

CHALLENGES IN LEGAL PRACTICE

“A NIGHTMARE IN TANZANIA”

Introduction

In Tanzania, over 1,000 lawyers engage in legal practice as advocates, relying on it for their livelihoods and to support their families. However, as this article will demonstrate, their professional reality resembles a nightmare due to several pressing issues.

Leadership Dilemma at the Tanganyika Law Society (TLS)

Recent developments have highlighted a troubling trend within the Tanganyika Law Society's leadership. Instead of prioritizing the interests of their members, the leadership, led by the president, appears more inclined towards serving personal interests or protecting a self-serving cartel. This approach not only undermines the welfare of advocates but also jeopardizes the rule of law. The top leadership often fails to intervene when members face unwarranted trouble, showing more enthusiasm in matters concerning society fees.

Disrespect towards Advocates

Since 2015, advocates have faced numerous instances of disrespect while advocating for their clients. Examples include being denied access to clients held in police custody, or even facing unjust detention themselves during follow-up visits. Moreover, district and regional commissioners have shown a lack of respect towards advocates. Shockingly, advocates, who are officers of the court, have endured humiliation from magistrates and judges, subjected to abusive language in court chambers.

Unpredictable Justice

Advocates frequently find themselves navigating precarious situations, especially in cases involving government institutions. Despite having strong legal grounds and factual evidence, courts often rule in favour of government entities, highlighting a bias that exists within the judicial system.

Conflicting Decisions by the Court of Appeal

The increasing number of conflicting decisions from the Court of Appeal contributes to uncertainty among advocates. This ambiguity makes it challenging to advise clients or pursue legal matters effectively. While the principle dictates that the most recent and relevant decision should prevail, the lack of clear rules exacerbates the situation, necessitating urgent action from the Chief Justice to rectify this issue.

Judgement on Notice Syndrome

The practice of putting judgements on notice, without specifying delivery dates, creates uncertainty for both advocates and their clients. It is essential for the courts to establish clear timelines for judgement delivery to ensure transparency and manage expectations effectively.

Digitization of the Judiciary

The ongoing digitization of the judiciary, known as 'TEHAMA' in Swahili, is a positive step towards modernization and citizen-centric service delivery. However, for this initiative to succeed, it is crucial to involve practicing advocates in retooling and training efforts. Providing necessary equipment such as laptops and printers to advocate offices will facilitate their participation and support the judiciary in achieving its digitization goals.

Addressing these challenges is imperative for ensuring a fair and efficient legal system in Tanzania. By prioritizing the welfare of advocates, promoting respect within the legal profession, and enhancing judicial transparency, Tanzania can strive towards a legal landscape that upholds the principles of justice and rule of law.

The Biased Advocates Disciplinary Committee: A Nightmare Unveiled

Practicing advocates find themselves ensnared in yet another tribulation: the Advocates' Disciplinary Committee. However, far from embodying impartiality, this committee appears to operate under the sway of the Attorney General, rendering it a bastion of bias rather than a fair arbiter of legal conduct. To rectify this, it is imperative that the committee's composition be restructured to include representatives from the Tanganyika Law Society (TLS), ensuring a more balanced and just adjudication process.

The Attorney General's Role as De Facto Head of the Tanganyika Law Society

The Advocates Act, CAP 431, and the Advocates (Professional Conduct and Etiquette) Regulations, GN. 118, stand as pillars regulating advocates' professional conduct. However, the discretionary powers bestowed upon the Attorney General in enacting and amending provisions under these laws seem to disadvantage advocates, hindering their ability to safeguard their interests effectively. It is imperative that advocates be granted greater influence over amendments affecting their profession to ensure a fair and equitable regulatory framework.

Inadequate Focus During Court Proceedings

The ongoing digitalization of the judiciary has led to magistrates and judges conducting proceedings via computer, inadvertently detracting from their focus during crucial stages such as examination, cross-examination, and re-examination of witnesses. This diversion impairs their ability to discern witness demeanour effectively. To mitigate this, courts should consider employing stenographers or utilizing specialized technological solutions to maintain focus and observe witness demeanour more effectively.

Challenges of Digital Court Document Filing

Despite efforts to promote e-filing within the judiciary, the timely admission of electronically filed documents remains a persistent challenge. Delays and missed deadlines place undue strain on advocates and their clients, necessitating the filing of applications for leave to submit documents out of time. This uncertainty undermines the efficiency and reliability of the filing process, aggravating the burdens faced by advocates and their clients.

Conclusion

The aforementioned challenges present significant impediments to the effective practice of law, detrimentally affecting both advocates and their clients. It is incumbent upon key stakeholders to address these issues promptly, fostering an environment conducive to the discharge of advocates' duties and upholding the rule of law. By implementing the recommended reforms, we can endeavour to alleviate these burdens and promote a fair and equitable legal landscape for all.

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