

The Tanganyika Law Society

The Bar Association Of Tanzania Mainland

KEYNOTE SPEECH OF THE PRESIDENT OF THE TANGANYIKA
LAW SOCIETY, HON. TUNDU ANTIPHAS MUGHWAI LISSU, ESQ.,
ON THE OCCASION OF THE EXTRA-ORDINARY GENERAL
MEETING OF THE TANGANYIKA LAW SOCIETY

Blue Pearl Hotel, Ubungo,

Dar es Salaam, June 30, 2017

Honorable Vice President of the Tanganyika Law Society,

Honorable Honorary Treasurer and Members of the
Governing Council,

Distinguished Members, Officers and Staff of the Secretariat,
Invited Guests, Professional Colleagues, Friends, Ladies and
Gentlemen Present,

On behalf of your Governing Council, please allow me the
pleasure of welcoming you all to Dar es Salaam. And while
on it, please accept our heartfelt apologies for all the
inconveniences you may have suffered, for the sacrifices in
your valuable time and resources you will have necessarily
made to be able to attend here today. We know the
Notice for the Meeting has been short. We are very much
aware that Dar es Salaam, the venue of this Meeting, is not
the most ideal for most of you, even for those of us who live

and work in this Metropolis. We are alive to the costs you must have incurred to make the trip and to stay here specifically for this Meeting.

Yet, this is what emergencies always are like. They come not because we wish them to come, or we choose the moment of their arrival, but because they are forced on us by events often beyond our control.

THE MORTAL DANGER

Distinguished members,

We are met here today in an Extraordinary General Meeting. My Law Lexicon¹ tells me that 'Extraordinary Meeting', as applied to bodies corporate such as the TLS means a meeting of members 'called upon emergencies, and for transaction of particular business.' It is 'extraordinary' if it is, *inter alia*, 'beyond or out of the common order or rule; not usual, regular or of a customary kind.'

We are called upon an emergency today. We are called to transact a business that is beyond or out of the common order of the matters TLS. For it is not usual, regular or customary; it is not ordinary for your Governing Council or for you, distinguished members, to meet for the specific purpose of deliberating on what I described, hardly three

¹ *The Law Lexicon: The Encyclopaedic Law Dictionary, 1997 Edition*, Wadhwa & Co., Nagpur, 1997.

months ago, as 'the greatest threat on the existence of TLS and the independent Bar in Tanzania.'²

We meet here today because the TLS, now in its 63rd year of existence, is in mortal danger of being legislated out of existence. I trust you have all seen the so-called 'Bango Kitita', containing the Government proposals for wide-ranging reforms of the legal profession in Tanzania. Even though, for reasons we have not been adequately informed of, these proposals are not in the customary form of a Bill or a Government White Paper, they portend the most serious danger to the existence of the TLS and the independence of the legal profession in our country.

Many of you distinguished members have described these Government proposals in graphic and colourful terms. Reading 'mischief' in these proposals, one member has argued that '... the very existence of the Law Society as a free and independent professional body may be in great peril.' Another has politely opined that the proposals will not 'serve any useful purpose.' A third has discerned the motive behind the proposals as being '... to exert greater state control over the legal profession.' Yet another member has seen danger in the proposals in that 'yawezekana ule uhuru wa kimaamuzi tulionao wanasheria kwa sasa ukawekwa rehani kwa zile kasumba za kuteuana, hivyo kupenyeza matakwa ya kisiasa au kiserikali kwa ujumla.'

Now please allow me to go back in time in order to show that the members' worries are not out of place.

NOTES FROM HISTORY

² *Close Ranks and Protect TLS, Rule of Law: Inaugural Speech of the President-Elect of the Tanganyika Law Society, Hon. Tundu Antiphas Mughwai Lissu, Esq., Arusha International Conference Centre, Arusha, March 18, 2017.*

Distinguished members,

As the 'Winds of Change', a la Lord MacMillan, gathered gale force at the dawn of the decade of the 1960s, judges, academics and lawyers in private practice and in public service gathered in Lagos, Nigeria, to consider the requirements for the Rule of Law, especially for countries that were just emerging from the long and dark night of colonialism. Organized by the International Commission of Jurists (ICJ), the Lagos Conference on the Rule of Law, held in 1961, adopted the following resolutions that are central to our deliberations today:

1. To maintain the respect for the rule of law, it is necessary that the legal profession should be free from any interference;
2. It is essential to the maintenance of the rule of law that there should be an organized legal profession free to manage its own affairs;
3. In countries where an organized Bar exists, the lawyers themselves should have the right to control the admission to the profession and the discipline of the members according to rules established by law;
4. In countries where an organized Bar does not exist, the power to discipline lawyers should be exercised by the Judiciary in consultation with senior practicing lawyers and never by the Executive.

The Lagos Principles were inspired by Article 10 of the Universal Declaration of Human Rights, adopted by the United Nations in Paris some thirteen years earlier. The Principles have since found their way into various international and regional treaties we are signatory to, as

well as in several United Nations General Assembly Resolutions and international statements of principle. To name but a few of the provisions in international and regional treaties that we have signed and ratified in this regard: Article 14(1) of the International Covenant on Civil and Political Rights, 1966; Article 7 of the African Charter on Human and Peoples Rights, 1985; and Articles 6(d) and 7(2) of the Treaty for the Establishment of the East African Community, 1999.

Of the United Nations General Assembly Resolutions, the most relevant are UNGA Resolution 40/32 of 29th November, 1985 and UNGA Resolution 40/146 of 13th December, 1985. There is also a long line of resolutions of the UN Commission on Human Rights which have emphasized the independence of lawyers and the legal profession.³

As far as international statements are concerned, we have the UN Draft Principles on the Independence of the Judiciary (1981); the International Bar Association's Minimum Standards of Judicial Independence (1982); the Beijing Basic Principles on the Independence of the Judiciary (1985); the UN Basic Principles on the Role of Lawyers (1990); the Bangalore Principles of Judicial Conduct (2002); the Cairo Declaration on Judicial Independence (2003), and the Suva Statement on the Principles of Judicial Independence and Access to Justice of 2004. The issues that bring us here today are, therefore, very much part of our domestic law and form an integral part of our obligations to the international community.

Distinguished members,

Please allow me to illustrate the importance of the independence of lawyers and the legal profession by borrowing liberally from the

³ See UN Human Rights Commission Resolutions 2000/42 of 20th April, 2000; 2001/39 of 23rd April, 2001; 2002/43 of 23rd April, 2002; 2003/43 of 23rd April, 2003, and 2004/33 of 19th April, 2004.

provisions of the UN Basic Principles on the Role of Lawyers, adopted in 1990. The Principles provide, *inter alia*:

1. The Independence of Lawyers: 'Adequate protection of the human rights and fundamental freedoms to which all persons are entitled ... requires that all persons have effective access to legal services provided by an independent legal profession';
2. Freedom of Expression and Association: 'Lawyers shall be entitled to form and join professional associations.... The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference';
3. Professional Associations of Lawyers: 'Lawyers shall be entitled to form and join self-governing professional associations to represent their interests.... The executive body of the professional associations shall be elected by its members and shall exercise its functions without external influence.'

TLS AND THE INDEPENDENCE OF LAWYERS

Distinguished members,

TLS had been in existence for approximately seven years when the Lagos Principles were adopted.⁴ Nevertheless, its founding statutes already combined some or all of these Principles. However, the Tanzanian state has always had a preponderance of power in these matters since the very beginning. Thus, under the statutes currently and historically in force, we Tanzanian lawyers have not had the power to control the admission to the legal profession, or to remain

⁴ The Tanganyika Law Society Act, Chapter 345 of the Laws was enacted in 1954.

therein. On the contrary, that power has always rested with the Judiciary, through the Chief Justice and the High Court Registrars.

Similarly, in matters of the discipline of the members, power has always preponderantly rested with the state, with the Advocates Committee required by statute to be chaired by the Jaji Kiongozi or a Judge; and the Attorney General being the second of three members of the Committee. Moreover, to constitute quorum, the Attorney General or his representative must, at all times, be present in the deliberations and decisions of the Committee. Outside these key areas, members of the independent Bar have always been free to manage their own affairs.

Which is to say, distinguished members, the legal profession in Tanzania has never fully been in compliance with the Lagos Principles. In mitigation, however, we lawyers have tolerated this system and have had confidence in it because it was always presided over by the Judiciary and due process and principles of fairness were built into its decision-making procedures and processes. It has, by most accounts, worked just fine for us and for the legal profession generally. Now, this system faces a mortal threat in the form of the government proposals contained in the Bango Kitita.

IS BANGO KITITA A TROJAN HORSE?

So what is new in the government proposals that has caused this much ire amongst us members? Firstly, by proposing the creation of the Bodi ya Usajili wa Wanasheria, which will deal with all matters of admission, discipline and/or removal of members from legal practice, the center of decision-making power will move from the Judiciary where it has hitherto rested, to the Executive. The reason is

not hard to find. The Chief Justice, currently the fulcrum by which advocates are admitted to, or remain in, the Bar, will be relegated to an advisory role through the consultation clauses. The Advocates Committee will completely disappear from the equation, as its quasi-judicial powers will now be transferred to the Bodi ya Usajili wa Wanasheria, in consultation with the Chief Justice.

Secondly, even though the Bango Kitita is silent on the matter, given the historical practice regarding statutory boards in our country, it is almost certain that Bodi ya Usajili wa Wanasheria will comprise mostly of ministerial appointees, with the chairman and secretary most likely presidential appointees. By tradition and practice, these boards are firmly under ministerial and, therefore, direct political control of the Executive. Ministry officials have informally intimated that that, indeed, is the hidden motive behind these proposals.

So, distinguished members, what the Bango Kitita says, and what it leaves unsaid, spells trouble to each one of us personally and to all of us collectively. Were it to pass, it would ring the death-knell of the TLS and, with it, will go the notion of an independent Bar and an independent legal profession. Simply put, we advocates, hitherto largely independent and self-regulating in many important spheres of our professional life, will come under tighter Executive control.

The politico-administrative arm of the state, namely the apparatus of the Bodi ya Usajili wa Wanasheria, will determine who gets admitted as advocate, renews his or her practicing certificate and, consequently, who is permitted to practice law and who does not. It is not farfetched to say that, before long, lawyers or advocates deemed troublesome by the powers-that-be will not be admitted to the Bar, or will have their practicing licenses revoked or refused renewal.

Similarly, advocates who defend or prosecute unpopular causes or litigants, will have to think twice before taking on those causes or clients. One can only imagine, in the current climate of the so-called 'vita ya kiuchumi', how many advocates will dare to defend foreign investors who are now being denounced as robber barons and plunderers of our natural resources.

Who will dare to defend any of the many persons recently calumniated in political platforms as drug lords, tax cheats, forgers of academic certificates and other official enemies of the state? Which advocate will, in the face of threats of revocation of his practicing licence or refusal of renewal thereof, want to represent victims of torture by agents of the state, or victims of state-sponsored violence against our rural populations which have been exposed in several parliamentary inquiries in recent times? Which advocate will want to represent persons intent on suing the government for breaches of contract or for torts committed by its agents?

Now if all these 'enemies of the state' cannot find the lawyers to represent them for fear of reprisals by the Executive operating through Bodi ya Usajili wa Wanasheria, what will be the state of the Rule of Law and Human Rights in our country? Though innocent-sounding, the Bango Kitita is, from the foregoing, anything but.

TLS NOT OPPOSED TO GENUINE REFORMS

Distinguished members,

TLS has never been, and will never be, opposed to genuine reforms of the legal and institutional regime governing the legal profession in Tanzania. On the contrary, we have always worked hard to bring about reforms of the law that will secure the attainment of the noble ends of the Rule of Law, Independence of the Judiciary and a

respect for Fundamental Human Rights of our people. Please allow me to share with you a few examples of our past endeavours in this regard.

In 2001 the Governing Council of the TLS appointed a five man committee comprised of former Presidents Peter Bakilana, now deceased, Dr. Fauz Twaib, now Judge of the High Court and Mohamed A. Ismail, Dr. Alexander T. Nguluma and former Executive Secretary Amour S. Khamis, now Judge of the High Court. The Committee's remit was, *inter alia*, 'to examine the present Advocates and the Tanganyika Law Society Ordinances and come out with new acts (sic!) that are in keeping with the present-day challenges and circumstances confronting Tanzania....'

The Committee was specifically tasked to inquire into '... the oft repeated accusation of the growing indiscipline amongst advocates, the apparent failure of disciplining advocates effectively and timely, the complaint of high fees ... the question of seniority and training of advocates....' It was also asked to examine the relevant statutes from neighbouring countries of Kenya, Uganda, Zambia and Namibia, to draw any relevant lessons for us.

On 25th February, 2003, the Committee handed in the fruits of its labours to Attorney General Andrew Chenge: a Draft Advocates Act, 2003. The key highlights of the Draft Act included the creation of the Law Council chaired by a Judge of the High Court appointed by the Chief Justice and comprising of the TLS President; Dean of the Faculty of Law of the University of Dar es Salaam; two senior advocates appointed by the TLS, and two lawyers appointed by the Attorney General, one of them representing 'private institutions offering legal training.'

In the words of President Thomas Bashite Mihayo, who presented the Draft Act to the Attorney General, the Law Council was to be ‘... given wider responsibilities and functions than the Council of Legal Education in the present Ordinance which it seeks to replace.’ The Draft Act also made wide-ranging proposals for the remuneration and discipline of advocates. Its proposed Ethics and Disciplinary Committee introduced, in the words of President Mihayo again, ‘for the first time in our history, a machinery controlled and manned by the advocates themselves to discipline their own brethren.’

President Mihayo described the proposals as ‘both bold and original and not traditional or commonplace’, and challenged the Attorney General to ‘... be bold enough to take new steps if necessary and not confine your views to traditional and conservative ones for the sake of it.’

The TLS proposals were never acted on and its Draft Advocates Act presumably continues to gather dust somewhere in the Attorney General's Chambers.

Distinguished members,

The Society was not discouraged by inaction on the part of the Government. Three years after submitting the Draft Advocates Act, 2003, TLS re-submitted, with minor changes, the Draft Advocates Act, 2006. No action was forthcoming from the Government. The following year, 2007, a similar draft was once again submitted to the Government.

After ten years of waiting, the Government has finally responded with the Bango Kitita. The latter has completely ignored all efforts made by TLS over this many years. Not a single one of its proposals of the past fourteen years has been taken up in the Bango Kitita. None.

CLOSE RANKS: A CONCLUDING NOTE

Distinguished members,

Your Governing Council finds the Bango Kitita not only dangerous but also totally unacceptable. If we must respond to these proposals, and I believe we must, our response should be to re-submit, with changes where necessary, the legislative drafts that we submitted to the Government in 2003, or 2006 or 2007. But your Governing Council believes that it does not have the right to decide these life and death matters on behalf, above the heads and behind the backs, of you, distinguished members. We do not have the monopoly of knowledge and experience on these issues. These are questions that must, therefore, be decided directly by the members themselves.

Your Governing Council has called this Extraordinary General Meeting for this purpose. To bring the collective wisdom and experience of you, distinguished members, to bear on this most vexing problem thrust upon us all by the Bango Kitita.

The road ahead will be bumpy, rocky and full of difficulties. Our collective resolve will be tested to the extreme. As I stated in my Inaugural Speech of 18th March, 2017, ‘... unity between and amongst members is of utmost imperative. We may not, and we shall not, always agree on what is the best way of attaining these noble objectives. Our differences and diversities, however, should be the source of our strength, not our undoing.’ The time has come to put these words into practice.

Your Governing Council has requested the professional knowledge and experience of our pre-eminent members, Drs. Hawa Eve Sinare and Beatus Malima to take us through the nooks and crannies of the

Bango Kitita. Please allow me to applaud their readiness to help even under the severe time constraints that were imposed on them.

We have sought the knowledge, experience and wisdom of our continental association, the Pan African Lawyers Union (PALU) and I am happy to acknowledge the generous presence here of Dr. Donald Deya, an old friend of the TLS.

As always, we have sought – and obtained - the selfless assistance of our Emeritus President, Dr. Kibuta Ong'wamuhana, to moderate this important event.

Finally, I ask you all to debate the proposals in the Bango Kitita and the presentations of our eminent resource-persons with the calmness and dispassionate precision of the true professionals that you all are.

I thank you for your time and patience,

Hon. Tundu A.M. Lissu (MP)
PRESIDENT