

INTRODUCTION

The Law Reform Commission of Tanzania is an independent institution established under the Law Reform Commission Act, No. 11 of 1980, to constantly keep under review all laws of the United Republic of Tanzania with the view to its systematic development and reform.

Business Environment Strengthening for Tanzania (BEST) The Review of the Civil Justice System being undertaken by the Government of Tanzania through the Law Reform Commission of Tanzania is one of the 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 MAGISTRATES' COURTS ACT, 1984

This Act establishes Primary Courts, Districts Courts, and Resident Magistrates' Courts and it provides for their territorial and pecuniary jurisdiction. The Primary and District Courts are supervised by Resident Magistrates while Resident Magistrates Courts are supervised by the High Court. The law requires Primary Court Magistrates to sit with assessors whose decisions are not binding.

Moreover, District and Resident Magistrates courts have concurrent pecuniary jurisdiction in civil cases. However, a Resident Magistrate Court may be conferred with extended jurisdiction to certain matters whose original jurisdiction is vested in the High Court.

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

Pecuniary Jurisdiction of District Court and Resident Magistrate Courts

It was observed that pecuniary jurisdiction of these courts is very low taking into account the social economic advancement of the society. This causes overloading of cases in the higher courts. The current pecuniary jurisdiction forces some litigants to travel long distances in order to reach the right court to file cases depending on the value of the subject matter.

Restriction of Advocates not to Represent Litigants in Primary Court

Majority of people are residing at grass root level where the Primary Court is situated. It has been observed that those litigants who file their cases to primary court are denied their rights to be represented as advocates are restricted by law to appear in primary courts.

Relevance of Assessors in Primary Courts

The law requires that primary Court Magistrate should sit with assessors on customary and islamic matters. However, codification of customary law has simplified the application of customary law hence it reduces necessity of assessors in courts.

WARD TRIBUNALS ACT, 1985

The law requires the establishment of Ward Tribunals in every ward under the Local Government Authority. Ward Tribunal comprise of members who are elected

by a Ward Committee and lead by a Chairman who is appointed by the Ward Development Council. Function of the Ward Tribunal includes maintenance of peace and harmony, settlement of disputes amicably, reconciliation of marriages and enforcement by-laws passed by the respective Council. This tribunal has powers of handling disputes of both registered and unregistered land.

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

Institutional Arrangement

The control of ward tribunals seems to be difficult as they are placed under the Local Government Authority which is part of the executive arm of the Government and not to the judiciary which is, under the constitution, vested with the role of delivering justice. Members of the tribunal are responsible to the council within which they are established but they give less cooperation to other justice delivery organs.

Restriction on Legally Qualified Members

The law restricts legally qualified persons to be appointed as members of ward tribunals although among the judicial powers of the tribunal is to order recovery of possession of land, specific performance, issue injunction, award damage and order costs. That means that the ward tribunal are exercise extensive judicial powers. Stakeholders argued that there is a need for members of tribunals to acquire legal knowledge in order to smoothen implementation of their duties.

THE LAND DISPUTES COURTS ACT, 2002

This law establishes the hierarchy of specialized land courts from the grass root level in order to speed up litigation on land matters. These courts are the Village Land Council, Ward Tribunal, District Land and Housing Tribunal, High Court and Court of Appeal.

Institutional Arrangement

These special land courts are supervised by different Ministries. Village Land Councils and Ward Tribunals are managed by Local Government Authorities under the Prime Minister's Office. District Land and Housing Tribunals are under the Ministry of Lands, Housing and Human Settlements Development. The High Court and Court of appeal is under the Ministry of Constitutional and Legal Affairs. Stakeholders argued that placing justice delivery organs under the control and supervision of executive arm institutions contributes to inefficiency when it comes to appeals, revision and other service to the public.

Appointment

It was noted that Chairmen of District Land and Housing Tribunals are appointed by the Ministry responsible for lands and that members of ward tribunal are appointed by the Ward Development Committee in their respective wards.

Appeals

Under the Act, appeals from decisions of High Court Judges exercising original jurisdiction on land matters to the Court of Appeal requires leave. Contrary to that, decisions of the same judges exercising original on other matters do not require leave to appeal. The requirement of leave in land cases seems to prolong the appeal procedure.

THE EVIDENCE ACT, 1967

Among the roles of the courts is to hear and decide on the relevancy and admissibility of evidence. In Tanzania this is governed by the Evidence Act and that parties to a case have a big role to play.

Passive Role of Courts

There are complains that the procedure followed by courts in taking evidence is difficult to parties who are not represented by the counsel. The Adversarial system require a party to find and adduce evidence before the court and this may lead to vital evidence escaping attention of the court. The passive role of the court in taking evidence may lead to injustice.

Witness statement before the officer of the court

The law does not allow recording of testimony of a witness by an officer upon the failure of the presiding Judge or Magistrate to take that record. This situation contributes in delay on finalization of cases as witnesses may make court appearance several times without giving their testimony. On the other hand, there are suggestions that those officers should be allowed to record testimony and that the principle of orality and demeanor of witness should not be discarded, and that, in all type of proceedings witnesses should appear in court instead of being required to file statements.

THE LAW OF LIMITATION ACT, 1971

This is the law governing the limitation of action in suits and applications in civil proceedings.

Power of the Minister

The law confers powers to the Minister responsible for legal Affairs to extend time in institution of civil suits who is part of the executive rather than granting this power to the judiciary, the organ mandated to dispensation justice.

Extension of Time

The law requires that if time is extended it should not be more than half of original time. It is observed that by this requirement, the applicant may fail to institute a case as a result is denied access to justice. Stakeholders argued that time granted for extension should consider reasons given or circumstances shown by the applicant.

Conclusion

The Commission is working on the challenges in order to improve the civil justice system in Tanzania in keeping with public needs and expectations.

For more information

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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 III

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