

Appointment and removal of judges and the assignments of files at Criminal Courts in Tanzania

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Abstract

This paper explored the Judiciary as one of the organ of the state and looked on the appointment and removal of judges and the assignments of files at criminal courts in Tanzania. Judiciary is among the three organs of the state together with the executive arm of the state vested with executive powers as well as the Parliament vested with legislative and supervisory powers over public affairs. The Judiciary consists of four tiers which all together forms a court system in Tanzania. These includes the Court of Appeal, the High Court of Tanzania mainland and Zanzibar, Magistrates Courts (Resident Magistrates Courts and District Courts) and Primary Courts.

In this paper it has found that, the process of appointing judges and removal are well codified under the Constitution of the United Republic of Tanzania [cap 2 R.E 2002] as well as Judiciary Administration Act of 2011. The procedures are not exhaustive to guarantee the independence of Judiciary in the Country. For instance, Chief Justice, Justice of Appeal and Judges of the High Court are all appointed by the executive arm of the state –the President. Also, the Chief Justice in Tanzania has no security of tenure, he can be removed at any time by the President.

It has further found that, the Judiciary has adopted the five years strategy for 2015/2016-2019/2020 to reform the court system and improve service delivery. Taking into account this strategy the High Court of Tanzania adopted the High Court Proceeding Rules to fast track hearings and make sure that the assigned files are completed within 60 days. These reforms will improve court services, fast track court proceedings, as well as improve on how court staffers treat customers/clients. However, ensuring independence and impartiality in the execution of justice should reaming the key objectives to be observed by the courts in these reforms.

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A. Introduction

Tanzania is located south of the equator in East Africa. The country borders on the Indian Ocean to the east, and has land borders with eight countries, anticlockwise from the north: Kenya, Uganda, Rwanda, Burundi, Democratic Republic of Congo (across Lake Tanganyika), Zambia, Malawi and Mozambique. The country has a total area of 945,000 km² including the three major coastal islands of Mafia, Pemba, and Zanzibar. The Tanzanian geography includes plains along the coast, a central plateau, and highlands in the north and south. In the northeast of Tanzania is a mountainous region that includes Mount Meru (14,979 ft/4,566m) and Mount Kilimanjaro (19,340 ft/5,895m). The latter is the highest point in Africa. The northwest of the country encompasses approximately one-half of Lake Victoria, which is the second largest freshwater body in the world. On the south-western border is Lake Malawi (previously Lake Nyasa), the third largest lake on the continent¹.

Tanzanian state was formed by the union of the former German colony of Tanganyika, on the mainland, and the islands of Zanzibar, a British protectorate. After World War I when Germany was defeated, Tanganyika was mandated to Great Britain by the League of Nations. Following World War II, the mandate became a United Nations trusteeship till 1961, when the country became independent. Tanganyika became a republic in December 1962 with late Mwalimu Julius Kambarage Nyerere as the first president. The union of Tanganyika and Zanzibar took place on 26th April 1964 after the change in governance due to a revolution which took place in the islands on 12th January 1963 when Zanzibar became the Revolutionary Government of Zanzibar under the presidency of late Abeid Amani Karume. The current president, (the fifth president), is the honourable John Pombe Joseph Magufuli who took over from President Jakaya Mrisho Kikwete in October, 2015².

The Constitution of the United Republic of Tanzania of 1977³ (as amended) provides under Article 4 the three organs of the state. These organs include the executive arm of the state, judiciary and legislature. It states that the organs vested with executive powers shall be the Government of the United Republic and the Revolutionary Government of Zanzibar; the organs vested with judicial powers shall be the Judiciary of the United Republic and the Judiciary of the Revolutionary government of Zanzibar; and the organs vested with legislative and supervisory powers over public affairs shall be the Parliament of the United Republic and the House of Representatives.

This paper will explore the Judiciary as one of the organ of the state and look on the appointment and removal of judges and the assignments of files at criminal courts in Tanzania. The paper is divided in to four sections. Section one covers the introductory part which

- 1 Tripathi, S. (2012). Population and Environmental Sustainability: Tanzanian Experiences in Climate-Friendly Energy Solutions, (unpublished).
- 2 Dagne, T. (2011). Tanzania: Background and Current Conditions. Congressional Research Service (CRC) Report Prepared for Members and Committee of Congress, August, 31 2011 (unpublished).
- 3 United Republic of Tanzania, (1977). Constitution of the United Republic of Tanzania, Dar es Salaam: Government printer, Dar Es Salaam.

provide an overview of Tanzania and the purpose this paper. Section two looks at the court systems of Tanzania and its structures. Section three discuss the appointment and removal of judges as well as assignment of files followed by the last section which provides for conclusion and recommendations.

B. Court systems in Tanzania

The court system in Tanzania falls under the Ministry of Justice and Constitutional Affairs. The Ministry has overall responsibility for the administration of justice in Tanzania. The functions of the Ministry are provided for in the Second Schedule, Order Number 468 of 2000 made under the Ministers (Discharge of Ministerial Functions) Act No. 10 of 1980. The main institutions under the Ministry includes the Attorney General's Chambers, the Judiciary, the Commission for Human Rights and Good Governance, the Law Reform Commission, and the Institute of Judicial Administration, Lushoto⁴.

I. The judiciary

Chapter five of the Constitution of the United Republic of Tanzania⁵ provides for the dispensation of justice in the united republic, the high court of the united republic, the judicial service commission for mainland Tanzania, the High Court of Zanzibar, the Court of Appeal of the United Republic as well as special Constitutional Court of the United Republic. The independence of the Judiciary is guaranteed under Articles 4 and 107B of the same Constitution.

The Judiciary consists of four tiers: the Court of Appeal, the High Court, Magistrates Courts (Resident Magistrates Courts and District Courts) and Primary Courts. The head of the Judiciary is the Chief Justice. The day-to-day management of the Judiciary is vested with the Registrar of the Court of Appeal of Tanzania and has different operational departments such as Private Office of the Chief Justice, Office of the Senior Deputy Registrar of Court of Appeal, Office of the Deputy Registrar of Court of Appeal, Directorate of District Court Appeal as well as Directorate of Primary Courts⁶.

1. The court of appeal of Tanzania

The Court of Appeal of the United Republic of Tanzania was established by article 117(1) of the Constitution⁷ and is the highest Court in the Judiciary. There are 15 Justices of Ap-

4 International Records Management Trust, 2011. Managing Records as Reliable Evidence for ICT/ e-Government and Freedom of Information: Tanzania Court Case Study (unpublished).

5 Act No. 2 Revised Edition 2002.

6 International Records Management Trust, 2011. Managing Records as Reliable Evidence for ICT/ e-Government and Freedom of Information: Tanzania Court Case Study (unpublished).

7 Act No. 2 Revised Edition 2002.

peal who hear appeals from the lower courts. Appeals are heard by three Judges sitting together as the Court of Appeal.

The day-to-day management of the Judiciary is vested with the Registrar of the Court of Appeal of Tanzania. The Office of the Registrar of the Court of Appeal has the following departments: Office of the Registrar of the Court of Appeal; Private Office of the Chief Justice; Office of the Senior Deputy Registrar of Court of Appeal; Office of the Deputy Registrar of Court of Appeal; Directorate of Administration and Personnel; Directorate of District Courts to Court of Appeal; Directorate of Primary Courts; Chief of Training, Research and Statistics; Accounts Unit; as well as Internal Audit⁸.

In this court there is a Principal Judge who oversees Judges in Charge of High Court Registries, the Resident Magistrates Courts, the District Courts, the Primary Courts, and the Juvenile Courts. The principle Judge is also responsible to oversee the Registrar of the High Court, the Commercial Division of the High Court, the District Registrar of the High Court Zones, the Land Division of the High Court, as well as the Labour Division of the High Court⁹.

2. The High Court

The High Court of Tanzania was established under Article 108(1) of the Constitution¹⁰. The court has full and unlimited jurisdiction over all civil and criminal matters and is vested with the appellate power in regard to determining matters submitted to it from subordinate courts, for instance the appeal may be from the Resident Magistrate Court or the District Court. A civil or criminal appeal to the High Court can be on points of law or on points of fact, or on both.

The High Court comprises 13 zones. Each zonal High Court is staffed by Judges. The High Court also has three specialised divisions: Commercial Division, Land Division and Labour Division. The Commercial Division is a division of the High Court, responsible for handling all commercial disputes. Established in 1999, the main objective of establishing this court was to ensure efficient management and expeditious disposal of commercial disputes so as to encourage business development under a free market economy and also growth of foreign investments. The Land Division, established in 1984 in relation to the Land Act, handles all land disputes. Judges of this court are appointed by the Chief Justice from amongst the Judges of the High Court. The Labour Division, inaugurated in 2007, is another division of the High Court of Tanzania and is responsible for hearing and deciding upon employment disputes¹¹.

8 *Supra*.

9 *Supra*.

10 *Supra*.

11 *Supra*.

3. Resident Magistrate Courts and District Courts

The Magistrate Court Act¹² establishes the Magistrate Courts in Tanzania. There are 22 Resident Magistrates' Courts and 109 District Courts. The Resident Magistrates' Courts and the District Courts have concurrent jurisdiction. The District Courts, unlike the Resident Magistrates' Courts, are found throughout all the Districts in Tanzania. They receive appeals from the Primary Courts. The Resident Magistrates' Courts are located in major towns, municipalities and cities, which serve as the regional headquarters¹³.

4. Primary Courts

There are 1,105 Primary Courts. The Primary Courts are the lowest courts in the hierarchy. They deal with both criminal and civil cases. Civil cases on property and family matters that apply customary law or Islamic law must be initiated at the level of the Primary Court, where the Magistrate sits with lay assessors¹⁴.

5. Tribunals

There are several specialised quasi-judicial tribunals, including the District Land and Housing Tribunal, the Tax Tribunal and the Tax Appeals Tribunal.

C. The appointment and removal of judges and assignment of files

II. Appointment of Judges

Article 107B of the URT Constitution provides that in exercising the powers of dispensing justice, all courts shall have freedom and shall be required only to observe the provisions of the Constitution and those of the laws of the land. This article together with Article 107A guarantee the independent of the judiciary. These provisions demands the judicial officers being free from intimidation or pressure from their superior officers and colleagues. It refers to, in other words, independence of a judge or a judicial officer from any kind of order, indication or pressure from his judicial superiors and colleagues in deciding cases¹⁵.

Article 109 provides that Principal Judge and other Judges of the High Court who shall be not less than thirty shall be appointed by the President after consultation with the Judicial Service Commission¹⁶. Moreover, the Judiciary Administration Act No.4 of 2011 under

12 Act No. 55 Revised Edition 2002.

13 International Records Management Trust, 2011. Managing Records as Reliable Evidence for ICT/e-Government and Freedom of Information: Tanzania Court Case Study (unpublished).

14 Supra.

15 Act No. 55 Revised Edition 2002.

16 The Judicial Service Commission is established under Article 112 of the Constitution and section 13 of the Judiciary Administration Act No. 4 of 2011. Members of the Commission are the Chief

section 37 (1) established the Judges Ethics Committee whereby three Justices of Appeal, three Judges of the High Court, are appointed by the Chief Justice. The same apply to Judicial Officers Ethics Committee established in Section 46 (1) of the same Act, whereby Principal Judge, two judges in the High Court, and two Judicial Officers are appointed by the Chief Justice (Section 46(2) of the Judiciary Administration Act No.4 of 2011).

III. Removal of Judges

The Constitution of the United Republic of Tanzania provides for the security of tenure and provides that no judge of the High Court shall vacate the office unless attaining the age of sixty years old, or unless otherwise the President directs or specify otherwise. Article 110A (1-4) of the Constitution¹⁷ provides for the conditions for the removal of judges from their offices, for examples when a judge has inability to continue performing his office functions, for behaviour inconsistent with their ethics or law as advised by the Special Tribunal.

In the other hand, president has power to change or remove Chief Justice at any time¹⁸. The Justice of Appeal vacates the office only at the retirement age, that is sixty five years (65), unless the President direct otherwise as it may fit to continue with the position¹⁹. However, the justice of appeal may be removed from the office when there is inability in performing office functions, or when there is inconsistent behaviours which are not tolerable. This removal must be considerable and observed the same to Article 110A of the Con-

Justice who is the Chairman; the Attorney General; Justice of Appeal of Tanzania who is appointed by the President after consultation with the Chief Justice; the Principal Judge; and two members (other the member of the Parliament) who are appointed by the President. The functions of the Commission are: (a) to advise the President regarding appointments of the Judges of the High Court; (b) to advise the President on matters relating to discipline of Judges; (c) to advice the President in relation to salaries and remuneration for Judge; (d) to advise the President in respect of appointment and discipline for Registrar of the Court of Appeal and the Registrar of the High

Court; (e) to appoint magistrates and control their discipline; (f) to establish various committees for purposes of implementation of its functions.

17 Where the President considers that the question of the removal of a Judge from office needs to be investigated, then the procedure shall be as follows: (a) the President shall after consultation with the Chief Justice, suspend that Judge from office; (b) the President shall appoint a Tribunal which shall consist of a Chairman and not less than two other members. The Chairman and with at least half of other members of the Special Tribunal must be persons who are judges of the High Court or Justices of Appeal in any country within the Commonwealth; (c) the Tribunal shall investigate the matter and make a report to the President, advising on the whole matter, and shall advise him whether or not the Judge concerned should be removed from office on the grounds of inability to perform his functions due to illness or any other reason or on grounds of misbehaviour. If the Tribunal advises the President that the Judge be removed from office on grounds of inability to perform functions due to illness or any other reason or on grounds of misbehaviour, then the President shall remove the Judge from office and the employment of that Judge shall cease.

18 Article 118(2) (c) of the Constitution of the United Republic of Tanzania.

19 Article 120 (1-4) of the Constitution.

stitution²⁰. Therefore, judges and Justices of Appeal do not have to worry about losing their jobs, thus they should make their decisions in accordance with the particular law without being afraid of either the government officials or their learned colleagues.

Moreover, section 37 of the Judiciary Administration Act provides for the Judges Ethics Committees. The Judicial Service Commission delegated to the Judges Ethics Committee powers to make investigation and inquiries of complaints against Judges regarding the ethical implications of their prospective or on going conducts (Judges Ethics). The committee may hear the complaint or forward the same to the Commission. The committee has power to warn a Justice of Appeal, Principle Judge or any Judge in respect of any complaint which does not warrant reference to the Commission and take any other measures as it deemed necessary. If the complaint against a Judge considered to be grave shall be submitted to the Commission for consideration. The Commission may consider the matter and advice the President to take other disciplinary measures as stipulated under article 110A of the constitution²¹.

IV. Assignment of files

The Judiciary Administration Act²² provides that the Chief Justice shall be responsible for overseeing performance of judicial functions of the courts, power to determine the sittings of the court assign judges to sittings, assign cases to judges, annual, monthly and weekly work load of judges, and preparing hearing list and assign courtrooms.

At the same time, section 264 of the Criminal Procedure Act provides that the High Court may regulate its own practice in the exercise of its criminal jurisdiction subject to the provisions of the Act or any other written laws²³.

The Court Users Satisfaction Baseline Survey²⁴ conducted in 13 regions (20 districts) of mainland Tanzania in 2015 is the first attempt of the Judiciary of Tanzania to establish indicator baseline for its operations for the purpose of ensuring better services to its clients. In this survey, interviews were administered to 618 respondents in all the courts visited, staff interviews to 217 persons working for the courts –mostly court clerks and custodians, and 240 interviews with ordinary residents in wards where primary courts exist. In addition focus group discussions were held with 200 ordinary citizens in the neighbourhoods of primary courts that were visited.

The survey revealed that 59% of the people at the courts had been there before during the 12 months span to the date of the interviews. A majority of people who were inter-

20 Article 120A (1-2) of the Constitution.

21 Section 38 of the Judiciary Administration Act No. 4 of 2011.

22 Act No. 4 of 2011.

23 [Cap 20 Revised Edition 2002].

24 The Judiciary of Tanzania, 2015. Court Users Satisfaction Baseline Survey. The Report Prepared by REPOA for the Judiciary of Tanzania.

viewed at the courts (97%) were there to seek adjudication services, while the remaining 3% were at the courts in a professional capacity. This indicates that most of the cases were taking too long for the hearing and judgement being completed. For instance the case of Zakaria Kamwela and Others Vs Attorney General which was filed in the High Court of Tanzania in 1998 and decision was rendered in 2015. The case was pending in the high court for more than 15yers²⁵.

Recently the Judiciary has adopted the five years strategy for 2015/2016-2019/2020 to reform the court system and improve service delivery. The strategy focused on good governance; accountability and resource management; timely dispensing of justice; and retaining public peace and meaningful consultation²⁶. Taking into account this strategy the High Court of Tanzania adopted the High Court Proceeding Rules to fast track hearings and make sure that the assigned files are completed within 60 days. One of the recent case decided within the indicated time was that of Rebecca Gyne v AG Miss Civil Cause No. 5 of 2016 which move the court to declare the provision of the marriage act unconstitutional. These reforms will improve court services, fast track court proceedings, as well as improve on how court staffers treat customers/clients. However, ensuring independence and impartiality in the execution of justice should reaming the key objectives to be observed by the courts in these reforms.

D. Conclusion and recommendations

The appointment and remove of judges as well as assignment of files are among key indicators which can reflect the independent of judiciary in dispensing of justice in Tanzania. Therefore, after the above analysis on these key issues, and based on the court users' satisfaction survey, this paper recommends the following;

- i. Ensuring there is fairness/impartiality in the execution of justice.
- ii. Improving efficiency so as to reduce backlog of cases, hassle to customers and duration of hearings.
- iii. Improving court environment/infrastructure and facilities.
- iv. Staff conduct and ethics including fighting corruption, indolence and arrogance and improving staff sensitivity in handling clients, particularly the poor and those with limited influence.
- v. Improving remuneration and work environment for court staff.
- vi. Increasing court staff and court facilities in areas where they are lacking or insufficient particularly in rural areas.

25 Supra.

26 Supra.

- vii. Ensuring court staffers are adequately skilled including on ethical requirements for their jobs.
- viii. Providing community education/awareness on court services and rights of citizens to quell fear of using courts.

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