

FREE ACCESS TO LAW IN TANZANIA: A MYTH OR REALITY?

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By Damas Daniel Ndumbaro¹

1.0 Introduction

Tanzania, which is found between longitudes 29 and 41 east and latitudes 1 and 12 south, is an East African country which is a result of the union between Tanganyika and Zanzibar of 26th April, 1964. Tanganyika and Zanzibar executed a union deeds containing what is known as articles of the union. It is one of the unique unions in the world in the sense that there are two governments, i.e. the union government which deals with matters mentioned in the articles of union, such as foreign relation, defence, home affairs, etc. and Zanzibar Revolutionary government which deals with non union matters in Zanzibar, such as legal, health, labour, finance etc. It is therefore, constitutional and legal affairs are not a union matters. There is a constitution for United Republic of Tanzania and constitution for Zanzibar. Zanzibar enjoys semi autonomous status²

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² It has its own President, Parliament, cabinet and Judiciary, though their powers are limited to non union matters as mentioned in the articles of union.



The map of Tanzania.

Tanzania has a total population of about forty million people, scattered in 945,000 square kilometers which is the total surface area. Dodoma is the capital city but most of the population, about four million, is located in Dar es Salaam, which is a commercial city. There are more than one hundred and thirty tribes but unlike most African countries, Swahili, a national language, is spoken by every Tanzanian, helping a lot in forging the much needed national unity. However, English is spoken by few elite who managed to have secondary education and above. Literacy level is 85% of the total population (these are people who can at least read and write). It is one of the highest literacy rate in Africa.

The high literacy rates, which is mostly in Kiswahili language, owes much to the free primary education policy and adult education programmes.

1.2 Judicial and Legal System in Tanzania.

Tanganyika was colonised by Germany³ followed by British⁴ and it attained its independence in 9th December, 1961. The legal system was very much influenced by English law and system, through Judicature and Application of Law Ordinance⁵, which, among other things, imported the English law which was in force in England as of 1st July, 1922 and made it applicable to Tanganyika subject to minor changes as the local circumstances inevitably compelled. Some of the laws are still in force today.

After Uhuru⁶, some changes were made, mostly by enacting new laws and putting the new legal and judicial system in place. The system was almost like the old one save for lack of discrimination based on colour and race.

When we discuss the judicial and legal system, we have to bear in mind that there are two different systems, one operating for the union government⁷ and the other for Zanzibar⁸ only.

³ (1884 – 1919)

⁴ (1919 – 1961)

⁵ Reception Clause, imported English law to Tanganyika and established for court for enforcement of the law

⁶ Uhuru is a Swahili word which means independence.

⁷ Tanganyika or Tanzania mainland as it is called

⁸ Tanzania islands, though there are other islands which are not part of Zanzibar, i.e Mafia and Ukerewe.

1.2.1 Tanzania mainland.

The judiciary in Tanzania mainland is headed by a Principal Judge who sits at the high court of Tanzania. The court system is basically a three tier system, from Primary court, which is the most inferior, District and Resident Magistrate court, which have almost the concurrent jurisdiction and lastly the high court. The high court is further divided into four divisions, i.e. Main Division, Commercial Division, Land Division and Labour Division. There are fourteen high court registries distributed in thirteen zones⁹. There are twenty three resident magistrate courts, one in each region except Dar es Salaam which has three and about 120 district court, one in every district. Also there are many primary courts at least one in every ward. Apart from these courts, there are also specialized courts like Industrial courts, land courts, tax tribunals, competition and consumer tribunals, etc.

1.2.2 Zanzibar

The judiciary in Zanzibar is slightly different from that of Tanzania mainland, though they are both influenced by English law. In Zanzibar, the judiciary is under the control of the Zanzibar Chief Justice, who sits at the High court of Zanzibar and he is in charge thereof. As it is, in Tanzania mainland, the court system is three tier; Kadhi's Court, which is the most inferior court dealing with customary and Islamic matters, Magistrate courts and High court. There are two high court registries¹⁰, five regional courts and kadhi court in every ward.

1.2.3 The Court of Appeal of Tanzania

⁹ Dar es salaam (2), Tanga (1), Moshi (1), Arusha (1), Mwanza (1), Bukoba (1), Tabora (1), Dodoma (1), Iringa (1), Rukwa (1), Mbeya (1), Songwe (1) and Mtwara (1)

¹⁰ One in Unguja, where the Chief Justice sits and another in Pemba.

This is the most superior court in United Republic of Tanzania established under Article 117 of the Constitution of the United Republic of Tanzania¹¹. It entertains appeals from both High Court of Tanzania and the High Court of Zanzibar. It is under the Chief Justice of United Republic of Tanzania who is also the head of Judiciary as per the constitution of United Republic of Tanzania. Historically, the Court of Appeal of Tanzania came into existence on 9th August 1979 following the demise of East African Court of Appeal after the collapse of East African Community in 1977. The Appellate Jurisdiction Act No. 15 of 1979 and first amendment to the Constitution of United republic of Tanzania are legal instruments establishing the Court of Appeal of Tanzania.

1.2.4 Special Constitutional Court.

This court is established under Article 125 of The Constitution of United Republic of Tanzania. Different from the fore mention courts, this court was established specifically for determining constitutional matters arising from any part of the union¹².

1.2.5 Court language

Save for primary and Kadhi's court where Kiswahili is the official language, English is the official language for the other courts. The courts business may be conducted in Kiswahili but the proceedings are recorded in English and the judgments are also written in English. Though Kiswahili is a national language, it is not a court language, thus alienating many normal citizens from accessing the court records and its allied services. As we discussed above, Kiswahili is not only the national language but also the main language spoken by all people, most of them do not understand English. With the court proceedings and judgments recorded in English, it creates a serious barrier in

¹¹ Chapter 2, Revised Edition 2002.

¹² Refer Article 126 of the Constitution of United Republic of Tanzania, Chapter 2 Revised Edition, 2002.

transmission of legal information to the people. The Magistrate and judges, there is a challenge in translating the proceedings from Swahili to English. These have impacts in access to the law.

1.2.6 Computerization

The court business in Tanzania is not computerized, except in the high court, commercial division. But this is a specialized court, which is financially not for normal poor citizen. The court handles commercial cases whose values is above Tanzanian shillings forty million. Lack of computerization affects the operation of the court which is typical manual and very tedious. In 2006, I brought to SAFLII a heap of judgments typed in manual typewriters. It was a difficult job to scan them and display in their website. The judgments were typewritten because of lack of computerized information system in the judiciary. With the manual system, tracing a judgment may prove to be a tough job. But the biggest challenge is transmission of the information to the mass. A computerized data base linked to the web would be an ideal because all these much needed legal information could be accessed easily, conveniently and freely. In the modern world, this is inevitable but is not there in Tanzania.

1.3 Legal Aid

To begin with, it is important to understand importance of legal representation using the following quotation:

“It is not every person who has the ability to defend his own... He may be tongue tied or nervous, confusing or wanting in intelligence...”¹³

Samatta, J (as he then was) elaborates more on the importance of legal representation in the following way:

¹³ Lord Denning M.R (as he then was) in *Pett v. Greyhound Racing Association Ltd.* (1969) 1 QB 125

“Legal representation for an accused is a right almost universally recognized. That right is jealously guarded by law that if an accused is deprived of it... and in the end convicted, that conviction cannot be allowed to stand on appeal”¹⁴

The poor and unprivileged Tanzanians, being financially unsound could lack legal representation and hence impliedly lack access to legal remedies. There are a number of legal aid forums¹⁵. These legal aid schemes emerged as a result of acknowledging the fact that the state is not capable of providing legal assistance to all the poor sections of Tanzanian society. However, like the state they have also failed to cater for all poor accused persons. This is due to limited financial resources at their disposal.

Legal aid forums in Tanzania are the main and most useful services which provide free access to law in Tanzania. One of the main challenges is funding to these forums, which most of them are concentrated in urban and they do lack coordination. All these forums are doing the same work but there is no coordination or a way to harmonize their activities which are somehow similar. There is a need for the national chapter of the free access to law to be established which will link directly to other national, regional and international institutions with similar objectives.

1.3.1 Tanganyika Law Society Legal Aid

This is under an organization of practicing Advocates and others lawyers in the country namely Tanganyika Law Society. The society is administered by a council established under part IV of Tanganyika Law Society Act. The council, applying its powers conferred by the Act under Section 17 appointed the legal assistance committee which offers legal advice and assistance the poor free of charge. Successful applicant for legal

¹⁴ In *Alimasi Kalumbeta v. Republic* (1982)TLR 329

¹⁵ Tanganyika Law Society Legal Aid, Legal and Human Rights centre, National Organization for Legal Aids, Tanzania Media Women Association, Women Legal Aid Clinic, Tanzania Women Lawyer Association, Zanzibar Legal Aid Centre and The University of Dar es salaam, Faculty of Law Legal Aid.

assistance are assigned to practicing Advocates who takes their cases without charging anything¹⁶

1.3.2 Women Legal Aid Clinic

It is part of the Union of Women of Tanzania (UWT) wing attached to the ruling party, *Chama Cha Mapinduzi* (CCM). It concerns, primarily, with the rights of women. As far as legal aid is concerned, it helps poor women with legal problems through counseling and representation. One of the weaknesses of the clinic is that, being attached to the ruling party can be seen as not being politically neutral. However, currently there have been campaigns to detach it from the ruling party.

1.3.3 Tanzania Media Women Association (TAMWA)

It manages to raise some taboo issues with loud voice such as wife beating, child labour, prostitution and problems relating to AIDS epidemics. Like the previous mentioned centres, it runs legal aid clinic at Dar es Salaam only.

1.3.4 The Legal Aid Committee of the Faculty of Law (University of Dar es salaam)

It has two legal aid clinics in Dar es Salaam. In those clinics members of the public receive advice and counseling. Eligible persons have their cases taken up and represented in courts of law and other statutory bodies. The Committee concentrates in civil matters especially Labour law, Land lord and tenant, Matrimonial issues, Inheritance, etc.

¹⁶ Rule 37 (c) of The Rules of Conduct and Etiquette of Tanganyika Law Society requires a practicing Advocate member of the society to accept legal aid briefs assigned to him by the society.

1.3.5 Tanzania Women Lawyers' Association (TAWLA).

It came into force in 1990. Its membership is open to all women lawyers who are Tanzanians and Association whose objects are similar to those of TAWLA. One of its objects is to provide assistance to women in matters related to their rights and particularly to educate women of their rights. Its main weakness is that it offers legal aid to women and children only leaving out other members of the society.

1.3.6 Legal and Human Rights Centre (LHRC)

This is a non governmental and non profit making organization established in 1995. Its main object is to create legal and human rights awareness among the general public especially unprivileged sections of the society through legal and civic education and provision of legal aid.

1.3.7 Findings

Most of the above mentioned legal aid for a have proved to be very useful and helpful for people in need of the access to law. The biggest weakness is that all of them are concentrated and centralized in urban centre and not in rural areas where 80% of the Tanzanian population is. There is a need of thinking of ways in which this service could also reach majority of people in villages as well.

1.4 Media and the Court

Media in some occasion have contributed to give people the much needed access to the law. These are through reporting of court cases¹⁷ and conducting of radio and television¹⁸ program. However, most of them are concentrated in urban areas and not all people are accessible to it. There are equally other cases which are conducted in camera and media is not allowed to cover. This is another opportunity lost for the citizen to access the law.

2.0 Benefits for the provision of Free Access to the Law.

Free Access to law is a human rights issue. In Tanzania, it is a constitutional right. The constitution of United Republic of Tanzania guarantees the right to be informed, thus, implementing the free access to law. Free access to the law has the following benefits;

- i. It is respecting the constitution and other human rights instruments on the right to be informed¹⁹.
- ii. It may be used to educate people on their legal and other rights.
- iii. It may easily be done using Kiswahili language used by every Tanzanian, thus easy delivery of the message.
- iv. It may be part and parcel of the legal aid system which is already established.
- v. It may be done through media programme currently going on.
- vi. It may be incorporated into the local government system, thus ensuring its effects to the rural areas. Currently there is a local government reform programme and this may be part of it.
- vii. People are presumed to know the law (ignorance is not a defence). Free access to the law removes the ignorance of the law.

¹⁷ But they mostly report cases with public interests and reporting may be very inaccurate and full of personal opinion which may not necessarily be legal.

¹⁸ Channel Ten Program called “Pambanua” which means analyse and ITV programme “ijue sheria” which means know the law, Radio Mlimani Programme on Sauti ya Mtoto (Voice of the Child) which deals with children rights.

¹⁹. Article 18 of the Constitution of United republic of Tanzania and Article 19 of Universal Declaration of Human Rights, 1948

- viii. One may only obey the law which he or she knows. The access to the law promotes abiding to the law, makes one a good citizen, promotes peace, tranquility and safe society.
- ix. It saves tax payers money which may be used in controlling crimes.
- x. It does away with the notion that law is a reserve of few and its access must be very expensive.

3.0 Challenges for the provision of Free Access to the law

Provision of free access to law in Tanzania is facing a number of challenges;

- i. A strong belief that law is a reserved profession, thus its access is also for few reserved.
- ii. Language: All legal information is in English while the national language, used by many Tanzanians is Swahili.
- iii. Legal language is complicated and hard to interpret in Kiswahili.
- iv. The costs of such a project programme cannot be accommodated by the government. Therefore, in most cases you need a donor.
- v. Most of the legal information to be accessed is not computerized because of the outdated technology used in court and other palaces.
- vi. Copyright restrictions especially from the company doing business of publication of legal materials.
- vii. Poor prioritization in legal sector.
- viii. Competition from the company doing business in legal information materials.
- ix. Geographically, Tanzania is a big country; it is a serious challenge to disseminate this free access to law agenda in the entire country.
- x. Most of Tanzanian population is found in the rural areas where access to information, leave alone legal information, may be a challenge. Most of these rural areas have no access to modern technology.

4.0 Reality

With all the issues discussed above, the fact is free access to law in Tanzania still a dream which needs concerted efforts to be realized. The geographical size of the country, language barrier, lack of legal books, poor book reading habit are part of the challenge which poses more questions than answers. Centralization and concentration of legal aid forums and media in cities, with poor coordination and institutional framework, together with the perception of the people on law to be a secluded agenda and a reserve of the few, makes the entire notion of access to law in Tanzania more of a myth and less of a reality.

5.0 Recommendation

Free Access to law in Tanzania is very much needed now than any other time in order to assist people not only to know their legal rights but also and more important to make society safe. By ensuring free access to law in Tanzania, we will have made sure that the constitutional right to be informed is implemented.