance, the condition of certification on a point of law before a litigant accesses CAT on specified matters has received limited scholarly attention in Tanzania. Existing literature tends to examine broader perspectives, such as fundamental rights under the Constitution, independence of the judiciary, and strategic human rights litigations, without concentrating precisely on procedural filters before appealing to the CAT.⁹ Scholars from other jurisdictions have suggested that appellate gatekeeping mechanisms play a crucial role in shaping the accessibility to the apex court. Posner observes that several proposals are thought to provide a major restructuring of the appellate court system that enhances access to justice.¹⁰ Undisputedly, the requirement of a certificate on the point of law controls and manages caseloads and maintains doctrinal coherence. Despite limited academic discussion, certification remains a relevant aspect for accessing appellate courts.¹¹ Thus, appellate jurisdictions should weigh the competing objectives of error correction, legal development and institutional efficiency in the judicial system.

The requirement of a certificate on a point of law on specific matters is very important in the appellate context when a litigant wants to exercise the appeal rights, especially when such an appeal requires a certificate on a point of law. Scholars of access to justice have observed that procedural rules governing appeals are a determining factor for litigants pursuing the

⁹ C. M. Peter, *Human Rights in Tanzania: Selected Cases and Materials*, Rüdiger Köppe, 1997, pp. 12–16.

¹⁰ R. A. Posner, *The Federal Courts: Challenge and Reform*, Harvard University Press, 1996; reviewed in *Catholic University Law Review*, Vol. 46, 1997, p. 1189, available at: <https://scholarship.law.edu/lawreview/vol46/iss4/4> (accessed 28 March 2026).

¹¹ K. G. Crennan, 'The Viability of Certification in Federal Appellate Procedure', *William & Mary Law Review*, Vol. 52, 2011, p. 2025, available at: <https://scholarship.law.wm.edu/wmlr/vol52/iss6/6> (accessed 28 March 2026).

right before the appellate court.¹² From the legal perspective, certification on a point of law signifies not merely a technical procedural prerequisite but a key determinant of the practical accessibility of the CAT.¹³

This article, therefore, assesses the procedural requirement of certification on points of law as a gatekeeping mechanism to access the CAT. It analyses the legal framework governing appeals to the CAT on matters requiring a certificate on a point of law. It further investigates the jurisprudence on certification of the point of law and evaluates the legal implications of this requirement in accessing CAT. The article argues that although certification requirements serve a significant institutional function in preserving the capacity of the CAT only to entertain arguable issues, their operation may limit litigants seeking to appeal to the CAT, particularly in cases originating from Primary Courts, where this requirement is mandatory. By analysing doctrinal dimensions of this requirement, the article intends to contribute to scholarly debates regarding the relationship between appellate procedure and access to justice in CAT.

This article offers a doctrinal examination of certification of point of law in CAT, further assesses the legal implications of the requirement of certification on access to civil justice in CAT and suggests tremendous reforms that intend to promote access to civil justice.

1.1 Methodology

This study adopts a doctrinal methodology. The primary materials include the Constitution, statutes governing appellate jurisdiction, procedural rules, and court decisions of the High Court of Tanzania and the CAT. Cases were selected because they address certification on the points of law in the appellate process. The secondary sources, which included scholarly literature on appellate access to justice, were also used based on the principle of relevance and confined to civil proceedings.

2.0 Scholarly Perspectives on Certification on Points of Law

This article employs the access-to-justice framework developed by Cappelletti and Garth¹⁴, which evaluates whether procedural rules

¹² M. Galanter, 'Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change', *Law & Society Review*, Vol. 9, 1974, p. 95.

¹³ The Appellate Jurisdiction Act (note 48) s 8(2)(c).

facilitate or impede the practical enjoyment of legal rights. Academic and judicial debates on appellate justice have progressively recognised the role of procedural requirements that regulate access to higher courts. Among these requirements is the certification on a point of law. Thus, the work of civil courts is a reflection of the cumulative choices of litigants on when and how to press and defend the appeal or claim.¹⁵

It has often been considered as a mechanism that filters only the appeals that are referred to the apex court involve a point of law. These requirements have, for ages, attracted scholarly debate from other jurisdictions. The requirement for a certificate before appealing to the apex courts has received little attention.¹⁶ There has been relatively limited analysis of Tanzanian jurisprudence. Thus, existing literature provides useful theoretical foundations while instantaneously revealing important gaps regarding the Tanzanian framework.

The requirement of certification on a point of law before appealing to the apex court as a procedural filter is not a modern novelty but echoes an ancient tradition within common law jurisdictions of regulating access to apex courts.¹⁷ In England, for example, the Administration of Justice Act¹⁸ put in place a mechanism allowing direct appeals from the High Court to the House of Lords, provided that there is certification by the trial judge that the case involves a point of law. In fact, this legislative approach was a direct implementation of the recommendations of the Evershed Report¹⁹ as well as the earlier proposal of the Judicature Commissioners' First Report.²⁰

Reading the two reports, it is evident that they emphasise screening the intended appeals before they are filed in the apex courts. Ideally, such certification functions as a gatekeeping mechanism that guarantees that only appeals which demonstrate a point of law are instituted in the

¹⁴ Cappelletti and Garth, *Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective* (note 7), pp. 182–183.

¹⁵ H Genn, *Judging civil justice* (Cambridge University Press 2010) p. 3

¹⁶ *Ibid*

¹⁷ Evershed Committee on Supreme Court Practice and Procedure, *Final Report* (Cmnd 8878, 1953) para 483.

¹⁸ *The Administration of Justice Act 1969*, pt. II.

¹⁹ Evershed Committee on Supreme Court Practice and Procedure, *Final Report* (Cmnd 8878, 1953) para 483.

²⁰ Judicature Commissioners First Report 1869 [4130] 1869, 24.

appellate apex courts. Unlike the English model, Tanzanian law vests exclusive authority to certify a point of law in the High Court without providing a mechanism for appellate review of the refusal. This distinction has significant implications for access to justice and demonstrates the uniqueness of the Tanzanian framework that requires academic scrutiny.

This approach has been subjected to criticism as an appeal to the apex court is not always regarded as subject to procedural requirements, which at times limit access to justice.²¹ This contrary argument is a resounding bell on the need to conduct more research on this topic.

Scholarly arguments from different jurisdictions have constantly argued that although a right to appeal may be constitutionally guaranteed, the conditions to pursue the same may undermine it.²² Posner contends that appellate courts rely on a selective requirement to manage the backlog of cases and maintain significant doctrinal issues that may be determined by the appellate courts.²³ He has justified the selective requirement to manage an appeal to the apex court, but his analysis remains institutional and economically oriented. In the absence of a clear doctrinal assessment of the certification rationale and its impact on accessing justice to the apex court, access to civil justice remains elusive.

Robertson's work on the right to appeal is primarily concerned with the normative question of whether appellate review constitutes a constitutional guarantee; however, it does not extend to analysing how procedural requirements such as certification on a point of law operate in practice to qualify or restrict that right.

In his work, Shapiro observes that appellate courts ought to balance the competing objectives of appeal, which are error detection and correction, institutional efficiency and legal development based on the decision made.²⁴ Similarly, Shapiro advances a powerful theoretical framework by identifying the competing objectives in the justices' system in appellate courts. However, his analysis is far from indicating how the requirement of certification achieves the objective of access to justice without

²¹ Robertson, *The Right to Appeal* (note 2).

²² *Ibid.*

²³ Posner, *The Federal Courts: Challenge and Reform* (note 13).

²⁴ M. Shapiro, *Courts: A Comparative and Political Analysis*, Chicago: University of Chicago Press, 1981.

preventing litigants from exercising their appellate right in the highest courts within their jurisdictions.

Correspondingly, Jacob conceptualises civil procedure as the machinery of justice which provides for the mechanisms of regulating access to courts and ensuring orderly adjudication of legal disputes.²⁵ Even though Jacob's work is relevant to this study, it is largely foundational and does not go into detail to examine appellate thresholds with the requirement of certification, which, in fact, is a preoccupation of the work under review.

Crennan opines that the rationale for having the certificate on point of law is to ensure that matters taken to appellate courts raise a significant point of law and appellate courts determine matters which raises substantial point of law.²⁶ In a broader socio-legal context, the author highlights how procedural structures influence who gains access to higher courts, thereby shaping substantive outcomes in the justice system.

Galanter argued that litigation normally operates under a structured legal system composed of rules, courts, lawyers, and parties. Ideally, all functions with different roles but with the same objective, which is promoting justice.²⁷ Thus, these institutions are arrangement cannot be considered as passive, but they have an essential role which makes the law act as a distributive change tool. A complex of legal rules and procedures requires specialised legal expertise. The legal limitation of accessing the higher court in some instances impedes accessing the apex courts. Galanter's analysis is largely structural and general, providing a narrow focus on jurisdiction-specific procedural rules and the requirements for their grant. Primarily, his analysis focuses on the inequality within the courts, among litigants, and between advocates. It attracts debate on how to balance the certification of the point of law and the need to access justice.

The reviewed literature on appellate justice, to a large extent, focuses on the right to appeal as provided in the constitution, access to justice in broad term and the independence of the judiciary. Little attention has been paid to certification on the point of law as a procedural gateway to

²⁵ J. I. H. Jacob, 'The Fabric of English Civil Justice' in *The Reform of Civil Procedural Law and Other Essays in Civil Procedure*, London: Sweet & Maxwell, 1982.

²⁶ Crennan, 'The viability of certification in federal appellate procedure' (note 14).

²⁷ M. Galanter, 'Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change' (note 9), pp. 95–160.

CAT. The extent to which the certification requirement hinders applicants or appellant to access CAT is not thoroughly examined by reviewed scholarly works in civil matters which requires certification in Tanzania. The article addresses the identified gaps by assessing the legal framework, judicial approach in interpreting the law and legal implications on access to civil justice in CAT.

3.0 Legal Framework Governing Certification on Points of Law in Tanzania

The legal architecture of certification on point of law before appealing to the CAT is primarily governed by the Constitution of the United Republic of Tanzania²⁸, the Appellate Jurisdiction Act²⁹ The Tanzania Court of Appeal Rules,³⁰ and the Magistrate Courts Act.³¹ The Appellate Jurisdiction Act³¹ state the requirement of obtaining a certificate on a point of law when a person appeals to the CAT for matters that originate from the Primary Court and where such an appeal to the CAT is the third appeal. Thus, in civil matters originating from Primary Courts, the law establishes the requirement of a certificate on a point of law to balance the need for appeals referred to the CAT, so that they are confined to a particular parameter. The requirement for Certification on points of law forms a central part of this legal framework, as it determines whether a litigant can pursue a third appeal to the CAT or not.

3.1 Constitutional Basis of the Appellate Structure

The appellate system in Tanzania obtains its foundation from the Constitution³², which establishes the CAT as the highest judicial authority in Tanzania.³³ Its jurisdiction is provided by the constitution and any other written laws.³⁴ The core functions of the CAT are to hear and determine appeals filed before it, which emanate from the decision of the High Court of the United Republic of Tanzania and the High Court of Zanzibar or a magistrate in a subordinate court with extended jurisdiction.³⁵

²⁸ The Appellate Jurisdiction Act (Cap 141 R.E. 2023).

²⁹ The Tanzania Court of Appeal Rules, G N No. 368 of 2009 (as amended).

³⁰ The Magistrate Courts Act (Cap. 11 R.E 2023).

³¹ The Appellate Jurisdiction Act (note 34) s 8(2)(c).

³² The Constitution of the United Republic of Tanzania (note 10).

³³ *Ibid*, art 117.

³⁴ *Ibid*.

³⁵ *Ibid*, art 117(3).

Within the Tanzanian judicial ladder, civil disputes ordinarily proceed through three levels of adjudication, namely, subordinate courts, which include the Primary Court³⁶, the District Court³⁷, the Court of Resident Magistrate,³⁸ the High Court of the United Republic of Tanzania,³⁹ the High Court of Zanzibar⁴⁰, and the CAT.⁴¹

The legal mandate regulating certification on points of law in Tanzania is grounded in the Constitution⁴². The Constitution vests the Judiciary with the final authority in dispensing justice in both criminal and civil matters.⁴³ Thus, in a broad sense, the courts have supremacy in adjudication and promoting access to justice. This normative foundation is consummated by virtue of a hierarchical court structure and procedural regimes which determine how justice is accessed in CAT, which, among other things include the requirement for a certificate on a point of law as a prerequisite of appealing to CAT on matters originating from a Primary Court or which the law has specified

The practical implications of the court being the final authority in dispensation of justice also imply that when determining a certificate on a point of law, their decision may have a finality effect which, at times, jeopardises the right to access justice. The case of *Amina Ramadhani v. Athumani Hinga and Yahya M. Singu*⁴⁴ the court insisted that the judiciary is the final authority to dispense justice in Tanzania, which supports the normative function of the court in any justice system.

3.2 The Appellate Jurisdiction Act

The principal legislation governing appeals to the CAT is the Appellate Jurisdiction Act.⁴⁵ According to this Act, the CAT has jurisdiction to hear both appeals from the High and Subordinate courts having extended

³⁶ The Magistrates' Courts Act (Cap 11 R.E. 2023) s 3.

³⁷ *Ibid*, s 4.

³⁸ *Ibid*, s 5.

³⁹ The Constitution of the United Republic of Tanzania (note 10) art 108(1).

⁴⁰ The Constitution of the United Republic of Tanzania (note 10) art 114; Constitution of Zanzibar 1984 art 93(1).

⁴¹ *Ibid*.

⁴² *Ibid*.

⁴³ *Ibid*.

⁴⁴ *Amina Ramadhani v. Athumani Hinga and Yahya M. Singu*, Miscellaneous Land Revision No 26947 of 2023 (High Court of Tanzania at Dodoma) reported in *TANZLII*, p. 8.

⁴⁵ Appellate Jurisdiction Act (Cap 141 R.E. 2023) s 6.

jurisdiction.⁴⁶ Thus, the Appellate Jurisdiction Act establishes the framework governing appeals to the CAT.⁴⁷ It establishes the general statutory framework governing appeals to the CAT in civil proceedings. The Act stipulates the mandatory legal requirement that all appeals originating from a magistrate with extended jurisdiction or the High Court are referred to the CAT. This is so notwithstanding that such an order or decree was made in exercise of original, revision, or appellate jurisdiction of the High Court or a magistrate with extended jurisdiction.⁴⁸ The cited provision recognises the right of appeal, placing the CAT as the highest forum for determining a High Court decision or that of the magistrate with extended jurisdiction of the judicial ladder in Tanzania.

Nevertheless, this position granting the right to appeal is not absolute. There are preconditions which must be met, which act as an exception to the right to appeal for the matters arising under Head (c) of Part III of the Magistrates' Courts Act.⁴⁹ Among other provisions is the provision requiring that the appeal be filed with the CAT as a condition that the certification of the point of law from the High Court is obtained. There must be a point of law involved in the intended appeal. This provision provides for the mechanism that regulates appeals to be referred to the CAT, though it intends only to allow arguable appeals to the CAT; however, when viewed broadly, it limits access to the CAT. Generally, the provisions under the Appellate Jurisdiction Act⁵⁰ provide generally and specifically for the appellate jurisdiction in appealing to the CAT. Apart from the fact that the law provides for the general right of appeal, it stipulates the conditions to be met for one to qualify for the right to appeal that has been provided. Thus, the right to appeal to Judicial interpretation has reinforced this structure by treating certification as a condition precedent to jurisdiction. This position was fortified in *Amina Joseph Muganda v. Zainabu Juma Masoud*, (Administratrix of the Estate of the Late Hashimu Jawadu Zubail).⁵¹ The CAT, confronted by an application or revision after the High Court had refused to grant certification of a point of law, observed that

⁴⁶ Ibid.

⁴⁷ Ibid s. 8

⁴⁸ Ibid.

⁴⁹ Ibid, s 8(2).

⁵⁰ The Appellate Jurisdiction Act (note 48) s 8.

⁵¹ *Amina Joseph Muganda v Zainabu Juma Masoud*, Civil Application No 357/08 of 2023 (Court of Appeal of Tanzania at Mwanza) reported in TANZLII, p. 8.

“Filing a revision against the ruling of the High Court refusing to certify a point of law amounts to questioning the mandate of the High Court in the matter or trying to force it to do what she thinks is right. We do not have such jurisdiction and if there is any such application filed as alleged, in our respectful view, on the facts before us, amounts to an abuse of the court process”

This decision underscores the mandatory requirement of a certificate on a point of law from the High Court when the matter lies before the CAT as the third appeal. The court went further to declare that it has no mandate to question whether the certificate was properly refused or not and that raises a serious issue on access to justice to CAT when the certificate of law is wrongly refused.

From the above-discussed case law, it is apparent that the law provides for a dual structure within the appellate system in the CAT. On one level, the law affirms the availability of an appeal right to CAT from the High Court or from the decision of the magistrate with extended jurisdiction and on the other side, it restricts the appeal in certain categories of cases, which require certification of a point of law before appeals are lodged to CAT. Legally speaking, the High Court is placed in a position where it determines appeal which may be filed to the CAT.

This statutory structure operates within the broader constitutional framework.⁵² Within this framework, the provision under appellate Jurisdiction Act⁵³ operates as a mechanism regulating whether or not an appeal demonstrates a point of law to be filed in the CAT. Regarding this mandatory requirement, certification of a point of law is a central requirement when assessing how procedural requirements are considered determinant factors for the litigant to access justice in the CAT in civil cases.

3.3 Legal Framework under the Tanzania Court of Appeal Rules

The procedural framework regulating certification on points of law as a mandatory requirement to specified cases before appeal to the CAT is further governed by the Tanzania Court of Appeal Rules.⁵⁴ Hereinafter referred to as the rules which provide the way in which applications

⁵² Constitution of the United Republic of Tanzania (note 10) art 107A(1).

⁵³ Appellate Jurisdiction Act (note 48) s 8.

⁵⁴ Tanzania Court of Appeal Rules, GN 368 as amended.

relating to certification on the point of law are to be made. These Rules reinforce the statutory requirements by outlining the procedural steps that must be followed before an appeal can be properly instituted in the CAT.

The Rules provide for the mandatory requirement for the application for a certificate on a point of law for cases that require such a certificate.⁵⁵ It is mandatory that where an appeal demands a certificate on a point of law, then such a certificate must be applied to the High Court within the prescribed time. It places an application for a certificate on the point of law to be made formally. Thus, appealing in such cases is not automatic, but the certificate on the point of law must be sought by the applicant and be granted before lodging an appeal to the CAT. In the case of *Kahambi Idd v. Hidayat Shaban*⁵⁶ The court reiterated the requirement that an application for a certificate on a point of law should be made in the High Court within the prescribed time. If a party is unable to lodge the application for a certificate on a point of law within the prescribed time, the applicant may apply for an extension of time in the High Court at first instance. If the application is refused, the applicant may then apply for the same in the Court of Appeal as a second bite.⁵⁷ The application for extension of time must be made within fourteen days of the CAT from the date the High Court refused to grant an extension of time to lodge a certificate on a point of law.

The Rules further clarify the procedural sequence that must be followed by the applicant to apply for the certificate on the point of law. It makes it mandatory that, where a certificate is necessary, such an application for a certificate must be made after the notice has been lodged.⁵⁸ This sequential order is momentous because it demonstrates that the notice of appeal alone does not suffice to institute an appeal in CAT. Instead, certification on the point of Law forms an additional mandatory procedural step that must be met before an appeal can be competent in CAT.

The Rules also impose formal requirements on the manner in which the application should be made. Basically, the application must be made by

⁵⁵ *Ibid* r 44.

⁵⁶ Civil Appeal No. 544/11 of 2028, Court of Appeal of Tanzania at Tabora, TANZLII p.4.

⁵⁷ Tanzania Court of Appeal Rules (note 32) r 45A(1)(c).

⁵⁸ *Ibid* 46(1).

chamber summons supported by an affidavit.⁵⁹ In addition, all relevant documents must be attached, including but not limited to the decision intended to be challenged. All these requirements reveal the procedural framework of access to justice in CAT.

While the rules provide for the second bite to file an application for extension of time in CAT in case the High Court refuses to grant extension of time⁶⁰ however the rules do not provide a room for the CAT to determine if the point of law exists where it has been refused by the High Court. The consequences of this procedural practice reinforce the finality of the High Court decision, hence acting as a gatekeeper for a litigant to access CAT, especially when there is a requirement in point of law.

Generally, the Rules establish a structured procedural regime under which a certificate on points of law must be sought and obtained. By prescribing the timing, form, and forum for such applications, indicate the procedural requirement in accessing CAT. This reveals that accessing CAT is not an absolute right but is subject to some legal procedural requirement, especially when the matter requires a certificate on a point of law.

4.0 Judicial Interpretation of Certification on Points of Law

From the legal framework discussed above, the jurisprudence of the Court of Appeal of Tanzania reveals a coherent but highly formalistic doctrinal approach to the procedural requirement of certification on points of law. It firmly entrenches it as a jurisdictional gateway to appeal to the CAT. It is undisputed that the doctrine serves an important institutional function in filtering appeals before being filed with the CAT. Judicial interpretation and practice reveal a persistent tension between procedural rigour and access to civil justice in CAT, warranting critical scholarly review.

At the outset, the CAT has consistently affirmed that certification of a point of law by the High Court constitutes a mandatory jurisdictional precondition. Underscoring the legal position that CAT cannot entertain an appeal in a matter requiring a certificate on a point of law, and where the same has not been obtained from the High Court. This position was

⁵⁹ Tanzania Court of Appeal Rules (note 32) r 49.

⁶⁰ *bid*, r 45A.

reinforced in *Shamte Khatibu v. Charles Moses*⁶¹ where the CAT struck out the third appeal for lack of a proper certificate and requisite High Court documentation, which, as a matter of rules, must be included in the record of appeal.

From a doctrinal perspective, this decision clearly positions certification as a jurisdiction-triggering mechanism. The rationale being that only appeals that demonstrate a point of law, as per the High Court's view, are allowed to be filed with the CAT for determination. It may be argued, from a scholarly perspective, that the rigid certification of the point of law, being exclusively vested in the High Court, raises procedural concerns that undermine access to civil justice in CAT. It warrants the High Court's discretion to salvage appeals involving substantive legal issues while prioritising procedural requirements at the detriment of substantive justice.

Similarly, in *Mathew Mlay v Rashid Majid Kasenga*,⁶² the CAT reaffirmed the procedural threshold governing appeals originating from the Primary Court by holding that where an appeal does not lie as of right, it may only be instituted upon leave or certification on a point of law, and that such certification constitutes a mandatory jurisdictional prerequisite, particularly in third-tier appeals originating from the Primary Court.

The Court further refused to invoke its revisionary powers under the Appellate Jurisdiction Act, as doing so would circumvent the High Court's jurisdiction to refuse or grant a certificate on a point of law and insisted that revision is not a substitute for appeal. It concluded that in case the condition for instituting an appeal has not been met, including obtain certificate on a point of law, such an appeal becomes incompetent before the CAT. This indicates the strict application of procedural rules, which at times limit access to justice in the CAT.

The Court has further developed a demanding standard requiring certification to be specific, explicit, and supported by judicial reasoning.

⁶¹ *Shamte Khatibu v. Charles Moses*, Civil Appeal No. 15 of 2011, Court of Appeal of Tanzania, Dar es Salaam Sub-Registry, 2016, pp. 4-7.

⁶² *Mathew Mlay v Rashid Majid Kasenga*, Civil Application No. 354/17 of 2020 (Court of Appeal of Tanzania, Dar es Salaam Registry).

In *Dorina N. Mkumwa v. Edwin David Hamis*⁶³ The Court forbade a vague certificate that failed to identify the precise point(s) of law, criticising the practice of issuing generalised statements without analytical grounding. The Court insisted that certification must clearly articulate the legal issue(s) and reflect a reasoned judicial determination. Although this requirement promotes doctrinal clarity and assists the CAT in dealing with specific legal issues that the High Court has properly assessed, it introduced a very strict technical requirement. Litigants are exposed to the risk of not meeting the laid-down standard when seeking the certificate on a point of law. This is considered as a reminder of the need to have an option in determining the point by the CAT when the High Court refuses the same. In the absence of this mechanism, there is a likelihood of restricting access to justice for most of the litigants.

The CAT has further strictly reinforced the difference between questions of fact and law. These also limits the circumstances in which a certificate on the point of law can be granted. In *Amina Khamis & 6 Others v Kikundi Cha Kapu la Mama cha Katunguru*,⁶⁴ The High Court refrained from granting a certificate on a point of law as the application and supporting affidavit raised issues of fact and not law.

From a scholarly perspective, this approach preserves the appellate hierarchy by confining the CAT to its role of dealing with matters of law when the appeal before it is the third appeal; however, from a bird's eye perspective, the rigid dichotomy between law and fact is often superfluous. Many disputes involve both questions of law and fact, and an excessively obstructive interpretation may reject appeals with significant legal principles, though embedded on point of fact. As a result, the determination of the point of law in a narrow scope stimulates a review to balance the demand of justice vis-à-vis the procedural requirement.

The other critical issue is that the CAT has insisted that certification on a point of law is an exclusive jurisdiction of the High Court. In *William F. Muze v. Yane Tedy Mayemba*⁶⁵ The CAT held that certification is “the

⁶³ *Dorina N. Mkumwa v. Edwin David Hamis*, Civil Appeal No. 53 of 2017, Court of Appeal of Tanzania, Mwanza Sub-Registry, 2018, pp. 9–1.

⁶⁴ *Amina Khamis & 6 Others v Kikundi Cha Kapu la Mama cha Katunguru*, Misc. Civil Application No. 15316 of 2024, High Court of Tanzania at Mwanza, unreported (TANZIL), p. 4.

⁶⁵ *William F. Muze v Yane Tedy Mayemba*, Civil Application No. 104 of 2016, Court of Appeal of Tanzania, Dar es Salaam Sub-Registry, 2016, p. 5

domain of the High Court.” This was reaffirmed in *Shaban R. Kavitenda v Yasin S. Kavitenda*,⁶⁶ where the CAT refused to grant a certificate on a point of law as the second bite after the refusal by the High Court. By stating that the CAT has no jurisdiction to grant a second opportunity for certification.

Appreciatively, this interpretation preserves judicial hierarchy boundaries and creates a structural bottleneck. However, litigants are entirely dependent on the High Court’s readiness to certify on a point of law. The jurisprudence on the determination of a certificate on a point of law is limited and determined solely based on the court’s discretion. From a scholarly perspective, this raises a debate about consistency, accountability, and transparency in the certification process, particularly where refusal is injudiciously determined.

The CAT has consistently rejected attempts to circumvent the certification requirement through alternative procedural mechanisms. In *Mathew Mlay v Rashid Majid Kasenga*⁶⁷, The CAT was of the view that, revision cannot be used to bypass the statutory requirement for certification. This reinforces the centrality and indispensability of certification within the appellate framework.

However, this strict limitation of alternative avenues may be critiqued for over-entrenching procedural rigidity, particularly in cases where certification is wrongly refused or procedurally frustrated. A more flexible approach could appear to allow the Court to intervene in exceptional circumstances to prevent injustice.

In the above discussion, the dominant approach by CAT regarding a certificate on a point of law is strict. The CAT has applied stringent rules when the application for a certificate of law is sought in a forum other than the High Court. However, it has relaxed its procedures only where an extension of time to file an application for certification on a point of law is sought. In *Emmanuel Makamba v Bodi ya Wadhamini Jimbo Kuu la*

⁶⁶ *Shaban R. Kavitenda v Yasin S. Kavitenda*, Civil Application No. 252 of 2020, Court of Appeal of Tanzania, Dar es Salaam Sub-Registry, 2022, p. 4.

⁶⁷ *Mathew Mlay v Rashid Majid Kasenga*, Civil Application No. 354/17 of 2020, Court of Appeal of Tanzania, Dar es Salaam Sub-Registry, 2022, p. 1,

Mwanza,⁶⁸ the Court granted an extension of time to apply for certification, recognising that the delay caused by late access to the judgment constituted sufficient cause. Equally, in *Juma Sanga v Matrida Sangupa*⁶⁹ The Court refused extension due to unexplained delay and procedural non-compliance.

These decisions suggest that while the Court is not entirely inflexible, its willingness to relax procedural requirements is exceptional and tightly controlled. From a scholarly perspective, this limited flexibility does little to offset the broader rigidity of the doctrine and may not sufficiently safeguard litigants against procedural injustice.

Generally, judicial interpretation of certification on points of law in Tanzania reflects a deliberate gatekeeping philosophy grounded in jurisdictional discipline and doctrinal clarity. While this approach promotes efficiency and preserves the Court's role as a court of law, it simultaneously imposes significant procedural burdens. The cumulative effect of strict compliance requirements, the High Court's exclusive control, and the narrow construction of certifiable issues raises serious concerns about the practical accessibility of appellate justice, particularly for unrepresented or resource-constrained litigants.

4.1 Implications of Judicial Interpretation on the Point of Law for Access to Civil Justice

The jurisprudence discussed above has shown that the certification requirement on points of law operates as a gatekeeping mechanism for the litigant to access CAT. It restricts the third appeal to a legal question solely determined by the High Court.⁷⁰ However, this gatekeeping role by the High Court has an adverse impact on access to justice, especially where it is erroneously determined.

Scholarly analysis underscores that the traditional distinction between questions of law and questions of fact plays a decisive determining point of law when there is a question of certification. The determination causes a significant challenge to access to justice when the certificate on a point

⁶⁸ *Emmanuel Makamba v Bodi ya Wadhamini Jimbo Kuu la Mwanza*, Civil Application No. 423 of 2021, Court of Appeal of Tanzania, Mwanza Sub-Registry, 2022, p. 3,

⁶⁹ *Juma Sanga v Matrida Sangupa*, Civil Application No. 817/06 of 2023, Court of Appeal of Tanzania, Dar es Salaam Sub-Registry, 2024, pp. 4–5,

⁷⁰ Appellate Jurisdiction Act (note 48) s 8.

of law is refused. According to Steinman, rigid categorisation of issues of facts and law undermines the decision-making process by the judiciary, as many disputes arising from subordinate courts are predominantly factual, hence limiting litigants' ability to refer the matter to the apex court.⁷¹ These procedural mechanisms undermine access to justice in most of the apex courts in different jurisdictions, including Tanzania.

The jurisprudence of the CAT demonstrates that certification on points of law plays a conclusive role in determining whether litigants can pursue the third appeal in civil matters originating from the Primary Court. In fact, the requirement serves an important judicial function by regulating the CAT's appellate jurisdiction. On the other side, it raises a crucial issue regarding the accessibility of civil justice within the CAT. In *Eustance Kabalyenda v. Venancia Daudi*⁷² The CAT held that the rejection of the High Court to grant a certificate on a point of law is final and not subject to appeal to the CAT.

The gap of not having the second bite application to CAT when the certificate is not granted appears to be a stumbling block to access to justice. In *Haruni Chacha and Mugabe Gikaro*⁷³ The Court insisted that when it comes to the issue of granting the certificate, that remains an exclusive jurisdiction of the High Court, and the legislature made it clear that such jurisdiction is vested in the High Court only. There is no concurrent jurisdiction in determining a certificate on a point of law.

The effects of the law not providing a second bite to appeal in the CAT limit parties to present their grievances to the CAT. The decision on Lord Diplock in *Bremer Vulkan Schiffbau und Maschinenfabrik v. South India Shipping Corp*⁷⁴ Although the decision is persuasive, the court made a very crucial remark that every civilised government must have in place mechanisms through which citizens may settle their disputes amicably. A procedural framework should preserve meaningful access to courts for litigants seeking review of legal error.

⁷¹ A.N Steinman, 'Law, fact, and appellate review' *Iowa Law Review*, Vol 110, 2024 (1–), available at: <https://scholarship.law.tamu.edu/facscholar/2150> (accessed 6 April 2026).

⁷² *Eustance Kabalyenda v. Venancia Daudi*, Civil Appeal No. 70 of 2011, Court of Appeal of Tanzania at Mwanza, reported in TANZLII.

⁷³ *Haruni Chacha and Mugabe Gikaro*, Civil Application No. 1 of 1986

⁷⁴ [1981]AC 909, HH, 976.

From this perspective, although the Constitution of the United Republic of Tanzania⁷⁵ provides for the right to appeal; however, it has some limitations imposed by the law, including the limitation under the embedded-on application of the certificate of law. Thus, relaxing this requirement is ideal in promoting access to justice in CAT.

4.2 Key Findings

The foregoing analysis yields five principal findings. First, certification on a point of law functions as a jurisdictional gatekeeping mechanism regulating access to the CAT.⁷⁶ Secondly, the High Court exercises exclusive jurisdiction in determining whether or not a point of law exists for purposes of certification.⁷⁷ Thirdly, refusal of certification terminates the appellate process because such refusal is generally not subject to appellate review.⁷⁸ Fourthly, Tanzanian jurisprudence adopts a predominantly formalistic approach characterised by strict adherence to procedural requirements and a narrow distinction between questions of law and fact.⁷⁹ Finally, the certification framework disproportionately affects self-represented and resource-constrained litigants, who may encounter difficulties in identifying and articulating certifiable legal issues.⁸⁰ These findings demonstrate the continuing tension between judicial efficiency and access to civil justice within the appellate system. The study highlights the dual character of certification on points of law as both a procedural safeguard and a potential barrier within the civil justice system. While the requirement serves the legitimate purpose of regulating appellate jurisdiction, it also influences the extent to which litigants can

⁷⁵ Constitution of the United Republic of Tanzania (note 10) art 13.

⁷⁶ Appellate Jurisdiction Act, Cap 141 (R.E. 2023), s 8(2)(c); *Shamte Khatibu v Charles Moses*, Civil Appeal No 15 of 2011 (CAT, Dar es Salaam Sub-Registry, 2016) 4–7.

⁷⁷ *Amina Joseph Muganda v Zainabu Juma Masoud (Administratrix of the Estate of the Late Hashimu Jawadu Zubail)*, Civil Application No 357/08 of 2023 (CAT at Mwanza); *William F Muze v Yane Tedy Mayemba*, Civil Application No 104 of 2016 (CAT, Dar es Salaam Sub-Registry, 2016) 5; *Shaban R Kavitenda v Yasin S Kavitenda*, Civil Application No 252 of 2020 (CAT, Dar es Salaam Sub-Registry, 2022) 4.

⁷⁸ *Amina Joseph Muganda v Zainabu Juma Masoud* (n 2); *Mathew Mlay v Rashid Majid Kasenga*, Civil Application No 354/17 of 2020 (CAT, Dar es Salaam Registry, 2022); *Eustance Kabalyenda v Venancia Daudi*, Civil Appeal No 70 of 2011 (CAT at Mwanza).

⁷⁹ *Dorina N Mkumwa v Edwin David Hamis*, Civil Appeal No 53 of 2017 (CAT, Mwanza Sub-Registry, 2018) 9–11; *Mathew Mlay v Rashid Majid Kasenga* (n 3); *Amina Khamis & 6 Others v Kikundi Cha Kapu la Mama cha Katunguru*, Misc Civil Application No 15316 of 2024 (High Court of Tanzania at Mwanza).

⁸⁰ M Cappelletti and B Garth, 'Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective' (1978) 27 *Buffalo Law Review* 181; D L Rhode, 'Access to Justice' (2001) 69 *Fordham Law Review* 1785; A N Steinman, 'Law, Fact, and Appellate Review' (2024) 110 *Iowa Law Review* 1; see also discussion in section 4.1.

access the CAT. The procedure offers a finality jurisdiction in determining a certificate on a point of law, which threatens access to justice to CAT as it is determined by a single court without affording options of appeal or second bite application to CAT to cure errors that might have been committed by the High Court.

Thus, this study contributes broadly on understanding of the relationship between appellate procedure and access to civil justice. It further indicates the potential danger for the High Court to have exclusive jurisdiction in determining the point of law. The findings suggest that certification requirements must be carefully interpreted in order to promote access to justice. Also, the High Court should not have exclusive jurisdiction; there should be an avenue to appeal to the CAT as a second bite where the High Court refuses to grant a certificate on a point of law.

5.0 Conclusion and Recommendations

The study under review demonstrated that certification on points of law plays an important role in regulating access to the CAT in civil matters requiring certificate on point of law. The procedural framework established under the Appellate Jurisdiction Act and related procedural rules clearly limit appeals before it when originating from Primary Court courts only to issues of law. Judicial interpretation of these provisions has constantly emphasised that the CAT's jurisdiction is limited to legal questions and not disputes concerning factual issues. As illustrated by decisions cited in this study, the CAT has firmly upheld this distinction while maintaining its role as the apex court responsible for the interpretation and development of legal doctrine in Tanzania.

From the legal perspective, the condition of certification on points of law serves an important role in the appeal process. The confinement of appeals to the point of law assumes that since the matter is preferred to the CAT as the third appeal, the issues of fact must have been settled in the appellate courts below the CAT. The limitation of third appeal appeals supports the principle of finality in litigation by preventing disputes from being prolonged indefinitely through repeated appeals.

However, the analysis undertaken in this article also demonstrates that certification on points of law has important implications for access to civil justice. This is due to the reasons that, at times, disputes originating from the Primary Court might have been preferred to CAT while the factual

issues have not been resolved. This limitation is particularly apparent in civil disputes originating from Primary Courts, where many litigants appear without legal representation and may lack the technical expertise required to identify and articulate legal issues that can satisfy the certification requirement.

The legal requirement for the High Court to have conclusive jurisdiction in determining the existence of a point of law significantly hinders access to justice. The CAT have held several times that once the High Court refuses to grant a certificate on a point of law, it ceases to have jurisdiction. This practice and statutory requirement unnecessarily limit the applicant's right to access CAT. The study reveals that the High Court may, in some cases, refuse certification on an unduly narrow view of what constitutes a point of law.

The jurisprudence of the CAT indicates that the determination of whether an issue constitutes a point of law often involves judicial interpretation and discretion. While courts have attempted to maintain a clear distinction between legal and factual questions, the boundary between these categories is not always easily defined. As a result, the interpretation of certification requirements may influence the extent to which litigants can access CAT. Where certification requirements are interpreted narrowly, litigants may be prevented from pursuing appeals even where genuine legal questions arise.

The study, therefore, highlights the dual character of certification on points of law within the CAT. On the one hand, certification functions as a necessary gatekeeping mechanism that enables the CAT to manage its jurisdiction effectively. Thus, the requirement may create procedural barriers that affect the accessibility of appellate justice for certain categories of litigants. Achieving an appropriate balance between these competing considerations remains an important challenge for the Tanzanian judicial system.

This study recommends the following: There should be an amendment of the Appellate Jurisdiction Act to provide specifically that a person aggrieved by the decision of the High Court or tribunal in determining the certificate on a point of law should have an avenue to apply for the same in CAT as the second bite. This will promote access to justice in CAT, especially when the certificate on a point of law is erroneously refused by

the High Court as the case may be. Amending the provision and extending appellate jurisdiction on matters of certificate to CAT will expand the normative jurisdiction of CAT in developing the precedent of certificate on a point of law.

There is a need for greater doctrinal clarity regarding the meaning of a “point of law.” Although the CAT has provided guidance through judicial decisions, the absence of a clear statutory definition may create uncertainty for litigants and practitioners. Legislative or procedural clarification of the concept of a point of law could help reduce ambiguity and improve the predictability of appellate procedures.

Also, judicial practice could be further developed to ensure that genuine legal issues embedded within factual disputes are properly recognised. Many civil disputes involve mixed questions of law and fact, and overly rigid interpretations of certification requirements may prevent legitimate legal questions from reaching the CAT. Therefore, the CAT should continue to adopt a purposive approach when determining whether an issue raises a point of law.

There should be a relaxed application of law by implying the overriding objective principle, which would enhance accessibility in the CAT. It is a fact that some disputes originating from Primary Courts involve self-represented litigants, clearer procedural guidance on how to identify and present legal questions could help ensure that certification requirements do not operate as unnecessary barriers to justice.

Finally, continued judicial reflection on the relationship between certification requirements and access to civil justice would contribute to the development of a balanced appellate system. Courts must continue to interpret certification rules in a manner that preserves the institutional efficiency of the CAT while ensuring that litigants retain meaningful opportunities to challenge legal errors in degerming certificate on point of law.

Certification on points of law will likely remain an essential feature of the Tanzanian appellate system. As the highest court in the country, the Court of Appeal must necessarily exercise selective jurisdiction to maintain its capacity to interpret and develop legal principles. Nevertheless, the effectiveness of the certification system ultimately depends on its ability

to balance institutional efficiency with the broader objective of ensuring accessible and fair civil justice.

This study confined itself to doctrinal methodology which lacks empirical data; however, based on the nature of the study which was purely interpretative on the certificate on a point of law, the study was therefore justified. However, future studies are encouraged to use empirical methodology in order to bring a balanced view while contributing to a deeper understanding of the role played by appellate gatekeeping mechanisms in CAT. Future reforms aimed at clarifying certification requirements and extending appellate jurisdiction on certification of point of law to CAT, and enhancing procedural accessibility may help ensure Access to justice in CAT.