

Introduction

The strength of any justice system depends not only on the quality of its laws and institutions, but also on the quality, independence, integrity and experience of the men and women entrusted with administering justice. A strong Judiciary therefore requires judges who possess a sound knowledge of the law, but legal knowledge alone does not necessarily amount to judicial experience. The judicial function demands a particular professional temperament, developed through years of hearing cases, evaluating evidence, managing proceedings, listening to litigants and advocates, writing reasoned decisions, and making impartial determinations that directly affect the rights and obligations of others. It is against this background that the value of experience deserves serious consideration in appointments to Tanzania's High Court and Court of Appeal.

This argument should not be understood as questioning the constitutional powers of the appointing authority. Nor is it an argument that lawyers drawn from private practice, prosecution, academia, government service or other areas of the legal profession are unsuitable for judicial appointment. On the contrary, a Judiciary can benefit significantly from professional diversity. The point is narrower and institutional: long and distinguished experience in actually performing judicial functions is itself a valuable professional qualification and should receive substantial consideration when appointments are made to the superior courts.

Judicial experience and the development of a judicial mind

There is an important distinction between knowing the law and having extensive experience in applying the law from the position of a judicial officer. A lawyer may spend decades representing clients, prosecuting criminal matters, teaching law, advising government or practising in a specialised area. Such experience can be highly valuable to the Judiciary. Yet the judicial officer performs a fundamentally different function.

A judge or magistrate must remain detached from the interests of the parties. The officer must determine disputed facts, assess the credibility and weight of evidence, manage proceedings fairly, resolve competing legal arguments and provide reasoned decisions without becoming an advocate for either side. These responsibilities require not merely knowledge, but judgment, restraint, patience and impartiality developed through repeated exposure to the realities of adjudication.

Over time, these responsibilities develop what may properly be described as a judicial mind. Such a mind cannot be acquired simply by reading judgments, studying statutes or practising law from outside the Bench. It is shaped by the practical experience of judging and by the ethical discipline required to exercise judicial power fairly and independently. This is why long-serving Magistrates and judges constitute an important institutional resource: they have been professionally and ethically moulded by the judicial function itself.

The "Generals" of the Judiciary

An analogy may be drawn, cautiously and in a limited sense, from other professional institutions, including the military. The Judiciary and the military are fundamentally

different institutions, and the analogy should not be taken beyond the particular point being made. In a professional military establishment, senior commanders ordinarily emerge from officers who have accumulated substantial experience within the profession. Their leadership is built upon years of training, discipline, operational experience and institutional knowledge.

The Judiciary also needs its professional “Generals”: judicial officers who have spent many years performing judicial functions and have accumulated deep experience in adjudication, case management, judicial ethics, decision-making and the practical administration of justice. This does not mean that judges must exclusively come from the Magistracy, nor does it suggest that an advocate, prosecutor, academic or government lawyer cannot become an excellent judge. It means that experience acquired within the judicial profession is a distinct form of professional experience and should receive appropriate institutional recognition.

The constitutional position in Tanzania

The Constitution of the United Republic of Tanzania, 1977, confers constitutional powers on the relevant appointing authority in relation to the appointment of judges. Those powers must be respected. This discussion does not seek to question the legality of appointments made under the Constitution, nor does it seek to substitute an individual's judgment for that of the constitutionally authorised appointing authority.

The issue is instead one of institutional policy and judicial development. When qualified candidates are being considered for appointment to the superior courts, how much weight should be given to long, demonstrated and tested experience in actually performing judicial functions? That is a legitimate institutional question even where the constitutional appointment powers are fully respected.

What can we learn from the United Kingdom?

Comparative experience provides a useful illustration. The United Kingdom does not operate an exclusive system in which judges must begin and remain within the Judiciary throughout their professional careers. Lawyers from different professional backgrounds can enter judicial office. At the same time, the UK's judicial appointment framework expressly recognises the importance of previous judicial experience. The Judicial Appointments Commission states that previous judicial experience is ordinarily an eligibility requirement for many salaried judicial appointments, reflecting the view that candidates should have been tested in judicial work and given an opportunity to develop relevant judicial experience before assuming higher judicial responsibilities.

The requirements for senior judicial positions provide an even clearer illustration. For recent Court of Appeal appointments, candidates were expected, except in exceptional circumstances, to possess sufficient directly relevant previous judicial experience, including experience of sitting as a judge in a higher court and dealing with substantial and complex cases. Similar requirements have appeared in selection criteria for senior leadership positions such as the Master of the Rolls and President of the King's Bench Division.

At the same time, the UK system retains pathways through which legal practitioners without previous judicial experience can enter certain judicial roles. The position of Deputy High Court Judge, for example, can be open to qualified lawyers with relevant professional experience, including those without previous judicial service. The

lesson, therefore, is not that Tanzania should simply copy the United Kingdom. The more relevant lesson is that a mature judicial system can value professional diversity while also recognising judicial experience as an important qualification for assuming greater judicial responsibility.

The current Tanzanian situation

Against this background, it is appropriate to reflect on the continuing development of Tanzania's Judiciary. There appears to be an increasing public and professional perception that appointments to the superior courts, particularly the High Court and Court of Appeal, are drawing substantially from professional backgrounds outside long-standing judicial service. This observation should not be mistaken for a finding that judges appointed from outside the Judiciary are incompetent. Such a conclusion would be neither fair nor justified merely by reference to an appointee's previous professional background.

Judges should ultimately be assessed according to their judicial performance, integrity, independence, quality of reasoning and fidelity to the law. The concern here is institutional rather than personal. If judicial officers who have spent many years performing judicial functions see comparatively limited progression to the highest levels of the Judiciary, the institution may gradually lose an important incentive for professional judicial development.

Consider a Magistrate who has spent ten, fifteen or twenty years hearing cases, writing decisions, managing proceedings and developing judicial skills. It is reasonable for such an officer to expect that this accumulated experience will be recognised as an important qualification when opportunities arise for advancement to higher judicial office. Where that expectation is not adequately reflected in career progression, it may affect morale, professional motivation and institutional continuity.

A question of judicial experience

The current composition of Tanzania's superior courts provides an important basis for reflection. Of the 45 serving Justices of Appeal, only 9 previously served as Magistrates and High Court Judges, representing about 20%. At the High Court, out of 95 serving Judges, only 40 had substantial prior experience as Magistrates, representing approximately 42.1%. These figures should not be understood as questioning the competence of judges appointed from other legal backgrounds or the constitutional powers of the appointing authority. Rather, they raise an institutional question about whether long and practical judicial experience is sufficiently represented at the highest levels of the Judiciary.

The issue is particularly important because judicial experience is acquired through years of actually performing judicial functions and developing judicial temperament, ethics, case management and decision-making skills. The objective, therefore, is not to suggest that judges from outside the Judiciary are less capable, nor that appointments should be restricted to career judicial officers. It is to emphasise that long and distinguished judicial service is itself a valuable professional qualification and should receive substantial consideration when appointments are made to the superior courts. A strong Judiciary should combine professional diversity with a strong core of experienced judicial officers who have been tested and developed through years of judicial service.

Judicial career progression matters

A strong Judiciary should provide a credible internal career path. The Magistracy should not be viewed merely as a level at which cases are disposed of before officers move on to other opportunities. It is also one of the principal institutions through which judicial officers develop the practical skills required for greater judicial responsibility.

A Magistrate who has served for many years will have encountered thousands of practical questions involving evidence, procedure, criminal and civil litigation, advocacy, sentencing, case management and judicial ethics. When such an officer progresses to the High Court, that experience does not disappear. It accompanies the judge and informs the exercise of judicial responsibility.

The same principle applies at the High Court level. A High Court judge who has spent years deciding complex matters develops another layer of experience in jurisprudential development, constitutional interpretation, commercial disputes and judicial reasoning of a quality required for appellate consideration. There is therefore a natural institutional value in allowing experienced judicial officers to progress through the judicial hierarchy.

But diversity should not be lost

Recognising the value of judicial experience does not mean that the Judiciary should become institutionally closed. There are compelling reasons to allow distinguished advocates, prosecutors, academics, government lawyers and other experienced legal professionals to enter the Bench. They bring different perspectives, specialised knowledge and professional experiences that can enrich jurisprudence and strengthen judicial decision-making.

The objective, therefore, should not be to create a Judiciary composed exclusively of career judicial officers. It should be to maintain an appropriate balance. Tanzania can have a superior Judiciary that welcomes outstanding lawyers from different professional backgrounds while ensuring that long-serving judicial officers are not overlooked as a source of experience, institutional knowledge and judicial leadership.

The principle we should consider

The central principle should not be that only career judicial officers should become judges. Equally, it should not be assumed that extensive experience at the Bar is sufficient without substantial experience in performing judicial functions. A more balanced principle is that the higher the judicial responsibility, the greater the importance of tested judicial experience, while exceptional candidates from other legal backgrounds should not be excluded.

This approach recognises two realities. First, legal knowledge, professional competence and diversity of experience are important to a healthy Judiciary. Second, judicial experience is a specialised form of professional experience, and its value becomes increasingly significant as the level of judicial responsibility increases.

Building the judiciary of tomorrow

The Judiciary must think beyond the appointment of individual judges. It must also consider succession, professional development and institutional continuity. Today's Magistrates are potentially tomorrow's High Court judges. Today's High Court judges may become tomorrow's appellate judges and judicial leaders. A system that allows

such progression to develop on the basis of competence, integrity, experience and demonstrated judicial ability can strengthen the institution over time.

Strengthening this institutional progression can also reinforce professional morale. Judicial officers should be able to see that dedication, competence, integrity and years of service can lead to greater judicial responsibility. A judicial officer who has developed professionally within the Judiciary also carries substantial institutional knowledge concerning the administration of justice, the challenges facing the courts and the ethical responsibilities attached to judicial office.

Conclusion

The debate about judicial appointments should therefore be approached with respect, balance and constitutional maturity. It should never be reduced to the proposition that judges appointed from private practice, prosecution, academia or government are inferior to those who have spent their careers within the Judiciary. Professional background alone cannot establish judicial competence. At the same time, it would be equally mistaken to underestimate the value of long and distinguished judicial experience.

The experience of jurisdictions such as the United Kingdom illustrates that professional diversity and judicial experience are not mutually exclusive. A judicial system can remain open to talented lawyers from different professional backgrounds while requiring, or strongly valuing, tested judicial experience for many senior judicial positions. Tanzania does not need to reproduce another country's system. It can draw from comparative experience while developing an approach suited to its own constitutional and institutional circumstances.

The issue, therefore, should not be framed as a restriction on the constitutional powers of the appointing authority. It should be understood as a question of institutional development and appointment philosophy: whether long and distinguished judicial service should receive the weight it deserves when candidates are being considered for positions in the superior courts.

The Judiciary needs its professional "Generals" not because they are inherently better than lawyers from other professional backgrounds, but because years spent performing the judicial function can produce a depth of practical, ethical and institutional experience directly relevant to higher judicial responsibility. Ultimately, a strong Judiciary needs lawyers who know the law, but it also needs judges who have lived the judicial experience. The real challenge is to bring these qualities together in the right balance, in the interests of an independent, competent, ethical and institutionally strong Judiciary.

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