



Tanzania Merger Control: When Is a Foreign Company Considered "Established"?

Introduction

Anyone who has prepared a merger notification in Tanzania will be familiar with the routine. The prescribed form requires a certificate of incorporation or certificate of registration for each merging party, and practitioners have long treated the Certificate of Compliance issued under section 439 of the Companies Act as the definitive answer to whether a foreign company has "established a place of business" in the country. If the certificate exists, the foreign company is taken to have a local establishment. If it does not, the company is treated as having no local establishment in Tanzania, provided that other indicia of local presence, such as revenue streams or distributorship agreements, are also absent, and the transaction may be argued to fall outside the notification requirement altogether. That conventional wisdom now faces a serious challenge. In *Victor Heven Kimei v. 08600 Africa (Pty) Ltd (Labour Revision No. 12323 of 2026)*, delivered 2 September 2026), Justice N.E. Mandia of the High Court of Tanzania (Labour Division) held that the Certificate of Compliance is evidence of registration as a foreign company, and not the instrument by which a foreign company acquires its corporate personality or establishes its existence in Tanzania. Although the case arose in a labour dispute, its reasoning cuts directly across merger control practice. It draws a clear distinction between corporate existence, which derives from the law of the country of incorporation, and mere statutory compliance with Tanzanian registration requirements. The implications for notification analysis are significant.

Background to the Judgment

The case concerned 08600 Africa (Pty) Ltd, a company incorporated in South Africa that was carrying on business in Tanzania. During labour proceedings before the Commission for Mediation and Arbitration (CMA), the company raised a preliminary objection that it could not be sued because it lacked a Certificate of Compliance under the Companies Act. The CMA upheld the objection, holding that the absence of the certificate meant the company did not legally exist and therefore could not be a party to proceedings.

On revision, the High Court reversed the CMA's decision. The Court held that:

- A. a foreign company derives its legal personality from the law of its country of incorporation, not from Tanzanian registration;
- B. section 437 of the Companies Act presupposes that the foreign company already exists before Tanzanian registration requirements arise—section 438 applies to an already existing foreign company;
- C. the Certificate of Compliance under section 439 is "conclusive evidence" of registration as a foreign company—it is not the source of the company's corporate personality;
- D. section 446 prescribes the specific consequence for failure to comply with Part XII (a fine), and courts should not create additional, more drastic consequences that Parliament did not prescribe; and
- E. a foreign company that operates in Tanzania cannot invoke its own regulatory default as a shield against legal proceedings arising from acts, contracts, or employment relationships entered into in Tanzania.

The Traditional Approach: Certificate of Compliance as Proof of Establishment

Under Tanzanian competition law, a transaction is notifiable to the FCC if it results in a direct or indirect change of control of a business, part of a business, or assets in Tanzania, and the combined global asset or turnover value of the merging parties exceeds TZS 3.5 billion. A critical element of this analysis is whether the target (or any merging party) has an entity, branch, assets, or turnover in Tanzania.

The general rule has been that a filing can be ruled out if the target has no entity, branch, assets, and turnover in Tanzania. In determining whether a foreign company has a "branch" or is "established" in Tanzania, practitioners have typically looked to the Certificate of Compliance as the dispositive piece of evidence. If the foreign company holds a Certificate of Compliance, it has established a place of business; if it does not, it has not.

This approach has had real practical consequences. For example, in the context of the Zanzibar Fair Competition Commission's inquiry into a particular transaction (involving the acquisition of shares in a certain locally operating company), the central argument for why the transaction was not notifiable in Zanzibar was that the target was not registered in Zanzibar at the time of completion and only obtained a certificate of compliance from the Zanzibar Registrar of Companies some seven months after the transaction completed. The certificate of compliance was thus treated as the determinative marker of when the entity became "established" in the jurisdiction.

Why the Judgment Matters for Competition Law

The High Court's reasoning in Kimei undermines the assumption that the Certificate of Compliance is the sole or even the primary indicator of whether a foreign company has established a place of business in Tanzania. The Court made clear that:

- A. The certificate evidences registration, not establishment. The Court described the certificate as "conclusive evidence that the company is registered as a foreign company under the Act" but emphasised that it "is not expressed to be the instrument by which the company acquires its original corporate personality." By the same logic, the certificate is evidence of a company's compliance with the registration obligation—it is not evidence that the company only began operating in Tanzania on the date the certificate was issued.
- B. Establishment precedes registration. Section 438 of the Companies Act requires a foreign company to register within thirty days of establishing a place of business. This means, by statutory design, that a foreign company will have been operating in Tanzania before it obtains a certificate. The Court's holding reinforces this: it would be anomalous for a company to operate in Tanzania, employ persons, and enter into commercial relationships, yet claim it was not "established" simply because it had not completed the registration formality.
- C. Regulatory non-compliance cannot be used as a shield. The Court held that a foreign company cannot invoke its own failure to register as a defence against legal obligations arising from its Tanzanian operations. This principle is directly applicable to merger control: a foreign company that is in fact carrying on business in Tanzania cannot argue that it has no local nexus merely because it lacks a Certificate of Compliance.

Practical Implications

The judgment suggests that the analysis of whether a foreign company has a "branch" or "place of business" in Tanzania for competition law purposes should shift from a formalistic, document-based inquiry to a substantive, fact-based one. Going forward, the following factors are likely to become increasingly relevant:

- (A) **Actual business operations.** Whether the foreign company is, as a matter of fact, conducting business in Tanzania—hiring employees, entering contracts, generating revenue, maintaining physical or digital infrastructure—regardless of whether it has registered.
- (B) **Revenue streams and distribution arrangements.** Consistent with the FCC's existing approach (as seen in the Toyota Tsusho Tribunal decision and subsequent FCC practice), even a revenue stream from Tanzania, a brand presence, or an exclusive distribution arrangement may suffice to establish local nexus. The Kimei judgment reinforces this by confirming that formal registration is not a precondition for legal existence or accountability.
- (C) **Timing of establishment vs. registration.** The date of the Certificate of Compliance can no longer be treated as the date on which a foreign company became "established" in Tanzania. The relevant date is when the company actually began carrying on business, which may predate registration by months or years.
- (D) **Due diligence in M&A transactions.** Acquirers and their advisers should look beyond the certificate register and conduct substantive due diligence on whether the target (or any party to the transaction) has actual operations, employees, assets, or revenue-generating activities in Tanzania, even in the absence of formal registration.

Conclusion

The Kimei judgment is a labour law decision, but its reasoning strikes at the heart of a longstanding assumption in Tanzanian merger control practice. The Certificate of Compliance under section 439 of the Companies Act has traditionally been treated as the benchmark for determining whether a foreign company has a branch or establishment in Tanzania—and, by extension, whether there is a local nexus sufficient to trigger a merger notification obligation. The High Court has now made clear that the certificate is merely evidence of registration compliance, not the marker of when a company began to exist or operate in Tanzania. This is consistent with the FCC's own evolving practice of looking beyond formal corporate structures to actual economic presence.