



## Deficiency of separation of powers and its applicability in Zanzibar

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### Abstract

Separation of powers is considered an important practice in any democratic government to ensure good governance and general welfare of the people in a country. In Zanzibar, the constitution stipulates the country is adhering to separation of powers, but several cases have been reporting to show there is a violation of the important items that are stipulated by the doctrine of separation of powers. It is from this violation that the researcher intended to study the doctrine of separation of powers and see its importance in examining powers of different organs of the government. This study examined the Discrepancy of Separation of Power and its Applicability in Zanzibar. The study sampled a total of 60 respondents using qualitative analysis and various sampling techniques. Data were collected using face to face interviews and questioner as tools for collecting data. The data analysis was done in descriptive way because it is easy to understand. The researched was analyzed in relying with the objectives. The findings resulted from Lawyers, Politicians, Administrators as well as the Members from the society. The survey was effectively conducted in Pemba and Unguja Zanzibar and it was very effective. The discrepancies were realized within the organs of the government. It was found that the separation of power in Zanzibar exist despite such discrepancies. The legislations and constitution addressed the separation of powers the challenges remain in the implementation. In general the study results shows that, the constitution contains some weaknesses which needs reforms so as to correct and remove the contractions that hinders effective adherence to the doctrine.

**Keywords:** Separation of powers, legislations, constitution, Zanzibar

### Introduction

#### 1. Background of the Study

Following separation of legislative powers and executive powers by the Revolutionary Council, the Council was now supposed to deal with administrative powers only. The President, Ministers and other administrative authorities were further supposed to exercise only administrative powers as they form part of the executive organ of the government. They were supposed to be so in order to exercise their powers efficiently and successfully when compared to traditional system whereby they exercised two separate powers at the same time in Zanzibar. It is the intention under this study to see the deficiency of separation of powers and its applicability in Zanzibar.

The modern history of Zanzibar can be considered to have started with the establishment of Omani rule in 1832, followed by the imposition of a British protectorate in 1890. Having consolidated his position in his Omani Sultanate, Seyyid Said began looking towards the East African Coast. Prior to his coming to power, Omani Arabs had fought the Portuguese in East Africa, driven them to Mozambique, and started, in the early 18th century, to colonize the coast and the islands. Seyyid Said decided in 1832, because of commercial and strategic reasons, to move his seat from the Persian Gulf to Zanzibar. Because of the dependency of the Al-Busaidy dynasty on Britain since the Muscat days, it was inevitable that in the rivalry between Britain, Germany and France for the control of East Africa, Britain was favoured by the Sultan of Zanzibar.

Zanzibar, consequently, was made a British protectorate on 14th June 1890 and thus started the British colonization of Zanzibar which ended seventy-three years later, on 10th December 1963. There has been debate in the literature as to whether between 1890, when Zanzibar became a British

protectorate, and 1963, when British colonialism ended, there was dual power in the islands. What is very obvious is that the British dismantled the Sultan's state and imposed their own. By the 1930's there was no traits of the Sultan's state. It must be stressed, though, that for Britain, Zanzibar was 'Arab state'.

In the hierarchical situation that existed in the Zanzibar society there could be seen many contradictions. There was the existence of the colonial power controlling the state and its institutions; the Arab dynasty which was described as "an embodiment of all the worst and most barbarous characteristics of a primitive Arab dynasty", the landed aristocracy, the Asian in control of trade, commerce and finance; and the African population, both indigenous and immigrant, providing labour in the countryside and in the few industrial outfits that existed in the islands. These contradictions came to manifest themselves much more in later years.

Zanzibar's road to formal independence from Britain was attained on December 10th, 1963, with the Sultan as the Head of State, with power to nominate his successor. A month after formal independence, on 12<sup>th</sup> January 1964, Zanzibar experienced a revolution that not only overthrew a government, but also immediately abolished a monarchy. With the establishment of a republic and a new coalition of classes in power, a radical change of circumstances occurred.

On 26<sup>th</sup> April 1964, the People's Republic of Zanzibar and the Republic of Tanganyika announced that they had merged to form a United Republic of Tanzania. The circumstances in which the Union was formed raised a lot of questions, many of which are still unanswered, and some have been at the centre of continuous debates and controversies in Tanzania in the last twenty years.

Following Zanzibar Revolution in 1964, there was formation of the Revolutionary Council. The Council exercised two powers at one time which are legislative and executive powers. It was until 1980 when the two powers were separated following the establishment of the House of Representatives which was given legislative powers. The Revolutionary Council was thus left with only one power which is executive powers.

As per its composition, the Revolution Council is made up of the President of Zanzibar who serves as the Chairperson of the Council, the ministers and the Attorney General. It means that the Revolutionary Council is simply the cabinet of Zanzibar. Below the Council there are other administrative authorities like tribunals, corporations, administrative authorities, local authorities and directorates. They are all exercising administrative powers at public or private levels depending on the law which establishing the authority concerned.

Like all social revolutions in the world, the 1964 Revolution in Zanzibar tried to destroy the old order, but it debatable whether it has been able to create in its place a new system of rules, work ethics, standards of behaviour and efficiency, especially in running public institutions. The lack of a proper system operating over a long period of time has resulted in what can be termed inertia and stagnation at present. It now requires bold initiatives, well-articulated programmes, disciplined supervision and political will to change the situation. And if Zanzibar is to progress and develop, it requires a essential change in its governance and the running of public institutions.

**1. Research Methodology**

The methodology used in this study is qualitative approach because it gave the room to the researcher to study attitude or approach, regular behavior and even went to the site that were home or office of the respondent to conduct the research by collecting data necessary to accomplish the study objectives. Through this approach, the researcher

Became able to develop a level of detail about the individual or place and to be highly involved in the actual experiences of the respondents. The respondents were interviewed by researcher within their offices, homes or anywhere provided that research ethics were well observed.

**2. Data Collections**

The data was collected in Zanzibar; Unguja and Pemba. During the study, 60 respondents were involved as planned who are 20 lawyers, 15 politicians and 15 administrators including directors of several institutions and 10 members from society. The questionnaires were 20 and were supplied to all 20 lawyers who returned them completely without any problem. The politicians and administrators were interviewed individually using interview guide as it was found effective for facilitating the interview process and data collection from the respective respondents of the study. The data obtained from the study is presented below to provide room for analyzing them as provided by the respondents. Presentation of data in this aspect is done by considering what was presented by the respondents and the researcher to collect them accordingly through selected methods. The data from each category of respondents is presented in order to provide room for being analyzed effectively.

**Constitutional Provisions on Separation of Powers**

The principal of separation of powers between the executive, the legislature and the judiciary; and checks and balances between and within them. The President is the part of the legislature, and he elects the house representatives and speaker the House, yet He is the Chairman of the Revolutionary Council, which is part of the House of Representatives. The separation of power than need a clear demarcation in it. On the field work the researcher wanted to know from respondents what is provided for in the Constitution of Zanzibar on the question of separation of powers to administrative issues. The responses were as follow:

**Table 1:** Constitutional Provision on Separation of power

Category of Respondents	Number Involved	In favor of Constitution	Percentage (%)	Against Constitution	Percentage (%)
Lawyers	20	10	50%	10	50%
Politicians	15	10	66.66%	5	33.33%
Administrators	15	12	80%	3	20%
Members of society	10	4	40%	6	60%
TOTAL	60	36	60%	24	40%

Source (data collection through interview and questioner 2023)

the above table presents the as; 20 lawyers were involved Out of 20 lawyers, a total of 10 which are equal to 50% were of the view that the Constitution of Zanzibar provides sufficiently the issue of separation of powers. The remaining 10 lawyers equal to another 50% replied that the Constitution of Zanzibar does not provide sufficiently the issue of separation of powers.

The other respondents were of the view that the Constitution provides sufficiently the question of separation of powers. These respondents present 66.66% where the total number was, 10 among 15 members. The remaining 5 respondents that are equal to 33.33% replied that the Constitution does not provide the issue of separation of powers sufficiently. Moreover, the respondents who were 15 in number, 12 among 15 respondents relied that, the Constitution has sufficient provisions on the question of separation of

powers. Thus 80% of such respondents were of the view that the Constitution contains sufficient provisions. The remaining 3 respondents which represented 20% replied that the Constitution does not provide sufficiently the question of separation of powers.

All respondents in generally were 60 in totality. Out of them, 32 equals to 64% were of the view that the constitutional provisions are sufficient while the rest 18 equal to 36% were of the view that the constitutional provisions are not sufficient. This implies that the respondents who were of the view that the provisions are sufficient form the majority of the respondents.

On the reasons of adequacy, the respondents who are lawyers almost had similar reasons that the Constitution provides comprehensively the issue of separation of powers in its provisions. The governmental powers in Zanzibar have

been divided among three organs of the government which are executive, judiciary and legislature. Each organ has been given its function comprehensively in the Constitution. Moreover, the respondents from the groups of politicians and administrators said that the provisions are sufficient because powers have been properly divided and distributed among organs of the government. Each organ has its function and there is restriction for one organ to interfere another or other in the discharge of functions. On the other hand, the respondents who were of the view that the provisions are insufficient had a common ground though it was presented using different words that there are several provisions of the Constitution which show that separation of powers in Zanzibar is not sufficiently provided for.

### 1. Practical Application of Separation of Powers

Coming to the second aspect that relates to practical application of the doctrine of separation of powers in Zanzibar, the general results are those in practice, the doctrine is not applicable. The results show that out of 60 respondents, 22 which are equal to 44% replied that in the practice, separation of powers exists while 28 equals to 56% replied that separation of powers does not exist in practice in Zanzibar.

Considering the reasons, those who contend that in the practice separation of powers exists said that there are three organs of the government of Zanzibar and each of them has its powers. There is executive, judiciary and legislature. On the other side, those who said that in practice there is no separation of powers gave several reasons. They argued that the President can dissolve the House of Representatives when there is disagreement between them on the law going to be enacted, judges are practically removed by the President and there are some persons who form part in more it was observed that separation of powers does not exist completely in the practice in Zanzibar. There are some gaps as identified by the respective respondents. Narrated that, the composition and roles of the Revolutionary Council, their relationship to the President, and to the House of Representatives need to be clarified. They gave an example that, the appointment by the President of Members of the Revolutionary Council from the House of Representatives has serious implications for good governance. There is no clear separation between the Executive and the legislature, as appointees of the executive constitute a significant number of the Members of the House of Representatives. Thus, close to one third of the House consisted of Members of the Executive.

In this the researcher was interested to see the view of the respondents examine the doctrine was practical. This assumption was derived due to the influence of several scholars who argued the doctrine to be impractical that is impossible to follow due to the idea of trying to separate the three organs while they are inseparable. The main reason for assessing this was necessary to see the perception of the respondent over the practical nature of the doctrine, the main assumption being if they think it is not practical then adherence to it will also be impossible. Among the reasons deducted were. The point of the practicability of the doctrine of separation of powers is the main debate among many scholars. Some of these scholars argue the doctrine is indeed practical while the rest argue it is impossible to fulfill the actual principles of the doctrine hence at one point the doctrine is indeed impractical. Due to this, the researcher

was interested to understand what say does the respondent possess concerning the practicability of the doctrine of separations of powers especially with their government being among those that follow the constitution which propagates the adherence of the doctrine of separations of powers. The respondent interviewed said the doctrine is practical since because indeed the government organs needs a system of check and balance so as to achieve good governance. Their main emphasis in this was that, despite the weaknesses that can be seen in the doctrine of separations of powers the doctrine is indeed practical in contrary to what others believe of the doctrine being impractical.

The respondents were of the view that, the legal system of Zanzibar deserves special treatment because of its distinct and separate nature. The legal sector is not a union matter and Zanzibar has its own system of laws and courts with needs. The respondents elaborated on the institutional and resources constraints underlying the problems in the legal sector for Zanzibar. It identified a number of problems and issues in the legal and institutional framework within the sector. The respondents addressed the changes needed to reform the legal sector and concluded that all the institutions and services in the legal sector have been starved of resources in the past and that the legal sector was accorded a very low priority in the allocation of budgetary resources. The problems are largely still the same today almost more than ten years since the study was carried out.

### 2. Powers of Different Organs

The respondents contended that, Court structure of Zanzibar comprises of the High Court of Zanzibar and subordinate courts. The High Court of Zanzibar is a "creature" of the Constitution of the United Republic of Tanzania of 1977, and is governed by its own law, the High Court Act of 1985. According to that Act, the High Court of Zanzibar has jurisdiction in all matters arising in Zanzibar. The Magistrates Courts Act No.6 of 1985 establishes the Subordinate Courts of Zanzibar. These are: Regional Courts, District Courts, Primary Courts, Juvenile Courts and Kadhi's Courts. The High Court, Regional, District and Primary Courts each have a civil and criminal jurisdiction. Kadhi's Courts have exclusive jurisdiction in Islamic law cases on personal status matters. The respondent added that, structure, jurisdiction and powers and functions of Kadhi's Courts are elaborated in the Kadhi's Courts Act of 1985. Juvenile Courts are recognized under section 10(1) (f) of the Courts Decree Cap.3 of 29<sup>th</sup> July 1923 as being part of the judicial hierarchy and are established which provides the procedure to be followed in dealing with juvenile cases. There are also special rules for juvenile courts, the Juvenile Courts Rules Example the Appointment of Judges. The main weakness with the appointment of Judges in Zanzibar is the political influence that is exerted by the executive in the process. According to section 94 (1) of the Constitution of Zanzibar, the President appoints the Chief Justice of Zanzibar. Judges of the High Court of Zanzibar are also appointed by the President but on the advice of the Judicial Service Commission.

On other hand the respondents studied that, the Judicial Services Commission is established by section 102 of the Constitution of Zanzibar. According to the 8<sup>th</sup> Constitutional Amendment to the Constitution of Zanzibar, membership to the Judicial Services Commission are; the Chief Justice of

Zanzibar as Chairman, One member appointed by the President from amongst Judges of the High Court of Zanzibar recommended by a meeting of the Judges of the High Court of Zanzibar, one member from amongst retired Judges of Zanzibar or Tanzania Mainland recommended by a meeting of the Judges of the High Court of Zanzibar, One member nominated by the Zanzibar Law Society, Chairman of the Civil Service, the Attorney General, he Chief Kadhi. They added that the Chief Justice who is the Chairman, the Attorney General who is the Deputy Chairman and the Chairman of the Civil Service Commission, all presidential appointees in their respective offices, are members of the Judicial Services Commission. In addition, the President can appoint any other person he “thinks fit” to be a member of the Commission and this is not restricted to qualification. Thus, clearly reflecting a political influence in the appointment of a body, which is supposed to deal with judicial officials. The appointment of senior members of the Judiciary and the members of the Commission remains the constitutional prerogative of the President of Zanzibar. There is no legally stipulated criteria set for the President to adopt when appointing members of the Commission. This is not conducive to transparency. This shows that, the powers of the Judicial Services Commission are limited to the appointment and discipline over the Registrar of the High Court, Deputy Registrar, all magistrates, Kadhis and other persons empowered to exercise a criminal jurisdiction. It does not have any role in the appointment of the Chief Justice

The researcher on other hand realized that the structure and operations of the Ministry however, need to be streamlined a bit so as to improve its performance both in terms of resource utilization and capacity to manage the process of good governance. Currently the Ministry has a very heavy portfolio including that of the Judiciary, the Office of the Attorney General (AG), the Office of Director of Public Prosecution (DPP), the Office of Mufti (OM), the Office of Registrar General (RG) the Commission of Wakf and Trust Property (CW&TP) and the Controller and Auditor General. This creates an organizational burden and makes the task of coordination cumbersome. Recent efforts by the Revolutionary Government of Zanzibar to prepare a new draft Audit Act entitled the Establishment of the Office of the Controller and Auditor General Act, 2003 would result in the repealing of section VI of the Financial Administration Act No.8 of 1996. The new Act proposes the establishment of the OCAG as an autonomous body corporate. This will mean that the OCAG operationally will be removed from the Ministry of State, President’s Office, Constitutional Affairs and Good Governance, thus going a long way towards lessening the operational burden on the Ministry.

### 3. Legal Impact of the Correct Situation on separation of Powers

In looking the legal implication whether negative or positive following the way separation of powers is provided for in Zanzibar, the general findings show that all 60 respondents were involved in the interview. Out of 60 respondents 32 equal to 64% were of the view that there is negative legal implication following the way separation of powers is provided for in Zanzibar. The remaining 18 respondents equal to 36% replied that there is no negative legal implication.

The second case is of *Attorney General v. Lohay Akonaay and Joseph Lohay* [1995] TLR 80 (CA), Nyalali CJ (*as he then was*) reiterated his position in Daudi Pete’s case and noted as follows (in relation to the encroachment of the Judiciary’s power by the Executive);

“It is the basic structure of a democratic constitution that state power is divided and distributed between three state pillars. These are the Executive, vested with executive power; the Legislature vested with legislative power, and the Judicature vested with judicial powers. This is clearly so stated under Article 4 of the Constitution. This basic structure is essential to any democratic constitution and cannot be changed or abridged while retaining the democratic nature of the constitution. It follows therefore that wherever the constitution establishes or permits the establishment of any other institution or body with executive or legislative or judicial power, such institution or body is meant to function not in lieu of or in derogation of these three central pillars of the state, but only in aid of and subordinate to those pillars. It follows therefore that since our Constitution is democratic, any purported ouster of jurisdiction of the ordinary courts to deal with any justiciable dispute is unconstitutional.”

On what is the negative legal implication, the respondents replied as follow taking their ideas generally and not specifically:

Firstly, the rule of law is endangered. They explained this idea that absence of sufficient separation of powers undermines the independence of judiciary. The courts will be receiving executive directives in the adjudication of cases something which makes rule of law very weak in the society. No organ will work according to the law but rather it will work according to the wishes of some people. Secondly, there will be inefficiency in the discharge of governmental functions. When one person becomes a member in more than one organ of the government, he or she cannot be efficient in the work because of multiplicity of duties. The third one is *Mwalimu Paul John Mhozya v. Attorney General* (No. 1) 1996 TLR 130 (HC), the issue was whether the President may be removed or suspended from office by the Court. Samatta JK (*as he then was*) in relation to the doctrine of separation of powers held that;

“The principle that the functions of one branch of government should not encroach on the functions of another branch is a very important principle, one of the principles which ensure that the task of governing a State is executed smoothly and peacefully. It seems to me to be an incontrovertible proposition of law, having regard to the use of the words ‘in accordance with the provisions of this constitution’ in s 42(3) (d) of the Constitution, that removal or suspension from office of the President of the United Republic is the legislature’s exclusive prerogative. Since s 46A of Constitution lays down the procedure to be used in removing or suspending the President, the attempt to remove or suspend him by a procedure other than that would not be legal”.

Thirdly, there is risk of abuse of power. The respondents were of the view that governmental functions should be executed by different persons to make sure that there is check and balance. When one person is found in more than

one organ of the government, it becomes impossible for check and balance to be maintained.

It was concluded that there is negative legal implication for the position of separation of powers in Zanzibar. The current position puts many risks on the governing system of Zanzibar society. The ideas of respondents in this respect are very strong when they are considered in the practical perspective. They are thinking that separation of powers is required to be effectively provided and protected in both law and practice. The law should provide it comprehensively and widely and to guarantee its practical operation for effective governance of the society. In the case of *A.G. v. Rev. Christopher Mtikila* [Civil Appeal No. 45 of 2009] reaffirmed the doctrine (though not so expressly) by restricting the role of the Court to that of adjudicating (and not legislating).

The Court argued that;

“.....the issue of independent candidates has to be settled by Parliament which has the jurisdiction to amend the Constitution and not the Courts which, as we have found, do not have that jurisdiction.”

In the above judicial decisions, it is observed that the courts in Tanzania are very mindful on the issue of separation of powers. They are of the view that separation of powers should be observed by the government organs when they exercise their powers. The courts themselves try as much as possible to make sure that they do not exercise the functions of other organs of the government particularly parliament and its legislative powers.

In the cases of *Rukia Utope* and *Naila Jidawi* the High Court of Zanzibar was of the view that separation of powers distinguishes different organs of the government. The rights of persons should be determined by the court and not executive. When executive determines the right of a persons, then the court should have opportunity to explore the situation with the view of ensuring that equality is maintained as prescribed in the laws.

Also, large percent of the respondents seemed to understand the importance of the doctrine of separation of powers in promoting good governance and the need to adhere to this doctrine. Apart from that, large percent of the respondent also agreed there is overlapping of powers in Zanzibar which also affects the proper adherence to the doctrine of separations of powers. From there, several recommendations were made to improve the situation. Such recommendations include; Conducting Training and education programs on the doctrine of separation of power; Performing awareness raising campaigns; Reform of the constitution; and Creation of enforcement mechanisms. Respondents Suggestions on adherence of Separation of Powers Suggestions

On the question of adherence to the doctrine of separation of powers the respondents explained as the situation on which one government indeed has the three organs and each on the three organs has its own power and limits which hinder other organs from interfering with its judgment. They added that, to establish if the doctrine of the separation of power is indeed practiced in Zanzibar, the researcher first started by checking the adherence of the doctrine of separation of power. In this aspect the researcher was interested in establishing the government's adherence to the doctrine of separation of powers, and in doing so, the researcher started

by establishing if each of the branches is free from interference from other branches. In this the researcher wanted the respondents in each case to answer a simple yes or no question to whether the branch is indeed free from interference or not. This question was asked separately from all the three organs. Although respondents were asked separately to explain if their organ face any drawback in adhering to the doctrine of separation of power, the aim of assessing this was to see the percentage at which the doctrine is followed in the country. In this those who agree with the existence of separation of powers were of large amount compared to those who did not agree. The respondents related that there is adherence to the doctrine of separation of powers. They added that, the, the constitution has stipulated the practice of the doctrine in the country hence saying there is no doctrine of separation of powers will be equally as saying the constitution is not adhered in the Zanzibar. Also, they went further pointing out that, the arrangement of the government through its three organs is the clear example of the existence of this doctrine. Some of the respondents disagreed with the adherence of doctrine of power, meaning that the country does not adhere to the doctrine of separation of power.

Those who disagreed pointed out that since there is interference between one organ and another in the country, then there is no actual practice of separation of powers. They went further pointing out that, looking at the arrangement of the government one can see presence of people holding power among two organs of the government. This is in fact not exactly as what is stipulated in the actual separation of powers. Also, in some respects the leaders have more power to interfere with some of the rulings of other bodies. The other respondents were neutral claiming they do not know about the adherence of this doctrine. What was realized among the respondents who did not support the existence of separation of powers is lack of enough knowledge on the issue.

Although large percent of people agreed with the practice of the doctrine of separation of powers, an important item to note here is that there is a need to provide more education or training on this aspect, the goal being to try to reduce the percentage of people which do not have enough knowledge concerning the existence of the doctrine of the separation of powers. Increase in education will stimulate the increase in people's awareness concerning separation of powers which will in turn affect the way people understand, believe and practice the general principles of the doctrine. Also, there is a need to improve the constitution not only to change the current practice which contradicts itself, but also to establish a new constitution which will enable effective adherence and practice of the doctrine of separation of powers.

From researcher's view, it can be observed that both sides are correct. Those who contend that the provisions are sufficient presented valid grounds like the ones who say that the provisions are not sufficient. From the above findings, it is concluded that the provisions of the Constitution of Zanzibar are sufficient on the question of separation of powers, but we are supposed to bear in mind that the minority also presented strong reasons which must be taken into account when thinking of separation of powers in Zanzibar.

There are some judicial decisions that deal with the doctrine of separation of powers in Zanzibar and Tanzania at large. The following are some of them. In the case of *DPP v.*

*Daudi Pete*, a case which was concerned with restrictions imposed by Section 148(5) (e) of the Criminal Procedure Act, 1985 (on bail), Nyalali CJ refuted arguments made by Mwalusanya J (High Court), thus laid down circumstances under which the doctrine of separation of powers can be said to have been violated the following; “In our view, the Doctrine of Separation of Powers can be said to be infringed when either the Executive or the Legislature takes over the function of the Judicature involving the interpretation of the laws and the adjudication of rights and duties in disputes either between individual persons or between the state and individual persons.”

Through analysis of the respondent’s answers highlighted three basic things, which are; through existence of separation of powers, people expected the three organs of the government to be effective in decision making and standing firm on their decisions rather, there lacks a mechanism to make sure the doctrine of separation of powers is indeed adhered by the government just because the Legislature also is the part of the doctrine and can sometimes be intimidated by the members of other organs and There is a need to provide education to members of the government so as to impact them with required and necessary knowledge on the importance of the doctrine of separation of powers.

From the research data, the researcher analyzed the 40 response agreed on the existence of overlapping power in the country, and out of these 40 respondents 30 respondent argued that the branch which is mostly affected by this overlapping problem is the judiciary, meaning that most of the case of overlapping power within the three organs are occurring with members of executive and legislature forcing the ruling of the judiciary to be on their will rather than adhering to what the constitution has stipulated. The remaining 20 respondents choose either interference of other bodies to affect Executive or Legislature.

The researcher went further to ask the respondents to explain if in one way or another there has been interference from other bodies in decision of other body. In this, the results were as follows; Out of the respondent asked, 38% of the respondent argued that there is the presence of interference of one body to another in decision making while the remaining 22% argued that there is no overlapping of powers between the bodies of the government.

### **Recommendations**

Taking into account the findings of this study, the researcher come up with the following recommendations based on research findings and objectives of the research are given:

#### **1. No Person Should be a Member in More than one Organ of the Government.**

The current constitutional position should be amended. No person should be a member in more than one organ of the government. For example, ministers should not be member of the House of Representatives and at the same time members of Revolutionary Council which is the cabinet of Zanzibar hence the executive. There should be alternative ways of getting ministers and not to appoint them from among members of the House of Representatives.

#### **2. Judges of the High Court should not be Presidential Appointees**

It is better for the Judicial Service Commission to be the central organ for the appointment of Judges of the High Court. If it is necessary to pass them before another organ, such organ should be the House of Representatives. The executive should not be involved in process of obtaining High Court Judges. The President may only be authorized to appoint Chief Justice and not Judges. This will help to maintain complete separation of powers and independence of judiciary hence rule of law will be maintained.

#### **3. The President should not be Empowered to Re-appoint Judge who are in Office.**

The current constitutional position allows the President to re-appoint a High Court Judge to another post where such a Judge consents in writing. This is an alternative way of removing judges from their offices. It is practically difficult for a judge to reject re-appointment of the President hence the room of removing judges from their offices is still open. This room should be closed in order judges to have full security of tenure and to avoid interference of executive to the judiciary.

#### **4. The President to be Given Veto Powers in the Legislative Process.**

The President should not continue to be empowered to dissolve the House of Representatives in case of controversy during the law-making process between the President and the House of Representatives. It is better to give the president veto powers so that he can control the law-making process as the head of state and government but separation of powers should be maintained in all respects in order to make the law-making process separate from executive control.

#### **5. Amendment of Section 5 of the Zanzibar Constitution 1984.**

The Constitution prohibits government organs from interfering each other except as provided for in the Constitution. It means that there are several circumstances in the Constitution where one government organ may interfere another or others. This position should be removed instead the Constitution should encourage check and balance among the three organs of the government and not allowing interference among them.

#### **6. The Functions Should be Regulated**

The function of the Minister should be to initiate and approve policies and to monitor their implementation. The responsibility for policy implementation should lie with the Chief executive Officers and the Heads of the various Government Departments under the portfolio of the ministry of State, President’s Office, Constitutional Affairs and Good Governance. It is also recommended that a Good Governance Coordination Unit be established within the Ministry to coordinate good governance issues for Zanzibar.

#### **7. Reform of the Constitution**

This is the major thing that is needed to make the country adheres effectively to the doctrine of separation of powers. Currently, although the constitution explains about the doctrine of separation of powers, there are many weaknesses in the constitution that instead of being among the factors

that assists in effective adhering to the doctrine of separation of powers, it becomes a document which leads to ineffective adherence to the doctrine of separations of powers. Such constitutional weaknesses include the presence of contradictions within the articles which for example those which gives president power to overrule some of the judiciary rulings, also the blessing of the constitution to allow one person to be a member of two organs is also a weakness. All the mentioned weaknesses inside the constitution are becoming the reason to why the doctrine fails to be effective adhered to in Tanzania. Hence to rectify this situation, there must be some major reforms in the constitution and not only amending some of the parts. The reason for championing the reform of the constitution is due to the reason that, amending some of the constitution articles to favor what is currently required is the main reason which make the current constitution to contain lots of weaknesses, this is because amending some of the articles leads to presence of contradictions between the amended articles and the remaining articles in the constitution which have not been amended.

### 8. Creating Enforcement Mechanism

This was proposed under the assumption that currently the offenders walk away easily without any punishment. This is due to two reasons; lack of penalty for offenders according to the constitution and the mechanism to enforce what the doctrine is holding. Lack of these two leads to people violating the doctrine's propositions and yet walk away without any problem. Lack of the enforcing mechanism was mentioned by some of the respondents to be among the problem causing failure of the country to adhere to the doctrine of separation of powers. To solve this problem, there is a need to establish a mechanism which will be responsible for ensuring any person violating the doctrine receives the required punishment.

### Conclusion

Separation of Powers is one of the modern principles of constitutionalism. It originated from the absolutism whereby rulers had absolute powers in their societies. It was found important to have the doctrine because powers always corrupt hence absolute powers corrupt absolutely. When separation of powers does not exist in the society, tyranny takes place. Also, when all powers are vested in one person, there will be inefficiency and misunderstanding in the society. The doctrine of separation of powers is both theoretical and practical one. At theoretical level, it is required to be inserted in the mother law of the country which is the constitution. The constitution is required to guarantee the existence of the doctrine and respect to it by the governing system. In the constitution the doctrine should be well provided and described in order to avoid poor application of the doctrine.

### References

1. Alder J. General principles of constitutional and administrative law (4th Ed) New York, Palgrave Macanillan, 2002.
2. Althusser L. Politics and History: Montesquieu, Rousseau, Hegel and Marx. London: New Left Books, 1971.
3. Alvey J. The Separation of Powers in Australia: Issues for the States, MA Unpublished thesis, Queensland University of Technology, 1962.
4. Americas unwritten constitution science, Religion and political responsibility by Don. K. price.
5. Ayany SG. A History of Zanzibar: A Study in Constitutional Development, 1970, 1934-1964. Nairobi: EALB.
6. Chipeta BD. Administrative law in Tanzania, Mkuki na Nyoka publisher, Dar es salaam Tanzania, 2009.
7. Barnett H. constitutional and administrative law (4<sup>th</sup> Ed) London Cavendish publishing Limited Law, 2002:3-15:1.
8. Blood, Sir Hillary. Report of the Constitutional Commissioner, Zanzibar Government Printer, 1960.
9. Fimbo GM. Constitution Making in Tanzania: Some Thoughts on the Union between Tanganyika and Zanzibar. (Mimeo). Faculty of Law: University of Dar es Salaam, 1982.
10. Gewirth A. Marsilius of Padua: The Defender of Peace. New York, 1951.
11. Godson. Separation of Powers, Oxford, Oxford University Press, 2007, 102.
12. Government of Zanzibar: Act no 3 of 1995: An Act to Establish the Zanzibar Municipal Council and Other Matters Connected therewith.
13. Government of Zanzibar: The Election Act No II of 1984 with amendments up to 31st March 1995, and Election Amendment Act, 2000.
14. Gray J. History of Zanzibar from the Middle Ages to 1856. London: OUP, 1962.
15. WADE HWR, CF. Administrative law, Oxford University Press in., New Hollingsworth (1953). Zanzibar Under Foreign Office, 2000, 1890-1913.
16. Hinton RWK. English Constitutional Theories from Sir John Fortesque to Sir John Elliott.
17. Hotman, François. Franco-Gallia. Second English edition. London, 1573, 1721.
18. Levin ML. The Political Doctrine of Montesquieu's *Esprit des Lois*: Its Classical Background. New York, 1936.
19. Jennings L. the Law and the Constitution, 5<sup>th</sup> Ed, 1963, 76.
20. Joint Inter-Party Committee, Consultants' Reports on Constitutional, Electoral and Judicial Reform in Zanzibar, submitted to the Inter-Party Committee of CCM and CUF, Zanzibar on the 6<sup>th</sup>, 2000.
21. Kane E, O'Reilly B. Doing our Own Research, London: Marion Boyars Publishers, 2001.
22. Kothari CR. Research Methodology. New Delhi: New Age International (P) Limited Publishers, 2004.
23. The United Republic of Tanzania (1999). Legal Sector Reform Programme, Medium Term Strategy and Action Plan 2000-2005, October
24. Ullmann W. Principles of Government and Politics in the Middle Ages. London, 1961.
25. Uppsala. The Zanzibar Revolution and its Aftermath. London: C. Hurst and Co. see (n.d). Commission of Inquiry into Disturbances on 1st June 1961 and Succeeding Days (n.p.), 1981.
26. Vile MJC. Constitutionalism and the separation of powers. Clarendon Press. Oxford, 1969.

27. *Vindiciae Contra Tyrannos*. English edition. London, 1648. Also, Von Fritz, Kurt. *The Theory of the Mixed Constitution in Antiquity*. New York, 1954.
28. Vishwanadham. *Government and Separation of Powers*, 2012, 49
29. Waliggo JM. 'The Separation of Powers Between the Legislature, Executive and the Judiciary in the New Constitution' *Federo*, 2002, 1-6.
30. Waliggo JM. *The Separation of Powers Between the Legislature, Executive and the Judiciary in the New Constitution*' *Federo*, 2002, 1-6,
31. Wilson A. *U.S. Foreign Policy and Revolution: The Creation of Tanzania*. London: Pluto Press, 1989.
32. York. Othman, H. and H. Bhagat (1978). *Colonialism and Class Formation in Zanzibar*. *Utafiti* vol.3 No.1.
33. Zanzibar Protectorate (1961). *Report of the Supervisor of Elections on the Registration of Voters and the Elections held in January 1961*. Zanzibar: Government Printer.
34. Zanzibar Sustainable Programme: *Municipal Boundaries and Institutions Responsibilities*. Working Group report, Revised, 2000.