



PARLIAMENTARY PRIVILEGE IN TANZANIA

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PARLIAMENTARY CIVIC
EDUCATION PROGRAMME

PARLIAMENTARY
PRIVILEGE
IN TANZANIA

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[PARLIAMENTARY PRIVILEGE IN TANZANIA]

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PREFACE

This publication is intended to explain and expound on the little known doctrine of parliamentary privilege, as well as the circumstances under which it may be applied here in Tanzania.

There is ample evidence to show that the concept of parliamentary privilege is not well understood by the majority of Tanzanians, including some of the members of parliament themselves whom it is intended to benefit, despite the fact that statutory provision for parliamentary privileges, powers and immunities, has been in place for a very long time, starting with the very first legislative body which was established way back in 1926, then known as the Legislative Council of Tanganyika (LEGCO). As a consequence of that general ignorance, very little appears to be known about the contents and even the purpose of these special privileges and immunities being granted to members of parliament.

The reason for this general ignorance is quite simple. It is because the relevant laws have actually never been applied to anyone, in the sense that so far there has been no case in Tanzania involving a breach of parliamentary privilege. Any law which is dormant will of course remain largely unknown to the people to whom it applies, including its intended beneficiaries, the honorable members of parliament.

The following example will show the extent of this general ignorance. Section 13 of the Parliamentary Immunities, Powers and Privileges Act, 1988 (No. of 1988), gives the National Assembly and any of its standing committees the power to secure the attendance of persons on matters of suspected breaches of parliamentary privilege, and to deliberate and examine witnesses on such matters. It reads as follows: -

"The Assembly, any standing committee or any sessional committee may, subject to the provisions of sections 18 and 20 of this act, order any person to attend before the Assembly or before such committee,

and to give evidence or to produce any document or under the control of such person."

Subsequent sections of the act then describe in great detail the correct procedure to be followed in exercising this power. The procedure is more or less the same as that which is used by the courts of law.

But because of the prevailing public ignorance about the provisions of this law, the Parliamentary Privileges Standing Committee has in the recent past been subjected to some misguided and mischievously unfair criticism from certain sections of the press, when it started exercising its powers under that law. In this case, the committee has summoned a journalist to appear before it in order to answer for the scandalous and contemptuous article which he had written against the members of parliament collectively. The said article was published in one of the English language dailies circulating in the country.

That journalist deliberately failed to obey the summons which had been directed to him, and did not appear before the committee as required. Consequently, as mandated by section 15(l) of the same act, the Speaker, upon being satisfied that the summons was duly served, issued a warrant for the police to apprehend him and bring him before the committee. But then again, because of the general ignorance which I have already referred to above, the police, instead of complying with the terms of the warrant, i.e. to apprehend him and produce him before the committee, they started interrogating him apparently for the purpose of taking him to court; and finally they announced that they had not found sufficient evidence to file a case against him !

This shows that the police, did not understand that the offence which the journalist had committed is known as contempt of parliament; and that the evidence they were looking for was the contemptuous article which he had published to the world, plus his deliberate failure to appear before the committee. These offences are clearly mentioned in section 31 of the act; as follows:

"31 (a) any person commits an offence who disobeys an order made by the Assembly or a committee for

attendance or for production of documents, unless such attendance or production is excused as herein before provided; or

31(e) published any false or scandalous libel on the Assembly, or any report which willfully misrepresents in any way any proceedings of the Assembly or any committee."

But again, because of the prevailing ignorance, big noises were made in some sections of the press criticizing that perfectly lawful action of the Privileges standing committee; even suggesting that the action was illegal! They should know that any action which is authorized by the law of the land cannot be illegal. This particular journalist was just lucky to have escaped the way he did. But the next transgressor should beware, for he may not have the same luck!

In this publication, I have endeavored not only to highlight the actual contents of the Parliamentary Powers, Privileges and Immunities law, (no. 3 of 1988); but I have also, after fairly extensive research, citesomeslected relevant cases from other Commonwealth jurisdictions, which have been decided over the years in respect of this subject.

It is my sincere hope that this little publication will assist in eliminating the prevailing ignorance regarding this matter. It is also expected that the publication will be of some use to the students and practitioners of the law of parliament, which is part of the general constitutional law of the land relating to the customs, practices, procedures, powers and privileges of the institution of parliament.

Pius Msekwa.

Dodoma, June 2003.

1. **INTRODUCTION:
A GENERAL OVERVIEW OF PARLIAMENTARY
PRIVILEGE**

The acclaimed book of authority, Erskine May's *Treaties on the Law, Privileges, Proceedings and usage of Parliament* sets out at page 69 of the twenty-first edition, the following statement:-

"Parliamentary privilege is the sum of the peculiar rights enjoyed by each House of parliament, and by its members individually; without which they could not discharge their functions, and which actually exceed those possessed by other bodies or individuals. Thus "privilege," though part of the law of the land, is to a certain extent an exemption from the general law."

Another book of authority on the subject of parliamentary privilege entitled *Parliamentary Privilege in Canada* by J.P. Maignot, Q.C. Mc-Gill Queen's University Press 1977; makes the following statements at p. 12 of the second edition: -

"Parliamentary privilege is a fundamental right which is necessary for the exercise by parliament of its constitutional functions. In any Constitutionally governed country, the privileges, immunities and powers of its Legislature, as a body as well as the rights and immunities of its members, are matters of primary importance.

"It is obvious that no Legislative Assembly would be able to discharge its duties with efficiency, or assure its independence and dignity, unless it had adequate powers to protect itself and its members and officials in the exercise of their functions."

There are two important principles implied in the above quoted passages. The first is that parliamentary privilege is part' of the law of

the land; and the second is that because it is part of the law of the land, breaches of parliamentary privilege are punishable by the courts of justice in exactly the same way as violations of other laws are dealt with. Whenever any of those rights or immunities is disregarded or violated by any individual or authority, the offence is called a "breach of privilege" and is punishable under the law as a *contempt of parliament*, an offence which is similar to that of contempt of court, which is more familiar.

This is the reason why the written constitutions of many countries, especially the commonwealth countries, have routinely included specific provision to cater for parliamentary privileges and immunities. The following are some of the examples of such provisions from the constitutions of the East African countries.

In Tanzania, statutory provisions covering parliamentary privilege are to be found in (a) Article 100 of the constitution of the United Republic of Tanzania, which covers the privilege of freedom of speech and debate in the Assembly; and (b) the Parliamentary Immunities, Powers and Privileges Act, 1988 (no. 3 of 1988).

In Kenya, the powers, privileges and immunities of the Kenya parliament are provided for in article 57 of the constitution of Kenya; while in Uganda, such provision is to be found in Article 97 of the constitution of the Republic of Uganda.

Similarly the Treaty for the establishment of the East African Community has also made provision for the powers, privileges and immunities of the East African Legislative Assembly and its members in article 61 thereof.

Another example is the constitution of India, which makes provision for the powers, privileges and immunities of the parliament of India and its members in article 105.

These constitutional provisions do at the same time empower their parliaments "to enact legislation which would, declare and define the powers, privileges and immunities of parliament and its committees;

as well as of its members. It by virtue of this enabling constitutional article that the Tanzania parliament enacted Act no. 3 of 1988.

But because the law on parliamentary privileges in Tanzania has been largely dormant, there are hardly any privilege cases that have been recorded. On the other hand however, in many of the other parliamentary jurisdictions which are based on the British Westminster parliamentary system, questions of privilege are very frequently raised on the floor of their respective parliaments. Such privilege questions usually relate to some improper obstruction of a member of parliament in performing his parliamentary work. The following are some of the examples relating to breaches of parliamentary privilege: threatening a member for what he said in debate in the House; contemptuous reflections on a member of parliament; allegations of improper conduct by a member during a proceeding in parliament; or allegations that the Speaker or chairman of a parliamentary committee was biased.

The relevant areas of this publication will describe in greater detail the specific privileges and immunities, as well as the specific powers which are granted to our parliament by law; Attention is also drawn to the specific offences and penalties related to parliamentary privilege; and the procedure to be followed in dealing with breaches of parliamentary privilege which may be committed by non-members of parliament.

Although in the parliamentary vocabulary the words "privilege" and "immunity" are sometimes used synonymously; it is perhaps necessary to explain, for better clarity, that there is a clear distinction between those two words. Parliamentary privilege refers to certain specified rights which members of parliament are entitled to enjoy, such as the freedom of speech and debate inside parliament; while parliamentary immunity refers to a set of specified exemptions from the ordinary laws of the land, such as the immunity from legal proceedings for words spoken in parliament, and the immunity from arrest for civil debts.

It is also important to underscore the point that privilege is not granted to individual parliamentarians in order to confer on them special benefits

which are not ordinarily enjoyed by their fellow citizens. It is given to them for the sole purpose of enabling them to perform their duties without let or hindrance. It is therefore not privilege in any personal sense. Because the House and its individual members can claim these privileges which are not available to the ordinary citizen, and may even seek to punish those who infringe them, this could easily make them liable to criticism from members of the public if they appear to be asserting privileges which are not obviously essential for its functions. It is therefore absolutely necessary for parliament to reconcile the two demands, i.e. the need for the House to maintain its privileges on the one hand; and on the other hand the desirability of not abusing them.

2. PARLIAMENTARY PRIVILEGE IN TANZANIA

As has already been mentioned in the Introduction, parliamentary powers, privileges and immunities in Tanzania are provided for in The Parliamentary immunities, Powers and Privileges Act, 1988 (no. 3 of 1988). They are the following:

2.1 THE SPECIFIC PRIVILEGES AND IMMUNITIES

2.1.1 Freedom of speech and debate in the House

Section 3 of the Act states as follows:

"There shall be freedom of speech and debate in the Assembly and such freedom of speech and debate shall not be liable to be questioned in any court or place outside the Assembly"

The privilege of freedom of speech, though of a personal nature, is not so much intended to protect the members from prosecution for their own individual advantage, but rather to support the rights of the people by enabling their representatives to carry out their duties inside parliament, (e.g. denouncing abuses of authority) without fear of either civil or criminal prosecutions.

It has been said that freedom of speech as set out in Article 9 of the English *Bill of Rights*, 1689 was intended to protect members of parliament from possible deprivation by the other Branches of the government, i.e. the Crown or the Executive, or indeed the Courts of law. In the English case of *R. v Murphy* (1985) 64 A.L.R 498; it was stated as follows:

"What is meant by the declaration in Article 9 is that no court proceedings having legal consequences against a member of parliament

are permitted which have the effect of preventing his exercising free speech in parliament, or of punishing him for having done so. In other words, the phrase "shall not be impeached or questioned in any court or place out of parliament" in Article 9 should be interpreted in the sense that the exercise of the freedom of speech given to members of parliament may not be challenged by way of court process having legal consequences for such persons because they had exercised that freedom." It has also been authoritatively established that Article 9 of the Bill of Rights, 1689 only prohibits the questioning of the proceedings of parliament in any place outside parliament. But those participating in its proceedings, principally the members of parliament themselves but also any witnesses, petitioners and others, are still subject to the disciplinary powers of the House for their conduct during the proceedings. In the English cases of *Burdett v Abbot* (1811) 3 E.R. 1289 and *Stockdale v Hansard* (1839) 112 E.R. 1112 it was emphasized that "the jurisdiction of the Houses over their own members, and their right to impose discipline within their walls, is absolute and exclusive."

However, it must be made clear, for the avoidance of any doubt, that a member of parliament is not protected by parliamentary privilege outside the House of parliament itself. For example, if an M.P. repeats outside parliament what he said inside the House, he will not be able to rely on parliamentary privilege to protect him, should he for instance be prosecuted in a court of law for libel or for slander. In the English case of *R. v (Lord) Abingdon* (1794) 170 E.R.337; Lord Abingdon was convicted in a criminal court for publishing a criminal libel which he had uttered within the protection of the House.

What constitutes a proceeding in parliament

As a technical parliamentary term, "proceedings" have been defined as:

"All the events and the steps leading up to some formal action by parliament, including a decision taken by the House in its collective capacity. All of these steps and events, the whole process by which the House reaches a decision, are proceedings of the House."

Further clarification is given in Erskine May's *Parliamentary Practice* as follows:

"An individual member takes part in a proceeding usually by speech, but also by various recognized kinds of formal action, such as voting, asking questions, giving notice of a motion, etc, or presenting a petition or a report from a committee. Strangers can also take part in the proceedings of the House, e.g. by giving evidence before it or before one of its committees"

It is to be noted that in order for this privilege to apply to a member, he must be actually exercising his functions as such a member either in a committee or in the House itself, in the transaction of parliamentary business. Whatever he says or does in those circumstances is regarded as having been said or done during "a proceeding of parliament". In other words the privilege applies only when an M.P. is actually participating in parliamentary business as defined above, i.e. asking a question, or contributing to a debate etc; but not when he is just in the lobby or in his constituency. In *R v Bunting (1885) 7 OR 524* it was stated as follows:

"given the anxiety of the House to confine its own or its members' privileges to the minimum infringement of the liberties of others, it is important to see that those privileges do not cover activities that are not squarely within a member's true function."

This has been interpreted to mean that acts of a member in his official capacity may extend beyond parliamentary work, in which case they will receive no protection. That the "official capacity" of a member of parliament is a capacity beyond what the member does or says during the course of a parliamentary proceeding is illustrated in the following Canadian case:- *R v Bruneau (1964) 1 c.c.c.97 Ontario Court of Appeal*

Bruneau was a member of the Canadian House of Commons in 1956. He had accepted money for assisting a constituent to have the Federal government buy some property which the said constituent owned.

Bruneau was convicted of corruption while acting in his official capacity, because the functions of a member in his official capacity include assisting his constituents.

It is also to be noted that not everything which is said or done in the House or committee is protected by the term "proceeding in parliament" In order to be protected, the act or word must be done or said in connection with the proceeding concerned. For example, in *Coffin v Coffin (1808) 4 Mass. 1*, it was held that defamatory statements made by one member to another in the course of a private conversation in the House are not protected by the absolute privilege that attaches to proceedings in parliament.

2.1.2 Immunity from legal proceedings

Section 5 of Act no. 3 of 1988 provides as follows:-

"No civil or criminal proceeding may be instituted against any member for words spoken before the Assembly or any of its Committees, or by reason of any matter or thing brought by him therein by petition, bill or motion or otherwise, or for words spoken or act done bona fide in pursuance of a decision or proceeding of the Assembly or a committee."

This provision merely reinforces the protection accorded by the previous section, namely freedom of speech and debate in the Assembly, its practical application may be seen from *Strode's case (1512)*, 4 Henry 8. In 1512, Richard Strode, a member of the British House of Common, was prosecuted in court for having proposed certain Bills to regulate the tanners in Cornwall. He was subsequently imprisoned. His prosecution resulted in a special Act of parliament being passed, cited as *An Act Respecting Richard Strode*, which enacted the following:

"All suits and other proceedings against Strode and every other member of the present parliament or of any parliament thereafter, for the introduction of any Bill, speaking or declaring any matter concerning the

parliament to be communed and treated of, shall be utterly void and of no effect."

There is another relevant judgment in Canada which also sheds light on the courts' general response to this parliamentary immunity. In dealing with statements made in the Canadian House of Commons in the case of *Roman Corp v Hudson's Bay Oil & Gas Company, (1973)*-Houlden J stated as follows:-

"The court has no power to inquire into what statements were made in parliament, why they were made, who made them, what was the motive for making them, or anything about them. It seems to be well established that no person can have a judgment awarded against him in civil proceedings arising out of a speech made in the House of Commons."

That the courts will not inquire into the question of motive behind a parliamentary proceeding is confirmed by the decision of the Cook Islands Court of Appeal in the case of *Robati v The privileges Standing committee of the parliament of the Cook Islands and the Speaker of the Parliament of the Cook Islands (1994) CA. no 156193*. The facts of that case were as follows:

The Deputy Prime Minister of the Cook Islands moved in the House a vote of no confidence in the Speaker. But in order to succeed, the motion to remove the Speaker requires the affirmative votes of not less than two-thirds of all the members of the House. The Cook Islands parliament has a total of 25 members, of whom 17 belong to the government party; and that is precisely the number which is required to constitute a two-thirds majority. So the Deputy prime Minister had calculated that his motion to remove the Speaker would obtain the mandatory two-thirds majority without a problem. But then an unforeseen problem arose, which apparently had not been taken into consideration in the Deputy Prime Minister's calculations. The 17 members of the government party included the Deputy Speaker, Now, because the Speaker had to vacate the Chair when the motion for his removal was being discussed, the Deputy Speaker took the chair. But

because of being in the, chair, he could not vote at the end of the debate, (this was a constitutional restriction). As a result of this, only 16 votes were cast in favour of the motion, which was less than the required two-thirds. Utterly frustrated by this result, the Deputy Prime Minister moved another motion that the Deputy Speaker be permitted to vote from the chair. That motion was passed, and the Deputy Speaker then voted in favour of the motion, thus enabling it to obtain the mandatory two-thirds majority.

Subsequently however, one member who had voted against the motion for the Speaker's removal quickly filed proceedings in the High Court seeking a declaration that the passage of the motion for the removal of the Speaker was unconstitutional, and therefore null and void. The Attorney- general tried to counter this by asking the court "to look at the motive of the Speaker in leaving the chair" alleging that "it was improper and designed to defeat the clear intention of the constitution to permit two-thirds of the members of parliament to remove the Speaker" Counsel for the Speaker, on the other hand, maintained that while the court could indeed review an action arising out of a parliamentary proceeding which was contrary to the constitution, it could not in doing so venture into the Speaker's decision to leave the chair, or his motive for doing so.

The case was transferred to the court of appeal of the Cook Islands (consisting of three judges of the New Zealand court of appeal) The appeal court judgment was delivered on 7th February, 1994, and it said that "the Speaker's decision to vacate the chair could not be questioned because there was no constitutional or statutory obligation, or a standing order of the House, which requires the Speaker to remain in the chair." The judges further observed that in fact the Speaker, according to standing orders, is entitled to withdraw from the chair whenever he feels it appropriate to do so. Consequently, the vote of the Deputy Speaker while he was in the chair was declared unconstitutional, and the Appeal court further declared that the Speaker "is, and remains, the lawfully elected Speaker of the parliament of the Cook Islands.

There is another relevant case which reveals the general attitude of the courts regarding the question of motives for things done or words spoken in parliament. This is the case of *Prebble v Television New Zealand Limited (1994)*. On 27th June, 1994, the Privy Council, on an appeal from New Zealand in the above case, delivered a significant judgment concerning the question of motives behind what had been done or said in the House in the following words:-

"To permit in legal proceedings evidence, cross-examinations inferences or submissions to be made that suggested that actions performed or words used in parliament were inspired by improper motives or were untrue or misleading, is not permissible. Such matters fall to be judged by the House itself and not by the courts"

2.1.3 Immunity from arrest for civil debts.

Section 6 of Act no. 3 of 1988 states as follows:-

"No member shall be liable for arrest for any civil debt except for a debt the contraction of which constitutes a criminal offence."

The history of this particular privilege states that it was first accorded to parliamentarians in England in order to ensure that they were not impeded on their way to council with the monarch because of civil a civil process. It is said that the King could not afford to let anybody interfere with the agents of the shires and boroughs whom he had summoned to treat with him about supplying money for his needs. So he made supreme the necessity of attending the business of his highest court and took the members under his protection. The main concern was to secure the attendance of members, and it remains to this day the principal reason for the privilege of freedom from arrest. Its justification being that because of the great constitutional importance of Parliament it must have the first call on the services of its members. Hence, except in the case of criminal matters, parliament will not tolerate impediments to members who are on their way to attend its sittings.

In his book entitled Precedents of proceedings in the House of Commons (3rd edition, Volume 1 at page 12, John Hatsell comments as follows:-

"As it is an essential part of the constitution of every court of judicature, and absolutely necessary for the due execution of its powers that persons resorting to such courts, whether as judges or as parties, should be entitled to certain privileges to secure them from molestation during their attendance; it is more peculiarly essential to parliament, that the members who compose it should not be prevented by trifling interruptions from their attendance on this important duty, but should, for a certain time, be excused from obeying any other call not so immediately necessary for the great services of the nation. It is upon these principles that the members of both Houses should be, during their attendance in parliament, exempted from general duties and not considered as liable to some legal process to which other citizens, not entrusted with this most valuable franchise, are by law obliged to pay obedience"

The position in the United Kingdom is that because this privilege is always associated with the service of the House, it is limited to a period governed by the duration of the parliamentary session, together with a convenient and reasonable time before and after that session. In the United Kingdom and in Canada, this period is 40 days before any parliamentary session, and continues for another 40 days after the end of that session.

For the sake of clarity, it must be emphasized that this privilege extends only to civil matters. Any incident having a criminal character or of a criminal nature involving a member of parliament will not be protected by this privilege.

However, the practice in the United Kingdom is that in all cases in which members of parliament are arrested on criminal charges, the

House must be informed through the Speaker, of the cause for which they are detained from their service in parliament.

2.1.4 Immunity from service of civil process within the precincts of parliament.

Section 11 of Act no. 3 of 1988 states as follows:-

"Notwithstanding anything to the contrary, no summons issued by any court of the United Republic or outside the United Republic in the exercise of its civil jurisdiction, shall be served or executed within the precincts of the Assembly while the Assembly is sitting, or through the Speaker or any officer of the Assembly; nor shall any member be arrested on civil process save by the leave of the Speaker first obtained, while he is within the precincts of the Assembly and while the Assembly is sitting"

The precincts of the Assembly are defined in the same Act as follows:-

"Precinct of the Assembly" means the chamber in which the Assembly meets in session for the transaction of business, together with the offices, rooms, lobbies, galleries courtyards, gardens and other places provided for the use or accommodation of members, officers or strangers, and any passages connecting such places and any other places immediately contiguous thereto s may from time to time be declared by the Speaker as being within the precincts of the Assembly."

However, there is authority to the effect that if committees are sitting beyond the precincts of parliament, the place where they are sitting will constitute the precincts. When the Canadian parliament House caught fire in 1916, parliament moved to the Victoria memorial

Museum, situated one mile south of Parliament Hill in Ottawa. During the period when it was occupied by the House, it constituted the precincts of parliament. Thus when our Standing committees meet in Dar es Salaam, as they regularly do, then the hired rooms in which they meet also become the precincts of parliament. But not the remainder of the buildings in which those rooms are situated, because their functions are not directly related to the work of parliament.

In the context of this law, the words "while the Assembly is sitting" are of very significant importance. They mean that at any time when the House is not in session, this particular protection is not available to members. Therefore, if the need arises, a member can be arrested within the precincts of parliament. This is confirmed by the British House of Commons decision in 1815 regarding the re-arrest of Lord Cochrane, then a member of the House of Commons which took place inside the chamber of parliament at a time when the House was not sitting. Lord Cochrane had been committed to prison following conviction upon an indictable offence. He escaped from prison and made his way to the House of Commons chamber and sat on a bench on the right hand of the Speaker's chair. (the government side) No members were present at that time and prayers had not yet been read. He was rearrested right there in the chamber. His re-arrest in these circumstances was referred to the committee of privileges, which subsequently reported to the House that the privilege of the House did not appear to have been violated by Cochrane's re-arrest.

This unique case shows that it is wrong to imagine that the precincts of parliament constitute a kind of sanctuary for a member who is a fugitive from justice, and further that even the floor of the House is not sacrosanct even on a day when the House is sitting, provided it is before the official commencement of business.

The position at Westminster is that the immunity from service of any process, criminal or civil within the precincts of parliament extends to all persons who are within those precincts on any sitting day, including those who are not members of parliament, such as the officers of the House. The reason being that "the insult to the House from such actions taking place within its precincts stems from the act itself of serving

the process" (see *House of Commons debates, May 19th, 1989, p 1951-3*).

2.1.5 The Privilege of not being required to attend as a witness without a leave.

Section 9 of Act no. 3 of 1988 provides as follows:-

- (1) No member or officer, and no person employed to take or transcribe minutes of evidence before the Assembly or any committee, shall give evidence elsewhere respecting the contents of such minutes or evidence, or of the contents of any document laid before the Assembly or committee, as the case may be, or respecting any proceedings or examination held before the Assembly or committee, as the case may be, without the special leave of the Assembly first had and obtained.
- (2) The special leave referred to in sub-section (1) may be given during a recess or adjournment, by the Speaker

The justification for this privilege is that since parliament has the paramount right to the attendance and service of its members, any call for any member to attend elsewhere while the House is in session should not be entertained. The practice in the United Kingdom is that on the matter being raised by the member concerned, the Speaker will communicate with the court drawing attention to this privilege and asking that the member should be excused because of the sitting of the House.

Here in Tanzania, this immunity was embarrassingly breached by three members of parliament and two officials, in the criminal appeal case no.61 of 1999 of *Augustine Lyatonga Mrema v Republic*. The relevant facts were as follows:-

Three members of parliament and two officials of parliament had been summoned to give evidence in the High court in the above mentioned criminal case. Without seeking leave of the Assembly or of the Speaker as required by the provisions of the relevant law, they just proceeded to the High Court and gave their evidence, and the trial judge dully admitted this evidence. When the case went on appeal to the Court of Appeal of Tanzania, , the Appeal judges strongly criticized their behaviour in their judgment, as follows:-

"To us, "special leave" implies the availability of tangible evidence of leave being granted. The grant cannot be informal or general. We reach this view on account of the importance being placed on that leave by vesting the power of granting it to the National Assembly. That leave cannot therefore be presumed either by the witness-to-be or by the court, least of all in a criminal matter where the liberty of the individual is at stake. In view of these provisions, it is surprising that the three members of the parliamentary select committee, PW 2 Iddi Simba; PW 13 Wilson Masilingi; and PW29 Arcado Ntagazwa; as well as two officers of the committee, PW20 Esther Nyagawa and PW28 Paul Masami, were permitted to give evidence and to refer to the contents of the minutes of evidence and the documents laid before the committee, without the slightest indication that they had obtained special leave, let alone any leave, to do so. We think, with respect, that the evidence of these witnesses was, in the absence of the required special leave, inadmissible, and its reception was a fundamental irregularity in the trial. It is even more confounding, going by the record before us, that even though the provisions of sections(1) and 19(1) were drawn to the attention of the learned trial magistrate, not only did he not record that fact, but he proceeded to receive the evidence as if those provisions did not exist or did not matter. We cannot pretend to be happy with the magistrate's style in the conduct of the trial."

This is one clear example of the prevailing ignorance which I mentioned in the Preface to this publication, regarding the contents of this law. Two of the three members of parliament who took part in this exercise, namely Hon Arcado Ntagazwa and Hon. Wilson Masilingi, were both experienced lawyers, and so were the two officials. That was the reason why they were appointed to serve on the select committee. Yet they were presumably ignorant of the provisions of the relevant law!! On his part, the trial magistrate got what he really deserved for ignoring the provisions of the law on parliamentary privileges. He got a scolding from the Judges of the Appeal Court.

2. THE SPECIFIC POWERS OF THE PARLIAMENT

2.1.1 The Power to regulate its internal affairs.

The power of control over its own affairs and proceedings is one of the most significant attributes of an independent Legislature. Article 89 of the Constitution of the United Republic of Tanzania grants the necessary powers to parliament to make Rules (known as standing orders) prescribing procedure for the conduct of its business.

The courts have long confirmed that parliaments have exclusive jurisdiction over their own internal proceedings, or internal affairs of the House. There are many examples of this confirmation, starting with the ancient English case of *Stockdale v Hansard (1839) 9A.J.E. 1 at p114.* ; wherein it was stated that "whatever is done within the walls of either House must pass without question in any other place" This position was maintained in another English case of *Bradlaugh v Gossett (1884) 12 Q.B.D. 271*; where Lord Coleridge stated, inter alia, as follows:

What is said, or done, within the walls of parliament, cannot be inquired into by a court of Law. On this point all the judges in the two great cases which exhaust the learning on the subject, namely *Burdett v Abbot*, and *Stockdale v Hansard* are agreed and are emphatic. The jurisdiction of the House over their own members, and their right to impose discipline within their walls, is absolute and exclusive They would sink into utter contempt and inefficiency without it."

The more recent Canadian case of *New Brunswick Broadcasting Co. v Nova Scotia Speaker of the House of Assembly (1993) 1 S. CR. 319* also confirmed that the courts do defer to the internal proceedings of Parliament.

And as we shall see later, the courts here in Tanzania have also done so when, in dismissing Mrema's application for stay of implementation

of a parliamentary resolution suspending him, Judge Katiti of the High Court of Tanzania declared: "in obedience to article 100(1) of the constitution of the United Republic of Tanzania, I hereby declare that this court has no jurisdiction to hear this petition"

The right to regulate its own internal affairs and procedures free from external interference includes the following:-

2.2.2 The power to enforce discipline on its members

This is provided for in standing order no. 60. Apart from the disciplinary measures which are prescribed in S.0.60 (1) and (2), Standing Order no. 60(3) empowers the House to impose any other disciplinary measure which the House may consider reasonable in the particular circumstances of the relevant case, provided of course that it is not unlawful. Disciplinary measures which have been imposed on members in other jurisdictions of the Commonwealth over the years have included:-

Suspension from the service of the House for a specified period; commitment to prison; and even expulsion, from the House, The justification for these severe punishments is given in Erskine May's *Parliamentary Practice 21st* edition at p. 103 as follows:-

"The penal power is the power of both Houses (of the British parliament) to punish members and non-members for disorderly and disrespectful acts, It has much in common with the authority inherent in the superior courts , "to prevent or punish conduct which tends to obstruct, prejudice or abuse them" while in the exercise of their responsibilities. By these means, the two Houses are enabled to safeguard and enforce their necessary authority without the compromise or delay to which recourse to the ordinary courts would give rise."

It is on record that "the British courts of law have recognized the power of commitment of the British

House of Commons from the early eighteenth century.
(See *Halsbury's Laws of England, 4th edition vol. 34, p. 60 7*).

In Tanzania, the only disciplinary measure which has ever been taken against a member of the House so far is suspension from the service of the House for a specified number of days. (*For details see Pius Msekwa: Reflections on Tanzania Is First Multi-Party Parliament, 1995 - 2000 chapter*).

The facts were as follows Hon. Augustine Mrema, then M.P. for Temeke, had been ordered to produce documents which would substantiate his serious allegations in a speech he had delivered in parliament, alleging that a meeting of government officials held on a date which he mentioned, had decided that him and three other persons were to be assassinated before the year 2000(which was general election year); and further that one of them, retired Army General I.H. Kombe, had in fact already been killed in the process of implementing the alleged official scheme of causing death by assassination. He was given five days to produce the necessary documents to support his allegations. On the last day of the designated five days, Hon Mrema dully presented his documents and was given ample opportunity to speak in their support In the debate following his presentation, parliament was of the unanimous view that he had failed to substantiate his earlier allegations. Thereupon, a motion was moved for Hon Mrema's immediate suspension from the service of parliament for the period ending with the closure of the budget session which was then in progress. The motion was carried **nemine contradicente** (with no one dissenting).

Hon Mrema subsequently went to the High Court to challenge his suspension. He filed an application for stay of implementation of a the resolution to suspend him. Judge E.W. Katiti made the following pertinent comments in his ruling dismissing Mrema's application:- (misc. civil application no. 36 of 1998).

"I cannot see how the suspension of the applicant can be described in any other way than that it was a culmination of a proceeding within

the House's Rule 60 of the 1998 standing orders, which are made under article 89(1) of the constitution, allows in principle the suspension of a member of parliament, (of course for specified causes); and therefore that action cannot be unconstitutional, and it is not unconstitutional when it is imposed. The parliamentary rules and orders are there for guiding the business of parliament, and the vast powers exercised within such parliament have the protection of the constitution."

Mr. Mrema had also contended that his fundamental right of representing his constituency had been violated by his suspension. In response to this point, Judge Katiti said--

"I am yet to hear of an authority holding that staying in parliament during sessions, at any cost and under any circumstances, is a constitutional right, and therefore sending a member out on suspension is unconstitutional! Even if there were no rule authorizing suspension of a member, that power is implied if a breach of the rules occurs in the House, and is for some reason occasioned by the M.P. who is thereby suspended, the said M.P. cannot complain of having been denied participation in the House's. I am confidently convinced therefore, that Mrema's suspension was a disciplinary action taken by the House on account of matters committed within the House, which has exclusive jurisdiction to deal with the same in order to maintain its dignity and integrity. I therefore hold that the suspension was within the constitutional powers of parliament.

And in obedience to article 100(1) of the constitution, I hereby declare that this court has no jurisdiction to hear this petition, and therefore the application is unmaintainable. 'I shall not by illegal force break into the parliamentary castle"

2.2.3 The power to secure the attendance of persons on matters of suspected breaches of parliamentary privilege, and to deliberate and examine witnesses on such matters.

This power is provided for in section 13 of Act no. 3 of 1988, which states as follows:-

"The Assembly, any standing committee Ömay order any person to attend before the Assembly or before such committee, and to give evidence or to produce any document in the possession or under the control of such person."

Subsequent sections of that Act then describe in great detail the correct procedure to be followed in exercising this power. The procedure is more or less the same as that which is used by the courts of law.

This power also includes the right to institute inquiries, provided that any such inquiry must relate to a subject which is within the legislative competence of parliament.