

Post Ruling Lesson 3



Key Lessons from *Lutgard Kokulinda Kagaruki and Others v Minister for Health and Others*, Misc. Civil Cause No. 27579/2025, High Court of the United Republic of Tanzania, Main Registry at Dodoma, Ruling delivered on 16th June 2026

By Legal and Human Rights Centre (LHRC)

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A. INTRODUCTION

Legal and Human Centre (LHRC) is pleased to share an analysis of the recent High Court of Tanzania Ruling in [Lutgard Kokulinda Kagaruki and Others v Minister for Health and Others, Misc. Civil Cause No. 27579/2025, High Court of the United Republic of Tanzania, Main Registry at Dodoma](#), issued on 16th June 2026. The ruling was not a final determination of the constitutional breaches as claimed by the Applicants, however, it has addressed important points which have a positive implication on constitutional petitions and strategic litigation in general.

The lessons stemming from this ruling are important in giving meaning and support to constitutional claims, rather than leaving them hanging by being dismissed basing on procedural or technical errors, and this is in the spirit of ensuring that public claims are accorded weight and concerns from the courts of law, thus, promoting the right of access to justice and effective remedies as provided under Article 13(6)(a) of the Constitution of the United Republic of Tanzania, 1977, Article 3(a), (b), (c) of the International Covenant on Civil and Political Rights, 1966, and Article 7(1) of the African Charter on Human and Peoples' Rights, 1981.

B. BACKGROUND OF THE CASE

In *Lutgard Kokulinda Kagaruki and Others v Minister for Health and Others*, Misc. Civil Cause No. 27579 of 2025, arising from Miscellaneous Civil Cause No. 14430/2025. The Ruling was delivered on 16th June 2026.

Misc. Civil Cause No. 14430 stems on claims of unconstitutionality concerning tobacco farming, production of tobacco products, public health, protection of children, environmental concerns and Tanzania's obligations under the World Health Organization Framework Convention on Tobacco Control (WHO FCTC). The Applicants sought, among other reliefs, declarations and consequential orders requiring the Government of Tanzania to cease engaging in tobacco farming and production of tobacco products and to fully comply with and implement the WHO FCTC.

The petition was dismissed for want of prosecution on the 25th of September 2025 after the Applicants failed to file their written submissions within the timeframe directed by the Court.

The Applicants requested the court to set aside the dismissal, allowing them to re-file their submissions and have Misc. Civil Cause No. 14430 determined on its merits. Upon filing of the Application, a preliminary objection was raised by

the Respondents. The grounds were that the Court was already *functus officio*, having already heard the Applicants when they noticed that the submissions were not filed. They further argued that because the Applicants had been physically present when the issue of failure to file submissions was considered, the dismissal was not the type of dismissal contemplated under Order IX Rule 6(1) of the Civil Procedure Code Cap 33 R.E 2023.

C. COURT DECISION & POST-RULING LESSONS

1. Meaning of Dismissal for Want of Prosecution

The court highlighted that dismissal for want of prosecution occurs where a litigant fails to take any necessary step for progression of the case, thus, demonstrating lack of diligence. Such acts could, but not always, justify the dismissal. However, dismissal for want of prosecution never amounts to an adjudication of the substantive rights, this is an exception where the court proceeds to determine the matter on its merits.

2. Role and Weight of Written Submissions in Constitutional Petitions

Written submissions in Human Rights petitions are a post-competence procedural requirement; they only facilitate structure legal arguments in court. It does not make them amount to evidence, nor does it render them as a factor to affect the validity of the petition.

In constitutional petitions, evidence stems from affidavits and annexures, submissions are auxiliary, they assist the court in the evaluation of issues on record. Thus, failure to file written submissions is a procedural default not amounting to failure going to the root of the substantive claim. Any failure to file submissions falls within the concept of want of prosecution.

3. Doctrine of *functus officio* (finality of decisions)

A court determines a case finally only upon hearing it on merits. The doctrine is not absolute, for instance, where the court is allowed to set aside dismissal orders. In this situation, the court cannot hold itself to have finally resolved the dispute upon issuing a dismissal order.

4. Dismissal occurring while the applicant was heard on the fault leading to dismissal does not extinguish the right of that to apply for setting aside

The Applicants advocates were physically present in court and explained on why the submissions were not filed within time. However, this fact does not distinguish the right of the Applicants to apply for setting aside the dismissal. Such explanations did not constitute an application, nor did they include any affidavits to address the requirement of the law to provide sufficient cause.

D. IMPLICATIONS FOR PUBLIC INTEREST CASES & STRATEGIC LITIGATION

The ruling provides for a crucial and practical implication for organizations using strategic litigation and public interest litigation as a tool for legal and policy reform.

1. In Constitutional Petitions, Evidentiary records should be established independently of submissions

The court re-affirmed that submissions are not evidence, and that they only assist courts in understanding the arguments. All evidence provided prior, in the affidavits and annexures filed with the Petition. Thus, the affidavit and annexures should be properly laid out to disclose a constitutional breach.

2. Impact of not filing Written Submissions

Submissions are important, they are a facilitation for a structured legal argument, and the non-failure of submissions can still attract dismissal for want of prosecution. However, in constitutional cases, non-filing of submissions for any reason is not a reason to dismiss the case especially where reasons for non-filing can be explained. Non-filing of submissions in constitutional petitions does not go to the root of failing to prove a constitutional breach claim or negate the validity of the constitutional petition. It is a procedural error that can be rectified through an application for setting

aside the dismissal orders. This means that from now on, courts are inclined to use dismissal of a constitutional claim as a last resort as it is a procedural error.

E. CONCLUSION

This decision has highlighted a crucial lesson in public interest litigation cases filed through constitutional petitions. A constitutional claim was instituted to protect the rights of the public and children at large but was faced by an impediment of non-filing of submissions. The Applicants diligently did apply to set aside the dismissal, yet faced another obstacle, a preliminary objection from the Respondents.

The court addressed this objection and brought crucial implications in public interest litigation cases in Tanzania. One is that affidavits and annexures in constitutional cases are what amount to evidence, not submissions. Second is that submissions play an assistive role, not filing them does not go to the root of failing to prove a constitutional breach. Therefore, the court is not prevented from setting it aside and letting the parties elaborate on their claims as the evidence is already before the court. Additionally, the doctrine of *functus officio* is not applicable on dismissal for want of prosecution even where the applicants for setting aside addressed why they did not file submissions before the dismissal.