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A Constitutional Analysis on Presidential and Vice-President Succession Where the President-Elect Dies Before Taking the Oath in Tanzania: Lessons to Be Learned from Kenya

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ABSTRACT

Constitutional succession constitutes an indispensable component of democratic governance because it guarantees continuity of executive authority, political stability, and constitutional legitimacy during presidential transitions. While many constitutional systems comprehensively regulate succession after a President has assumed office, comparatively limited attention has been devoted to the constitutional consequences arising where a President-elect dies before taking the oath of office. This constitutional uncertainty has become increasingly relevant in emerging democracies where peaceful transfer of executive power remains essential to constitutionalism and the rule of law. In Tanzania, the Constitution of the United Republic of Tanzania provides elaborate mechanisms governing presidential succession following assumption of office but remains largely silent on succession where the President-elect dies before inauguration. This constitutional omission creates uncertainty regarding the authority responsible for assuming executive power, the status of the Vice-President-elect, and the constitutional procedure for preserving democratic legitimacy.

This article critically examines the constitutional implications of presidential succession where the President-elect dies before taking the oath of office in Tanzania. It adopts Kenya as a comparative constitutional model because the Constitution of Kenya, 2010 expressly regulates this situation and has generated important jurisprudential and scholarly debate regarding constitutional continuity and electoral legitimacy. Employing a doctrinal legal research methodology, the study analyses constitutional provisions, electoral legislation, judicial decisions, and academic literature from Tanzania and Kenya. It argues that the absence of an explicit constitutional succession mechanism in Tanzania creates legal uncertainty capable of undermining constitutional stability, democratic governance, and public confidence during presidential transitions. The article concludes that constitutional reform is necessary to establish a clear succession framework governing the death of a President-elect before assumption of office while preserving constitutional supremacy, electoral integrity, and democratic continuity.

Keywords: *Constitutional succession, President-elect, Vice-President-elect, Constitutionalism, Democratic governance.*

1. Introduction

The peaceful transfer of executive power represents one of the defining characteristics of constitutional democracy. Regardless of political ideology or governmental structure, constitutional systems derive legitimacy from their ability to guarantee continuity of governance while simultaneously respecting democratic choice and constitutional procedures. Consequently, modern constitutions ordinarily establish comprehensive rules governing presidential elections, assumption of office, succession, and temporary incapacity in order to prevent constitutional crises capable of destabilising state institutions. Constitutional certainty during executive transition therefore serves not merely an administrative function but also reinforces the rule of law, constitutional supremacy, and democratic legitimacy.¹

Despite the constitutional significance of presidential succession, many constitutions concentrate primarily on succession after an elected President has assumed office, leaving comparatively limited guidance concerning circumstances arising before inauguration. The death of a President-elect before taking the prescribed oath presents one of the most complex constitutional questions because the successful candidate possesses electoral legitimacy but has not yet acquired the constitutional authority associated with the presidency. This situation creates uncertainty concerning whether executive authority should devolve upon the Vice-President-elect, the incumbent office-holder, the Speaker of Parliament, or whether a fresh presidential election should be conducted. The absence of explicit constitutional regulation risks conflicting interpretations capable of generating institutional uncertainty and political instability.²

1 Dicey, A. V. (1959). *Introduction to the Study of the Law of the Constitution* (10th ed.). Macmillan, pp. 183–205.

2 Bingham, T. (2010). *The Rule of Law*. Penguin Books, pp. 78–99.

The constitutional framework of Tanzania illustrates this challenge. Although the Constitution establishes procedures governing presidential elections, assumption of office, vacancy after inauguration, and succession following the death or incapacity of a serving President, it does not expressly regulate the constitutional consequences arising where the President-elect dies before taking the oath of office. This constitutional silence leaves unresolved several important legal questions concerning the continuity of executive authority, the constitutional status of the Vice-President-elect, and the preservation of the electoral mandate expressed by the electorate. Given the constitutional importance of peaceful succession, such uncertainty has significant implications for democratic governance and constitutional stability.³

Kenya provides a useful comparative model because the Constitution of Kenya, 2010 expressly addresses the death of a President-elect before assumption of office. The Kenyan constitutional framework provides clear procedures governing succession and fresh presidential elections, thereby reducing institutional uncertainty during extraordinary political circumstances. Comparative examination of the Kenyan experience therefore offers valuable constitutional lessons capable of informing future constitutional reform in Tanzania while respecting the distinct constitutional traditions of the two jurisdictions.⁴

Although constitutional scholarship has extensively examined presidential succession, executive power, and democratic transitions, relatively limited attention has been devoted to the constitutional implications arising specifically from the death of a President-elect before inauguration within the Tanzanian context. Existing literature primarily focuses on succession after assumption of office, presidential term limits, electoral disputes, or constitutional amendments. Consequently, an important gap exists concerning the adequacy of Tanzania's constitutional framework in regulating pre-inauguration presidential succession. This article addresses that gap by undertaking a comparative constitutional analysis of Tanzania and Kenya, evaluating the existing legal framework against constitutional principles of certainty, democratic legitimacy, continuity of government, and the rule of law.⁵

The article proceeds by reviewing existing constitutional scholarship on presidential succession and constitutional continuity, explaining the doctrinal methodology employed, analysing the constitutional frameworks of Tanzania and Kenya, identifying normative and institutional gaps within the Tanzanian constitutional order, and proposing reforms designed to strengthen constitutional certainty during presidential transitions. Such reforms are essential to ensuring that future succession disputes are resolved through constitutional processes rather than political expediency, thereby reinforcing constitutionalism, democratic governance, and public confidence in the peaceful transfer of executive power.⁶

1.1 Background to the Study

The orderly transfer of executive power is one of the defining characteristics of constitutional democracy. Modern constitutions are designed not only to establish governmental institutions and allocate public powers but also to provide clear legal mechanisms that ensure continuity of government during both ordinary and extraordinary political transitions. Presidential succession provisions therefore play a fundamental role in safeguarding constitutional supremacy, democratic governance and the rule of law by ensuring that executive authority is transferred through predetermined constitutional procedures rather than political expediency. Where constitutions comprehensively regulate succession, they reduce the likelihood of constitutional crises, institutional paralysis and political instability during changes in executive leadership.⁷

Globally, constitutional practice demonstrates that presidential succession extends beyond addressing vacancies arising from the death, resignation or incapacity of an incumbent President. Increasingly, constitutional systems recognise that unforeseen circumstances may occur before an elected President formally assumes office, requiring constitutions to provide equally clear mechanisms for preserving constitutional continuity. The death of a President-elect before taking the oath of office represents one such exceptional circumstance because it raises complex constitutional questions concerning democratic legitimacy, continuity of executive authority and the legal status of other elected officials. Consequently, several constitutional democracies have adopted explicit constitutional provisions governing pre-inauguration succession to eliminate uncertainty and ensure that executive transitions remain firmly anchored in constitutional law.⁸

Within Africa, constitutional reforms undertaken over the past three decades have increasingly emphasised constitutional certainty during presidential transitions as an essential element of democratic consolidation. The Constitution of Kenya, 2010 exemplifies this approach by providing express constitutional procedures governing the death of a President-elect before assumption of office. Through these provisions, the Kenyan constitutional framework seeks to preserve both constitutional continuity and the democratic mandate while minimising institutional uncertainty during exceptional political circumstances.⁹ The Kenyan experience has therefore become an important point of reference in comparative constitutional scholarship concerning presidential succession and constitutional stability.

In Tanzania, the Constitution of the United Republic of Tanzania, 1977 establishes the legal framework governing presidential elections, executive authority and succession following the death, resignation, removal or permanent incapacity of a serving President. These provisions reflect the constitutional commitment to ensuring continuity of executive governance after a President has assumed office. However, the Constitution does not

3 The United Republic of Tanzania. (1977). The Constitution of the United Republic of Tanzania, 1977 (as amended), arts. 37, 38, 39, 46, & 47.

4 Ghai, Y. P., & Ghai, J. P. W. B. (2011). Kenya's Constitution: An Instrument for Change. Katiba Institute, pp. 215–233.

5 Ackerman, B. (2000). The New Separation of Powers. Harvard Law Review, 113(3), 633–729, pp. 639–650.

6 Vile, M. J. C. (1998). Constitutionalism and the Separation of Powers (2nd ed.). Liberty Fund, pp. 13–30.

7 The Constitution of Kenya, 2010, arts. 138(8)(b), 146, & 149.

8 Ghai, Y. P., & Cottrell, J. (2011). Kenya's Constitution: An Instrument for Change. Katiba Institute, pp. 220–236.

9 The United Republic of Tanzania. (1977). The Constitution of the United Republic of Tanzania, 1977 (as amended), arts. 37–46.

expressly regulate the constitutional consequences arising where a President-elect dies after being declared the successful candidate but before taking the prescribed oath of office. This omission leaves unresolved important constitutional questions concerning the lawful transfer of executive authority, the constitutional position of the Vice-President-elect and the preservation of the electoral mandate during the transitional period between election and inauguration.¹⁰

The absence of explicit constitutional regulation concerning pre-inauguration presidential succession has attracted increasing scholarly interest because constitutional certainty is indispensable to democratic governance. Constitutions are expected to anticipate exceptional situations capable of affecting the continuity of government and provide legal mechanisms for resolving them without resorting to political discretion or institutional improvisation. Examining the adequacy of Tanzania's constitutional framework in this regard is therefore essential to understanding whether the existing succession provisions sufficiently protect constitutional continuity, democratic legitimacy and the rule of law. It is against this background that this article undertakes a comparative constitutional analysis of Tanzania and Kenya to evaluate the constitutional framework governing presidential and vice-presidential succession where a President-elect dies before taking the oath of office.¹¹

1.2 AREA OF GAP.

The Constitution of the United Republic of Tanzania does not expressly provide a constitutional mechanism governing presidential and vice-presidential succession where a President-elect dies after being declared the winner of a presidential election but before taking the oath of office. While the Constitution comprehensively regulates succession following the death, resignation, removal or permanent incapacity of a serving President, it remains silent on the constitutional consequences of the death of a President-elect during the transitional period between the declaration of election results and inauguration. This constitutional silence creates uncertainty regarding the lawful succession process, the constitutional status of the Vice-President-elect, and the institution constitutionally mandated to ensure continuity of executive authority. In the absence of an explicit constitutional procedure, competing constitutional interpretations may emerge, thereby increasing the likelihood of institutional conflict, constitutional ambiguity and political instability during one of the most critical stages of democratic transition.¹²

The constitutional uncertainty generated by this omission has broader implications for constitutionalism, the rule of law and democratic governance. A constitution is expected to anticipate both ordinary and extraordinary circumstances affecting the transfer of executive power in order to guarantee legal certainty and institutional continuity. Where constitutional provisions fail to regulate exceptional situations such as the death of a President-elect before assumption of office, the peaceful transfer of power may depend upon political discretion rather than predetermined constitutional rules. Such an outcome undermines constitutional supremacy by exposing fundamental questions of executive succession to uncertainty at a time when legal clarity is indispensable.¹³

Although presidential succession has received considerable scholarly attention, existing literature has predominantly focused on succession following the assumption of presidential office, presidential term limits and executive accountability. Comparatively little attention has been devoted to examining the constitutional implications of the death of a President-elect before taking the oath of office within the Tanzanian constitutional framework. Furthermore, limited comparative scholarship has explored whether the constitutional approach adopted by Kenya, which expressly regulates this eventuality, provides lessons capable of strengthening constitutional certainty in Tanzania.¹⁴

This study addresses these legal and scholarly gaps by critically examining the constitutional adequacy of Tanzania's presidential succession framework in relation to the death of a President-elect before inauguration. Through a comparative constitutional analysis of Tanzania and Kenya, the study evaluates whether the existing constitutional framework sufficiently safeguards constitutional continuity, democratic legitimacy and the rule of law, and proposes reforms aimed at strengthening constitutional certainty during presidential transitions.

1.3 Objectives

General Objective

The general objective of this study is to critically examine the constitutional framework governing presidential and vice-presidential succession where a President-elect dies before taking the oath of office in Tanzania and to draw comparative lessons from the constitutional framework of Kenya.

Specific Objectives

The study specifically seeks to examine the constitutional and legal framework governing presidential and vice-presidential succession in Tanzania, analyse the constitutional implications arising from the death of a President-elect before assuming office, evaluate the adequacy of the existing

10 Bingham, T. (2010). *The Rule of Law*. Penguin Books, pp. 159–174.

11 Dicey, A. V. (1959). *Introduction to the Study of the Law of the Constitution* (10th ed.). Macmillan, pp. 188–201.

12 Bingham, T. (2010). *The Rule of Law*. Penguin Books, pp. 159–174.

13 Ghai, Y. P., & Ghai, J. P. W. B. (2011). *Kenya's Constitution: An Instrument for Change*. Katiba Institute, pp. 228–240.

14 Vile, M. J. C. (1998). *Constitutionalism and the Separation of Powers* (2nd ed.). Liberty Fund, pp. 33–48.

constitutional framework in addressing such an eventuality through a comparative analysis with Kenya, and propose constitutional and legal reforms aimed at strengthening constitutional certainty, democratic legitimacy and continuity of executive authority in Tanzania.

2. Literature Review

The question of presidential succession has attracted considerable scholarly attention because it lies at the intersection of constitutionalism, democratic governance and the rule of law. Constitutional scholars generally agree that a constitution should not only regulate the acquisition and exercise of executive power but also anticipate extraordinary circumstances capable of disrupting constitutional continuity. Accordingly, succession provisions have increasingly been regarded as indispensable constitutional safeguards designed to prevent institutional paralysis, political instability and unconstitutional transfers of power. Nevertheless, existing scholarship has largely concentrated on succession after a President has assumed office, leaving comparatively limited analysis of situations where a President-elect dies before taking the oath of office.¹⁵

Constitutional theorists argue that certainty in succession arrangements strengthens constitutional legitimacy by ensuring that executive authority is transferred through predetermined legal procedures rather than political negotiation. Dicey associates constitutional certainty with the rule of law, maintaining that governmental authority must always be exercised according to established legal rules rather than discretion or political expediency. Similarly, Tom Bingham contends that constitutional systems remain stable only where legal rules governing governmental transition are sufficiently clear to eliminate uncertainty during periods of political change. These perspectives demonstrate that succession clauses perform a constitutional function extending beyond administrative convenience by protecting democratic continuity and preserving public confidence in constitutional institutions.¹⁶

Modern constitutional scholarship further emphasises that succession mechanisms must reconcile two competing constitutional objectives. On one hand, continuity of government requires that executive authority should never remain vacant. On the other hand, democratic legitimacy demands that executive power should derive from the electoral mandate expressed by the people. Ackerman argues that constitutional transitions should therefore preserve both governmental continuity and democratic legitimacy without sacrificing constitutional supremacy. Failure to maintain this balance may create constitutional crises in which political actors rely upon expediency rather than constitutional rules to determine executive authority.¹⁷

Comparative constitutional studies demonstrate that jurisdictions have adopted different approaches to resolving pre-inauguration presidential vacancies. In the United States, the Twentieth Amendment provides mechanisms addressing circumstances where a President-elect dies before the commencement of the presidential term, thereby ensuring constitutional continuity without requiring immediate constitutional interpretation. Similarly, the Constitution of Kenya, 2010 expressly regulates the death of a President-elect before assuming office by requiring a fresh presidential election within a constitutionally prescribed period. These constitutional provisions minimise uncertainty by predetermining the legal consequences of extraordinary political events.

Kenyan constitutional scholarship has extensively analysed the rationale underlying these succession provisions. Mutakha Kangu argues that constitutional certainty strengthens democratic governance because it prevents institutional disputes regarding the lawful holder of executive authority during transitional periods. Ben Sihanya likewise maintains that succession provisions should eliminate ambiguity by prescribing clear constitutional procedures applicable to exceptional circumstances rather than leaving such matters to political interpretation. These analyses suggest that constitutional silence concerning presidential succession may itself become a source of constitutional instability.¹⁸

Within Tanzania, legal scholarship has generally examined presidential succession in relation to vacancies occurring after assumption of office, presidential term limits, constitutional amendments and executive accountability. Authors such as Issa G. Shivji and Chris Maina Peter have made significant contributions to understanding constitutionalism, separation of powers and democratic governance within Tanzania. However, their analyses primarily address the broader constitutional framework rather than the specific constitutional implications arising where a President-elect dies before taking the oath of office. Consequently, existing Tanzanian scholarship provides valuable constitutional principles but does not comprehensively address the legal uncertainty created by constitutional silence on pre-inauguration succession.¹⁹

The existing literature therefore reveals three significant gaps. First, comparatively little scholarly attention has been devoted to examining whether Tanzania's constitutional framework adequately regulates the death of a President-elect before assumption of office. Secondly, limited comparative constitutional analysis has been undertaken between Tanzania and Kenya concerning this specific constitutional question despite the relevance of Kenya's constitutional model. Thirdly, existing scholarship has not sufficiently examined how constitutional silence may affect democratic legitimacy, constitutional continuity and the peaceful transfer of executive power. These gaps justify the present study, which seeks to evaluate Tanzania's constitutional framework through comparative constitutional analysis while proposing reforms capable of strengthening constitutional certainty during presidential transitions.²⁰

15 Dicey, A. V. (1959). *Introduction to the Study of the Law of the Constitution* (10th ed.). Macmillan, pp. 193–205; Bingham, T. (2010). *The Rule of Law*. Penguin Books, pp. 85–98.

16 Ackerman, B. (2000). *The New Separation of Powers*. *Harvard Law Review*, 113(3), 633–729, pp. 650–667.

17 Kangu, M. B. (2015). *Constitutional Law of Kenya on Devolution*. Strathmore University Press, pp. 184–197; Sihanya, B. (2012). *Constitutional Democracy, Regulatory and Administrative Law in Kenya*. *LawAfrica*, pp. 265–281.

18 Shivji, I. G. (2004). *Reflections on the Constitutional History of Tanzania*. Mkuki na Nyota Publishers, pp. 97–120; Peter, C. M. (2007). *Human Rights in Tanzania: Selected Cases and Materials*. Rüdiger Köppe Verlag, pp. 41–58.

19 Ghai, Y. P. (Ed.). (2011). *Kenya's Constitution: An Instrument for Change*. Katiba Institute, pp. 240–251.

20 Hutchinson, T., & Duncan, N. (2012). *Defining and describing what we do: Doctrinal legal research*. *Deakin Law Review*, 17(1), 83–119, pp. 84–101.

3. Materials and Methods

This study adopts a doctrinal legal research methodology because the principal objective is to determine whether the constitutional framework governing presidential succession in Tanzania adequately addresses the death of a President-elect before taking the oath of office. Doctrinal research is appropriate where the inquiry focuses upon the interpretation, coherence and constitutional validity of legal rules rather than empirical investigation of social behaviour. The methodology therefore facilitates systematic analysis of constitutional provisions, statutory legislation, judicial decisions and scholarly commentary relevant to presidential succession and constitutional continuity.²¹

The study relies primarily upon documentary analysis of both primary and secondary legal materials. Primary sources include the Constitution of the United Republic of Tanzania, the Constitution of Kenya, 2010, electoral legislation, constitutional amendment laws and relevant judicial decisions from Tanzania, Kenya and selected comparative jurisdictions. Secondary sources comprise academic books, peer-reviewed journal articles, constitutional commentaries, reports of constitutional review commissions and publications addressing constitutionalism, presidential succession, democratic governance and comparative constitutional law.

The article further employs comparative constitutional analysis by examining the constitutional approaches adopted in Tanzania and Kenya. Comparative constitutional methodology is particularly appropriate because both jurisdictions share common historical and legal traditions while adopting different constitutional responses to presidential succession. The Kenyan constitutional framework therefore provides persuasive comparative guidance capable of informing constitutional reform in Tanzania without undermining the country's constitutional autonomy.

The analysis is undertaken using a critical constitutional approach rather than a purely descriptive examination of legal provisions. Constitutional rules governing presidential succession are evaluated against the principles of constitutional supremacy, the rule of law, democratic legitimacy, legal certainty and continuity of government. Particular emphasis is placed upon identifying constitutional gaps within the Tanzanian framework and assessing whether comparative constitutional experiences provide persuasive lessons capable of strengthening constitutional governance during presidential transitions.²²

3.1 Theoretical Framework

3.1.1 Constitutional Succession

Constitutional succession refers to the legally prescribed process through which executive authority is transferred following the occurrence of circumstances that render the elected or serving Head of State incapable of exercising presidential powers. Unlike political succession, which may depend upon political negotiations or customary practices, constitutional succession derives exclusively from constitutional provisions intended to guarantee continuity of government, constitutional stability and democratic legitimacy. Effective constitutional succession therefore requires clear constitutional procedures capable of preventing institutional uncertainty and ensuring that executive authority is exercised only by constitutionally authorised office holders. Within the context of this study, constitutional succession provides the principal framework for evaluating whether the Constitution of the United Republic of Tanzania adequately regulates the death of a President-elect before assumption of office.²³

3.1.2 President-Elect

A President-elect is a presidential candidate who has been lawfully declared the winner of a presidential election by the constitutionally competent electoral authority but who has not yet assumed office through the administration of the prescribed constitutional oath. Although a President-elect possesses democratic legitimacy derived from the electoral process, constitutional authority to exercise presidential powers ordinarily arises only upon taking the oath of office. The distinction between electoral legitimacy and constitutional authority is central to this study because the constitutional uncertainty arises precisely during the transitional period separating electoral victory from formal assumption of office.²⁴

3.1.3 Vice-President-Elect

A Vice-President-elect refers to the individual elected together with the President-elect in accordance with constitutional and electoral requirements but who has not yet assumed office. The constitutional status of the Vice-President-elect becomes particularly significant where the President-elect dies before inauguration because uncertainty may arise regarding whether the Vice-President-elect automatically succeeds to the presidency, temporarily exercises executive authority or awaits a fresh presidential election. The absence of explicit constitutional guidance concerning this status forms one of the principal constitutional questions examined in this article.²⁵

21 Dicey, A. V. (1959). *Introduction to the Study of the Law of the Constitution* (10th ed.). Macmillan, pp. 183–194.

22 Black, H. C. (2019). *Black's Law Dictionary* (11th ed.). Thomson Reuters, pp. 1449–1451.

23 Garner, B. A. (Ed.). (2019). *Black's Law Dictionary* (11th ed.). Thomson Reuters, pp. 1462–1464.

24 Ghai, Y. P., & Ghai, J. P. W. B. (2011). *Kenya's Constitution: An Instrument for Change*. Katiba Institute, pp. 221–227.

25 Bingham, T. (2010). *The Rule of Law*. Penguin Books, pp. 85–98.

3.1.4 Constitutional Continuity

Constitutional continuity denotes the uninterrupted functioning of constitutional institutions during periods of political transition or constitutional crisis. It requires that governmental authority continue to operate in accordance with constitutional rules regardless of unforeseen events affecting public offices. Constitutional continuity protects democratic governance by ensuring that no constitutional vacuum emerges capable of disrupting the exercise of executive authority. In this study, constitutional continuity serves as the benchmark for assessing whether Tanzania's constitutional framework sufficiently safeguards uninterrupted governance where a President-elect dies before taking the oath of office.²⁶

3.1.5 Democratic Legitimacy

Democratic legitimacy refers to the constitutional acceptance of governmental authority as deriving from the freely expressed will of the electorate through lawful democratic processes. Within constitutional democracies, executive authority acquires legitimacy through elections conducted in accordance with constitutional principles and the rule of law. Succession mechanisms must therefore preserve both constitutional continuity and the electoral mandate conferred upon elected leaders. This concept is relevant because the death of a President-elect raises fundamental questions regarding whether the electoral mandate survives the death of the successful candidate or whether democratic legitimacy requires the conduct of a fresh presidential election.²⁷

3.1.6 Constitutionalism

Constitutionalism is the principle that all governmental authority must be exercised in accordance with the Constitution and subject to legal limitations intended to prevent arbitrary exercise of public power. It embodies constitutional supremacy, separation of powers, accountability and the rule of law as the fundamental principles governing democratic states. Constitutionalism requires constitutions to regulate both ordinary governance and extraordinary constitutional events capable of affecting institutional stability. Accordingly, the concept provides the normative foundation for evaluating whether constitutional silence concerning the death of a President-elect is compatible with constitutional governance and democratic accountability.

This study is anchored on Constitutionalism Theory, which provides the normative foundation for analysing presidential succession within constitutional democracies. Constitutionalism is founded on the principle that governmental authority derives from the Constitution and must always be exercised within constitutional limits. It rejects the exercise of public power based on political expediency or discretion and instead requires that all constitutional offices, institutions and public officials act in accordance with predetermined constitutional rules. Consequently, constitutional succession provisions are designed not merely to regulate the transfer of executive power but also to preserve constitutional supremacy, democratic legitimacy and the rule of law during periods of political transition.²⁸

Constitutional scholars, including A.V. Dicey, Tom Bingham and Yash Ghai, argue that constitutional certainty is indispensable for maintaining political stability because constitutions should anticipate both ordinary and extraordinary circumstances capable of affecting governmental continuity. The death of a President-elect before assuming office constitutes one such extraordinary circumstance. Where the Constitution fails to provide an explicit succession mechanism, uncertainty may arise regarding the lawful holder of executive authority, thereby creating the possibility of institutional conflict and undermining public confidence in constitutional governance. Constitutionalism therefore requires that constitutional rules be sufficiently comprehensive to eliminate ambiguity concerning executive succession.²⁹

The relevance of Constitutionalism Theory to this study lies in its insistence that every stage of presidential transition should be regulated by clear constitutional provisions capable of preserving legality, democratic accountability and continuity of government. The theory provides the analytical basis for assessing whether the Constitution of the United Republic of Tanzania adequately addresses the constitutional consequences arising from the death of a President-elect before taking the oath of office. It also facilitates a comparative assessment of the Kenyan constitutional framework in order to determine whether explicit constitutional regulation strengthens constitutional certainty and democratic governance. Accordingly, Constitutionalism Theory provides the normative lens through which the constitutional adequacy of Tanzania's succession framework is critically evaluated.³⁰

4. Legal Framework

The legal framework for this study consists of national, comparative and international legal instruments governing presidential succession, democratic governance and constitutional continuity.

26 Dahl, R. A. (1989). *Democracy and Its Critics*. Yale University Press, pp. 163–180.

27 Dicey, A. V. (1959). *Introduction to the Study of the Law of the Constitution* (10th ed.). Macmillan, pp. 193–205.

28 Bingham, T. (2010). *The Rule of Law*. Penguin Books, pp. 159–174; Ghai, Y. (2010). *Kenya's Constitution: An Instrument for Change*. Katiba Institute, pp. 31–45.

29 Vile, M. J. C. (1998). *Constitutionalism and the Separation of Powers* (2nd ed.). Liberty Fund, pp. 45–63.

30 The United Republic of Tanzania. (1977). *The Constitution of the United Republic of Tanzania, 1977 (as amended)*, arts. 37–46; The United Republic of Tanzania. (2024). *The Presidential, Parliamentary and Councillors' Elections Act, 2024*, relevant provisions governing presidential elections and declaration of results.

4.1 National Legal Framework

The principal legal instrument is the Constitution of the United Republic of Tanzania, 1977, which establishes the constitutional structure of the executive, regulates presidential elections and provides procedures governing succession where the office of the President becomes vacant after assumption of office. The Constitution further defines the constitutional position of the Vice-President, the administration of the presidential oath and the principles of constitutional supremacy and the rule of law. Although these provisions regulate ordinary presidential succession, they do not expressly address the constitutional consequences arising where a President-elect dies before taking the oath of office. This constitutional silence forms the central legal issue examined in this article.³¹

The study also considers the National Elections Act and other electoral legislation governing the conduct of presidential elections, declaration of election results and the electoral process leading to the inauguration of the President-elect. These statutory provisions are analysed to determine whether they provide legal guidance capable of addressing the constitutional gap left by the Constitution.

4.2 Comparative Legal Framework

The comparative analysis is principally informed by the Constitution of Kenya, 2010, which expressly regulates the death of a President-elect before assumption of office. Unlike the Tanzanian constitutional framework, the Kenyan Constitution provides a clear constitutional procedure for resolving such an eventuality, thereby ensuring continuity of government while preserving democratic legitimacy. The Kenyan framework is examined not as binding authority but as persuasive constitutional practice from a neighbouring jurisdiction with comparable constitutional traditions. Its inclusion enables the study to identify lessons capable of informing future constitutional reform in Tanzania.³²

4.3 International and Regional Legal Framework

The study is further guided by regional and international legal instruments promoting constitutional democracy, democratic governance and the rule of law. These include the African Charter on Democracy, Elections and Governance, which requires State Parties to promote constitutional order, democratic transitions and peaceful transfer of power. The African Charter on Human and Peoples' Rights reinforces the principles of constitutional governance, participation in public affairs and the protection of democratic institutions. In addition, Article 25 of the International Covenant on Civil and Political Rights recognises the right of citizens to participate in public affairs through democratic processes. Although these instruments do not specifically regulate presidential succession, they establish constitutional principles requiring legal certainty, democratic legitimacy and continuity of constitutional governance during political transitions. These principles provide important interpretative guidance in evaluating the adequacy of Tanzania's constitutional framework.³³

4.4 The Constitutional Framework Governing Presidential Succession in Tanzania

The Constitution of the United Republic of Tanzania establishes an elaborate constitutional framework governing presidential elections, assumption of office and succession where a serving President dies, resigns or is permanently incapacitated. The constitutional objective underlying these provisions is to ensure continuity of executive authority while preserving constitutional order and political stability. Accordingly, the Constitution recognises the office of the Vice-President as the immediate constitutional successor where a vacancy occurs after the President has lawfully assumed office.³⁴

Despite this comprehensive regulation, the Constitution does not expressly provide for circumstances in which a President-elect dies after being declared the winner of a presidential election but before taking the oath of office. This omission creates a constitutional lacuna because the President-elect has acquired democratic legitimacy through the electoral process but has not yet assumed the constitutional powers of the presidency. Consequently, uncertainty arises regarding whether executive authority should remain with the outgoing President, devolve upon the Vice-President-elect, or require the conduct of a fresh presidential election.³⁵

This constitutional silence presents significant legal implications. First, it creates uncertainty concerning the interpretation of constitutional succession provisions. Secondly, it exposes state institutions to conflicting constitutional interpretations during periods requiring legal certainty. Thirdly, it creates the possibility that political considerations rather than constitutional principles may influence the resolution of succession disputes. Constitutional governance, however, requires that exceptional political events be governed by predetermined legal rules rather than institutional discretion or political compromise.³⁶

31 The Constitution of Kenya, 2010, arts. 138(8)(b), 146, & 148.

32 African Union. (2007). African Charter on Democracy, Elections and Governance. arts. 2, 3, 10, & 23; African Union. (1981). African Charter on Human and Peoples' Rights. arts. 13 & 20; United Nations. (1966). International Covenant on Civil and Political Rights, art. 25.

33 The United Republic of Tanzania. (1977). The Constitution of the United Republic of Tanzania, 1977 (as amended), arts. 37, 38, 39, 46, & 47.

34 Shivji, I. G. (2004). Reflections on the Constitutional History of Tanzania. Mkuki na Nyota Publishers, pp. 105–123.

35 Bingham, T. (2010). The Rule of Law. Penguin Books, pp. 159–174; Dicey, A. V. (1959). Introduction to the Study of the Law of the Constitution (10th ed.). Macmillan, pp. 183–201.

36 Vile, M. J. C. (1998). Constitutionalism and the Separation of Powers (2nd ed.). Liberty Fund, pp. 60–76.

The constitutional gap therefore extends beyond technical drafting deficiencies. It directly affects constitutional certainty, democratic legitimacy and the rule of law by leaving unresolved one of the most fundamental questions concerning executive succession. A constitution intended to provide comprehensive governance should anticipate extraordinary circumstances capable of threatening constitutional continuity, particularly where those circumstances concern the transfer of executive authority.³⁷

4.5 Comparative Constitutional Lessons from Kenya

The Constitution of Kenya, 2010 provides a significantly clearer constitutional response to the death of a President-elect before assumption of office. Unlike the Tanzanian Constitution, the Kenyan constitutional framework expressly recognises this possibility and prescribes the constitutional consequences. It provides for the conduct of a fresh presidential election within a constitutionally prescribed period, thereby ensuring that executive authority continues to derive from the democratic will of the electorate rather than constitutional implication or political negotiation.³⁸

The Kenyan approach reflects an important constitutional philosophy that exceptional constitutional circumstances should be regulated through explicit constitutional provisions rather than judicial innovation or executive interpretation. By prescribing a predetermined constitutional procedure, the Constitution minimises institutional uncertainty, protects electoral legitimacy and preserves public confidence in democratic governance.

The comparative significance of the Kenyan model extends beyond its procedural clarity. It also demonstrates that constitutional certainty and democratic legitimacy are complementary objectives. Rather than allowing uncertainty concerning the status of the Vice-President-elect or the continuation of the outgoing administration, the Kenyan Constitution establishes a transparent mechanism that restores constitutional legitimacy through a fresh electoral mandate. Consequently, executive succession remains firmly anchored in constitutional authority.³⁹

Nevertheless, the Kenyan model is not entirely free from criticism. Conducting a fresh presidential election may involve substantial financial expenditure, administrative complexity and temporary political uncertainty. Furthermore, repeated elections may generate electoral fatigue and intensify political competition. Despite these practical limitations, constitutional certainty remains preferable to constitutional ambiguity because legal predictability strengthens democratic institutions and reduces opportunities for constitutional manipulation during periods of political transition.⁴⁰

Accordingly, Kenya offers valuable constitutional lessons for Tanzania. While Tanzania need not replicate the Kenyan model in every respect, the existence of an explicit constitutional mechanism governing the death of a President-elect illustrates the importance of constitutional foresight in maintaining democratic continuity.

4.6 Constitutional Silence and Democratic Legitimacy

Democratic legitimacy constitutes one of the foundational principles upon which presidential succession is constructed. In representative constitutional democracies, executive authority derives from the sovereign will of the people expressed through periodic elections. Consequently, constitutional succession mechanisms should preserve both governmental continuity and the democratic mandate conferred by the electorate.⁴¹

Where a President-elect dies before assuming office, constitutional silence creates uncertainty regarding the continuing validity of the electoral mandate. The electorate has selected both a President and a Vice-President through a joint electoral process. However, the constitutional consequences arising from the death of the successful presidential candidate remain undefined within the Tanzanian constitutional framework. This ambiguity creates competing constitutional arguments regarding whether the Vice-President-elect possesses an independent democratic mandate or whether the electoral process should recommence through a fresh election.⁴²

From the perspective of constitutional theory, democratic legitimacy requires clarity regarding the source of executive authority. Constitutional ambiguity weakens public confidence because competing political actors may advance conflicting constitutional interpretations capable of generating institutional confrontation. Such uncertainty is inconsistent with constitutionalism, which requires governmental authority to be exercised according to predetermined constitutional rules rather than political convenience.⁴³

Comparative constitutional experience demonstrates that constitutions should eliminate uncertainty concerning executive succession before constitutional crises arise. The absence of clear constitutional procedures does not merely create interpretative difficulties; it potentially undermines political stability, investor confidence and public trust in constitutional institutions. Accordingly, democratic legitimacy requires constitutional provisions that clearly identify the lawful constitutional response to extraordinary succession events.⁴⁴

37 The Constitution of Kenya, 2010, art. 138(8)(b); Ghai, Y. P., & Ghai, J. P. W. B. (2011). *Kenya's Constitution: An Instrument for Change*. Katiba Institute, pp. 228–242.

38 Kangu, M. B. (2015). *Constitutional Law of Kenya on Devolution*. Strathmore University Press, pp. 190–205.

39 Sihanya, B. (2012). *Constitutional Democracy, Regulatory and Administrative Law in Kenya*. LawAfrica, pp. 272–286.

40 Dahl, R. A. (1989). *Democracy and Its Critics*. Yale University Press, pp. 175–192; Ackerman, B. (2000). *The New Separation of Powers*. Harvard Law Review, 113(3), 633–729, pp. 667–684.

41 Dahl, R. A. (1989). *Democracy and Its Critics*. Yale University Press, pp. 175–194.

42 Dicey, A. V. (1959). *Introduction to the Study of the Law of the Constitution* (10th ed.). Macmillan, pp. 193–205; Bingham, T. (2010). *The Rule of Law*. Penguin Books, pp. 159–174.

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44 Bingham, T. (2010). *The Rule of Law*. Penguin Books, pp. 85–98.

4.4 Constitutionalism, Rule of Law and Continuity of Government

The doctrine of constitutionalism requires governmental power to be exercised strictly within the limits prescribed by the Constitution. Constitutional succession therefore serves not only an administrative purpose but also preserves the supremacy of the Constitution by ensuring that transfers of executive authority occur according to established legal procedures. Any uncertainty concerning succession consequently raises broader constitutional questions concerning legality, institutional accountability and the rule of law.⁴⁵

The principle of the rule of law further requires that constitutional rules governing succession be predictable, publicly known and capable of consistent application. Executive authority should never depend upon political negotiation, administrative discretion or competing constitutional interpretations where the Constitution itself is expected to provide legal certainty. Constitutional silence concerning presidential succession therefore weakens one of the essential characteristics of constitutional governance by allowing uncertainty where legal clarity is most required.⁴⁶

Equally important is the constitutional principle of continuity of government. Modern constitutions recognise that governmental authority must remain uninterrupted even during periods of political transition. Effective continuity protects national security, public administration, diplomatic relations and constitutional stability. Consequently, succession provisions should ensure that no constitutional vacuum emerges following extraordinary political events.⁴⁷

The Tanzanian constitutional framework successfully protects continuity where a serving President vacates office after inauguration. However, it does not provide comparable certainty where the President-elect dies before taking office. This inconsistency suggests that constitutional protection of governmental continuity remains incomplete. A comprehensive constitutional framework should provide uninterrupted succession rules covering every stage of presidential transition from declaration of election results to the expiration of presidential tenure.⁴⁸

Viewed collectively, the principles of constitutionalism, democratic legitimacy, the rule of law and continuity of government support constitutional reform addressing the identified succession gap. Such reform would strengthen constitutional certainty without undermining democratic governance and would ensure that future presidential transitions remain governed by constitutional law rather than constitutional silence.

5. Findings

The comparative constitutional analysis undertaken in this study demonstrates that Tanzania's constitutional framework adequately regulates presidential succession only after the President has assumed office. While the Constitution clearly provides mechanisms governing vacancies resulting from death, resignation, removal or permanent incapacity of an incumbent President, it remains silent on the constitutional consequences arising where a President-elect dies before taking the oath of office. This omission creates a constitutional gap capable of generating uncertainty during one of the most sensitive periods of democratic transition.

The study further establishes that constitutional silence concerning pre-inauguration succession has implications extending beyond constitutional interpretation. It directly affects legal certainty, democratic legitimacy, continuity of government and the rule of law. Without an express constitutional mechanism, different constitutional institutions may advance competing interpretations regarding the lawful successor, thereby increasing the possibility of institutional conflict and political instability. Such uncertainty is inconsistent with the fundamental objective of constitutionalism, which seeks to ensure that transfers of executive authority occur according to predetermined legal rules rather than political expediency.

The comparative analysis also reveals that the Kenyan constitutional framework provides a more comprehensive approach to presidential succession. By expressly regulating the death of a President-elect before assumption of office, the Constitution of Kenya eliminates constitutional ambiguity and provides a legally certain mechanism for preserving democratic legitimacy. Although the Kenyan approach may present administrative and financial challenges associated with conducting fresh presidential elections, it nevertheless demonstrates the constitutional value of anticipating extraordinary political circumstances through explicit constitutional regulation.

Finally, the study finds that constitutional certainty strengthens democratic governance by enhancing public confidence in constitutional institutions. A constitution that comprehensively regulates exceptional succession scenarios reduces opportunities for political manipulation, reinforces constitutional supremacy and safeguards the peaceful transfer of executive power. Consequently, constitutional reform addressing pre-inauguration presidential succession would strengthen rather than weaken Tanzania's constitutional order.

45 Dicey, A. V. (1959). *Introduction to the Study of the Law of the Constitution* (10th ed.). Macmillan, pp. 183–194; Vile, M. J. C. (1998). *Constitutionalism and the Separation of Powers* (2nd ed.). Liberty Fund, pp. 60–76.

46 Ackerman, B. (2000). *The New Separation of Powers*. *Harvard Law Review*, 113(3), 633–729, pp. 684–701.

47 African Union. (2007). *African Charter on Democracy, Elections and Governance*, arts. 2, 3, 10, & 23; United Nations. (1966). *International Covenant on Civil and Political Rights*, art. 25; Bingham, T. (2010). *The Rule of Law*. Penguin Books, pp. 170–191.

48 Ibid

6. Recommendations

In light of these findings, the Constitution of the United Republic of Tanzania should be amended to expressly regulate the death of a President-elect before taking the oath of office. The Constitution should clearly identify the constitutional procedure applicable in such circumstances, thereby eliminating uncertainty and ensuring continuity of executive authority through predetermined legal rules.

The constitutional amendment should specify the legal status of the Vice-President-elect where the President-elect dies before inauguration. Whether the Constitution adopts automatic succession, temporary assumption of executive authority or the conduct of a fresh presidential election, the applicable constitutional procedure should be expressly stated in order to prevent conflicting constitutional interpretations during future presidential transitions.

The National Electoral Commission should likewise be empowered through appropriate legislative reforms to administer any constitutional procedure arising from the death of a President-elect. Electoral legislation should prescribe clear timelines, nomination procedures and transitional arrangements to facilitate efficient implementation of constitutional succession mechanisms while preserving democratic legitimacy.

Future constitutional reforms should also draw upon comparative constitutional experiences from jurisdictions that have successfully regulated exceptional presidential succession. Although Tanzania should retain constitutional arrangements consistent with its own political and legal traditions, comparative constitutional practice provides persuasive guidance regarding mechanisms capable of strengthening constitutional certainty without undermining democratic governance.

Finally, constitutional education should be strengthened through public legal awareness programmes, judicial training and academic research focusing on presidential succession and constitutional continuity. Greater understanding of constitutional succession principles would enhance public confidence in constitutional institutions and contribute to the peaceful resolution of future constitutional disputes.

7. Conclusion

This article has critically examined the constitutional implications of presidential and vice-presidential succession where a President-elect dies before taking the oath of office in Tanzania. Through comparative constitutional analysis, it has demonstrated that the existing constitutional framework does not adequately regulate this exceptional circumstance despite its potential significance for constitutional continuity and democratic stability. The absence of an express constitutional mechanism creates uncertainty concerning executive succession, democratic legitimacy and institutional authority during presidential transition.

The comparative examination of Kenya demonstrates that constitutional certainty can be achieved through explicit constitutional regulation governing extraordinary succession events. By prescribing predetermined constitutional procedures, the Kenyan framework reduces ambiguity, preserves democratic legitimacy and reinforces the rule of law. While Tanzania's constitutional framework differs in important respects, the comparative experience illustrates the constitutional importance of anticipating exceptional circumstances before constitutional crises emerge.

The study therefore argues that constitutional silence should not be regarded as constitutional neutrality. Rather, it represents a legislative omission capable of weakening constitutional governance where legal certainty is most required. A comprehensive constitutional framework should regulate every stage of presidential transition, including circumstances arising between the declaration of election results and the formal assumption of office.

Ultimately, constitutional succession is not merely a procedural question concerning the transfer of executive authority. It represents a constitutional guarantee protecting democratic legitimacy, constitutional supremacy, political stability and the rule of law. Addressing the identified constitutional gap through appropriate constitutional reform would significantly strengthen Tanzania's constitutional architecture while ensuring that future presidential transitions remain governed by law, constitutional certainty and democratic principles rather than institutional uncertainty or political expediency.

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