

INTRODUCTION

The Law Reform Commission of Tanzania is an independent institution established under the Law Reform Commission Act, 1980. The Commission was established, to constantly keep under review all laws of the United Republic of Tanzania with the view to attaining a systematic development of the laws through reform.

Business Environment Strengthening for Tanzania (BEST)

The Review of Civil Justice System being undertaken by the Law Reform Commission of Tanzania is one of reform initiatives under the support of Business Environment Strengthening for Tanzania (BEST) programme. The programme aims at enhancing enterprises growth and competitiveness, through the establishment of a simpler, more enabling, appropriate and sustainable regulatory environment for business in Tanzania.

Civil Justice Review Programme

The Civil Justice Review Project falls under, the Commercial Disputes Resolutions component of the BEST programme, which aims at removing procedural and administrative barriers and enhancing efficiency in service delivery by the Government including timely resolution of commercial disputes.

The review seeks to improve the machinery of civil justice in Tanzania by means of reforms in jurisdiction, procedure, regulation of private legal practice and court administration.

The reform aims at reducing delay, costs and complexity in civil litigation so as to be in line with Article 107 of the United Republic of Tanzania Constitution.

THE GOVERNMENT PROCEEDINGS ACT, 1967

The Government Proceedings Act provides for the rights, liabilities and procedures to be followed in civil proceedings by or against the Government.

The Law Reform Commission of Tanzania has identified legal issues which need to be reviewed so as to improve the civil justice system in Tanzania.

The Jurisdiction of the High Court to Hear Cases against the Government

The Government Proceedings Act empowers only the High Court to try suits against the Government. The geographical distribution of High Court makes it difficult for many people to access the High Court.

The Requirement of 90 Days

The law requires a notice of not less than 90 days specifying the basis of the claim to be served to the Chief Executive Officer of the Government department involved and a copy served to the Attorney General. It has been observed that there are circumstances which need courts intervention before the expiration of 90 days, therefore the period is considered to be too long.

Enforcement of Decrees

The Act provides that the Central Government and local authorities' properties are not subject to attachment for execution of a decree or order against them. The treasurer registrar is responsible in satisfying decrees and orders against Government. However, the law does not provide for a specific time limit and thus it takes long time for a decree to be satisfied.

THE ARBITRATION ACT, 1931

The Arbitration Act was enacted in 1931 since then no major reforms have been undertaken thus the Act is not yet inline with contemporary arbitration demands.

The Law Reform Commission of Tanzania identified issues which need to be reviewed so as to improve delivery of justice. The following are issued raised:

Arbitration Rules

The Commission observed that existing Rules on the filling of awards and all consequent or incidental proceedings are not comprehensive and do not give a clear guidance to the users.

Limited Grounds to Set Aside An Award

Arbitration in substance ousts the jurisdiction of court, except for the purpose of controlling the arbitrators, preventing misconduct and regulating the procedure after award.

However, the Act provides only two grounds namely; misconduct by umpire or arbitrator and improperly procuring of arbitration award which can be relied by court to set aside the granted award.

Geneva Convention on the Execution of Foreign Arbitral Awards 1927

The fourth schedule under the Arbitration Act contains the Geneva Convention on the Execution of Arbitral Awards of 1927. This Convention is out dated and many Arbitration Acts from other countries do not refer this Convention but they refer to the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards of 1958.

APPELLATE JURISDICTION ACT, 1979

This Act regulates the functions and powers of the Court of Appeal. Powers of the Court of Appeal include the hearing of appeals from the High Court and from subordinate courts and the power of revision. The following are the issues raised regarding this Act.

Appeals from Tribunals

The Court of Appeal has jurisdiction to hear appeals which originate from the High Court and subordinate courts with extended jurisdiction. Conversely, in recent time, many statutes establishing regulatory authorities and executive agencies have established tribunals and provide that appeals from those tribunals shall be determined by the Court of Appeal hence the Court of Appeal exercises the power without an enabling legal provision in the Constitution and the Appellate Jurisdiction Act.

The Power of the Court of Appeal to Review its own Decision

It has been observed that the Court of Appeal has been reviewing its own decisions despite there being no express provision in the Constitution and the Appellate Jurisdiction Act.

Right to Appeal

The Appellate Jurisdiction Act categorizes matters which can be appealed as of right; matters which appealable with leave of the Court of Appeal or High Court and matters which are appealable with certificate on a point of law. This requirement poses hurdles to appellants when exercising their right to appeal.

Conclusion

The Law Reform Commission of Tanzania is working on the issues raised by stakeholders and will come up with recommendations to improve the civil justice system in Tanzania.

For more Communication

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THE UNITED REPUBLIC OF TANZANIA



THE LAW REFORM COMMISSION OF TANZANIA

COMPREHENSIVE REVIEW OF THE CIVIL JUSTICE SYSTEM IN TANZANIA [BEST PROGRAM]

Part II

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