



# NYERERE DAY

## Nyerere Day: Reflection on constitutionalism and the rule of law

By Telesphor Magobe

**L**AST week, we briefly looked at the offence of theft, which I may say is the most committed offence in the community. Section 258 of the Penal Code (R.E. 2022) provides for the definition of theft. Subsection (1) states: "A person who fraudulently and without claim of right takes anything capable of being stolen, or fraudulently converts to the use of any person other than the general or special owner thereof anything capable of being stolen, steals that thing."

We also saw that by virtue of section 265 general punishment for theft is imprisonment for seven years. We also said that the Penal Code (R.E. 2022) does not provide an alternative punishment (for instance, a fine). So, it is good to take note of this.

Today, I invite you to briefly look at Nyerere and the rule of law. As we mark Nyerere Day, which is celebrated each year on October 14, let us recall Nyerere's contribution to the respect for the rule of law and the solid foundations he laid for us.

Mwalimu Julius Nyerere (April 13, 1922-October 14, 1999) led Tanganyika to independence on December 9, 1961 and was the first President of the United Republic of Tanzania from October 29, 1964 to November 5, 1985 when he retired (ng'atuka as he put it).

He is the Founder (Father) of the Nation and renowned for being a charismatic leader who unlike many African leaders, neither abused power nor mismanaged public resources nor amassed wealth for himself or his family. He strove for a strongly defined work ethic, ethical leadership, lived a simple lifestyle throughout his life and was among the few non-corrupt leaders not only in Africa, but also across the world. He was also a staunch supporter of human rights, human dignity and equality of all human beings.

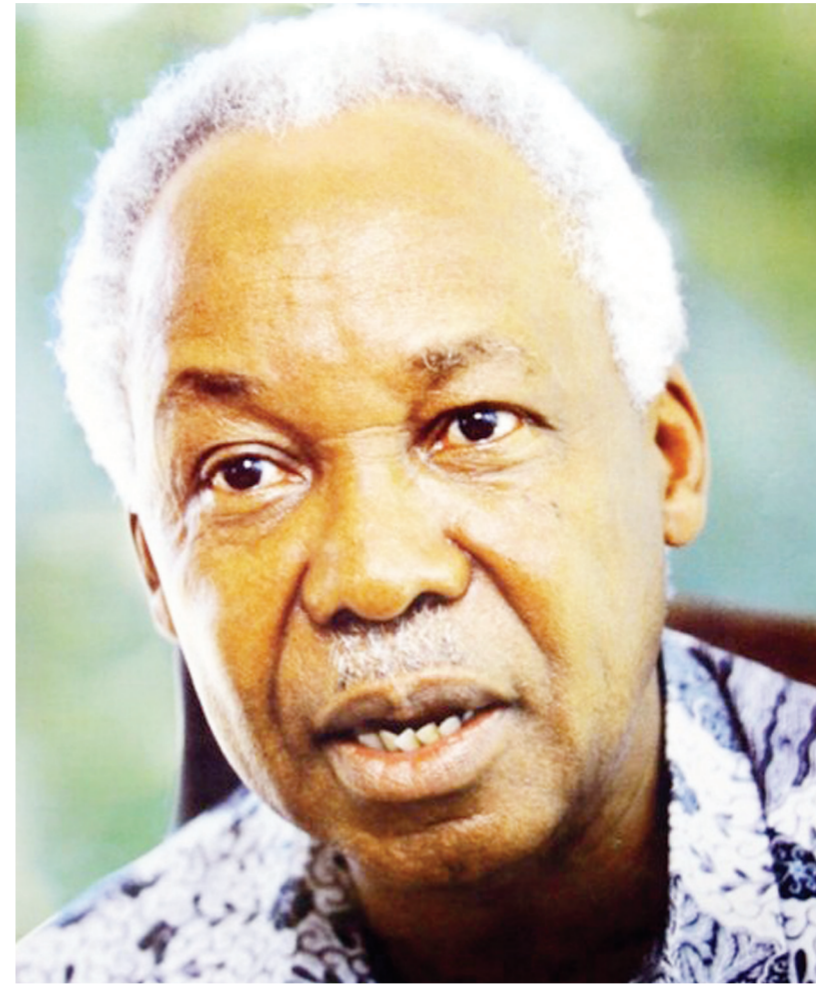
In fact, he is remembered for many good things, but today I would like to reflect on Nyerere and the rule of law. The Constitution is the supreme law of the land from which all other laws flow. Any law which violates any provision of the Constitution shall be void [Article 64(5)]. By virtue of Article 8(1) of the Constitution of the United Republic of Tanzania, 1977 (as amended until 2005) -

"(a) sovereignty resides in the people and it is from the people that the government through this Constitution shall derive all its power and authority; (b) the primary objective of the government shall be the welfare of the people; (c) the government shall be accountable to the people and (d) the people shall participate in the affairs of their government in accordance with the provisions of this Constitution."

These provisions show that any government authority is subject to and not above the Constitution. Instead, Article 13(1) states: "All persons are equal before the law and are entitled, without any discrimination, to protection and equality before the law." That is, before the laws of Tanzania apply to "all persons" equally: leaders and non-leaders alike are equal before the law.

Prof Robert Stein (2008) in an article entitled "Rule of Law: What Does it Mean?" says the following four universal principles comprise the rule of law: "(1) the government and its officials and agents are accountable under the law; (2) the laws are clear, publicised, stable and fair, and protect fundamental rights, including the security of persons and property; (3) the process by which the laws are enacted, administered and enforced is accessible, fair and efficient; and (4) the laws are upheld, and access to justice is provided, by competent, independent, and ethical law enforcement officials, attorneys or representatives, and judges, who are of sufficient number, have adequate resources, and reflect the makeup of the communities they serve."

Wade & Forsyth (2000) in their book "Administrative Law (Eighth Edition)" highlight some principles of the rule of law, but here I will mention four of them. They are: (1) Every act of government which affects the legal rights, duties or liberties of any person, must be shown to have a strictly legal pedigree. (2) The government should



conduct its affairs within a framework of recognised rules and principles which restrict discretionary power. (3) An essential part of the rule of law is a system of rules for preventing the abuse of discretionary power. (4) All public authorities should be subject to normal legal duties and liabilities which are not inconsistent with their governmental functions.

All these principles constitute what we call the rule of law, which Justice James Mwalusanya as quoted in Kijo-Bisimba & Maina Peter (2005) says it "means more than acting in accordance with the law. [It] must also mean fairness of the government. The rule of law is opposed to the rule of arbitrary power...Therefore, if by the rule of law all it means is that the government will operate in accordance with the 'law', then the doctrine of rule of law becomes a betrayal of the individual if the laws themselves are not fair, but oppressive and degrading."

Mwalimu on various occasions expressed his respect for and protection of the Constitution he dearly respected. In one of his speeches he says "A person who is elected President must first take an oath to protect the Constitution and will be judged by his or her protection or non-protection of it."

He said this because he was aware of the wide discretionary power the

Constitution gives to the President and it is possible to abuse it for any reason and at any time. He also said "In order to develop we need four things: land, people, good leadership and clean politics."

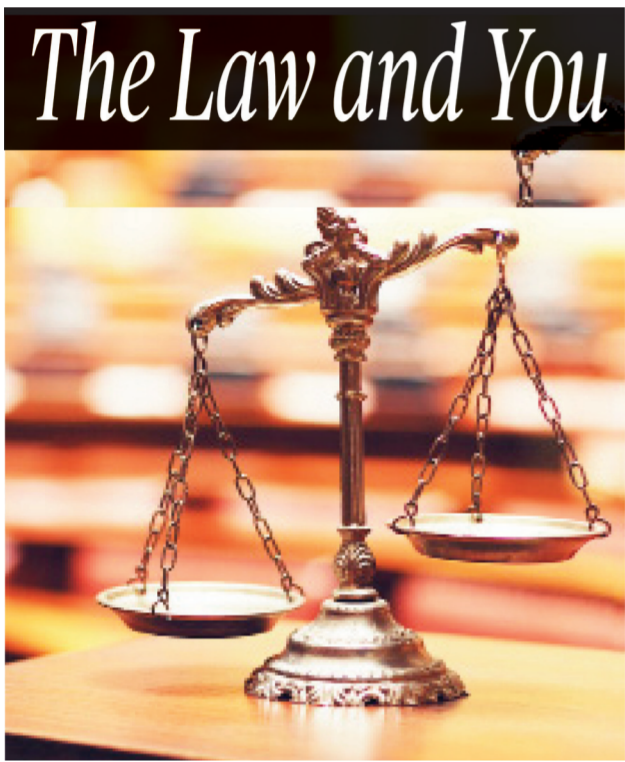
He is also renowned for his contribution to land law reforms on a person's right to compensation for a piece of land he or she has developed. From this we get what is called "Nyerere's doctrine of land value" (see Rwegasira, 2012, p. 68). In Ujamaa: Essays on Socialism (p. 50), he says: "Land is the basis of human life and all Tanzanians should use it as a valuable investment for future development. Because land belongs to the nation, the government has to see to it that it is used for the benefit of the whole nation and not for the benefit of one individual or just a few people."

Nyerere and the rule of law is a good reflection because many African leaders do not live up to leadership standards. They may trample on the laws they have assented to themselves, amend or repeal them at will if they find that those laws no longer protect their interests. Although they all take an oath to serve their people after being sworn in power it is the people who start serving them. They are held by their people to be above their national Constitutions and Acts of Parliament.

Mwalimu differentiated himself from other African leaders by adhering to the Constitution and ordinary laws and by living a simple lifestyle. He is an example to be emulated by African leaders especially those who tend to cling to power because they don't trust other people can lead after them. Happy Nyerere Day.

**Today's proverb: "Make every bargain clear and plain, that none may afterwards complain."**

**The author is a lawyer based in Dar es Salaam. He can be reached at t22magobe@gmail.com**





**THE UNITED REPUBLIC OF TANZANIA**  
**President's Office, Public Service Management and Good Governance**  
**E-GOVERNMENT AUTHORITY**







**MWL. NYERERE ANNIVERSARY**

The Board of Directors, Management and Staff of e-Government Authority wish to join the President of the United Republic of Tanzania.

**Her Excellency Samia Suluhu Hassan**  
 and all Tanzanians to Commemorate the 24<sup>th</sup> death anniversary of the late Mwalimu Julius Kambarage Nyerere

**Integrity and Innovation for Quality Public Service Delivery**

Father of the Nation, Mwalimu Julius Kambarage Nyerere

**1999 - 2023**

President's Office, Public Service Management and Good Governance  
 e-Government Authority,  
 Mtumba-Mtandao Street, P.O.Box 2833,DODOMA,  
 +255 026 - 296 1957, info@ega.go.tz, barua@ega.go.tz