Playing our part: defending constitutional rights of women in Tanzania

I definitely wear many hats, but the one hat I have been thinking hard about the last years is the one of being a citizen and what that means. I am grateful that I have so many skills that I use every day to help investors in Africa and working with big corporations, high net worth individuals and sovereign nations is another skill I have developed over the years, understanding how to manage interests and stakeholders and closing multi million dollar deals has been thrilling. However, I started asking myself if that is all? Is that really the most important role I can play? Contemplating this question for many years, I remembered that the profession of an Advocate at its primal base is one of defender of justice and ensuring that legal and economic justice is served by representing the under represented. This is what stemmed the creation of the pro bono division of Shikana Group where we represent, for free, women who have causes that we deem worth fighting for.

We therefore met some Tanzanian women back in 2015, who shared their stories with us regarding their difficult family situations because of the immigration laws in Tanzania. Most of these women were not able to live freely in Tanzania with their foreign spouses because of the harsh conditions stipulated and incidentally that these conditions were only reserved for Tanzanian women. A Tanzanian woman married to a non-Tanzanian man cannot make an application for her spouse to get a dependant pass, which would allow him to stay in the country. Tanzanian men have the right to live peacefully with their foreign spouse in Tanzania since the immigration Act and its regulations gives this right to a Tanzanian man to obtain a dependant pass for his spouse. The unfairness of it all.

While this is a situation that is not really spoken about because of the negative social impressions and prejudices related to Tanzanian women who marry foreign men, these women have been suffering and forced to either leave Tanzania all together and go and live in a country that allows them to be with their family or to shuttle between countries, for example Sweden and Tanzania, every few weeks so as to be able to be with the family, which is a major burden that nobody should have to bare.

Currently the laws in Tanzania provide that the cost for a Tanzanian woman to live with her foreign husband in Tanzania is to have a business venture whereby there is an investment capital requirement of USD 500,000 so as to qualify for an investor permit. Another alternative is for the foreign spouse to be educated enough to compete in the job market in Tanzania so as to have a job that would enable him to be in the country with his wife via a work and residence permit. A Tanzanian man however, only needs to produce a marriage certificate to the immigration authorities and the foreign spouse is given a dependant pass.

Listening to these women who explained how they would have to go and grovel to government authorities to be given a special status for their husbands to be in the country, I felt their humiliation and their pain. I wondered why there was this inequality. Why did the law discriminate against Tanzanian women?

Most of the answers I found were unfortunately based on negative cultural biais against women and the entrenched belief that somehow we cannot make our own decisions even when it comes to who we want to marry. I heard analogies of Tanzanian women to the Natural Resources that needed to be protected and that foreign men would come and exploit the national resources. I listened with eyes wide open as I was told that if they made it easy for foreign men to live in the country with their Tanzanian spouses, that they would use the women to acquire land and wealth in the country. When I questioned why these same scenarios could not happen with men ie that men be used by foreign women to own land, I was met with chuckles and laughter and statements that “Men are not so weak… women are very weak and vulnerable”.

The fact that a law and its regulation prohibits Tanzanian woman from living in Tanzania with her spouse violates Article 12(1) and 12(2) of the Constitution of the United Republic of Tanzania (URT) which guarantees equality for all human beings and provides that every person is entitled to recognition and respect for his dignity.

Article 13(1), 13(2), 13(4) and 13(5) of the Constitution which guarantees equality of all persons before the law and bars discrimination of persons by any provision of the law that satisfies the needs, rights or other requirements of different persons on the basis of their nationality, tribe, place of origin, political opinion, colour, religion and sex.

Article 16(1) of the Constitution which guarantees for the right of privacy of a person, their family and matrimonial life, and protection of residence is breached since both section 39 (1) of the Immigration Act and the Regulation 9 (1) of the Immigration Regulations have failed to protect the residence of the Tanzanian woman married to a non-citizen and her family by making it impossible for them to establish their family and live in Tanzania. The right to privacy is the right for the Tanzanian woman to make her own determinations about her life, but the regulations and laws are a State interference in her private life by making it impossible for a Tanzanian woman to apply for the dependant pass for her foreign spouse.

Equally Article 17 (1) of the Constitution is breached since the right to free movement, the right to live in any part of the United Republic of Tanzania and the right not to be forced to leave the country of Tanzania are all breached through the immigration law and regualtions.

Finally Article 22 of the Constitution guarantees the right to work for all persons and this is contravened by Section 39 (1) of the Immigration Act and Regulation 9 (1) of the Immigration Regulations which discrimate and deny the Tanzanian woman married to a foreign spouse the right to get a dependant pass for their spouse and due to this discrimination she cannot live in Tanzania peacefully with her family thus reuslting in her being at times forced to leave Tanzania and consequently denying her the right to work for economic gain, to pursue social and political activities in her own country since she must go and live with her spouse in another country.

So as we can see, there are a number of fundamental human rights being violated and this is simply not acceptable in my opinion. It is about time that the same rights that are afforded to Tanzanian men are given to Tanzanian women as well. This may result in many female citizens coming back to Tanzania where they can contribute to the growth and devleopment of the economy. Currently, Tanzania is losing out on the talent and resources that are forced to leave the country because of these disciminatory laws and regulations.

Admittedly, the road to justice is a long one. We are prepared for anything to happen in court, but what I do know is my team and I will give a good fight until the end because Tanzanian women deserve to be defended and protected and that this situation of injustice needs to end.